



TOWN OF CORTLANDT

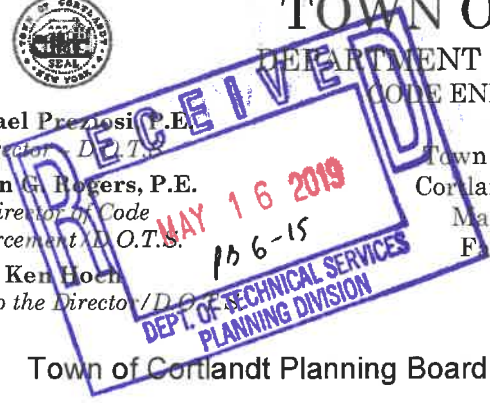
DEPARTMENT OF TECHNICAL SERVICES
CODE ENFORCEMENT DIVISION

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- Zoning Board
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- Frances Carroll
- Legal Dept

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), C.A.C.

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

Date: May 16, 2019

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

- P.E. DOTS Director
- A.R.C.
- Applicant
- Robert Davis, Esq.
- JMC

Sent 5/16/19

Ralph Mustromano P.E.

Introduction:

Per a request by the Town of Cortlandt Planning Board I sent them a preliminary review / zoning opinion (see attached) regarding the proposed Hudson Education and Wellness Center ("Wellness Center"). Specifically, on February 5, 2019, the Planning Board had sought a "zoning opinion on the two threshold issues: is it [The Wellness Center] a hospital" and if it is a hospital does it require frontage on a "main road." On April 23, 2019 I received a letter from attorneys' representing The Wellness Center requesting that I modify my preliminary review / zoning opinion. Unfortunately, despite the advocacy of Wellness Center's attorney, I am unable to do so. In fact, under these specific circumstances it seems appropriate for me to make an official determination in this matter.

Background Before the Code Enforcement Division:

The following is noted:

1. The Code Enforcement Division of the Town of Cortlandt has made no prior use determinations in regards to this matter, and since the Applicant misrepresented the nature of its application before the Town (as a Hospital / Specialty Hospital), the Town had no prior cause to make such a use determination.
2. Any repair permits issued by the Town to the Owner, specifically said, on its face, in all capital letters, that "NO EXISTING OR PROPOSED USE IS IMPLIED NOR APPROVED." Permits 20160140 and 20160145. Consequently, The Applicant was specifically made aware that no use determination had been made in this matter by The Code Enforcement Division, which clearly is the authority having jurisdiction over such matters.
3. The Code Enforcement Division has made no prior determination regarding the Code requirements for frontage on a State Road as required by §307-59 B. (9) of the Town of

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Cortlandt. The Code Enforcement Division, also clearly is the authority having jurisdiction over such matters and consequently, it is within my authority to now do so.

4. That contrary to the characterizations of The Wellness Center's legal representation, I observe that the Town of Cortlandt welcomes Rehabilitation Centers, Hospitals and Specialty Hospitals in specific zones within our Town. Specifically, the Town's 2016 Master Plan makes clear that the Town would like these types of uses (Rehabilitation Centers, Hospital / Specialty Hospitals) in our anticipated Medical-Oriented District, which is located in the area surrounding New York-Presbyterian Hudson Valley Hospital, on Crompond Road / Route 202 (a New York State Roadway).

Misrepresentations, Inconsistencies and Inaccuracies:

What has become clear in my review is that The Wellness Center has tried to make a rehabilitation center appear as a Hospital / Specialty Hospital in order to take advantage of a Town law clearly designed for a different land uses and also different requirements for a Special Permit (Town Law §307-59). These misrepresentations, inconsistencies and inaccuracies are clearly contained within The Wellness Center's numerous and often conflicting submissions to the Town. Amongst other things, this includes:

1. OLA has made no use determination per the Building Code. It is stated in the April 23, 2019 letter that OLA's revised analysis (Exhibit 14) states I-2 occupancy. It is noted in the letter that architectural analysis was prepared by Architectural Visions. The attached analysis states the Use Classifications were determined by Architectural Visions not OLA.
2. Based on the information provided, the use per the Building Code is classified as I-1.
3. Stating other agencies have made determinations regarding use when they are not the Authority Having Jurisdiction to do so either for purposes of Town Zoning nor the New York State Uniform Fire Prevention and Building Code.
4. Their numerous admissions indicate that the people in treatment would be in "custodial care" and would be "capable of responding to an emergency situation."
5. Noting in numerous documents this is a proposed "Residential Program," Medical Staff can be on-call, and the highest program level of care is 3.5.
6. That The Wellness Center would alter their plans for the site to now provide detoxification services on site in order to force their purported use in to that of a Specialty Hospital. This appears it would then place the proposed use outside of OASAS's jurisdiction.
7. That the primary use of The Wellness Center would be in keeping with the services provided under social services SIC 83, and not SIC 80.
8. That applications of this nature, must demonstrate that the proposed use would comply with the regulatory agencies binding on it as a Hospital / Specialty Hospital and referenced by §§307-14 and 307-15 Table of Permitted Uses, which is not permitted per SIC Sec. 83 uses.
9. That The Wellness Center purports to be a Hospital when clearly it has shifts where no physician, or even an advanced practice nurse, is on the premises. Furthermore, no documentation of an Authority Having Jurisdiction has suggested that despite this, it would be regulated as a Hospital / Specialty Hospital.

10. References similarities between nursing homes, which specifically is not regulated under OASAS.
11. The Wellness Center purports to be regulated under OASAS's jurisdiction, but when it suits their agenda, they include definitions and arguments from other jurisdictional authorities. Including, but not limited to New York Laws PBH - Public Health Article 28 - (Public Health) HOSPITALS.
12. Numerous references and text from OASAS Regulations but specific items that do not support their insistence as a Specialty Hospital is not included. For example OASAS TREATMENT SERVICES: GENERAL PROVISIONS TITLE 14 NYCRR, PART 800, 800.3 Definitions states the Medical Director "assist in referral and linkage relationships with other institutions and agencies including, but not limited to, general or Specialty Hospitals" which are not regulated by this agency.

(d) "Medical Director". (1) Each program must have a physician designated by the program sponsor to be the medical director. The medical director shall be a physician licensed and currently registered as such by the New York State Education Department and shall have at least one year of education, training, and/or experience in substance use disorder services. The medical director is a physician who has overall responsibility for the following (this overall responsibility may not be delegated): (vii) assisting in the development of necessary referral and linkage relationships with other institutions and agencies including, but not limited to, general or specialty hospitals and nursing homes, health-related facilities, home health agencies, hospital outpatient departments, diagnostic and treatment facilities, laboratories and related resources;

13. That despite The Wellness Center's assertion regarding the "incidental" nature of its medical care, I note that "direct medical care," and the structures it would be housed in are subject to the concurrent authority of multiple jurisdictions and The Wellness Center has demonstrated no approvals in that regard.

Analysis:

No information provided by The Wellness Center's submissions encourages me to modify my prior conclusion in this matter. Notably absent among all of The Wellness Center's submissions is any supporting documentation from concurrent authorities having jurisdiction determining that this proposed use is a Hospital / Specialty Hospital. Specifically missing is any proof demonstrating that The Wellness Center is an I-2 use.

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 which is misguided here and when supported, incorrect, or supported solely by conflicting information from experts who are not NYS Licensed Design Professionals or Authorities Having Jurisdiction, except Architectural Visions which is an Architectural Firm with Licensed Professionals.

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In my preliminary review / zoning opinion I was asked to “determine if a hospital requires frontage on a “main road” and I replied that “Quaker Ridge Road is a 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.’” However, without having first made a use determination (is this a Hospital / Specialty Hospital or not), I did not want to make a premature or hypothetical determination regarding the requirements of §307-59 B. (9) so I said making a determination would be “premature” at that time. Now with the making of this determination, I see no reason not to make a determination regarding the frontage requirements. First, I take note that the Cortlandt Zoning Board of Appeals (“ZBA”) issued a Decision and Order, Case No. 2016-24 that is related to this matter. However, since Cortlandt’s Code Enforcement Division, the authority having jurisdiction, has made no prior determination regarding use (hospital or not) or the requirements of §307-59 B. (9), I question what the jurisdictional grounds for such an order / hearing would be. Regardless, as ZBA’s Decision and Order was not “a final conclusion,” I feel unconstrained in making a determination now. Furthermore, regardless of my determination The Supreme Court has already held that the “merits” of The Wellness Center’s ZBA appeal have not been addressed and that the matter is “not ripe” nor has a “justiciable controversy” been presented. See Supreme Court Court County of Westchester Decision and Order Index Nos. 1449/17, 59903/2017. Consequently, regardless of Case No. 2016-24, the matter is not final before the ZBA.

Determination:

Given the above, I determine that the conclusion of my preliminary review / zoning opinion, remains correct in that “the applicant would not be providing hospital services and that The Wellness Center is not a hospital, nor a Specialty Hospital and per §307-59 does not meet the required conditions for a Special Permit. 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.

Furthermore, in relation to the frontage requirement, the Town Code (§307-59 B. (9)), is very clear, Hospitals are only a “permitted” use in “residential zones” on a lot that has frontage “on a state road.” Quaker Ridge Road is a not a “state road.” This is not a permitted use and may require a use variance.

Lastly, in my position as the Code Official for the Town, I also must determine what uses apply per the New York State Uniform Fire Prevention and Building Code. As per the documents received this is an I-1 use, Alcohol and drug centers, indicating custodial care.