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Zachary Bergeron, Chairman
Planning Board
Andover Town Hall
36 Bartlet Street
Andover, MA 01810

April 11, 2022

RE: Proposed Detox Facility, 140 Haverhill Street, Andover
Proposed Day Clinic, 140 Haverhill Street, Andover
Request for Reasonable Accommodation(s)

Dear Mr. Bergeron:

As you know, Medico 140, LLC ("Medico") has applied for a special permit and site plan approval to operate two separate facilities at 140 Haverhill Street in Andover: (1) Commonwealth Detox will operate from a new 39,000 square foot building on Lot 1; (2) Topsail will operate a day drug and alcohol rehab facility from a new 9,180 square foot building on Lot 2.

Medico respectfully requests the Planning Board to grant a reasonable accommodation with regard to any applicable zoning restrictions that would interfere with the residency and/or treatment of disabled persons at the proposed facilities at 140 Haverhill Street. The occupants of the proposed facilities will be persons recovering from drug and/or alcohol addiction. Such disabled persons are protected by federal and state statute. See, 42 U.S.C. § 12132 (the "Americans with Disabilities Act" or "ADA"), 42 U.S.C. § 3601 (the "Fair Housing Amendments Act" or "FHAA"), 29 U.S.C. § 791 (the "Rehabilitation Act"), and the Zoning Act's anti-discrimination provision in G.L. c. 40A, s. 3. See, *Granada House, Inc. v. City of Boston*, C.A. No.: 99-6624-E (Suffolk Super. Ct. 1997); *901 Ernston Road, LLC v. Borough of Sayreville Zoning Bd. of Adjustment*, Civ. No.: 18-2442 (D.N.J. 2018).

Specifically, Medico seeks relief from the following provisions of the Andover Zoning Bylaws:

1. Parking (Table 3): A "medical office or clinic" in the Office Park District requires one parking space for each 200 square feet of net floor area and four parking spaces for each doctor or dentist.

Topsail is a medical clinic. As verified by our transportation engineer, Kenneth Cram, 52 space are required for Topsail. 75 spaces are provided. No accommodation is required.

Commonwealth Detox is not a true "medical clinic." Unlike a day clinic, Commonwealth will have overnight stays. 78 parking spaces are provided for this facility.

The total number of proposed parking spaces for both facilities is 153 spaces. The Board's peer reviewer, Greg Lucas, agreed that 153 parking spaces is more than adequate to meet expected parking demand at both facilities.

Accordingly, Medico requests a reasonable accommodation from any otherwise applicable parking space requirement in the form of a special permit and site plan approval with a condition referring this matter to the Zoning Board of Appeals for further zoning relief.

2. Section 5.1.5.2.d prohibits the backing of vehicles onto a street or way. Counsel for a neighbor has suggested that the internal aisles, some of which are located on easements, constitute streets or ways and that the parking lot plan is violative Section 5.1.5. The Building Commissioner has disagreed in a memorandum dated March 23, 2022.

As a precaution, Medico seeks a reasonable accommodation in the form of a special permit and site plan approval with a condition referring this matter to the Zoning Board of Appeals for further zoning relief.

Medico's requested relief is mandated as a matter of federal law as a reasonable accommodation or modification. See *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 (E.D.N.Y.1993), and cases cited therein. An accommodation is reasonable "if it does not cause any undue hardship or fiscal or administrative burdens on the municipality or does not undermine the basic purpose that the zoning ordinance seeks to achieve." *Id.* at 1186. For example, the Fair Housing Act provides that it is a "discriminatory housing practice" to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. s. 3604. Courts have enforced this statutory requirement in precisely the circumstances presented here. *Oxford House v. Town of Babylon*, 819 F. supp. 1179, 1185 (E.D.N.Y. 1993) ("Courts have unanimously applied the reasonable accommodation requirement to zoning ordinances and other land use regulations and practices"). In fact, it is settled law that "compliance with the zoning ordinances may be waived" as a reasonable accommodation. *Casa Marie, Inv. v. Superior Court*, 988 F.2d 252, 270 n. 22 (1st Cir. 1993). In the case when a municipality denies the request for a reasonable accommodation, the burden of proof is squarely on the municipality to show that denial was reasonable. A delay in granting the reasonable accommodation request is also actionable. See, e.g., *Astralis Condominium Ass'n v. Secretary, U.S. Dept. of Housing and Urban Development*, 620 F.3d 62, 68-69 (1st Cir. 2010).

In the instant matter, the request for a reasonable accommodation may be granted without derogation of the purposes of Andover's Zoning Bylaw.

In short, Medico asks that you approve these requests for reasonable accommodations. Of course, I am available to answer any questions and to provide additional information. Thank you for your consideration.

Very truly yours,



Mark Bobrowski

cc: Atty. Urbelis (by email)
Atty. Flannagan (by email)
J. Byerley (by email)