

**Date Application Filed:** July 17, 2014  
**Applicant:** RCA Group LP  
**Premises Affected:** 36 Essex Street, Wenham, MA (the "Property") The Property consists of ~50 acres, all located in the Residential District.  
**Relief Requested:** Two Special Permits: (1) Section 4.4.3.1 to alter a nonconforming structure; and in the alternative (2) Section 13.4.3 to authorize a for profit educational use in the Residential District.  
**Public Notice:** Notice published in Salem Evening News on July 22, 2014 and July 29, 2014, and notice sent by mail, postage prepaid, to all interested parties pursuant to G.L. c. 40A, § 11.  
**Public Hearing(s) held:** August 6 & September 24, 2014, January 14, February 25 and April 29, 2015(hearing closed).  
**Decision of the Board:** Special Permits Denied  
**Members participating:** Feeherry (Chair), Coffey, Hutchinson. Alternate Chris Vance  
**Date of Decision:** June 18, 2015

## **I. PROCEDURAL HISTORY**

1. On July 17, 2014, RCA Group LP ("RCA" or "Applicant") submitted an application for two (2) special permits to the Zoning Board of Appeals (the "ZBA"). The Applicant applied pursuant to Section 4.4.3.1 of the By-Law to alter a nonconforming structure. In the alternative, the Applicant applied pursuant to Section 13.4.3 of the Bylaw to authorize a for profit educational use in the Residential District.
2. The Applicant sought this relief in order to convert the existing "Penguin Hall" (a structure located on the Property) to an inpatient facility that would house Applicant's to-be-formed business providing detox and intensive rehabilitation programs involving counseling and treatment services to persons afflicted with substance abuse disorders (the "Project"). The Project would serve approximately 156 persons at maximum capacity, and would be licensed and regulated by the Department of Public Health, Bureau of Substance Abuse Services. See, 105 CMR 164.00 et seq.
3. The Application, and subsequent submissions by the Applicant, consisted of plans for what was described as a \$10+ million conversion of the interior of the building, as well as civil engineering, environmental, and traffic reports prepared by experts.

4. The ZBA opened the public hearing on August 6, 2014. Continued sessions were held on September 24, 2014, January 14 and February 25, 2015. The ZBA closed the public hearing on April 29, 2015.
5. The documents and exhibits received during the public hearing, which constitute the record for this decision, are on file with the ZBA and are listed on Exhibit A to this Decision.

## **II. FINDINGS**

1. With respect to all aspects of this application, the burden of proof rests with the Applicant.
2. The Property is a 48 acre site located in the Residential District, as established in the By-law.
3. The most recent occupant of the Property was Mullen Communications, which relocated its headquarters to the site in 1987 pursuant to an initial special permit issued by this Board. That Permit was amended numerous times to accommodate the needs and growth of Mullen Communications. Mullen had an existing/ongoing business (an advertising and marketing agency), with approximately 150 employees. Thereafter, Mr. Mullen extensively renovated the 45,000 square feet of office space then at the site. In 1998, Mullen added another 40,000 square feet of office space. In total, the Manor House and the existing office space at the Property exceeds 100,000 square feet of offices, cubicles, meeting room and amenities.
4. The original proposal by the Applicant called for a Project with over 200 beds. Subsequently, the Applicant reduced the size of the Project to a maximum capacity of 156 persons.
5. The Board retained the following consultants to assist in the review of the Application:
  - \* Civil Engineering (water supply): Bruce Adams, P.E., Weston & Sampson, Peabody, MA
  - \* Legal: Mark Bobrowski, Blatman, Bobrowski & Mead, LLC, Concord, MA
  - \* Economic Assessment: Judi Barrett, RKG Associates, Quincy, MA
  - \* Fiscal Analysis: Amy Lashway, Treatment Consultants, Santa Fe, NM
  - \* Traffic: Fay, Spofford & Thorndike, Burlington, MA
6. Aspects of the Project were reviewed by the departments and officials of the Town of Wenham, including:
  - \* Fire Department

\* Police Department

\* Board of Selectmen

7. Section 4.1, the Table of Use Regulations, allows a “nonexempt educational facility” by special permit in the Residential District. A “nonexempt educational facility” is defined as an “educational facilit[y] not exempted from regulation by G.L. c. 40A, s. 3.”

8. Section 13.4.3 of the By-Law states:

Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:

- 1) Community needs which are served by the proposal;
- 2) Traffic flow and safety, including parking and loading;
- 3) Adequacy of utilities and other public services;
- 4) Neighborhood character and social structures;
- 5) Impacts on the natural environment; and
- 6) Potential fiscal and economic impact, including impact on town services, tax base, and employment.

9. Section 4.4.3.1 of the By-Law states:

The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

- 1) Reconstruction, extension or structural change;
- 2) Alteration to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

10. With regard to the application for a special permit for a nonexempt educational facility, the ZBA finds that the principal purpose of the Project is not educational in nature. The

Project more closely resembles a "hospital or sanitarium," "medical office" or "clinic" which are not allowed uses in the Residential District, although a hospital or sanitarium is allowed by special permit. The educational component, to the extent there is one, is dwarfed by the clinical and medical aspects of the Project.

11. In the event that the Project is deemed to be educational in nature, the ZBA finds that "the adverse effects of the proposed use will ... outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site." Specific findings follow:

**1) Community needs which are served by the proposal;**

The Project is not designed to serve primarily Wenham residents, and no evidence was offered in that regard. Instead, the Project addresses the broader societal need for such facilities. The ZBA is not blind to this need, but deems it more appropriate to locate such facilities where the actual need occurs.

The ZBA is also legitimately wary of the Project because RCA has no track record of ever operating a drug rehabilitation facility. The ability of RCA to address "community needs" is therefore entirely speculative. If the ZBA granted the special permits, RCA would significantly modify the interior of Penguin Hall rendering it unusable for any purpose other than as a "hospital" (this is to be compared with the prior uses of Penguin Hall: residential, novitiate, retirement home, conference center, and then Mullen Advertising). The property is now configured in a manner which could house corporate offices, which continues to be a "community need" in Wenham. Indeed, the property has been advertised for sale as an ideal location as a corporate headquarters: "A turnkey, first class office and conference facility."

**2) Traffic flow and safety, including parking and loading;**

The Project is not generally expected to generate traffic that would negatively impact traffic flow and safety, or cause parking and loading concerns. However, the nature of the proposed project as a licensed medical facility operating on a 24/7 basis is such that there will be traffic to and from the site on weekends and nights, which will have a disruptive effect on residential neighbors.

**3) Adequacy of utilities and other public services;**

The Project would not negatively affect utilities services except for water supply. The impact of the Project on the town's water supply/capacity was not fully developed by the applicant except that there might be a need for a "water tower" to accommodate the Project.

The Project, in part because of its location, would result in additional burdens on the Town's police and fire departments in responding to incidents on the Property. In a town of Wenham's size, such additional burdens could have a meaningful impact on the ability

of these departments to respond to simultaneous incidents without additional emergency personnel.

**4) Neighborhood character and social structures;**

The Project simply does not “fit” into the neighborhood, which is located in the Residential District. The Project is essentially a clinic or a treatment facility. Its proximity to the Notre Dame Children’s Class, 74 Grapevine Road, was an important factor for the ZBA. The school was founded in 1967 and has a current enrollment of 35-40 students, all under the age of eight. The arrival and departure of clients, employees, and treatment specialists, responses to emergency calls, and truck deliveries by vendors would not be consistent with the neighborhood character. RCA will operate 24/7, unlike Mullen Advertising’s corporate office. This would cause potential noise and lighting impacts different from prior use of the Property.

The ZBA is also concerned that additional security measures, whether proposed as mitigation by the Applicant or imposed as a condition by the ZBA, would be intrusive on the neighborhood character, which is primarily residential/rural in nature.

While, of course, not controlling, this Project was the subject of intense opposition from neighbors and past and present students at Notre Dame. While this opposition is not a determining factor, it did, nevertheless, inform the Board regarding these issues of impact on “neighborhood character and social structure.”

**5) Impacts on the natural environment;**

The Project would adequately address stormwater and other environmental concerns.

**6) Potential fiscal and economic impact, including impact on town services, tax base, and employment.**

RKG Associates projected a positive tax picture. The municipal costs associated with the Project did not exceed the Project’s gross tax contribution. However, the Project would undoubtedly strain the Police Department. The Chief testified that any call from the Project would be responded to by two officers. On a force the size of Wenham’s, this constituted a negative impact.

Additionally, neighbors presented evidence that the operation of the facility would have a negative impact on property values. Although RCA offered rebuttal evidence in the form of an appraisal of its own, the ZBA remains concerned that there could be a diminution in property values caused by the Project. It is unclear whether decreased tax revenues resulting from such diminutions in value would be fully offset by any additional tax revenues generated from the Project.

12. The ZBA finds that the Project is not a “nonexempt educational facility” eligible for consideration under Section 13.4.3 of the Zoning By-law. The ZBA further finds, in the

alternative, that “the adverse effects of the proposed use will ... outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.”

13. The ZBA makes the following additional findings pursuant to Section 4.4.3.1 of the Zoning By-law:

**1) Reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood:**

The ZBA reiterates all of its findings in para. 10, above, and incorporates same by reference hereunder.

In addition, the ZBA emphasizes the following findings that show the impacts of the Project to be more detrimental than the existing nonconforming structure to the neighborhood:

- The Project will operate 24/7/365, causing greater impacts to the neighborhood from traffic, noise, lights, and security concerns. Mullen Advertising operated only during normal business hours.
- The Applicant did not demonstrate a compelling economic reason for the approval of the Project. The drain on Fire and Police Department resources would be far greater than that of Mullen advertising.
- The Project would potentially cause a diminution in the property values of neighboring homes, unlike Mullen Advertising, which rescued and modernized an estate.

## **CONCLUSION**

For all the reasons stated above, the special permit applications pursuant to Section 13.4.3 and Section 4.4.3.1 are hereby DENIED.

**RECORD OF VOTE**

The following members of the Zoning Board of Appeals voted to DENY the special permits referenced above.

Christopher H. Vane                      [Signature]  
[Signature]

The following members of the Zoning Board of Appeals voted to GRANT the special permits referenced above, with conditions:

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Filed with the Town Clerk on June 24, 2015.

**ATTACHMENTS**

- A Document List

RECEIVED-TOWN CLERK  
WENHAM, MA 01984  
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## Exhibit A

1. February 20, 2015 Supplement to the Application for Special Permit, from James Ward, Esq. to the Town of Wenham Board of Appeals (the "Board");
2. Figures - Floor and Site Plans (attached as Figures to the February 20, 2015 submittal) including:
  - a. Set of four (4) aerial Site Maps showing the Property; and
  - b. Set of six (6) plans (SP-1, SK-1.1, SK-1.2, SK-1.3, SK-1.4 and SK-1.5) showing the layout of the Facility.
3. The Application for Special Permit, dated July 17, 2014 and Narrative, dated July 25, 2014 (Exhibit A to the February 20, 2015 submittal);
4. Organizational materials and resumes of key personnel (Exhibit B to the February 20, 2015 submittal) including resumes of Deni Carise, Ph.D., Chief Clinical Officer, Brad F. Greenstein, Executive Director; John Paul Christen, Chief Operating Officer; Kevin W. McClure, CPA, MBA, Chief Financial Officer; Darcy L. Brazzle, Director of Licensing; Robert Champagne, Security Consultant; and John Finnegan, Security Consultant;
5. Admissions and Policy and Procedure Manual, Addiction Severity Index 5<sup>th</sup> Edition, and assessment materials (Exhibit C to the February 20, 2015 submittal);
6. Security Plan (Exhibit D to the February 20, 2015 submittal);
7. Examples of other facilities in relation to "sensitive receptors" (Exhibit E to the February 20, 2015 submittal);
8. Financial Pro Forma review prepared by Treatment Consultants, dated January 2015 (Exhibit F to the February 20, 2015 submittal);
9. Water Supply Reviews (Exhibit G to the February 20, 2015 submittal) including:
  - a. January 10, 2013 review by Weston & Sampson on behalf of the Town of Wenham;
  - b. November 26, 2014 updated review by Weston & Sampson on behalf of the Town of Wenham;
  - c. February 20, 2015 response from Hayes Engineering.
10. Septic Reviews (Exhibit H to the February 20, 2015 submittal) dated July 30, 2014 attaching Massachusetts Department of Environmental Protection Approval of Hydrogeological Evaluation;
11. Hayes Engineering November 20, 2014 report on Drug Treatment Information and supporting information on reports on drugs in wastewater from Kopps (Exhibit I to the February 20, 2015 submittal);

12. Traffic Studies August 21, 2014 Hayes Engineering Traffic Information, FST Memorandum dated September 24, 2014 and Weston & Sampson Memorandum dated November 10, 2014 (Exhibit J to the February 20, 2015 submittal);
13. Curriculum outline and typical daily schedule (Exhibit K to the February 20, 2015 submittal);
14. RCA Presentation (Exhibit L to the February 20, 2015 submittal)
15. References for Impacts on Emergency Services (Exhibit M to the February 20, 2015 submittal);
16. 911 Protocol (Exhibit N to the February 20, 2015 submittal);
17. Plan for water conservation systems dated February 20, 2105 from THE Architects (Exhibit O to the February 20, 2015 submittal);
18. March 17, 2015 letter from the Wenham Fire Department;
19. March 24, 2015 letter from George McLaughlin, Esq. to the Board enclosing Colliers appraisal report;
20. March 2015 letter from Hayes Engineering regarding Fire Department Comments;
21. RKG Associates, Inc. April 28, 2015 letter to the Board;
22. April 29, 2015 letter from George McLaughlin, Esq. to the Board enclosing Second Response to CBRE Appraisal, dated April 28, 2015;
23. Response to Comments Letter from RCA to the Board, dated April 29, 2015;
24. Supplemental Response to Comments Letter from RCA to the Board, dated April 29, 2015;
25. Continuance letters dated August 25, 2014, October 21, 2014, November 14, 2014, December 3, 2014, March 17, 2015 and March 25, 2015