

**RETURN DATE: JANUARY 14, 2014 : SUPERIOR COURT**  
**SILVER HILL HOSPITAL, INC. : JUDICIAL DISTRICT OF**  
**VS. : STAMFORD / NORWALK**  
**: AT STAMFORD**  
**TOWN OF NEW CANAAN PLANNING :**   
**AND ZONING COMMISSION : NOVEMBER 26, 2013**

**APPEAL**

TO THE SUPERIOR COURT for the Judicial District of Stamford/Norwalk at Stamford, on January 14, 2014, comes SILVER HILL HOSPITAL, INC., (hereinafter referred to as “Plaintiff”), aggrieved by and appealing from a decision of the TOWN OF NEW CANAAN PLANNING AND ZONING COMMISSION (hereinafter “Commission”), which does complain and say:

1. Plaintiff is the owner of the property located at 143/208 Valley Road, in New Canaan, Connecticut (the ‘Property’) and the adjoining parcel of property known as 225 Valley Road, New Canaan, Connecticut (“225 Valley”).

2. The Defendant Commission is a municipal planning and zoning agency under Chapter 124 of the Connecticut General Statutes and New Canaan Town ordinances is designated to hear and decide zoning applications and this Court has jurisdiction to hear an appeal from Defendant’s decision.

3. Plaintiff Silver Hill Hospital, Inc., operates a nationally recognized not for profit, behavioral health hospital at the Property.

4. The Property is comprised of an East and West Campus, consisting of approximately 43 acres in total.

5. The East Campus, which is east of Valley Road, contains approximately 19.07 acres, a portion of which is in the adjoining town of Wilton.

6. The West Campus, which is west of Valley Road contains approximately 23.26 acres.
7. Plaintiff's hospital use has been in operation in this area of New Canaan near the Silvermine River Valley, since 1931 and thus predates the Zoning Regulations in New Canaan.
8. Over the years of its operation the hospital expanded from the single hillside farmhouse at which it began to a much more modern facility comprised of 14 buildings spread over approximately 60 acres.
9. In the last decade the Plaintiff sold off a portion of the Property and reduced its foot print to its current size of approximately 43 acres.
10. Over the years as New Canaan adopted and modified its zoning regulations, the area around the Property came to be zoned in the Two Acre Residence Zone, as now described in the Town of New Canaan Zoning Regulations effective as of June 16, 2007, as amended (the "Regulations").
11. New Canaan's master plan of development from 2003 recognized and mapped the Plaintiff's property as an "institutional use."
12. At that time hospitals were not a permitted use within the residential zones and having predated zoning, the Property as used by the Plaintiff was an established pre-existing nonconforming "institutional use" in the residential zone of this area of New Canaan.
13. In 2007 the Commission completed and adopted a comprehensive update to its Regulations.
14. As part of that update of the Regulations, the Commission, on its own application, adopted Section 3.2.C.18, which added a special permit use applicable to the all of the Town's residential zones for a "Hospital" use on a campus of not less than 30 acres.

15. The Commission's adoption of the Regulation creating this Special Permit "Hospital" use applied to Plaintiff Silver Hill Hospital and was an effort to bring the Plaintiff's prior non-conforming use of the Property into conformity with the comprehensive Zoning Plan of the Town and to minimize any conflict between the uses of the land and buildings of such a Hospital use and the surrounding residential zone(s).

16. In 2012, Plaintiff acquired the 225 Valley parcel.

17. 225 Valley is bound southerly and easterly by the Property owned by Plaintiff and is bound westerly by Valley Road and then beyond that by Plaintiff's Property; so that in effect 225 Valley is surrounded on three sides by the Property and Hospital use of the Plaintiff.

18. 225 Valley is a two acre parcel located in the Two Acre Residence Zone provided in the Regulations and is improved with a colonial style five bedroom, two story, single family dwelling.

19. On June 25, 2013 Plaintiff filed an application seeking a Special Permit and Site Plan approval in connection with the Property and 225 Valley Road (the "Application").

20. The dwelling at 225 Valley is compliant with the area, height, setback and bulk requirements of the Regulations for Two Acre Residence Zone and 225 Valley and the Property would remain so under the Application which is the subject of this appeal.

21. The Application sought merger of 225 Valley into the East Campus of the Plaintiff's Property and conversion of the dwelling on 225 Valley into residential treatment building under the "Hospital" use permitted pursuant to Special Permit in Section 3.2-C-18 of the Regulations.

22. Under the Application, Plaintiff proposed no physical expansion of the dwelling structure at 225 Valley but would convert the interior of the five bedroom home into facility with 8 bedrooms to accommodate up to 8 patients and up to five attendant staff members.

23. The proposed renovations in the Application were designed to meet all current code regulations under federal, state and local law and would maintain the exterior of the building with a colonial façade consistent with the other buildings on the Plaintiff's property and the surrounding residential properties in this area of New Canaan.

24. At the time of the Application and through the date of this appeal, the Property of the Plaintiff has been in full compliance with all zoning and local codes and Plaintiff is not under any citations for any alleged violations at its Property.

25. The Application met each and every one of the applicable criteria contained in Article 8, Section 8.2.B.4, Special Permit Criteria of the Regulations and 3.2.(C)(18) of the Regulations.

26. On or about July 23, 2013 and August 27, 2013, the Commission held a public hearing with respect to Plaintiff's Application, and said hearing was closed on August 27, 2013.

27. At that public hearing the Plaintiff presented facts fully in support of its Application and in full rebuttal to the negative and biased comments from certain members of the public.

28. The Commission considered the Application at subsequent meetings on September 24, 2013, October 22, 2013, and November 6, 2013.

29. On or about November 6, 2013, the Commission denied Plaintiff's Application, with an effective date of November 14, 2013 in decision that was split six (6) votes for denial and three (3) votes for approval, with the Commission Chairman and Commission Secretary voting in favor of approval and stating the reasons why the Application should have been approved.

30. Notice of the Commission's decision was duly published in the "New Canaan Advertiser" on November 14, 2013.

31. The Plaintiff is aggrieved by the action of the Defendant Commission in denying the Application in that Plaintiff was the applicant before the Commission and in that Plaintiff continues to be the owner of the Property and 225 Valley that were the subjects of the Application and are the subject of this Appeal.

32. In denying Plaintiff's Application, the Commission acted arbitrarily, illegally and in abuse of the discretion vested in it in one or more of the following ways:

- a. At least one member of the Commission was biased and had a conflict of interest, and that Commissioner made presentations to and otherwise influenced the Commission in violation of law and to the prejudice of the Plaintiff;
- b. On information and belief the Commission's decision was predetermined prior to the public hearing and it failed to maintain a neutral posture, including in part by its failure to prevent a biased member of the Commission from presenting evidence against the Application and seeking improperly to influence the Commission;
- c. On information and belief the Commission received and considered evidence submitted by opponents to the Application after the close of the public hearing;
- d. The Commission's decision was not supported by the record before it;
- e. The Commission based its decision on various arguments and findings which are irrelevant or improper under the Regulations;
- f. The Commission's decision was contrary to the standards and requirements of the Town of New Canaan Zoning Regulations;
- g. The Commission's decision unreasonably restricts the Plaintiff's use of its property and arbitrarily reduces the value of that property;

- h. The Commission has unfairly taken the reasonable use of Plaintiff's Property and 225 Valley by regulatory fiat in violation of Plaintiff's due process rights; and
- i. The nature of the process and conduct of the hearing by those Commission members voting for denial of the Application constituted a patently unfair proceeding in violation of the Plaintiff's due process rights.

WHEREFORE, the Plaintiff appeals the decision of the Commission and seeks the following relief:

- 1. An order sustaining this appeal and directing the Commission to grant Plaintiff's Application for a Special Permit and Site Plan approval.
- 2. Such other and further relief as in law, justice and equity may pertain.
- 3. The costs incurred in the proceeding as may be provided by law

THE PLAINTIFF,  
SILVER HILL HOSPITAL, INC.

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