



To: Bloomfield Zoning Board of Adjustment

From: Steven Martini, PP, AICP, Associate
George Wheatle Williams, PP, AICP

Date: ~~September 9, 2019~~
~~Revised on November 3, 2019~~
Reviewed & Submitted on January 15, 2020

Re: 103 Hazelwood Avenue (Block 460, Lot 1)
Planning Review Memo

INTRODUCTION

This office has reviewed the application submitted by William Meade and Hazel House - Sober Living in NJ LLC; also known as the "Hazel House" (Applicant). The Applicant has filed an application requesting a use variance for a 'Sober Living Facility', also known as 'Sober Living House'. On the property currently stands a single-family detached dwelling in an R-1A Zone (Low-density residential). In preparation of this Review Memo, the office has reviewed the following:

- Use Variance Application Checklist completed by Cristin M. Boyle Esq. dated June 27, 2019.
- W-9 Taxpayer documents completed by Applicant dated June 10, 2019
- List of Property Owners within 200 feet of the subject property
- Survey of the property prepared by Richard J. Hingos Inc., Professional Land Surveyor
- Certification of owners attesting to the accuracy of survey dated June 10, 2019
- Certification of payment in taxes prepared by Bloomfield Tax Collector dated June 18, 2019
- Proposed Floor Plans showing the existing layout of the single-family dwelling on the subject property
- Property Statement and Site Plan Waiver Request



- Property summary and history past approvals provided by the Township Construction Department of June 17, 2019
- Tax Map 18 showing subject property and surrounding properties within 200 feet
- Township of Bloomfield Zoning Ordinance (Chapter 315)
- Township of Bloomfield Master Plan (2002) and Re-examination Reports (2008 and 2014)
- Township of Bloomfield Zoning Map

PROPERTY AND AREA DESCRIPTION

The subject property is located along Hazelwood Road in the Township of Bloomfield. The property lies at the corner of Hazelwood Road and Walnut Street with only one contiguous single-family neighboring property east of the subject property. Immediately west of the subject property runs the Garden State Parkway right-of way, approximately 70 feet away from the site.

All surrounding properties include residential dwellings, ranging from 1 story to 3 stories in height. The property in question itself is a single-family residence containing 2,548 square feet and a height of 2½ stories. Improvements on the subject property also include a paved driveway leading to a garage stationed at the rear of the property.

PROJECT DESCRIPTION

The Applicant proposes a new use for the single-family dwelling on the site, anticipating the building to be used as a 'Sober Living Facility.' The Applicant states that the building on the subject property will be used as a living quarters for multiple sober individuals, which are in the midst of their recovery from addiction. The application proposes a use variance from the current single-family residential use on the subject property. No new construction or external improvements are proposed as part of the application. Since no site improvements are proposed as part of the proposed action, the Applicant is requesting a Waiver from the requirement of site plan submission.

According to the application, the first floor will consist of mainly common areas including a living room, dining room, kitchen. The second floor includes three bedrooms and two bathrooms. On the loft floor (above the second floor), there are two bedrooms and one bathroom. Thus, in total there will be five bedrooms and three bathrooms dedicated to the occupants of the 'Sober Living Facility'. The upper floors of the building are internally accessed via stairs.



Figure 1: Looking towards property on the corner of Hazelwood Road and Walnut Avenue





Hazelwood Road



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Figure 4: Full view of backyard and part of driveway



Figure 5: View of driveway as seen from **back** of property

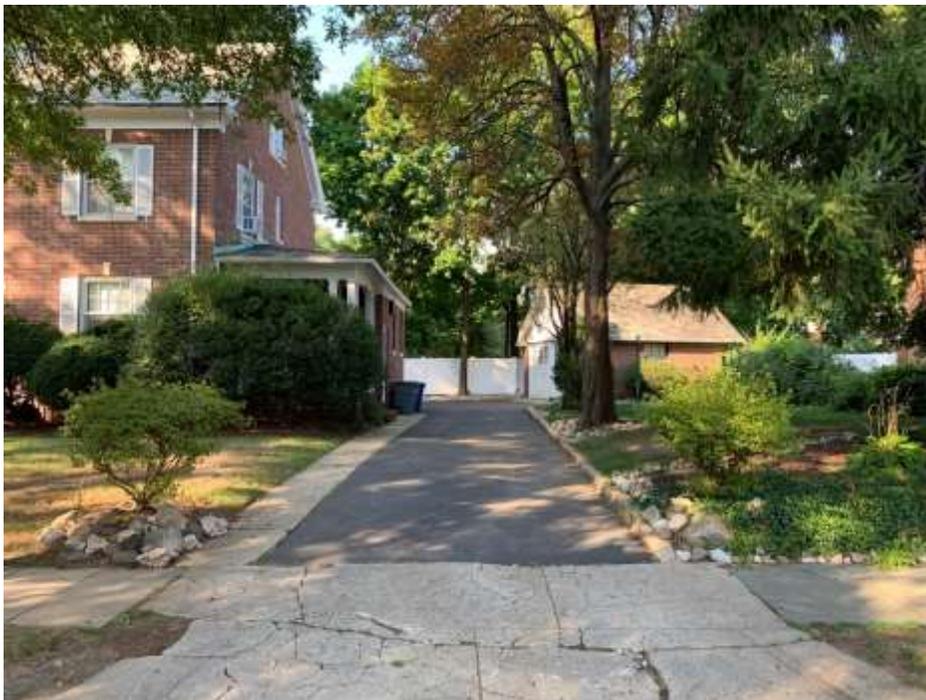


Figure 6: View of driveway as seen from **front** of property



LAND USE AND ZONING ANALYSIS

The subject property is located within the R-1A Zone. The R-1 Zone is defined as a 'Single-Family Residential Low-Density District.' According to the Land Use Plan of Bloomfield the R1-A district is intended for detached single-family housing. The regulations of this district are intended to maintain the primarily residential and suburban character of this area of the Township.

Permitted Uses

- (a) Single-Family Detached dwellings
- (b) Public Buildings, Public Parks, Utilities

BLOOMFIELD MASTER PLAN

The last comprehensive Master Plan for the Township of Bloomfield was adopted in November 2002. The Bloomfield Planning Board adopted Reexamination Reports in 2008 and 2014. Many of its recommendations are repeated in this Reexamination Report for official incorporation into the Bloomfield Master Plan.

Community residences are referenced in the Land Use Element of the 2002 Master Plan:

"Group homes or community residences as defined in the MLUL (N.J.S.A. 40:55D-66.2) 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 be given to zoning approaches that address boarding houses and group homes." (Land Use Element, pg. II-57)

Although there are definitions provided for similar facilities in the Township's Zoning Code, the use in question ('Sober Living Facility') is not explicitly defined in Bloomfield Code or Master Plan. According to the literature, a sober living facility is a form of *transitional housing*: i.e., between rehabilitation and independent living. This type of housing aims to assist individuals battling



addiction through substance abuse. Techniques used in these transitional housing include; regimented schedules designed to build healthy routines which increase the likelihood of long-term success in sobriety.¹

Additionally, an alternative definition of a 'Sober Living Facility' or 'Sober Living House' is the following:

*"Sober living houses (SLH)'s are alcohol and drug free living environments for individuals attempting to maintain abstinence from alcohol and drugs ([Wittman, 1993](#)). They offer no formal treatment but either mandate or strongly encourage attendance at 12-step groups. SLH's have been important resources for individuals completing residential treatment, attending outpatient programs, leaving incarceration or seeking alternatives to formal treatment."*²

¹ <https://www.addictioncenter.com/treatment/sober-living-homes/>

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2556949/>



PLANNING COMMENTS

1. The Application calls for a D(1) use variance since the use of a 'Sober Living Facility' is not a permitted use in the Township's R1-A Zoning District nor is the use noted as a permitted use within the Township. Under *Medici v. BRR Co.*, 107 N.J. 1, 21 (1987), the applicant must provide special reasons for the granting of the variance and demonstrate that the granting of the variance will not create a substantial detriment to the public good or substantially impair the zone plan.
2. The Applicant should provide testimony regarding the number of occupants to reside at the proposed sober living facility at full capacity (including the number of residents per bedroom).
3. The Applicant should provide testimony regarding the number of employees to work (and potentially reside) at the facility and the number of cars to be parked during peak hours.
4. Although no site improvements are proposed as part of the application, the Applicant should consider additional screening or buffer from neighboring dwellings.
5. Applicant should offer testimony regarding any State regulations. If the State does regulate this use, than the Applicant should be advised that proof of any necessary licensing from the state, in order to operation such a facility, shall be a condition of approval. (i.e. – New Jersey Department of Human Services).
6. The Applicant should provide testimony regarding the proposed residents of the sober living facility (i.e. – is the facility intend to treat individuals with only alcoholism, or other drug addictions). Have the residents attended rehabilitation and/or outpatient treatment prior to the sober living facility/residence? The applicant should provide testimony regarding proposed medical treatment at the sober living facility.



7. The Applicant should provide testimony regarding the maximum duration a resident can stay at the facility. Additionally, the applicant should provide testimony regarding the typical day of a resident (i.e. – will a typical resident have regular employment?)

8. The Applicant should provide testimony regarding rear, side and front yard access of the potential sober living residents. The applicant should discuss how security will be enforced and if the proposed facility will be under 24-hour supervision and surveillance.

9. § 315-14 specifies off-street parking requirements for land uses. One- and two-family dwellings are required to provide two parking spaces per dwelling unit with at least one provided in an enclosed garage. Since the proposed 'sober living facility' is a new land use in the Township, there are no off-street parking requirements stated for this use. The following are parking comparison references: An independent living residence is required to provide 0.5 parking spaces per dwelling unit and a bed-and-breakfast establishment requires 1 parking space per guest room (since the proposed use quantified by room).

The applicant should provide testimony regarding the number of off-street parking spaces provided.

CONCLUSION

The above comments are based on the review of the materials submitted to date. Nishuane Group reserves the right to provide new or updated comments as additional information becomes available. This Report should be cross-referenced with the Board Engineer's Review Letter.



ADDENDUM

The Municipal Land Use Law enables the Zoning Board of Adjustment to hear Appeals of Administrative Officer Decisions and Interpretations of the Zoning Code. §315-8(B)(1)(a-b) establishes this authority for the Bloomfield Zoning Board of Adjustment. In this matter, the Zoning Officer's Determination was based upon an Application which referred to a Rooming/Boarding House. The Applicant, however, asserts that the proposed use is a neither a Rooming or Boarding House. Instead, the Applicant asserts that the proposed use is a Cooperative Sober Living Residence {CSLR}, which constitutes a single-family. Our office offers this Addendum to provide further analysis of the Bloomfield Zoning Code's regulations for the single-family land use. In preparation of this Addendum, we again reviewed the Bloomfield Zoning Code and the Municipal Land Use Law (MLUL).

Definitions per §315-6:

1. *Boarder*: A person other than a member of a family occupying a part of any dwelling unit who, for consideration, is furnished sleeping accommodations in such dwelling unit and may be furnished meals as part of this consideration.
2. *Community Residence for the Developmentally Disabled*: Any community residential facility licensed pursuant to P.L. 1977, c. 448 (N.J.S.A. 30:11-B-1 et seq.) providing food, shelter, and personal guidance, under such supervision as required, to not more than 15 developmentally disabled or mentally ill persons 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 Planning Act". In the case of such community residence housing mentally ill persons, such residence shall have been approved for a purchase of service contract or an affiliation agreement pursuant to such procedures as shall be established by regulation of the Division of Mental Health and Hospitals of the Department of Human Services. {See also 40:55D-66.2(a). 4:55D-66.1 permit this use in all residential districts of a



- municipality, and the requirements thereof shall be the same as for single family dwelling units located within such districts.}
3. *Community residence For Persons with Head Injuries:* A community residential facility licensed pursuant to P.L. 1977, c. 448 providing food shelter and personal guidance under such supervision as required, to not more than 15 persons with head injuries 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 Planning Act”. {See also 40:55D-66.2(d). 4:55D-66.1 permit this use in all residential districts of a municipality, and the requirements thereof shall be the same as for single family dwelling units located within such districts.}
 4. *Community Residence for the Terminally Ill:* Any community residential facility operated as a hospice program providing food, shelter, personal guidance and health care services, under such supervision as required, for not more than 15 terminally ill persons. {See also 40:55D-66.2(e). 4:55D-66.1 permit this use in all residential districts of a municipality, and the requirements thereof shall be the same as for single family dwelling units located within such districts.}
 5. *Community Shelter for Victims of Domestic Violence:* Any shelter approved for a purchase of service contract and certified pursuant to standards and procedures established by regulation of the Department of Human Services....providing food, shelter, medical care, legal assistance, personal guidance and other services to not more than 15 persons who have been victims of domestic violence, including any children of such victims, who temporarily require shelter and assistance in order to protect their physical or psychological welfare. {See also 40:55D-66.2(b). 4:55D-66.1 permit this use in all residential districts of a municipality, and the requirements thereof shall be the same as for single family dwelling units located within such districts.}
 6. **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.

7. *Household*: A family living together in a single dwelling unit, with common access to and common use of all living and eating areas and all areas and facilities for the preparation and serving of food within the dwelling unit.

Additional Definitions Provided By “The Complete Illustrated Book of Development Definitions”

1. *Boardinghouse*: A dwelling unit or part thereof in which, for compensation, lodging and meals are provided and personal and financial services may be offered.
 - a. *Book Author’s Comment #1*: Over the years, the distinction between boardinghouses and rooming houses has narrowed. Traditionally, rooming houses provided only rooms and boardinghouses rooms and meals, but this distinction is no longer meaningful. The principal concern from a zoning point of view is how many rooms should be permitted to be rented as a matter of right, beyond which the rooming house or boarding house would be restricted to certain zones with controls, permitted only as a conditional use, or licensed.
 - b. *Book Author’s Comment #2*: In New Jersey, accommodations for two or more unrelated boarders require a state license, and a distinction is made between rooming houses, which provide only rooms or rooms and meals, and boardinghouses, which provide personal or financial services as well. However, the location and conditions of approval still remain local prerogatives.
2. *Rooming House*: A house in which lodgers rent one or more rooms for one or more nights, and sometimes for extended periods of time, and in which common area or services, such as laundry, cleaning, and dining may be provided.
3. *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; but not including any society, club, fraternity, sorority, association, lodge, federation, or like organization, or any group of



individuals who are in a group living arrangement as a result of criminal offenses.

- a. *Book Author's Comment:* The key words in the definition are “single housekeeping unit”, which is defined as “common use and access to all living and eating areas, bathrooms, and food preparation and serving areas.
- b. *Book Author's Comment 32:* Village of Belle Terre vs. Boraas Supreme Court Case restrictive definition of a family in the context of the number of unrelated persons may be superseded by State Courts. In State v. Baker (N.J. 1979) the New Jersey Supreme Court invalidated a local ordinance that established a limit on the number of unrelated individuals. It suggested that by limiting the number of unrelated individuals, it prohibited much reasonable occupancy, such as unrelated widows, bachelors, or “even judges”.



Analysis:

As mentioned in our original review memo, §315-38(A)(2) establishes the following permitted uses for the R-1A, R-1B, R-2A, R-2B Districts:

1. Single-family detached dwellings.
2. Public parks and playgrounds

We note that neither Boardinghouses nor Rooming Houses are listed as permitted uses. In our opinion, this omission from the Township Code informed the Zoning Determination.

In our opinion, based upon a review of the Township Code and literature, the proposed Cooperative Sober Living Residence {CSLR} is more akin to a group home as contemplated in the MLUL which prohibits a municipality from adopting an ordinance which discriminates in any way between children who are members of a families by reason of their relationship by blood, marriage or adoption and foster children.



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.

Therefore, if the Board finds the testimony of the Applicant, and their experts, pertaining to the intent, purpose an operation of the CSLR credible, then the Board may find that the proposed CSLR constitutes a “Family” and is therefore permitted at the 103 Hazelwood location. Specifically, the proposed CSLR includes the following:

- 1. A group of individuals not related by blood.*



- a. In this matter those individuals are adults that are referred and screened for residency at the CSLR.
 - b. This point appears to be undisputed.
 - c. We note that the Bloomfield definition of family does not include language about transiency and therefore should not be part of the Board's analysis.
2. *Living together in a dwelling unit as a single housekeeping unit.* According to the Applicant, the intent of the CSLR is to provide an environment in which the individuals function as a family unit with shared responsibilities/chores, and activities.
- a. According to the Applicant, their argument is bolstered by the DCA acknowledgement that CSLRs function as a single housekeeping unit.
 - b. Further, the Applicant also argues that the National Alliance For Recovery Residences {NARR} requires that CSLRs sustain a "*functionally equivalent family*"; residents involved in food prep, roommate selection, chores, shared



household expenses, regular residence meetings.

3. *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.*

a. According to the Applicant, the proposed CSLR does not include any of the aspects of the Bloomfield definition of a “Family” that would negate its inclusion in the definition of a family.

b. This matter was discussed at length at the last hearing.

We also note that the MLUL deems *group homes* and *community residences* inherently beneficial because they serve the general welfare.

Finally, we note that the general rule is that where it is the intent to prohibit or proscribe a particular use, such intent must be stated with clarity. The proposed CSLR is not prohibited in the Township’s Zoning Ordinance.



Appendix B – Talking Points

- 1. Apology.** Apologize for the schedule conflicts: to the Board, the Applicant and the audience.
- 2. Due Diligence.** Acknowledge that I have read the transcripts and reviewed the file.
- 3. Purpose of my revised memo:** Address the issue of whether the proposed CSLR.
- 4. Preliminary comments:**
 - a. Given the many nuances involved, this is the type of application that makes land use planning incredibly interesting.
 - b. I chose the simplest approach to analyzing the issue: i.e., continually referring back to the definition(s) provided in the Bloomfield Code...particularly the definition of Family. Admittedly, I did also utilize definitions



provided by the *Complete Illustrated Book of Development Definitions*.

- c. That being said, I agree with Michael Rubin on the role of the DCA in determining the issue before the Board. I could find no case law or legislation affording the DCA that authority.
- i. This may be an example of a disconnect between policy and law.
 - ii. That being said, I contend that the role of DCA may be a sperate issue.
 - iii. I submit that the Board may apply the information provided by the Applicant to the Township definition to make a determination.
 - iv. In this context, the DCA language just provides support or the Applicant's contention from a reliable source.
 - v. The Board may opt to address the broader conundrum in their 2019 Annual Report.
 1. 40:55D-70.1 provides that the ZBA shall, at least once a year, review its decisions on applications and



appeals for variances and prepare and adopt by resolution a report on its finding on zoning ordinance provisions which, were the subject of variance requests and its recommendations for zoning ordinance amendment or revision, if any.

2. The purpose of this provision is to encourage and enable the zoning board of adjustment to bring to the attention of the planning board and governing body particular provisions of the zoning ordinance, which had created problems for the ZBA.
3. Annual Reports and recommendations from the ZBA reflect a legislative policy intended to insure that a municipality's master plan and zoning ordinance reflect contemporary needs and conditions, and that the governing body is kept informed of provisions



of the zoning ordinance that generate variance requests.

4. **NOTE:** We did look at other definitions of families and did not find significant deviations from the Bloomfield definition.

5. Refer to the Analysis above...