

September 8, 2025

Frank D'Amato, Plans Examiner
Boston Inspectional Services Department
1010 Massachusetts Avenue
Boston, MA 02118

RE: Application No.: **ALT1748839**
Congregate Living Facility – 5 Redlands Road, West Roxbury, MA 02132

Dear Mr. D'Amato:

We are counsel to Blue Rock Investments LLC, a Massachusetts limited liability company ("Owner"), who has filed an Application for a Certificate of Occupancy for 5 Redlands Road, West Roxbury, MA, as a Congregate Living Facility (the "Property"). We have received and reviewed your Zoning Code Refusal letter dated July 31, 2025, ("Refusal Letter") and respectfully offer this legal opinion letter for your consideration. As explained below, we believe the Property may be used as a Congregate Living Facility as of right under the Boston Zoning Code and Enabling Act ("Zoning Code"), Article 8 (Use Regulations) and Article 56 (West Roxbury Neighborhood District). Moreover, we suggest that the Application as supplemented does not trigger the four "Violations" cited in the Refusal Letter.

Violation No. 1 – Screening and Buffering (Article 56, Section 37)

You pointed out that no screening and buffering were shown on the plans and that Article 56 section 37 requires screening and buffering along property lines since the Property, which is located in a Neighborhood Business Subdistrict, abuts a Residential Subdistrict. Nevertheless, the Violation Comments only notes that no screening and buffering have been shown on the plans. The Owner has updated its site plan dated September 3, 2025, to illustrate existing and appropriate screening and buffering for the Property in compliance with Article 56 section 37. Therefore, we respectfully suggest that this issue no longer rises to the level of a violation that the Owner would have to appeal to the Zoning Board of Appeal ("ZBA") for a variance.

Violation No. 2 – Off-street Parking Requirements (Article 56, Section 39.5) (Design)

Article 56, Section 56-39.5 prescribes the specifications for off-street parking spaces. As shown on the revised site plan, Owner has provided 11 off-street parking spaces with an unobstructed ten-foot-wide driveway. The plan shows clear maneuvering areas and appropriate means of vehicular access to a street, which has been designed as not to constitute a nuisance or a hazard or unreasonable impediment to traffic, bicyclists, and pedestrians. The design of

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the off-street parking, therefore, meets the zoning code requirements for the as-of-right use of the building as a Congregate Living Facility.

Violation No. 3 – Off-street Parking and Loading Requirements (Article 56, Section 39)
(Insufficient parking and one loading bay required)

The revised site plan shows 11 off-street parking spaces and one off-street loading zone in compliance with Article 56 section 39 requirements for off-street parking spaces and one off-street loading zone for the Congregate Living Facility. Additionally, the Property provides one accessible parking space designed in accordance with the state standards as set forth in Title 521 CMR 23 in the Massachusetts Code. This design standard includes an accessible aisle greater than five (5') feet wide adjacent to the accessible space. Accordingly, the plan meets adequate parking and loading specifications.

Parking Spaces: Specifically, Table I (Off-street Parking for Residential and Related Uses), footnote 2, provides that where a residential use is not divided into Dwelling Units such as the subject Property, when sleeping rooms accommodate more than two (2) people, "each group of four (4) beds shall constitute a Dwelling Unit." The proposed occupant load of one hundred thirty (130) people on the second and third floors of the Congregate Living Facility with no more than four (4) persons per sleeping room in 42 rooms, results in 10.5 Dwelling Units ($42 / 4 = 10.5$). All of the occupants of the Congregate Living Facility will qualify for Affordable Housing as defined in Article 2A of the Code, which means that Table I, footnote 3, applies. "For Dwelling Units qualifying as Affordable Housing, the off-street parking requirement for Proposed Projects under 50,000 square feet of gross floor area shall be 0.7 parking spaces per Dwelling Unit." Therefore, for the 10.5 Dwelling Units in the Property, (rounded to 11 Dwelling Units) 8 off-street parking spaces are required ($11 \times 0.7 = 7.7$, rounded to 8). The facility will have 11 off-street parking spaces as shown on the site plan. Please note that the Lot will not include multiple uses, since the accessory cafeteria kitchen, accessory laundry, accessory administrative offices, and the other accessory uses shown on the floor plans are all devoted to and essential for the operation of the Congregate Living Facility.

Loading Spaces: The revised site plan includes one loading zone for the Property that will be sufficient to meet the needs of the Congregate Living Facility and will comply with Table J of the Zoning Code (Off-street Loading Requirements) for property consisting of 15,001-49,999 gross floor area. The loading bay is located entirely on the lot and meets the minimum adequate dimensions, measuring at least ten feet (10') in width, twenty-five feet (25') in length, and has adequate clearance of fourteen feet (14') in height. The loading bay does not involve night operations and, therefore, will not be enclosed in a structure.

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Violation No. 4 – Effect of non-use of nonconforming use (Article 9, Section 9-3)
(Nursing Home use abandoned for more than two years)

In the Refusal Letter, you raised the question whether the abandonment and/or discontinuation of the nursing home use at the Property has any bearing on the Application for a Certificate of Occupancy for a Congregate Living Facility. The short answer is “no” for the simple reason that a Congregate Living Facility is an Allowed Use in the Neighborhood Shopping (“NS”) zone. The Application, therefore, does not rely on any pre-existing, nonconforming use, such as the prior nursing home, because a Congregate Living Facility is not a nonconforming use. Moreover, the Owner does not seek to revert to the prior use as a nursing home. The Zoning Code mandates that in the NS zone the proposed use as a Congregate Living Facility is allowed above the first floor, and no relief from the ZBA is necessary.

The Property is subject to the Use Regulations Applicable in Neighborhood Business Subdistricts contained in Section 56-15 of the Zoning Code, since the Owner seeks to change the occupancy to a Congregate Living Facility. Section 56-15 refers to Table B, Neighborhood Business Subdistricts, Neighborhood Shopping, in which a Congregate living complex is an Allowed (“A”) use, subject to Table B, Footnote 7, which provides that such use is allowed (“A”) on the floors above the first floor (here, the second and third floors).

Under Table B of Article 56, Accessory and Ancillary Uses, “an accessory use ordinarily incident to a lawful main use is allowed,” subject to the accessory uses listed in Table B. Accessory cafeteria (kitchen), accessory offices, and accessory service uses (laundry) are all allowed (“A”) accessory uses on the first floor of a Congregate Living Complex under Table B, which as stated above is an allowed (“A”) use in the NS zone.

Conclusion


Based upon the additional submittals and the foregoing information we respectfully submit that the Owner has addressed each of the Violations you cited in the Refusal Letter in a manner consistent with the Zoning Code. Each of the four Violations has either been remedied or shown to be inapplicable. Therefore, the revised Application with the updated submittals requires no zoning relief from the ZBA, the change of use should be allowed, and a Certificate of Occupancy should issue.

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This Opinion is rendered only for the Application herein described and as of the date hereof. It may not be relied on by any other person for any purpose or used in connection with any other transactions or proceedings.

On behalf of the Owner, we appreciate your consideration and assistance. Please let us know if you have any questions or concerns and we would be happy to discuss.

Smith Duggan Cornell & Gollub LLP


Paul Alan Rufo, Esq.



*ZONING DECISION RECONSIDERATION REQUESTED PER
REVISED PLANS:
REVISED PLANS AND REPORT HAS BEEN ACCEPTED FOR
ZONING APPROVAL, HOWEVER Four persons per
bedroom calculation has yet to TBD determined
due to unclear CALCULATIONS BY DESIGN FIRM.

FINAL COUNTS TO BE DETERMINED THROUGH THE
SUBMISSION OF A FINAL LIFE SAFETY OCCUPANT
LOAD/EGRESS PLAN SHOWING CLEARLY DETAILED
BEDROOM DIMENSIONS AND ACTUAL OCCUPANT BED
COUNTS PER ROOM IN ACCORDANCE WITH 780 CMR
CODE REGULATIONS 9/15/25-FD