



**TOWN OF WESTMINSTER
ZONING BOARD OF APPEALS
11 SOUTH STREET
WESTMINSTER, MA 01473**

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TOWN OF WESTMINSTER

**Meeting Minutes
January 12, 2017**

Call to Order: The meeting of the Zoning Board of Appeals was called to order at 7:00 PM in Room 205 of the Westminister Town Hall by Chairman Don Frigoletto.

Roll Call: The following members were present: Chm. Frigoletto, Robin Brasili, and Aime Denault. Also in attendance was Liz Irvine who will be the new Recording Secretary.

Approval of Minutes of previous meeting(s): The minutes of the December 6, 8 and 15, 2016 meetings were reviewed and a motion by Mr. Denault, seconded by Ms. Brasili to accept them as presented passed with a unanimous vote.

Continued Hearing 16-15: Chm. Frigoletto reopened the continued hearing by reading the public notice on the petition of **Eino Jarvenpaa for an appeal of the Building Commissioner's determination that violations of Westminister Zoning Bylaws Chapter 205, Table of Use Regulations, Part 3, Item F4, have occurred: that the subject property is operating or allowing to operate a trash hauling business (up to 5 trucks) within the Residential II Zoning District. Property is located at 217 South Ashburnham Road, Map 46, Parcel 12, in an R-II Zoning District.**

Chm. Frigoletto noted the hearing was continued pending communication from the Westminister Board of Health. He read the letter from Elizabeth E. Swedberg, Health Agent (copy attached). Atty. Aveni, speaking for the petitioner, noted that permitting by the Board of Health is not required. He also noted there are two more letters of support from abutters, Linda and Steven Hanmore, 223 So. Ashburnham Road and George and Eila Jones, 222 So. Ashburnham Road (copies attached). Also presented is a color coded map submitted by Gary Smith (copy attached). Mr. Smith is not present, but is expected to arrive later, as he wishes to speak. Kevin Bourgeois, 206 South Ashburnham Road reiterated his concern about falling property values in the area. James Bradley, 210 So. Ashburnham Road, stated trucks come and go all day, leave refuse in the trucks overnight, and sometimes rinse them letting dirty water run.

Chm. Frigoletto recessed the hearing until Mr. Smith arrives.

Continued Hearing 16-14: Chm. Frigoletto reopened the continued hearing on the petition of **9 Village Inn Road, LLC, for an Amendment to the Special Permit, specifically Condition 9, which stated that, "The services provided at the Site and permitted by this Special Permit shall not include outpatient services for any person not residing at the Site". This Special Permit was approved by the Zoning Board of Appeals on January 21, 2016, Case No. 15-09) and was Granted with Conditions.**

Chm. Frigoletto noted the previous hearing had been continued pending communication with Erica Piedade, Ed.D., MPH, Director of Quality Assurance and Licensing, Bureau of Substance Abuse Services (BSAS). As a result of the conversation, Chm. Frigoletto felt his questions were sufficiently answered. He read a proposal from Recovery Centers of America (copy attached). Atty. Robert Longden for the petitioner stated they are not requesting a limit on the number of patients but would agree to one if imposed. RCA's position is that there is a need for both inpatient and outpatient treatment and that is essentially the reason they want to include outpatient services. Brad Greenstein, CEO, RCA New England Region, would agree to refer outpatients to other facilities, but would really appreciate the consideration of the Board to allow outpatient at the Village Inn site. They would be happy to comply with an 8 AM to 9 PM limitation of said services.

Kelly Graham, 3 Wyman Road, a vocal opponent, asked how many police calls have there been. Apparently there was one incident. Chm. Frigoletto commented there were just as many or more when the site was an inn. Ms. Graham said it was very frustrating to be so close to the facility, and the promises made at the original hearing(s) have not been met. RCA has made no effort to communicate with neighbors, and she particularly objected to Jack Moroney, saying she was glad he was no longer involved. She indicated she thought a lot of things were going on that no one knew about, that there has been a lot of deception. She also said Jack had indicated property values would not be affected, but she has documentation that similar facilities have caused a 17% drop in property values.

Brad Greenstein said they had agreed to abide by the conditions, but found them to be unrealistic when trying to abide by them.

Chm. Frigoletto read a letter from abutter John Bowen (copy attached). Atty. Longden said the underlying issue is that RCA wishes to provide service to people who need it. The public tends to be afraid of addicts, but the only solution is to provide services for them. Ms. Graham asked if anyone was interested in protecting her rights.

Chm. Frigoletto asked and found there were no other comments or questions. A motion to close the hearing by Mr. Denault, seconded by Ms. Brasili was passed with a unanimous vote.

A motion was made to amend the special permit granted 1/21/2016 by replacing condition #9 with the following that the services provided at the Site and permitted by this Special Permit shall include outpatient services for not more than twenty-five (25) patients per day who are not residing at the Site. The Applicant shall maintain records of the number of patients per day who receive outpatient services and are not residing at the Site and without disclosing any confidential information, provide those numbers to the Building Inspector upon request. The hours of operation for such outpatient services will be allowed between 8 AM to 9 PM.

Pursuant to G.L. c.44, sec. 53G, the applicant shall reimburse the Town for the costs of utilizing outside legal consultants in connection with this application. The applicant will be advised of the amount of fees due within fourteen days after this decision is filed with the Town Clerk, and the fees shall be paid to the Town within fourteen days thereafter was made by Mr. Denault and seconded by Ms. Brasili, and passed with a unanimous vote.

Chm. Frigoletto reviewed the appeal process to the petitioner.

Continued Hearing 16-15: Chm. Frigoletto reopened the continued hearing as Mr. Smith has arrived.

Gary Smith, 179 So. Ashburnham Road states he has lived in the area for many years, and the Jarvenpaa land has been used for truck dispatch, storage and repair since he was a child. Chm. Frigoletto pointed out that Mr. Smith is the closest abutter and confirmed he has not has concerns with the trucks or odors and stated that the property and use has not changed in many years. Chm. Frigoletto asked if there were any plans for improvements, such as paving, building repairs. Mr. Jarvenpaa said they have not made any plans. When asked about fencing, he said there was no point as no one can see the trucks in question as they are far off the road. There were no further comments, questions or concerns. Atty. Aveni did mention the Jarvenpaas would not object to limiting hours of business, or including on-going involvement of the Board of Health.

Mr. Denault moved to close the hearing, Ms. Brasili seconded, and motion passed with a unanimous vote.

Chm. Frigoletto pointed out that the board could condition the finding in favor of the applicant by limiting the number of trucks/vehicles on site to 5. Any more than five trucks would have negative impact on the neighborhood and would be a substantial change to what existed there in the past. Chm. Frigoletto also indicated that in the past there have been no odors from trucks or equipment at the site.

A motion to find for the applicant and overturn the Building Commissioner's determination that the use is a violation of Westminster Zoning Bylaws as the current use has been in existence prior to Zoning By-laws adopted on January 22, 1974 in Westminster, and has not been unlawfully changed or substantially expanded, and is therefore a non-conforming use pursuant to the provision of MGL 40A Sec. 6, on condition that there are no more than 5 (five) construction vehicles, pieces of large equipment or trucks on site at any time was made by Mr. Denault and seconded by Ms. Brasili and passed with a unanimous vote.

Chm. Frigoletto reviewed the appeal process for the applicant.

Hearing 17-01: Chm. Frigoletto opened the hearing on the petition of 9 Village Inn Road, LLC, for an Amendment to the Special Permit specifically Condition 8, which stated that, "The total number of patient's beds licensed by the MA Department of Public Health shall not exceed forty eight (48), including a maximum of 16 detox treatment beds and the total number of unlicensed beds for extended stay shall not exceed forty two (42), without an amendment to this Special Permit". This Special Permit was approved by the Zoning Board of Appeals on January 21, 2016 (Case No. 15-09) and was granted with Conditions.

Atty. Robert Longden, representing the petitioner, stated RCA needs more flexibility than originally provided in the finding by the ZBA, specifically Condition #8. He also stated that licensed beds have requirements that unlicensed beds do not, such as staffing, and even if the licensed beds are not occupied, the requirements still have to be met. Presently, the 48 inpatient beds plus the 42 unlicensed beds total 90. If the request is approved by the ZBA, they will need to staff for the full 90 beds.

Brad Greenstein, RCA New England Regional Director, stated this would give them the flexibility they find they need to meet the needs of their patients. He also said that if the ZBA approved their request, they would need to go through the process with the state to get them licensed.

A motion by Mr. Denault to close the hearing was seconded by Ms. Brasili and passed with a unanimous vote.


A motion by Mr. Denault to amend the Special Permit by deleting Condition No. 8 in its entirety and inserting in its place the following: "Without an amendment to the Special Permit, the total number of patient beds licensed by the MA Department of Public Health shall not exceed ninety (90). The total number of unlicensed beds at any time shall not exceed the difference between the total number of

licensed beds at the facility and the maximum number of ninety (90) beds.” was seconded by Ms. Brasili and passed with a unanimous vote.

Chm. Frigoletto explained the appeal process to the petitioner.

The next regularly scheduled meeting of the ZBA is Thursday, January 19, 2017.

A motion by Mr. Denault to adjourn was seconded by Ms. Brasili and passed with a unanimous vote. The meeting was adjourned at 9:45 PM.

	<u>3/16/17</u>
Donald Frigoletto, Chairman	Date