

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT

MEDICO 140 LLC,

Plaintiff

v.

TOWN OF ANDOVER, and ELIZABETH OLTMAN,
CAROL McDONOUGH, LISA RECHISKY, KATHY
FAULK, ELLEN KELLER, MICHAEL NOVARIA,
DAVID GUERETTE, DANIEL LOPEZ, and RALPH
ARABIAN, as they are members of the ZONING
BOARD OF APPEALS OF ANDOVER,

Defendants

C.A. No.: 2271CV01282

COMPLAINT AND JURY DEMAND

Plaintiff, Medico 140 LLC ("Plaintiff" or "Medico"), by and through its undersigned counsel, by way of Complaint against Defendants, the Town of Andover ("Town" or "Andover") and the Andover Zoning Board of Appeals (the "ZBA"), alleges as follows:

I. PARTIES

1. Plaintiff, Medico 140 LLC is a Massachusetts limited liability corporation with a principal office located at 335 Middlesex Avenue, Unit 7, Wilmington, Massachusetts.

2. The Town of Andover is a municipal corporation in the Commonwealth of Massachusetts with a principal office located at 36 Bartlett Street, Andover, MA 01810.

3. Defendant, Elizabeth Oltman, is an individual residing at 24 Bradley Road, Andover, MA, and was at all times material hereto the Chairperson of the ZBA.

4. Defendant, Carol McDonough, is an individual residing at 5 Comanche Place, Andover, MA, and was at all times material hereto a member of the ZBA.

5. Defendant, Lisa Rechisky, is an individual residing at 3 Stinson Road, Andover, MA,

and was at all times material hereto a member of the ZBA.

6. Defendant, Kathy Faulk, is an individual residing at 20 Muirfield Circle, Andover, MA, and was at all times material hereto a member of the ZBA.

7. Defendant, Ellen Keller, is an individual residing at 39 Bannister Road, Andover, MA, and was at all times material hereto a member of the ZBA.

8. Defendant, Michael Novaria, is an individual residing at 20 Blueberry Hill Road, Andover, MA, and was at all times material hereto a member of the ZBA.

9. Defendant, David Guerette, is an individual residing at 33 Boston Road, Andover, MA, and was at all times material hereto a member of the ZBA.

10. Defendant, Daniel Lopez, is an individual residing at 17 Wildwood Road, Andover, MA, and was at all times material hereto a member of the ZBA.

11. Defendant, Ralph Arabian, is an individual residing at 34 Linwood Street, Andover, MA, and was at all times material hereto a member of the ZBA.

II. FACTS

12. Drug and alcohol abuse is wreaking havoc on public health and safety in communities across the United States, with more than 64,000 lives lost to drug overdoses in 2016 alone.¹ In an effort to recognize and combat this growing epidemic, on March 10, 2016, the United States Senate passed the Comprehensive Addiction and Recovery Act of 2016, which documented the abuse of heroin and prescription opioid painkillers as having “a devastating effect on public health and safety in communities across the United States,” with the number of drug overdose deaths now surpassing the number of traffic accident deaths:

According to the Centers for Disease Control and Prevention, drug overdose deaths now surpass traffic accidents in the number of deaths caused by injury in the United States. In 2014, an average of more than 120 people in the United States died from drug overdoses

¹ Drug Overdose Deaths in the United States, 1999-2016. No. 294, National Center for Health Statistics, U.S. Centers for Disease Control and Prevention, December, 2017.

every day.

Comprehensive Addiction and Recovery Act of 2016, S.524, 114th Cong., § 2.

13. The overdose death rate in Massachusetts is more than two times the national average.²

14. In the year 2021, opioid-related overdose deaths in Massachusetts were 2,281 people up from 547 in 2010. Of those 2,281 people who died from opioid-related drug overdose, 288 were residents of Essex County, up from 49 deaths in 2010.³

15. Medico's mission is to provide a neighborhood-based detox and recovery facility for patients suffering from drug and alcohol addiction.

16. To fulfill that mission, Medico acquired a property in Andover located at 140 Haverhill Street, being Assessor's Map 18, Lot 104A (the "Subject Property"), within the Town's Office Park District ("OP District").

17. At the time Medico purchased the Subject Property, a "medical center or clinic" was an allowed use in the OP District and was defined as "A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities."

18. Medico planned to operate on the Subject Property a 64 bed "detox" facility ("the Facility") dedicated to treating drug and alcohol abuse, and licensed by the Massachusetts Department of Public Health. The proposed Facility was a new 39,000 square foot building.

19. Under the Andover Zoning Bylaw, a "medical center or clinic" requires 1 parking space per each 200 square feet of net floor area and 4 parking spaces for each doctor or dentist.

20. On July 7, 2022, Medico filed for a variance from Andover Zoning Bylaw Article VIII, Section 10.0 (medical/clinic), and sections 4.1.4.3.b, 5.1.5.2.d, and 5.1.4(C.9) (the "Variance"). This was to seek relief as a "reasonable accommodation" from, respectively: 1) the definition of medical center or clinic which does not include overnight care; 2) the 300' setback from existing buildings, 3) parking circulation; and 4) a reduction of the required number of parking spaces.

2 According to the National Institute on Drug Abuse, the national rate of deaths due to drug overdose in 2016 was 13.3 persons per 100,000, while in Massachusetts it was 29.7 persons per 100,000.

3 Mass. Department of Public Health; <https://www.mass.gov/doc/opioid-related-overdose-deaths-by-county-december-2022/download>

21. A public hearing was held on August 4, 2022. At the conclusion, the hearing was continued to September 1, 2022 and the ZBA requested an opinion from Town Counsel on the "reasonable accommodation" argument and an update on the appeal of Z-21-93 (an earlier ZBA matter granting relief to the Plaintiff).

22. Town Counsel provided an opinion to the ZBA that the reasonable accommodation sought by Medico could be granted.

23. Due to scheduling, the ZBA continued the September 1, 2022 public hearing to October 6, 2022 and at the request of Medico to November 3, 2022.

24. By letter dated October 25, 2022 and at the November 3, 2022 public hearing, Medico withdrew the variance with regard to Sections 4.1.4.3.b (300' setback) and 10.0 (overnight care) as these were previously granted by the ZBA and confirmatory relief was no longer required given the status of the law.

25. By decision dated December 13, 2022, the ZBA granted the relief from Section 5.1.5.2.d (parking circulation) and denied the relief from Section 5.1.4(C.9) (a reduction in required parking) (the "December 13, 2022 Decision"). A true and accurate copy of the December 13, 2022 Decision, which is the subject of this appeal, is attached hereto as Exhibit A.

26. A "Technical Amendment" to the December 13, 2022 Decision was circulated on December 14, 2022. A true and accurate copy of the Technical Amendment is attached hereto as Exhibit B.

27. Prior to and as part of the Variance, Medico sought from the Town of Andover as a reasonable accommodation pursuant to the Americans with Disabilities Act ("ADA"), the Fair Housing Amendments Act ("FHAA"), the Rehabilitation Act, and State Law, relief from the Town's Bylaws, as set forth *supra*. A true and accurate copy of Attorney Bobrowski's letters dated June 7, 2021, August 29, 2022 and October 25, 2022 are attached hereto as Exhibit B. A true and accurate copy of an April 11, 2022 "Project Summary" is attached hereto as Exhibit C.

28. Although the vote in the December 13, 2022 Decision to approve a reduction in required parking was 3-2 in favor of approving, a 4-1 majority was required to pass a "variance" under the Town's Bylaw.

29. The stated reasoning for the ZBA members voting against the requested reduction in required parking was, "[a] disbelief in the data presented by the Applicant regarding the number of parking spaces required to support the facility, which they believe could cause a public hazard on the adjacent street system and property owners due to overflowed parked vehicles.

Subsequent police calls to address any off-site parking would be a detrimental administrative and financial burden to the Town.”

30. No data, studies or factual evidence was presented to refute or counter Medico’s presentation of the parking demand for the proposed Facility.

31. The proposed Facility has a reduced parking demand as compared to a medical office or clinic, as patients stay overnight in “detox,” whereas a typical medical office or clinic providing day treatment may see multiple patients per hour and have numerous patients waiting to be seen, thus requiring more parking capacity. The parking demands of the proposed Facility is more like that of a hospital, that has overnight stays and less daily/hourly turnover. Andover’s Bylaws only require 1 parking space per every 2 beds and 1 for each employee for a hospital. If considered a hospital for purposes of parking demand, the Facility would only need 32 parking spaces for “beds” and 1 for each employee, much less than the 87 proposed spaces for the Facility.

32. By decision dated July 12, 2022, the Andover Planning Board stated, in part: “[Medico] has submitted a Traffic Impact and Access Study prepared by Bayside Engineering dated January 19, 2022. The report was peer reviewed by Environmental Partners. . . Both the traffic peer reviewer and the Andover Public Safety Officer agree that the estimated traffic to be generated by the acute treatment facility and the clinical stabilization facility is substantially lower than the traffic generated from Doctors Park I as a fully-occupied medical office building; . . . The applicant has submitted a letter requesting the Board to grant a reasonable accommodation as outlined in their request dated April 11, 2022. . . The applicant has agreed a variance is needed for relief from the zoning bylaw parking requirements for a medical clinic. The Board makes a finding that the traffic flow and safety including parking and loading have been reviewed by experts and have no concerns with the traffic to be generated by this use and the parking is adequate for the use;” Thus, the Andover Planning Board agreed that the proposed reduction in required parking was appropriate, but such needed to be approved by the ZBA.

33. The reasonable accommodation sought, in the form of a reduction from parking requirements imposed by the Town’s Bylaws, was reasonable and necessary to provide access to much needed treatment and long-term overnight detox beds for individuals in recovery from substance use who are considered disabled under State and Federal law.

34. The proposed parking for the Facility is more parking than would be required for a hospital, if a hospital were proposed for this site. Thus Medico, as a provider of services and/or housing to individuals in recovery from substance use, is being denied the ability to provide the same level and access to services that would be allowed for those suffering from other illnesses that require overnight care at a typical ‘hospital,’ as a result of the Town’s imposition of excessive parking requirements upon a facility dedicated to substance use.

35. The reasoning provided by the two members of the ZBA voting against the requested accommodation is pretext, as there has been public opposition to the Facility in this neighborhood because of the disability of the individuals to be treated and unfounded fear and prejudice.

36. Medico is suffering carrying costs, business losses, lost profits, legal fees, professional fees, and damages as a result of not being able to move forward with its plan to open the Facility. The individuals Medico intends to treat and provide detox beds to are suffering from the wrongful denial of access to this much needed Facility.

37. As a result of the wrongdoing alleged herein, Medico seeks compensatory damages, punitive damages, injunctive relief, and attorneys' fees and costs, and asserts claims under 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"), the Zoning Act's anti-discrimination provision in G.L. c. 40A, Section 3, the Massachusetts anti-discrimination act, G.L. c. 151B, and review under G.L. c. 40A, Section 17.

III. CLAIMS FOR RELIEF

COUNT 1: VIOLATION OF THE ADA

38. Paragraphs 1 through 37 above are incorporated by reference, as if fully set forth herein.

39. The American with Disabilities Act (the "ADA") provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the service, program, or activity of a public entity, or be subjected to discrimination by any such entity. The ADA makes it unlawful for a public entity, in determining the site or location of a facility, to make selections that have the purpose or effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination. 28 C.F.R. § 35.130(b)(4).

40. Medico's patients will be qualified persons under the ADA with disabilities that substantially impair one or more major life activities.

41. The first criterion for admission to any part of the Facility is that patients be diagnosed as suffering from drug or alcohol addiction, and participate or agree to participate in substance abuse treatment.

42. For an individual to be eligible for inpatient care at the Facility, Medico's medical

personnel must determine that the patient is suffering from drug or alcohol addiction to such a degree that they are unable to care for themselves.

43. While being treated at the Facility, Medico's patients will not be illegally using controlled substances. As a result, its patients are "qualified persons with disabilities" within the meaning of the ADA, 42 U.S.C. § 12102(2) and 28 C.F.R. § 35.104.

44. The Defendants are qualifying public entities within the meaning of the ADA. 42 U.S.C. § 12131(1)(A).

45. Section 12132 of the ADA constitutes a general prohibition against discrimination on the basis of disability by public entities. Federal law declares that discrimination is prohibited in failing to provide a reasonable accommodation or in effectuating discriminatory goals of others, or those of a municipality, through the use of or imposition of rules, laws or zoning, whether legal or otherwise, if done with discriminatory animus or without animus if done in a way that effectuates the discriminatory goals of others.

46. Medico is associated with and/or provides services to disabled individuals protected under the ADA.

47. The Defendants have violated, and are continuing to violate the ADA, by, inter alia: (i) refusing to provide reasonable accommodations to disabled individuals or those that provide services to them (i.e. the Plaintiff); (ii) allowing prejudice against disabled individuals to dictate the outcome of zoning decisions and hearings; and (iii) discriminating against disabled individuals or those providing services to them (i.e. the Plaintiff).

WHEREFORE, Medico demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Defendants' discriminatory zoning decisions and improper denial of Medico's variance application constituted violations of the ADA, and that Medico and its patients are entitled to reasonable accommodations with respect to the requested reduction in parking to 87 spots to facilitate the construction and operation of the Facility as planned;
- (2) Preliminary and permanent injunctive relief permitting Medico's proposed reduction in parking for the Facility to 87 spots;
- (3) Compensatory damages;
- (4) Punitive damages;
- (5) Attorneys' fees and costs; and
- (6) Such other and further relief as the Court deems necessary and appropriate.

**COUNT 2:
VIOLATION OF THE FHAA**

48. Paragraphs 1 through 47 above are incorporated by reference, as if fully set forth herein.

49. The Fair Housing Amendments Act, 42 U.S.C. § 3601, et seq., (the "FHAA") guarantees fair housing to handicapped individuals.

50. Under the FHAA, the term "handicap" means, with respect to a person, a "physical or mental impairment which substantially limits one or more of such person's major life activities, a record of such impairment, or being regarded as having such an impairment." 42 U.S.C. § 3602(h). The term "physical or mental impairment" includes "alcoholism" and "drug addiction (other than addiction caused by current, illegal use of a controlled substance)." 24 C.F.R. § 100.201.

51. Medico's prospective patients are qualified individuals with disabilities within the meaning of 42 U.S.C. § 12101.

52. Under the FHAA, it is unlawful to discriminate against or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that buyer, renter, or person residing in or intending to reside in that dwelling after it is sold, rented, or made available. 42 U.S.C. § 3604(f)(1). Municipalities are required to make reasonable accommodations with respect to zoning to provide equal access to dwellings for disabled individuals.

53. Medico's residential treatment space and beds within the Facility qualifies as a dwelling under the FHAA.

54. The Defendants have violated, and are continuing to violate the FHAA, by, inter alia: (i) refusing to provide reasonable accommodations to disabled individuals or those that provide services to them; (ii) allowing prejudice against disabled individuals to dictate the outcome of zoning decisions and hearings; and (iii) discriminating against disabled individuals or those providing services to them.

WHEREFORE, Medico demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Defendants' discriminatory zoning decisions and improper denial of Medico's variance application constituted violations of the FHAA, and that Medico and its patients are entitled to reasonable accommodations with respect to the requested reduction in parking to 87 spots to facilitate the construction and operation of the Facility as planned;
- (2) Preliminary and permanent injunctive relief permitting Medico's proposed reduction in parking for the Facility to 87 spots;
- (3) Compensatory damages;
- (4) Punitive damages;
- (5) Attorneys' fees and costs; and
- (6) Such other and further relief as the Court deems necessary and appropriate.

**COUNT 3:
VIOLATION OF THE REHABILITATION ACT OF 1973**

55. Paragraphs 1 through 54 above are incorporated by reference, as if fully set forth herein.

56. The Rehabilitation Act, 29 U.S.C. § 791 et seq., provides that no qualified individual with a disability shall, solely by reason of her or his disability, be excluded from participation in or be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance. 29 U.S.C. § 794(a).

57. The Town of Andover receives federal financial assistance, including through federal grant programs such as the Community Development Block Grant program, which is funded by the U.S. Department of Housing and Urban Development.

58. Section 508 of the Rehabilitation Act defines "program or activity" as "all of the operations" of specific entities, including "a department, agency, special purpose district, or other instrumentality of a State or of a local government." 29 U.S.C. § 794(b)(1)(A).

59. Zoning decisions by a municipality are normal functions of a governmental entity and thus are covered by the Rehabilitation Act.

60. Medico's patients are qualified persons under the Rehabilitation Act with disabilities that substantially impair one or more major life activities.

61. The first criterion for admission to any part of the Facility is that patients be diagnosed as suffering from drug or alcohol addiction, and participate or agree to participate in substance abuse treatment.

62. For an individual to be eligible for inpatient care at the Facility, Medico's medical personnel must determine that the patient is suffering from drug or alcohol addiction to such a degree that they are unable to care for themselves.

63. While at the Facility, Medico's patients are not illegally using controlled substances. As a result, its patients are "qualified persons with disabilities" within the meaning of the Rehabilitation Act, 29 U.S.C. § 706(8)(C)(ii)(II).

64. The ZBA is a qualifying public entity within the meaning of the Rehabilitation Act.

65. Section 508 of the Rehabilitation Act constitutes a general prohibition against discrimination on the basis of disability by public entities.

66. The Defendants have violated, and are continuing to violate the Rehabilitation Act by, inter alia: (i) refusing to provide reasonable accommodations to disabled individuals

or those that provide services to them; (iii) allowing prejudice against disabled individuals to dictate the outcome of zoning decisions and hearings; and (iii) discriminating against disabled individuals or those providing services to them.

WHEREFORE, Medico demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Defendants' discriminatory zoning decisions and improper denial of Medico's variance application constituted violations of the Rehabilitation Act, and that Medico and its patients are entitled to reasonable accommodations with respect to the requested reduction in parking to 87 spots to facilitate the construction and operation of the Facility as planned;
- (2) Preliminary and permanent injunctive relief permitting Medico's proposed reduction in parking for the Facility to 87 spots;
- (3) Compensatory damages;
- (4) Punitive damages;
- (5) Attorneys' fees and costs; and
- (6) Such other and further relief as the Court deems necessary and appropriate.

COUNT 4 VIOLATION OF STATE LAW – G.L. c. 40A, SECTION 17

67. Paragraphs 1 through 66 above are incorporated by reference, as if fully set forth herein.

68. As detailed above, the ZBA was wrong as a matter of law, palpably abused its discretionary authority and acted in an arbitrary and capricious manner when it denied Medico's request for a reasonable accommodation with respect to a reduction in required parking through its variance application.

69. G.L. c. 40A, s. 17 states that "[a]ny person aggrieved by a decision of the board of appeals or any special permit granting authority" may appeal to a court of competent jurisdiction. In such appeal "[t]he court shall hear all evidence pertinent to the authority of the board or special permit granting authority and determine the facts, and, upon the facts as so determined, annul such decision if found to exceed the authority of such board or special permit granting authority or make such other decree as justice and equity may require."

70. The ZBA's Decision was arbitrary and capricious and ignored the uncontroverted evidence that the proposed parking was adequate given the proposed use and was reasonable and necessary to provide access to much needed treatment facilities for those in recovery and/or seeking treatment for substance use. The ZBA's findings ignore the uncontroverted evidence establishing that the proposed parking was adequate for the Facility. The Decision exceeds the authority of the ZBA and should be annulled.

WHEREFORE, Medico demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the ZBA's actions were arbitrary, capricious, unreasonable, and in violation of the Zoning Act and the local Zoning By-laws;
- (2) Entry of an Order annulling and/or overturning the ZBA's denial of Medico's variance application with respect to parking;
- (3) Preliminary and permanent injunctive relief permitting Medico's construction and operation of the Facility as planned with respect to reduced parking;
- (4) Compensatory damages;
- (5) Punitive damages;
- (6) Attorneys' fees and costs; and
- (7) Such other and further relief as the Court deems necessary and appropriate.

COUNT 5
VIOLATION OF STATE LAW – G.L. c. 40A, Section 3

71. Paragraphs 1 through 70 above are incorporated by reference, as if fully set forth herein.

72. The ZBA violated the provisions of G.L. c. 40A, s. 3, which states, in pertinent part:

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of Cambridge.

73. The ZBA's imposition of parking requirements for the Facility are more onerous and treat differently those in recovery from substance use from those suffering from other illnesses that may require general hospitalization and therefore the ZBA's zoning laws have the effect of preventing the construction and operation of facilities (such as that proposed) with the same access that would be available to those needing overnight care who are not specifically suffering from substance use issues.

WHEREFORE, Medico demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Board's actions were arbitrary, capricious, unreasonable, and in violation of G.L. c. 40A, s. 3;
- (2) Entry of an Order overturning the Board's denial of Medico's variance application;
- (3) Preliminary and permanent injunctive relief permitting Medico's construction and operation of the Facility as planned with a reduction in parking under the zoning;
- (4) Compensatory damages;

- (5) Punitive damages;
- (6) Attorneys' fees and costs; and
- (7) Such other and further relief as the Court deems necessary and appropriate.

COUNT 6
VIOLATION OF MASSACHUSETTS LAW AGAINST DISCRIMINATION
G.L. c. 151B et seq.

74. Paragraphs 1 through 73 above are incorporated by reference, as if fully set forth herein.

75. G.L. c. 151B, s. 4 makes it unlawful "[f]or any person to directly or indirectly induce, attempt to induce, prevent, or attempt to prevent the sale, purchase, or rental of any dwelling or dwellings by: (a) implicit or explicit representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular age, race, color, religion, sex, gender identity, national or ethnic origin, or economic level or a handicapped person, or a person having a child, or implicit or explicit representations regarding the effects or consequences of any such entry or prospective entry..."

76. All political subdivisions of the Commonwealth are "persons" for the purposes of Chapter 151B. See Section 1.

77. G.L. c. 151B, s. 1 defines the term "handicap" to mean "(a) a physical or mental impairment which substantially limits one or more major life activities of a person; (b) a record of having such impairment; or (c) being regarded as having such impairment, but such term shall not include current, illegal use of a controlled substance as defined in section one of chapter ninety-four C."

78. The ZBA violated Medico's rights and violated Chapter 151B by denying Medico's variance application in contravention of Chapter 40A and the local Zoning By-law, and G.L. c. 40A, s. 3.

79. The ZBA has exercised its powers to regulate land use in a way that discriminates against disabled persons without justification or cause by preventing development of a Facility that is necessary for their treatment and rehabilitation.

80. The ZBA's conduct was arbitrary, capricious, unreasonable, malicious and in bad faith, and shocks the conscience.

81. The ZBA's wrongful actions prohibit Medico from providing access to a residential treatment facility on a property where it should be permitted to operate, an action that is discriminatory on its face against persons with disabilities, a discrete and insular minority that faces restrictions and limitations and has been subjected to a history of purposeful unequal treatment.

82. The ZBA's violation of G.L. c. 40A, Section 3 constitutes discrimination and therefore is a violation of G.L. c. 151B.

83. Because of the ZBA's denial of Medico's variance application and request for reasonable accommodation, Medico has expended significant time and financial resources, has lost the opportunity to timely conduct their business and provide a much-needed service, and is incurring substantial damages.

WHEREFORE, Medico demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the ZBA's actions were arbitrary, capricious, unreasonable, and in violation of Chapter 151B;
- (2) Entry of an Order overturning the Board's improper denial of Medico's variance application and/or request for reasonable accommodation;
- (3) Preliminary and permanent injunctive relief permitting Medico's construction and operation of the Facility as planned with reduced parking;
- (4) Compensatory damages;
- (5) Punitive damages;
- (6) Attorneys' fees and costs; and
- (7) Such other and further relief as the Court deems necessary and appropriate.

Plaintiff demands a trial by jury.

Dated: December 29, 2022.

Plaintiff, by counsel,

/s/Andrew J. Tine

Andrew J. Tine (BBO#633639)
18 Maple Avenue, Suite 267
Barrington, RI 02806
(401) 396-9002 – Tel.
atine@tinelaw.com

EXHIBIT A



A TRUE COPY

ATTEST: *Austin Gump*

Town Clerk

DECISION OF THE

ZONING BOARD OF APPEALS

ANDOVER, MASSACHUSETTS

(Space above reserved for Registry of Deeds)

(Space below reserved for Town Clerk)

Decision Number: Z-22-76

Date Application Filed: July 7, 2022

Applicant: Medico 140 LLC
355 Middlesex Avenue, Suite 7
Wilmington, MA 01876

ANDOVER TOWN CLERK
RCUD 2022 DEC 13 AM 9:3

Premises Affected: Land at 140 Haverhill Street
Located in Zoning District OP
Town Assessor's Map 18, Lot 104A
Essex North Registry of Deeds Book 16214, Page 202-228

Owner of Record: Medico140 LLC
355 Middlesex Avenue, Suite 7
Wilmington, MA 01887

Relief Requested: Variance in the form of reasonable accommodation from the requirements of Article VIII, §10.0 (Medical/Clinic), §4.1.4.3.b, 5.1.5.2.d, and §5.1.4(C.9)

Public Notice: Notice published in the Andover Townsman on July 21 and 28, 2022, and notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws.

Public Hearing(s) held: August 4, 2022, September 1, 2022, November 3, 2022

Decision of the Board: Variance from the requirements of Article VIII, §4.1.4.3.b, and 10.0 WITHDRAWN;
Variance from the requirement of Article VIII, §5.1.5.2.d, GRANTED;
Variance from the requirement of Article VIII, §5.1.4(C.9) Deemed DENIED by a 3-2 vote in favor of granting the variance

Members participating: Oltman, McDonough, Faulk, Novaria, Arabian

Date of Decision: December 13, 2022

140 Haverhill Street
Decision No. Z-22-76

I. FACTS PRESENTED AT THE PUBLIC HEARING

A public hearing was held in Conference Room A, 3rd Floor, Town Offices, 36 Bartlet Street, Andover, MA on Thursday, August 4, 2022 on the petition of Medico 140 LLC for variances in the form of reasonable accommodation from the requirements of Article VIII, §10.0 (Medical/Clinic), §4.1.4.3.b, §5.1.5.2.d, and §5.1.4(C.9) to operate a medical center / clinic with overnight care. Present were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; Kathy Faulk, Lisa Rechisky and Ellen Keller, Members; and Michael Novaria and Ralph Arabian, Associate Members. Due to a personal conflict for member Keller, the Chair designated Associate Member Novaria to sit in their place.

Attorney Mark Bobrowski addressed the Board on behalf of the Applicant. The subject property is located at the intersection of Haverhill Street and High Street, on a portion of the current "Doctors Park I". The building is only partially occupied at this time. The Applicant is proposing to remove the Doctors Park I building and replace it with two new buildings, one an outpatient addiction treatment clinic and one an addiction detoxification facility, requiring overnight care. Zoning By-law relief was granted under Z-21-93 for Section 4.1.4.3.b, requiring a 300-foot setback from existing residential dwellings for non-residential structures in an Office Park District; Section 5.1.5.2.b, requiring a five-foot setback of parking areas from property lines; and Section 10.1 definition of a "medical center or clinic" which specifically does not include overnight care facilities.

Since the granting of the prior relief, the Applicant sought and was granted a Special Permit for a Major Non-Residential Project by the Andover Planning Board. As a result of that Special Permit, the Applicant is required to come back before the Zoning Board for relief from Section 5.1.5.2.d, requiring each parking area to provide "a circulation system within the lot so that all vehicles may exit from and enter into the adjacent street or way by being driven in a forward direction and no vehicle shall be required to enter or leave by backing," and Section 5.1.4 (C.9) to reduce the number of parking spaces provided on the site. The Applicant reapplied for the Variances from Section 4.1.4.3.b and Section 10's definition of medical center / clinic strictly to defend against possible claims that the previous application was not properly noticed. The previously granted Variance from Section 5.1.5.3.2.b for the parking setback is no longer required.

Ken Cram, PE, of Bayside Engineering, presented the results of the Traffic Impact and Access Study prepared for the Planning Board. The traffic study was peer reviewed by the Town's consultant, Environmental Consultants, and both engineers agree that the proposed development will not have a significant impact on the adjacent street system, and that the parking supply proposed will meet the anticipated demand for the buildings without spillover into the adjacent Doctors Park II.

Attorney Thomas Flannagan represented an abutter within Doctors Park II. He stated that any granting of relief from the By-Law must meet the Variance justification requirements pertaining to the soil conditions, shape or topography of the land or structures of the lot. He argued that the reasonable accommodation argument does not apply in this situation and the reduction in the number of parking spaces will have a derogatory impact on the adjacent properties. Many residents from the adjacent neighborhood along Haverhill Street and High Street spoke against the application, stating reasons of safety, increase in crime rate, parking, and traffic concerns.

Attorney Bobrowski indicated that the variance requirements are met as the Applicant would face a financial hardship in attempting to rehabilitate the existing building to be functional, and that the proposed uses will not be derogatory to the neighborhood. Attorney Bobrowski indicated that the variances could also be granted as a "reasonable accommodation" for the addiction treatment center as persons recovering from addiction are

140 Haverhill Street
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protected by Federal and State statute, including the Americans with Disabilities Act, the Fair Housing Amendments Act, and the Rehabilitation Act, and the Zoning Act's anti-discrimination provision in MGL Chapter 40A, Section 3.

The Board requested an opinion from Town Counsel on the "reasonable accommodation" argument and for an update on the appeal of Z-21-93. The Board then voted to continue the application to the September 1, 2022 meeting.

A continued hearing was held in The Hall, 2nd Floor, Memorial Hall Library, 2 North Main Street, Andover MA, on Thursday, September 1, 2022. Present and eligible to hear the application were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; and Kathy Faulk, Members; and Michael Novaria and Ralph Arabian, Associate Members. David Guerette, Associate Member was appointed as an Alternate for the application as he signed a Mullen Rule Agreement for the August meeting.

The Board had received a Memo of Law from Town Counsel, Attorney Tom Urbelis, dated May 17, 2022, indicating that the Board may grant the zoning relief as a "reasonable accommodation" for the addiction treatment center. Attorney Bobrowski reiterated the zoning relief requested. Members of the public and Attorney Thomas Flannagan spoke again against the application. Through the discussion the Board identified several conditions of any approval, including that the buildings would not be a "methadone clinic" open to the general public, no sirens will be used by emergency vehicles dropping off patients, no outdoor activities will be held, no nighttime lights will be used, patients leaving the program against medical advice will be escorted by staff and the Andover Police Department will be called if no other ride can be arranged, and two radar feedback signs will be purchased for the purpose of installation to reduce traffic speeds. Any appropriate conditions from the Planning Board decision will also be incorporated.

Town Counsel was unable to be present at the September 1, 2022 meeting and a meeting with the Land Court Judge was scheduled in September for the appeal of Z-21-93. Therefore, the Board voted to continue the application to the October 6, 2022 meeting. The Applicant requested a continuance to the November 3, 2022 meeting and granted the Board an extension of time.

A continued hearing was held in The Hall, 2nd Floor, Memorial Hall Library, 2 North Main Street, Andover MA, on Thursday, November 3, 2022. Present and eligible to hear the application were: Elizabeth Oltman, Chair; Carol McDonough, Clerk; and Kathy Faulk, Members; and Michael Novaria and Ralph Arabian, Associate Members. David Guerette, Associate Member was appointed as an Alternate.

Attorney Bobrowski indicated that a new court case had been decided by the Court that determined that if two of three noticing requirements are met under MGL Chapter 40A, Section 11, then proper notice of an application is given. Therefore, he anticipated that the appeal of Z-21-93 on the basis of inadequate notice will be dismissed. A motion was made then to withdraw the applicant's request for relief from Sections 4.1.4.3.b and 10.0 as these were previously granted by the Board. This motion was unanimously approved by the Board.

Attorney Tom Urbelis, Town Counsel, advised the Board that per federal law, reasonable accommodations might be made for persons with disabilities. The reasonableness requirement calls for a balancing of the benefits that would accrue to the handicapped individual against the burdens that the accommodations would entail to the Town. Alcohol and drug addiction has been classified as a disability and is protected under these federal statutes. For a reasonable accommodation, state and local grounds for a variance would not apply. He advised that the

140 Haverhill Street
Decision No. Z-22-76

Board should find that there is a specific undue financial or administrative burden to the Town if the Board were to deny the application for a reasonable accommodation and the grounds for a denial must be described. Attorney Urbelis reminded the Board that the Town's peer reviewer approved the reduction in parking request and the Building Inspector, who is the administrator of the By-law, indicated that the application complies with the intent of Section 5.1.5.2.d.

Several neighbors expressed their opposition to the application. One neighbor expressed their support of the application and reiterated its necessity. The Board voted unanimously to close the public hearing. The Board then proceeded to deliberate the matter. In deliberation, the sense of the Board was to approve the requested variance from Section 5.1.5.2.d and deny (by a 3-2 vote in favor) the variance from Section 5.1.4 (C.9). The Board voted unanimously to continue its deliberation to a meeting to be held on December 8, 2022 for the purpose of further deliberation, reviewing and voting on the final decision.

In addition to the written application, the following documents and materials were received by the Board and considered at the public hearing:

- Letter to the Board from Attorney Bobrowski, dated July 7, 2021
- Email to Jacki Byerley, Town Planner, from Greg Lucas, PE, PTOE, RSP, of Environmental Partners, dated May 23, 2022
- Memorandum to Jacki Byerley, Town Planner from Chris Clemente, Inspector of Buildings, dated March 23, 2022
- Board Decision Z-21-93
- Owner Authorization Letter, dated June 4, 2021
- City of Lawrence Abutters List Request Form, dated June 8, 2022
- Board of Assessors Certification of Abutters for Z-22-76, dated July 8, 2022
- Two existing aerial photographs
- Variance Plan, prepared by Ranger Engineering Group, Inc., dated June 29, 2022
- Existing Conditions Plan, prepared by Ranger Engineering Group, Inc., dated June 3, 2021
- Decision of the Andover Planning Board SP21-04
- Memorandum "Traffic Peer Review," prepared by Environmental Partners, dated February 3, 2022
- Traffic Impact and Access Study, prepared by Bayside Engineering, dated January 19, 2022
- Email to Gina Decareau, from Eric Daum, dated May 11, 2022 regarding Design Review Board approvals
- Letter to the Board from Attorney Bobrowski, dated September 28, 2022 requesting continuance and granting extension
- Memorandum "Andover - 140 Haverhill Street Project Concerns," prepared by Ciro Mello, 197 High Street, Andover, MA, dated August 30, 2022
- Letter to the Board from Attorney Bobrowski, dated October 25, 2022
- Letter to the Board from Attorney Bobrowski, dated August 29, 2022
- Email to the Board from Deb Olander, Reservation Road, dated August 4, 2022
- Memorandum "Mass and Cass" undated and anonymous
- Email to the Board from Attorney Bobrowski, dated November 22, 2022
- Voicemail to the Board from Christia Royer, dated November 2, 2022
- Stipulation of Voluntary Dismissal, dated September 26, 2022

140 Haverhill Street
Decision No. Z-22-76

- Memorandum "Application Medico 140 LLC – Reasonable Accommodation," prepared by Attorney Tom Urbelis, Town Counsel, dated May 17, 2022
- Video submitted by Attorney Bobrowski, dated January 7, 2022
- Project Summary submitted by Attorney Bobrowski to the Planning Board, dated April 11, 2022
- Email to the Board from Glen Ota, APD Safety Officer, dated July 27, 2022
- Certification Pursuant to MGL c.39 Section 23D, signed by David Guerette, dated November 3, 2022

The Board deliberated and voted on the following findings and decision at a public meeting held in Conference Room A, 3rd Floor, Town Offices, 36 Bartlet Street, Andover, MA on Thursday, December 8, 2022. Present and eligible to vote on the application were: Elizabeth Oltman, Chair; Carol McDonough, Clerk, Members; and Michael Novaria, David Guerette and Ralph Arabian, Associate Members.

II. FINDINGS AND DECISION OF THE BOARD

With respect to Variances, Section 9.2.2.2 of the Andover Zoning By-law grants the Board of Appeals the power: "To hear and decide appeals or petitions for variances from the terms of this By-law, including variances for uses, with respect to particular land or structures, owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, where a literal enforcement of the provisions of the ordinance or By-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or By-law, all as set forth in G.L. c. 40A, s. 10."

Further, MGL Chapter 40A, Section 3 provides: "Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provision of this paragraph shall apply to every city or town." Further, the Americans with Disabilities Act, the Massachusetts Public Accommodation Law and the Massachusetts Equal Rights Act focus on eliminating discriminatory barriers to services, programs and ensuring accommodations for people with disabilities. Alcohol and drug addiction have been classified as a disability and is protected under these statutes.

The Board finds that the subject proposal is an improvement over the existing poor-condition, non-conforming building. The Board finds that the proposed buildings are less non-confirming than the existing building and will not be derogatory to the adjacent neighborhood or a detriment to the public good. The Board finds that the proposed outpatient clinic, and overnight withdrawal/detoxification facility will not derogate from the intent or purpose of the By-law. The Board agrees that the requested variance relief for the addiction treatment center can be granted as a "reasonable accommodation" for a protected group of persons (see Granada House Inc. v. City of Boston, 1997 WL 106688 Massachusetts Superior Court).

Two Board members requested that the remaining variances be vote upon separately.

140 Haverhill Street
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The Board voted unanimously (5-0) to grant a Variance from the requirements of Article VIII, Section 5.1.5.2.d, subject to the following conditions:

- All applicable conditions from Planning Board Decision SP21-04 be incorporated into this decision by reference.
- No emergency vehicle sirens shall be used to transport patients to the facility.
- No nighttime lights will be active in the parking areas adjacent to residential land uses.
- Outdoor smoking areas will be protected from view by residential land uses.
- Any change in the use of the facility will require a return to the Zoning Board of Appeals.
- A methadone clinic that is open to the general public is specifically denied.
- Any patient leaving the facility against medical advice will be escorted by security until the patient is removed by a vehicle from the premises. Andover Police Department will be contacted if a ride cannot be secured.
- Two radar feedback signs will be procured for use and installation by the Andover Police Department.
- A sign stating, "No Commonwealth Detox or Topsail Parking" (or appropriate facility name) will be placed at the internal entrance to Doctors Park II.

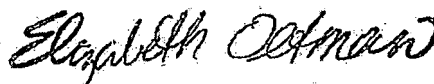
Members voting FOR the decision regarding Article VIII, section 5.1.5.2.d: Oltman, McDonough, Faulk, Arabian, Novaria

Members voting AGAINST the decision: None

The Board voted 3-2 in favor of granting a Variance from the requirements of Article VIII, Section 5.1.4 (C.9). However, since four votes are needed to grant the variance, the request is deemed to be denied. The reasons for the 2 votes of denial included disbelief in the data presented by the Applicant regarding the number of parking spaces required to support the facility, which they believe could cause a public hazard on the adjacent street system and property owners due to overflowed parked vehicles. Subsequent police calls to address any off-site parking would be a detrimental administrative and financial burden to the Town.

Members voting FOR granting the variance : Oltman, Guerette, Novaria

Members voting AGAINST granting the variance: McDonough, Arabian.


Elizabeth M. Oltman, Chair

EMO/bb

140 Haverhill Street
Decision No. Z-22-76

CERTIFICATION

I, Austin Simko, Town Clerk of the Town of Andover, Massachusetts do hereby certify that twenty days have elapsed since the above referenced decision of the Board of Appeals, which was filed in the office of the Town Clerk on _____, 2022, and that no appeal has been filed with the Town Clerk.

Austin Simko,
Town Clerk
Andover, Massachusetts

Technical Amendment

To: Austin Simko, Town Clerk
From: Barbara Burke, Zoning Administrative Secretary
Date: 12/14/2022
Re: ZBA Decision No. Z-22-76

ANDOVER TOWN CLERK
RCUD 2022 DEC 14 AM 10:00

The following Scrivener's errors occurred in the above referenced decision:

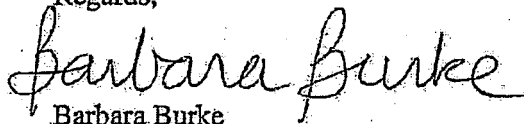
Page One – to 'Members participating:' add the name 'Guerette' after 'Arabian'

Page Six – in 'Members voting FOR the decision regarding Article VIII, section 5.1.5.2.d, replace the word 'Faulk' with the word 'Guerette'.

I am submitting this quest in order for the record to cure these scrivener's errors and so that the record accurately references the members participating and the members voting.

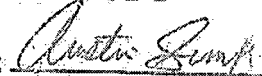
Please attach this technical amendment to the Decision Z-22-76 filed in your office on December 13, 2022.

Regards,


Barbara Burke

ZBA Administrative Secretary

A TRUE COPY

ATTEST: 

Town Clerk

EXHIBIT B

BLATMAN, BOBROWSKI & HAVERTY, LLC
ATTORNEYS AT LAW

9 DAMONMILL SQUARE, SUITE 4A4
CONCORD, MA 01742
PHONE 978.371.3930
FAX 978.371.3928

MARK BOBROWSKI
Mark@bbhlaw.net

June 7, 2021

Zoning Board of Appeals
Municipal Building
36 Bartlett Street
Andover, MA 01810

RE: Medico 140 LLC Proposed Medical Center or Clinic, 140 Haverhill Street, Andover
Petition for Variances

Dear Members:

Medico 140 LLC ("Medico") respectfully requests the Board of Appeals to grant three (3) variances in order to allow the construction and operation of a medical center or clinic at the above-referenced location in the Office Park (OP) District. Specifically, Medico seeks variances from the following provisions of the Andover Zoning Bylaw:

- Section 4.1.4.3.b, requiring a 300' setback from existing buildings;
- Section 5.1.5.2.b, requiring a five foot setback of parking areas from property lines; and
- Section 10's definition of "medical center or clinic" which bars "overnight care facilities."

Such relief may be granted under G.L. c. 40A, s. 10 because the existing structure on the property is nonconforming, useless, and of limited value, substantial hardship would result if the petition is not granted, and there will be no substantial detriment to the neighborhood. A Brief providing additional details will be submitted one week before the opening of the public hearing.

If the variances are not granted, Medico expects to respectfully request the ZBA to open a new public hearing for the purpose of granting a reasonable accommodation with regard to the three by-law provisions set forth above. The occupants of the proposed facility 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.

Medico's proposed facility involves construction of two new buildings on the site, in approximately the same location as an earlier razed building, which will be used to provide rehabilitation and education services to the local community. The site is in the OP District. Please refer to the architectural floor plans and elevations, and the civil engineering plan set, included herewith, for specific design details and other information.

Relief from the zoning provisions 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). The burden of proof if a request for a reasonable accommodation is denied is squarely on the municipality. 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 derogating from the purposes of Andover's Zoning Bylaw. The buildings have been designed to "fit" into this area of the OP District. The new buildings will actually be located more distant from the existing buildings on Haverhill and High Streets. They will have a smaller total footprint. Their modern appearance will aesthetically enhance the OP District when compared to the existing building. Traffic will decrease when compared to that generated by the old medical office building.

In short, please consider Medico's variance requests first. If the Board denies these requests, Medico will then request a subsequent public hearing to seek a reasonable accommodation from the Board. 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)

BLATMAN, BOBROWSKI & HAVERTY, LLC

ATTORNEYS AT LAW

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MARK BOBROWSKI
Mark@bbhlaw.net

RECEIVED

AUG 29 2022

August 29, 2022

Zoning Board of Appeals
Town Hall
Andover, MA 01810

**ZONING BOARD
OF APPEALS**

RE: Response to Attorney Flannagan's Memorandum dated April 15, 2022

Dear Members of the Board:

I would like to take this opportunity to respond to Atty. Flannagan's Memorandum to the Planning Board dated April 15, 2022. Attorney Flannagan wrote in opposition to the application of Medico 140 LLC for a special permit to operate a detox facility¹ at 140 Haverhill Street in the OP District. Medico 140, LLC is now before the Zoning Board of Appeals (ZBA) with a petition for four variances, all associated with the proposed detox facility.

As I understand Attorney Flannagan's Memorandum, he makes two arguments against the proposed detox facility component of the project: (1) the facility will not be a "dwelling" as required by the Fair Housing Amendments Act (FHAA); and (2) the grant of a reasonable accommodation "would constitute an impermissible preference for those with a disability, not a mandated equal opportunity." I will address each argument in turn.

1. The proposed detox facility is a "dwelling" as that term is used in the FHAA.

In his Memorandum, Attorney Flannagan cites *901 Ernston Road, LLC v. Borough of Sayreville Zoning Bd. of Adjustment*, 2018 WL 2176175 (D.N.J. 2018) ("*Sayreville*"), but he must have missed the pertinent ruling contained therein at page 5: "FHA and FHAA violations must involve dwellings, and the Third Circuit has found that rehabilitation facilities qualify as

¹ There is another component to the proposed project, called "Topsail." Topsail is a day clinic, which is an allowed use in the OP District. For the purposes of this Response, I have assumed that Atty. Flannagan takes issue only with the proposed detox facility.

dwellings for the duration of a patient's time in treatment. *Lakeside Resort. Enters., LP v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154, 156 n.5 (3d Cir. 2006).² See also, *Step by Step, Inc. v. City of Ogdensburg*, 176 F.Supp.3d 112, 125-26 (2016), set forth in footnote 1.²

2. The ZBA may grant a reasonable accommodation to authorize operation of a detox facility in the OP District.

Attorney Flannagan suggests in his Memorandum, at pages 2-3, that the FHAA is only available as a remedy to those disabled persons "seeking to live in a residentially zoned area."

This is not the case. *Sayreville*, again, is squarely on point:

Here, it is undisputed, and was discussed many times during the course of the hearings, that because "right now the use is not permitted anywhere in the Borough" (Nov. 8th Tr. 133:1-10), a variance must be granted to accommodate an RCA facility in Sayreville, amounting to a reasonable accommodation for this class of handicapped individuals (see, e.g., *id.* 135:22-136:5; Jan. 24th Tr. 17:5-18, 132:4-16). See *Cnty. Servs., Inc.*, 439 F. Supp. 2d at 399 (concluding that where a convalescent home was not permitted as of right anywhere, "a special exception or variance is necessary to achieve an equal opportunity" for housing for handicapped individuals).

At 2018 WL 2176175, p. 8.

In Andover, like Sayreville, a detox facility is not an allowed use in any district. Moreover, RCA's proposed Sayreville location was not residentially zoned; it was zoned PRIME³, which is a commercial district like Andover's OP District. See Exhibit A. Attorney Flannagan makes the

² "Pursuant to the FHA, a dwelling is "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families". 42 U.S.C. § 3602(b).

"Courts have found that, for purposes of the FHA, a dwelling includes a "temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit," *Jenkins v. N.Y.C. Dep't of Homeless Servs.*, 643 F.Supp.2d 507, (S.D.N.Y.2009) (quoting *United States v. Hughes Memorial Home*, 396 F.Supp. 544, 548-9 (W.D.Va.1975))."

"Both homeless shelters and treatment facilities have been found to constitute dwellings under the FHA. See *Lakeside Resort Enters., LP v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154, 159 (3d Cir.2006); see also *Cnty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1044 n. 2 (9th Cir.2007); *Jenkins*, 643 F.Supp.2d at 518; *Woods v. Foster*, 884 F.Supp. 1169, 1172 (N.D.Ill.1995)."

"As amended, the FHA applies to zoning ordinances and to the zoning of group homes. See *Larkin*, 89 F.3d at 289; *Casa Marie, Inc. v. Superior Court of Puerto Rico*, 988 F.2d 252, 257 n. 6 (1st Cir. 1993)."

³ At 2018 WL 2176175, p. 1.

point, on page 2, that the PRIME District allowed a “nursing home, assisted living facility, [or] continuing care retirement community” as of right. But, this is a distinction without a difference, because Andover’s OP District allows a “hospital” by special permit. All of these types of facilities are residential and protected by the FHAA and the ADA.

3. Conclusion.

The FHA’s reasonable accommodation requirement is applicable to “zoning ordinances and other land use regulations and practices.” See *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 (E.D.N.Y. 1993), and cases cited therein. The burden to prove that an accommodation is reasonable is on the applicant. *Sayreville*, at p. 8. 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.” *Oxford House*, at 1186.

Once the applicant makes the case that a reasonable accommodation is necessary to “afford handicapped persons an equal opportunity to use and enjoy housing, ... the burden shifts to the defendant to show that the requested accommodation is unreasonable.” *Sayreville*, at p. 8. As applied to zoning cases, municipalities must “change, waive or make exceptions in their zoning rules.” *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096, 1104 (3d Cir. 1996). Municipalities must make such changes even if they would “result in the imposition of some costs on the accommodator.” *Assisted Living Assocs. of Moorestown, LLC*, 996 F. Supp. 409, 436 (1998)

Here is what the *Sayreville* decision had to say about municipality’s failure to grant the request for a reasonable accommodation:

[T]he record below does not indicate that the request for a variance was unreasonable. Testimony made clear that there would be no changes or modifications to the footprint of the building that might impinge on zoning. (Nov. 8th Tr. 100:18–19.) There would only be “minor parking lot geometry changes” (*id.* 101:20–21; *id.* 101:3–9 (describing minor site plan modifications)), and overall “from a planning and land use impact point of view ... there would be no substantial detriment to [the Board’s] zone plan” (Dec. 13th Tr. 90:20–25). There was also no discussion of additional administrative work for Defendants or services they would need to provide. Rather, the key rationale for denial articulated by Defendant Board members emphasized safety concerns and touched on issues of understaffing, industry self-regulation, and decreased home values. These do not represent undue burdens placed on either Defendant Board or Borough to accommodate a variance

for RCA.

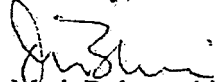
And in *Granada House, Inc. v. City of Boston*, C.A. No.: 96-6624 (Suffolk Super. Ct. 1997), still the lead case in Massachusetts on point, the municipality was similarly chastised by the Superior Court:

The City has advanced no legitimate reason, individualized to recovering alcoholics or drug addicts, that would warrant or justify such discrimination. At best, it has offered speculative grounds, such as traffic, parking, and noise problems, or concerns that the residents of Granada House might be prone to criminal behavior, as a basis for its disparate treatment of Granada House. However, municipalities may not justify discriminatory zoning practices on the basis of "unfounded speculations" or "blatant stereotypes." See, e.g., *Bangerter v. Orem City Corp.*, 46 F.3d at 1503 (10th Cir. 1995); *Epicenter of Stubenville v. City of Stubenville*, 924 F. Supp. at 851 (S.D. Ohio 1996).

In the instant matter, the project has been designed to minimize visual intrusion, light trespass, and noise. A security plan has been provided. Trip generation will be approximately one quarter of the trips generated when Doctor's Park One was fully operational. Medico 140, LLC has provided parking that is more than adequate to meet maximum expected demand, as verified by the Planning Board's expert consultant after peer review. In short, the requested accommodations are reasonable.

Thank you for your consideration.

Sincerely,


Mark Bobrowski

cc: B. Burke (by email)
Atty. Flannagan (by email)
P. Kneeland (by email)

BLATMAN, BOBROWSKI & HAVERTY, LLC

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OCT 26 2022
ZONING BOARD
OF APPEALS

MARK BOBROWSKI
Mark@bbhlaw.net

October 25, 2022

RECEIVED

OCT 26 2022

**ZONING BOARD
OF APPEALS**

Z-22-76

Zoning Board of Appeals
32 Bartlett Street
Town Hall
Andover, MA 01810

RE: Medico 140, LLC's Petition for Variances
140 Haverhill Street, Andover

Dear Members:

As you know, I represent Medico 140 LLC (the "LLC") in the matter. I hereby seek permission from the ZBA to withdraw from the pending petition, without prejudice, the following specific variance/reasonable accommodation requests:

- Section 4.1.4.3.b, requiring a 300' setback from existing buildings; and
- Section 10's definition of "medical center or clinic" which bars "overnight care facilities."

This would leave intact the LLC's request for a two new variances/reasonable accommodations:

- Parking Table 3 requires more than 200 parking spaces for an medical office or clinic in the Office Park District. The LLC requests a reduction by variance and reasonable accommodation to 154 spaces after peer review by the Planning Board; and
- 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.

Discussion

In ZBA Decision #Z-21-92, the LLC has already been granted variances/reasonable accommodations with regard to Section 4.1.4.3.b and Section 10's definition.

However, in the appeal of this ZBA Decision #Z-21-92, dated September 3, 2021, plaintiff alleged a procedural defect in connection with the mailing of notice of the public hearing. The appeal is entitled *South Bay Properties LLC II v. Andover Zoning Bd. of Appeals, et al*, 21 MISC 000472 (KTS)(the "2021 Appeal"). In order to avoid a lengthy and costly delay

in the litigation to focus on this allegation, the LLC considered it prudent to ask for these variances again so as to eliminate the procedural claim in the 2021 Appeal.

This is no longer an issue of concern for the LLC, or, for that matter, the ZBA. In *Markham v. Pittsfield Cellular Telephone Co.*, 101 Mass. App. Ct. 82, 87 (2022), the Appeals Court ruled that "where the Legislature established a ninety-day limitation period for interested persons to raise issues as to defects in notice, and there was not a complete absence of notice, the plaintiffs' complaint was untimely, and the judge correctly dismissed the action." There is no disagreement that posted notice and publication of notice were provided for the public hearing.¹ *Markham* was decided on May 22, 2022. This link connects any interested reader.
<http://masscases.com/cases/app/101/101massappct82.html>

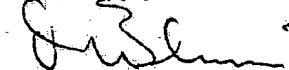
G.L. c. 40A, s. 16, para. 2 states:

Any petition for a variance or application for a special permit which has been transmitted to the permit granting authority or special permit granting authority may be withdrawn, without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter be withdrawn without prejudice only with the approval of the special permit granting authority or permit granting authority.

Technically, I am not asking to withdraw the entirety of the LLC's pending petition. I am only seeking to amend the petition by eliminating two variance requests, keeping two others. After consulting with Attorney Urbelis, I agreed to seek your consent to withdraw the above-referenced requests, without prejudice, in the absence of guidance from any case law, while reserving all rights.

Thank you for your consideration.

Very truly yours,



Mark Bobrowski

cc: B. Burke (by email)
Atty. Urbelis (by email)

¹ The LLC was prepared to argue, with the ZBA, that mailed notice was also provided as required by statute.

EXHIBIT C

PROJECT SUMMARY
April 11, 2022
Commonwealth Detox and Topsail
140 Haverhill Street, Andover

RECEIVED

AUG 12 2022

**ZONING BOARD
OF APPEALS**

PART I: Description the Site and Proposed Buildings

1. Zoning District

OP Office Park.

2. Lot Area and Frontage

The existing property is 7.06 Acres with 534 feet of frontage on Haverhill Street and High Street.

The proposed development splits the existing property into two lots. Lot 1 will be 2.3 Acres with a total frontage of 354 feet, 180' of which will be on Haverhill Street. Lot 2 will be 4.76 Acres with 180' of frontage on High Street.

3. Proposed Buildings

Lot 1 will have a 3 story 39,000 square foot building (future home of Commonwealth Detox).
Lot 2 will have a 2 story 9,180 square foot building (future home of Topsail).

4. Building Layout and Design

Commonwealth Detox will have 34 bedrooms with 64 beds. The first floor will have small offices, a cafeteria and a large group room. The second floor will have a lobby, an exam room, a nurses' station, two (2) client bathrooms with showers, several visitor and staff bathrooms, a community room, and several sitting areas. The third floor will have several small offices, two (2) medium size group rooms, a nurses' station, an exercise room, an open lounge area, and a similar bathroom layout to the second floor.

Topsail will have an entrance lobby, several small offices, and group meeting rooms on the first floor. The second floor will have clinical staff offices, a conference room and a staff break room. The basement level will have a lunchroom with a small kitchen area, mechanical room, and access to a terrace at the back of the building. Topsail will have bathrooms on each floor.

5. Water and Wastewater

Water will be supplied by the existing 6" water line which extends onto the site from Haverhill Street.

Wastewater will flow to the existing sewer service extension from Haverhill Street.

Easements for both services will be created to allow connection of the building on Lot 2 over Lot 1.

6. Fire Department Access

Fire department access will be over the existing driveway entrances which will remain in the redevelopment proposal.

A fire hydrant is located at the Haverhill Street entrance.

The building on Lot 1 will be serviced by a fire sprinkler system.

7. Stormwater Management

The existing site is serviced by a stormwater management system consisting of catch basins which flow to a detention pond area at the center of the site. The existing system will be modified to accommodate the new site layout; however, the modifications will be minimal due to the fact that most of the existing pavement will remain.

8. Parking

The site currently has 160 spaces. That number will be reduced to 153 total spaces to serve both facilities.

Topsail's day services are designed to be parked as required for a clinic in the Office Park District: one parking space for each 200 square feet of net floor area and four parking spaces for each doctor. That total is 52 space, but 75 spaces will be provided.

As a clinic, Commonwealth Detox would require 215 spaces. However, a lesser number of spaces will be required because the facility will not perform like a clinic. There will be far fewer trips to Commonwealth given the facility's business plan. Accordingly, 78 spaces are being provided for Commonwealth.

The Planning Board and/or the ZBA will be requested to grant a variance and/or a reasonable accommodation to allow a total of 153 parking spaces for both facilities. Six (6) handicap spaces will be included in the total count of 153 spaces, two at Topsail and four at Commonwealth Detox.

9. Deliveries

Deliveries to the rehabilitation hospital will be in an enclosed courtyard area behind the building on the lower level.

10. Garbage Removal

A double garbage dumpster area will be located within the delivery area at the lower level of the rehabilitation hospital on Lot 1.

A single small dumpster will be located on the west side of the building on Lot 2. This dumpster will be capable of being rolled out of the enclosure for pickup by a dumpster truck.

Part II: Programmatic Aspects of the Facilities

Commonwealth Detox:

1. Type of Facility under State Regulations; Licensing Requirements

The Applicant proposes to operate an Acute Treatment Services (ATS) facility. This is the medical withdrawal/detoxification component. The applicant also proposes to operate Clinical Stabilization Services (CSS), a clinical detox component. Both ATS and CSS are regulated by 105 CMR 164.000, Licensure of Substance Abuse Treatment Programs. These are all inpatient services.

2. Program Objectives

The objective of the Commonwealth program is to safely and effectively, through medical and clinical means, stabilize and detoxify someone from alcohol or substance dependence and to make necessary and appropriate aftercare recommendations that are clinically and medically informed with attention to the needs and presentation of each individual client.

The facility proposes to implement evidence-based medically assisted treatment, cognitive behavioral therapy, dialectic behavioral therapy, motivational interviewing and several other evidence-based treatment methodologies. Furthermore, the facility intends to develop programs that provide staff access to and professional training in emerging evidence-based treatments such as culturally informed evidence-based practices, by partnering with local teaching hospitals and universities.

3. Personnel — Overview and Qualifications for Commonwealth

- * Medical Director - Licensed MD in Massachusetts with significant experience treating persons with addiction. Mandated.
- * Program Director - Approved by Massachusetts Department of Public Health (DPH) as a Program Director. Mandated.
- * Nurse Manager - MSN with significant experience leading medical team addressing addiction treatment. Mandated.
- * Nurse - Supervisor of each medical shift shall be led by a BSN. Mandated.
- * Staff Nurse - RN or LPN approved to dispense medications used in residential treatment. Mandated.
- * Clinical Supervisor - Master Level licensed independent clinician with a minimum of 2 years of experience supervising clinicians treating persons with addiction. Mandated.
- * Counselors - Masters level and/or licensed substance abuse/mental health counselors meeting all Massachusetts requirements. Mandated.
- * Case Managers - B.A. or B.S. level education and experience with treatment planning for persons with addiction. Mandated.

- * Behavioral Health Technicians — High school graduate with experience recovery coaching for persons with addiction. Mandated.
- * Security Guard - High school graduate with training in de-escalation tactics, CPR and how to handle aggressive verbal or physical confrontation of any member of the public who tries to enter the facility or harass the clients. Not mandated.
- * Food Service Director - Required to meet all Massachusetts and Andover regulations and have experience/expertise in dietary factors that enhance the recovery from addictions process. Not mandated.
- * Food Service Staff. Not mandated.
- * Receptionist and Admissions Staff. Not mandated.

4. Procedures upon Intake; Privacy Rights

After reviewing federal and state laws, the Applicant has determined that it cannot ask clients to waive privacy rights. Commonwealth Detox will strictly adhere to such laws, including HIPPA regulations, which require extensive and significant care to protect client confidentiality and privacy.

All admissions to the program will be made by appointment. The facility will not accept walk-ins. However, if someone was to arrive without a scheduled admission, the staff of Commonwealth Detox will facilitate safe transportation to an appropriate program and/or location.

Whenever a person with addiction and/or a referral entity contacts Commonwealth Detox for admission a telephone screening shall be conducted. Only after the person is deemed to meet admission criteria of the program shall an admission/evaluation time be given. During that telephone screening before the appointment is made, safe appropriate transportation to the facility shall be determined. Commonwealth Detox will be available to provide that transportation, if needed. Never will it be an acceptable plan that the prospective patient drives himself, walks to the facility, or uses public transportation.

The vast majority of clients will arrive via family transportation or transportation provided by the facility in one of the facility's passenger vehicles (a Ford Explorer or similar type vehicle). All clients must be ambulatory and medically stable. Commonwealth Detox is not an Emergency Room and no client will be arriving for emergency care.

At the time of admission, all clients will undergo an extensive medical and clinical assessment by the medical and clinical staff, including substance use history, treatment history, a biopsychosocial assessment, as well as an assessment of each client's knowledge and awareness of available treatment modalities. Findings from the assessment will be reviewed by both the medical and clinical team and an individualized treatment plan will be created and presented to each client. Clients will be given all pertinent information on available treatment modalities and how they may be effectively incorporated.

5. Procedures upon Voluntary Departure (Client Leaves Mid-Program); Police Notification

All clients will be at the facility voluntarily. Clients who choose to be admitted do so of their own free will and volition. If a client decides not to complete the program or recommended medical or clinical treatment plan, they may do so after receiving medical and clinical advice from the staff.

Several AMA (against medical advice) and ACA (against clinical advice) blocking techniques will be employed, including staff and family interventions to convince the client to complete treatment recommendations. However, if a client decides to leave prior to the completion of treatment transportation will be provided by the operator. If for some reason a client refused the free and readily available transportation provided to them and decided to simply "walk off" of the facility, an immediate notification would be provided to local authorities if the client were deemed a safety risk.

During the admission process, the patient will sign an agreement stating that when discharge from the program occurs, the patient agrees to have the facility provide arrange transportation departing the facility. This will be the policy regardless of the reason for discharge. The facility will transport door to door if the patient is entering a new treatment program. If the patient requires non-emergency medical transportation to a medical facility, Commonwealth Detox shall utilize a private ambulance service.

Although the staff will employ counseling support to encourage the patient to stay in treatment, ultimately if any patient decides to leave the program it cannot be prevented. Federal confidentiality regulations prevent the operator from identifying the person as a patient. However, any information such as current medication, mental status, risk factors, personal description, and the direction the patient was heading can and will be provided to safety officials if and when necessary.

The patients will sign a statement of understanding of this procedure during their admission process.

While consideration was given to having patients sign a release that would allow the operator to call the Police Department if the patient leaves the program without transportation, it was ultimately determined that this practice would be considered a barrier to treatment. Furthermore, federal confidentiality regulations allow patients to revoke any release they may have signed.

The program is allowed to release pertinent information to qualified medical/safety personnel when a safety and/or medical emergency occurs. Should a patient decide to leave the program and refuse transportation *and a safety risk is determined*, the patient will be informed that the

program will need to call emergency public services. Often, this reality will motivate a patient to accept the program's transportation services.

6. Procedures upon Completion of Program

Discharge planning begins at admission. As stated above, after full medical and clinical assessments of each client, individualized treatment plans will be made and given to each client including recommended aftercare plans. Discharge planning for individuals will include

- * Recommendations for follow up medical and clinical care with an approved provider;
- * Referrals to licensed facilities for those seeking lower levels of care such as Intensive Day or Night Treatment; and
- * Outcomes tracking and analysis to improve quality and proper application of treatment recommendations.

Practically speaking, when a client completes treatment, depending on their discharge plan, they will either be transported home or to a lower level of care via the facility.

7. Round the Clock Security

Security will include 24 hour monitored video surveillance of all outside spaces and entrances and exits as well as common spaces inside the facility.

The licensing authority does not require security guards. However, there will be designated, professionally trained security personnel on staff 24 hours a day. One (1) security guard will be on-site during the 7AM to 3 PM shift, during the 3PM to 11PM shift, and during the 11PM to 7AM shift. The security personnel will have specific training on de-escalation tactics, CPR, and how to handle aggressive verbal or physical confrontation of any member of the public who tries to enter the facility or harass the clients.

8. Dining Facilities

Dining will be in-house. All meals will be prepared and served from the facility's kitchen in the facility cafeteria.

9. Laundry and Other Amenities

Clients will have access to their own client laundry services in the facility. Housekeeping will provide laundry services linens and other items.

10. Private Ambulance Services Contract

The operator will enter into a contract for services with a local private ambulance provider. A vendor has not been selected at this time. The contracted services will attempt to limit use of Andover municipal ambulance services.

11. Preference for Andover Residents

Space permitting and subject to state and federal laws and regulations, Andover residents will be put at the very top of the list for admission.

12. Scholarships

Scholarships will be available to qualified applicants.

Topsail:

1. New Facility

Topsail's current outpatient services are now offered in the existing Doctor's Park One Building. A new freestanding 9,180 - - square foot building will be constructed on Lot 2 for Topsail's outpatient services. The licensing requirements can be found in 105 CMR 164.000. The requirements are 80 pages long and can be found in PDF format here:

<https://www.mass.gov/files/documents/2017/09/11/105cmr164>

2. Current and Future Operations

The existing Topsail operation has a track record of 1.5 years at this location.

The existing outpatient facility operates on a daily basis with approximately sixteen (16) employees. Total employment includes a medical director, a clinical director, a program director, five (5) licensed clinicians and approximately seven (7) to eight (8) support staff. The largest shift has ten (10) employees.

Services are provided during the day from 8:45 AM to 3:45 PM. The employees generally drive to the facility. Some patients are typically driven in a passenger van (with 15 seats) or a Ford Explorer, while others drive themselves. Currently, the day program has 29 patients. On any given day, approximately 15 of the 29 patients drive themselves to the facility, while the remainder use transportation provided by the facility.

Topsail offers an evening program three (3) nights a week (Monday, Wednesday and Thursday) from 6:00 to 9:00 PM. Two (2) staff members run the program. At this time,

the evening program has an enrollment of ten (10) patients. The van or Explorer serves evening outpatients when they reside in a sober house or like facility; otherwise, they arrive independently by car.

2



CIVIL ACTION COVER SHEET

DOCKET NUMBER

2271CV01282

Trial Court of Massachusetts
The Superior Court

COUNTY Essex Superior Court (Lawrence)

Plaintiff Medico 140 LLC

Defendant: Town of Andover and Andover Zoning Board of Appeals

ADDRESS:

ADDRESS:

Plaintiff Attorney: Andrew J. Tine

Defendant Attorney:

ADDRESS:

ADDRESS:

18 Maple Avenue, Barrington, RI 02806

617-755-5770

BBO: 6336349

BBO:

TYPE OF ACTION AND TRACK DESIGNATION (see instructions section below)

CODE NO.

TYPE OF ACTION (specify)

TRACK

HAS A JURY CLAIM BEEN MADE?

CO2

Zoning appeal - 40A

F

☒ YES

☐ NO

*If "Other" please describe:

Is there a claim under G.L. c. 93A?

☐ YES

☒ NO

Is there a class action under Mass. R. Civ. P. 23?

☐ YES

☒ NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

A. Documented medical expenses to date

1. Total hospital expenses

2. Total doctor expenses

3. Total chiropractic expenses

4. Total physical therapy expenses

5. Total other expenses (describe below)

Subtotal (1-5): \$0.00

B. Documented lost wages and compensation to date

C. Documented property damages to date

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe below)

TOTAL (A-F): \$0.00

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

CONTRACT CLAIMS

☐ This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).

Item #	Detailed Description of Each Claim	Amount
1.	Zoning Appeal - 40A	
Total		

Signature of Attorney/Unrepresented Plaintiff: X

Date: 12-29-22

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney/Unrepresented Plaintiff: X

Date: 12-29-22

CIVIL ACTION COVER SHEET INSTRUCTIONS

SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

AC Actions Involving the State/Municipality *

AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)
AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)
AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)
AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)
AE1 Administrative Action involving Commonwealth, Municipality, MBTA, etc. (A)

CN Contract/Business Cases

A01 Services, Labor, and Materials (F)
A02 Goods Sold and Delivered (F)
A03 Commercial Paper (F)
A04 Employment Contract (F)
A05 Consumer Revolving Credit - M.R.C.P. 8.1 (F)
A06 Insurance Contract (F)
A08 Sale or Lease of Real Estate (F)
A12 Construction Dispute (A)
A14 Interpleader (F)
BA1 Governance, Conduct, Internal Affairs of Entities (A)
BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)
BB1 Shareholder Derivative (A)
BB2 Securities Transactions (A)
BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)
BD1 Intellectual Property (A)
BD2 Proprietary Information or Trade Secrets (A)
BG1 Financial Institutions/Funds (A)
BH1 Violation of Antitrust or Trade Regulation Laws (A)
A99 Other Contract/Business Action - Specify (F)

* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

† Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

ER Equitable Remedies

D01 Specific Performance of a Contract (A)
D02 Reach and Apply (F)
D03 Injunction (F)
D04 Reform/ Cancel Instrument (F)
D05 Equitable Replevin (F)
D06 Contribution or Indemnification (F)
D07 Imposition of a Trust (A)
D08 Minority Shareholder's Suit (A)
D09 Interference in Contractual Relationship (F)
D10 Accounting (A)
D11 Enforcement of Restrictive Covenant (F)
D12 Dissolution of a Partnership (F)
D13 Declaratory Judgment, G.L. c. 231A (A)
D14 Dissolution of a Corporation (F)
D99 Other Equity Action (F)

PA Civil Actions Involving Incarcerated Party †

PA1 Contract Action involving an Incarcerated Party (A)
PB1 Tortious Action involving an Incarcerated Party (A)
PC1 Real Property Action involving an Incarcerated Party (F)
PD1 Equity Action involving an Incarcerated Party (F)
PE1 Administrative Action involving an Incarcerated Party (F)

TR Torts

B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)
B04 Other Negligence - Personal Injury/Property Damage (F)
B05 Products Liability (A)
B06 Malpractice - Medical (A)
B07 Malpractice - Other (A)
B08 Wrongful Death - Non-medical (A)
B15 Defamation (A)
B19 Asbestos (A)
B20 Personal Injury - Slip & Fall (F)
B21 Environmental (F)
B22 Employment Discrimination (F)
BE1 Fraud, Business Torts, etc. (A)
B99 Other Tortious Action (F)

RP Summary Process (Real Property)

S01 Summary Process - Residential (X)
S02 Summary Process - Commercial/ Non-residential (F)

RP Real Property

C01 Land Taking (F)
C02 Zoning Appeal, G.L. c. 40A (F)
C03 Dispute Concerning Title (F)
C04 Foreclosure of a Mortgage (X)
C05 Condominium Lien & Charges (X)
C99 Other Real Property Action (F)

MC Miscellaneous Civil Actions

E18 Foreign Discovery Proceeding (X)
E97 Prisoner Habeas Corpus (X)
E22 Lottery Assignment, G.L. c. 10, § 28 (X)

AB Abuse/Harassment Prevention

E15 Abuse Prevention Petition, G.L. c. 209A (X)
E21 Protection from Harassment, G.L. c. 258E(X)

AA Administrative Civil Actions

E02 Appeal from Administrative Agency, G.L. c. 30A (X)
E03 Certiorari Action, G.L. c. 249, § 4 (X)
E05 Confirmation of Arbitration Awards (X)
E06 Mass Antitrust Act, G.L. c. 93, § 9 (A)
E07 Mass Antitrust Act, G.L. c. 93, § 8 (X)
E08 Appointment of a Receiver (X)
E09 Construction Surety Bond, G.L. c. 149, §§ 29, 29A (A)
E10 Summary Process Appeal (X)
E11 Worker's Compensation (X)
E16 Auto Surcharge Appeal (X)
E17 Civil Rights Act, G.L. c. 12, § 11H (A)
E24 Appeal from District Court Commitment, G.L. c. 123, § 9(b) (X)
E25 Pleural Registry (Asbestos cases) (X)
E94 Forfeiture, G.L. c. 265, § 56 (X)
E95 Forfeiture, G.L. c. 94C, § 47 (F)
E99 Other Administrative Action (X)
Z01 Medical Malpractice - Tribunal only, G.L. c. 231, § 60B (F)
Z02 Appeal Bond Denial (X)

SO Sex Offender Review

E12 SDP Commitment, G.L. c. 123A, § 12 (X)
E14 SDP Petition, G.L. c. 123A, § 9(b) (X)

RC Restricted Civil Actions

E19 Sex Offender Registry, G.L. c. 6, § 178M (X)
E27 Minor Seeking Consent, G.L. c. 112, § 12S(X)

TRANSFER YOUR SELECTION TO THE FACE SHEET

EXAMPLE:

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
B03	Motor Vehicle Negligence-Personal Injury	<u>F</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

DUTY OF THE PLAINTIFF - The plaintiff shall set forth, on the face of the civil action cover sheet (or attach additional sheets as necessary), a statement specifying the facts on which the plaintiff relies to determine money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served with the complaint. **A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or self-represented litigant.**

DUTY OF THE DEFENDANT - If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may file with his/her answer a statement specifying the potential damages which may result if the plaintiff prevails.

**A CIVIL COVER SHEET MUST BE FILED WITH EACH COMPLAINT.
FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
MAY RESULT IN DISMISSAL OF THIS ACTION.**