

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of :
 : Index No. 66048/2022
MEDICAL ARTS SANITARIUM, INC. d/b/a :
CORNERSTONE OF RHINEBECK, :
 :
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Petitioner, : Assigned Judge:
 : Robert J. Prisco, J.S.C.
 :
For a Judgment pursuant to Article 78 of the CPLR :
 :
 :
-against- :
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 :
TOWN OF CLINTON ZONING BOARD OF APPEALS, : **SO-ORDERED**
TOWN OF CLINTON, EDWARD WILSON, : **STIPULATION OF**
WENDIE ADELMAN, ERIN SAX, and : **SETTLEMENT**
KATARINA MAXIANOVA, :
 :
 :
Respondents. :
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MEDICAL ARTS SANITARIUM, INC. d/b/a CORNERSTONE OF RHINEBECK (“Cornerstone” or “Petitioner”), and Respondents **TOWN OF CLINTON ZONING BOARD OF APPEALS (“ZBA”)** and **TOWN OF CLINTON (“Town,”** together with ZBA, “Municipal Respondents”), hereby stipulate and agree as follows:

WHEREAS, Petitioner is the operator of a legal preexisting, nonconforming Alternate Care Facility (“ACF”), as that term is defined under the Town Zoning Code, located at 73-93 Serenity Hill Road in the Town of Clinton (Parcel Grid No. 132400-6469-00-531763-0000) (“Cornerstone ACF”); and

WHEREAS, on or about September 30, 2022, Petitioner commenced a proceeding pursuant to N.Y. C.P.L.R. Article 78 against Respondents herein (“Proceeding”), challenging, *inter alia*, an interpretation by the ZBA that, based upon the language of the Town Zoning Code

(“Zoning Code”), Cornerstone could not seek from the Town Planning Board (“Planning Board”) an increase to its maximum bed capacity; and

WHEREAS, subsequent to the commencement of this Proceeding, and prior to issue being joined, the Town Board introduced an amendment to the Zoning Code, which would expressly permit preexisting nonconforming ACFs like Petitioner to seek from the Planning Board an increase to its maximum bed capacity (“Proposed Zoning Amendment”); and

WHEREAS, following a public hearing on the Proposed Zoning Amendment, and in light of comments raised by members of the public, the Town Board rejected the Proposed Zoning Amendment, and reintroduced a Revised Proposed Zoning Amendment, which would limit the expansion of maximum patient capacity of nonconforming ACFs to an amount not to exceed 50% of the population that existed when the use became nonconforming; and

WHEREAS, on February 14, 2023, following a public hearing, the Town Board voted 3-1 to adopt the Revised Proposed Zoning Amendment as Local Law No. 1 of 2023 (“Local Law”); and

WHEREAS, Petitioner acknowledges that the a maximum patient capacity of 68 beds existed at the Cornerstone ACF at the time the Town adopted the Zoning Code and the Cornerstone ACF became nonconforming; and

WHEREAS, the statute of limitations for any purportedly aggrieved party to challenge the Local Law expires on June 14, 2023, which is four (4) months from the date the Local Law was filed in the Office of the Town Clerk (“Local Law Statute of Limitations”); and

WHEREAS, notwithstanding that Petitioner maintains that the Proceeding is meritorious, Petitioner and Municipal Respondents wish to avoid the expense and distraction of

litigation, and therefore, without admission of fault or liability, desire to settle all disputes among them; and

WHEREAS, Petitioner has represented to Municipal Respondents that so long as it may have its application reviewed and considered by the Planning Board, it would discontinue the Proceeding without prejudice, thereby reserving the right to reinstate the Proceeding pursuant to the stipulated terms herein; and

WHEREAS, no Respondent herein has served a responsive pleading, and therefore Petitioner may unilaterally discontinue the Proceeding without a Court Order pursuant to N.Y. C.P.L.R. Rule 3217(a)(1); and

WHEREAS, immediately preceding the filing of this Stipulation, Petitioner has filed and served via NYSCEF on all parties appearing a Notice of Partial Discontinuance Without Prejudice as to the Individual Respondents named in this Proceeding.

NOW THEREFORE IT IS HEREBY ORDERED that pursuant to N.Y. C.P.L.R. Rule 3217(a)(1), the above-captioned Proceeding is hereby discontinued against all remaining Respondents, specifically the Municipal Respondents, *without prejudice*, in accordance with the terms herein, and without costs to any of the parties hereto, and that the docketing by the Court of a So-Ordered, fully executed copy of this Stipulation of Settlement shall be deemed sufficient notice of discontinuance of the Proceeding.

IT FURTHER STIPULATED AND AGREED that in the event a timely challenge to the Local Law is commenced within the Local Law Statute of Limitations, and said challenge results in a final, unappealable determination annulling the Local Law in whole or in part, Petitioner retains the right to reinstate the Proceeding under the same Index Number herein.

IT FURTHER STIPULATED AND AGREED that upon the later of (i) the expiration of the Local Law Statute of Limitations without any challenge to the Local Law being commenced, or (ii) in the event that a timely challenge to the Local Law is commenced within the Local Law Statute of Limitations, and said challenge results in a final, unappealable determination upholding the Local Law in its entirety, the discontinuance of the Proceeding shall be deemed to be *with prejudice*.

IT FURTHER STIPULATED AND AGREED that Petitioner will process diligently, in good faith, and in accordance with the provisions of the Local Law and the Zoning Code, its application to the Planning Board for a retroactive increase in its maximum patient capacity from 66 to 99 beds.

IT FURTHER STIPULATED AND AGREED that the patient capacity of 68 beds existed at the Cornerstone ACF at the time the Town adopted the Zoning Code and the Cornerstone ACF became nonconforming.

IT FURTHER STIPULATED AND AGREED that Municipal Respondents will continue to hold enforcement of the August 31, 2021 Violation Notice in abeyance until such time as the Planning Board proceedings in connection with Petitioner's application are concluded.

For the purpose of this Stipulation, this document can be executed in counterparts and facsimiles of signatures or electronic signatures shall be deemed effective as originals.

**(SPACE INTENTIONALLY LEFT BLANK –
SIGNATURE LINES TO FOLLOW)**

Dated: White Plains, New York
March __, 2023

ZARIN & STEINMETZ, LLP

By: _____
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Dated: March __, 2023

Dated: Pawling, New York
March __, 2023

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SO ORDERED:

Hon. Robert J. Prisco, J.S.C.