

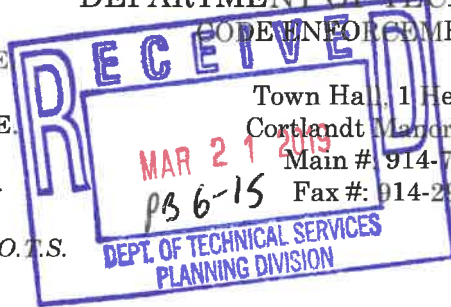


**TOWN OF CORTLANDT**  
 DEPARTMENT OF TECHNICAL SERVICES  
 CODE ENFORCEMENT DIVISION

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To: Town of Cortlandt Planning Board

Cc: Chris Kehoe, AICP (Deputy Director – Planning), Michael Preziosi, P.E. (Director, Deputy of Technical Services) & Thomas Wood, Esq. (Town Attorney)

From: Martin G. Rogers, P.E. – Director of Code Enforcement

Date: March 21, 2019

Re: Hudson Education and Wellness Center  
 2016 Quaker Ridge Road  
 Tax ID 79.11-1-18

**Introduction:**

This review was requested by the Town of Cortlandt Planning Board at their regular meeting held on February 5<sup>th</sup>, 2019, seeking a “zoning opinion on the two threshold issues: is it [The Hudson Education and Wellness Center] a hospital” and if it is a hospital does it require frontage on a “main road.”

The applicant has maintained, with some inconsistency, that the proposed use is a Hospital. Specifically stating that it is a specialty hospital under SIC 8069. In the course of my review I noticed a number of ancillary issues that are inconsistent with this proposed use, however, for purposes of this review I will solely address matters related to Hudson Education and Wellness Center’s purported status as a hospital and whether such a hospital in the Town of Cortlandt must be located on a “main road.”

**Applicable Codes and Regulations:**

The following codes and regulations are noted.

**Code of the Town of Cortlandt**

§ 307-59 Hospital or nursing home.

A. Purpose. The purpose of this section is to allow for the provision of hospital and nursing home facilities and accessory buildings and uses, including dwellings for staff members, to serve the needs for medical care of residents of the Town and to ensure that such facilities are provided in a manner that is not disruptive to surrounding property or the neighborhood.

B. Standards and conditions. Standards and conditions shall be as follows:

(9) Only to be permitted on a lot in residential zones which fronts on a state road.

§§ 307-14 and 307-15 Table of Permitted uses.

*Health and Social Services*

*Hospital or nursing home*

*Offices of doctors, dentists or other health care practitioners*

*Other health (SIC Secs. 808-809) or social services (SIC Sec. 83)*

The Table of Permitted Uses specifically states that SIC Sec. 83 uses are **not permitted** in residential (R) zones.

**Standard Industrial Classification Manual (SIC):**

*SIC Code 8069 Specialty Hospitals, except Psychiatric*

*Establishments primarily engaged in providing diagnostic services, treatment, and other hospital services for specialized categories of patients, except mental.*

*SIC Code 8361 Residential Care*

*Establishments 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. Included are establishments providing 24-hour year-round care for children. Boarding schools providing elementary and secondary education are classified in Industry 8211. Establishments primarily engaged in providing nursing and health-related personal care are classified in Industry Group 805.*

*Alcoholism rehabilitation centers, residential: with health care incidental*

*Drug rehabilitation centers, residential: with health care incidental*

**New York State Uniform Fire Prevention and Building Code:**

2015 International Building Code is the current applicable Code and is used for this memo. Per Chapter 3 the following uses apply:

**Institutional Group I-1**

**Residential Group R-3 and R-4**

It is noted the applicant has identified these as the proposed uses.

**Analysis:**

The applicant has presented that the proposed classification is a hospital. Specifically a specialty hospital under SIC 8069. Having reviewed Hudson Education and Wellness Center's submissions, I do not agree with this classification. Rather, the proposed use is appropriately classified in the Standard Industrial Classification Manual in Major Group 83.-Social Services; Industry Group No. 836 Residential Care. 8361 Residential Care includes Alcoholism rehabilitation centers, residential: with health care incidental and Drug rehabilitation centers, residential: with health care incidental. As per §§ 307-14 and 307-15 Table of Permitted uses SIC Sec. 83 uses are **not permitted** in any residential (R) zone within the Town of Cortlandt.

Many of the reasons for my determination are readily apparent from a cursory reading of Hudson Education and Wellness Center's own submissions. See, for example, the following:

Excerpts from the Environmental Impact Statement and included documents (with emphasis):

*JMC Report and Correspondence*

*92-bed private residential treatment program for individuals who are recovering from chemical dependency.*

*Clinical and Medical program services will include, but not be limited to Diagnostic Assessment (approximately three to five days); Health and Physical Examination, Residential Treatment (approximately 28 to 45 days total), including Individual, Group and Family Counseling, Case Management, Urine Drug Screening, Psychiatric Assessment, if available and indicated, and Psychiatric Medication Management, as indicated, Specialty Care services, Extended Care, Continuing Care and Transition/Discharge Planning.*

*All HEWC clients have either completed detoxification elsewhere or do not require it. The clients are commencing their initial formal addictions treatment, having been "transferred" after completion of medical detoxification from alcohol and/or drugs, or else do not require medical detoxification, or have had a period of absence from prior formal treatment episode(s).*

*Shift 3 (10:00pm – 6:00am)*

*0 Physician / Advanced Practice Nurse*

*2 Nurses*

*With this type of level of care, the only medical waste generated by the program will be limited to medical "sharps" including needles for treatment of clients with diabetes and lancets to test client's blood sugar levels, when needed. Any other type of blood or other type of testing would be conducted off-site by a medical testing laboratory.*

*DeAngelis Architectural Services, LLC letter dated October 4, 2016*

*Fire sprinkler requirements for each building will depend on the use of the building and the extent of alterations to be done as determined by the Existing Building Code of New York State (EBCNYS). The most recent recorded use of the property appears to be the Hudson Institute, which is classified as a Business Use under the Building Code of New York State.*

*R-4 Occupancies shall comply with the Residential Code of NYS.*

*Sprinkler protection: Not required for R-3 occupancy less than three stories.*

*[It is noted the 2015 International Codes with NYS Supplements were adopted and went into effect October 3, 2016. 2015 IBC Section 308.3.4 requires a sprinkler system for the R-3 Occupancy proposed.]*

*OLA Letter regarding sprinkler requirements:*

*It should be noted that there was no indication of a change to the Certificates of Occupancy in the architectural analysis. Therefore, we have assumed the existing C of O will remain. If there is a change to any of the C of O, the project can no longer follow the Existing Building Code for fire protection, but must instead follow the Building Code. All buildings in Group I and R require sprinklers as per the new Building Code.*

*Domestic Well Water Report, By: Ralph G. Mastromonaco, PE*

*Hospital flow generation factors:*

*Hospital 92 full time patients = 92 beds*

*92 beds x 110 gpd*

*From NYS DEC Design Standards:*

*Group Home per bed 110/130/150 gpd*

*Hospital per bed 175 gpd*

[It is noted the submission to the WCDOH was for flow rates for Group Home and not a Hospital.]

*JMC Response to comments dated November 1, 2017:*

*The Specialty Hospital will have no in-house testing lab.*

Zoning Board of Appeals Minutes October 19, 2016 which include Bob Davis, Esq written statement:

*It's also important to note that all of the patients will either have undergone detox elsewhere before admission or won't require it.*

*In short, this will be a wellness center, intended to provide a very private, peaceful setting. There will be no disturbance, let alone danger, to the neighborhood, and the patients clearly won't want to draw attention to themselves. They will be there voluntary, to get well.*

*There'll be very minimal medical waste generated on this property, so little that it's only picked up a couple of times a year.*

[The above responses and statements from JMC and Mr. Davis note the proposed use is a wellness center and health care is incidental.]

*2015 International Building Code excerpts (with emphasis):*

*308.1 Institutional Group I.*

*Institutional Group I occupancy includes, among others, the use of a building or structure, or a portion thereof, in which care or supervision is provided to persons who are or are not capable of self-preservation without physical assistance or in which persons are detained for penal or correctional purposes or in which the liberty of the*



occupants is restricted. Institutional occupancies shall be classified as Group I-1, I-2, I-3 or I-4.

### 308.2 Definitions.

The following terms are defined in Chapter 2:

24-HOUR BASIS.

CUSTODIAL CARE.

DETOXIFICATION FACILITIES.

FOSTER CARE FACILITIES.

HOSPITALS AND PSYCHIATRIC HOSPITALS.

INCAPABLE OF SELF-PRESERVATION.

MEDICAL CARE.

NURSING HOMES.

### 308.3 Institutional Group I-1.

[It is noted R-3 and R-4 applies based on the number of persons receiving custodial care. The uses in this Section are specifically for Custodial Care not Medical Care.]

*Institutional Group I-1 occupancy shall include buildings, structures or portions thereof for more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1 shall be classified as one of the occupancy conditions specified in Section 308.3.1 or 308.3.2. This group shall include, but not be limited to, the following:*

- Alcohol and drug centers
- Assisted living facilities
- Congregate care facilities
- Group homes
- Halfway houses
- Residential board and care facilities
- Social rehabilitation facilities

#### 308.3.1 Condition 1.

*This occupancy condition shall include buildings in which all persons receiving custodial care who, without any assistance, are capable of responding to an emergency situation to complete building evacuation.*

#### 308.3.2 Condition 2.

*This occupancy condition shall include buildings in which there are any persons receiving custodial care who require limited verbal or physical assistance while responding to an emergency situation to complete building evacuation.*

**308.3.3 Six to 16 persons receiving custodial care.**

*A facility housing not fewer than six and not more than 16 persons receiving custodial care shall be classified as Group R-4.*

**308.3.4 Five or fewer persons receiving custodial care.**

*A facility with five or fewer persons receiving custodial care shall be classified as Group R-3 or shall comply with the International Residential Code provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the International Residential Code.*

**310.5 Residential Group R-3.**

*Residential Group R-3 occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including:*

- *Buildings that do not contain more than two dwelling units*
- *Boarding houses (nontransient) with 16 or fewer occupants*
- *Boarding houses (transient) with 10 or fewer occupants*
- ***Care facilities that provide accommodations for five or fewer persons receiving care***
- *Congregate living facilities (nontransient) with 16 or fewer occupants*
- *Congregate living facilities (transient) with 10 or fewer occupants*
- *Lodging houses with five or fewer guest rooms*

**310.5.1 Care facilities within a dwelling.**

*Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the International Residential Code provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the International Residential Code.*

**310.5.2 Lodging houses.**

*Owner-occupied lodging houses with five or fewer guest rooms shall be permitted to be constructed in accordance with the International Residential Code.*

**310.6 Residential Group R-4.**

*Residential Group R-4 occupancy shall include buildings, structures or portions thereof for more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised residential environment and receive custodial care. Buildings of Group R-4 shall be classified as one of the occupancy conditions specified in Section 310.6.1 or 310.6.2. This group shall include, but not be limited to, the following:*

- ***Alcohol and drug centers***
- *Assisted living facilities*

- *Congregate care facilities*
- *Group homes*
- *Halfway houses*
- *Residential board and care facilities*
- *Social rehabilitation facilities*

*Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code.*

*310.6.1 Condition 1.*

*This occupancy condition shall include buildings in which all persons receiving custodial care, without any assistance, are capable of responding to an emergency situation to complete building evacuation.*

*310.6.2 Condition 2.*

*This occupancy condition shall include buildings in which there are any persons receiving custodial care who require limited verbal or physical assistance while responding to an emergency situation to complete building evacuation.*

*308.4 Institutional Group I-2.*

[I-2 is specifically for medical care. The applicant's representatives have noted detoxification has already occurred or is not required.]

*Institutional Group I-2 occupancy shall include buildings and structures used for medical care on a 24-hour basis for more than five persons who are incapable of self-preservation. This group shall include, but not be limited to, the following:*

- *Foster care facilities*
- *Detoxification facilities*
- *Hospitals*
- *Nursing homes*
- *Psychiatric hospitals*

*308.4.1 Occupancy conditions.*

*Buildings of Group I-2 shall be classified as one of the occupancy conditions specified in Section 308.4.1.1 or 308.4.1.2.*

*308.4.1.1 Condition 1.*

*This occupancy condition shall include facilities that provide nursing and medical care but do not provide emergency care, surgery, obstetrics or in-patient stabilization units for psychiatric or detoxification, including but not limited to nursing homes and foster care facilities.*

*308.4.1.2 Condition 2.*

*This occupancy condition shall include facilities that provide nursing and medical care and could provide emergency care, surgery, obstetrics or in-patient stabilization units for psychiatric or detoxification, including but not limited to hospitals.*

*308.4.2 Five or fewer persons receiving medical care.*

*A facility with five or fewer persons receiving medical care shall be classified as Group R-3 or shall comply with the International Residential Code provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the International Residential Code.*

*Definitions, Chapter 2:*

*24-HOUR BASIS. The actual time that a person is an occupant within a facility for the purpose of receiving care. It shall not include a facility that is open for 24 hours and is capable of providing care to someone visiting the facility during any segment of the 24 hours.*

*CUSTODIAL CARE. Assistance with day-to-day living tasks; such as assistance with cooking, taking medication, bathing, using toilet facilities and other tasks of daily living. Custodial care includes persons receiving care who have the ability to respond to emergency situations and evacuate at a slower rate and/or who have mental and psychiatric complications.*

*DETOXIFICATION FACILITIES. Facilities that provide treatment for substance abuse, serving care recipients who are incapable of self-preservation or who are harmful to themselves or others.*

*HOSPITALS AND PSYCHIATRIC HOSPITALS. Facilities that provide care or treatment for the medical, psychiatric, obstetrical, or surgical treatment of care recipients who are incapable of self-preservation.*

*INCAPABLE OF SELF-PRESERVATION. Persons who, because of age, physical limitations, mental limitations, chemical dependency or medical treatment, cannot respond as an individual to an emergency situation.*

*MEDICAL CARE. Care involving medical or surgical procedures, nursing or for psychiatric purposes.*

*TRANSIENT. Occupancy of a dwelling unit or sleeping unit for not more than 30 days.*

As stated above in comments and per the applicant's representatives Custodial Care is proposed, not Medical Care.

Furthermore, Building Permits and Certificate of Occupancies are required to be issued per the requirements of the New York State Uniform Fire Prevention and Building Code. The Use Classifications are located in IBC Chapter 3. The Use proposed is I-1, Alcohol and drug centers, (It is noted R-3 and R-4 also apply based on the number of persons receiving custodial care.) which has also been listed by the applicant. Hospital or "Specialty Hospital" would not be noted on Permits or Certificates of Occupancy, since those uses are classified in the IBC as I-2 uses.



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The Planning Board also requested we determine if a hospital requires frontage on a "main road." Quaker Ridge Road is not a "state road." However, the Town Code is clear that Hospitals are only a "permitted" use in "residential zones" on a lot that has frontage "on a state road." This would not be a permitted use.

**Conclusion:**

Given the above, it is clear that the applicant would not be providing hospital services and that Hudson Education and Wellness Center is not a hospital, nor a specialty hospital. What is being proposed is a rehabilitation center which clearly falls under SIC Group 83. This Use is not permitted in the R-80 Zone per The Town of Cortlandt Table of Permitted Uses Health Care and Social Services, Other health (SIC Secs. 808-809) or social services (SIC Sec. 83). Furthermore, any determination regarding a hospital not being located upon a "main road" is not before me.