

**RESOLUTION**  
**Borough of Kinnelon**  
**Board of Adjustment**  
**In the Matter of Palisades Properties LLC**  
**Application Number 1571**  
**Decided on September 2, 2025**  
**Memorialized on October 7, 2025**  
**Denial of Use Variance**

**WHEREAS**, Palisades Properties LLC (hereinafter the “Applicant”) has made application to the Kinnelon Borough Board of Adjustment (“Board”) for a use variance for property known as Block 56301, Lot 137 as shown on the Tax Map of the Borough of Kinnelon, located at 21 Wood Chase Lane in the R Zone (hereinafter the “Subject Property”); and,

**WHEREAS**, public hearings were held on July 1, 2025, August 5, 2025 and September 2, 2025, after the Board determined it had jurisdiction; and,

**WHEREAS**, the Applicant was represented by Edward W. Purcell, Esq.

**NOW THEREFORE**, the Board of Adjustment makes the following findings of fact, based on evidence presented at its public hearing, at which a record was made. The following materials were reviewed by the Board and comprise the record before the Board:

1. Cover Letter from the Applicant's Attorney, Edward W. Purcell, Esq., dated November 1, 2024;
2. Board of Adjustment of the Borough of Kinnelon, Application for Development, no date;
3. Hearing Notice, Zoning Board of Adjustment, Borough of Kinnelon, not signed, not dated;
4. Application Addendum, Palisades Properties, LLC, no date;
5. Licensed Class F Rooming House expressly for Cooperative Sober Living Residence, from the NJ Department of Community Affairs, dated May 24, 2022;
6. Tax Assessment Map, Sheet No. 63, prepared by Robert L. Cigol PLS No. 24GS04026100 of DMC Associates, dated January 1, 2014, bearing three (3) revisions, last revised October 18, 2019;

7. Letter from the Borough of Kinnelon Zoning Official, Leonard Perre, dated October 1, 2024;
8. Affidavit of Consent of Owner, signed by the homeowner, Sal J. Gargulo, dated October 8, 2024;
9. Cover Letter from the Applicant's Attorney, Edward W. Purcell, Esq., dated November, 1, 2024;
10. Board Engineer Review Letter dated December 23, 2024;
11. Location Survey for Palisades Properties, LLC, prepared by Peter C. Kirch, PLS No. 23130 of Surveying Technologies, Inc., dated October 25, 2024, revised February 14, 2025;
12. Zoning Table, no date, no name;
13. Owner Disclosure Statement, signed by Edward W. Purcell, Esq., dated February 17, 2025;
14. Checklist Waiver Request, no date, no name;
15. List of Other Governmental Approvals Required, no name, no date;
16. Request for Certified List, dated November 1, 2024, signed by Chris Lauver, Borough Assessor;
17. Board Engineer Review Letter dated April 21, 2025;
18. Board Planner Report #1 dated June 27, 2025;
19. Exhibit A-1 – DCA Licenses;
20. Exhibit A-2 – Property Survey;
21. Exhibit A-3 – Photographs;
22. Exhibit A-4 – Palisades Property Home Rules;
23. Exhibit A-5 - Curriculum Vitae of Dr. Sugerman;
24. Exhibit A-6 - Letter from Dr . Sugarman dated July 25, 2025;
25. Exhibit A-7 - Employee Training Course Description List;
26. Exhibit A-8 - Borough of Kinnelon Fire Safety Certificate issued August 27, 2024;
27. Exhibit A-9 – Electrical Code Permit for 100 AMP Panel;

28. Exhibit A-10 - Evaluation Report of DCA dated July 11, 2025;
29. Exhibit O-1- Palisade Properties LLC Website Screenprint from August 4, 2025 (5 pages);
30. Exhibit O-2 - North Jersey Recovery Centers Website Screenprint from August 4, 2025;
31. Exhibit O-3 - NJRC "Programs" Website Screenprint from August 4, 2025;
32. Exhibit O-4 - NJRC "Our Treatment Facilities" Website Screenprint from August 3, 2025;
33. Exhibit O-5 - NJRC "Insurance" Website Screenprint;
34. Exhibit O-6 - NJRC "Sober Living" Website Screenprint (5 pages);
35. Exhibit O-7 – Psychology Today Website Screenprint (2 pages);
36. Exhibit O-8 – NJRC advertisement from Psychology Today Website Screenprint;
37. Exhibit O-9 - Assembly Bill A-3973 (signed into law August 11, 2025);
38. Exhibit O-10 Assembly Bill A-3974 (signed into law August 11, 2025);
39. Exhibit O-11 CSLRs in New Jersey (7 pages);
40. Exhibit O-12 DB Homes "About the Founder" Website Screenprint; and
41. Exhibit O-13 Septic Application.

The Subject Property is known as Block 56301, Lot 137 on the Borough of Kinnelon Tax Maps and is more commonly known as 21 Wood Chase Lane. The Subject Property is a conforming lot in the Borough's Residential Zone with a lot area of 60,698 square feet with lot frontage of approximately 242 feet where minimums of 60,000 SF and 200 feet are required. The Subject Property is improved upon with a two-story single-family residence, concrete patio, asphalt driveway, stone walkway, several dry laid boulder retaining walls, and a septic system. The Applicant represented that the existing single-family dwelling is leased, and has five (5) bedrooms and 4.5 bathrooms, with a total living space of 4,372 square feet.

The Applicant requests a d(1) use variance for the Subject Property to permit operation of a sober living home licensed by the State of New Jersey as a Cooperative Sober Living Residence (“CSLR”). The Borough Code does not permit such use. Borough Code §207-27 permits the following principal uses in the Residential Zone: i. Single-family dwellings; ii. Borough-owned parks and playgrounds; iii. Public schools; iv. Publicly owned buildings; v. Public libraries; vi. Poultry and livestock farming; vii. Truck gardening or nurseries; viii. Community residences for the developmentally disabled; ix. Community shelters for victims of domestic violence; x. Community residences for the terminally ill and community residences for persons with head injuries; xi. Retail bakeries; xii. Laundrettes; xiii. Offices; xiv. Banks; xv. Restaurants; xvi. Salesrooms or showrooms; xvii. Retail dyeing and cleaning establishments; xviii. Retail stores, theaters, and motion-picture houses; and xix. Billboard pursuant to § 207-17M.

The Application provides that up to ten (10) persons will temporarily reside at the Subject Property while receiving off-site treatment for drug and alcohol dependency (i.e., no treatment takes place on the Subject Property). The Application provides that all residents are driven to an out-patient treatment facility, operated by North Jersey Recovery Center, 22-08 Route 208, Suite 2, Fair Lawn, NJ 07410. The Application provides that at any one time, there will be three (3) employees on site to help manage the facility.

Testifying before the Board on behalf of the Applicant were (i) Jay Jonas, Applicant’s part owner, (ii) Dr. Rachel Sugerman, the Applicant’s mental health expert, and (iii) Paul Grygiel, the Applicant’s Professional Planner.

First, Mr. Jay Jonas testified that the purpose of this facility was to provide a residence for persons receiving clinical treatment off-site at the North Jersey Recovery Center in Fair Lawn, NJ (“NJRC”, of which Mr. Jonas is also a part owner). Residents are not permitted to have their own

cars; transportation to and from NJRC is provided utilizing passenger vans operated by NJRC. The typical resident schedule provides for off-site treatment at NJRC between 9 am and 4 pm. There are two (2) employee shifts at the facility, with three (3) staff present between 4 pm and 12 am; and two (2) staff during the overnight hours of 12 am to 8 am. Mr. Jonas explained that the Subject Property has been utilized in this capacity since issuance of a NJDCA Class F License in 2019. Mr. Jonas was unaware whether the Subject Property had ever accepted any persons not otherwise undergoing treatment at NJRC. Mr. Jonas testified as to the reasons for selecting the Subject Property as that it was of suitable size and number of bedrooms, and was made available for lease (the current lease term runs until 2028). Mr. Jonas confirmed that the Applicant was a commercial, for profit entity, adding that CSLRs may only be operated within single family residences by administrative code.

Next, Dr. Rachel Sugerman testified as the Applicant's mental health expert on addiction. Dr. Sugerman serves as Clinical Director for the North Jersey Recovery Center. Dr. Sugerman provided an overview of the types of off-site treatment that NJRC provides to those temporarily residing at the Subject Property. Lastly, the Applicant presented the planning testimony of Paul Grygiel. Mr. Grygiel's review of the Borough Code confirmed that sober homes of the type operated by the Applicant were not permitted in any of the Borough's zone districts. Mr. Grygiel provided an overview of the Borough's Residential Zone standards, which permit certain group homes as principally permitted use, but sober homes are not included as permitted uses, thereby triggering the need for a d-1 use variance. Mr. Grygiel explained the burdens of proof to support the use variance required here. First the Applicant would need to satisfy special reasons, or what is otherwise known as the positive criteria. There are three (3) recognized means of satisfying special reasons, which are: (i) the use is inherently beneficial to the general welfare; (ii) the property is particularly well suited to accommodate the proposed use; and (iii) economic inutility. It was Mr.

Grygiel's opinion that special reasons were available here under both (i) and (ii). As to whether the use was inherently beneficial, Mr. Grygiel was unable to identify whether any other CSLR or sober home had ever been formally recognized as inherently beneficial in any court decision by a court at the appellate level. As to particular site suitability, Mr. Grygiel pointed to the willingness of the property owner to lease the Subject Property for this use, the size of the driveway to accommodate the commercial passenger vans that transport the residents to and from NJRC's off-site treatment facility, and that the existing residence was large enough to support this use, which he found consistent with the MLUL planning purpose "a" ("promotes the public health, safety, morals and general welfare"). Turning to the first prong of the negative criteria, Mr. Grygiel believed that granting the use variance would not result in a substantial detriment to the public good primarily because the residences would not possess their own motor vehicles. As to the second prong, whether granting the use variance would result in a substantial impairment of the zone plan, Mr. Grygiel explained that the Borough had not updated its zoning since the Subject Property began being used as a sober home nearly six years ago. The entire CSLR concept is a relatively modern construct, and Mr. Grygiel believes that many municipalities, including the Borough, have not yet had the opportunity to update their ordinances to permit these. He pointed to other community residences for disabled persons as already being principally permitted within the Borough's Residential Zone, finding the sober home use to be not too great a departure from those comparable uses. Mr. Grygiel did nevertheless confirm that the sober home use was not consistent with the Master Plan or any of its Reexamination Reports, rendering it contrary to the enhanced quality of proof the Board was obliged to find if approving a commercial use variance such as that sought by the Applicant. That being said, Mr. Grygiel believed the Board was authorized by law to grant use variance relief as a reasonable accommodation under the Federal Fair Housing Act Amendments.

The hearing was opened to the public at which time Mr. Paul Rosenwasser, 39 Chilhowie Drive, questioned the Applicant's Planner regarding the inconsistencies between the proposed use and the Borough's Master Plan and Zoning Ordinance. Mr. Rosenwasser questioned the Applicant's Planner about the bases for his opinions regarding the negative criteria, particularly regarding the detriments associated with placing a commercial use within a residential neighborhood. Mr. Rosenwasser introduced Exhibits O-1 through O-13 challenging the Applicant's claim that the sober home operates independently of the NJRC, when the NJRC's marketing materials include the Subject Property as being an available amenity. Mr. Rosenwasser asked the Board to deny the use variance due to the Applicant's failure to satisfy the required burdens of proof.

Mr. and Mrs. Joseph DeFalco, 15 Ben5 Tree Lane, provided a historical overview of the neighborhood, including limitations provided within the granting deeds, among other issues, the absence of fencing as well as septic utilization. The DeFalcos asked the Board to deny the use variance.

Ms. Nancy Fegan, 21 Chilhowie Drive, commented that the amount of services required to support the Applicant's use was too intense for a residential neighborhood and local roadways ill equipped to handle it. Ms. Fegan asked the Board to deny the use variance.

Dr. Sreepadraj Venkatarao, 122 Wood Chase Lane, challenged how the Subject Property was particularly suitable for such a use when the same criteria would means pretty much every large house in the Borough would be similarly suitable? Dr. Venkatarao also challenged the claim that the sober home residents lived and resided akin to a family unit and was opposed to any use variance relief.

Ms. Dana Torsiello, 22 Wood Chase Lane, commented that the sober home's use across the street from her property created a substantial detriment with respect to increased traffic, lack of sanitation and maintenance, as well as concerns over septic overuse. Ms. Torsiello asked the Board to deny the use variance.

Mr. Jenn Ritacco, 11 Bent Tree Lane, took exception to the Applicant's delay in seeking use variance authorization for the Subject Property, particularly when it sought appropriate approvals for a sober home it operated in Mahwah, New Jersey. Ms. Ritacco also explained how she personally filed several police reports regarding activities that were taking place on her street associated with the sober home. Ms. Ritacco asked the Board to deny the use variance.

Mr. Ed Gilhooley, 15 Wood Chase Lane, took exception to any commercial use of the Subject Property as being contrary to the Highlands Act. Mr. Gilhooley also found it inappropriate that the water line serving the Subject Property appeared to pass through the septic leach field. Mr. Gilhooley asked the Board to deny the use variance.

**NOW THEREFORE**, the Board of Adjustment makes the following conclusions of law, based on the foregoing findings of fact. The Applicant is requesting a use variance to utilize an existing single-family dwelling on the Subject Property as a sober home akin to a Cooperative Sober Living Residence, which is not a permitted principal use in the Borough's Residential Zone.

It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law and is not arbitrary, unreasonable or capricious. The Board has exclusive jurisdiction to grant "d(1)" variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70d(1) "in particular cases and for special reasons." This is the so-called positive criteria of a "d(1)" variance. The courts have held

that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of “special reasons” Medici v. BPR Co., 107 N.J. 1 (1987). For non-inherently beneficial uses, the benefit to the general welfare comes from the development of a site in the community that is particularly suited for the proposed use.

Providing proofs that the proposed application promotes at least one of the purposes of zoning found in MLUL at N.J.S.A. 40:55D-2, also provides one aspect of the positive criteria for a non-inherently beneficial use application. The Applicant does not have to demonstrate that there are no other viable locations for the project. Price v. Himeji, 214 N.J. 263, 292-293 (2013). For this criterion, it is the Applicant’s burden to identify those aspects of the site that render it particularly suitable to the use.

While the MLUL itself does not define special reasons, "subsequent judicial interpretations have `infus[ed] substantive meaning into the "special reasons" standard.'" In particular, the Supreme Court has held that the term "'special reasons' takes its definition and meaning from the general purposes of the zoning laws," that have been specifically identified by the Legislature as providing general purposes of zoning as identified in N.J.S.A. 40:55D-2. It remains the applicant's burden to prove special reasons because the grant of a use variance always represents an exception to the generally applicable zoning scheme. The Appellate Division observed that because of the Legislature's strong policy preference for planning by ordinance, "only exceptional cases warrant use variances."

At present, there are only three recognized categories of circumstances that constitute special reasons for a (d)(1) use variance: (i) an inherently beneficial use; (ii) the property is zoned into economic inutility; and (iii) “the use promotes the general welfare because the proposed site is particularly suitable for the proposed use.” An application for a use variance based on the assertion

that a property is particularly suitable for a project requires an evaluation of whether the use, otherwise not permitted in the zone, when authorized for the particular parcel, will promote the general welfare as defined by the MLUL. The New Jersey Supreme Court has held that particularly suitable means that "...the general welfare is served because the use is peculiarly fitted to the particular location for which the variance is sought..." The Supreme Court has observed that, in the context of the specific parcel, it means that strict adherence to the established zoning requirements would be less beneficial to the general welfare. Our Supreme Court has further commented that an application demonstrates a special reason if there is proof that "the subject property was particularly suitable for the proposed use." Our courts also recognize that almost all lawful uses of property can be said to promote the general welfare to some degree, with the result that if general societal benefit alone constituted "...an adequate special reason, a special reason almost always would exist for a use variance."

Here, the Board declines to find that the Applicant's sober home satisfies special reasons under the inherently beneficial standard. The Board's review of the operation of this sober home is quite distinct from other community residences or group homes, where residents live cohesively together in a family-like environment. The Board can only conclude based on the evidence before it that frequent cycling of short term residents in and out of this sober home renders it far too transient to allow for development of any cohesive residential bonds between and among the residents, which is far different than a traditional community residence or group home. The Board further concludes that the Applicant has not proven the existence of any demonstrable need within the Borough for sober living residences. If anything, the proofs offered by the public confirmed no shortage of available capacity that has heretofore satisfied existing need.

Further, the Applicant confirms that it is a commercial “for profit” use and was unable to identify any prior precedent or appellate-level determination that a comparable facility so qualified. The Board also concludes that the existing sober home is being operated less like a CSLR, as that term is defined by N.J.A.C. 5:27-2.1, and more like an off-site dormitory that has to date, without exception, exclusively served clients of North Jersey Recovery Center. The Board concludes that the named Applicant, Palisades Properties LLC, is indistinguishable from North Jersey Recovery Center, or is in effect an alter ego of that commercial entity. The Supreme Court in Medici explained that because commercial uses generally do not qualify as inherently beneficial, “...any benefit to the general welfare derives not from the use itself but from the development of a site in the community that is particularly appropriate for that very enterprise.” The Board concludes that the Subject Property is not particularly appropriate for such a use, as the Applicant itself admitted that it was chosen only because it was both available and had a owner willing to lease it for such a use.

Where, as here, undue hardship would not be encountered in the Applicant’s attempt to adapt the Subject Property to a conforming use within the Residential Zone, the Applicant’s only remaining argument in support of use variance relief is necessarily based on the particularly suited standard. The Board recognizes that this special reasons requires a site-specific analysis to confirm that particular suitability for the use must be due to special characteristics of the property itself. Moreover, any review under particular site suitability standard further requires a careful review of the whether the proposed use is consistent with the planning purposes to be advanced by the MLUL. Here, the Board concludes that the proofs in the record created before it were inadequate to establish that the Subject Property was “particularly suitable” for the proposed use. Merely having a sufficient number of bedrooms together with an amenable lessor does nothing to distinguish the

Subject Property from any other residential property in this neighborhood specifically or the Borough in general.

Next, the Board concludes that the Applicant has not satisfied the “negative criteria.” The negative criteria require a two-part proof: (1) that the proposed use can be granted without any substantial detriment to the public and (2) the proposed use will not substantially impair the intent and the purpose of the master plan and zoning ordinance. The Board concludes that the Applicant was unable to satisfy the first prong of the negative criteria because its sober home had already demonstrated that it was causing a substantial detriment to the public good. Extensive public comment and participation during the public hearings identified myriad problems attributable to sober home, such as the lack of proper sanitation and maintenance, trespassing, excessive traffic, and the presence of medical office-style laboratory boxes, all collectively highlighting the fact that this residence was being utilized as a commercial facility rather than a residence.

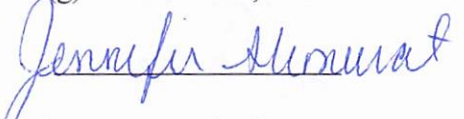
Moreover, for use variances that do not involve inherently beneficial uses, Medici further provides that satisfaction of the second prong of the negative criteria requires applicants to demonstrate through an enhanced quality of proof that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance, which is known as the “enhanced burden of proof” standard. This enhanced burden of proof requires an applicant “reconcile the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district.”

As to the zone plan and zoning ordinance, Medici held that an applicant must prove an “enhanced quality or proof” that there will be no substantial impairment to the zone plan and ordinance. The Applicant must “reconcile” the use proposed with the ordinance’s omission of the use from those permitted in the zone. Medici further explains that the MLUL exhibits a preference

for municipal land use planning by ordinance rather than by variance. Here, after considering the planning testimony provided by the Applicant's professional planner, together with the guidance offered by the Board's own professional planner, as well as undertaking a careful examination of the Borough's Master Plan and Reexamination Reports, the Board concludes that the use variance is inconsistent with the Borough's prior planning. The Board recognizes that the Borough's Planning Board and Governing Body, which have exclusive jurisdiction over planning and zoning within the Borough, have chosen to neither update the Master Plan nor change the ordinance to permit sober homes. After review, the Board infers that the Borough's inaction was deliberate. Accordingly, the Board concludes the Applicant has failed to provide any compelling reason for the Board to exercise its use variance power that would in effect usurp the legislative power reserved to the Borough's Governing Body to amend or revise the zone plan to permit sober homes or CSLRs within the Residential Zone.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment that the application of Palisades Properties LLC for property known as Block 56301, Lot 137 as shown on the Tax Map of the Borough of Kinnelon, located at 21 Wood Chase Lane in the R Zone requesting a use variance is **DENIED**.

The undersigned secretary certifies the within resolution was adopted by this Board on September 2, 2025 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on October 7, 2025. ~



FOR: Mr. Lockwood, Mrs. Canale, Mrs. Herrington, Mr. Wilkes, Mr. Nicosia & Mrs. Maletsky

AGAINST:

ABSTAIN: Mr. Mondello

Board Member(s) Eligible to Vote: All