

Statement on Compass Westchester Application
Councilwoman Susan Siegel
January 20, 2015

I'd like to make a few comments before we vote.

As an elected official, I have a legal obligation to base my decisions on the facts and on the law. Sometimes the facts and law are clear. Sometimes they're not. And sometimes, regardless of what the facts and the law are, there are sharp differences of opinion in the community as well as on the board.

Over the past 13 months, I've listened to residents and lawyers speak for and against the Compass Westchester (CW) application. I've listened with an open mind. I've consulted with town staff and outside lawyers. I've read legal memorandum, articles and court decisions. I understand the passions on both sides. I respect both sides.

At the heart of the issue is our outdated zoning code and the provisions regulating a sober living residence. Provisions that are over 50 years old and should have been changed a year ago, as soon as the CW application was submitted. But no effort was made back then to update the code. And after processing an application for 13 months, at the 11th hour, it's too late to change the rules. Going forward, we can, we must, change the zoning code, but it's too late to change the code retroactively.

By the time I became a member of the Town Board on December 2, the public hearing was closed and it was decision time. I was stuck with applying the existing zoning code's very general and very minimal standards and requirements governing convalescent homes. And I do mean general and minimal.

Initially, I thought the permit could be denied based on what I believed at the time were deficiencies in the application and a failure to meet those standards.

My main concern were unanswered questions about the adequacy of the site's septic system, something the town could have checked out weeks before but didn't. Other issues dealt with screening, buffering and inconsistencies in the plans.

Between December 2 and the beginning of January, I continued to seek more information, Most importantly, I contacted the Department of Health to clarify the unresolved septic issue.

Once my questions were answered and my concerns put to rest, and it was clear that the DOH stood by its earlier decision that the septic system, with some modifications, was adequate for a convalescent home, the septic issue ceased being a valid basis for denial.

As for the other reasons in my draft denial resolution, screening, buffering, and plan inconsistencies, they could be addressed as conditions of issuing a permit—and they have been

That left me with no legal basis to deny the special permit.

I'd like to make two additional points here.

Under our current, outdated zoning code, if the Town Board denies the special permit, CW can open up tomorrow as a family in a single family residence without a special permit and without any of the conditions that would be part of the special permit, such as requiring criminal background checks for both residents and staff, the prohibition on residents having their own cars, required meetings with the neighbors and town officials to air concerns, etc. And, the permit is only good for 3 years and subject to renewal. The family use is unlimited in time.

And here's another difference.

If CW opens as a convalescent home, it will have to replace its existing 1,000 gallon septic tank with a new 2,000 tank and install low flow plumbing fixtures. But, if it opens as a family, with the exact same number of people, the 1,000 gallon tank is okay and the plumbing fixtures don't have to be changed. Those of DOH rules, not the town's.

Given the current zoning code, and pending a decision on Article 78 proceeding challenging the ZBA decision that a sober living residence is a convalescent home, the issue isn't whether CW will open. The issue is whether it will open with a special permit with conditions or as of right with NO conditions.

Let me say a few words about the issue of allowing a commercial for profit business in a residential neighborhood. While this issue came to light as part of the CW application, it's an issue that probably needs a community discussion. The fact is our current zoning code allows commercial for-profit business in residential zones, and has for probably the past 50 or so years dating back to when the code was written. If today's residents don't want any or only some commercial uses in residential neighborhoods, then that's another part of the zoning code that may need changing.

Finally, I'd like to address the issue of lawsuits.

As I said before, elected officials have a legal obligation to base their decisions on the facts and on the law. And before I make a decision, any decision, that could result in a lawsuit, I need to feel confident that the town has a strong case and can win. To act otherwise would be a disservice to the town and taxpayers. It would also be dishonest.

And after weighting all the CW facts and the law, I did not think the town had a defensible case if it denies CW a special permit. And if we're going to have a sober living residence, I'd rather have one with conditions, than without any.

In zoning issues, the town is subject for certain federal laws. Recovering addicts are protected in both the American with Disabilities Act and the Fair Housing Law. The town cannot outright prohibit sober living homes; all we can do is regulate them and that's something we have to do – and soon –before a new SLR wants to open, either by special permit or as a family.