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# 103 Hazelwood Rd. Bloomfield, NJ Block 460, Lot 1

## Planning & Zoning Report

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## 1. Introduction

This Planning & Zoning Report has been prepared on behalf of William Meade and Hazel House – Sober Living in NJ LLC (“Hazel House,” the “Applicant”) in support of a zoning appeal for a single-family sober living house at 103 Hazelwood Road, Block 460, Lot 1 in Bloomfield Township, Essex County, New Jersey.

In the event that an appeal is not approved, the Applicant will seek a d(1) use variance for same.

This report will evaluate the zoning compliance with the proposed project and set forth the planning proofs required for the Board to grant an approval.



Figure 1: Aerial Map

## 2. Existing Conditions and Context

The subject property is designated as Block 460, Lot 1 on the township tax maps, and is commonly referred to as 103 Hazelwood Road. The property is located at the intersection of Hazelwood Road and Walnut Street, bordering the east side of the Garden State Parkway right-of-way.

The 12,123-square foot property is located in the R-1A Single Family Residence District. The zone requires 5,000 square foot lots with 50 feet of lot width, meaning that the existing lot area and dimensions are more than double that required under the zoning code. There is an existing single-family residence on site which complies and exceeds with these, as well as other, bulk requirements. The R-1A zone permits single-family detached dwellings, parks and playground. The proposed use is classified as a single-family detached dwelling, as will be discussed in this report.

Surrounding development and land uses in the vicinity consist primarily of single-family detached residential to the south and east, the Parkway right-of-way to the west, and a surface parking lot accessory to a medical office building to the north.

## 3. Proposed Development and Operations

On April 25, 2019, the township zoning officer issued a letter of denial for the request to use the subject property as a "Class F Rooming House for Cooperative Sober Living Residence (CSLR)," on the grounds that it was operating as a rooming house.

As provided in prior testimony, the facility will not be modified from its existing appearance or layout, continuing to mirror the character of the neighborhood. The residence has three bedrooms and shared living, dining, kitchen, and bathrooms.

## 4. Local Zoning



Figure 2: Zoning Map

As mentioned above, the subject property is located in the R-1A – Single-Family Low Density Residential district. Single-family detached residences are permitted uses.

Bloomfield defines family as follows:

FAMILY - A group of individuals not necessarily related by blood, marriage, adoption, or guardianship living together in a dwelling unit as a single housekeeping unit. For purposes of this chapter, "family" does not include any society, club, fraternity, sorority, association, lodge, federation or like organizations or any group of individuals who are in a group living arrangement as a result of criminal offenses.

The exceptions enumerated in the definition (*society, club, fraternity, sorority, association, lodge, federation or like organizations or any group of individuals who are in a group living arrangement as a result of criminal offenses*) do not include other types of group living such as sober living (sober living residents are vetted to disqualify those with criminal offenses).

As is required for CSLRs, residents of this home will live together, sharing meals, household responsibilities, and living space. They will live as a family; dining is not permitted in bedrooms, and community meetings for all lodgers is a mandatory component of recovery. A maximum of eight residents will live in the house along with a house manager to ensure that rules are followed and support is provided. Stays are a minimum of 90 days.

Those living in the home will not be receiving medical care or going through detoxification on the premises, although all residents are subject to random searches and drug screenings to ensure the house remains free from substances.

The subject application, therefore, qualifies as a single-family residence per the municipal code definition, and should be held to the same bulk and use standards as other single-family residences. The Federal Fair Housing Act states that it is illegal to impose restrictions or additional conditions on group housing for persons with disabilities that are not imposed on traditional families or other groups of unrelated individuals. It goes on to state that a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability.

## Boarding Houses

The Bloomfield zoning officer issued a zoning denial based on the determination that the subject property is a boarding/rooming house because the Department of Community Affairs ("DCA") applies boarding house code to the structure. This is an incorrect interpretation.

While the DCA licenses rooming houses, this terminology is unrelated to zoning. Rather, DCA licensing intersects with uniform construction code and what structural or infrastructure features must be in place.

In 2019, DCA adopted regulations creating a new class of rooming houses (Class F) specifically for Cooperative Sober Living Residences ("CSLR"). In so doing, DCA became the sole enforcement agency for CSLRs, which are *only* permitted in one- and two-family buildings – thus even internally at DCA, a single-family home and rooming/boarding house are not mutually exclusive. In describing the new Class F license, DCA states that, "*residents of a CSLR become familiar with each other and depend on one another as part of a single housekeeping unit. Residents of a CSLR often share a bedroom with another resident and complete tasks related to maintenance and housekeeping within the facility.*"

An April 25, 2019, email to the township from Mr. Bernard A. Raywood, Chief, Bureau of Rooming and Boarding House Standards, NJ DCA, affirmed this information, and stressed that DCA regulates construction code, and the township regulates land use. In other words, DCA requirements should not impact land use decisions, and the DCA does not require proof of zoning or land use approval to allow a CSLR.

It is further noted that Bloomfield does not define “boarding house,” “group home,” or “rooming house.” Referring back to state law, a CSLR *must* be in a single- or two-family home, and the federal Fair Housing Act defines “group home” as a dwelling that is or will be occupied by unrelated persons with disabilities, including homes occupied by persons in recovery from alcohol or substance abuse. There remains a prohibition on discrimination based on disability.

## 5. d(1) alternative

Should the Zoning Board decline the requested interpretation based on the definition of a *family*, the Applicant will seek a d(1) use variance for the sober living facility.

### Positive Criteria

Courts have determined that “group homes” are inherently beneficial uses (that is, by definition they promote the general welfare), and as such are subject to a slightly more relaxed standard of proof by way of the positive criteria.

### Negative Criteria

The Applicant is still subject to satisfying the “negative criteria” in order to be granted a d(1) variance. According to N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The Applicant must reconcile the use proposed with the ordinance’s omission of the use from those permitted in the zone.

#### without substantial detriment to the public good

Those living in the home are living as roommates, functioning as a family, and would have no impact on the immediate neighborhood in ways different than that of a family related by blood or roommates without a disability.

In fact, with a house manager on site, there will be rules enforcement beyond that which other households are subjected to, ensuring no late-night noise or disruptive behavior.

The residents of this house are in lifelong recovery, voluntarily choosing to live in a supportive environment, in a residential neighborhood where they can live, work, and grow without stigma or judgment. A house such as this provides that opportunity.

will not substantially impair the intent and purpose of the zone plan and zoning ordinance  
The purpose of the zoning code mirrors that of the MLUL, and the following purposes apply to the subject Application:

- A. To plan and guide the appropriate use or development of all land in a manner which will promote the public health, safety, morals and general welfare by means including the following:
  - (2) By prohibiting incompatible uses and prohibiting uses, buildings or structures which are incompatible with the character of development of the permitted uses within specified zoning districts and surrounding areas.  
The proposed use and existing structure are both compatible with the existing character.
- C. To provide adequate light, air and open space.  
The subject parcel is more than double the size required, ensuring ample light and air. To ensure that land development does not conflict with the development and general welfare of neighboring municipalities, the county and the state as a whole.  
The proposed use aligns with state and federal law.

A new Master Plan has been in progress for the past year, but to date the 2002 Master Plan and subsequent Reexaminations and Amendments are in effect. Nothing in the 2008 Reexamination, 2014 Reexamination, or 2020 Amendment impacts the subject Application.

The Goals and Objectives of the 2002 Master Plan are also supportive of this application.

1. Provide a balanced land use pattern that preserves residential neighborhoods, strengthens the vitality of commercial districts, enhances remaining industrial areas, preserves and addresses parks and open space, protects environmentally sensitive natural features, accommodates community facilities and facilitates local/regional circulation.
2. Preserve and enhance the suburban residential character of the Township by protecting established neighborhoods, maintaining a balance of housing choices, providing for compatible in-fill housing and planning for appropriate residential development in targeted redevelopment areas where land uses are in transition.

Most significant, however, is the Master Plan Land Use Element (pg II-57) which affirms the following:

*Community Residences - Group homes or community residences as defined in the MLUL (N.J.S.A. 40:55D66.2) are permitted in all residential zones of a municipality under State law. Such uses should be made a permitted principal use in all residential zones when the zoning ordinance is amended. This will ensure compliance with State law, provide opportunity for community housing and protect the ordinance from challenge. Consideration should also be given to zoning approaches that address boarding houses and group homes.*

## 6. State and Federal Law

In considering the above interpretation and/or d(1) variance request, it is important to understand the state and federal constitutional protections for community residences under several laws, including the MLUL, Fair Housing Act, and ADA.

### State Law

The MLUL (§40:55D-66.1) requires that municipalities permit a variety of community residence types in all residential districts. Such automatically permitted uses appear to be limited to those with certain licenses granted by the Department of Human Services (“DHS”). The subject Applicant is operating under a license granted by DCA, and therefore not directly applicable to the Application at hand.

However, the MLUL regulation – which is copied verbatim in the Bloomfield code – does provide context to the matter:

*MLUL (§40:55D-66.1): Community residences permitted use in residential districts. Community residences for **persons with developmental disabilities**, community shelters for victims of domestic violence, community residences for persons with terminal illnesses, community residences for persons with head injuries, and adult family care homes for persons who are elderly and **adults with physical disabilities** shall be a permitted use in all residential districts of a municipality, and the requirements therefor shall be the same as for single family dwelling units located within such districts.*

Two classifications in the above list of community residences (noted in bold) include those recovering from addiction: Community residences for persons with developmental disabilities<sup>1</sup> and adult family care homes for adults with physical disabilities.

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<sup>1</sup> Any community residential facility licensed pursuant to P.L. 1977, c. 448 (C.30-11B-1 et seq.) providing food, shelter, and personal guidance, under such supervision as required, to not more than 15 persons with developmental disabilities or with mental illnesses, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, intermediate care facilities, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of the “Health Care Facilities

Developmental disabilities include persons with mental illness, of which addiction is legally one qualifier.<sup>2</sup>

## Federal Law

Protecting those with disabilities is the prime intent of the **Americans with Disabilities Act ("ADA")**, and it should be noted that the ADA classifies individuals who consume & abuse alcohol as disabled if that person is an alcoholic or recovering alcoholic.<sup>3</sup> Therefore, denying housing to a recovering addict bears the same consequence as denying housing to those with other more visible physical disabilities.

The **National Institute of Mental Health** says, "a substance use disorder is a mental disorder that affects a person's brain and behavior, leading to a person's inability to control their use of substances such as illegal drugs, alcohol, or medications." A symptom of this mental disorder is addiction.

**The Fair Housing Act ("FHA")** intersects with the ADA, forbidding discrimination based on handicap. Using the same language as the ADA, the FHA says that a disability is "*a physical or mental impairment that substantially limits one or more of a person's life activities,*" and/or "*a record of having such an impairment,*" or "*being regarded as having such an impairment.*" The FHA affirms that mental or physical impairment may include alcoholism or drug addictions. It is unlawful to make unavailable a dwelling because of a handicap.

The FHA further clarifies that sober living is a dwelling; not a hotel, not a dorm, and not temporary.<sup>4</sup>

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Planning Act," P.L. 1971, c. 136 (C.26:2H-1 et al.). In the case of such a community residence housing person with mental illness, the residence shall have been approved for a purchase of service contract or an affiliation agreement pursuant to procedures as shall be established by regulation of the Division of Mental Health and Addiction Services in the Department of Human Services.

<sup>2</sup> Sec. 2 of P.L. 1987, c.116 (C.30-4-27.2): a current, substantial disturbance of thought, mood, perception, or orientation which significantly impairs judgment, capacity to control behavior, or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome, or developmental disability unless it results in the severity of impairment described herein. The term mental illness is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.

<sup>3</sup> The ADA defines a disability as someone who "has a physical or mental impairment that substantially limits one or more major life activities," and/or "has a history of an impairment that substantially limited one or more major life activities." ADA stipulates that these both include addiction to alcohol.

<sup>4</sup> The case of Lakeside vs. Palmyra said that 14.5 days is not transitory; residents "return there, get mail, hang pictures on the wall."

## Joint Statement of the Housing and Urban Development and the Department of Justice

In 2016, HUD and the DoJ published a joint statement to provide guidance to municipalities as it relates to group housing. This statement emphasizes the protected class status of those with disabilities, including those recovering from addiction, and makes clear the responsibility of local Land Use Boards to reject potential discriminatory sentiment from opponents seeking to prevent such housing from locating in their communities.

Key points from this publication are:

- The Fair Housing Act prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic.
- Examples of state and local land use and zoning laws or practices that may violate the Act include:
  - Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
  - Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class...
- Municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias.
- A local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability.
- The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.
  - The term "physical or mental impairment" includes, but is not limited to,... drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

- A state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community.
- The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home.

## 7. Conclusion

Bloomfield's local zoning code definition of *family* includes those living in sober living homes. This definition is supported by the state Municipal Land Use Law and does not conflict with the DCA requirements for boarding houses in single-family homes. On this basis, the Applicant requests that the Board interpret the use as such and permit the single-family community residence in the R-1A zone.

Should a d(1) use variance be required, the positive criteria is satisfied by nature of the inherently beneficial use being proposed. The negative criteria is also satisfied by having no substantial detriment to the public good and no impairment the intent and purpose of the zone plan and zoning ordinance, as discussed above.

Importantly, nothing in the municipal zoning code absolves a town of its obligation to protect the civil rights of others and accommodate handicapped households. By state and federal law, a CSLR is a single-family household for the handicapped.

The FHA and the ADA say, in no uncertain terms, that alcoholism and drug addiction are disabilities. Addicts in recovery are to be treated no differently than those with no disability, those with a visible disability such as those in wheelchairs, those with traumatic brain injury, those who are deaf, or those with cancer. They are all equally protected.



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