



MASSACHUSETTS
Recreation and Park Association

PO Box 783, Westfield, MA 01086-0783

Phone: 413-568-8356 Fax: 413-568-4166 Email: jmwjtw74@comcast.net Web site: www.massrpa.org

February 15, 2019

Karen Campbell
Wilmington Recreation Department
9 Cross Street
Wilmington, MA 02030

Dear Karen,

Congratulations! Yentile Farm Recreational Facility in Wilmington has been selected as the winner of the 2019 Massachusetts Recreation and Park Association's "***Design of Facility Agency Award***". The Massachusetts Recreation and Park Association's Executive Board established this award as a way to recognize departments that create and renovate facilities that greatly enhance their community.

This award will be presented to you during the Awards Brunch at the 34th Annual MRPA State Conference on **Wednesday, March 27, 2019** at the Sea Crest Beach Hotel in North Falmouth, MA. The awards brunch will be held from **9:00-10:30AM**.

You are welcome to invite guests to join us on this momentous occasion. Tickets for the brunch are available by contacting Executive Director John Whalen. Those who are attending the conference will have the breakfast included in their registration packet. Mr. Whalen can be reached by calling (413) 568-8356 or at jmwjtw74@comcast.net.

In addition, please contact Stacey Mulroy by Monday, 2/25/19, with a couple of paragraphs of written bio information and a photograph for the Awards Brunch Program booklet. Stacey will need to get this information ASAP to format and print the awards booklet in time for the conference in March. You can email Stacey at SMulroy@town.arlington.ma.us with your information or with questions. Please copy me on your email so I know Stacey has your information.

On behalf of the Massachusetts Recreation and Park Association's Executive Board and the 34th Annual State Conference Committee members, congratulations on your award! Thank you for all that you do! Please call me directly if you have any questions.

Sincerely,

Bruce Doig
MRPA Awards Committee Chairman
Director, Beverly Recreation Department
bdoig@beverlyma.gov (978) 423-6883

Massachusetts Recreation and Park Association is
affiliated with the National Recreation and Park Association
MRPA is a Massachusetts Non-Profit Organization





TOWN OF WILMINGTON

**121 GLEN ROAD
WILMINGTON, MA 01887**

**THE OFFICE
OF TOWN CLERK**

**VOICE (978) 658-2030
FAX (978) 657-7564**

Date: February 22, 2019

To: Jeffrey M. Hull
Town Manager

From: Christine R. Touma-Conway
Office of Town Clerk *ht*

Subject: Proposal to Change Dates of Annual Town Meeting/Town Election

The Office of Town Clerk has been asked to provide a memorandum outlining the potential impact upon this office of moving the Annual Town Election to the third Saturday in March and the Annual Town Meeting to the fourth Saturday in March.

Upon being assigned this request, we undertook a quick survey of other Massachusetts towns inquiring the dates of their annual elections and town meetings. Of the 115 responses we received, seven (7) hold their elections and five (5) hold their town meetings in March. The rest fall in the April to June timeframe. One respondent that holds both events in March warned in their response, "don't do it!"

Initially a description of the nature of the workload of the Office of Town Clerk will be helpful. It is a small office with a small staff that is responsible for an extraordinary amount of work over the course of the year. Many of the functions of the Clerk's Office are constant: creating, registering and providing copies of vital records, processing passport applications, accepting and entering voter registrations, posting meeting agendas and notices, accepting said notices and agendas as well as minutes of the Town's bodies, boards and commissions, receiving, overseeing and fulfilling public records requests, all are year-round duties.

However, in addition to these duties, there are additional duties that are more cyclical in occurrence. There is a specified timeframe for each of these additional programs, which include: annual town and, every other year, state primary and election and town meeting preparation and administration, including site preparation, programming of electronic equipment, preparing and printing ballots and other election-related documents, hiring and training election workers; preparation of the Annual Street Listing, which necessarily includes mailing out confirmation cards to Annual Census Non-

Respondents and processing their returns; conducting the Annual Town Census, which includes preparing the almost 10,000 forms, mailing them, and then processing them upon their return; soliciting and processing approximately 3,000 dog registrations; sending and tracking the return of the Annual Conflicts of Interest pamphlets and acknowledgement receipts from all municipal employees and board and commission members; biannually reminding this same group of the requirement that they complete the state's Online Ethics Training, and tracking their submission of Certificates of Completion.

There are countless other duties and programs not mentioned here. However, the main reasons the small office staff can accomplish all of these duties is because of the "calendar of events" that is followed annually.

Typically, the months of January and February are spent on two of these aforementioned tasks. First, the preparation and mailing of the Annual Town Census, receiving them back and manually processing them. And secondly, the solicitation and processing of annual dog registrations, a task which includes ensuring rabies certifications are complete, entering data into the system set up for this purpose and sending out the licenses and dog tags.

Additionally, every fourth year the Presidential Primary is held in early March. This primary includes not just the various candidates for president in the parties, but state and local committee elections. All of the typical preparation necessary for any election gets added to the usual January/February tasks of the Office of Town Clerk, including increased voter registrations which must be processed.

To add annual preparation for both the Town Election and Town Meeting to these tasks would place severe stress upon the staff of the Office of Town Clerk. It would impact the ability of the office to follow the timeline required in in the state law regarding completion of the steps in the Town Census. It is one thing for this to occur every four years, but quite another for it to be an annual event, made even more complex every fourth year by throwing a major election into the mix. During the years of having to run both a local election and presidential primary, it would be necessary to send and process two sets of distinct absentee ballots, which would have to be kept and processed completely separately, which would be no easy task given the likelihood of voter confusion, It would also increase the likelihood of errors which could ultimately result in disenfranchising voters and affect the proper administration of elections.

Although currently Early Voting is not required for primaries, it is often mentioned at the state level that adding this feature is being contemplated. Should this happen, and it very well could, another layer of work would be placed upon the staff of the Office of Town Clerk during this time period.

Another issue that arises is that securing election workers for these events is extremely difficult in the winter months, because many of our experienced workers are so-called "snowbirds" who travel south for the cold winter months. In the years that we hold the Presidential Primaries, those workers who are still in town are often susceptible to illness. It is not uncommon to receive phone calls in the days leading up to the Presidential Primary that workers are hospitalized or otherwise unable to work for health reasons, necessitating finding replacement workers. This is not an easy task, nor one which is beneficial to the Town, inasmuch as having experienced workers is what enables us to run good, clean elections. Having to deal with this once every four years is difficult, but having to deal with it annually would prove even more of a strain on the staff of the Clerk's office.

Finally, it must be mentioned that if the annual Town Meeting were to be moved into March, that would push back the timeline for budget preparation. This would specifically create a conflict in this office during years that there is a State Election in November. In addition to typical preparation for those elections, state law currently requires that for the two weeks prior communities hold Early Voting. Thus, during those years, budget preparation would be incredibly difficult to accomplish while also having to administer early voting.

I am available to discuss these issues in greater depth if necessary, at your convenience. Thank you for the opportunity to provide this information to you in advance of any possible decision made by the Board of Selectman.



MMA's Legislative Breakfast Meetings set for March 22, March 29 and April 5

Please Register Today for the Latest Info on FY20 Budget Bills and Key Legislative Initiatives!

February 15, 2019

Dear Local Official,

The MMA's Annual Spring Legislative Breakfast series will start next month as work begins at the State House on the FY20 state budget, and legislative priorities take shape for the for the new session.

The MMA's regional meetings are scheduled for three Friday mornings (March 22, March 29 and April 5) in six cities and towns across the state. We hope that you will join us at a meeting near you to talk about key issues and municipal priorities with area legislators, your municipal colleagues from the region, and MMA's legislative staff. With the new session underway, we expect a lively discussion!

The Spring Legislative Breakfast meetings take place as the House and Senate begin their work on the FY20 state spending plan, with important decisions to be made on municipal and school accounts, with a starting place based on House 1, the budget recommendation filed by the Governor in January. The new legislative session will feature re-starts on important public policy initiatives from the last session, including zoning and housing production, Chapter 70 and charter school finance, and solid waste and recycling. There are also new bills that would impact local government, ranging from marijuana policy, the public records law, climate change, and benefits for public employees and retirees.

These springtime meetings are a great time to connect with colleagues and legislators on the key local government issues of the day as deliberations get underway at the State House.

There's a lot to talk about this Spring! Please register online at www.mma.org, or complete the attached registration form and mail it to: Alandra Champion, Massachusetts Municipal Association, One Winthrop Square, Boston, MA 02110, or by fax to: 617-695-1314, or by email to: achampion@mma.org.

Sincerely,

Geoffrey C. Beckwith
Executive Director & CEO

19 FEB 19 AM 11:36
TOWN OF
MILFORD MASS
TOWN MANAGER



2019 Spring Legislative Breakfast Meetings Please Register Now!

Please register online at www.mma.org, or complete this registration form and mail it to: Alandra Champion, Massachusetts Municipal Association, One Winthrop Square, Boston, MA 02110, or by fax to: 617-695-1314, or by e-mail to: achampion@mma.org

Registrant's Name: _____

Municipality: _____

Job Title: _____

Phone Number: _____

Email Address: _____

Breakfast Location (Please check the meeting you will attend):

March 22nd

- Andover, Old Town Hall, 20 Main Street
- Mansfield, Town Hall Meeting Room, 6 Park Row

March 29th

- Athol, Public Library Program Room, 568 Main Street
- Millbury, Asa Waters Mansion, 123 Elm Street

April 5th

- North Adams, Massachusetts College of Liberal Arts, Murdock Hall, 375 Church St.
- Springfield, Carriage House at the Barney Estate, 200 Trafton Road

While the meetings are free, attendees are asked to pre-register so the planners can have an accurate count. All legislative breakfast meetings will begin at 8:00 a.m. and end by 10:00 a.m.

THANK YOU FOR REGISTERING – WE LOOK FORWARD TO SEEING YOU THERE!



Wilmington, Massachusetts

INTER-DEPARTMENTAL COMMUNICATION

FROM THE TOWN MANAGER

February 22, 2019

TO: Board of Selectmen

RE: Town Meeting Review Committee

As the Board considers appointments to the Town Meeting Review Committee, I recommend that the Board appoint Town Clerk Christine Touma-Conway and Administrative Assistant Beverly Dalton.

Ms. Touma-Conway, in her capacity as Town Clerk, has a complete understanding of the elections requirements including primaries for candidates to state and federal offices, early voting requirements, deadlines for residents to register to vote etc. Beverly Dalton is intimately familiar with the budget calendar leading up to Annual Town Meeting including associated public notice posting requirements and the deadline for the presentation of the budget in advance of Annual Town Meeting. Their perspectives on the implications for changing the Annual Town Meeting date and/or local election date will be invaluable to the Committee.

Jeffrey M. Hull
Town Manager



Wilmington, Massachusetts

INTER-DEPARTMENTAL COMMUNICATION

FROM THE TOWN MANAGER

February 22, 2019

TO: Board of Selectmen

RE: Economic Development Committee

The membership on the Economic Development Committee has been established. In addition to Selectman Greg Bendel, Planning and Conservation Director Valerie Gingrich and me, the following residents of Wilmington have been appointed:

- Michael Champoux
- Patrick Giroux
- Lilia Maselli
- Nancy Vallee

The appointees bring a broad and diverse background that will prove beneficial when assessing Wilmington's strengths, weaknesses and opportunities and in developing an understanding of what economic development means to residents. The first meeting of the committee will be on Thursday, March 12, 2019 at 7:00 p.m. in Room 9 at the Town Hall.


Jeffrey M. Hull
Town Manager



Wilmington, Massachusetts

INTER-DEPARTMENTAL COMMUNICATION

FROM THE TOWN MANAGER

February 22, 2019

TO: Board of Selectmen

RE: Board of Appeals Consideration of Bettering, LLC Application

The following serves to update the Selectmen concerning the Board of Appeals consideration of the application for a substance abuse detoxification center at 362 Middlesex Avenue. On Wednesday, February 27, 2019 @ 7:00 p.m. the Board of Appeals will conduct their meeting to review the draft written decision that was made at the January 16, 2019 meeting. Jonathan Silverstein, Esq., has prepared a decision that is intended to reflect both the vote that was taken and the basis for the decision to deny the special permit. If the decision is finalized at that meeting it must then be filed with the Town Clerk.

Additionally, Board of Appeals members will discuss the process to follow for consideration of a request from Bettering LLC for a reasonable accommodation with respect to their application to construct a substance abuse detoxification center. Consideration of whether or not to grant a reasonable accommodation will not take place at the meeting on February 27th. Instead, a separate meeting will need to be scheduled. The Board's next scheduled meeting on March 13, 2019 apparently has a full agenda which may mean that the reasonable accommodations matter is scheduled for a later date. The Board will also consider, with the advice of Jonathan Silverstein, Esq., whether or not to conduct the meeting as a public hearing and will receive counsel's opinion as to whether the decision to grant a reasonable accommodation requires a simple majority or a "supermajority."


Jeffrey M. Hull
Town Manager

To: Jeffrey Hull, Michael McCoy, Kevin Ciara, Gregory Bendel, Jonathan Eaton, Raymond Lepore, Thomas Siracusa, Anthony Barletta, Jacquelyn Santini, Daniel Veerman

From: The Concerned Citizens of Wilmington

Subject: Sixth Circuit Court Ruling

One of our members did extensive research to find a legal precedent that would apply to the upcoming Zoning Board of Appeals hearing regarding the applicability of The Americans with Disabilities Act (ADA) to local zoning bylaws. Attached please find a one page synopsis of the decision and a 10 page ruling from the Sixth Circuit Court. The ruling clearly states that the ADA may not be invoked to supersede local zoning bylaws.

Furthermore, we believe the citizens of Wilmington provided reasonable accommodations to the substance dependent population by voting to pass Article Two. This bylaw amendment was approved by the Attorney General. The bylaw revision opened large tracts of industrial zoned areas to medical and rehabilitation facilities. These locations are remote, quiet and far more conducive to those individuals undergoing the torments of withdrawal.

The Concerned Citizens of Wilmington respectfully request that you weigh these factors carefully when making a decision that will significantly impact the citizens of Wilmington and the substance dependent population.

CC Attorneys Rich and Silverstein, KP Law

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TOWN OF
WILMINGTON, MASS

REC'D - FRENCH MASSACHUSETTS

LAW OF THE LAND

A blog on land use law and zoning

Posted by: **Patricia Salkin** | March 25, 2015

Sixth Circuit Court of Appeals Holds Special Use Requirement for Residential Substance Abuse Facility is not Discriminatory

In this case, Get Back Up, Inc., operated a 160 bed all male residential substance abuse treatment facility in the City of Detroit. Get Back Up sought a conditional use permit application to operate in an unused school building it purchased from the Detroit Public Schools, the City's Board of Zoning Appeals denied Get Back Up a permit to operate its facility in an area of the City zoned for general business and historic use. The B4-H District allows boarding schools, child care institutions, nursing homes, religious residential facilities, adult day care centers, hospitals, libraries and religious institutions (among other uses) by right. "Residential substance abuse service facilities" is listed as one of several conditional uses requiring the satisfaction of 15 stated criteria before being allowed. Get Back Up originally received approval from the Building Safety and Engineering Department, but the Russell Woods-Sullivan Area Homeowners Association appealed the approval to the Board of Zoning Appeals (BZA). The BZA voted to reverse the decision. Get Back Up appealed to the trial court and following a protracted legal dispute the trial court affirmed the BZA's denial. Appeals to the Michigan Court of Appeals and Supreme Court were unsuccessful so Get Back Up filed a complaint in federal court, alleging violations of the American's with Disabilities Act, the Rehabilitation Act, and the Fair Housing Act. The federal district court held for the city, and Get Back Up appealed. The issue was whether a city zoning ordinance violates federal antidiscrimination laws when it requires a residential facility for the treatment of substance abuse to obtain a conditional use permit to operate in a business district.

At the outset the court noted, nursing homes and hospitals, cited by Get Back Up are not similar uses to the residential treatment facilities. Accordingly, because there were no materially similar uses that may operate by right in a B4 zoning district, the ordinance was not facially discriminatory. Moreover, Get Back Up failed to offer any direct evidence of discriminatory intent. As to the vagueness argument, the court stated that zoning ordinances must be sufficiently clear to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited," and to "provide explicit standards for those who apply them." Here, the terms at issue, "detrimental to or endanger the social, physical, environmental or economic well being of surrounding neighborhoods," "use and enjoyment of other property in the immediate vicinity," and "compatible with adjacent land uses" are terms with "common-sense meanings" and are not so vague in their application that they fail to provide fair notice to applicants or fail to provide fair notice to applicants or fail to provide standards to guide Board of Zoning Appeals decisions. Finally, the court held that unlike in a First Amendment challenge to a prior restraint on

NOT RECOMMENDED FOR PUBLICATION

File Name: 15a0207n.06

No. 13-2722

FILED
Mar 13, 2015
DEBORAH S. HUNT, Clerk

**UNITED STATES COURTS OF APPEALS
FOR THE SIXTH CIRCUIT**

| | | |
|--|---|------------------------|
| GET BACK UP, INC., |) | |
| |) | |
| Plaintiff-Appellant, |) | |
| |) | |
| v. |) | ON APPEAL FROM THE |
| |) | UNITED STATES DISTRICT |
| CITY OF DETROIT; CITY OF DETROIT BOARD |) | COURT FOR THE EASTERN |
| OF ZONING APPEALS, |) | DISTRICT OF MICHIGAN |
| |) | |
| Defendants-Appellees. |) | |
| |) | |

BEFORE: BATCHELDER and ROGERS, Circuit Judges; BECKWITH, District Judge.*

PER CURIAM. This case is about whether a city zoning ordinance violates federal antidiscrimination laws when it requires a residential facility for the treatment of substance abuse to obtain a conditional use permit to operate in a business district. Get Back Up, Inc., operates a residential substance abuse treatment facility in the City of Detroit. After two public hearings regarding Get Back Up's conditional use permit application, the City's Board of Zoning Appeals denied Get Back Up a permit to operate its facility in an area of the City zoned for general business use. After its administrative appeals in the Michigan state courts failed, Get Back Up filed suit in federal court, alleging that the ordinance was invalid facially and as applied under the Americans with Disabilities Act, the Rehabilitation Act, and the Fair Housing Act. Get Back Up also alleged that the ordinance was void for vagueness. The ordinance is not facially invalid

*The Honorable Sandra S. Beckwith, Senior United States District Judge for the Southern District of Ohio, sitting by designation.

under the relevant statutes, and is not unconstitutionally vague. Other arguments are not adequately raised and affirmance is therefore required:

Get Back Up operates a 160-bed all-male residential facility in downtown Detroit, providing substance abuse treatment and counseling, education, and job training opportunities.¹ In August 2007, Get Back Up purchased an unused school building from Detroit Public Schools for approximately \$500,000. The building is located in a zoning district labeled B4-H, General Business/Residential Historic.

Detroit's zoning ordinance generally identifies uses of property within each type of zone by classifying them as "by right," prohibited altogether, or permitted if certain conditions are satisfied. By right uses do not need permission from the City, subject to some exceptions for site plan reviews and some parking requirements. Conditional uses must first obtain permission from the City before operating. As described by Section 61-3-201 of the zoning ordinance, conditional uses "because of their unique characteristics, cannot be properly classified in any particular district or districts without consideration, in each case, of the impact of those uses upon neighboring uses. Review of dimensional requirements, location, construction, development, and operation of each use is necessary to ensure compatibility with the surrounding neighborhood." Conditional use applications must be reviewed and approved based on fifteen criteria set forth in Section 61-3-231 of the zoning ordinance. Those criteria are:

- (1) The establishment, maintenance, location, and operation of the proposed Conditional Use will not be detrimental to or endanger the social, physical, environmental or economic well being of surrounding neighborhoods, or aggravate any preexisting physical, social or economic deterioration of surrounding neighborhoods; and
- (2) The Conditional Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes permitted; and

¹ At one point in the procedural history, Get Back Up was allowed by the City to operate. Later, the parties stipulated that Get Back Up could continue operating during the pendency of its appeals.

- (3) The Conditional Use will not substantially diminish or impair property values within the neighborhood; and
- (4) The Conditional Use shall not be inconsistent with the goals and objectives of the City of Detroit Master Plan; and
- (5) The establishment of the Conditional Use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district. Plans for such development and improvement shall be evidenced in a written or published community plan, development plan, cluster board plan, or similar document; and
- (6) Adequate utilities, access roads, drainage, and other necessary facilities have been or will be provided; and
- (7) The Conditional Use will be compatible with the capacities of public services and public facilities that are affected by the proposed use; and
- (8) The Conditional Use will be compatible with land uses on adjacent and nearby zoning lots in terms of location, size, and character. For purposes of this section, "nearby zoning lots" shall mean those lots on the same side of the same block face as the subject property; and
- (9) The Conditional Use will not hinder or have a detrimental effect upon vehicular turning patterns, ingress/egress, traffic flow, nearby intersections, traffic visibility and the clear vision triangle, and other vehicular and pedestrian traffic patterns in the vicinity; and
- (10) The Conditional Use will in all other respects conform to ... this Zoning Ordinance. In the event a dimensional or other variance is needed, the [BSE] may approve the Conditional Use contingent on approval of the needed variance from the Board of Zoning Appeals as provided for in Sec. 61-3-219 of this Code; and
- (11) The Conditional Use is consistent with any approved preliminary site plan; and
- (12) The Conditional Use is so designed, located, planned, and to be operated so that the public health, safety, and welfare will be protected; and
- (13) The Conditional Use shall not involve activities . . . or conditions of operation that will be detrimental to the physical environment or to public health and general welfare by reason of excessive production of noise, smoke, fumes, glare, or odors; and

(14) The Conditional Use is consistent with and promotes the intent and purpose of this Chapter; and

(15) Where a public, civic, or institutional use is proposed on land zoned industrial, the impacts of the normal operations that are allowed in the district, including noise, smoke, fumes, glare, and odor, shall not adversely affect the employees, patrons, or users of the proposed public, civic, or institutional facility.

For the B4 general business zone in which Get Back Up's property was located, Section 61-9-73 of the ordinance lists by right uses, grouped by (a) residential use; (b) public, civic, and institutional use; (c) retail, service, and commercial use; manufacturing and industrial use; and (d) "other" uses not included in the first four categories. By right residential uses include boarding schools, child caring institutions, nursing homes, and religious residential facilities. By right public, civic, and institutional uses include adult day care centers, hospitals, libraries, and religious institutions. By right commercial uses include 37 types of businesses, including restaurants, medical clinics, retail stores, and offices. In contrast, Section 61-9-80 identifies conditional residential uses in B4 zones, including a "[r]esidential substance abuse service facility." Other conditional residential uses in B4 zoning districts are a multi-family dwelling, an emergency shelter, a pre-release adjustment center, a fraternity or sorority, and a rooming house.

Get Back Up applied for a conditional use permit for the property in the fall of 2007, and on November 7, the Building Safety and Engineering Department held a public hearing. The City Planning and Development Department initially recommended that the Building Safety and Engineering Department deny the permit, but after Get Back Up submitted additional information, the departments approved the site plan and the conditional use on January 9, 2008, attaching 17 conditions to the permit.

The Russell Woods-Sullivan Area Homeowners' Association, representing the adjoining historical residential district, filed an appeal to the Board of Zoning Appeals. The Board of

No. 13-2722, *Get Back Up, Inc. v. City of Detroit et al.*

Zoning Appeals held a hearing and voted to reverse the Building Safety and Engineering Department's decision granting Get Back Up's conditional use permit.

Get Back Up appealed the Board of Zoning Appeals's decision to the Wayne County Circuit Court as provided by the zoning ordinance. The dispute bounced back and forth between the circuit court and the Board of Zoning Appeals, but the circuit court ultimately upheld the Board of Zoning Appeals's denial of the conditional use permit. Get Back Up's appeals to the Michigan Court of Appeals and the Michigan Supreme Court were unsuccessful.

Get Back Up filed a complaint in federal district court. Count One sought declaratory and injunctive relief under the Americans with Disabilities Act, the Rehabilitation Act, and the Fair Housing Act, alleging that the City's zoning ordinance unlawfully discriminates against substance abuse treatment facilities and is facially invalid. Count Two alleged that the fifteen factor standard for evaluating conditional use applications was unconstitutionally vague. Get Back Up challenged the ordinance as invalid, both facially and as applied to its conditional use application. Get Back Up sought an order invalidating the ordinances as unconstitutional, and enjoining the City from enforcing the Board of Zoning Appeals's decision.

Get Back Up filed a motion for a preliminary injunction. The parties then filed cross-motions for final judgment; Get Back Up sought a permanent injunction and the City filed a combined motion for judgment and response to Get Back Up's motion.

After holding a hearing and allowing Get Back Up to file a supplemental brief, the district court issued its order denying Get Back Up's motion and granting the City's motion. The court reviewed the motions under FRCP 12(c), noting that the "central evidence" before the Board of Zoning Appeals established no material factual dispute because the parties had stipulated to the relevant facts. The court concluded that the zoning ordinance did not

discriminate against the disabled, and was neutral in its treatment of disabled and non-disabled residents. The court discussed reasons that hospitals and nursing homes were materially different from a residential substance abuse service facility, and noted that the ordinance effectively “treats Get Back Up like a standard rooming house.” The court rejected Get Back Up’s as-applied challenge to the ordinance, finding that the Board of Zoning Appeals had reasons to deny the conditional use permit unrelated to prejudice against the disabled. The court held that Get Back Up’s void-for-vagueness challenge to the ordinance failed. Get Back Up claimed that each of the ordinance’s conditional use criteria provided no real standards, or at best impermissibly vague standards, to guide the Board of Zoning Appeals in determining whether to grant a conditional use permit. The court cited cases finding that cities have the power to zone in accordance with the “public interest,” “public welfare,” and to protect the “enjoyment of property,” and reasoned that while these are general interests, they were not so vague as to amount to no standard at all.

Get Back Up sought reconsideration under FRCP 59. It argued that the City did not raise the issue that the district court found to be dispositive, “that a [residential substance abuse service facility] should not be classified with other public health facilities.” Get Back Up claimed that it was misled by the City’s failure to raise the argument, and that it should be permitted to show why a residential substance abuse service facility should be classified and treated as a “public health facility.” The district court denied Get Back Up’s motion, finding that the briefing merely repeated arguments Get Back Up made in its prior pleadings. It also rejected Get Back Up’s assertion that the court relied on arguments that the City did not raise, noting that Get Back Up was asked during the hearing which by right uses were materially similar to Get Back Up’s facility, and why they should be treated as such.

Get Back Up appeals the district court's order granting judgment to the City of Detroit, and denying Get Back Up's motion for permanent injunctive relief. Get Back Up also appeals the district court's denial of its motion to reconsider that order. The only arguments that Get Back Up presents on appeal are a facial challenge to the City's not grouping a residential substance abuse service facility with other public health uses, and a void-for-vagueness challenge to the ordinance.²

Next, Get Back Up's facial challenge to the zoning ordinance fails because the ordinance does not allow any materially similar use to operate by right in a B4 zoning district. In order to prevail on its Rehabilitation Act, Americans with Disabilities Act, and Fair Housing Act claims, Get Back Up must first show that the ordinance discriminates against the disabled. The City concedes that individuals at residential substance abuse service facilities are handicapped and disabled as defined by federal law. However, the ordinance does not discriminate by requiring Get Back Up to obtain a conditional use permit.

Residential substance abuse service facilities are treated the same as many other residential uses. Residential substance abuse service facilities are allowed to operate in B4 business districts if they obtain a conditional use permit. The same is true for a multi-family dwelling, an emergency shelter, a rooming house, a fraternity or sorority, or a single-family detached or a two-family dwelling, all of which are among the residential conditional uses for a general business district as listed in Section 61-9-80.

Hospitals and nursing homes are not materially similar to residential substance abuse facilities in a B4 zoning district. Get Back Up notes that hospitals and nursing homes may operate by right in B4 zoning districts and argues that this is discriminatory because residential

² Because, as Get Back Up's counsel conceded at oral argument, Get Back Up did not argue on appeal until its reply brief that the ordinance was invalid as applied, we do not address the as-applied challenge. We generally will not hear issues raised for the first time in a reply brief. *United States v. Crozier*, 259 F.3d 503, 517 (6th Cir. 2001).

substance abuse service facilities are identical to hospitals and nursing homes in every respect except one: residential substance abuse service facilities treat recovering addicts and alcoholics. But hospitals and nursing homes differ from residential substance abuse service facilities in multiple respects.

Most obviously, hospitals are not a residential use. Residential and non-residential uses differ widely in how they affect traditional zoning concerns like noise, traffic, parking, and utilities usage. Hospitals are no exception, as they tend to have a substantial impact on the characteristics of their immediate surroundings and the public health of the larger community. Hospitals are well-suited for a busy commercial district like the B4 zoning district, a district described by Section 61-9-71 of the ordinance as “provid[ing] for business and commercial uses of a thoroughfare-oriented nature.” These characteristics justify allowing hospitals to operate by right in such districts.

While nursing homes are a residential use, they differ from residential substance abuse service facilities in their impact on traditional zoning concerns and accordingly in their need for a conditional use application. Nursing home residents are often physically disabled and they rarely leave the premises, if ever. *See Drug Abuse Prevention Ctr. v. City of Kelso*, 84 Wash. App. 1044, 1044 (Wash. Ct. App. 1996). As the district court observed, nursing homes are a uniquely sedate and unburdensome use, have relatively little impact on traditional zoning concerns like noise and traffic, and may warrant special treatment on the grounds that a city desperately needs nursing care. Because there are no materially similar uses that may operate by right in a B4 zoning district, the ordinance is not facially discriminatory.

The cases relied upon by Get Back Up are distinguishable. Most involved outright bans. *See MX Grp., Inc. v. City of Covington*, 293 F.3d 326, 345 (6th Cir. 2002); *Bay Area Addiction*

No. 13-2722, *Get Back Up, Inc. v. City of Detroit et al.*

Research & Treatment, Inc. v. City of Antioch, 179 F.3d 725, 729 (9th Cir. 1999); cf. *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 304 (3d Cir. 2007) (noting the ban was waivable by majority vote). It is true that requiring facilities serving the mentally retarded to obtain a conditional use permit while allowing other residential uses to operate by right has been found to be discriminatory in *City of Cleburne v. Cleburne Living Center.*, 473 U.S. 432, 447 (1985). In that case, though, the Supreme Court declined to rule that such a requirement could never be imposed, even for a residential zoning category. *Id.* Instead, the Court looked to the specific categories in the ordinance to conclude that the requirements of the ordinance rested on “irrational prejudice against the mentally retarded.” *Id.* at 450. And in the other cases cited by Get Back Up, the plaintiffs had direct evidence of discriminatory intent. See *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 307 (3d Cir. 2007); *MX Grp., Inc. v. City of Covington*, 293 F.3d 326, 342 (6th Cir. 2002); *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 49 (2d Cir. 1997).

Finally, the ordinance’s fifteen standards for approving a conditional use permit are not unconstitutionally vague, as argued by Get Back Up. Zoning ordinances must be sufficiently clear to “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited,” and to “provide explicit standards for those who apply them.” *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). The challenged criteria require the Board of Zoning Appeals to find, for example, that the conditional use will not be “detrimental to or endanger the social, physical, environmental or economic well being of surrounding neighborhoods”, that the use will not injure “the use and enjoyment of other property in the immediate vicinity”, or that the use will be “compatible” with adjacent land uses. Beyond a few bare assertions, Get Back Up does not elaborate on how the ordinance is unconstitutionally vague and such perfunctory

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arguments are generally deemed waived, *see Thomas v. Speedway SuperAmerica, LLC*, 506 F.3d 496, 500 n.1 (6th Cir. 2007). Still, these terms have common-sense meanings and are not so vague in their application that they fail to provide fair notice to applicants or fail to provide standards to guide Board of Zoning Appeals decisions.

Get Back Up cites *HDV-Greektown, LLC v. City of Detroit*, 2007 U.S. Dist. LEXIS 56951 (E.D. Mich., Aug. 6, 2007), where the district court found that the same ordinance was overbroad and unconstitutionally vague, but Get Back Up's citation of *HDV-Greektown* is misplaced because that case involved a First Amendment challenge to a prior restraint on protected expression. Vagueness doctrine applies with special force in the context of prior restraints, where an ordinance must provide "narrow, objective, and definite standards," *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976), and Get Back Up makes no argument why *HDV-Greektown* should be applied outside of that context.

For the foregoing reasons, we affirm the judgment of the district court.

RECEIVED - TOWN MANAGER



19 FEB 21 PM 12:21

February 14, 2019

TOWN OF
WILMINGTON, MASS

Board of Selectmen
Town of Wilmington
121 Glen Road
Wilmington, MA 01887

Re: Xfinity TV Channel Updates

Dear Chairman and Members of the Board:

We are committed to keeping you and our customers informed with Xfinity TV changes and enhancements. Below we share details regarding new programming that we are launching, the drop of channels from our line-up, and a general reminder about expiring programming contracts.

New Channel Effective April 12, 2019

For our customers who subscribe to the Xfinity Latino package, in April we will begin offering a new Spanish-language channel, RCN Novelas. RCN Novelas is a Spanish-language network designed for women with a focus on telenovelas and dramas.

Loss of Channels Effective April 8, 2019

We also wanted to remind you that Comcast's programming agreement with TuTV to carry Bandamax, De Película, De Película Clásico, Telehit and RMS/Ritmoson expires on April 8, 2019, at which time these channels will no longer be available. These channels are carried on Xfinity Latino. We are communicating this change to our affected customers through a bill message.

General Reminder About Programming Contract Expirations

We regularly inform our customers in their bills and annual notices that we maintain an updated website (<https://my.xfinity.com/contractrenewals/>) and toll free number ((866) 216-8634)) to reflect the programming contracts that are set to expire in the coming months and the channels we might or will lose the rights to continue carrying.

We are excited about the addition to our robust entertainment offerings and for the opportunity to continue enhancing our Xfinity TV product. Please do not hesitate to contact me at 781-769-5986 should you have questions.

Very truly yours,

Catherine Maloney

Catherine Maloney, Sr. Manager
Government Affairs