

February 14, 2023

Schultzville, NY

A public hearing on proposed local law No. 1 of 2023 was held on this day in the Town Hall. Present were Supervisor Whitton, Councilmen Dean Michael, Eliot Werner, Katherine Mustello and Town Clerk Carol-Jean Mackin. Councilman Chris Juliano was absent. Town Attorney Shane Egan was also present. There were approximately 45 people in the audience.

### **PLEDGE OF ALLEGIANCE**

At 6:00 PM, Supervisor Whitton called the public hearing to order and led the Pledge of Allegiance.

### **LEGAL NOTICE**

The Town Clerk read aloud the Public Hearing Notice.

### **PUBLIC HEARING**

#### **Supervisor Whitton gave the ground rules for the evening:**

After we open the Public Hearing, I am going to invite Shane Egan, the Town Attorney, to give a short history of this situation, what this amendment to the town code is, and what it intends to accomplish. Next, I will open it up to the floor for comments.

- Come to the microphone in the front of the room, to your right. It is helpful to us, but not required, to state your name and the road you live on.
- All comments should be directed to the five members of the Town Board. Please do not direct any questions or comments to Cornerstone representatives or other audience members.
- We ask that you limit your comments to 3 minutes out of respect for others that would like to have an opportunity to speak.
- In the interest of respecting everyone's time, you will only be permitted to speak once. Your comments should also be relevant to the amendment we are considering.
- As a general rule during public hearings, we are not going to respond to any comments or questions directed to us. Please understand that we are not trying to be rude, this does not indicate that we haven't heard you or that we agree or disagree. Our job is to be here to listen, not to speak.
- Please do not interrupt those that are speaking with audible reactions. Many of us are neighbors, and I expect all of us to treat our neighbors with respect and civility.
- Finally, I would like to mention that this is a continuation of the public hearing in December on a Local Law that has been slightly tweaked. All of the comments from that public hearing are in the record, so there is no need to come back to the microphone for a repeat performance. We want to let as many people speak that would like to, but we are eager to hear any new thoughts or information.

Before Mr. Egan takes the floor, I would like to mention that we received emails from residents about issues of concern all the time. I am in receipt of about 12 emails regarding this Public Hearing. Almost all of those emails have asked the TB to delay our vote. One had specific questions. Those questions were forwarded to Mr. Egan and are addressed in his statement. If you would like to see the emails we have received, they will be attached to the minutes.

**Town Attorney Shane Egan statement: Local Law Amending 250-31 of the Town Code – Alternate Care Facilities**

Before the start of the Public Hearing the Town Board has asked that I summarize the reasons this law is being considered, the procedural history of how we got to this point and address some of the questions and concerns raised by Town residents since the last public hearing in December.

On August 31, 2021, then Municipal Code Enforcement Inspector John Fenton issued a Notice of Violation to Cornerstone which was confirmed in a subsequent notice dated November 10, 2021. The Notice of Violation stated that Cornerstone had impermissibly expanded its patient capacity without obtaining Site Plan or Special Use Permit approval from the Planning Board in violation of 250-31(B)(5) of the Town Code. The Municipal Code Enforcement Inspector directed Cornerstone to apply for Site Plan and Special Use Permit approval to the Planning Board.

Despite assertions to the contrary in the media or elsewhere, the August 31, 2021 Notice of Violation was the first zoning violation issued to Cornerstone or any of its predecessors regarding bed capacity. Specifically, no Notices of Violation were issued to Cornerstone in 2005 by former Zoning Administrator Robert Fennel.

In December 2021, Cornerstone applied to the Planning Board for retroactive approval of its patient capacity to 99. The application was made pursuant to 250-31(B)(5) of the Town Code for Site Plan and Special Use Permit approval.

The Planning Board considered the application in the Winter/ Spring of 2022. A public hearing was held on multiple nights regarding Cornerstone's application.

In March 2022, prior to the conclusion of the Planning Board public hearing certain neighboring property owners, by their attorney Kyle Barnett, submitted a complaint to the Municipal Code Enforcement Inspector. The complaint stated that Cornerstone as a nonconforming Alternate Care Facility which use predates the adoption of Zoning regulations, COULD

NOT expand or increase its patient capacity beyond what existed at the time

the Town adopted Zoning Regulations. Mr. Barnett also argued that Cornerstone had improperly intensified its use when it began offering detoxification services to its patient population. Mr. Barnett asserted that Cornerstone violated 250-80 and 250-81 of the Town Code which governs non-conforming uses and their expansion/intensification.

In April 2022, the Municipal Code Enforcement Inspector issued a determination which held that Cornerstone DID NOT impermissibly expand or intensify its use by increasing its patient capacity to 99 nor by offering detoxification services.

In late April 2022, Mr. Barnett appealed the Municipal Code Enforcement Inspector's determination to the Zoning Board of Appeals.

The ZBA considered the application in the Spring / Summer of 2022. It held a public hearing and received a number of submissions both in favor and in opposition to Mr. Barnett's application.

On August 31, 2022, the ZBA issued a decision which upheld in part and reversed in part the Municipal Code Enforcement Inspector's decision. The ZBA held that offering detoxification services DID NOT impermissibly expand or intensify Cornerstone's non-conforming use in violation of 250-80 and 250-81 of the Town Code. However, the ZBA also held that Cornerstone DID impermissibly expand and intensify its use in violation of 250-80 and 250-81 of the Town Code when it increased its bed capacity to 99 from 68, the level that existed at the time the Town adopted Zoning regulations. Notably, the ZBA held that Cornerstone as a nonconforming use COULD NOT apply to the Planning Board under Town Code Section 250-31(B) (5) for Site Plan and Special Permit approval because that Section does not apply to nonconforming Alternate Care Facilities.

In September 2022, Cornerstone commenced an Article 78 proceeding in Westchester County Supreme Court against, amongst others, the Town Board and ZBA seeking to reverse the ZBA determination as it pertained to the bed capacity increase. This Article 78 proceeding is still pending.

In November 2022, the Town Board introduced a Local Law to amend 250-31 of the Town Code to allow Cornerstone, as a nonconforming Alternate Care Facility, to apply to the Planning Board for a bed capacity increase. Under the terms of this proposed Local Law, Cornerstone would have to obtain both Special Use Permit and Site Plan approval to increase its patient population based on the criteria contained in Town Code Section 250-96 and 250-97. In addition to this criterion the Planning Board will have to consider whether there would be any significant additional adverse impacts to the surrounding neighborhood if the application is granted.

In December 2022 a public hearing was held on the Local Law where concerns were raised by members of the Town Community. One concern in particular was that the Local Law as proposed would allow Cornerstone to apply to the Planning Board for unlimited increases in its patient capacity.

In January 2023, the Town Board having considered the comments made at the December 2022 public hearing voted to reject the proposed Local Law and thereafter introduced a revised Local Law. The revised Local Law which is being considered tonight sets a patient capacity cap. Under the revised Local Law Cornerstone is only permitted to increase its bed capacity by 50% of the resident population that existed on the effective date of Chapter 250 (Zoning) of the Town Code. In accordance with past decisions of the Municipal Code Enforcement Inspector and the ZBA decision, the patient capacity of Cornerstone at the time the Town adopted Zoning regulations was 68. This means Cornerstone is effectively capped at a patient capacity of 102. This cap is clear, firm and permanent. The 50% rule contained in the revised Local Law is very similar to the 50% rule for nonconforming buildings which has been contained in 250-84 (B) of the Town Code for many years.

The Local Law under consideration is narrow in scope and only pertains to Cornerstone as it is the only nonconforming Alternative Care Facility in the Town of Clinton. It does not open the door to other entities to seek similar approvals.

If this Local Law is adopted, the Planning Board will have the opportunity to address the concerns many residents have expressed regarding Cornerstone's use of their property, including environmental concerns about Silver Lake. A definitive cap will be established that prevents future bed capacity expansion beyond 102. And the Article 78 litigation will be resolved along with the long running issues between Cornerstone and neighboring property owners.

If the Local Law is not approved, Cornerstone will not be permitted to increase beyond 68 beds pursuant to the ZBA's decision, the Article 78 proceeding will continue and there will be no forum to address the concerns of residents regarding quality-of-life issues such as traffic, safety, noise, and the use of town infrastructure.

It is impossible to predict the outcome of the Article 78 litigation, however two scenarios are likely if this Local Law is not adopted. Under the first, the Town wins and Cornerstone is limited to a patient capacity of 68. Under the second Cornerstone wins and is permitted to increase its patient capacity beyond 68, possible up to 99 and no definitive patient capacity cap would be in place. Under either scenario, the Planning Board will not have the jurisdiction to address the concerns raised by residents throughout the

Planning Board and ZBA processes. Under either scenario, the Town could expend tens of thousands of dollars defending the lawsuit with an uncertain result.

It should also be noted that while this this Local Law establishes a patient capacity cap of 102, it will be the Planning Board that establishes the exact patient capacity based upon its review of Cornerstone's application.

The Town Board has also performed an environmental review of this Local Law as required by SEQRA and completed a Full EAF.

If the limits established by this Local Law are violated by Cornerstone the Town, specifically the Municipal Code Enforcement Inspector, has all the enforcement mechanisms available to him pursuant to Chapter 250 of the Town Code.

The Local Law is consistent with the Town's Comprehensive Plan as Cornerstone's use of their property as an Alternative Care Facility predates the Town's adoption of zoning and this use will not change because of this Local Law. The Local Law in no way changes the scenic and rural character of the Town and in reality, Cornerstone has been operating at a 99-bed capacity for more than 15 years.

The Local Law being considered tonight was arrived at after thorough and thoughtful consideration. The Town Board believes it to be the best possible solution to the patient capacity issue at Cornerstone.

Supervisor Whitton opened the public hearing to comments:

**Kyle Barnett** –with the law firm Vanderwater and Vanderwater, represents a few of the neighbors in particular Katarina Maxinova, Edward Wilson and Wendi Adelman who are also three of the respondents in the article 78 that was filed by Cornerstone. Expressed that he is going to talk about legal issues not the lifestyle or life quality issues that they've been complaining about regarding the expansion. First to the issue regarding ambiguity about what the number of residents was at the time the chapter was enacted, he understands the town has taken a position it's 68, but says that's also the law now based upon what the ZBA found as a result of the recent decision that Mr. Egan just read. That's not Cornerstone's position, in his opinion because if Cornerstone thought that the capacity that they were allowed to (have) at the time the chapter was enacted which would have to be the same they're allowed now, they wouldn't have filed the lawsuit. They filed this lawsuit because they believe that the ZBA was wrong by saying that the current code only permits them to have 68 beds so it's not clear to everybody precisely as to what they're entitled to otherwise we wouldn't be here. The second issue regarding the ambiguity is, aside from the fact

that the town may have one belief as to what the number of beds they were entitled to at the outset of the chapter, Cornerstone is going to have a different belief or they wouldn't have sued. It's not clear as to whether that means 68 beds permitted or 68 beds that were actually used, if you read the language, it almost appears like it's whatever actual beds were being used at that particular point in time that could be 68 when this chapter was enacted, that could have been 75 when this chapter was enacted that could have been 99 when this chapter was enacted. In fact, why we're here is because presently the town's position now is 68 is all they're allowed but obviously they've been operating in excess of that capacity for some time we don't know when and we don't know for how long even Cornerstone has admitted that that number varies over time based upon capacity that they have had at any particular season, so right now they might not have 99 beds being operated they might have 70. We don't know. The problem with that is and the ambiguity that this line creates is because zoning ordinances are in derogation of the common law, that means that when a court looks at a zoning law, they look at it in terms of strictly construing it against the municipality - what does that mean? That means that any ambiguity in your zoning code gets decided in favor of the property owner so a judge isn't going to simply sit there and say oh well the town says it's 68 even though the statute doesn't say that nor is there any reference to where that is defined in in the code or in the statute, so what is the judge going to do? The judge is going to sit there and obviously if they're going to say it's ambiguous, they're going to have to find in favor of the property owner. As an attorney, I don't think I could argue if Cornerstone came into court two years from now or five years from now and said: hey you know when this was enacted we had 80 beds so we're entitled to 50 more than that, that's a reasonable argument and your code doesn't address it. Mr. Barnett continued: but that's not actually one of the more serious issues with the code, the second issue relates to the secret review Mr. Egan sort of made reference to. Mr. Barnett looked up the eaf that's online and the only thing he found on it is the part one of the eaf, he didn't see part two or three there and even the part one was only partially completed. Also, the town's never debated all of the environmental issues that go in with the expansion and all of them have to be considered. This is also a property that's under conservation agricultural residential district you can't simply say well we'll just look at some of it and allow the Planning Board to address it at site plan or special use permit because as we know, that's called segmentation that's illegal you can't do it. You're taking an action when you pass a local law, and when you take an action you'll have to look at the entire project in particular here because this is a zoning code directed towards one particular property and one particular property owner with a particular project in mind so when you do Secret review you have to look at all of that you have to look at - how is the expansion going to affect the environment and whether or not it's going to have a specific or significant adverse impact and simply just saying oh you know they've been doing it for 10 years and I'm sure it's fine isn't going to do it it's a lot more complicated than that so your secret review is going to be a real problem because it's incomplete at best and at worst it's segmentation which is also as you know illegal but even that's not one of the more significant issues although it is

significant perhaps one of the most significant issues is the fact that this appears to be what's called illegal spot zoning. That is when you take one particular piece of property and alter its use or its ability for use to suit that particular property for the owner without doing a comprehensive or overall view of the plan. He cited several cases to this point: One is *Envy van Dalton V Van Damme* (sp?- CJM) which was a really good case that looked at a well-known case regarding spot zoning called *Jackson Perkins V Martin*. What happened in that case is almost identical to what's going on here. In that case, which went up to the court of appeals, there was this trailer park that was not legal - it was not in conformance with zoning, it wasn't a prior non-conforming zoning use. It was completely illegal, the village came along and said okay we're going to pass a zoning law that legalizes it but anything that comes after is going to be illegal. The court said you can't do that you cannot pass a code that legalizes something that was already illegal simply for the benefit of one property owner and to the detriment of adjacent Property Owners. If the use itself was a prior non-conforming, that's is a little different but the problem is what you're doing is you're passing a zoning law to legalize what was an illegal expansion and this is the phrase the court uses - giving special privileges to the property owner, you're essentially rewarding - again words from the decision - rewarding the wrongdoer for the illegal activity rather than enforcing the code. That is spot zoning, what you're doing and what makes it worse is that it's not in compliance with the comprehensive plan. Mr. Barnett can't find in the comprehensive plan where this type of activity is permitted, so that's going to make the spot zoning argument that much stronger.

In addition, Mr. Barnett said he is concerned that this is going to create more problems than you have now because if you pass this local law in its current form with the issues that he mentioned, he feels the town is creating greater problems down the road. If this law gets challenged and it gets overturned now, you're going to have Cornerstone that didn't get what they want, you're going to have a bunch of residents that are going to be really ticked off because they had to sue the town because the town did something they shouldn't have done and it's just going to make a bigger mess. As a final thought he suggested the town get a second opinion, take a harder look at this stuff because he can see where this thing's going. He appreciates the Town Board for their time.

**Brad Cole** – offered appreciation for everybody here who's done all the work to try to resolve this and move forward. It appears to him that there's a violation of the law, saying the Town Board is doing their best to resolve to get Cornerstone happy and to make all the residents happy. Unfortunately, there was a lawsuit that was introduced here that created more tension and it feels like it's pushing the Town Board to address the lawsuit as opposed to address what's happening in the neighborhood. He feels that whether it's 50, 60, 100 beds that's not the point, we're now addressing a lawsuit to change our law and he just doesn't think that's right. We need you to stand up and address the lawsuit and fight it. To the board: You've tried your best to do a compromise I think anybody in their right mind is going to try to find a compromise to make everybody happy but he just doesn't

think this is actually ringing true as a compromise for us who live here. If we're putting this off to the Planning Board what's to stop the Planning Board from being sued if the answer doesn't come out right for Cornerstone and those who are involved with Cornerstone. Said it feels like you're shifting some of this responsibility to the Planning Board and he doesn't see it as resolving, but opening up more can of worms.

**Andrew- Clinton resident** - seems odd to him that Cornerstone is violating the zoning law; Cornerstone is suing and the Town is now changing the law to suit Cornerstone. Said Town Attorney's explanation of settling to avoid litigation seems disingenuous. Referring to the minutes of last meeting seems that there is a lot of opposition to the law from townspeople, The Town Board should be mindful they represent townspeople.

**Katarina Maxianova** – Cornerstone has shown complete disregard for our laws even when explicitly told they could not do something by the former zoning enforcement officers; doubts they will respect a poorly drafted vague Law. Sited Rhinebeck or Red Hook laws, both of which have resident and employee population density restrictions for all alternate care facilities based on lot size. Members of Cornerstone seem pretty happy with the way the law is written and they have spent a lot of money on Westchester and New York City lawyers and lobbyists. Cornerstone is happy and spending a lot of money to get what they want. This issue goes back to 2017 when they wanted to expand to 200 beds, Cornerstone came back in 2018 with the former Planning Board chair as their representative, the residents did their research, we asked the zoning officer at the time to investigate how they got to 99 beds, almost a year and one half later in August 2021, they got a violation for past illegal expansions. Cornerstone lawyered up, hired lobbyists and aggressively attacked those in their way and when the Zoning Board ruled the Cornerstone expansion was indeed illegal, they sued the town and others. Kat explained Cornerstone includes several facilities including the one in Clinton, and recently agreed to sell itself to a large for-profit corporation. Kat discussed the new owners and the amount of money they are spending to make the purchase; it does not make sense to spend so much money unless these violations are lifted.

**Erin Sax** said she is named in the lawsuit to silence her. Would like to board to speak, she hears silence. Feels the town will accommodate Cornerstone because Cornerstone is threatening them. There is a current investigation by the New York attorney general into some potential people tied to the purchase of this property, if these buyers end up indicted, she questions if members of the Town Board are legally protected if they had this information prior. Asks if the members of this board have all done their own due diligence to be sure they won't be sued like her.



**Town resident/Contractor** (Noah White)- Heard about this on Newsbreak; has a huge concern to what is happening to our town, we were a small farming town- it wasn't about money, now everything's about money. We have Clinton residents being sued over something that's going to happen, why isn't the town standing up for our homeowners who've been paying taxes for 30 years, rather than some rich 'you know what's' coming in from New York City trying to take over our town; all it's doing to all of our local Town residents is raising our tax dollars. Someone needs to look to see if our EMS can handle this bump, can our fire departments handle this bump?, we are talking about a huge commercial building. He thought we were about growing fields and raising corn and making hay now all of a sudden, we're about people buying off people now and people suing people over money. Alluded to Cornerstone having money as the reason the Town Board is presenting the law tonight, saying this issue is here suddenly because everybody's got money in their back pocket - says now this is what happens in small towns. He is not saying he does not want Cornerstone for this town, he is saying we want what's right for this town meaning what's right to protect our homeowners. He wants Clinton to stay a small-town farming community.

**Steve Rathjen** - Cornerstone is a customer for 37 years, this is not about residents or Cornerstone; he has never seen screaming or drug paraphernalia, just people getting help. They have been operating for many years and why is it a problem now? They have had up to 99 beds for 15 years, which the state allows and has permitted them for. They change lives, thanked Cornerstone for their work.

**Tiffany Pratt** no one should be allowed to operate outside the law.

**Jody Cross** -lawyer from Zarin and Steinmetz representing Cornerstone and a decades-long resident of the town and taxpayer of the town. We're in favor of the law; she is not going to address the lawsuit but wants to dispel some misinformation here. Agrees with Shane and Mike Whitton that the local law allows Cornerstone to go to the Planning Board and process a capacity increase, this is not approving any development; it doesn't Okay anything that's been done now or in the past this is just a means to get to the Planning Board for additional oversight of Cornerstone. They recognize that and when the Zoning Board ruled, they, the ZBA, commented that they felt constrained by the language in the code. Cornerstone disagrees with some of the determinations of the Zoning Board - they would rather be before the Planning Board addressing the issues rather than litigating. She clarified what's pending before the Planning Board is the approval of what exists today and what's existed for 16 years. In 2006 they got increased capacity from 66 to 96 beds and then in 2016 there were three more beds added. As to the issues of infrastructure, noise, sound those will all be addressed by the Planning Board and they are fully aware that they need to do that. Although Cornerstone had not obtained approval from the Planning Board for the increase, it was overseen by OASAS, (the State regulator), it was also overseen by the County Health Department who has approved the septic's and the like so the environmental issues have been addressed. Regarding some of the issues raised by

Mr. Barnett, the zoning determination said that Cornerstone was operating at 68 beds at the time it became non-conforming – they don't challenge that in the litigation and in fact if they go before the Planning Board and the litigation is discontinued, they will concede that 68 number that's their base, they can see that the Max Capacity is 102. But she said they're still not going to 102. They're staying at 99. This also is not spot zoning. The distinguishing facts of that case the Mr. Barnett cited are very important but Cornerstone is a legal use, the spot zoning pertains to changing the zoning of a property. The use isn't changing, the use is remaining the same, in fact Cornerstone has been the same capacity for 16 years but the same use for 40 years. We're not legalizing the use, the use is the same it's just the capacity that's in question here; it's also not segmentation although this law will only apply the Cornerstone, it is a town-wide law. The law just clarifies that an existing provision applies to non-conforming uses because it wasn't clear in the code. The ambiguity in the code should have been determined in Cornerstone's favor and that's what the litigation is about. She said they would rather process before the Planning Board. Cornerstone didn't apply for this amendment; this is not a petition from a member of the public this is a Town Board action. Cornerstone will address site-specific environmental concerns at the time we go to the Planning Board, they will also address any of the use issues. She stated that tonight is not about who owns the property it's not about what other properties the Cornerstone or any of its entities own, that is all irrelevant from a land use perspective and is inappropriate to be discussed at this board; the Planning Board is the appropriate entity to be looking at these issues. Cornerstone is looking forward to proving out that there has been no impact over the 16 years they have been operating at this capacity or the 40 years that this facility has been in existence. They support the law and are long-standing members of this community; just because they're a corporate entity doesn't mean they're not a resident of the town that pays taxes as well and a lot of them. They are here to answer the questions of the board and Cornerstone's here to save lives.

**Randi Sackheim** - Cornerstone has been sold and everything is going to change. That needs to be addressed. That is the future.

At 6:55 PM, there being no further comments, MM Supervisor Whitton, 2nd Councilman Michael to close the public hearing. All aye except Councilman Juliano who was absent. Motion carried.

### **ENTER EXECUTIVE SESSION**

MM Supervisor Whitton, 2<sup>nd</sup> Councilman Michael to enter into executive session to discuss with council litigation before the town. All aye except Councilman Juliano who was absent. Motion carried.

MM Supervisor Whitton, 2<sup>nd</sup> Councilman Michael to return to the regular order of business. All aye except Councilman Juliano who was absent. Motion carried.

**ADJOURN**

At 7:05 PM, MM Supervisor Whitton, 2nd Councilman Michael to adjourn the meeting.  
All aye except Councilman Juliano who was absent. Motion carried.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Carol-Jean Mackin".

Carol-Jean Mackin,  
Town Clerk