

Zoning for a Health Care Facility: A Few Things to Think About

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Admit it – your first thought was, why would anyone care if a health care facility was built in their neighborhood? But you were thinking of a nice, quiet nursing home, where the most activity that might take place would be family members gently pushing their elders in wheelchairs around a lush green lawn. A well-manicured, lush green lawn, surrounding a tastefully designed Colonial building. If that is your vision, you are seriously behind the times. There are not likely to be many, perhaps any, new “nursing homes” in Connecticut for the foreseeable future, but there is very likely to be a continuation of the exponential growth of health-related facilities, and they do present challenges to land use planners, developers, and neighbors.

All major hospitals now reach a substantial percentage of their patient population through outpatient clinics located at some distance from the hospital. Surgery that does not require an overnight stay in a hospital is more likely to be performed in a suburban clinic than in the hospital itself. What challenges are involved in siting such facilities?

The first challenge is to find a site zoned to permit a medical facility, or one where a zone change would be favorably considered. There may be confusion over definitions at this early stage because zoning regulations do not always keep up with the times. For example, is an outpatient surgical center a “community health center”? Probably not in Hartford, where the definition of community health center requires service of primary medical care to the needy in a facility not part of a hospital. But “medical clinics – outpatient services”, undefined, are allowed in two residential districts and several business districts, with conditions. Where do addiction services fall? Or pain clinics, or acupuncture, or massage therapy? The many varieties of medical services now available challenge planning departments to locate them appropriately and fitting these facilities into existing zoning definitions can be difficult. If they do not fit into the existing definitions, applications for the use in question could be easy for a local commission to deny, if that is its inclination.

And what are the issues about locating them? First, there is always traffic. For facilities where patient turnover is quick, such as eye surgery centers where the patient can be in and out in two hours or less, and where many surgeons operate at the same time, there is considerable traffic and the need for plenty of parking. If located in a residential area, that will bother residents; if in an industrial area, it could be disruptive to heavy truck traffic and not comfortable for patients. A commercial/business zone may be the best fit.

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Other questions that will come up will involve waste generation and disposal, particularly of medical or hazardous waste, and whether public sewers and water are available. Both are probably mandatory for most health care uses, and the developer of a site that lacks those benefits may need to arrange for their installation, probably at considerable cost. Hours of operation, and whether the design of the building is compatible with the area will also be considered. For some uses, approval from other agencies is needed. Depending on the services to be provided and the intensity of the use, for example, approval from the Office of Health Care Access and the Department of Transportation may be required. The phasing of these approvals is always tricky, particularly when considerable expense is involved at virtually every stage of the process and before it has been determined that the project can even go forward.

Will there be neighborhood opposition to the proposed new health care facility? Very likely. If opposition is voiced by the owners of neighboring property, within the statutory limits that provide for aggrievement, and thus standing, the project will likely be stalled while an appeal is resolved, and the appeal itself and the delay will add to the expense of the project. Others outside the statutory limits for aggrievement who try to establish standing based on “classical aggrievement” generally do not fare well. If one cannot prove he has a “specific, personal and legal interest” that is affected by the proposed development, standing will not be proven and the appeal will be dismissed. A general complaint by the owner of property outside the 100 foot distance from the proposed new facility that too much traffic will be generated by the development will almost certainly fail. See *Fifty Connecticut Avenue, LLC v. Norwalk Zoning Commission*, 2011 WL 590325.

A proposed new health care facility with a well-designed building and parking, safe access from a major street, and reasonable business operations will probably be a welcome addition to most municipalities and their tax rolls. If the issues mentioned above can be managed, and there are none of the problems that trip up any development, such as extensive wetlands or endangered species on the property, approval of the application should be possible, whether it is just site plan or special use, or even a zone change. If, however, the proposed use is a sensitive one, such as addiction services or medical marijuana, the entire scene changes, and another discussion is appropriate.

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