

Subject to Approval

MADISON PLANNING AND ZONING COMMISSION PLANNING MEETING MINUTES July 2, 2020

The Planning Meeting of the Madison Planning and Zoning Commission was conducted Thursday, July 2, 2020, at 7 p.m., remotely, using Zoom Videoconferencing. The public was invited to participate remotely by joining the meeting through a Zoom webinar link password, telephone call-in number, and a webinar identification number. Log-in and call-in details were posted to the Town of Madison website (<https://www.madisonct.org/>) prior to the meeting.

MEMBERS PRESENT

Chairman Ronald Clark, Vice Chairman James Matteson, Secretary Elliott Hitchcock, Thomas Burland, Joseph Bunovsky, Jr., Joel Miller, and Giselle Mcdowall.

MEMBERS ABSENT

Brian Richardson and John K. Mathers.

ALTERNATES PRESENT

Peter Roos, Ron Bodinson and Seonaid Hay.

OTHERS PRESENT

Director of Planning and Economic Development David Anderson and Town Attorney Ira Bloom. The meeting was recorded via Zoom Videoconferencing software for You Tube viewing.

The Planning Meeting of the Madison Planning and Zoning Commission was called to order at approximately 7 p.m. by Chairman Ronald Clark. Director of Planning and Economic Development David Anderson stated that this is not a public hearing, and comments will not be taken from the public.

PUBLIC HEARING ITEM:

20-08. 503 Old Toll Road. Map 143, Lot 20. RU-1 District. Owner: Madison Investment Group LLC. Applicant: Wildwood Behavioral Health, LLC. Special Exception Permit to utilize the existing buildings to provide professional outpatient behavioral health services for adults. The facility will be licensed by the Connecticut Department of Health to provide outpatient programming including individual, group, family and activity therapies for individuals with low to moderate severity psychiatric (including substance abuse) disorders requiring non-hospital, non-medically managed treatment. Treatment services will not include methadone maintenance. Deliberation continued from June 18, 2020 Regular Meeting.

At the June 18, 2020 Planning and Zoning Commission meeting, the application for 503 Old Toll Road was continued, because only eight commissioners were present, and it appeared as though the vote would result in four in favor and four opposed, according to Chairman Clark. It was hoped that in continuing the session to this meeting, that the entire Planning and Zoning Commission of nine members would be present to deliberate and make a decision. However, Commissioner John Mathers is not present, thus bringing the commission back to eight members present, which is the same position the panel had been in on June 18, 2020, according to

Chairman Clark. Commissioner Joseph Bunovsky, Jr. had been absent in the previous meeting, in order to attend his son's high school graduation; Chairman Clark asked him in which direction he is leaning on the application. Commissioner Bunovsky apologized for his absence and stated that he had watched the meeting video twice and reviewed all documents affiliated with the application, but his opinion did not really sway, at all, from the Planning and Zoning Commission's first meeting on this. Commissioner Bunovsky stated that he is inclined to be in favor of the application. Chairman Clark asked whether anybody, over the past two weeks, has changed their mind from the previous session, two weeks again. The Planning and Zoning Commission continued this, because it was thought there would be a full complement of commissioners available to deliberate and vote; however, there is not, and Town Attorney Ira Bloom stated that he wanted to ask the commissioners whether they want to go forward with this, with eight members present, and make a decision, or postpone, again. Commissioner Bunovsky stated that knowing that a tie vote is the same as a denial, he does not think that would be fair to the applicant. Vice Chairman James Matteson stated that he believes the commissioners have been more than fair—they have continued this several times, and it is only fair to the applicant to make a decision; he spoke in favor of voting. Commissioner Ron Bodinson stated that he cannot remember how Commissioner Mathers was going to vote, and the whole point of the commission continuing was to get a full complement of nine. Commissioner Thomas Burland stated that he knows there are two alternates, and he asked whether the two alternates want to join. It is important to be fair to the applicant, but it is also important to be fair to the neighbors, Commissioner Burland stated. Chairman Clark stated that Alternate Commissioner Peter Roos has recused himself, and there are legal issues, also, to consider. Mr. Bloom stated that he is just a bit leery of making a call for an alternate, now, adding that he does not know if they have watched all the videos or have participated in some way. Involving an alternate at this point raises a fairness issue, because the neighbors and the applicant could say they did not know this person would vote, according to Mr. Bloom, who stated that his preference is that the commission stay with the regular members, deliberate and take a vote with eight commissioners, or wait two weeks, until there is a full complement of nine. There is also the possibility that in two weeks, someone else would be absent, according to Mr. Bloom. With the town attorney weighing in, Commissioner Burland stated that he thinks the commission should wait. Having nine commissioners present to deliberate and take a vote is the fairest way to proceed, according to Mr. Bloom; if the Planning and Zoning Commission thinks there is a possibility of getting everybody at the next meeting, on July 16, then that would be a good idea. Fairness is the key word, Chairman Clark stated, asking if the Planning and Zoning Commission decides to wait for two weeks, could it declare, tonight, that there would be a vote at that time? Mr. Bloom reminded the commission that it has to articulate and have the discussion on whether the proposed facility is a clinic or a medical office. Commissioner Bunovsky stated that he is fine with waiting until July 16 to vote. Commissioner Giselle McDowall stated that she is fine with waiting, but she asked whether other applicants could use what the commission is doing, now, in future public hearings. Mr. Bloom stated that he confesses that in all of his years, this is a little different; this is a situation where there seems to be a split down the middle, and most commissions usually have unanimous votes, or votes similar to 8-1. If the Planning and Zoning Commission wants to do what is fair, if it wants nine people together, then it has got to do that, according to Mr. Bloom. It is consistent with the logic the commission used last, Chairman Clark stated, adding that he has apologized to the applicant and to the neighbors. With fair being the word, the Planning and Zoning Commission wants to do the right thing, according to Chairman Clark. The Planning and Zoning Commission has no idea whether anyone has changed their mind on whether it is a clinic or not, Commissioner Joel Miller stated, adding that he is 100 percent available on July 16th, and he would like to continue the meeting until then.

Commissioner Burland stated that he asked if anyone in the practice is a medical doctor, and they said, "No." There are no doctors there; they're not prescribing drugs, Commissioner Burland stated. There is no requirement, in the zoning regulations, that it be a medical doctor; the definition describes a non-retail premises of one or more health care providers who give outpatient care, according to Commissioner Bodinson. Commissioner Miller stated that he does not think it matters if the commissioners say it is medical or professional; it is not a clinic. The Planning and Zoning Commission does have to make that finding that the facility fits in the category of Section 5.4, according to Mr. Bloom. Chairman Clark asked whether the commission is going to continue it for another two weeks or act on it, now. Secretary Elliott Hitchcock stated that he is in favor of having the vote in another two weeks. Chairman Clark stated that the commissioners will continue discussing this but vote at the next meeting. Noting that Commissioner Mathers is currently absent, Secretary Hitchcock asked whether the commission does all of the discussion, now, or wait two weeks and discuss it, then? Chairman Clark stated that he does think it would be helpful and important to listen to what others say, but the Planning and Zoning Commission may not be the ultimate decision maker on this vote, since there may be an appeal. During the appeal process, an appeal is filed in superior court, and then it goes in the usual manner, taking about a year to conclude, with these cases being heard in Hartford, according to Mr. Bloom. With the Coronavirus pandemic, right now, the land use docket, where the cases go, is backlogged, and a lot of the cases are on hold, according to Mr. Bloom. The strongest case in an appeal requires articulation of the commission's reasoning, evidence to support it, and the drafting of a resolution that incorporates everything, according to Mr. Bloom. In seeking to answer whether the facility would be a clinic or an office, Chairman Clark stated that, to him, it would be a clinic, and were it to be determined to be a medical office, he would have a number of conditions, including: fencing, no parking at night, and no medicine. Four of the five employees are described as professional clinical social workers, which means something to him, Chairman Clark stated, adding that he also does not see a medical facility where a patient can come up to the office for five or six hours at a time. Commissioner Bodinson stated that the applicant currently has a medical office, and the plan is to take the patients he is currently seeing for an hour a day, and move them to this facility, where they would be seen three to four hours a day, adding that he does not recall five or six hours. Therefore, what the applicant is doing, suits the definition of medical office, according to Commissioner Bodinson. This is not a 24 hour a day, seven days a week medical care facility for patients that need immediate care; this facility is not offering that, according to Commissioner Bodinson. In deciding whether to approve the application, it has to be determined whether the public convenience and welfare are substantially served and advanced by the facility, according to Commissioner Bodinson, who stated that it is. It also must be asked whether anyone is substantially injured by the facility, and neither those across the street at the strip mall, nor the neighbors, have said they will be substantially injured, according to Commissioner Bodinson. The Planning and Zoning Commission does take into consideration the public's feelings, Vice Chairman Matteson said, adding that he has not heard one neighbor speak in favor of this; it is their feeling that they will be impaired by this facility, and he is concerned about the strong opposition from the public. That is why the Planning and Zoning Commission has a public hearing, Vice Chairman Matteson stated. Secretary Hitchcock stated that he is still leaning toward agreeing with Chairman Clark and Vice Chairman Matteson on all the points as to whether it is a clinic or a medical office, and he stated that he agrees with Vice Chairman Matteson that there has not been a neighbor in favor of this, so his opinion had not changed. Commissioner Bunovsky stated that his family, for many years, owned a commercial building on Research Parkway in Meriden, that was located in a mix of residential and commercial use, so with respect to a professional office versus a clinic, he has had two occasions of sharing a

facility with an office that functions as this applicant proposes. It was an outpatient facility; it was there for many years, and people would come and go into the building, and no one knew whether they were going to the dentist or going to another office inside, according to Commissioner Bunovsky. A clinic is a mini hospital that provides a whole host of services, Commissioner Bunovsky stated, adding that he does not see an outpatient drug and alcohol treatment center as a clinic—it is a professional office. Commissioner Mcdowall stated that the fact that the applicant needed a license for a clinic to operate his business, indicates that it is for a clinic; a clinic does not have to be related toward medical, there are other types of clinics. She asked whether the license is for a clinic or does it read outpatient clinic. Mr. Anderson stated that it is described as a psychiatric outpatient clinic for adults. It is a clinic, Commissioner Mcdowall stated, adding, she thinks it is a wonderful idea, it is an establishment that is needed, and it is more than welcome, however, it is a clinic regulated by the Department of Public Health. Commissioner Miller stated that the Department of Social Services requires licensure to enable facilities to receive payments through insurance. In addition, there will be no dispensing of medications, no beds, no walk-in service, it is strictly by appointment, Commissioner Miller stated, adding that he has not heard anything that makes it not an office; it does not even come close to a clinic. In all fairness to the neighbors, there are ways the Planning and Zoning Commission can mitigate those concerns with parameters around an approval, Commissioner Burland stated. Chairman Clark stated that if his math is correct, the commission is at the same place as it was two weeks ago, and that he thinks like Commissioner Mcdowall: A clinic is a clinic is a clinic. In addressing Mr. Bloom, Chairman Clark stated that it seems obvious that the commission is at a deadlock, and he proposed reviewing all of the documentation and discussion and waiting two weeks, adding that he wants to make the right decision and have it be a fair and objective one. Mr. Bloom stated that the commission could decide to call the question and vote tonight, or decide to wait two weeks to get the ninth person here, have more discussions, and vote, then. Chairman Clark asked the commissioners to mark their calendars for July 16, 2020 at 7 p.m.; he asked Mr. Anderson and Mr. Bloom whether they had any closing thoughts, and both did not.

Commissioner Bunovsky made the motion to continue the meeting to July 16, 2020; it was seconded by Commissioner Miller and unanimously approved.

Vote to continue passed, 8-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock, and Commissioners Burland, Bunovsky, Miller, Mcdowall, and Bodinson.

OPPOSED: None.

ABSTAINED: None.

Director of Planning and Economic Development David Anderson stated that normally these types of applications are handled once a month, and they are doing the best they can to expedite this one fairly. Town Attorney Ira Bloom stated that he is not 100 percent sure he will be available on July 16th, but he reminded the Planning and Zoning Commission to support its decision, explain it, focus on the regulations, and the evidence, and craft a resolution.

Approval of Minutes: Planning Meeting, June 4, 2020 ~ Regular Meeting, June 18, 2020.
No action was taken.

Remarks: Commission Chair ~ None.

Town Planner ~ Mr. Anderson stated that he has compiled all of the conditions that
Page 4. Madison Planning and Zoning Commission, Regular Meeting, July 2, 2020

he has received for 503 Old Toll Road, and there are eight different categories that the conditions fell into; he asked the commissioners to submit others, if they have any. He expects, at the next meeting, to introduce those conditions for discussion, before a motion is made.

Adjournment

Vice Chairman Matteson made the motion to adjourn at 8:10 p.m.; it was seconded by Commissioner Burland and unanimously approved.

Vote to adjourn at 8:10 p.m. passed, 8-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock, and Commissioners Bunovsky, Miller, Burland, Mcdowall, and Bodinson.

OPPOSED: None.

ABSTAINED: None.

Respectfully submitted,
Marlene H. Kennedy, clerk