

TOWN OF KENT
PLANNING AND ZONING COMMISSION

41 Kent Green Boulevard
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Phone (860) 927-4625 Fax (860) 927-4541

SEPTEMBER 26, 2019 SPECIAL MEETING MINUTES

The Town of Kent Planning and Zoning Commission held a special meeting on Thursday, **September 26, 2019 at 7:00 p.m.** in the Kent Town Hall.

1. CALL TO ORDER

Chairman Johnson called the meeting to order at 7:00 p.m.

2. ROLL CALL AND APPOINTMENT OF ALTERNATES IF REQUIRED

Commissioners Present: Karen Casey, Anne McAndrew, Adam Manes,
John Johnson, Darrell Cherniske, Matt Winter,
Marc Weingarten

Staff Present: Donna Hayes, Land Use Administrator; Tai Kern, Land Use Clerk

Anne McAndrew and Adam Manes were elevated to voting status.

3. READING AND APPROVAL OF MINUTES:

3.A. Regular Meeting Minutes of September 12, 2019

Mr. Weingarten moved to approve the Regular Meeting Minutes of September 12, 2019. Mr. Cherniske seconded and the motion carried unanimously.

4. OLD BUSINESS:

4.A. PUBLIC HEARINGS (Possibility of closure, discussion and decision on the following):

- 4.A.1.** Application #'s 44-19SP and 64-19C, Dolores R. Schiesel, Esq. for Roberti Family, LLC, 175 Carter Road, change of use from single family dwelling and accessory dwelling unit to convalescent home, Map 14 Block 21 Lot 35.

TOWN OF KENT PLANNING AND ZONING COMMISSION
SPECIAL MEETING MINUTES FOR SEPTEMBER 26, 2019

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RECEIVED FOR RECORD
KENT TOWN CLERK

2019 SEP 27 A 11:17

BY  TOWN CLERK

The Public hearing was re-opened at 7:05 pm and Chairman Johnson read correspondence submitted by Rob Colvin and Daniel and Linda Palmer.

Attorney Neil White came forward as the applicant's representative. He explained that the reason they requested the public hearing extension was to address the public's concerns. He explained that Mr. Roberti is willing to work with the town to control traffic to post traffic signage on the road. He reported that Mr. Roberti has agreed to reduce the amount of beds to 14 in order to free up one of the suites for a program manager to live on the premises and be a part of the community.

Attorney White addressed Mr. Colvin's letter noting his reference to treatment centers and clarified that this is not what they are proposing. This is going to be a temporary living arrangement where no treatment is going on. He distributed photos of the driveway and a copy of the property survey showing the wooded access that is very secluded with a gated entry. He explained that property values will not be affected as noted in the letter. Mr. Roberti discussed the square footage of the proposed facility as well as the intent for this proposal not to be a treatment facility.

John Johnson questioned the certification and credentials they expect the House Manager to have. Mr. Roberti advised that, at a minimum, they would have to have a counselor's license and a BA or BS. A job description was distributed for the position.

Marc Weingarten asked about the Operator position for this proposal. Mr. Roberti explained the options available for this position. He noted they cannot seriously recruit this person without having a zoning permit for the operation.

Donna Hayes discussed her research regarding Dr. Samuel's program; The Hills. Mr. Roberti explained that The Hills is a treatment facility and that is not what is being proposed. They have recruited him because he is a highly recognized expert in this field.

Darrell Cherniske questioned licensing requirements. Mr. Roberti advised that their attorney has determined licensing or a CON is not needed; however, if it is determined that this is needed they are willing to try to meet the requirements. They understand that the proposal will not go forward if they cannot do this.

Alan Priaulx of 82 Carter Rd. came forward and noted that he is not opposed to this proposal. He feels this is needed. The Roberti residence is far removed from the road itself and will not create a disturbance.

Attorney Joe Szerejko of Murtha Cullina came forward to represent the neighbors in opposition to the pending application. A memorandum dated September 26, 2019 was distributed (see attached). It was noted that they respectfully request that Cramer & Anderson withdraw their appearance due to their conflict as Town Attorney. Donna Hayes and John Johnson explained that the Zoning Commission is represented by Michael Zizka. No one from Cramer & Anderson would be representing the town, if this was to go to court.

Attorney Joe Szerejko reviewed the memorandum in detail. He explained that there are two reasons for denial. A sober home is not a permitted use in the RU1 zoning district. The definition of a convalescent home fails to equate with the definition a sober home. Marc Weingarten noted that the only definition that is relevant is what is defined in the Kent Zoning Regulations. Matt Winter explained that this Commission was careful in creating this definition.

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Attorney Szerejko explained the second reason for denial is this proposal does not comply with other regulations. He reviewed the parking regulations and the number of spaces proposed are not sufficient and there has been no provision for the loading and unloading trucks. The proposed use of the guest house as part of the proposed sober home is not permitted under the regulations. No site plan or parking plan has been provided. The intensity of the use militates against the waiver of the site plan requirement. A traffic study or plan has not been provided. The traffic pattern is relevant given that High Watch is in such close proximity. The Town of Warren has requested a traffic study as well. Adequate mitigation has failed to be addressed. The proposed use is not consistent with the overall intent of the regulations. The overall operation of the proposal has not been presented. Due to these reasons, Attorney Szerejko respectfully requested that the application be denied in its entirety.

John Johnson reviewed the definition of convalescent per the regulations noting that the counseling provided in a sober home meets the definition of a convalescent home. Donna Hayes clarified that the site plan for this application was submitted on August 7th, 2019. Attorney White addressed the comments made regarding parking and reiterated that the residents will not have their own vehicles. Guest visits will occur on weekends at staggered times as per the schedule submitted for the record.

John Johnson explained that the special permit would supersede the definition of guest house. It would be a separate building as part of the convalescent home. It was agreed that this should be discussed with Attorney Zizka. It was clarified by Attorney White that this accessory dwelling unit does not meet the definition of guest house because it has a full kitchen.

Donna Hayes explained that no formal application has been presented to TAHD. Should the Commission decide to approve this application, the approval by TAHD will be a condition of approval. Additionally, other Agencies' approvals will be a condition of approval and required to go forward.

Ellen Altfest reiterated that the zoning regulation requirements also apply to an accessory dwelling unit. Many questions are reoccurring because they have been unanswered. An adequate parking area is not in the application. Adam Manes explained that they have testified to this information. Ms. Altfest questioned how the conditions of approval will be enforced. John Johnson explained that if there is reason to believe they are in violation, then the matter will be investigated and it can nullify the permit. The mitigation that is offered is in no way addressing her concerns of traffic as they are they are at the tipping point due to High Watch.

Rob Colvin discussed the study he included as part of his letter to the Commission with regard to devaluation. Ellen Altfest noted that she feels that potential buyers will be affected by a treatment heavy neighborhood.

Toni Soule, local realtor, reported that Carter Rd is in no way a thruway. She feels a treatment heavy neighborhood will have an effect on property values.

Larry MacNeil explained that road signs might slow down one person out of 100; however, will not do anything to decrease the traffic flow on this rural winding road with already too much traffic. He testified that he has seen the traffic increase since they built their house in the 1990s.

John Johnson reported that the traffic information from the traffic sign was made available. An average of 225 cars per day was recorded with an average speed of 27 mph.

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Mr. Roberti submitted documentation noting that the House Manager will need a master's degree and a license. Everyone else will require a certificate.

Pam MacNeil confirmed that the approval would go with the property. It was explained that the same conditions would apply to a new owner.

Annette James discussed the fact that this is a rural community with families. A business is being opened, because this house could not be sold; thereby, devaluing her property.

Fred Hosterman of 178 Carter Rd. came forward and reminded the group that Mr. Roberti is willing to subsidize some signs that could reduce the traffic. He suggested that the speed limit be reduced, radar signs be installed, and State Trooper's support be sought in reducing speed and noise.

Dr. Karen Altfest noted that the Chairman has voiced the same queries at each meeting and he is not getting any response. There are not enough solid answers forthcoming.

Larry MacNeil asked the members if anyone of them would want this facility next to their house.

Vinny Roberti confirmed for Anne McAndrew that counseling is not a medical treatment. Anyone in need of medical treatment will be taken to a doctor.

Attorney Szerejko stated that record needs to be made of the discussions with Emergency Services. Additionally, the fact that the use of cars by residents will not be allowed should be submitted in writing.

Mr. Manes moved to close the public hearing at 9:19 pm for application #'s 44-19SP and 64-19C, Dolores R. Schiesel, Esq. for Roberti Family, LLC, 175 Carter Road, change of use from single family dwelling and accessory dwelling unit to convalescent home, Map 14 Block 21 Lot 35. Mr. Weingarten seconded and the motion carried unanimously.

The members discussed their plan of action going forward in making a decision regarding this matter.

5. ADJOURNMENT

Mr. Winter moved to adjourn at 9:36 p.m. Mr. Weingarten seconded and the motion carried unanimously.

Respectfully submitted,

Tai Kern

Tai Kern,
Land Use Clerk

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MEMORANDUM

TO: Kent Planning and Zoning Commission

FROM: Kari L. Olson and Joseph D. Szerejko
KLO *JS*

DATE: September 26, 2019

RE: Roberti Family LLC Application for Special Permit

Dear Members of the Town of Kent Planning and Zoning Commission:

This firm represents, Richard James, Annette James, Robert James, Karen Altfest, Ellen Altfest and Robert Colvin, Marion Whynott, William Whynott, Rueben Miller, Dolores Miller, Pamela McNeil, Laurence MacNeil and Jerry Miller (collectively, the "Neighbors") regarding the pending application of Roberti Family LLC ("Applicant") seeking a special permit to install a "Sober Home" in the single family residence located at 175 Carter Road (the "Application"). While we appreciate the need for drug rehabilitation facilities, there are appropriate locations for siting such uses in accordance with local zoning regulations for good reason. It is only with due consideration to preserving the general health, safety, welfare and property values of the community that commercial uses, such as Sober Homes, should be allowed in a particular zone. Where, as here, a proposed use is not permitted in the RU-1 zone and does not otherwise meet the regulatory requirements for a permit to issue, the Application must be denied.¹

¹ The Applicant is represented by Dolores R. Schiesel of the law firm of Cramer & Anderson, LLP. This firm is also counsel to the Town of Kent. The Neighbors believe this presents a conflict of interest in that the Town Attorney is required to advise and act in the best interests of the Town at large and not with the competing obligation to promote the interests of a single resident or private developer before this Commission. For this reason, there appears to be an inherent conflict of interest and the Neighbors request that Attorney Schiesel and the firm of Cramer & Anderson withdraw its representation of the Applicant.

I. RELEVANT FACTS

The current Town of Kent Zoning Regulations (the "Regulations") provide as a preamble that:

Any use not specified in these Regulations as permitted in a zoning district without permit, by Zoning Permit, by Site Plan, or by Special Permit shall be deemed to be prohibited within such district.

Regulations § 1410.1. The property at issue lies in the Rural Residential District (RU-1). In this zone, the only uses permitted by right or pursuant to a zoning permit are agricultural uses and single and two-family dwellings. All other permitted uses are allowed only by special permit.

A review of the Application discloses that the property at issue consists of a large single family home and guest house. The main house has 6 bedrooms and the guest house has two more. The Applicant is proposing to change the use of this property to a commercial one and seeks to double the occupancy of this single family home to two beds per bedroom, or sixteen possible residents. According to the Applicant, the proposed residents are individuals who have completed medical treatment for alcohol and drug related addiction. Although the proposal is to "staff" the house 24/7 with a "house manager", no medical staff or medical treatments will be provided on site. The residents will be referred by physicians upon completion of formal "recovery programs." The Applicant admits that these individuals do not need nursing care or hospitalization, but rather, peer support. The Applicant agrees that what is proposed is a "Sober Home."

II. A SOBER HOME IS NOT A PERMITTED USE IN THE RU-1 ZONE

As the Commission is aware, the determination of whether a proposed use is permitted under the Regulations is for the Commission to determine in the first instance. Regulations § 1410.2. In doing so, the Commission must take into account the tenets of interpretation of local regulations. As the Supreme Court has stated:

The regulation is a local legislative enactment, and in its interpretation we seek to discern the intent of the legislative body as manifested in the words of the regulation. Since zoning regulations are in derogation of common law property rights, however, the regulation cannot be construed beyond the fair import of its language to include or exclude by implication that which is not clearly within its express terms. The words employed by the local legislative body are to be interpreted in accordance with their natural and usual meaning and any interpretation that would torture

the ordinary meaning of the words to create ambiguity will be rejected. Common sense must be used in construing the regulation, and we assume that a rational and reasonable result was intended by the local legislative body.

Spero v. Zoning Board of Appeals, 217 Conn. 435, 441 (1991) (emphasis added).

Couched as an application to install a "convalescent home," the Applicant relies on Regulations § 3224.8, which permits by special permit in the RU-1 zone:

A privately operated hospital, clinic, nursing home, or convalescent home provided that: a. the property contains at least five acres, and b. at least 4,000 square feet of lot area shall be provided for each bed providing in-patient accommodation.

We note that the Regulation does not expressly permit a "Sober Home." The Application, therefore, should be denied on that basis alone. Indeed, one would have to torture the words of the Regulation to equate a convalescent home, according to its Regulatory definition and its ordinary meaning, with a "Sober Home."

The Regulations define a "convalescent home" as,

An establishment other than a hospital where three or more persons suffering from, or afflicted with, or convalescing from, any disease, condition or ailment are kept, boarded or housed for remuneration.

While it is clear that the Applicant intends to seek remuneration from the proposed boarders, we submit that the Application to install a Sober Home otherwise fails to meet the definition of a convalescent home. Indeed, the actual terms used in this Regulation reflect that there was no intent for it to include the Sober Home proposed for several reasons.

First of all, while we are mindful that the Regulations have provided a definition of "convalescent home," the definition, itself, by its very terms is susceptible to interpretation. As noted above, there is no provision in the Regulations for a Sober Home and, as the Applicant itself acknowledges, to find that a Sober Home is a convalescent home requires that the Commission agree with the Applicant's interpretation of that Regulatory term. The Applicant relies upon the Oxford House case cited in the Application, arguing that a Sober Home is an "institution" providing "services" which exempts them from the summary process statutes. That case, however, is both inapposite and instructive. It is inapposite in that there are no summary process statutes at issue here and the definition contained in the Regulations does not call for an interpretation of the term "institution," nor does it equate

convalescent services with "counseling services." The Oxford House case cited by Applicant also is a superior court housing session decision of no precedential value for its conclusions - **a decision which was actually vacated** by the Appellate Court in Oxford House at Yale v. Gilligan, 125 Conn. App. 464 (2010).

Notwithstanding, the Oxford House case is instructive to the degree that the Applicant recognizes the relevance of state statutes in interpreting the meaning of regulatory terms. Notably, the legislature, in passing Public Act No. 18-171, specifically and separately, defined Sober Homes from any convalescent care "institution." Indeed, Public Act No. 18-171 (codified as C.G.S. § 17a-716) defines Sober Homes and makes certification listing for these homes the obligation of the Department of Mental Health and Addiction Services under Chapter 319j of the general statutes. Actual convalescent homes (and other such "institutions") fall under the auspices of the Department of Public Health. See Chapter 368A of the general statutes. Nowhere in the general statutes has a Sober Home been equated with a convalescent home.

More fundamentally, however, when you look at the Regulations' definition of convalescent home in its component parts and in concert with other relevant Regulations, it becomes even clearer that Sober Homes do not fall within its terms.

For example, the definition calls for an "establishment." This term connotes a facility designed for use as a convalescent home, and not a single family residence. This is consistent with what the term "convalescent home" means by its common usage, i.e. that it is a type of nursing home or rest home. Indeed, a convalescent home is an "establishment" defined as "a place where people stay when they need care from doctors and nurses, but are not sick enough to be in a hospital."² That the Regulations exclude hospitals from the term "establishment" (which otherwise might fall thereunder) further supports this interpretation. There is nothing in the Regulations that supports the notion that a "convalescent home" could, would or should include a single family home converted to a Sober Home, especially when the proposed Sober Home does not provide the fundamental and common convalescent care. Again, in common parlance, a convalescent home has a medical treatment component. The following excerpts from well-established convalescent home providers' websites bears this out.

Skilled nursing facility, nursing home, and convalescent home are all terms used to describe a residential facility that provides on-site 24-hour medical care.³

...

² <https://www.ldoceonline.com/dictionary/convalescent-home>

³ <https://www.agingcare.com/articles/difference-skilled-nursing-and-nursing-home-153035.htm>

Convalescent homes, commonly called Inpatient Rehabilitation Facilities (IRF), are facilities staffed by medical professionals who provide short-term care after a patient's surgery, injury or long-term illness.⁴

...

Convalescent homes are staffed by medical professionals and provide short-term care and recovery for patients after surgeries and long-term illness. These facilities can be freestanding hospitals or hospital-based units and are a lower level extension of hospital care. They can also be referred to as an Inpatient Rehabilitation Facility (IRF), rehabilitation hospital and Skilled Nursing Facility (SNF).⁵

In contrast to the common meaning of convalescent homes, the proposed Sober Home has no "patients," no admissions, no insurance coverage and no license. It provides absolutely no medical staff or medical services. Accordingly, this proposed Sober Home does not constitute an establishment designed to provide convalescent services under the Regulations. As one physician commentator, Dr. Brant-Zawadski wrote, the provision of actual medical treatment creates a clear distinction between Sober Homes and residential care facilities providing actual addiction recovery treatments (like convalescent homes).⁶

The media, the "rehab" industry and even some attorneys and politicians conflate residential treatment facilities and sober-living homes, though there is a clear distinction between them.

The recent Daily Pilot coverage of the controversies in Costa Mesa propagates the confusion. Domiciles used for any type of addiction treatment are residential treatment facilities, as defined by the state, much like nursing homes and assisted living facilities.

⁴ <https://www.assistedseniorliving.net/healthcare/convalescent-homes/>

⁵ <https://www.seniorliving.org/convalescent-home/>

⁶ These facts are what also distinguishes High Watch Recovery Center and Birch Hill Recovery Center, both of which are licensed by the Department of Public Health and provide medical staff on site for addiction treatment and recovery. High Watch also existed long before Kent adopted its Regulations in 1965.

Operators who advertise “rehab” treatment to clients (really patients), and provide housing to them contingent on such treatment, must obtain a state license and conform to state law regarding operation of single or integrated residential treatment facilities (as has been well clarified by recent state litigation against a local operator).

Sober-living homes are a distinctly different category from residential treatment facilities. As often referred to in state and other agency publications, sober-living homes need no license, because they are meant for individuals who are recovering after acute treatment and wish to live a communal lifestyle for support of ongoing sobriety.⁷

It is telling that the relevant Regulations also recognize the “in patient” component of a true convalescent home. See Regulations § 3224.8, requiring that “at least 4,000 square feet of lot area shall be provided for each bed providing in-patient accommodation.”

“Whenever possible, the language of zoning regulations will be construed so that no clause is deemed superfluous, void or insignificant. . . . The regulations must be interpreted so as to reconcile their provisions and make them operative so far as possible. . . . When more than one construction is possible, we adopt the one that renders the enactment effective and workable and reject any that might lead to unreasonable or bizarre results.”

Heim v. Zoning Bd. of Appeals of New Canaan, 289 Conn. 709, 715-716 (Conn. 2008) (quoting, Graff v. Zoning Board of Appeals, 277 Conn. 645, 652-53 (2006)).

For all the foregoing reasons, a Sober Home is not a Convalescent Home under any reasonable interpretation of the Regulations. The Application, therefore, must be denied.

⁷ Commentary: The difference between sober homes and treatment facilities; <https://www.latimes.com/socal/daily-pilot/opinion/tn-dpt-me-1218-commentary1-20141217-story.html>

III. THE APPLICATION DOES NOT COMPLY WITH THE REQUIREMENTS FOR A SPECIAL PERMIT

In addition to the fact that a Sober Home is not a convalescent home under the Regulations, the Application must also be denied for failing to meet the requirements for a special permit to issue.

A special permit allows a property owner to use his property in a manner expressly permitted by the local zoning regulations. . . . The proposed use, however, must satisfy standards set forth in the zoning regulations themselves as well as the conditions necessary to protect the public health, safety, convenience and property values. . . . An application for a special permit seeks permission to vary the use of a particular piece of property from that for which it is zoned, without offending the uses permitted as of right in the particular zoning district.

Trumbull Falls, LLC v. Planning & Zoning Comm'n, 97 Conn. App. 17, 20-21 (Conn.

App. Ct. 2006) (emphasis added).

According to Section 10450.3 of the Regulations:

Before the Commission may approve a Special Permit application, it must determine that the application:

- a. has satisfied the applicable Special Permit criteria in Section 10440 of these Regulations, and
- b. is in conformance with other applicable provisions of these Regulations, and
- c. is in harmony with the purposes and intent of these Regulations.

A. The Application is Not in Conformance with the Regulations

Not only is this Sober Home not a permitted use under the Regulations, but the Application otherwise is not in compliance with the Regulations. The Applicant has failed to provide a required site plan. While the Applicant proposes no changes to the site, the change in use proposed requires site changes in the form of adequate parking and truck access. Regulations § 8220 states that off-street parking shall be provided and "sufficient to accommodate the motor vehicles of all occupants, employees, customers, residents, and other persons normally visiting or expected to use such building or premises at any one time." (Emphasis added). The Application baldly states without a proper plan that there are 10 parking spaces available on site. Not only do we have no idea where these parking areas are to be located, but 10 spaces is not enough.

The Applicant proposes 16 residents, plus staff and visitors. Clearly, 10 spaces is insufficient to accommodate all of them at any one time. While the Applicant claims that the residents are not permitted a car for the first three months, they also admit that the residents may stay for as much as a year. Thus, there is a likelihood that all of them will be eligible to have a vehicle on site at any one time. There also has been no provision offered for truck loading and unloading. Regulations § 8240. Moreover, to the extent that the Applicant wishes to have the Commission vary any parking obligations, they have failed to provide a proper parking plan for the Commission's analysis. Regulations § 8230.

The proposed use of the guest house also is not in conformance with the Regulations. The Regulations define a Guest House as "[a]n accessory building located on the same lot but having no structural connection to the principal dwelling and used as living quarters, without kitchen facilities, for non-paying guests or domestic help." Regulations § 2200. In the RU-1 zone, guest houses are only allowed in accordance with Section 6200. Regulations § 3200. Pursuant to Section 6200, guest houses:

1. ...shall be permitted only when accessory to a single-family dwelling and when sanitary arrangements are approved by the Sanitarian or the Kent Town Sewer Commission.
2. The owner of the premises shall reside in the principal dwelling unit or the accessory dwelling unit or the Special Permit shall become invalid.

Accordingly, the use of the guest house as part of the proposed Sober Home is not permitted under the Regulations. Indeed, the permit issued for the guest house becomes invalid by the proposed use.

B. The Applicant has Failed to Satisfy the Special Permit Criteria

Pursuant to the Regulations, the Applicant bears the burden of establishing that it has met all of the Special Permit Criteria set forth in Section 10440. The Applicant has failed in this regard as to several of the criteria.

1. The Applicant has not provided a site plan

The Applicant's failure to provide a site plan for the proposed use is problematic for a number of reasons. While the Applicant claims that there will be no outside changes to the site (and we submit that there should be for parking and loading purposes alone) the fact is that the intensity of the proposed use of the property militates against the waiver of this requirement. Indeed, a site plan under the circumstances here, where a single family home is being converted to a commercial use, is critical.

As stated above, the assurance of adequate off-street parking and loading areas is one reason. But also, with respect to the other special permit criteria, it will be impossible for this Commission to ensure the other objectives of the special permit criteria are met without a site plan. For example, without a site plan, the Commission cannot be assured that the landscaping, parking and access are and will remain "Appropriate Improvements" for public safety, screening from the neighbors, nuisance avoidance and overall compatibility with the neighborhood. There also will be no way to adequately control future expansion or modifications without a site plan for a baseline.

2. The Applicant has failed to provide a traffic study and plan

The Commission is obligated to determine whether the proposed use presents suitable transportation conditions. Regulations § 10400.6. The Commission cannot make this determination on the Application alone. The proposed use will intensify the traffic generated at this location at least three-fold based upon the number of beds alone. There will also be a house manager, a cook, visitors, and persons attending the self-help programs to be held on site. Although the Applicant fails to address it, there likely will be other employees tending to household and grounds maintenance. Finally, the Applicant's claim that there will not be any delivery truck traffic generated by this use is simply unbelievable. That a traffic study must be generated is even more important given the recent approval for expansion of High Watch, and any traffic study commissioned should take into account that approved expansion as well. The traffic impact of having both High Watch and this proposed Sober Home operating within a short distance of each other in this neighborhood is a relevant and necessary consideration for this Commission.

Moreover, the abutting municipality, the town of Warren, also has requested a traffic study for this proposal. Warren's request must be given due consideration by this Commission. Regulations § 10450.5. Indeed, the property in question actually abuts the Kent-Warren town line.

3. The Applicant has not established that the infrastructure can accommodate the health and safety of the proposed residents

It is telling that Kent Fire Department personnel have attended the public hearing on this Application expressing concerns over access to the buildings for emergency purposes. Issues revolving around the ability of the sanitary sewerage system in place to accommodate the increased number of users also have been made and not addressed by the Applicant. To our knowledge, there has been no input from the Torrington Health District at all. Query whether the addition of beds and use of the property for rental purposes can even comply with the local building codes.

Because the burden is on the Applicant to establish that there is adequate provision for these health and safety concerns, the failure of the Applicant to address them adequately up front at the application stage is cause for denial under the Regulatory criteria.

4. The Applicant has not offered any mitigation

Pursuant to Regulations §10400.11, the Commission is to determine whether

adequate provisions have been made to moderate or mitigate neighborhood impacts by limiting the intensity of use of the property (including, without limitation, such considerations as the area devoted to the use, the number of people involved in the use, the number of events or activities proposed, the hours of operation, etc.) or by modifying the location or configuration of the proposed use.

Not only has the Applicant failed to clearly define the scope of the proposed use as a Sober Home, it has failed entirely to provide any mitigation. The proposal seeks to maximize residency rather than ameliorate the negative impacts attendant to same. The Applicant does not even address the number of events or activities proposed for the site. The Applicant's relationship to High Watch, its intent to offer self-help "programs" on site and past practices of offering the property to hundreds of guests at one time for fundraising events exacerbates the concern.

5. The proposed use is not consistent with the purposes of the Regulations

The property is located in the Rural Residential zone. It is surrounded by single family homes that are already impacted by the neighboring High Watch Recovery Center. The installation of this commercial use at this site in the heart of this neighborhood is not compatible. The intensity of the proposed use does not prevent the overcrowding of land, much less does it control the density of population in this residential neighborhood, nor lessen congestion of the country road which is its only access. Regulations § 1200.

Significantly, the Applicant also has not provided any information to refute the study submitted by Robert Colvin which concludes that addiction treatment centers, including Sober Homes, located in residential neighborhoods do decrease the value of properties and homes located nearby. The impact of the study, not surprisingly, shows that the decrease in value to be expected is proportionate to the distance between the home and the property housing such drug addiction treatment centers.

Finally, as the Commission has recognized, there is a dearth of information from the Applicant as to how and by whom this commercial enterprise will be operated. This is an important consideration as well given recent illegal activities on the part of operators of and residents in Connecticut Sober Homes. The Applicant has not even contracted with an appropriate operator at this juncture. How can the Commission approve an Application like this, much less arrive at appropriate conditions going forward, in a vacuum.

CONCLUSION

Because the proposed Sober Home is not a permitted use, and because the Applicant has failed to establish compliance with the Regulations and the criteria for special permit approval, in particular, the Application must be denied.



Substitute House Bill No. 5149

Public Act No. 18-171

AN ACT CONCERNING SOBER LIVING HOMES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2018*) (a) As used in this section:

(1) "Sober living home" means an alcohol-free and drug-free residence where (A) unrelated adults who are recovering from a substance use disorder choose to live together in a supportive environment during their recovery, and (B) no formal substance use disorder treatment services are provided; and

(2) "Operator" means the lawful owner of a sober living home or a person designated by such lawful owner to have primary responsibility for the daily operation of such sober living home.

(b) An operator of a sober living home that is certified as a recovery residence by an affiliate of the National Alliance for Recovery Residences, or a successor organization, or another organization recognized by the Department of Mental Health and Addiction Services as an organization responsible for certifying sober living homes in the state, may report the sober living home's certified status to the Department of Mental Health and Addiction Services, provided

Substitute House Bill No. 5149

such operator maintains at least two doses of opioid antagonists, as defined in section 17a-714a of the general statutes, on the premises and provides training to all of its residents in the administration of an opioid antagonist when such home is occupied by at least one resident who has been diagnosed with opioid use disorder. An operator of a sober living home that reports its certified status to the department shall provide the department with the number of beds available in the sober living home at the time of its report and weekly thereafter. The department shall post on its Internet web site a list of the sober living homes that have reported their certified status pursuant to this section and the number of beds available at each such sober living home. The department shall update the list of sober living homes and the bed availability at each sober living home on a weekly basis.

(c) No operator of a sober living home shall (1) advertise or represent that a sober living home is a facility that is certified or licensed to provide substance use disorder treatment services, or (2) publish any claims of particular outcomes for individuals residing in such homes. Any Internet web site or publication maintained by a sober living home shall include a clear and conspicuous statement in bold typeface that the sober living home (A) is not licensed or certified to provide substance use disorder treatment services, and (B) is a type of housing in which individuals recovering from a substance use disorder voluntarily choose to live together in a supportive environment during their recovery. Any violation of the provisions of this subsection shall constitute an unfair trade practice pursuant to section 42-110b of the general statutes.

(d) On or before August 1, 2018, the commissioner shall create a printable one-page disclosure form for distribution to prospective sober living home residents. Such disclosure form shall (1) be written in plain language and in an easily readable format, (2) state that sober living homes are not licensed or certified to provide substance use

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disorder treatment services, (3) provide information on sober living homes and resources for individuals recovering from a substance use disorder, and (4) contain a signature line on which a prospective resident may sign the form. Such disclosure form shall be made available to the public on the department's Internet web site. The commissioner shall review and update such disclosure form as necessary.

(e) The Department of Mental Health and Addiction Services may adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to implement the provisions of this section.

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Commentary: The difference between sober homes and treatment facilities

By DR. M. BRANT-ZAWADZKI

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The media, the “rehab” industry and even some attorneys and politicians conflate residential treatment facilities and sober-living homes, though there is a clear distinction between them.

The recent Daily Pilot coverage of the controversies in Costa Mesa propagates the confusion. Domiciles used for any type of addiction treatment are residential treatment facilities, as defined by the state, much like nursing homes and assisted living facilities.

Operators who advertise “rehab” treatment to clients (really patients), and provide housing to them contingent on such treatment, must obtain a state license and conform to state law regarding operation of single or integrated residential treatment facilities (as has been well clarified by recent state litigation against a local operator).

Sober-living homes are a distinctly different category from residential treatment facilities. As often referred to in state and other agency publications, sober-living homes need no license, because they are meant for individuals who are recovering after acute treatment and wish to live a communal lifestyle for support of ongoing sobriety.

The intent is for those individuals to transition to a normal life in the community, residing much like any family or group of friends sharing the responsibilities of a typical household. The individuals may choose who to live with and whether to see a therapist or physician, as needed.

Sober-living households can be located in residential neighborhoods, provided they conform to local zoning rules, much like any other communal or alternative family. Reasonable accommodation to override the local neighborhood zoning can be considered for any household at the discretion of the municipality.

Municipalities have responsibility for the health and safety of all their residents and thus are responsible for proper zoning with consideration given to overcrowding, the potential for the spread of communicable disease, effects of secondhand smoke, fire and traffic dangers, etc.

Municipalities dictate residential treatment facility locations through zoning. State law overrides municipal zoning laws, distinguishing commercial-versus-residential neighborhoods in only one instance — that of a licensed residential treatment facility housing six or fewer clients (patients) being permitted in even single-family zoned neighborhoods.

The U.S. Supreme Court has protected single-family zoning since 1939, presumably in order to maintain the character and integrity of neighborhoods, where residents become familiar with each other and weave a community fabric of life. What has changed is the legal definition of “family,” blood relation no longer being a requirement, but the concept of a stable household as a key element in the fabric of a neighborhood remains important to society.

The incursion into neighborhoods of commercial entities such as boarding homes, vacation rentals and recently AirBnB is a challenge to the essence of a residential neighborhood and to enforcement of municipal zoning ordinances — not much different from that posed by some blatantly commercial operations of sober-living homes. These are not true households but rather examples of individuals residing under a short-term contract with little or no choice of roommates, accountability to each other or relationship to their neighbors.

Given the widespread prevalence of mental health disorders (1 in 5 Americans will have such a diagnosis this year), including addiction, the need for access to proper treatment facilities is critical and unquestioned. This need includes consideration of appropriate facilities, qualified personnel and oversight, a calming therapeutic environment, the right of privacy and tactics for the eventual transitioning of the person to a healthy community lifestyle.

As a society, we must understand the role that healthcare providers, legislators and neighbors play in the continued support of those afflicted with mental health disorders, and those in recovery, while balancing the needs of all. Proper definitions are important to such understanding.

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