

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON JUNE 22, 2022 AT 6:00 P.M.

RESOLUTION #14-221/2022

To Deny the Special Use Permit (Application No. 2022-013) for a Planned Parenthood Medical Diagnostic Center / Medical Facility.

On Motion of
Councilmember Bellanca

Seconded by
Councilmember Bolzner

WHEREAS, Planned Parenthood of Central and Western New York (the "Applicant") has applied for a Special Use Permit under Henrietta Town Code §295-14[B](6) for a medical Diagnostic and Treatment Center (the "Application") to be located in a Commercial B-1 District at 376 Jefferson Road, Rochester, New York 14623 (the "Property"), or as more particularly described in plans on file in the Town Clerk's Office; and

WHEREAS, a public hearing was duly advertised and held relative to the same on June 22, 2022 at 6:00 p.m.; and

WHEREAS, the Town Board has carefully considered all information relevant to the Application, including but not limited to the Application, correspondence and oral testimony from the public, etc.; and

WHEREAS, the Town has referred the application to the Monroe County Planning Board pursuant to NY General Municipal Law Section 239 and the Town has incorporated the comments and feedback from the Monroe County Planning Board; and

WHEREAS, the Town Board has considered each of the factors for assessing the requested Special Use Permit approval, all as set forth in Town Code Section 295-54.

THEREFORE, BE IT RESOLVED, that pursuant to the State Environmental Quality Review Act ("SEQR") at Section 617.5(c)(18), and consistent with the EAF Part 1 submitted, the Application is a Type II action not subject to further review pursuant to SEQR.

BE IT FURTHER RESOLVED, that, in considering the special use permit factors, including in considering all information based on the record, including feedback from the Monroe County Planning Board and other interested or involved County or State agencies, public comments, those reasons discussed at the public meeting related to the same, and all materials submitted related to such Application, and based upon applicable law, and in consideration of any conditions set forth herein, the Henrietta Town Board makes those findings attached hereto and entitled "Special Use Permit Factors Narrative for Denial of Planned Parenthood," thus finding that the special use permit factors support denial of the Application.

BE IT FURTHER RESOLVED, that based upon the aforementioned, the Town Board hereby denies the Application to operate the medical Diagnostic and Treatment Center.

Duly put to a vote:

Councilmember Sefranek	No
Councilmember Bolzner	Aye
Councilmember Page	Aye
Councilmember Bellanca	Aye
Supervisor Schultz	No

RESOLUTION ADOPTED

Special Use Permit Factors Narrative for Denial of Planned Parenthood

§ 295-54 Granting or denial of special use permits.

In considering an application for a special use permit, the Town Board shall make its decision based upon the following factors. The Town Board may impose conditions, including in order to resolve any issues identified via its assessment of said factors.

A.

Whether the proposed use is substantially consistent in its scale and character with those uses permitted and the existing built permitted uses in the subject zoning district and neighborhood or will otherwise impair such uses due to inconsistency.

The proposed use is inconsistent with the character of those uses in the “neighborhood” in which it will be located, including, specifically, the retail shopping plaza. The existing tenants in the plaza include restaurants, retail stores, and entertainment facilities. The inclusion of a medical facility which performs surgical procedures is not consistent with the character of those retail uses now existing in the plaza.

The current businesses which are present in the plaza include, specifically: Subway, Vanessa Nails, Virtual Reality Arcade, Tandoor of India, International Food Market, Just Chicken, Anime, Goodwill, Revolution Bar and Lounge, Asian Food Market, Café 35, Kings Billiards, YOLO Hair Salon City Mattress, Barton’s Home Outlets, Bill’s Carpet and Furniture Center, Amvets Thrift Store, The Tile Shop, Coco Garden, Golden Corral, and Dumpling House. These businesses include restaurants, grocery store, entertainment (arcade), personal services (nails), and retail, none of which are similar in character to that of a surgical medical facility.

As it stands, this commercial retail shopping plaza serves patrons which can traverse from establishment to establishment in the plaza, shopping to obtain goods and services. A surgical medical facility is completely inconsistent with the purpose and character of a retail shopping plaza – a patron does not shop at a surgical medical facility or stop in for a visit in between shopping stops a retail stores (like one might stop at a restaurant for food or at an entertainment venue for a break). A surgical medical facility is not a commercial, day to day shopping destination like the other uses in the shopping plaza and it is thus inconsistent therewith.

Moreover, the area in which the surgical medical facility is proposed is zoned as Commercial B-1. The principal purpose of B-1 Commercial Districts is “to provide for businesses that meet the local day-to-day shopping and service needs of residents and visitors . . .” The Commercial District clearly contemplates, in its intent, retail and service uses. Indeed, the uses listed above and which are present in the plaza currently are consistent with this purpose because they tend to serve the day to day shopping and service needs of patrons.

However, a medical surgical facility is not a business that services the “local day-to-day shopping and service needs” of patrons – indeed, a core component of the facility involves surgeries – significant events which are typically scheduled in advance and which cannot reasonably said to be “day to day shopping and service needs.” Thus, the facility is inconsistent with the character of

both the zoning district and the neighborhood comprising the plaza. In fact, the proposed use is not enumerated in the list of permitted uses in the B-1 District.

See also “I”, below, which details some of the specific aspects of the proposed facility which are inconsistent with the character of the existing uses at the plaza.

B.

Whether the proposed use aligns with the vision, goals and recommendations of the Comprehensive Plan and other applicable plans and studies conducted by or on behalf of the Town.

The Comprehensive Plan of the Town of Henrietta is the basis for the zoning of the area in which the facility is proposed. For the reasons set forth in paragraph “A” above, the proposed surgical center doesn’t align with the intention for which this property is zoned.

C.

Whether the proposed use aligns with the purpose, intent, and applicable design and development standards of the zoning district(s) in which the use is proposed to be located.

See paragraph “A,” above.

D.

Whether the proposed use will be a nuisance in law or in fact due to its being materially noxious, offensive or injurious by reason of the production of or emission of dust, smoke, refuse, poisonous substances, odors, fumes, noise, radiation, vibration, unsightliness or similar conditions, or will contaminate waters.

We are not aware of any nuisance in law or in fact in the proposed use regarding use specifically referenced here, except as otherwise described herein.

E.

Whether the proposed use will create material hazards or dangers to the public or to persons in the vicinity from fire, explosion, electricity, radiation, traffic congestion, crowds, parking of vehicles, or other causes.

See “I,” below.

F.

Whether the proposed use will create materially adverse impacts that cannot be adequately mitigated, such as to adversely impact natural resources or the environment, agriculture, community services or other areas required to be addressed by the State Environmental Quality Review Act (SEQRA).

This proposal is not subject to SEQ. However, materially adverse impacts are described elsewhere herein.

G.

Whether the physical conditions and characteristics of the site are suitable for the proposed use considering site size, configuration, location, access, topography, vegetation, soils, and hydrology for effective stormwater management and, if necessary, the ability to be screened from neighboring properties and public roads.

Please see the discussion elsewhere herein.

H.

Whether there are adequate public infrastructure, utilities, community facilities and emergency services, either existing or to be provided by the applicant or others, to effectively serve the proposed use. A proposed use shall not create or contribute to an existing inadequacy.

Relative to utilities such as water and/or sewer, for example, there do not appear to be any inadequacies. However, as detailed in “I,” below, the proposed site is located in a plaza without a clearly defined traffic pattern for commercial vehicles and which presents a significant difficulty for emergency services, specifically ambulances.

I.

Whether the proposed use will provide, maintain, or enhance, as necessary, safe and efficient vehicular traffic patterns, nonmotorized travel, and pedestrian circulation as well as, where feasible, access to public spaces, parks, recreation, and open space resources.

The proposed surgical medical facility is proposed in a plaza designed and used as a retail shopping plaza. The particular building space proposed for the medical facility is located at or on a corner of the plaza characterized by a tight, ninety-degree curve in the drive lane. The drive lane is without material shoulders and is otherwise designed in a manner which directly abuts the building structures and/or curbing. Being a surgical medical facility, the proposal is likely to result in increased use of emergency services. Should surgical patients require emergency services, the drive lane fronting/accessing the space proposed for the medical facility leaves inadequate space for emergency service vehicles to traverse the area due to the lack of shoulders and due to traffic and the extreme curve fronting the space.

Moreover, the proposed facility lacks any sufficient drop off/pick up area typical of surgical facilities where vehicles can stop, wait and pick up surgical patients at the door to the facility. Without such an area, post-surgical patients (perhaps wheelchair bound) may be forced to traverse the busy/narrow drive lane, and/or pickups and transfers of patients will be conducted within the drive lane at the door of the facility, resulting in traffic situations which not only present an issue for traffic circulation, but present a direct safety issue for surgical patients.

Additionally, the area near the proposed facility contains extremely limited handicapped parking, none of which directly fronts the building, forcing handicapped and/or post-surgical patients,

again, to traverse the busy shopping plaza parking lot/parking lane. While a crosswalk is present in the area of the facility, it appears to lack even the most basic of signage indicating its presence.

Finally, New York state has recently announced that it seeks to be a “safe harbor” for abortion providers, including implementing laws aimed to protect abortion providers in New York against actions from other states which may limit rights to abortions. Thus, consistent with the intent of New York State, the surgical facility is expected to attract patients regionally, rather than simply locally. The regional nature of the proposal is inconsistent with the nature of a busy retail shopping plaza designed long ago. Moreover, the issues with limited handicap spaces, narrow drive lanes and, arrangement of the parking spaces and parking lot (such that handicap spaces and other parking spaces are not abutting the building and such that there is no pick up area for post-surgical patients) is only further exacerbated by the likely regional nature of the proposed facility, which is expected to draw increased traffic given this new policy and legal development in New York.