

ZONING BOARD OF APPEALS  
MINUTES  
APRIL 22, 2015  
TOWN HALL ANNEX – COMMUNITY ROOM 1

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

I. ROLL CALL

Present: Kravits, Manning, Mencer, Stebbins, Russotto  
Absent: Grady  
Staff: Cullen, Quinn, Attorney Michael Carey, Attorney Edward O'Connell, Gilot

II. PUBLIC HEARINGS

1. ZBA#15-01 – 40 High Rock Road, Bright Horizons Children Centers LLC/Owner, Stonington Behavioral Health, Inc./Applicant, Brian Smith, Robinson & Cole/Applicant's Agent, for an appeal to the determination letter issued December 23, 2014 by the Manager of Inspection Services that the proposed use does not constitute a hotel/motel under any section of the Zoning Regulations. PIN #169809055861, Office Multi-Family Zone – Continued

Secretary Manning read the call of the hearing for the record. The hearing was opened on the 11<sup>th</sup> of March. A letter from Robinson & Cole granted an extension to the April 22, 2015 meeting. No quorum was present at the April 11<sup>th</sup> meeting. Mr. Manning stated that he was not able to make the meeting because of a family emergency. His daughter delivered her child early, and Manning had to go to Florida. He offered his apologies to the applicants.

The Chairman gave a statement that the Board will not accept, allow, consider, tolerate or sympathize with insensitive, prejudicial or similar comments by anyone about the subject matter or persons associated with any matter or application before it for its consideration, whether such comments are oral or written, or made from the audience or the microphone.

Brian Smith, Robinson & Cole, represented the applicant, Stonington Behavioral Health. Mr. Smith presented 8 letters of support to the Board to be read into the record. Mr. Smith preferred to withhold comments until after Attorney Carey presented his comments, and an attorney representing some of the neighbors presented comments.

Michael Carey, Suisman Shapiro, represented Kevin Quinn, Zoning Officer for the Town of Groton, and presented a memo to the Board. Attorney Carey said he had no more to add to the hearing at this time, but reserved the right to ask questions later.

Attorney Edward Moukawsher, Groton, represented the following property owners neighboring 40 High Rock Road: Mike & Louann Conwell, Barbara Navarro, Marion Lamb, Ruth Ramaccia, Gregory Cebriwsky, Doloris Haury, Aimee Porazzi & Peter Reynolds, Kathy Frattali, Edward & Florence Tassone, and Thomas Frattali.

Mr. Moukawsher addressed the definition of hotels, group homes, and discussed a particular case in New London which determined that group homes are not dwellings; they were a place of temporary sojourn and not protected as dwellings under FHA. The FHA does not cover transient guests, such as those frequenting hotels. The court found that they were not transient guests and were considered residents. Attorney Moukawsher submitted a copy of a case, *CT Hospital v City of New London* as an exhibit. He stated that the Fellowship House example was not germane to this use. He stated that the use was not a hotel/motel, not a rooming house, and not a multi-family home, but rather something entirely different. It does not fit any of the definitions. Attorney Moukawsher asked the Board to uphold the Zoning Official's decision.

Chairman Stebbins asked for comments from the public. There were none.

Secretary Manning read into the record the following letters supporting the Zoning Official's decision.

- Robert Washabaugh, St. Mary Star of the Sea Church, New London dated 4/21/15
- Alan Messier, 21 Huntington Street, New London dated 4/20/15
- George Fisher, Fisher Florist, 87 Broad Street, New London
- Stephanie Hines, 7 Huntington Street, New London
- Shirley Goode, 11B Huntington Street, New London
- Brad and Mimi Borden, 107 Sawntown Hill Road, North Stonington
- Peter and Susan Grufstedt, 61 Swantown Hill Road, North Stonington dated 4/21/15
- Seija Grufstedt, 88 Swantown Hill Road, North Stonington dated 4/21/15

Attorney Smith stated he had no further evidence at this time. He stated that the individuals were a protected class and made comparisons to the operating rules of the Fellowship house versus their operation. He discussed the differences between boarding and rooming houses and hotels.

Mr. Aniskovich spoke to the Board about the details of their operation in terms of timing and discussed further the definitions of resident versus transient. He stated that the New London case is irrelevant. He stated that it was absolutely possible to be transient to meet regulations, and be a non-transient in how federal law protects the person. The proposed use is consistent with neighborhood; a mix of commercial and residential uses. He asked for the support of the Board.

Attorney Moukawsher discussed further the definitions of transient versus resident and the definition of motel/hotel.

Attorney Carey stated that if the Zoning Commission intended to develop a use nothing like a hotel, they would not have called it hotel. If members of public cannot check in, it is not a hotel. Payments for staying are made by medical insurance. The Board needs to decide what Zoning Commission meant by this definition. He stated that a hotel does not constitute a dwelling under FHA. One of the requirements for reasonable accommodation to be requested is that FHA only protects "dwellings."

Attorney Smith commented on the use of the word "public" from Carey. That word is nowhere in the definition or in the regulations.

Aniskovich said insurance does not pay the room and board charge. They are in an outpatient treatment program; insurance pays for treatment but not residential housing.

Carey said he misunderstood Mr. Aniskovich.

Staff had no further comments.

The public hearing was closed at 8:10 p.m.

2. ZBA#15-02 – 40 High Rock Road, Bright Horizons Children Centers LLC/Owner, Stonington Behavioral Health, Inc./Applicant, Brian Smith, Robinson & Cole/Applicant's Agent, for a variance to Section 2 (Definitions) for a use variance to permit a living accommodation for addiction disabled individuals consistent with the definition of Hotel/Motel. PIN #169809055861, Office Multi-Family Zone (Coastal Area Management) – Continued

Secretary Manning reread the legal notice for the record and confirmed that the mailings were in order.

Brian Smith, Robinson & Cole, represented the applicant, Stonington Behavioral Health. Mr. Smith explained that a request for a use variance is brought to the Board in the event the appeal is not overturned.

Mr. Smith submitted originals of three memoranda submitted during the appeal.

For the purposes of the hearing, Mr. Smith, in agreement with Attorney Carey, asked the Board to incorporate the entire record from the public hearing for the appeal to this hearing.

Mr. Smith said the hardship is to relax the definition to accommodate disabled individuals. They are a protected class under the Fair Housing Act. Reasonable accommodation is to be provided. Second, the size is suited to the individuals for the program, the location is across the street from their other business. The residential property abutting this site is screened already.

William Savinelli, 106 Worthington Road, Glastonbury, Clinical Director for Stonington Institute, 618 Poquonnock Road, discussed the social network and supportive living environment which are necessary for sobriety. Mr. Savinelli's statement and resume were submitted for the record.

A GIS map and photos showing the building and surrounding area were distributed to the Board. Property cards for surrounding areas were submitted. A memorandum of law, which was previously submitted, was entered into the record.

Mr. Smith said the unique location creates a hardship. The location is in the coastal management area.

Clint Brown, DiCesare-Bentley Engineering, 100 Fort Hill Road, Groton, Professional Engineer, addressed the coastal area management application. Mr. Brown detailed the site location, building surrounding property, fenced play areas, and the

location in relation to Birch Plain Creek. Mr. Brown reviewed the coastal resources and inland wetlands.

Mr. Smith said conditions could be applied to an approval. The parking of vehicles could be limited to staff and weekend visitors, not residents. If the appeal is denied, the applicants are requesting a variance. There are two hardships; one, the nature of the use for individuals for this type of program, a reasonable accommodation under the Fair Housing Act. If the use as a hotel is inadequate, then the definition needs to be relaxed to accommodate these individuals for this particular property. The second hardship is the unique location, and it is appropriate because the surrounding area has commercial, industrial, residential and transitional, and it is zoned for hotel use, with a treatment facility that is across the street.

The commission discussed Section 7.1-37 of the zoning regulations, and asked why they didn't get a special permit. Mr. Aniskovich said a special permit would be appropriate for inpatient care, but this is outpatient. The benefits of congregate living facilities for the residents were discussed.

Attorney Moukawsher addressed the issue of reasonable accommodation. Mr. Moukawsher said with regard to the hotel use, the Fair Housing Act does not cover lodging for transient guests, such as hotels. People are transients, but then it's a residence so the FHA applies. There is no reasonable accommodation in the case of a hotel. With regard to one of the variance conditions – that the hardship is not financial or pecuniary – an accommodation is being requested so that they can consolidate into one place. It is a convenience for the business of the applicant, not an unmet need. With no transportation expenses, etc., it may be a financial or business interest for the applicant, making it more convenient, which does not fit the hardship definition. Attorney Moukawsher's case was submitted previously, and he asked the Board to deny the variance.

Attorney Michael Carey asked Attorney Smith if he is making a request for reasonable accommodation as a hardship. He asked if he is asking the Board to issue a reasonable accommodation alone beyond the variance.

Attorney Carey asked Mr. Savinelli about his resume and various titles, and several questions about treatment methodology, housing program residents in a smaller family like atmosphere as opposed to the untried concept of 192 people in one building. Carey was asked about the reasonable accommodation and necessity, and the concept of absorption with too many group homes in one neighborhood. Mr. Carey referred to a definition in Section 7.1-28 of the regulations, "executive hotel suites" for longer-term use.

The Chairman asked if anyone wanted to speak in favor of the variance. There was none. He asked if anyone wanted to speak against. There was none.

The Planning Commission had no comment on the referral.

A memo discussing the definition of "transient" to the Planning Commission from Jonathan Reiner dated 3/5/15, was read into the record.

Attorney Smith discussed the Fair Housing Act's definition of dwellings, and asked the Board to relax a strict definition.

Mr. Aniskovich argued regarding the opposing counsel's characterization of the "for profit" nature. No explanation was ever given of combining or closing 11 other residences to save money or for financial gain. The differences in the management of the current houses and this hotel were reviewed. Current sober houses share the task of making meals. High Rock will have a kitchen staff, which adds expenses. Staff will need to be added to prepare and serve meals, not so in self-managed houses. He stated that this concept is not motivated by saving money; the difference is in treatment modalities.

Attorney Carey clarified that he did not mention anything regarding hardship or financial hardship. He stated that his recollection of the previous evening of hearing on the record stated that the other group homes that Stonington Institute owns in the area would be closed.

Staff entered some items into the record.

- Copies of 13 property records of group homes which currently exist in Groton.
- An article from the February 2015 issue of *Planning* magazine with regard to Fair Housing Act definitions, population served, hotels not qualified as residences in FHA. The Act also states there cannot be any fundamental change or alteration in the municipal program (zoning).

Staff also discussed the Treasure Island case referred to previously, regarding the three part test for reasonable accommodation.

The board discussed the parking restriction proposed by the applicant as part of the variance. Staff said variances run with the land, and if the building was established as a hotel, the parking restriction would not be appropriate if only staff could park there. Staff briefly discussed the Town's long-standing, updated fair housing plan.

Staff entered the Town of Groton's current Fair Housing Action Plan into the record and stated for the record that she was the Town's representative and Fair Housing Officer and the person whose duty it was to affirmatively further fair housing options in Groton. She also stressed the long standing principles and programs that the Town of Groton participates in to further these principles of fairness.

Mr. Aniskovich said they are proposing a temporary living arrangement, not a treatment facility. It is not a group home, which would require a license. The building would house a group of people in an outpatient treatment program who do not have a safe temporary place to live while they are in outpatient care. It would not be a group home or hospital.

Manning asked about the parking. Attorney Smith said it is currently zoned for hotel use. If this was a commercial hotel, no use variance would be needed. He said they could restrict the parking as long as the hotel houses dependent disabled individuals. If that restriction went away, the parking restriction would go away.

The public hearing was closed at 9:45 p.m.

3. ZBA#15-04 – 1268 Poquonnock Road, City of Groton/Owner, Richard M. Stevens/Applicant, Erica Lotz, PE/Applicant’s Agent, for a variance to Section 5.2 to allow 37 feet proposed height instead of 30 feet required height for a process building, to Section 7.2-3(S) for 35 proposed parking spaces instead of 52 required parking spaces for the overall facility. PIN#169807584778, RS-20 zone (Coastal Area Management)

Secretary Manning reread the legal notice into the record.

The applicant granted an extension by fax dated April 22, 2015, to the next regular meeting on May 13, 2015.

### III. MEETING FOLLOWING PUBLIC HEARINGS

#### Decision on Public Hearing Applications

1. ZBA#15-01 - 40 High Rock Road, Bright Horizons Children Centers LLC/Owner, Stonington Behavioral Health, Inc./Applicant

MOTION: To postpone discussion until the May 13, 2015 meeting.

Motion made by Russotto, seconded by Mencer, so voted unanimously.

2. ZBA#15-02 - 40 High Rock Road, Bright Horizons Children Centers LLC/Owner, Stonington Behavioral Health, Inc./Applicant

MOTION: To postpone discussion until the May 13, 2015 meeting.

Motion made by Russotto, seconded by Mencer, so voted unanimously.

3. ZBA#15-04 – 1268 Poquonnock Road, City of Groton/Owner

The public hearing was continued to May 13, 2015.

### IV. CORRESPONDENCE

A post card was received for the Board from Christine Grady.

### V. APPROVAL OF THE MINUTES OF MINUTES OF April 8, 2015

MOTION: To approve the minutes of April 8, 2015 as amended.

Motion made by Russotto, seconded by Mencer so voted unanimously.

### VI. OLD BUSINESS – None

### VII. NEW BUSINESS

- a) New Applications

Staff said there are no new applications at this time.

VIII. REPORT OF STAFF – None

IX. ADJOURNMENT

Motion to adjourn made at 9:54 p.m. by Russotto, seconded by Kravits. Motion passed unanimously.

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Tom Manning, Secretary  
Zoning Board of Appeals

Prepared by Debra Gilot  
Office Assistant III