

Judge Backs Yorktown ZBA's Ruling on Sober Home

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An acting state Supreme Court Justice last week wholeheartedly sided with the Yorktown Zoning Board of Appeals regarding its ruling last July that a facility for recovering alcohol and substance abuse addicts on Underhill Avenue falls under the definition of a “convalescent home.”

On July 24, 2014, three of the four sitting ZBA members denied an appeal from neighbors Linda Girona and Al French, stemming from a written opinion by Building Inspector John Winter, that the sober home proposed by Compass Westchester did not fit the criteria of either a convalescent home or a nursing home, which are treated the same in the town's Zoning Code and, therefore, it should not be allowed to be considered for a three-year special permit by the Town Board.

“It is undisputed that the proposed residence meets all the Zoning Code criteria for a ‘convalescent home,’” the ZBA stated in its decision. “The Board rejects Appellants’ arguments that a ‘smell’ test applies requiring the Board to look beyond the Zoning Code definition of ‘convalescent home’ because such use may have been traditionally associated with on-site nursing or other patient/resident care. The Board finds to supplement and substantially disregard the unambiguous definition of ‘convalescent home’ in this way would result in a flawed and irrational interpretation of the Zoning Code.”

Last week, acting state Supreme Court Justice Robert Neary also rejected legal arguments by Girona and French seeking an order to reverse the ZBA's decision and Winter's opinion “on the grounds that said actions and determinations were affected by errors of law...and constitute an abuse of discretion,” by ruling “the Court finds that the Board's determination was proper in all respects.”

“The Court finds that the Board's determination was reasonable and was supported by evidence in the record,” Neary stated. “The record reflects that the parties in this matter had ample opportunity to present their positions and that lengthy discussions were had with respect to statutory interpretation in addition to the pros and cons of the proposed project. “

Attorneys for sober home owners Compass Westchester, Al Capellini and Robert Davis, maintained during public hearings Winter was correct in identifying the sober home residence with a convalescent home since it meets the criteria of having three or more people who suffer from any disease, affliction or ailment and are habitually kept or bordered.

The home purchased by Tom McCrossan and Mark McGoldrick for the sober residence sits on about three acres and is about 8,500 square feet. Two smaller residences also exist on the property, which once was used as boarding home for mentally challenged children.

The special permit being sought by Compass Westchester from the Town Board to allow as many as 14 individuals to live together for between 30 to 60 days to continue on a path to sobriety was denied on January 20.

McCrossan, his son Devin, slated to be the on-site supervisor of the sober home, and business partner Mark McGoldrick, filed an Article 78 proceeding February 23 in state Supreme Court seeking a judgment “reversing, annulling and setting aside, as arbitrary and capricious, an abuse of discretion and contrary to law, the determination of (the) Town Board rendered on January 20, 2015.”

In a 2-1 vote, the Town Board denied a special permit for the sober home, with Councilman Vishnu Patel being the lone dissenter. Without the special permit, Compass Westchester is not required to abide by any conditions that the town would have imposed with the permit.

The matter is likely to be brought up again by the Town Board in light of newly elected councilmen Gregory Bernard and Tom Diana joining the board. According to one town official, Compass Westchester is pushing to have a permanent special permit be issued in exchange for the withdrawal of the lawsuit. Also off the table may be a condition for Yorktown residents to be able to live in the sober home at a discounted rate.