

Minutes for a Ticonderoga Planning and Zoning Board Meeting held on
December 2, 2021, commencing at 6:00 p.m. in the LaChute Hall

Present: Chairman W.D. McTyier, Erik Leerkes, Don Meserve, Attorney Matt Fuller, Clerk Tonya M. Thompson

Absent: Walt Lender, Ben Leerkes, Stephanie Mitchell

Recuse: Mike Powers

Others: Jim Abdallah, Michael Laramie, Donnie Ecret, Brandon Titus, Sam Hall, Attorney Richard Frankel, Don & Elain Hardy, Mark Wright, Alice Vilardo, Joe & Alicia Vilardo, Tim Rowland and Margaret Armstrong

Chairman McTyier opened the meeting with the Reciting of the Pledge Allegiance. He welcomed everyone and introduced the three members of the board that are present, noting that Mike Powers who is a member of the board, has recused himself from these proceedings.

Chairman McTyier noticed that the proper wording was not included in the Public Hearing announcement for the Appeal on the Determination – we will open the meeting up for discussion; however, we will be tabling this for tonight in order to get out the correct announcement for the Public Hearing on the Appeal Determination.

The Clerk receive at this meeting a letter from the Department of Health for Essex County in support of the project which will be attached to these minutes.

Appeal of a Determination for property at 102 Race Tract Road (#150.34-9-18.019./2 & /3

Richard Frankel Attorney for Rivkin Radler, LLP for St. Joseph's Rehabilitation Center, Inc.

Essentially, St. Joseph's is seeking to acquire the property at 102 Race Track Road, it is currently owned by Hudson Headwater which had occupied the facility and as he understands it, was providing primary care and other medical services there. St. Joseph's operates certain substance abuse and rehabilitation centers as well as other homes for people that need assistance in a controlled environment. They provide services throughout the North Country and even down as far as Dutchess County in Poughkeepsie and Schenectady, NY. The purpose of why St. Joseph's would like to purchase this property is to place in there what is called a Part 820 facility which is going to be a 25-bed census facility for woman only. Some of whom may be pregnant, some of whom may have children. It is a form of a residential facility to assist them through the substance abuse issues that they may have. Now, to put this in perspective, most people are familiar with the concept of continuing care, usually we think of that in terms of our parents or individuals who may need assistance at home because they can't handle daily activities themselves so they may get help inside their homes, when they can no longer do that, they may go into an assisted living facility and then when that no longer can help them with their daily living they can go into a nursing home. That is the continuing of care. St. Joseph as a licensed provider under the Mental Hygiene law licensed through the OASAS provides continuing care, they can provide in-treatment facilities, they can provide people with supportive housing, and they can provide somewhere in between. This facility, as he is told, is somewhere in between, people are going to be living there 24/7, they are going to receive some form of medical assistance to get them through their substance abuse problems. So, we, as you would imagine

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before signing a contract or even if we sign a contract, have a contingency to make sure that the property can be zoned for this particular use. He has representatives here from St. Joseph's who can answer more directly the clinical aspects that you might find inside the facility if the application is granted. He believes we also have our architect here who can primarily provide a conceptual plan. Initially, we sought the understanding from the Code Enforcement Officer what is this zoned for and he guesses there was a little bit of a misunderstanding in the beginning because when we asked for that we got back a formal letter saying it was a historic district, which required us to have to do an analysis as to whether or not we could meet anything that was in the historic district, which we could not. Upon further understanding, it is actually in the medium district as opposed to the historic district. So, you will have seen initially in our initial application we were responding to a letter on May 18 of this year from the Code Enforcement Officer, which he thinks has been rectified and we now all understand it is in an MD district and we looked at that and we said, well, we should be able to fit within two concepts here. That is, is it possibly considered a Nursing Home or is it considered a multiple dwelling environment. In our paperwork, we have gone through the analysis of what a Nursing Home is, it specifically states that a Nursing Home is not a hospital, this is not a Hospital, it is not a hospital in the definitions of the public health law, and Nursing Homes are specifically defined elsewhere, but you define it in your code, and we feel that we meet that definition. Alternatively, we feel that we meet, based upon your definition of multiple dwellings, that this is a multiple dwelling. We are going to have 25 units, where people will be living 24/7, and although they will have communal food and communal bathrooms, it is essentially a multiple dwelling as we believe you have defined it in your code. So, initially, we felt that the appropriate thing would be to get an interpretation from this board, who under your Town Code has that authority to provide an interpretation. If there is in fact an interpretation that we are either a Nursing Home or a multiple dwelling, then we fall within the special use permit provided under your zoning code, which permits us then to apply to the Planning Board for a Special Use permit, which you would then go ahead and do, see if we obtained it and if we have obtained it, then we will acquire the property. Alternatively, we felt it incumbent for us to also take a look at whether or not we should get a Use Variance and combine the two applications. Recently, he doesn't know when you posted it, but it was after we had applied for this application, you've put in forms now for Applications for Interpretation and different formats, but when we applied back in July, you didn't have those forms. So, we had to kind of combine what we were doing to say in the alternative.

The second application that we made was for a Use Variance, we have to show unnecessary hardship, we have to show that there can be no reasonable return on investment, we have to show that we won't affect the character of the neighborhood and then essentially, we did not self-create it. We didn't create this problem. The last one, we can really just say, we didn't create it, we haven't bought it, it is not like buyers' remorse, who should have come before you and done what we are now doing after we bought it. We haven't bought it, so we are coming to you now, there is no self-created hardship here. If we were even to put in a contract, we would put in a contingency to say if the board does not give us this, then we are out. So we have not created any hardship at this point. In terms of reasonable rate of return, you have to do an analysis of

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each . the uses that are permitted in the MD district. We went and hired a person who is a licensed appraiser, and he came up here and looked at the property, he did his analysis, we submitted that analysis and basically, any of the uses that would be permitted would have a negative rate of return. Can't make money, can't make money, plain and simple based upon the expenses, based upon the uses that are permitted. So, no rate of return, we have shown no reasonable return can be made by the uses. In terms of the character of the neighborhood, we are not really changing much, the building is the building there, yes we propose to add an addition to the building and we can talk about that, but that is something that would be really more of a discussion at the Planning Board in Site Plan approval of whether or not we can do that and conform it to what the current building looks like and rest of the neighborhood. We are not changing by putting in a brand-new building and the use is certainly from our prospective, less intensive. There will be a 25-bed census, yes, we will have employees there, yes, it will be 24/7, but you won't have this in and out, in and out that you might have had when Hudson Headwater was seeing primary care people. Theoretically, we don't want our residents to have access to cars, there may be some exceptions to that, because we want them to stay within a controlled environment. So, the cars that would be there, would be mostly the employees or vendors when they have to come in. We do not anticipate there to be a significant traffic issue that has to be done, but once again, if the Planning Board would require a traffic study, then we would do a traffic study to see whether or not, but that is a Planning Board issue. We do not anticipate that the substance to be the character of the neighborhood would be changed.

Chairman McTyier wants to be clear that what we are talking about at this presentation is for the Appeal of the Determination. You are getting more into the Use Variance. What we will do, now that you have given us the basis of the Appeal, we will first of all we will ask the board if they have any basic questions, not about the Use Variance.

Mr. Leerkes stated that your basis of your Appeal is that it fits the permitted use under either Nursing Home or Multiple Dwelling. You mentioned that the definition of a Nursing Home is listed in the Town Law?

Mr. Frankel answered that this is correct. Code section 20.20-81 defines a Nursing Home as "any building other than a hospital where persons are housed or lodged and furnished with meals and nursing care for hire" in addition Codes section 20.20-41 defines a Multiple Dwelling as "any structure designed or used as a residence for two or more families?" What the code doesn't define is hospital. So, if we go the basic definitional concept, where would we find the definition of hospital, well hospitals are regulated by the DOH under the NYS Public Health Law so if you look at Public Health Law Section 20801, paragraph one that defines what is a hospital, but if you go down into that definition it says "but the term hospital shall not include sanatorium, or other facility engaged principally in providing services for the prevention, diagnose, treatment of mental disability in which is subject to the powers, visitation, inspection of the Department of Mental Hygiene" and so, his client is not regulated by the DOH, it is regulated by the Department of Mental Hygiene. So, if we look at what NYS says is a hospital and we look at what his client does, it is not a hospital, but if we look at how the Town has defined what a Nursing Home is, we fit within the definition.

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Mr. Leerkes then asked that you are saying to us that you are not a hospital, you are a mental health facility?

Mr. Frankel answered, "correct".

Mr. Leerkes continued, you are saying that you consider a mental health facility a Nursing Care, what is defined as a Nursing Home?

Mr. Frankel stated that you define Nursing Home as being anything where you provide Nursing Care, what is Nursing care? Nursing care is assisting someone with medical or other services.

Mr. Leerkes asked, you are saying that you are providing other services, but in the meantime, you are trying to tell us it is a multiple dwelling? It is one or the other.

Mr. Frankel agreed, one or the other and he thinks he can argue in the alternative, either it fits within the definition of a multiple dwelling, or it fits within your definition of Nursing care. Interestingly enough, you define the concept of medical facility, but yet you don't have any place in the town that allegedly permits a medical facility, but yet you do have medical facilities. One could argue that by definition, if you don't exclude it, you have included it. Which is another argument that we have made, you haven't specifically excluded what we are trying to do, so therefore it should be included.

Zoning Officer Burrows stated that he had received the application and gone through the application and this part 820 which Mr. Frankel is referring to, he read through and in their definitions, it states, "unless otherwise indicated, the following terms shall be applicable to all programs certified pursuant to this part. "Residential services are 24/7 structured treatment/recovery services – provided by office certified programs to person recovering from substance disorder." His determination on this is that it is a Drug and Alcohol Treatment Center. If you go further, "Certified residential program may provide residential services corresponding to one or more of the following elements of the treatment/recover process: stabilization – rehabilitation – reintegration." "Stabilization provides a safe environment in which a person may stabilize withdrawal systems, sever cravings, psychiatric and medical systems. Stabilization requires the supervision of a physician and clinical monitoring. Rehabilitation provides a structured environment for persons who are seriously limited due to significant functional impairment including social, employment, cognitive and ability to follow social norms." Reintegration is just helping somebody acclimate back into society. Further down section 820.4 "Programs will be certified pursuant to Part 810 of this Title for residential services and will have noted on the operating certificate each of the services – stabilization, rehabilitative and/or reintegration." In the packet, not one of those were presented, he has to logically assume that all three (3) of them would be presented at this facility. Section 820.5 "Medication assisted treatment – the provider of residential services provides residential services to an individual who is on methadone or other approved opiate maintenance or is being detoxified from methadone." Another red flag, it seems like a Drug and Alcohol Treatment Center. Continuing through Section 820.10 Additional requirements "residential providers will be required to have medication management protocols approved by Oasis Medical Director, to qualify to provide stabilization services. All programs offering stabilization services shall have ancillary

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withdrawal and addition medication management available.” Drug and Alcohol Treatment Center. It is his determination of the Occupancy is that this is a Drug and Alcohol Treatment Center rather than residential use or a Nursing Home. In your application, Exhibit A, states that this is a facility for a residential environment to receive treatment, services, and support in the recovery of substance abuse disorders. We just covered that. Among the support provided to the residents are counseling and medication assisted treatment. We just covered that. It also states that there will be counseling and administrative offices, medical office, and a day care. Now we are starting to get outside of Residential and we are starting to get outside of Nursing Home, also. In Exhibit B – you respond in your application that it is the position of this applicant that none of the Special Permitted uses are reasonably applicable to this current building and property. This is getting to the Use Variance – but this being said: As stated earlier, the information presented by the applicant defines the use as residential services 24/7 structured treatment/recovery services provided by office certified program to persons recovering from substance abuse disorder and it continues to Part 820.5 with medication assisted treatment which provides residential services to individuals who are on methadone or other approved Opiate maintenance, or is being detoxified from methadone. My determination is that this is more aligned with a Drug and Alcohol Treatment center than a Residence or Nursing Home. As the Zoning Administrator, it is my duty to enforce the Zoning for the Town of Ticonderoga with the aid of the Town of Ticonderoga Zoning chart of allowed uses. The chart of allowed uses is just that, the uses that are allowed. There is nowhere in any of the zoning on this chart that states that a Drug and Alcohol Center is allowed in the Town of Ticonderoga in any zones. As the Zoning Board of Appeals, you gentlemen are empowered to enforce the same Zoning Laws that he is using the same Zoning information that he has in front of him, and you have in front of you. As a reminder, it is not our position to debate “how” to fit their use into our Zoning. It is just that we have to enforce our Zoning. He suggests at this point, should the applicant be willing to pursue this further, that this matter be brought up to the Town board to possibly change the Zoning to accept this use. Thank you.

Chairman McTyier stated that we will now be opening the public comment portion. We will be keeping with our protocol with anyone wanting to speak, please sign in – come up to the podium and tell us what your concerns are, each person will be given three (3) minutes for what you want to say. His expectations are avoiding any kind of talking over people, interrupting and being very respectful to what people want to say. If you feel like you want to say more later, then we can go around again. Comments are to reflect this Appeal only, we are not talking about the Use Variance, we are not talking about other issues that have happened in Town, this is specifically about this topic. Comments are directed to this board, not others in the audience.

Mike Powers resides at 43 Third Avenue, but he and his wife own property at 99 Race Track Road. (Mr. Powers has turned in a document for the record in further detail than what he will personally report on – they are attached to the end of these minutes) Regarding the Applicants Appeal of Interpretation - The applicant has asked the board to overturn the Code Enforcement Officer’s decision that the proposed use is not a permitted use withing the Medium Residential Zone, but is instead either a “Nursing Home” or a “Multiple Dwelling”. The proposed use is clearly not a “Nursing Home” as the applicant’s own documents state that the proposed use is a

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“residential facility for multiple residents, some of whom are anticipated to have children reside with them” which is a clear indication that the applicant expects and intends for families to be residents of the facility. The inclusion of a playground on the project’s site plan reinforces this. The Town’s definition of a “Nursing Home” clearly states, “any building other than a hospital where person(s) is housed..” Persons. Not families. For this reason, I believe the proposed use cannot be considered a “Nursing Home” under the Town’s definitions. The proposed use also is also not a “Multiple Dwelling” as the applicant contends. The applicant states that “the program facility is intended to include separate living accommodations for the residents with shared bathrooms facilities, dining area, kitchen.” Logic dictates that a Multiple Dwelling would consist of multiple dwelling units, which are defined in our law as “a single unit providing for complete, independent living facilities for one or more persons, including PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING AND SANITATION.” As I stated before the applicant states that the facility will have separate living accommodations for residents with shared bathroom facilities (sanitation), dining area (eating) and kitchen (cooking). These shared areas fail to meet the definition of a dwelling Unit, of which more than one would constitute a “multiple Dwelling”. This is why I believe the proposed use cannot be considered a “Multiple Dwelling” under the Town Zoning Ordinance. For these two (2) reasons, I believe Mr. Burrows’ interpretation is correct and the Board should uphold his decision and deny the applicant’s request to overturn it.

Don Hardy lives at 116 Race Track Road, right next door to this facility in question. He does not have a lot to say other than, that this is obviously a medium density residential zone. He does not see how you can put a 25-bed facility in a medium density residential zone. The other thing that he might add is that if we can make variances because someone wants to use something that doesn’t fit, then you don’t have a zoning law at all.

Alice Vilardo lives at 66 Mt. Hope Avenue, and two years ago we were in front of the board because St. Joe’s had multiple meetings in which she has found out that two weeks ago Wednesday that they were assisted by Joe Giordano. She went to Joe Giordano concerned about the neighborhood having a women’s rehab in our neighborhood. They bought the house that had four (4) apartments in it and as this gentleman is telling you it was going to be housed with women only, no children, no whatever and first off for the record, she works in the Nursing Home and has for 36 years. What he is describing is not a Nursing Home, he is describing Coniford Park, he is describing a mental ward like Odie Heck, places like that, but anyway, long story short – they approved for this house to be put in. Bill Ball told us that he can get a CO and he could close it at any time if there were issues. They moved these women in, never to have a boyfriend, never to have a husband, they are supposed to have their children. Never to do drugs, never to do animals, never to do – just to have a happy life there.

Chairman McTyier interrupted stated that we are talking about this project and the Appeal of the Determination not the Use Variance yet.

Mrs. Vilardo continued that they are talking about a use for woman housed in a residential area. They party all night, fires outside all night, the kids are out at 1:30 in the morning all night, they

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are out there playing, we have Facebook of one of the neighbors complaining about crack – tired of smelling crack upstairs in the apartment.

Chairman McTyier again stopped the discussion to explain that we will be having another hearing regarding the use variance, this is for the Appeal.

Mrs. Vilardo stated that she hopes you listen and hopes that you don't allow it, because they don't follow through with what they are doing. The interpretation is that they are going to have this house, this residential area for homeless women with children, that is the interpretation. They are going to have it observed, managed, people will be coming in. That doesn't happen, it does not happen. You are lucky if you get a person in there once a month, they let them know when they are coming and they do what they have to do to clean it up. Two weeks ago, she called Mr. Burrows – they lie to you, they will not follow through with what they tell you.

Mr. Frankel would like to follow up in relation to the interpretation aspect of this Appeal. Mr. Burrows did go through, quite extensively Part 820, but he would have to ask – Sam Hall, the Director of Program Development to come up. He would like him to speak of 820. It is the part that allows for residential programs – is all the items that are provided for in 820...do they have to be provided in every residential home. Mr. Hall stated that they do not. Mr. Frankel continued, so there may or may not be certain types of individuals who have certain kinds of substance abuse problems that might not fit into this category that St. Joseph's are looking to utilize the Race Track Road property.

Mr. Hall answered correct, one of the specifics that was mentioned was the methadone treatment, this will not be included in this program, because for methadone treatment you have to have a Federal License to utilize that substance for treating Opiate disorders and that is not going to be part of this program. That is not even a factor as far as that goes. That is one issue that will not be included. The 820 regs. Are meant to be all inclusive, in other words it covers everything and if you go downstate, Opioid treatment program are very common down there, they are not common up here. There is one and another is getting established in Messina, so...

Mr. Frankel stated that in many respects, not all hospitals have a license to perform all types of surgeries, even though they are called a hospital, not ever Part 820 facility is going to fulfill every single item that is in Part 820. It is what St. Joseph's applies for and what the Department of Mental Hygiene and Oasis approve for the type of facility that is being presented, so we can't go down and say everything from column A, everything from column B and everything from column C and say look at all these things, all these things are going to be done here, that is not the case. He would just like to point out that the residents that came up, some were speaking about other facilities which really are not relevant at the scope and in addition, we do believe that given the limited nature, the Town Board adopted a Zoning Code and the definitions that were put in there are the definitions. We work within those definitions, and he thinks the paperwork shows that we fit within at the very least Nursing Homes. Based upon the limited definition that is provided and he does think an argument still can be made that it is within the definition of the code of multiple dwelling, even though yes at this time the projection is that there is not going to be separate cooking facilities in each unit or bathrooms within each unit. He thinks that we can,

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in fact, fit within the definition. He really thinks that their papers speak for themselves, in terms of the interpretation and he thinks that the issues that have been raised, really are issues that can be dealt with at the Planning Board stage to meet the special permit requirements and the conditions that can be placed on the facility if there are concerns with the public or with that Planning Board or with the Code Enforcement Officer about certain services. He thinks that is the appropriate forum. He is open for any other questions.

Mr. Burrows again reminds the board that we are here to enforce the zoning laws with our chart of allowed uses. We are not here to make things fit for an applicant into our zoning. Regarding the allowed uses, he specified the allowed uses. As he pointed out several times, this is a Drug and Alcohol Treatment Center and that is not an allowed use in our Zoning.

Chairman McTyier would like to consider tabling this hearing if there are no other questions.

Resolution #19PZB-2021 brought by Erik Leerkes, seconded by Don Meserve to table the Appeal of the Determination until January 6, 2022, at 6:00 p.m. **3 – Ayes , 0 – Nays. Carried.**

Mr. Frankel wanted to clarify what is being tabled.

Chairman McTyier explained that we are tabling the Appeal of the Determination at this time. We will put the correct announcement in the paper and continue the Appeal at the January meeting. This board is then asking if you would like to continue tonight to discuss the Use Variance since you are present.

Mr. Frankel is more than happy to continue with the Use Variance presentation noting that is being argued in the alternative and that he is not waiving his clients' rights as to the right of the Appeal of the Interpretation. It would be useful to continue seeing that there are people here and obviously they are concerned.

Mr. Frankel started his presentation regarding a Use Variance for 102 Race Track Road if the board should determine that the Appeal of the Determination application is denied. A Use Variance in this situation in the MD district is such that the use that they are intending to put at the facility at the property at 102 Race Track allegedly is not a permitted use, whether as a right or by special permit. As he indicated, there are essentially four (4) criteria that is in the Town Code and is also in the NYS Town Law as to what an applicant has to prove to establish a right to a Use Variance. Working backwards because the easiest one as he indicated before is Self-created hardship. We do not have a self-created hardship here because we have not acquired the property yet any application to the board if it required a contract then the contract would be contingent upon obtaining the necessary variances and permits in order for use to purchase and utilize the property. So, we haven't bought it, we haven't created the situation. Next, is whether or not the property can make a reasonable yield on investment, reasonable return – according to the NYS Court of Appeals one has to show dollars and cents proof, one has to show financial hardship. In this case, we retained and hired an appraiser who submitted a report to us, which we have supplied as part of the record. He has reviewed the property, he has reviewed the uses, the surrounding area, reviewed expenses, renovations, what would be required to possibly use this property as a permitted use, whether a special permit or otherwise and his analysis is that there is

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a negative return on investment. None of the uses can be utilized at this property without incurring basically a loss. One of the nice things about St. Joseph's is that it is willing to come into the community and through financing from different sources and because of certain abilities to obtain a payer mix, it is able to put forth a project and use for this property that none of the other permitted uses would provide any investor, any owner a reasonable return on their investment. The other aspect that one has to look at is the character of the neighborhood and we have already heard tonight that the property is surrounded by some mixture, there are single family residential structures, there are recreational land, office, commercial, small industrial all within a small radius of this property. You have the Best Western Hotel, the Walmart Supercenter, Walgreens, a Gas Station, a Church, farther down the road is a Hospital and where Hudson Headwaters moved closer to. As indicated, there are of course single-family residential homes. This property sits off from the road, next to it is some transmission lines from National Grid so there is this buffer there between residential property going down, it sits on a slope, as he said it sits back and initially there is no indication from speaking with the architects and his clients to have large ambient lighting, something that can certainly be discussed more fully at a Planning Board Site Plan Review, but essentially, the building is there, it was used, people came in and out for treatment as he said before, primary care facility. This was all accepted within the community. Having a facility that would provide housing for a 25-bed census for women only will not, in our opinion, dramatically change the neighborhood. The people that are residents there are monitored, they are there because they want a safe environment where they can get better and go back into the community. If you look at the Town's Comprehensive Plan on page 55 Or 56, it states that the assessment found that the area residents were concerned about the lack of mental health care, the need to travel for specialized health care and the difficulty of providing high quality volunteer ambulance services were also cited as important concerns. Services that the group identifies as needed in the area included mental health and drug and alcohol counseling. Clearly, what the applicant is trying to do is to provide the services in the community that the Town's Comprehensive Plan says that they want. This facility can meet the needs of the community, it fits within the program structure of his client and the building we understand will have an addition, but the nature and character we submit is going to remain the same in how it looks and we have also indicated that the traffic will, in our opinion, should not be any more or less than what was there before. Less in and out, because as we indicated, the residents are not intended to have vehicles, some might, but for the most part, he is told that they are intended not to. You have the employees coming in and out, but you had patients and you had employees that were coming in and out when Hudson Headwaters operated the facility. So, we do not believe that the essential character of the building is being changed by keeping this building and having it utilized for something that already existed as a facility, it is just being put to a different use for a need that the Town has indicated itself that its residents want and need. Lastly, how is this property, this structure unique? Well, to make this property fit within any of the uses, it appears, if you take a look at Mr. Carr's report, you would have to demolish it or you would have to so substantially renovate it that it would be different. This building already exists. The property sits where it's basically unique in and of itself from the surrounding neighborhood. So, we believe, not only in this presentation, but in the paperwork that has been provided, we have provided dollars and costs proof, we have indicated that it is unique, we have indicated that

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it is not going to change the essential character of the neighborhood and that certainly we have not created this hardship ourselves. He is open for any questions from the board.

Mr. Leerkes would like to discuss the financial hardship. You've said that you have provided substantial evidence, they did a report saying that says you can't make a return, but he does not see any financial proof. We have had people come to this board before and say that they can't make money on it, but that is not proof, to say that it cannot conform to all the different possible uses that are approved for that building.

Mr. Frankel stated that the applicant is not coming up here or the owner is not coming up here and saying that, an expert witness who indicates that he has reviewed the property, looked at the tax structure, looked at the economics of it and has come to an expert opinion that it cannot provide a reasonable rate of return.

Mr. Leerkes understands that, but he does not show any proof of this other than it, it is just his word.

Chairman McTyier agrees, there are no numbers for the data that we have in front us.

Mr. Meserve concurs, your expert witness, it is his personal opinion, it is not that cut and dry. There should be numbers to back up his opinion.

Mr. Frankel stated that we can turn to page 19 of Exhibit 12 – The Howard Group, licensed Appraiser, November 8, 2021...The initial application did not have this analysis because we were engaging him. As he understands what the Appraiser did, he looked at what type of income can be derived from this property and then looking at the vacancy rate if you were to rent it and also expenses, taking into account insurance, real estate taxes, repairs and maintenance, snow and lawn, reserves for replacement and having looked at the community and the market conditions establishing that of an 11,380 square foot building with a 3.5 per square foot net – in this case if you look at the asterisk represents the participation in the operating expenses by the ownership, another phrase that some of you may be familiar with, rather than that is modified gross and by applying the capitalization rate and reviewing everything net operating income is negative. He did that looking at all the different uses that can be provided.

Chairman McTyier asked what was the support to come up with the figure and another issue is that he references the Village of Ticonderoga several times, there is no Village of Ticonderoga.

Mr. Frankel stated that he does not have his work papers, if that is what you are asking for is for him to come and testify and provide the work papers, we can provide that at the next town hearing if the board is so inclined. These are his conclusions based on his analysis, in fact - his numbers, facts and figures, his licensed appraisal. So, if you and look at his conclusions on page 23 in the second paragraph, basically in a nutshell, if someone was to gift someone the property and that person was willing to invest \$500,000.00 into the property for renovation, maybe you might be able to make a go of it. If somebody wants to buy it, somebody wants to operate it, pay all the expenses the real property taxes etc., they are not going to make any money on the uses that you have provided based upon the rates that this licensed appraiser has determined. So what

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is unique here, is the fact that his client has sources of funding that permits it to be able to do this as a Not-for-Profit entity and maybe one thing that he forgot to mention is that St. Joseph's Rehabilitation Center is a 501C3 Not-for-Profit Organization. It provides a charitable service to the community. Doesn't mean it can't make a profit just because it is a Not-for-Profit, but it is intended to be a charitable organization. That is his fault for not having mentioned that sooner, he works with a lot of Charitable Organizations, and he just presumed that and that was his fault, but this Charitable Organization, St. Joseph's is willing to do this and willing to put this investment into the community to provide something that the community says it needs. Now will everybody agree, no. That is just a fact of life, not everyone agrees, but he thinks this board can see the need in the community, understands that it's the times that we live in, understands that this is a charitable organization and can take a look at this licenses appraisers report and come to a conclusion. Who else but his client is going to be able to make this project worthwhile, but if the board feels it needs additional information and feels this is insufficient, then he is more than happy to ask his clients expert to provide his work papers and if the board needs more, have him travel here as he did to make a presentation and answer any questions that are necessary. We felt that it was pretty self-evident but if the board disagrees that is fine, we are more than happy to supplement and provide additional information at the next time.

Chairman McTyier stated that at this point we will open the public hearing and then there may be more comments after that.

Clerk Thompson read the notice of the Public Hearing that the Planning and Zoning Board will hear comments regarding the Use Variance submitted by St. Joseph's Rehabilitation Center, Inc. concerning a property located at 102 Race Track Road, tonight, December 2, 2021.

Mr. Powers would like to continue his comments now on the Use Variance that is in front of the board. The four tests: Cannot realize a reasonable financial return, the alleged hardship is unique to the property, the variance will not alter the essential character of the neighborhood and the hardship is not self-created. TEST ONE: The applicant has not submitted real proof that no other permitted use in the Zone will generate a reasonable financial return. The one page of general financial data buried in several pages of carefully selected images of the neighborhood is not enough to prove the applicant can't realize a reasonable return on its investment from each and every permitted and special use within the Medium Residential Zone. TEST TWO: There is no uniqueness of the project property that imposes a hardship. Most of the permitted and special uses within the Medium Residential Zone (notably Place of Worship, Public or Semi-Public Building, School, Single Family Dwelling, Townhouse, Private School and Tourist Accommodations) can easily be placed on the project property with little or no difficulty. TEST THREE: The applicant has totally mis-characterized the Race Track Road Neighborhood. Excluding the property in question there are 13 single family dwellings, one multi-family dwelling, two business, the Highway Department and on (to my knowledge) abandoned building. The rest of the land along Race Track is agricultural. There is no "recreational land" and there are no industrial uses on Race Track. Walgreens, Walmart, Best Western and the church and gas station are not on Race Track and cannot be considered part of the neighborhood as they are up to a mile or more away. Given the actual makeup of the Race Track Road neighborhood, the

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establishment of a 25-bed drug and alcohol rehab facility will alter the essential character of the Racetrack Road neighborhood. Traffic: The applicant states that “it is not anticipated that the traffic will be increased by this use since the residents are stationary”. Foot traffic will undoubtedly increase as these “residents” will walk to the convenience store at the intersection of Race Track Road and Wicker Street. Given that there is currently minimal foot traffic on the Road this alone will constitute a change in the character of the community. Also, since the facility will be open 24 hours a day and seven days a week, it stands to reason that there would be an increase in vehicular traffic at night and on weekends. Noise: Currently, there is almost no noise at night on Race Track Road. (Mr. Powers time is up)

Mr. Hardy stated that he has lived next to this in the same location for over 50 years. Now, on September 12, 1989, when Dr. Beehner was requesting a variance for this building there was a meeting with the Zoning Board of Appeals and a hearing and there are two versions of the determination from that meeting. The following day went to the Town Clerk’s office and asked for a copy of the determination that was made by that board and Wilma Ryan the Town Clerk at the time said well, it hasn’t been typed yet and all she had was a penciled copy. He said that was fine and he settled for that. A few days later, he went back to get the typed copy and it had changed. If you bear with him, they are only a paragraph each, but he would like to put into the record what was said. From the handwritten copy from the meeting by Mr. Lemieux who was the Chairman of the ZBA: We have determined that the Beehner medical project and this project only is indeed situated within the service business zone. We have made the determination for this professional office, where it is to be sited, on all available evidence to the best of our ability. It is to be noted that the configuration of the zone allows this project only and no others as it is surrounded by the medium density residential zone. So, it was recognized that this was a residential zone. Just a couple of other comments to echo Mike Powers presentation, this will make a considerable difference in the character of the neighborhood to give the examples that were given, they are not part of this neighborhood. He has had much foot traffic from the doctor’s office across his property because his property is between that and the convenience store down the street and other traffic, patients going in and out of the place like to take a short cut through his property. There will be, as Mike pointed out, a lot more foot traffic across his property. He won’t take time to go through all of the things that have gone on at the Mt. Hope facility but to the best of his knowledge there is no reason to think that it will not go on in this facility. There is, to the best of his knowledge, there is no plan for supervision around the clock as there was not at the Mt. Hope Facility. (A copy of the 1989 determination and handwritten notes are attached to these minutes).

Mrs. Vilardo would like to continue with her comments from before. So as far as trying not to change the neighborhood, there are a group of us that met with Brandon Titus a couple of weeks ago, Brandon Titus had asked us to help him come up with some policies to help the neighborhood. Brandon Titus is St. Joe’s overseeing of the Mt. Hope Property. They cannot get a handle on the people that live there. They are women, there are they boyfriends, there are fathers that live there, there was a drug overdose there. The kids are there and there is partying all night, the group couldn’t come here tonight to tell you this, her brother-in-law is up all the time and has actually gone over several times to tell them to shut down the music. They take

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their motorcycles and are running up and down in the yard and the road. They had 4-wheelers, kids on them with no helmets, music blaring. You have the boyfriend and girlfriend that live upstairs that aren't supposed to be living together screaming at each other in the middle of the night, waking up everybody. You have the one that lives in there, he creates problems all the time. St. Joseph's, he knows from one of the girls that is working on this committee has threatened Brandon that if he doesn't get control of this then they are going to the State of NY that gives them the grant. Also...

Chairman McTyier asked if they have discussed this with the Police.

Mrs. Vilardo stated that the police are there all of the time, but when you ask the police what the number is, because supposedly there are supposed to be so many numbers that you can get in a Nuisance Law, they don't have the total. They tell you that they don't have the number and there is a Nuisance Law that we were told to follow up on. Sorry, she is trying to rush through this. If you have to live in that neighborhood, there is garbage in the yard all the time, she has had David Burrows..... she is talking about the change in the neighborhood. Our neighborhood was a calm, quiet neighborhood. Now you have traffic in and out of this one dwelling all the time. You have trash cans lined up in front of their yard, where everyone else's trash cans are in the back yard. St. Joseph's came just before Thanksgiving and cleaned up the yard because the neighbors were complaining and they knew they were going to have this meeting and they wanted to impress everybody with the women's residential home for Hudson Headwaters and they don't tell you the truth. They do not monitor the place, these people come and go, they are not supposed to be living there but they do, the men – they live there. The kids are up all times of the night. They started coming into her yard and she told them to get out. Their dogs are running through her yard, the kids are running through her yard. She said "you are not welcome in my yard" it has gotten terrible. We have gotten no support from the Town when it was happened. We found out from Brandon Titus two weeks or three weeks ago Wednesday that Joe Giordano supported this situation, supported the house being a women's residential place and at that time only women were supposed to be there, and it is not happening. It this is happening in our neighborhood; these poor people will have to live with it. Do you think they will want to listen to this, the motorcycles going up and down, they don't tell you the truth and she has two other people that can't be here tonight and if you have another meeting she is sure that they will be here because they are more vociferous than she is so, take it as what you will. She hopes and prays that you will support the Town of Ticonderoga people because no matter what help they give these people, it is not working. They are still doing drugs.....(Mrs. Vilardo's time is up)

Mr. Powers would like to finish his comments He returned to Noise: As he said there is currently almost no noise at night on Race Track Road, it is eerily quiet. The addition of a 25 or so basically unsupervised (I found no mention in the application of supervision level of the residents, so I'm assuming little, or no oversight supervision will be provided) recovering substance abusers will undoubtedly result in an increase in noise particularly at night and result in an alteration and degradation of the current community character of the Race Track Road neighborhood. TEST FOUR: Here, the applicant appears to be correct assuming they have not

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purchased the property yet. CLOSING: In closing, based on my observations and the comments I have made here and submitted in writing. I feel that the applicant's project fails three of the four tests required to obtain a Use Variance and the application should be denied. He can answer any questions that may come up.

Mr. Frankel wanted to clarify in terms of the security, and Sam Hall can answer with more specificity than he can but:

1. There will be camera security that will be monitored on-site by staff
2. There will be no less than 2 staff on site at all time
3. The doors will remain locked at all times to prevent entry – this will not restrict exiting in case of emergency
4. Vehicles are discouraged while in the program, will be reviewed on a case-by-case basis, the only residents that would be allowed a vehicle would be someone in the reintegration element of care and that is so they can travel to work or school, will not exceed 5 out of the 25 and typically a reintegration resident does not stay that long
5. At times, residents will be allowed to enter the community, these instances will largely be accompanied by staff, but by the end of the stay, residents may go into the community unaccompanied

One has to understand that people that come into this facility have to have a plan of care, they have to follow that plan of care. They have to be reintegrated back into the community and they have to have a discharge plan. They are not prisoners, but at the same time, they are supervised. This is what is required, this is what St. Joseph does to help these people. He can't get into specifics over this other facility, though he believes that this is supportive housing apartments, which is different than what we are talking about here. One of the issues that all landlords, which is what basically St. Joseph's is, and facing this whole pandemic, is the moratorium in being able to evict or to enforce regulations by tenants. For the longest time, the courts wouldn't even entertain these types of actions and to get people into court and to have a hearing has been insurmountable. We understand that there are concerns and they are trying to address them, to the best of their ability. That facility is not what we are talking about here. This is more of a medical facility as opposed to a supportive apartment facility. He thinks that has answered the potential for foot traffic, the un supervision of the residents. He is sure that Sam can answer some questions.

Chairman McTyier believes he read in the document that there is not 24-hour supervision at this facility. It clearly stated that.

Sam Hall stated that this is not correct. As you brought up earlier, reading the regulation, if you actually look in there, there is a difference between the Permanent Supportive Housing and an Oasis Certified Program. An Oasis Certified Program is required to follow the regulation, and, in that regulation, you can have no less than 2 people on site 24/7. The majority of the time you will have probably between 5 -7, but the overnight shift does normally have 2 people. There are nurses on 24/7, it is actually closer to what you would normally feel as a nursing home because, yes, they are primarily for medical things, but you are also there for attendants. You are there so

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that you can help the person for the frailty that they have and in this case these individuals' frailty is their substance use disorder. So, it is actually, very similar in structure and if you look as far as the big umbrella, residential treatment facility, recovery care facilities which is what this is, they fall under the same umbrella as a nursing home. He is not trying to make that argument back and forth, that is not his job, but he is trying to give you an idea as to what the structure is. Very similar. One of the things that he would like to highlight, he has been in charge and affiliated with 4 of these type of programs now and with the exception of one they are all located in a very similar, actually even more dense as far as residential population than this one would be, and we have had zero issues as far as surrounding neighbors and such. Matter of fact, they actually usually have a lot of compliments.

Mr. Frankel, the last point that was raised was about us not presenting any financial information to support the lack of reasonable return and he believes the speaker of the residence indicated that things can be done here. Well yes, the burden is on us. The burden is on us to show that there is no reasonable rate of return, but by the same token, just stating you can do something with it is not evidence in and of itself. He thinks they have provided evidence that you can't get a reasonable rate of return.

Mr. Meserve asked what is the official name as to what you are applying for? Is this on the application, he does not believe that this is actually on the application.

Mr. Hall stated that the technical title for it is Oasis Part 820. He is not sure if it is actually in the application.

Mr. Frankel stated that it is in there and it is defined. On the very first page it says that St. Joseph's is considering acquisition of 102 Race Track Road, Ticonderoga, NY to house a NY Mental Hygiene Law Regulation Part 820 facility. The facility will be license by the NYS Office of Addiction Services and Support (OASIS).

Mr. Meserve then stated that if you do not follow the rules that have been approved for that type of facility and by the Town's guidelines, then you will be asked to leave. If you do not follow exactly what the people are allowed to do, how many staff are allowed per residents, what people are allowed to visit (boyfriends and husbands), you will be in breach of your contract and you will be shut down.

Mr. Frankel understands what you are asking, but this is a multi-layered project and what does he mean by that? If we get the variance or get the appropriate interpretation for a Part 820 facility, we still have to apply for a license from the Department of Mental Hygiene through OASIS. What we apply for and what they will permit based upon the facility structure, may not be definable to the exact point, plus regulations are ambulatory, they change with time. So, if OASIS in their infinite wisdom says you need less people to supervisor, or you need more people to supervisor, you can no longer provide this service – to keep our license, we have to abide by this. So, to harmonize the Use Variance with the OASIS license, it is the cart before the horse scenario. The Use, it is no different than if you were to grant the Use Variance for the definition of Nursing Home, you are not going to require an applicant to state, you can only have 100 beds, you can only have 100 people, you can only have ... the conditions could go on endless because

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the license that the nursing home gets from the Department of Health is ambulatory. So, we can define as best we can what we perceive and what we are asking for, but there has to be some flexibility in order for us to be able to obtain a license. There are questions that arose, such as lighting, how it will work – these are Site Plan questions, we won't allow more than 12 cars at any given times, we won't allow overnight park....those are Site Plan issues, not necessarily ZBA issues.

Chairman McTyier earlier you were saying that there were facilities that do different drug rehab, but you won't be doing any of that, but we don't really know that.

Mr. Hall stated that it is hard to say never, but to become an Opioid treatment center is so Federally regulated it doesn't make a lot of sense to go and apply for that. It is more difficult.

Mr. Frankel suspects that if we wanted a different license under the OASIS and Mental Hygiene law to do something other than this Part 820, it probably would be considered a different use and we would have to come back here again to say we need to expand our Use Variance, possibly. It would all depend on the type of license; these regulations do change.

Mr. Hall added that any kind of changes to a State License has to be approved by the County before it can go forward.

Mr. Leerkes stated that there are two big red flags for him 1. The effect on the neighborhood - This property basically operated only in the day time as an office building and you are turning it to a 24 hour facility, the businesses up the road are day time and this is 24 hours, he has concerns about that and 2. You say that the other facility in Town is nothing like this, but he was on the ZBA when that got approved and it was stated that there would be no problems there either, as you see there are many complaints about that. So, it is hard for him to imagine how that is now true here either. He just has a hard time with this not changing the neighborhood. Running an office during the day hours and changing that into a 24-hour facility, he doesn't understand how that is not an affect in the neighborhood. Also, when he asked about the dollars and cents for a reasonable return, whether or not you have proven that doesn't mean that you haven't had an affect on the neighborhood. His biggest concern is the effect on the neighborhood.

Mr. Frankel stated that in terms of changing the current use of the building to a 24/7 facility. It is a 24/7 residential facility meaning that there is lights out or quiet time at certain period of time, meaning that people have to be in their rooms except to have to go to the bathroom.

Mr. Hall agreed and noted that one of the main treatment issues when you are dealing with this population is that they turn almost nocturnal because that is the lifestyle and that is one of the things that we try to make them do when we bring them in is to put them back on a structured schedule where their entire day is structured out. So, typically speaking, quiet time starts at 9:30 and lights out is usually 10:30 so it across the board, not to say that people won't get up to go to the bathroom or something like that, but theoretically the only people that will be up and moving about will be staff members.

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Mr. Leerkes other concern is that you are talking about a residential neighborhood you are adding 25 beds in a neighborhood full of houses that are 3 or 4 bedrooms and that is a big impact.

Mr. Frankel would state that it would be a big impact also if it was an apartment complex where people were coming in and out, going to their jobs and , but people come in and they are supervised and we have indicated only a small number would be going out into the community, but most of them will not have cars so, it is more confined than if you just look at sheer numbers of people compared to if you were to call it an apartment complex and if he could also add since you mentioned the dollar and cents, you are 100% correct, there are 4 elements here and we have to prove all 4 elements and he thinks that they have proven 4 elements. Moving away from the dollars and cents, we are now focusing on the character of the community, and he thinks that the character of the community is that the building is there, and it will be used. Although people will be living there 24/7 compared to an office building where people come in and patients coming in and out and leave maybe at 5 or 6 o'clock, yes, there will be people there and as his client has indicated there will be quiet time and at Site Plan we will work on lighting, we will work on whatever noise issues that might be the concern.

Mr. Leerkes asked about these other facilities that you mentioned. There might be children, what system is there for that... people think their children are home, but...

Mr. Hall noted that the obvious hurdle would be school, the plan is to have no one over, but only up to 5 years old. That would eliminate that hurdle. The reason behind it, and he wishes the state could do more, but one of the barriers with females and women getting treatment is children, because they are very natural, and the parental nature makes them want to stay and take care of the children and do things like that because they can't take them with them. There are some scenarios in which that would be beneficial to have a scenario where they can bring them with them to go through the treatment that they need while the child is there with them. The maximum is three women with children – up to 2 children each.

Chairman McTyier reminded that we talked that we needed some more information one was the Financial Hardship.

Mr. Leerkes noted that in exhibit 12 on page 19 it lists the possible uses in regard to the financial hardship. He did not show the financial review on it's current use of professional offices. That is also an approved use, it was approved for Hudson Headwaters so that use still stands for these professional offices.

Mr. Frankel understands, and we can supplement this.

Chairman McTyier wanted Mr. Frankel and St. Joe's to understand that per our requirements this additional information is needed by the 15th of this month, by noon in order to be reviewed at the next meeting on January 6, 2022, at 6:00 p.m.

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Resolution #20PZB-2021 brought by Erik Leerkes, seconded by Don Meserve to table the Public Hearing for the St. Joe's Use Variance until January 6, 2022, at 6:00 p.m. **3 – Aye, 0 – Nays. Carried.**

Resolution #21-PZB-2021 brought by Don Meserve, seconded by Erik Leerkes to adjourn at 7:54 p.m. **3 – Aye, 0 – Nays. Carried.**

Respectfully submitted, Tonya M. Thompson, Town Clerk



**HEALTH
DEPARTMENT**
Public Health Unit

DIRECTOR OF PUBLIC HEALTH- LINDA BEERS
DIRECTOR OF HEALTH PLANNING AND PROMOTION-
JESSICA DARNEY BUEHLER

12/2/2021

Dear Zoning Board Members:

This letter represents Essex County Public Health's support of St. Joseph's Rehabilitation Center's application to the Essex County Zoning Board to develop a residential treatment program to treat women and mothers with children who struggle with substance use and mental health concerns.

Motherhood has proven to be an immense barrier to women seeking help for substance use. This burden has only grown larger since the on-set of COVID-19. Despite an obvious need for residential care, many mothers have chosen to meet some of their needs in an outpatient manner because it allowed for them to care for their children. Since the onset of COVID-19, that option has also been reduced due to closing daycare and school systems. This has left many women desperately in need of support and stability while juggling the rigors of parenthood with the need for treatment services.

Women seeking residential treatment for substance use, as well as other behavioral health needs, often find themselves in a precarious situation. This situation requires the relinquishing of custody of the child(ren) to receive the services, they deserve, or to have their children (perhaps permanently) removed from their custody if they do not receive treatment. The result is that many women are forced to leave their children with unsuitable childcare for extended periods of time. Often, this childcare fails, and the woman is forced to leave treatment prematurely in order to care for the child.

The proposed initiative works with women and mothers with mental health and substance use needs, targeting the individuals living in North Country region. There are currently no such treatment programs specifically designed for this population in the region at this time. This will improve the system of care for vulnerable families by connecting them with residential treatment opportunities. Increasing access to high-quality treatment programs for underserved populations in their community is a critical need within the region.

The Essex County Health Department can attest to the need for this approach to care and that it is critical as a community, we engage families with behavioral health needs, at risk of separation and expand opportunities for them to access the care, services and support that they require, as well as increase the quality of care provided.

If approved, this project will promote positive outcomes by providing treatment options care and helping families stay healthy and together.

Sincerely,

Linda L. Beers

Essex County Public Health Director

Written comments from Michael Powers, co-owner of the property at 99 Racetrack Road, Ticonderoga NY on the application of St. Joseph's Rehabilitation Center, Inc., to locate a drug and alcohol rehabilitation facility at 102 Racetrack Road, Ticonderoga NY.

APPEAL OF INTERPRETATION

As the Applicant has stated, the Town of Ticonderoga Zoning Ordinance does not define a Drug and Alcohol Rehabilitation Facility. They also concede that the proposed Facility is not a hospital under New York Public Health Law section 2801, and are asking that the Board overturn the Code Enforcement Officer's decision that the proposed use is not a permitted use in the zone, but instead is either a "Nursing Home" or a "Multiple Dwelling".

The proposed use is clearly not a "Nursing Home", as the Applicant's own documents state that the proposed use is a "residential facility for multiple residents, some of whom are anticipated to have children reside with them" which is a clear indication that the Applicant expects and intends for families to be residents of the facility. The inclusion of a proposed playground on the proposed project's site plan reinforces this. The Town's definition of a "Nursing Home" clearly states "Any building other than a hospital where person(s) are housed...". Persons. Not families. For this reason the proposed use cannot be considered a "Nursing Home" under the Town's definitions.

The proposed use is also not a "Multiple Dwelling" as the Applicant contends. The Applicant states that, "The program facility is intended to have separate living accommodations for the residents with shared bathroom facilities, dining area, kitchen,...". Logic dictates that a Multiple Dwelling, being "designed or used as a residence for two or more families" would be comprised of two or more Dwelling Units which are defined as "A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation". As stated above, the applicant states that the facility will have "separate living accommodations for residents with shared bathroom facilities, dining area, and kitchen". Shared bathroom (sanitation), dining area (eating), and kitchen (cooking) areas fail to meet the definition of a Dwelling Unit, of which more than one would constitute a "Multiple Dwelling". This is why the proposed use cannot be considered a "Multiple Dwelling" under the Town Zoning Ordinance.

For these two reasons I believe Mr. Burrows' interpretation is correct and the Board should uphold his decision and deny the Applicant's request to overturn it.

USE VARIANCE

#1 The Applicant cannot realize a reasonable financial return.

The Applicant has not submitted any substantive proof that no other permitted use for the project property will generate a reasonable economic return and thereby imposes an unnecessary hardship. One page of general financial data in among several pages of carefully selected imagery of the neighborhood is not proof of financial hardship based on the permitted uses within the zone. The Applicant has not proven that it cannot realize a reasonable return from each and every permitted and special use within the Medium Residential Zone on the project property.

Based on this lack of information (which the Applicant has had months to obtain and submit), I would submit that there is no unnecessary financial hardship in regards to the project property and the application for a Use Variance be denied.

#2 The hardship is unique to the property.

There is no uniqueness of the project property as the Applicant has alleged that imposes an unnecessary hardship. Most of the other permitted and special uses within the Medium Residential Zone (notably Place of Worship, Public or Semi-public Building, School, Single Family Dwelling, Townhouse, Private School, and Tourist Accommodations) can easily be placed on the project property in its current state with little or no difficulty.

Based on this assessment of the project property and the permitted uses within the Medium Residential Zone which can easily use the same structure, there is no hardship due to a unique quality of the property or the structure and the application for a Use Variance should be denied.

#3 The Use Variance will not alter the essential character of the neighborhood.

The Applicant has totally mis-characterized the Racetrack Road neighborhood. Excluding the property in question there are 13 single family dwellings, one multi-family dwelling, two businesses, the Town's Highway Department, and one abandoned building. The remainder of the land on Racetrack Road is agricultural. There is no "recreational land" and there are no industrial uses on Racetrack Road. Walgreens, Walmart, Best Western, and the church and gas station mentioned in the Applicant's application are not on Racetrack Road and in some cases are a mile or more away.

Given the actual makeup of the Racetrack Road neighborhood, the establishment of a 25 bed drug and alcohol rehabilitation facility will alter the essential character of the neighborhood, notwithstanding the project property's former use as a medical office.

The Applicant states that "It is not anticipated that the traffic will be increased by this use since the residents are stationary". However, foot traffic on Racetrack Road will dramatically increase as these "residents" will undoubtedly walk to the convenience store at the intersection of Racetrack Road and Wicker Street. Given that there is currently minimal foot traffic on the Road this alone will constitute a change in the character of the community. Further, the vehicular traffic generated by the most recent use of the property as a medical facility was limited to the business hours of the offices. The Applicant has stated that the proposed use will be open 24 hours a day, seven days a week. It stands to reason that, even though there may be a decrease in vehicular traffic during the day, there would be an increase in vehicular traffic at night and on weekends. The Applicant has also stated that children of the "residents" may also be living on the property. This would also result in a potential increase in vehicular traffic as the children themselves would have doctor appointments, school, etc, that would require the use of vehicles to transport them.

A further alteration to the essential character of the Racetrack Road neighborhood is noise, particularly at night. Currently there is almost no noise at night on Racetrack Road. The addition of 25 +/- basically unsupervised (the Applicant makes no mention of supervision level of the residents in it's application and it is therefore assumed that little or no overnight supervision will be provided) recovering substance abusers will undoubtedly result in an increase of noise within the neighborhood and a resultant alteration and degradation of the current essential character of the Racetrack Road neighborhood.

Based on these factors, the proposed use submitted by the Applicant for the project property would result in a significant change in and impact on the character of the Racetrack Road neighborhood and the application for a Use Variance should be denied.

2. application # 2-150-02-04-01
was approved on a vote - 3-1
in favor

~~We determined that the Beehner
medical project was ~~to~~ indeed
situated within the Service
Business Zone, and all information
available~~

John Lemier Chairman
ZBA ~~for~~

We have determined that the Beehner
medical project and this project only is indeed
situated within the service Business Zone.
We have made the determination ~~that~~ this
professional office, where it is to be sited,
on all available evidence to the best of our
ability. It is to be noted that the ~~configuration~~
configuration of the zone allows this ~~type~~
project only and no other as it is
surrounded by the medium density residential
zone.

Rec 7/13/89
HKS

Zoning Board Of Appeals
TOWN OF TICONDEROGA
Ticonderoga, New York 12883

Received 9/18/89

JOH H

Dr. Michael Beehner

Application #1-150-02-04

Determination of the scope of the project.

After careful study John Lemeiux moved to classify the project as a "Professional Office". Being duly seconded all members voted "aye". Carried

Application #2-150-02-04-01

We have determined that the Beehner Medical facility and this project only is indeed within the "service Business Area". This determination was made after reviewing all available evidence and to the best of our ability. It is to be noted that because of the configuration of the zone this applies to this one project only. Other such projects must come before the board for the determination. After motion was duly made and seconded, Voting "Aye" John Lemeiux, Lewis Sanders, and Craig Lonergan. Voting "Nay" Harold Otley. Carried.

