

RESOLUTION
Borough of Kinnelon
Board of Adjustment
In the Matter of Palisades Properties, LLC
Application Number 1572
Decided on August 4, 2026
Memorialized on September 1, 2026
Statutory Denial of d(1) Use Variance Application

WHEREAS, Palisades Properties, LLC (hereinafter the “Applicant”) has made application to the Kinnelon Borough Board of Adjustment for d(1) use variance approval for property known as Block 45605, Lot 103 as shown on the Tax Map of the Borough of Kinnelon, located at 5 Mulberry Trail in the Residential Zone (hereinafter the “Subject Property”); and,

WHEREAS, public hearings were held on November 11, 2025, April 7, 2026, May 5, 2026 and August 4, 2026, 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 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 and the Board’s earlier interpretation of the Code confirmed that the proposed use does not fall within the Borough’s definition of “family” in order to qualify as a permitted use within the Residential Zone. At present, Borough Code §207-27 permits only 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. Launderettes; 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 seven (7) 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 outpatient treatment facility, operated by North Jersey Recovery Center, 22-08 Route 208, Suite 2, Fair Lawn, NJ 07410. In addition to the seven (7) residents, the Applicant employs a house manager to supervise the facility and its residents.

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 may have their own cars, subject to the availability of parking spaces to accommodate such vehicles. Otherwise, transportation to and from NJRC is provided utilizing passenger vans operated by NJRC. Mr. Jonas testified that the Subject Property has been utilized as a CSLR since issuance of an NJDCA Class F license in 2019.

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). The Board, together with the principal objector, concurred with Mr. Grygiel that the CSLR use proposed for the Subject Property qualified as inherently beneficial, thereby satisfying the special reasons requirement for use variance relief.

Next, and 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 number of on-site parking spaces would be limited, an improvement over existing conditions. 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, which the Board confirmed was not applicable

here since this CSLR was recognized by the Applicant, Board and the principal objector as being inherently beneficial and therefore not subject to the Medici enhanced burden of proof standard. 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 numerous residents of the Fayson Lakes and other Borough residents offered comment, opinion and documentary exhibits in opposition to the Applicant's use variance application. Issues raised included undersized roadways that may prove challenging to navigate by persons unfamiliar with the roadway network, lingering operational issues involving the septic system including foul odors, residential transiency and related safety concerns.

At the final public hearing held August 4, 2026, Mr. Purcell, prior to his summation, offered the following proposed stipulations for the Board's consideration. First, the Applicant offered to correct its "House Rules" to confirm that parking was limited to the four (4) proposed demarcated on-site spaces, subject to availability, and would not rely upon any on-street parking. Second, the Applicant offered to redirect any on-site security cameras to not direct their view towards any neighboring properties. Third, the Applicant stipulated that its CSLR operations would maintain compliance with all Board of Health rules and regulations, confirming that the property's septic system would be operated and maintained to the satisfaction of the Board of Health. Fourth, the Applicant confirmed that all operating conditions required by its CSLR license would be maintained, confirming that off-site laundry was consistent with these rules, because the Applicant was offering that service for its residents, rather than providing that service itself, which could be contrary to those same rules. Fifth, the Applicant stipulated to capping its residents at seven, together with one house manager, rather than the ten (10) residents permitted by its CSLR license. Sixth, the Applicant stipulated that it would provide biennial certifications to the Borough Zoning

Officer confirming its continued compliance with all approval conditions and stipulations. Seventh, the Applicant stipulated that it would promptly eliminate any physical encroachments upon any neighboring property.

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 continue utilizing an existing single-family dwelling on the Subject Property as 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 quasijudicial 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. 40:55D70d(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. Here, a majority of Board members have confirmed that the Applicant's sober home satisfies special reasons under the inherently beneficial standard. The Board also confirmed that the Applicant was not required to satisfy the enhanced quality of proof standard under Medici.

In addition to the positive criteria, use variance relief must also satisfy the negative criteria. Because this application involves an inherently beneficial use, the Board's evaluation of the negative criteria must apply the four (4) part balancing test created by the New Jersey Supreme Court in Sica v. Board of Adjustment, 127 N.J. 152, 165, 166 (1992) (the "Sica Balancing Test").

First, the Board should identify the public interest at stake. Second, the Board should identify the detrimental effect that will ensue from the grant of the variance. Third, the Board should seek to reduce the detrimental effect by imposing reasonable conditions on the use. Fourth, the Board should weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good. As to the fourth step of the Sica Balancing Test, our Supreme Court refined that element recently to require determination “whether the applicant has made a showing that the variance . . . sought will not substantially impair the intent and the purpose of the zoning plan and zoning ordinance,” and should deny the variance “[i]f the applicant has not made such a showing.” Monarch Communities, LLC v. Township of Montville, (A-70-24), decided July 13, 2026 (citation pending).

Here, the Board has applied the Sica Balancing Test to the proposed CSLR. First, a majority of Board members accept that the proposed CSLR constitutes an inherently beneficial use because it provides residential opportunities for persons undergoing treatment for substance dependencies. With respect to the second step of the Sica Balancing Test, a majority of Board members found that, although the CSLR operates within an existing single-family dwelling located in the Residential Zone, the actual operation and intensity of the CSLR result in identifiable detriments to the public good and the Borough's zone plan, including concerns regarding insufficient off-street parking, vehicular traffic and conflicts with adjoining properties, septic-system operation and associated odors, noise, and the intensity of the use in relation to the size and characteristics of the Subject Property and surrounding residential neighborhood. Under the third step of the Sica Balancing Test, the Board considered whether reasonable conditions could sufficiently mitigate the detrimental effects associated with the continued operation of the CSLR. In response to concerns raised by Board members, neighboring residents, and property owners, the Applicant proposed seven (7) stipulations, summarized above.

. However, the relevant inquiry is not merely whether conditions were offered, but whether those conditions sufficiently address the identified detriments, including insufficient off-street parking, vehicular conflicts, septic-system operation and odors, noise, sanitation, encroachments, and the overall intensity of the use. While certain Board members found the proposed stipulations sufficient, other members were not persuaded that these conditions adequately addressed the underlying concern: whether the Subject Property itself is physically capable and suitable to accommodate the intensity of the proposed CSLR use without substantial detriment to the surrounding residential neighborhood.

Finally, under the fourth step of the Sica Balancing Test, the Board must weigh the inherently beneficial nature of the CSLR against the detrimental effects associated with its operation at this particular property, after consideration of the Applicant's proposed mitigating conditions. Although three Board members voted in the affirmative, two of those affirmative votes were accompanied by significant reservations concerning the suitability of 5 Mulberry Trail for the proposed intensity of the CSLR use and whether the identified detriments had been sufficiently mitigated. Those members nevertheless determined that, given the circumstances presented, an affirmative vote was warranted in part to preserve the stipulations and protections offered by the Applicant for the benefit of the surrounding residents.

The Board members voting against approval were not persuaded that the proposed conditions sufficiently mitigated the identified detriments and concluded that the Subject Property was not suitable for the proposed intensity of the CSLR use. Accordingly, although the CSLR was recognized as an inherently beneficial use and three members voted in favor of approval, the Applicant did not obtain the five affirmative votes required for approval of the d(1) use variance.

Next, a majority of the voting Board members concluded that the Applicant's proposed stipulations mitigated some of the detrimental effects identified in the record. However, a

determination that particular detriments may be reduced does not necessarily establish that all identified detriments have been sufficiently mitigated or that the Subject Property is suitable for the proposed intensity of the CSLR use. The negative criteria require a two-part showing: (1) that the proposed use can be granted without substantial detriment to the public good, and (2) that the proposed use will not substantially impair the intent and purpose of the Master Plan and zoning ordinance.

With respect to the first prong, extensive public testimony identified concerns involving inadequate sanitation relating to the on-site septic system, odors, noise, insufficient parking, vehicular traffic, conflicts with adjoining properties, and related property damage. Although the Applicant proposed conditions intended to mitigate these impacts, those conditions do not necessarily establish that the underlying detriments have been eliminated or that the Subject Property is physically capable of accommodating the intensity of the CSLR use.

Of particular concern is the on-site septic system. Given the sanitation and odor concerns identified in the record, the property's location within a lake community, and the presence of a lake in relatively close proximity to the Subject Property, the adequacy and capacity of the septic system may have significance beyond the immediate property. A malfunctioning, overloaded, or inadequately functioning septic system could potentially affect surrounding soils, groundwater, drainage, and nearby surface-water resources, depending upon site-specific soil conditions, topography, groundwater movement, and drainage patterns.

The proximity of the lake does not, by itself, establish that the CSLR has caused or will cause contamination. However, the potential environmental consequences warrant consideration in evaluating whether the Subject Property can accommodate the proposed occupancy and intensity of use without substantial detriment to the public good and surrounding lake community. Given the septic-related complaints identified in the record, the proposed occupancy, and the property's

location within a lake community, the adequacy, capacity, and condition of the septic system are relevant to the site-suitability analysis and should be supported by appropriate evidence rather than solely by a stipulation that the existing system will be maintained.

With respect to the second prong, the Applicant's operational stipulations do not, standing alone, establish that the proposed use will not substantially impair the intent and purpose of the Master Plan and zoning ordinance. The CSLR is not a permitted principal use in the Residential Zone, and the Applicant's planner acknowledged that the use was not consistent with the Master Plan or its Reexamination Reports. Accordingly, the relevant inquiry remains whether the Applicant demonstrated that this particular property, at the proposed intensity of use, can accommodate the CSLR without substantial detriment to the public good or substantial impairment of the Borough's zoning plan and ordinance.

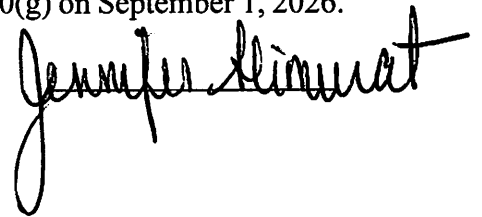
NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment that the application of Palisades Properties, LLC for the property known as Block 45605, Lot 103 on the Tax Map of the Borough of Kinnelon, located at 5 Mulberry Trail in the Residential Zone, requesting d(1) use variance approval, is DENIED pursuant to N.J.S.A. 40:55D-70d(1). A d(1) use variance requires the affirmative vote of at least five (5) Board members. Although the motion to approve received three (3) affirmative votes, constituting a majority of the voting members, it failed to obtain the five (5) affirmative votes required for approval and therefore results in a statutory denial.

The Board members who did not support the motion to approve recognized the inherently beneficial purpose served by a CSLR but were not persuaded that the Applicant satisfied its burden under the Sica Balancing Test with respect to this particular property and the proposed intensity of use. Those members concluded that the Applicant's proposed conditions did not sufficiently mitigate the identified detriments to the public good and surrounding residential neighborhood,

including concerns involving septic-system operation and associated odors, insufficient off-street parking, vehicular traffic and conflicts with adjoining properties, and the intensity of the use in relation to the size and physical characteristics of the Subject Property. Accordingly, those members concluded that, even with the proposed conditions, the Applicant had not sufficiently demonstrated that the Subject Property was capable and suitable to accommodate the proposed intensity of the CSLR use without resulting in substantial detriment to the public good and surrounding residential neighborhood.

Given the likelihood of an appeal involving this decision, this Board's denial shall not take effect until either: (i) forty-five (45) days following publication of the Board's Notice of Decision, or, (ii) forty-five (45) days following a final unappealable judicial determination affirming same, should an appeal be filed, whatever is later.

The undersigned secretary certifies the within resolution was adopted by this Board on August 4, 2026 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on September 1, 2026.

A handwritten signature in black ink, appearing to read "Jennifer Kimurat", with a long horizontal flourish extending to the right.

FOR: Mr. Passalacqua and Mrs. Maletsky

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote:

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