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December 17, 2020

*Via E-Mail and Federal Express*

Hon. Loretta Taylor, Chairperson and Members of the Board  
Planning Board of the Town of Cortlandt  
1 Heady Street  
Cortlandt Manor, NY 10567  
Attn.: Chris Kehoe, AICP, Deputy Director, Planning Division

*Re: Hudson Ridge Wellness Center, Inc. and Hudson Education and Wellness Center  
2016 Quaker Ridge Road, Town of Cortlandt  
January 5, 2021 Planning Board Meeting*

Dear Chairperson Taylor and Members of the Board:

As you know, our firm represents the Applicants, who are seeking a special permit and site plan approval from your Board to operate a specialty hospital to serve patients suffering from substance use disorder. As a reminder, the Applicants are proposing to reuse the existing buildings at the subject property, originally used for similar hospital and other institutional purposes, with no new construction, except the updating of the septic system. The Applicants also require an area variance from the Zoning Board from the State road frontage requirement for hospital special permits. The Planning Board is the Lead Agency under SEQRA with respect to this application.

At the January 5, 2021 meeting, I will update the Board in detail as to where we were in the review process as of our last appearance before the Board on the substance of the application on January 8, 2019.

In short, some four years after the commencement of this application and after two prior litigations, upon receipt of an inquiry in February 2019 from counsel for the neighborhood opposition group as to whether the proposed specialty hospital constitutes a permitted "hospital" use under the Zoning Code, this Board directed that belated question to its professional staff. On March 21, 2019, the Director of Code Enforcement rendered his opinion to the Board that the

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proposed use does not constitute a “hospital”. Notwithstanding the substantial written objection of Applicants’ counsel to the contrary, on May 16, 2019, he reiterated that opinion.

Thus, the Board’s review of this application ceased and the Applicants were compelled to appeal the Director’s determinations to the Zoning Board. The Zoning Board proceedings on the Applicants’ appeal lasted from June 2019 until January 2020, when the Zoning Board, by a 3-1 vote in favor of the Applicants, with two members recused and one new member abstaining, set aside the Director’s erroneous determinations. However, as State law requires 4 votes of the 7-member Zoning Board to effectuate any such approval, the Board’s 3-1 vote was deemed to constitute a “default denial” under the statute. Accordingly, although, the 3-1 majority of the Board voted in favor of the Applicants, the Applicants were compelled to bring an Article 78 proceeding against the Board to set aside its “default denial” and the Director’s determinations.

On September 24, 2020, the Supreme Court, Westchester County ruled emphatically and conclusively in favor of the Applicants, holding that the proposed use is clearly a permitted “hospital” under the Zoning Code and directing the Zoning Board to render a Decision and Order in accordance with the Court’s directive. A copy of the Court’s Decision Order & Judgment is enclosed herewith. Accordingly, the application may now proceed before the Planning Board.

At the point of interruption of this Board’s review, 1½ years ago, after exhaustive analysis, the Applicants had been determined by the Town’s hydrogeological and traffic consultants, respectively, to have satisfactorily addressed all relevant issues in demonstrating the lack of any significant adverse impacts either on off-site wells or traffic, the two primary issues raised by the public. Accordingly, the Applicants requested that the Board proceed to render its SEQRA determination, specifically a Negative Declaration or Conditioned Negative Declaration. In support of that request, on January 10, 2019, the Applicants submitted to the Board a detailed analysis of the proposed use *vis a vis* the SEQRA criteria for a determination of significance – demonstrating there would be no significant adverse environmental impacts. In addition, the Applicants submitted as part of their application, a list of 54 positive and mitigative aspects of its prospective hospital operations, including special accommodations for the Town and Town residents, which would not only further ensure there would be no significant adverse environmental impacts, but that there will be significant positive impacts, and which the Applicants proposed as conditions of approval.

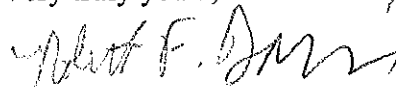
On March 28, 2019, as the Board had requested in order to facilitate its efficient and thorough review, the Applicants submitted a 4-volume set consolidating all prior submissions, with a fully updated version of its environmental analysis and its responses to all public comments.

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Thereafter, in April 2019, the Town's Traffic Consultant submitted his final comments, to which the Applicants fully responded. Given the passage of time since these submissions, we respectfully request that Board and staff review same, with the intent of moving expeditiously forward subsequent to the January 5, 2021 meeting with the previously requested SEQRA determination.

Thank you for your consideration.

Very truly yours,



Robert F. Davis

RFD:dds  
Enclosure

c: Steven Laker (via e-mail)  
Richard Pearson (via e-mail)  
Robert Peake (via e-mail)  
Thomas Cusack (via e-mail)  
Karen Destefanis (via e-mail)  
Ralph Mastro Monaco (via e-mail)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
In the Matter of the Application of  
HUDSON RIDGE WELLNESS CENTER, INC., and  
HUDSON EDUCATION AND WELLNESS CENTER,

Petitioners,

DECISION  
ORDER & JUDGMENT

Index No. 1167/20

- against -

ZONING BOARD OF APPEALS  
OF THE TOWN OF CORTLANDT,

Respondent.

-----X  
CACACE, J.

The following papers, numbered one (1) through ten (10) were read on this petition for relief brought pursuant to article 78 of the Civil Practice Law and Rules (CPLR):

	<u>Papers Numbered</u>
Notice of Verified Petition . . . . .	1
Verified Petition - Exhibits . . . . .	2
Memorandum of Law . . . . .	3
Affirmation in Opposition . . . . .	4
Affidavit in Opposition . . . . .	5
Memorandum of Law in Opposition . . . . .	6
Answer . . . . .	7
Reply Affirmation . . . . .	8
Sur-Reply Affirmation . . . . .	9
Sur-Sur-Reply Affirmation . . . . .	10

Upon the foregoing papers, it is decided, ordered and adjudged that the instant petition for relief brought pursuant to article 78 of the CPLR is resolved as follows:

Procedural History and Factual Findings

The record presented reflects that the events relevant to this proceeding began with the implementation of measures by the petitioners, Hudson Ridge Wellness Center, Inc., and Hudson Education and Wellness Center, to develop an approximately 20.8 acre lot located at 2016 Quaker Ridge Road, designated on the Town of Cortlandt Tax Map as Section 79.11, Block 1, Lot 18 (hereinafter, the project site), upon which improvements exist in the form of seven buildings previously associated with the original use of the property as a specialty hospital, denoted as a sanitarium in Town of Cortlandt property records, between approximately 1920 and 1948. Specifically, the petitioners are seeking to operate a new private specialty hospital upon the project site which would provide residential substance use disorder/chemical dependency treatment for a maximum of 92 patients (hereinafter, the proposed project). In pursuit of their rehabilitation and development of the project site, the petitioners sought site plan approval regarding same from the Planning Board of the Town of Cortlandt (hereinafter, Planning Board), which, incident thereto, undertook a review of the potential environmental impacts of the proposed project pursuant to SEQRA. In connection with its review, the Planning Board made a formal request of the Town of Cortlandt's Department of Technical Services (DOTS) on February 5, 2019, seeking a zoning opinion concerning whether the proposed project would constitute a "hospital" under the Code of the Town of Cortlandt (hereinafter, the Town Code), and if so, whether the operation of such a "hospital" would require frontage on a "main road".

Acting pursuant to the Planning Board's zoning opinion request, Martin G. Rogers, the Director of Code Enforcement of the DOTS (hereinafter, DCE Rogers), issued a written

determination, dated March 21, 2019, which concluded that the proposed project would not provide for the use of the project site as either a "hospital" or a "specialty hospital", but rather would constitute use as a "rehabilitation center" which is not a permitted use within the R-80 Zone encompassing the project site pursuant to §§ 307-14 and 307-15 of the Town of Cortlandt Table of Permitted Uses, and further declined to render a determination regarding any requirement of "main road" frontage for the proposed project. For reasons not clearly articulated upon the record, DCE Rogers issued a second written determination, dated May 16, 2019, in response to the Planning Board's zoning opinion request of February 5, 2019, through which he adhered to his earlier conclusion that the proposed project would not provide for the use of the project site for the operation of either a "hospital" or a "specialty hospital", but rather would provide for its use as a "rehabilitation center", and proceeded to render his further determination that Town Code § 307-59(B)(9) required that the proposed project have frontage upon a state road (hereinafter, DCE Rogers' determinations).

In response to DCE Rogers' determinations, the petitioners brought an application before the respondent Zoning Board of Appeals of the Town of Cortlandt (ZBA) for an interpretation of the Town Code in relation to those determinations based upon their contention that same were incorrect *en toto* (hereinafter, the underlying application), leading the respondent ZBA to conduct public hearings upon the underlying application on June 19, 2019, August 21, 2019, September 18, 2019 and October 16, 2019, when the public hearing was formally closed. As reflected in the certified minutes of its meeting on January 15, 2020, the respondent ZBA commenced its consideration of the underlying application by first announcing that two of its seven members, Frank Franco and Thomas Walsh, had recused themselves from participating in any vote upon

the underlying application. Immediately thereafter, Chairman David S. Douglas proceeded to marshal the evidence adduced in connection therewith upon the record, drawing from a draft Decision and Order (hereinafter, the draft D&O) which the respondent ZBA had prepared in advance of that meeting. As published therefrom, the respondent ZBA framed the question raised through the underlying application as an issue of whether the proposed use of the project site should be properly defined as the operation of a "hospital", which would be capable of being permitted upon the approval of applications for a special permit and an area variance, or whether that proposed use should be properly defined as a "rehabilitation center", which would be capable of being permitted upon the approval of an application for a use variance.

As further reflected in the certified minutes of the meeting of January 15, 2020, Chairman Douglas stated that the respondent ZBA first sought to define "hospital" through examination of the Town Code, but noted that the absence there of such a definition had ultimately lead to its reliance upon the Standard Industrial Classification Manual (SIC) for guidance regarding the question of whether the proposed project should properly be defined pursuant to § 8069 of the SIC which defines "Specialty Hospitals", or should more properly be defined pursuant to § 8361 of the SIC which defines "Residential Care". In connection therewith, Chairman Douglas again referenced the draft D&O and recited the definition of "Specialty Hospitals" provided by § 8069 of the SIC, and related that the given examples of same therein included both "alcoholism rehabilitation hospitals" and "drug rehabilitation hospitals". Again drawing from the draft D&O, Chairman Douglas next recited the definition of § 8361 of the SIC, and related that the given examples of same therein included both "alcoholism rehabilitation centers, residential: with health care incidental" and "drug rehabilitation centers, residential: with healthcare incidental".

After having recited these definitions, Chairman Douglas stated that the respondent ZBA had determined that the ultimate issue for its resolution turned upon whether the adduced evidence demonstrated that the health care services to be rendered through the proposed project should properly be characterized as being merely incidental to the primary care provided, or should otherwise properly be characterized as being more than incidental to such provided care.

Chairman Douglas then stated that the adduced evidence which related to the type/nature of the health services to be administered pursuant to the proposed project, had supported the conclusion that the proposed project is a "hospital" within the meaning of § 8069 of the SIC. In support of this conclusion, Chairman Douglas proceeded to summarize the adduced evidence set forth within the draft D&O relating to the type/nature of the health services to be provided to patients who were being treated at the proposed project facility.

Specifically, reading from the draft D&O, Chairman Douglas related that the services to be provided to patients admitted to the proposed project facility would be in the nature of those medical treatment and care services traditionally provided by a hospital subsequent to the detoxification and stabilization of a person suffering from an acute substance abuse issue. In this regard, Chairman Douglas further related that the proponents of the proposed project had demonstrated that persons admitted thereto would require 24-hour medical treatment and care, which would be provided by no less than 2 medical doctors and 15 nurses, among other psychologists, social workers, counselors and technicians, all of whom would be responsible for administering treatment for physical needs related to internal medicine and addictionology, as well as psychiatry and psychology. In terms of the nature of the medical treatment to be administered through the proposed project to admitted patients, Chairman Douglas related that



the adduced evidence had established that such medical treatment and care would be central to the services provided, rather than merely incidental thereto, as these medical treatment and diagnostic services would be the same as those provided by traditional hospitals. In terms of the nature of the persons admitted to the proposed project facility for treatment and care, Chairman Douglas reflected upon the adduced evidence and stated that these persons would exclusively be sufferers of substance abuse disorder who would continue to receive diagnostic assessments, routine drug testing, physical and mental health examinations, prescribed medication treatment regimens, and other associated medical and psychiatric during their anticipated 28-45 days of in-patient treatment at the proposed project facility. After marshaling much of the evidence adduced in connection with the underlying application, as considered in light of the applicable statutory and case law, Chairman Douglas submitted that the proponents of the proposed project had successfully demonstrated that it meets the definition of a "hospital", and that the underlying application should be granted to the extent that DCE Rogers' determinations should properly be reversed and set aside.

Having completed his summarization of the draft D&O, Chairman Douglas indicated that prior to calling upon the members of the respondent ZBA to enter their respective votes upon the underlying application, he would first solicit comments from them. Initially, Cristin Jacoby announced that she would be abstaining from a vote upon the underlying application due to her absence from all public hearings conducted in connection therewith. Having received no comments from any other members of the respondent ZBA, Chairman Douglas advised that he wished to be heard further and proceeded to address his fellow ZBA board members. Notably, Chairman Douglas stated that he agreed with the draft D&O's analysis regarding the applicability

of the SIC to the definition of "hospital", and that he concurred with much of the content and findings outlined in the draft D&O based thereupon, yet stated that he intended to vote against the underlying application. Indeed, after submitting his several statements of concurrence with the draft D&O, Chairman Douglas proceeded to offer an explanation for his stated intention to vote to deny the underlying application based upon his feeling that the proposed project "falls more readily under SIC Code 8361 which covers residential care". Specifically, Chairman Douglas stated that he felt that the medical treatment to be provided pursuant to the proposed project is "incidental" to the primary care provided, as he submitted his belief that the residential upkeep of recovering patients subsequent to their detoxification would primarily be provided by nurses and social workers. Continuing, Chairman Douglas submitted that the presence of doctors doesn't establish that the proposed project would involve the operation of a hospital, as he stated that doctors provide medical care in many settings other than hospitals, as do care providers such as nurses, psychologists, social workers, counselors and technicians, whom he believed to routinely administer medication and perform diagnostic assessments, drug testing, mental/physical examinations and counseling in non-hospital settings. Upon these beliefs, Chairman Douglas submitted his opinion that the proposed project facility seemed to him to be more akin to what he characterized as "non-hospital healthcare facilities", referencing both a hospice and a residence for people with dementia as examples, rather than hospitals. Finally, Chairman Douglas stated that the adduced evidence concerning the Medication Assisted Treatment (MAT) to be offered to persons admitted to the proposed project facility, supported his view that such treatment constituted a "step-down" from the actual medical intervention provided to patients since MAT does not need to be provided in a hospital, or by doctors.

Chairman Douglas' remarks were followed by a motion brought by Wai Man Chin, Vice Chairman of the respondent ZBA, supporting the adoption of the draft D&O, as submitted and published by Chairman Douglas. Vice Chairman Chin's motion to approve the draft D&O was followed by a poll of the members of the respondent ZBA, which reflected votes in support of the motion by members Adrian C. Hunte and Eileen Henry, an abstention from the vote by member Cristin Jacoby, and a vote against the motion by Chairman Douglas. Upon the recording of the votes registered by the four voting members of the respondent ZBA, the tabulation of same by Assistant Town Attorney Joshua Subin reflected a total of 3 votes registered in favor of Vice Chairman Chin's motion to adopt the draft D&O, and a total of 1 vote registered in opposition thereto, leading Mr. Subin to announce that since the registered vote totals reflected the absence of a voting quorum of the respondent ZBA, the underlying application was deemed to have been denied and DCE Roger's determinations would remain in effect (hereinafter, the challenged determination).

The instant litigation ensued, as the petitioners commenced this hybrid article 78 proceeding/declaratory judgment action in an effort to overturn the challenged determination made by the respondent ZBA through its default denial of Vice Chairman Chin's motion to approve the draft D&O which had represented the proposed approval of the petitioners' challenge to DCE Rogers' determinations. By a verified petition, the petitioners brought the instant hybrid proceeding for a judgment pursuant to article 78 of the CPLR and declaratory relief pursuant to CPLR 3001, in an effort to challenge and overturn the respondent ZBA's failure to approve its own draft D&O by a voting quorum which is required by Town Law § 267-a(13) for the adoption of same, which specifically seeks an order of this Court: (1) reversing,

annulling and setting aside the challenged determination upon allegations that same was arbitrary and capricious, an abuse of discretion, contrary to substantial evidence and contrary to law, and (2) declaring that the petitioners' proposed establishment of a specialty residential drug abuse treatment facility on the project site does constitute the operation of a "hospital" within the meaning of the Town Code, and further directing that the draft D&O be given full force and effect as if it had been validly approved.

#### Legal Analysis

At the outset, the Court notes that although the challenged determination of the respondent ZBA to deny the petitioners' application for an "interpretation" - seeking to overturn DCE Rogers' determinations - was supported by the registered vote of merely 1 of the 4 voting members of the respondent ZBA, the resulting failure of a majority of its 7 members to register votes in support of Vice Chairman Chin's motion to approve the draft D&O constituted a denial of the petitioners' application and, in effect, an approval of DCE Rogers' determinations (*see* Town Law § 267-a[13][b]; *see also* *London v Zoning Bd. of Appeals of Town of Huntington*, 49 AD3d 739, 740, *lv. denied* 10 NY3d 713). When the respondent ZBA undertook to consider the petitioners' application for an "interpretation" regarding DCE Rogers' determinations, it was acting with the authority to make such an "interpretation or determination as in its opinion ought to have been made in the matter" by the Code Enforcement Division of the Town of Cortlandt in the first instance (*see* Town Law § 267-b[1]; *see also* *Matter of BBJ Assoc., LLC v Zoning Bd. of Appeals of Town of Kent*, 65 AD3d 154, 159). Pursuant to that express authority, the respondent

ZBA rendered the challenged determination, which, in effect, served to approve DCE Rogers' determinations that the petitioners' proposed establishment of a specialty residential drug abuse treatment facility on the project site does not constitute the operation of a "hospital" within the meaning of § 307-59(B)(9) of the Town Code.

In this regard, it is generally understood that a determination made by a zoning board of appeals may not be set aside by a reviewing court considering a challenge raised pursuant to article 78 of the CPLR unless that board's decision is arbitrary and capricious, lacks a rational basis, or constitutes an abuse of discretion (*see Matter of Lucas v Bd. of Appeals of Vil. of Mamaroneck*, 109 AD3d 925; *see also Matter of Fuentes v Planning Bd. of Vil. of Woodbury*, 82 AD3d 883). More specifically, where the challenge relates to the legal interpretation of a term of a zoning ordinance as it is applied to a particular property, the zoning board's interpretation shall not be set aside unless found to be unreasonable or irrational (*see Pecoraro v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 613; *see also Matter of Frishman v Schmidt*, 61 NY2d 823, 825; *Matter of Conti v Zoning Bd. of Appeals of Vil. of Ardsley*, 53 AD3d 545, 547; *Matter of Falco Realty, Inc. v Town of Poughkeepsie Zoning Bd. of Appeals*, 40 AD3d 635, 636; *Matter of Arceri v Town of Islip Zoning Bd. of Appeals*, 16 AD3d 411, 412). In this regard, although a zoning board's interpretation of its zoning ordinance is generally entitled to great deference (*see Matter of New York Botanical Garden v Board of Stds. & Appeals of City of N.Y.*, 91 NY2d 413, 419; *see also Matter of Louchheim v Zoning Bd. of Appeals of Town of Southampton*, 44 AD3d 771), its interpretation "is not entitled to unquestioning judicial deference, since the ultimate responsibility of interpreting the law is with the court" (*Matter of Baker v Town of Islip Zoning Bd. of Appeals*, 20 AD3d 522, 523; *see Matter of Ogden Land Dev., LLC v Zoning Bd. of*

*Appeals of Vil. of Scarsdale*, 121 AD3d 695, 696).

Furthermore, where, as here, the courts are called upon to review a zoning board's exercise of its appellate authority in relation to a zoning code interpretation made by a zoning enforcement official pursuant to the jurisdictional authority conferred by Town Law § 267-a(4), this Court remains mindful that zoning ordinances exist in derogation of the common law and, thus, must be strictly construed in favor of the owner whose land is being regulated (*see Matter of La Russo v Neuringer*, 105 AD3d 743; *see also Matter of Sanantonio v Lustenberger*, 73 AD3d at 934; *Matter of Mamaroneck Beach & Yacht Club, Inc. v Zoning Bd. of Appeals of Vil. of Mamaroneck*, 53 AD3d 494, 498), and any ambiguity in the zoning ordinance under review must be resolved in favor of the property owner (*see Albany Basketball & Sports Corp. v City of Albany*, 116 AD3d 1135, *lv. denied* 23 NY3d 907; *Matter of Subdivisions, Inc. v Town of Sullivan*, 92 AD3d 1184, 1185; *Incorporated Vil. of Saltaire v Feustel*, 40 AD3d 586).

Consequently, as the Court's review of the challenged determination rendered by the respondent ZBA reveals that the basis upon which DCE Rogers relied when he determined that the petitioners' proposed establishment of a specialty residential drug abuse treatment facility on the project site does not constitute the operation of a "hospital" within the meaning of § 307-59(B)(9) of the Town Code, as echoed by Chairman Douglas when he registered his vote in opposition to the adoption of the draft D&O, was the application of the definition of a "hospital" pursuant to the 1987 edition of the Occupational Safety and Health Administration's Standard Industrial Classification (SIC) Manual. In this regard, it is noted that such reliance was compelled by the absence of a definition of "hospital" within either Town Code § 307-4, entitled "Definitions", or Town Code § 307-59, entitled "Hospitals or nursing home". Specifically, this

application of the SIC is properly drawn from Town Code § 307-4, which provides that any terms not defined therein (or within the unavailing New York State Uniform Fire Prevention and Building Code) may properly be given the meaning provided within the SIC Manual, and by Town Code § 307-14, entitled, "Content of Table of Permitted Uses", which also directs that such definition be drawn from the SIC. As both DCE Rogers' determinations and the respondent ZBA's challenged determination permissibly drew their applied definition of "hospital" from the SIC, the Court first notes that § 8069 of the SIC, entitled "Specialty Hospitals", defines same as "[e]stablishments primarily engaged in providing diagnostic services, treatment, and other hospital services for specified categories of patients", and provides examples including "alcoholism rehabilitation hospitals" and "drug rehabilitation hospitals". In addition, the Court notes that § 8361 of the SIC, entitled "Residential Care", defines same as "[e]stablishments primarily engaged in the provision of residential, social and personal care for children, the aged, and special categories of persons with some limits on ability for self-care, but where medical care is not a major element", and provides examples including "alcoholism rehabilitation centers, residential: with health care incidental", and "drug rehabilitation centers, residential: with health care incidental".

Having applied these SIC-based definitions, the Court notes first that the evidence adduced before the respondent ZBA indicated that the proposed project facility will be designed and staffed to provide medical treatment and related health care services to individuals who suffer from the diseases of alcoholism and/or chemical dependence, primarily subsequent to their detoxification, using a residential substance abuse treatment program model under licensing by the New State Office of Alcoholism and Substance Abuse Services (OASAS) pursuant to Article

32 of the of the Mental Hygiene Law (MHL) and 14 NYCRR Part 820. In connection therewith, the adduced evidence indicated that persons admitted to the petitioners' proposed OASAS-licensed treatment facility (hereinafter, patients) would receive 24/7 medical care and treatment on-site from a staff of medical/health professionals which would include a minimum of 2 medical doctors and 15 nurses, as complimented by an additional team of 2 licensed psychologists and 23 social workers, counselors and technicians, all of whom would implement the individual treatment and recovery plan developed for each patient admitted to the proposed project facility. More specifically, all patients would receive periodic medical assessments and ongoing treatment for medical ailments and chronic diseases, whereas patients determined to be suffering from withdrawal symptoms would be stabilized through the use of "medication-assisted treatment", and patients determined to be suffering from co-occurring mental illness would be treated with "medication therapy" to alleviate the symptoms of same, through the administration of these treatments on a daily basis by a medical doctor, registered nurse or nurse practitioner. Pursuant to the OASAS licensing requirements, the individual treatment and recovery plan developed for each patient would include initial and ongoing drug/alcohol screening, individual counseling, group counseling, family counseling, chemical abuse and dependence awareness education, chemical dependence relapse prevention counseling and generalized healthcare services throughout their anticipated 28-45 days of in-patient treatment at the proposed project facility. Notably, the adduced evidence which supported this overview of the medical treatment and related health care services to be provided to patients at the proposed project facility was derived from the hearing testimony and written presentations offered by Frank Cicero and Brian Baldwin, LCSW of Cicero Consulting Associates, Inc., and Peter Millock, Esq., of Nixon



Peabody, LLP, and Dr. Ernst Jean, MD, during the public hearing sessions conducted on September 18, 2019 and October 16, 2019.

Of further significance, the Court notes that the evidence presented by these hearing witnesses further informed that the OASAS certification, which the proposed project facility will operate under, specifically mandates that such a residential substance abuse treatment facility be operated under the supervision of a Medical Director who is a NYS licensed physician possessing the required education, training and experience in substance use disorder services, and who shall personally bear overall responsibility for, *inter alia*, all medical services provided by the program, oversight of routine medical care, specialized services and medications, and the supervision of medical staff in the performance of all medical services. Notably, Dr. Jean's testimony on October 16, 2019, offered through the prism of his personal experience as the Medical Director of an OASAS-certified residential substance abuse treatment facility located in Bronx County, revealed that patients do not qualify for such treatment unless they are seriously ill and require extensive 24-hour medical presence to address their addiction-related treatment needs and their commonly presented co-occurring disorders, which include coronary artery disease, hypertension and Chronic Obstructive Pulmonary Disease (COPD), opining that such a level of significant medical care cannot be properly characterized as mere custodial care.

Despite the considerable experience-based expertise reflected in the testimony and extensive written submissions presented by these witnesses in connection with the respondent ZBA's efforts to examine the nature of the medical care to be provided to the petitioners' patients, and their shared opinion that the petitioners' proposed project facility would provide diagnostic services and treatment which would be consistent with that provided at alcoholism

and drug rehabilitation hospitals as defined by § 8069 of the SIC, Chairman Douglas, alone amongst the members of the respondent ZBA, rejected that evidence and elected to register the only vote to deny the petitioners' interpretation application based upon his conclusion that the medical care to be provided to such patients would be incidental to the primary care they were to receive. Although Chairman Douglas declined to support this conclusion by identifying the specific nature of the primary care that he believed would predominate over the medical care that each patient would receive at the proposed project facility, he did indicate that his vote was based upon his determinations that patients would primarily be cared for by nurses and social workers, that the presence of doctors doesn't establish that the proposed project would constitute the operation of a hospital, and that the administration of medication and the performance of diagnostic assessments/examinations and counseling could be accomplished in non-hospital settings.

Against this backdrop, having considered the evidence adduced before the respondent ZBA, and having evaluated Chairman Douglas' articulated factual bases for his vote to deny the petitioners' interpretation application, the Court finds little difficulty concluding that there is neither a reasonable nor rational view of that adduced evidence which would support the challenged determination reached by the ZBA upon the sole vote of respondent Chairman Douglas. In this regard, the Court finds that all three of the bases proffered by Chairman Douglas in support of his disapproving vote bear little, if any, relevance to his ultimate determination that the medical care to be provided to the petitioners' patients would be incidental to the primary care they were to receive, as reflected by the conclusory statements he ostensibly offered to support his minimization of the significance of the adduced evidence detailing the routine

medical care that would be delivered to all patients of the proposed project facility. Indeed, the Court's scrutiny of each of the three findings offered by Chairman Douglas in support of his vote, reveals the ambiguous nature of such findings in relation to his ultimate conclusion that the medical care to be provided to the petitioners' patients would be incidental to the primary care they were to receive, as his findings that the petitioners' proposed project facility would be staffed by medical doctors on-site, that more patient care would be delivered by nurses than doctors, and that such patient care could be equally provided in either a hospital or a non-hospital setting, more persuasively undermines his ultimate conclusion rather than supports it.

Consequently, noting the absence of support within the challenged determination for Chairman Douglas' ultimate conclusion that the medical care to be provided to the petitioners' patients would be incidental to the primary care they were to receive, the Court's consideration of the hearing testimony and submissions offered by the petitioners' expert witnesses, Frank Cicero, Brian Baldwin, Peter Millock, Esq., and Dr. Ernst Jean, MD, with specific regard to the extensive and consistent medical care that would be provided by the petitioners' to the patients of their OASAS-certified residential substance abuse treatment facility, strongly indicates that such care is not consistent with mere residential care defined by § 8361 of the SIC, yet is entirely consistent with the care provided by a specialty hospital as defined by § 8069 of the SIC.

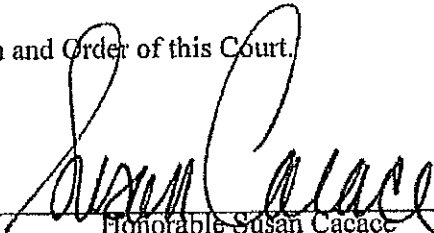
Accordingly, as this Court's role in reviewing the respondent ZBA's challenged determination is limited to a retrospective examination and analysis of the record before it to determine the level of evidentiary support therein for that determination, this Court finds that the record in this case compels it to conclude that the respondent ZBA's challenged determination to deny the petitioners' application for an interpretation that their proposed operation of an OASAS-

certified residential substance abuse treatment facility on the project site is consistent with that of "Specialty Hospital" as defined by § 8069 of the SIC, was improper, arbitrary and capricious, and constituted an abuse of discretion, as it was neither rational nor reasonable to reach that determination due to the patent absence of a sufficient evidentiary basis of support for same within the record (*see Matter of Sanantonio v Lustenberger*, 73 AD3d 934, 935; *see also Matter of Stone Indus., Inc., v Zoning Bd. of Appeals of Town of Ramapo*, 128 AD3d 973; *Matter of LaRusso v Neuringer*, 105 AD3d 743; *Halperin v City of New Rochelle*, 24 AD3d 768).

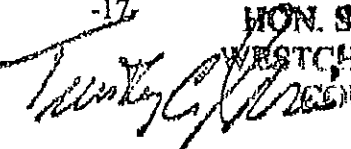
Based upon the foregoing, the respondent ZBA's challenged determination is hereby annulled and set aside (*see Matter of Sasso v Osgood*, 86 NY2d 374, 384 n. 2; *see also Matter of Ogden Land Dev., LLC v Zoning Bd. of Appeals of Vil. of Scarsdale*, 121 AD3d 695, 696-97; *Matter of Haberman v Zoning Bd. of Appeals of Town of E. Hampton*, 85 AD3d 1170, 1171; *Matter of Campbell v Town of Mt. Pleasant Zoning Bd. of Appeals*, 84 AD3d 1230, 1231; *Matter of Rusciano v Ross*, 78 AD3d 715, 716), and to the extent that the petitioners additionally seek declaratory relief, the Court hereby remits this matter to the respondent ZBA for the issuance of a determination that the petitioners' proposed establishment of an OASAS-certified residential substance abuse treatment facility on the project site does constitute the operation of a "hospital" within the meaning of the Town Code (*see Ogden Land Development, LLC v Zoning Bd. of Appeals of Village of Scarsdale*, 121 AD3d at 697).

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York  
September 24, 2020

  
Honorable Susan Cacace  
Acting Justice of the Supreme Court

10/2/2020

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HON. SUSAN CACACE  
WESTCHESTER COUNTY  
COUNTY JUDGE

TO:

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