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Rec. 9/11/19
JWC

To: Bloomfield Zoning Board of Adjustment

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

Date: September 11, 2019

Re: 103 Hazelwood Road (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



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- 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. The lot size is 12,123 square feet or 0.28 acres. 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 site; a 'Sober Living Facility.' The Applicant states that the building on the subject property will be used as 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.



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



Figure 2: Looking toward the front of the property from Hazelwood Road



Figure 3: View of house from backyard; showing height of building



Figure 4: Full view of backyard and part of driveway



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

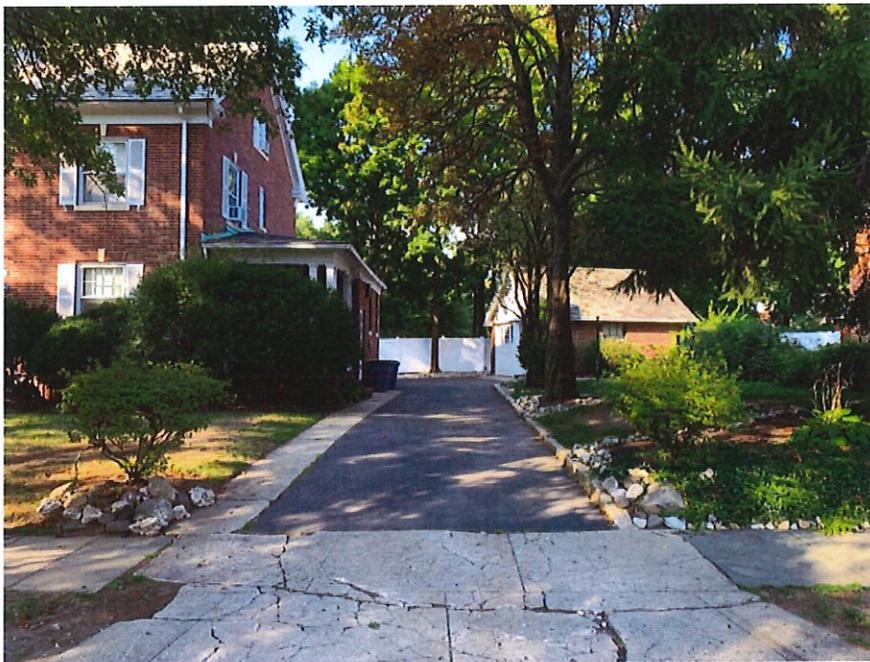


Figure 6: View of driveway as seen from **front** of property

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



Figure 7: Excerpt from Bloomfield Zoning Map

Waiver of site plan approval § 315-14.B.

"By Planning Board. The Board may waive the requirement for site plan approval where the Board determines that the proposed development is a permitted use in the zone and does not involve substantial site development considerations."



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Although this provision is pertinent to the Township's Planning Board, it is applicable to the Zoning Board of Adjustment as well as this application.

RELEVANT DEFINITIONS

Independent living residence:

"A dwelling unit in a continuing care retirement community which is unrestricted except as to an age requirement for occupancy" (Bloomfield Land Development Code, pg. 15).

Transitional housing:

"A community-based residential facility that provides short-term (120 days or less) room and board in a supervised living environment utilizing counseling and rehabilitation services for persons with a history of juvenile delinquency, behavioral disorders, alcoholism, or drug abuse." (Planner's Dictionary, pg. 424)

Group homes: (N.J. Zoning & Land Use Administration – Cox & Koenig, pg. 714)

The only definition of group homes in the MLUL is found in N.J.S. 40:55D-66(c), but only for the purposes of that section which prohibits a municipality from adopting an ordinance which discriminates in any way between children who are members of families by reason of their relationship by blood, marriage or adoption and foster children placed with such families in a dwelling by the Division of Youth and Family Services in the Department of Institutions and Agencies, or a duly incorporated child care agency. For a variety of reasons including the protections afforded by this section and constitutional concerns, the legislature could not have meant to limit group homes as there defined.

The group homes that the legislature undoubtedly had in mind were those permitted in 40:55D-66.2a for community residences for persons with developmental disabilities which are permitted in all residential zones. 40:55D-66.1. Thus these homes, while requiring a "d" variance in all other zones are protected by the inherently beneficial use designation."



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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. (New Jersey Municipal Land Use Law, 40:55D-66.1)

Inherently beneficial use:

"The concept of the "inherently beneficial" use was judicially created to deal with a relatively narrow range of enterprises so universally considered to be of community value that municipalities should be favorably disposed toward their inclusion." (N.J. Zoning & Land Use Administration – Cox & Koenig, pg. 705)

"Where the application, for example, is for a use variance to permit a structure which is not permitted and is also out of keeping with the scale and architectural style of the district, but the application is for an inherently beneficial use, such as a school or hospital, and the board in the exercise of its discretion finds the applicant entitled to the variance, it should make every attempt to impose conditions or otherwise assist in harmonizing the use with the district. The basic procedure to be followed by the board in utilizing Commission recommendations is not different than in other cases where the board receives expert testimony or reports which it must weigh in determining whether the applicant's proposal meets both the positive and negative criteria." (N.J. Zoning & Land Use Administration – Cox & Koenig, pg. 67)

Based on the classification provided above, the proposed 'Sober Living Facility' use may be considered an inherently beneficial use as the use will promote public health, safety, morals and general welfare of the community.

BLOOMFIELD MASTER PLAN

The last comprehensive Master Plan for the Township of Bloomfield was adopted in November 2002. The Bloomfield Planning Board adopted Reexamination



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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.

LITERATURE REVIEW

According to *Addiction Center*, 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

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



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completing residential treatment, attending outpatient programs, leaving incarceration or seeking alternatives to formal treatment.”²

MLUL CONTEXT

The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70(d)(1) permits the Board of Adjustment in particular cases for special reasons, grant a variance to allow departure from regulations to permit “a use or principal structure in a district restricted against such use or principal structure”. This represents the Positive Criteria of the statute. A “d” variance also requires a showing of the Negative Criteria. An applicant must demonstrate that the proposed variances can be granted “without substantial detriment to the public good and will be substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.”

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. In *Medici v. BPR Co.*, 107 N.J. 1, 21 (1987), the Applicant is required to meet the enhanced quality of proof test. The Applicant must provide special reasons for the granting of the variance and demonstrate that the granting of the variance will be inherently beneficial and will not create a substantial detriment to the public good or substantially impair the zone plan. The court, in *Sica*, provides a four-part test for the review of inherently beneficial uses:

- 1) Identify the public interest at stake.
- 2) Identify the detrimental effect that that will ensue from the grant of the variance.
- 3) Reduce detrimental effect by imposing reasonable conditions on the use.
- 4) Weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

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



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Ultimately, the Board must find that on balance the positive criteria outweigh the negative criteria. If the Board finds that the positive criteria outweigh the negative criteria, a variance can be granted. However, if the negative criteria outweigh the positive criteria, then the variance can be denied.

The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70c sets forth the standards for variances from the bulk regulations of a zoning ordinance. A c(1) variance is for cases of hardship due to a) exceptional narrowness, shallowness or shape of a specific property, or b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

A c(2) variance may be granted where the purposes of the Municipal Land Use Law would be advanced by deviation from the zoning ordinance requirements, that the variance can be granted without substantial detriment to the public good, that the benefits of the deviation would substantially outweigh any detriment and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The benefits identified in granting a c(2) variance must include benefits to the community as a whole, not only the applicant of the property owner. A c-variance applicant must address the "negative criteria," and affirmatively demonstrate that the variance can be granted "without substantial detriment to the public good" and "without substantial impairment to the intent and purpose of the zone plan and zoning ordinance".



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PLANNING COMMENTS

1. Applicant should address the Sica test for the proposed use.
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. The 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 operate 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?
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



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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.

10. Because zoning standards are not set for this particular use (i.e. parking requirements), more information is necessary to determine whether site plan approval is required. Therefore, the Applicant should reiterate whether any site improvements are proposed as part of the application (i.e. delineated parking spaces).

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.

