Wasatch County Board of Adjustment

August 15, 2023

Item #1

Dustin Sidwell, Marie Shelton and Brian Myers

Appeal Planning Commission Conditional Use Permit Approval – Cascade Academy

WASATCH COUNTY
Board of Adjustment Staff Report

ITEM 1 Jay Springer, representing Dustin Sidwell, Marie Shelton, and Brian Myers, citing the provisions of UCA §17-27a-103(2)(b) and WCC §16.02.09(A), appeal the Land Use Decision rendered by the Wasatch County Planning Commission to approve a Conditional Use Permit for Cascade Academy, granted on May 11, 2023 for an eight bed residential facility for persons with disabilities to be located at 1374 Red Filly Road. (DEV-8072; Doug Smith)

PROJECT SUMMARY

Applicant: Jay Springer
Hearing Date: August 15, 2023
Proposal: Appeal of the Conditional Use approved on May 11, 2023
Property Owner: ULA, LLC

Existing Land Use: Residential
Proposed Land Use: Residential facility for disabled persons
Acreage: 1.0 Acres (RA-1 zone)

BACKGROUND

The appellant is requesting that the Board of Adjustment reverse the decision made by the planning commission on May 11, 2023 that granted the approval of a conditional use permit and site plan for a residential facility for persons with disabilities in the Summit Meadows subdivision located in the RA-1 zone.

A meeting was held on April 13th where the item was continued to the May 11th meeting. At the April 13th meeting as well as the May 11th public hearings there was a large number of residents in attendance who were not in favor of the proposal. Many spoke who opposed the use. On May 11th after public comment and discussion, including a presentation by the Deputy County Attorney as well as the applicant's attorney, the planning commission approved the conditional use citing the findings and conditions provided by staff (see attachments F and G).

The Wasatch County code allows for the appeal of decisions of the planning commission to the Board of Adjustment with the following requirements:

Wasatch County Code (WCC)
§16.02.09 (in part) reads as follows:

> ***16.02.09: APPEALS PROCEDURE***
> *Appeals of administrative decisions shall be made as follows:*
>
> *A. Standing to Appeal: Any person or entity (including a county department or elected official) affected by an administrative decision applying this title, or a decision by the planning commission in which it is acting as the land use authority, may appeal that decision to the board of adjustment by alleging that there is an error in any order, requirement, decision or determination by an official.*
> *…*

G. (5)(a) . . . . The person or entity making the appeal has the burden of proving that an error has been made.

Utah Code Annotated (UCA) 17-27a-707(4) authorizes the Board of Adjustment, on appeal of a land use application, to *"determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations."* The standard review procedure, for factual matters, is de novo. However, the Board reviews the application of WCC by the Planning Commission to determine the correctness of the interpretation and applies the land use regulation to favor a land use application (UCA 17-27a-707(4). The Board of Adjustment is asked to consider all evidence of the proposal as presented in the hearing documents and is not limited to what the initial land use authority was presented. The appellant claims that the Wasatch County Planning Commission erred in its approval of a land use application. The burden of proof is on the appellant. If the appellant has not provided sufficient evidence to support the claim that an error was made, the Board of Adjustment should affirm the Planning Commission decision.

Wasatch County Code 02.02.02(H) requires that an appeal *"shall include copies of any documentary evidence or written arguments that will be presented to the Board of Adjustment."* A complete copy of the filed appeal is provided for the Board of Adjustment review as Exhibit D of this report.

The disability facility is located at 1374 Red Filly Road on lot 4 in the Summit Meadows Subdivision. The proposal is in an existing single family home. The proposal is a residential facility for up to eight (8) adolescent girls between the ages of 13-18 with severe anxiety disorders with specialized treatment for Obsessive Compulsive Disorder (OCD). Individuals who suffer from both of these disabilities are identified as a protected class by the Americans with Disabilities Act and the Fair Housing Act because they meet the federal definition for a disability or handicap. An individual is protected under the FDA and the ADA if they suffer from an impairment that limits a major life activity. Both OCD and anxiety, limit several major life activities.

While enrolled, the average length of stay is 45-90 days with 24 hour supervision. The applicant, Cascade Home, runs a similar home in Midway, Utah called Cascade Academy. As mentioned the proposal is in an existing 5,454 sq. ft. residence. Cascade Home will obtain and maintain a business license for operation, receive a building permit through the building department for this use and be inspected prior to occupancy and be licensed by the State of Utah Department of Health and Human Services. The proposal changes nothing aesthetically with the home other than extra off street parking behind the front façade of the home and an agreed upon solid fence around the perimeter of the sides and rear yard.

Under the FHA (Fair Housing Act), a disabled person must be allowed equal opportunity to use and enjoy a dwelling" 42 U.S.C §3604(f)(3)(B). The individuals who will be residing in the Cascade Home are a protected class. Federal law defines handicapped or disabled individuals. Handicap and disabled individuals in this context means the same thing. They are both individuals who suffer from a mental impairment which substantially limits a major life activity. (The FHA uses the term "handicap" while the ADA uses the term "disability." See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (stating that the definition of "disability" in the ADA is drawn verbatim from the definition of "handicap" contained in the FHA). Major life activities include the ability to interact with others, learning, reading, concentrating, etc. See 28 CFR § 35.108(c)(1). Both obsessive compulsive disorder and anxiety are listed in the DSM (Diagnostic and Statistical Manual of Mental Disorders) as mental disorders and limit major life activities. The applicant provided sufficient evidence at the hearing before the Planning Commission to

show that the residents of the facility are not able to perform several major life activities. Each individual that will be staying at Cascade Home will be diagnosed by a medical professional as having either OCD or anxiety. Whether the condition is permanent or temporary is irrelevant when it comes to how a disability is defined under the FHA and ADA.

Due to FHA requirements the County is required to allow a protected class (in this case a residential facility for handicapped persons) in residential areas and the WCC has made provisions for this. The policy making body for the County (The County Council) has decided to allow this type of facility within a residential area, in this case an RA-1 zone, as a conditional use by adopting the codes in place which the applicant is vested under. The conditional use is an allowed use that may require mitigation of any impacts of the use. Handicapped facilities are also required to comply with the requirements for a residential facility for handicapped persons as required by Wasatch County Code.

As mentioned there are two aspects of the WCC that must be complied with in order for the proposal to be approved. The first is WCC 16.21.17(B) “Uses for the Elderly and persons with disabilities”. This code section allows for protected classes to live in residential neighborhoods as long as they are in compliance with that section of the code. WCC 16.21.17(B) allows for a maximum of eight (8) unrelated persons in a group home. The second code requirement is 16.23.07 which is the conditional use section of the code. Both of these code sections will be addressed in detail in the body of this report under the staff analysis section.

STAFF ANALYSIS

The BOA must find that there was an error made by the planning commission in approving the conditional use permit. The burden of proving that error is upon the applicant appealing the conditional use permit.

According to the appellant, “the approval of the CUP Application should be reversed for three independent reasons”:

1. The ADA and FHA do not apply because at least some of the patients are not disabled;
2. The Planning Commission erred in characterizing the CUP Application for a "Residential Facility for Handicapped Persons" when the Facility is a treatment facility, not a residential facility; and
3. Even if the ADA applied and the use was proper, the Subject Property cannot meet the minimum requirements to be suitable for the Facility.

Each one of the above arguments will be addressed individually:

1. The ADA and FHA do not apply because at least some of the patients are not disabled;

According to the appellant, “Not All Proposed Patients are handicapped or disabled. The first threshold error is that the applicant has failed to demonstrate that all the proposed patients at the facility have a "handicap" or "disability." And that disqualifies them from protected class status under federal law and city code.”

Statement from Cascade Home, “All residents will have received a previous diagnosis of depression, obsessive compulsive disorder, or anxiety disorder, all of which are listed in the DSM (Diagnostic and Statistical Manual of Mental Disorders). The diagnosis will be derived from a medical professional qualified in their state to provide formal diagnoses. Residents will go to Cascade House because they are unable to function normally in daily life.”

Under the FHA (Fair Housing Act), a disabled person must be allowed equal opportunity to use and enjoy a dwelling” 42 U.S.C §3604(f)(3)(B). The individuals who will be residing in the Cascade Home are a protected class. Federal law defines handicapped or disabled individuals. Handicap and disabled individuals in this context essentially means the same thing, as those who suffer from a mental impairment which substantially limits a major life activity. Major life activities include the ability to interact with others, learning, reading, concentrating, etc. See 28 CFR § 35.108(c)(1). Both obsessive compulsive disorder and anxiety are listed in the DSM (Diagnostic and Statistical Manual of Mental Disorders) as mental disorders. Each individual that will be staying at Cascade Home will be diagnosed by a medical professional as having either OCD or anxiety and is unable to function normally in daily life. In other words, each resident will have been diagnosed with a mental disorder that limits a major life activity. This is the definition of disabled or handicapped as referenced above. Whether the condition is permanent or temporary is irrelevant when it comes to how a disability is defined under the FHA and ADA.

2. The Planning Commission erred in characterizing the CUP Application for a "Residential Facility for Handicapped Persons" when the Facility is a treatment facility, not a residential facility; and

Statement from Cascade Home, “Based on the definition of a residential facility for elderly persons, a “residential facility” is simply a place people can receive care and treatment in a residential setting. Neither state law nor the Wasatch County Code requires that any particular activity be dominant. However, looking at Cascade House in terms of what types of activities are occurring makes it clear that the vast majority are “residential” as compared to “treatment.” On the average weekday at Cascade House the residents will spend 4 to 5 hours participating in therapeutic services and the remaining 19 to 20 hours of the day will be spent in typical residential activities including eating and preparing meals, sleeping, exercising, hygiene, reading, recreation, socializing, studying, and chores. On a typical weekend day residents will spend 1 to 2 hours participating in therapeutic services and the remainder will be spent in residential activities. Therapeutic services may include group therapy, individual and family therapy, medication meetings, receiving medications, and technology assisted therapy (neurofeedback).”

In addition, the idea that the CUP should have been denied by the Planning Commission because of the claim that it is a treatment facility and not a residential facility is not persuasive to staff. First, residential facilities, whether for the elderly or disabled/handicapped, provide treatment to those living at the facility. That is the point of residing at one of these facilities. Under WCC, a residential facility for elderly persons is described as a residential dwelling that provides “primary care” to a limited number of people. See WCC 16.21.17 (A). Primary care is another word for treatment. Similarly, WCC 16.21.17 (B) only limits treatment for drug or alcohol abuse. It does not say that it cannot provide treatment for the disabilities/handicaps that would place an individual into that facility. In fact, one of the permitted conditional uses in the RA-1 zone is a residential facility for handicapped persons. WCC 16.04 defines a handicapped person as someone who “…requires a combination or sequence of special interdisciplinary or generic care, treatment or other services that are individually planned or coordinated to allow the

person to function in, and contribute to, a residential neighborhood." See WCC 16.04. It's not feasible that the WCC would define a handicapped person as someone that requires treatment to function in a residential neighborhood and allow a conditional use for a residential facility for those individuals, but not allow them to receive treatment. The appellant's assertion is simply an incorrect understanding of WCC and federal law. The appellant provides no support for its claim that residential facilities in the RA-1 zone cannot administer treatment to their residents. The appellant only mentions that the living areas category in WCC 16.36.01 states that the dominant use of the structure is for living purposes. As noted by the applicant, the dominant use of the facility is for living purposes. Second, the eight residents at this facility will live at the location as their full-time residence, while receiving treatment. There is no requirement in the WCC that requires any particular activity to be dominant at a residential facility for persons with disabilities. As indicated by the applicant, however, most of the resident's time will be spent doing the typical activities of any other residence. This is contrary to the appellant's claim that "…[l]iving is secondary to the medical and rehabilitation treatment being provided." See Appellant's memo pg. 9.

3. Even if the ADA applied and the use was proper, the Subject Property cannot meet the minimum requirements to be suitable for the Facility.

Staff is not entirely sure what is meant by the statement, "they cannot meet the minimum requirements to be suitable for the facility", our assumption is they are referring to building code requirements.

The following is an excerpt from an email provided by the Wasatch County Building Official Quinn Davis:

> *"Thank you for reaching out regarding the review of accessibility requirements during the plan review process for permit 22-517. I wanted to assure you that our third-party reviewer thoroughly examined the plans in accordance with the 2018 International Building Code (IBC) accessibility requirements, including Section 1107 Dwelling Units and Sleeping Units.*
>
> *I see no reason why the proposal by Cascade Home for a facility for disabled persons in the proposed existing residence would not meet the building code requirements to be used for a facility for up to 8 disabled persons*
>
> *If you have any specific questions or would like further information about the accessibility review process, please feel free to reach out."*

In talking with the building official there are some internal items that need to be addressed for code compliance but there was nothing that the applicant cannot comply with. In addition, the CUP process does not determine whether the facility is compliant with the ADA. This is determined by state licensing for the facility.

ADDITIONAL ISSUES RAISED BY THE APPELLANT

In addition to the three items raised above the following comments are also included in the appeal letter:

"Cascade Home has failed to demonstrate the accommodation is reasonable. The Application fails to meet the definition of a "reasonable accommodation."

Although the FHA allows for reasonable accommodation, a reasonable accommodation is not being requested with this application. A reasonable accommodation isn't necessary since WCC. 16.21.17(B) allows for a facility for up to 8 disabled persons. The proposal is for 8 disabled persons and cannot go above 8 persons without the County making an accommodation which would be discretionary. A reasonable accommodation could be something similar to a handicap ramp that needs to be installed into the front setback or asking for more patients than the 8 allowed by code. The applicant is not seeking a reasonable accommodation so that analysis is not necessary. The County has a built-in accommodation listed in the WCC and the application clearly meets the requirements for the CUP as noted by the Planning Commission when they approved the CUP.

"The Planning Commission erred in characterizing the CUP Application as one for a "Residential Facility for Handicapped Persons."

The Planning Commission correctly found that the application did qualify as a Residential Facility for Handicapped Persons. While the residents of the facility will have a disability, it is a distinction without a difference in this context. Wasatch County Code ("WCC") § 16.04: Definitions. "HANDICAPPED PERSON: A person who has a severe, chronic disability attributable to a mental or physical impairment, or to a combination of mental and physical impairments, which is likely to continue indefinitely, and which results in a substantial functional limitation in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living or economic self-sufficiency; and who requires a combination or sequence of special interdisciplinary or generic care, treatment or other services that are individually planned or coordinated to allow the person to function in, and contribute to, a residential neighborhood."

Because the WCC only permits, as a conditional use, a "Residential Facility for Handicapped Persons," and does not permit other types of group housing for people with disabilities, the County must use the federal definition of handicapped, otherwise the County would be discriminating against people who fall within the federal definition and are not covered by the County definition. In other words, if there is a gap and "handicapped" under WCC does not cover everyone who meets the definition of "handicapped" under federal law, the people in that gap would be illegally discriminated against if the County does not give them the same rights and protections of those who meet the definition under the WCC. As noted above, the ADA uses the term disability" and the FHA uses the terms "handicap" for the same thing. Under federal law, they're a distinction without a difference. They both have the same definition: Accordingly, the County must use the federal definition in considering this conditional use permit ("CUP"). The Planning Commission understood that the WCC has to apply to both handicapped and disabled persons to be compliant with federal law.

"The Planning Commission erred in finding that the CUP Application met minimum and required standards."

I assume when the appellant refers to the "minimum and required standards" they are referring to the required findings in the conditional use section of the code that the planning commission must make in order to grant the conditional use permit. The findings required in order for a conditional use to be granted are noted in 16.23.07 below. Items A-J were found to be satisfied by the planning commission based on their review of the code section, findings and motion. Each of the findings has a response provided by either the applicant or staff stating how that finding has been satisfied.

"The Planning Commission erred in granting the CUP because the CUP Application is incompatible with uses in the surrounding area."

By classifying a "Residential Facility for Handicapped Persons" as land use number 1292 which is under the larger heading of "living areas" the County Council, which is the policy making body for the County, has already determined that this use is treated as residential. The owner of the home is operating a business, however, the use of the home is considered residential. The appellant's assertion that WCC 16.04.02 states that a residential facility for elderly persons cannot be a business is misguided. The clause "that is not a business" is only modifying "unit." This only means that the building is not designed for business, but must be residential in nature. Any facility that would offer care to elderly persons would operate as a business. The building itself has to be a single-family or multiple-family dwelling, not a business. That is what makes the facility "residential," as is the case with Cascade. The Planning Commission and staff found that the use will be compatible with the surrounding structures in use, location, scale, mass, design and circulation. See Exhibit G - Planning Commission Minutes. The County Council has determined this use is appropriate in residential areas by allowing it as a conditional use in the RA-1 zone. Because the County Council has determined that a Residential Facility for Handicapped Persons is allowed as a conditional use in their legislative capacity, the proposal is allowed but may require conditions to mitigate negative effects. The Planning Commission did, when it approved the CUP, listed 10 conditions to mitigate negative effects. See Exhibit G.

The use is going in an existing home with no modifications to the home except for additional parking stalls behind the front façade of the home as well as a solid fence around the perimeter of the lot.

"The Planning Commission erred in granting the CUP because the conditions imposed on the CUP Application fails to mitigate any of the anticipated negative effects."

All the findings required for a conditional use were reviewed and made by the Planning Commission. The appellant claims that the application fails to mitigate any of the anticipated negative effects. However, this simply ignores the fact that the Planning Commission placed 10 conditions to mitigate the impacts of the proposal See Exhibit G.

The Planning Commission erred in granting the CUP as the CUP Application and Facility fail to demonstrate compliance with the General Plan and Wasatch County Zoning Ordinance objectives.

I assume the appellant is referring to statements in the General Plan like the following, "The lot sizes of permitted development shall increase as the distance from population centers increase." This is not saying that density is higher closer to population centers it is saying that lot sizes can be smaller. The density or lots per acre remains the same only lot sizes are intended to get smaller so lots are more urban and less rural closer to population centers. The location of the proposal is in a subdivision that has 1-acre lots.

The legislative body already determined that a residential facility for handicapped persons is allowed in the RA-1 zone. As stated before a conditional use is permitted but may require conditions to mitigate impacts. The proposal cannot be treated differently than any single family home that would be occupied by a family of up to 8 or more. A disabled person must be allowed equal opportunity to use and enjoy a dwelling" 42 U.S.C §3604(f)(3)(B).

As mentioned previously the County code allows for this facility as long as they are in compliance with two sections of the code. The below section is the first of the two sections that must be complied with.

16.21.17(B) Residential Facility for Persons with Disabilities [RFPD]: A residential facility for persons with disabilities shall be consistent with all applicable federal and state laws, and the existing zoning of the desired location, and shall:

1. Be occupied on a twenty four (24) hour per day basis by eight (8) or fewer persons with disabilities, in a family type arrangement under the supervision of a house family or manager;
   A maximum of 8 girls is allowed. The applicant is proposing a maximum or 8 girls. The patients will be in the home 24 hours a day. There will be awake staff 24 hours 7 days per week in the home. Each shift has a designated supervisor as well as assigned on call administration.

2. Conform to all applicable standards and requirements of the department of human services;
   The proposal will follow all requirements of the department of Health and Human Services. The proposal will be required to have a license similar to the one issued for the Cascade Academy (Facility in Midway) attached as Exhibit H.

3. Be operated by or operated under contract with that department;
   As mentioned the applicant is licensed by DHHS, not contracted with. DHHS does not refer clients to Cascade home or pay for clients to be in Cascade home.

4. Meet all county building, safety and health ordinances applicable to similar dwellings;
   The plans for the proposal have been reviewed by the building department and are ready to be signed off from a building permit perspective. The Building Official has provided a statement hat he sees no reason that the building cannot comply with the requirements.

5. Provide assurances that the residents of the facility will be properly supervised on a twenty four (24) hour basis;
   Residents are supervised on a 24 hour per day basis

6. Establish a county advisory committee through which all complaints and concerns of neighbors may be addressed;
   Complaints would be directed to the planning department. If complaints are valid enforcement actions will be taken. If complaints cannot be resolved the land use authority can be included in the discussion which would be in a public meeting.

7. Provide adequate off street parking space, as required under this title. See section 16.33.13, "Parking Computation", parking computation matrix, of this title;
   This is a residential facility not a commercial facility however, it was represented in the April 13th meeting that there can be as many as 10 employees at the site at a given time. If this is the case, in staff's opinion, there needs to be a minimum of 10 parking spaces regardless of what the residential standards require. There are three inside (covered) stalls in the garage and there must be 7 outside. Stalls are required to be 9' wide and are a minimum of 18' deep. Parking stalls must be kept behind the front façade of the home and have a screening fence.

8. Be capable of use as a residential facility for persons with disabilities without structural or landscaping alterations that would change the structure's residential character;

   The changes in staff's opinion do not require significant alterations other than some additional hard surface parking (for 7 parking stalls) behind the front setback of the home and a solid fence agreed to by the applicant. Staff does not believe that these requirements change the structure's residential character.

9. Not be established or maintained within one mile of another residential facility for the elderly or persons with disabilities;

   There is not another facility within a 1-mile radius of the proposal.

10. Not allow treatment for alcoholism or drug abuse to be performed on the premises of a residential facility for persons with disabilities. This shall not preclude the residence from being used for temporary housing for persons who are being treated for such disabilities on an outpatient basis at an approved facility for such treatment;

    This statement has been provided by the applicant: "In order to comply with the FHA, it is necessary that reasonable accommodations to allow for drug and alcohol addiction, which are "handicaps" under the FHA, to be treated, but it does not allow for reasonable accommodation of drug addiction caused by "current, illegal use of a controlled substance." 24 C.F.R. §100.201(a)(2). We interpret #10 in light of these FHA requirements".

11. Not allow a person who is violent to be placed in a residential facility for persons with disabilities; and

    This statement has been provided by the applicant: "Cascade Home reviews all current medical records, psychiatric and psychological testing and conducts interviews with previous and current treating professionals, parents and the client to ensure each client meets placement criteria for admission. Treatment is not allowed for those with a history of the following: history of aggression towards others, significant self-harm, and or suicide attempts not currently addressed to ensure stable treatment as well as sexual disorders and schizophrenia. If at any time during the course of treatment increased interventions, supports due to safety of client, staff or others in the community, the patient will be referred and discharged to a more appropriate level of care".

12. Require that placement in a residential facility for persons with disabilities be on a strictly voluntary basis.

    This statement has been provided by the applicant: "This qualifies because they are minors and the guardians have voluntarily placed their children in our care - by contrast of being court ordered or something of that nature. Clients who reside at and receive services at Cascade Home are voluntarily enrolled by their legal guardians. Clients are not mandated, nor ordered to attend the program. The clients referring team and the clinical team at Cascade Home have determined the client requires this program for the best prognosis to return home to a lower level intervention and or support."

-*CONDITIONAL USE* – There are some uses in the County that are considered conditional uses. These are uses that are allowed but may require conditions to mitigate negative effects. The code, adopted by the legislative body, has already made a determination that a "Residential facility for handicapped persons"

is allowed in the RA-1 zone but may require conditions to mitigate negative effects. Utah Code states that a land use authority SHALL approve a conditional use if reasonable conditions are proposed to mitigate anticipated detrimental effects. See Utah Code 17-27a-506(2)(a)(ii).

Wasatch County Code 16.23.07 outlines the criteria necessary for approving a Conditional Use Permit as follows (Staff responses provided are *italicized*):

16.23.07 GENERAL STANDARDS AND FINDINGS REQUIRED

These standards shall be in addition to any standards set forth in this land use ordinance for the zoning district wherein the proposed conditional use will be established. If there is a conflict between these standards and those set forth for the appropriate zoning district, the more specific standard control. The county shall not issue a conditional use permit unless the issuing department or commission finds:

A. The application complies with all requirements of this title;

Response: Applicant complies with 16.21.17 having a maximum of 8 persons allowable by code as well as all other requirements of 16.21.17(B) and 16.23.07. The applicant will need to provide the needed parking of 10 stalls with any other required conditions which will be addressed in this report. With the issues and conditions in this staff report staff believes the application is in compliance with the code. As noted below additional findings required by the conditional use have been met. The building used for the facility has been inspected and with the requirements of the building department can meet the IBC for the requested occupancy.

B. The business shall maintain a business license, if required;

Response: Applicant will maintain a Wasatch County Business License.

C. The use will be compatible with surrounding structures in use, location, scale, mass, design and circulation;

Response: The use is located in an existing single family home originally built and occupied as a single family home. There will be no modifications to the home other than some additional parking behind the front façade of the home, a solid fence that will start behind the front façade of the home and any requirements by the building department which are internal. No modifications will be made to the exterior of the building. The goal of the treatment facility is to create a transitional environment for residents receiving care that will fit in with a residential neighborhood.

D. The visual or safety impacts caused by the proposed use can be adequately mitigated with conditions;

Response: There may be additional traffic compared to a traditional family due to the staff that will be working at the facility. The roads are designed to handle the additional capacity and are well below an acceptable level of service. No additional garbage pick-up will be necessary. Staff believes that the conditions listed address the visual and safety impacts.

E. The use is consistent with the Wasatch County general plan;

Response: The General Plan does state that lot sizes should increase as the distance from the Heber City Boundary increases. This however does not change density which is the same regardless in the RA-1 zone. As stated, this use is considered residential. We would

not limit the number of family members allowed to live within a home. Staff believes the use is consistent with the General Plan.

F. The effects of any future expansion in use or scale can be and will be mitigated through conditions;

Response: Any expansion of the building, or use would require applying for a new conditional use permit.

G. All issues of lighting, parking, the location and nature of the proposed use, the character of the surrounding development, the traffic capacities of adjacent and collector streets, the environmental factors such as drainage, erosion, soil stability, wildlife impacts, dust, odor, noise and vibrations have been adequately mitigated through conditions;

Response: Staff does not believe that 4 parking stalls proposed by the applicant is adequate. Especially since it has been stated that there could be as many as 10 employees between shift changes. A minimum of 10 parking stalls will need to be provided that are 9x18, if there is room to pull over a landscape area. This will be a requirement of the conditional use. A solid fence will also need to be provided that starts where the parking stalls start but is behind the front façade of the home. This is to block impacts of headlights pointing into the adjacent home.

H. The use will not place an unreasonable financial burden on the county or place significant impacts on the county or surrounding properties, without adequate mitigation of those impacts;

Response: The conditions proposed, in staff's opinion, adequately mitigate these impacts.

I. The use will not adversely affect the health, safety or welfare of the residents and visitors of Wasatch County; and

Response: With the conditions proposed, adverse effects on the health, safety, or welfare, in staff's opinion, will be adequately mitigated.

J. Any land uses requiring a building permit shall conform to the international uniform building code standard.

Response: This requirement has already been complied with and will be enforced by the building department (see comments above by the building official).

-*PARKING*- The applicant has stated that they are a residential facility and that parking should be determined by their use as a residential facility not using any commercial parking requirement. This may be correct however, parking should be provided to adequately mitigate the actual parking needs. This breakdown, provided by the applicant, shows that the parking stalls needed is the following:

- One (1) Clinical Director
- One (1) Assistant Admissions Director
- One (1) Therapist
- Two (2) AM/PM Nursing Staff
- One (1) Chef
- Executive Director on both Cascade Academy and Cascade Home sites along with, Psychiatrist, recreational therapy, maintenance and other support staff.

The applicant's analysis regarding parking states the following:

a. A land use authority cannot base a denial of a land use application only on evidence that parking is a problem from public comment.

b. WCC § 16.04 "DWELLING UNIT: A single unit providing complete, independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking and sanitation." This property contains a single-family dwelling unit.

c. For single-family dwellings the WCC § 16.33.13 requires **2 spaces per unit plus 1/4 space per bedroom above 3**, with a minimum of 2 covered spaces. Accordingly, to comply with the WCC the property must have 4 parking spaces.

    i. Home has 5,454 sq. ft. (per footnote 2 of WCC § 16.37.11 this equals 1.1 "units"; one unit for the first 5,000 sq. ft. and 0.1 units for each 500 additional sq. ft.), which would require 2.2 parking spaces (2 x 1.1 = 2.2).

    ii. Home has 7 bedrooms, which requires an extra 1 parking space (1/4 space for the 4th, 5th, 6th, and 7th bedrooms).

    iii. 2.2 + 1 = 3.2, rounded up to **4 parking spaces**.

d. Other parking provided is required for state licensing and to comply with the ADA.

Staff does not believe that 4 parking stalls is sufficient especially when it was mentioned by the applicant that at the highest work shift there could be as many as 10 employees. As mentioned the proposal is a conditional use and requires all the items in 16.23.07 to be satisfied. Item H mentions parking and that issues of parking need to be mitigated. Staff believes that at a minimum 10 parking stalls needs to be provided. Stalls are required to be 9'x20' unless the bumper can pull up over landscaping then they can be 9'x18'. The garage has a parking capacity of 3 stalls. Parking stalls need to be behind the front façade of the house. Below are sections of the conditional use requirements that relate to parking as well as relevant code sections regarding parking:

16.23.07 (H) All issues of lighting, **parking**, the location and nature of the proposed use, the character of the surrounding development, the traffic capacities of adjacent and collector streets, the environmental factors such as drainage, erosion, soil stability, wildlife impacts, dust, odor, noise and vibrations **have been adequately mitigated through conditions;**

16.33.11 (C) No portion of a required front yard, other than driveways leading to a garage or properly located parking area, shall be paved or improved to encourage or make possible the parking of vehicles thereon. Parking of vehicles shall not be allowed except in such designated improved parking areas, and shall not be permitted in areas intended to be landscaped.

16.33.12 (E) Parking Lot Improvement Requirements: Every parcel of land hereafter used as a public or private parking area, including commercial parking lots and automobiles, farm equipment, or other open air sales lots and residential developments of three (3) or more units, shall be developed and maintained in accordance with the following requirements:

1. Parking areas shall be properly graded for drainage, surfaced with concrete, asphaltic concrete, asphalt, brick or stone. Such surface must be maintained in good condition, free of weeds, dust, trash and debris;
2. The sides and rear of any off street parking area for more than four (4) vehicles, which adjoins a residential or institutional building, or is contiguous to a residential zone, shall be effectively screened by light-tight masonry wall or solid fence. Chain-link fences with inserts shall not be considered acceptable. Such wall or fence shall be of a height determined by the planning department not to exceed eight feet (8') in height, and shall be maintained in good condition. Additional landscaping and buffering shall also be required;

16.33.08 Size of Parking Spaces - Each off street parking space shall be not less than nine feet by twenty feet (9' x 20') for diagonal or ninety degree (90°) spaces, or nine feet by twenty two feet (9' x 22') for parallel spaces, exclusive of access drives or aisles; except that commercial and industrial parking lots may have not more than five percent (5%) of the parking spaces designated for motorcycles, which shall measure at least four feet by eight feet (4' x 8'). The planning department may consider allowing up to a two foot (2') reduction in the length of diagonal or ninety degree (90°) parking spaces if bumper guards are placed so that a vehicle can extend over a landscaped area without interfering with the plants or pedestrian passage. No vehicle may protrude over any sidewalk. Handicap stalls shall be in accordance with (ADA) Americans with disabilities act requirements.

-*GARBAGE*- There will be no dumpster. The garbage will be handled by multiple residential cans which will be handled the same as the neighboring residences. A dumpster will not be used.

-*CC&R's* – There were some comments by the public that the proposal violates the subdivisions CC&R's. Section 16.01.17 of the WCC states the following: "Effect of CC&R'S Enforcement of private covenants, conditions and restrictions shall not be the responsibility of Wasatch County". CC&R's also do not preempt local, state, or federal law.

DEVELOPMENT REVIEW COMMITTEE

This proposal has been reviewed by the various members of the Development Review Committee (DRC) for compliance with the respective guidelines, policies, standards, and codes. The DRC also includes the building department. A report of this review has been attached in the exhibits. The Committee accepted the item for Planning Commission to render a decision.

POTENTIAL MOTION

Move to affirm the approval by the planning commission with the following findings.

Findings:

1. The planning Commission, acting as the land use authority, approved the conditional use on May 11, 2023 and included all the findings and conditions in the staff report.
2. The appellant applied to reverse the planning commission decision on June 13, 2023.
3. The proposal is in an existing home in the RA-1 zone in a residential neighborhood.
4. The proposal is providing housing for a protected class as defined by the ADA and the FHA.
5. The county code allows uses for protected classes.

6. All the girls living at the facility are a protected class because they meet the definition of "handicapped" under the Fair Housing Act and will be diagnosed as such. Any resident must be diagnosed with a mental disorder, as listed in the DSM (Diagnostic and Statistical Manual of Mental Disorders), that impairs a major life activity.
7. The home will be used for treatment of girls with severe anxieties as well as OCD. Both handicaps are considered a protected classes.
8. The WCC provides for "Residential facilities for persons with disabilities" in section 16.21.17(B) and the proposal is in compliance with this section of code.
9. By the stated use names of "*Residential* Facility for Handicapped Persons" (16.08.03) and "Residential facilities for persons with disabilities" (16.21.17) and land use number 1292 under the larger heading of "Living Areas" the County Council has already determined that this use is a residential use allowed in residential areas.
10. The proposal is a residential facility for handicapped persons. A residential facility for handicapped persons can provide treatment to its residents. The residents of the residential facility will primarily be performing residential activities, while receiving treatment.
11. Land use 1292 is considered a conditional use in the RA-1 zone. The code, adopted by the legislative body, has already made a determination that a "Residential facility for handicapped persons" is allowed in the RA-1 zone but may require conditions to mitigate negative effects. Utah Code states that a land use authority shall approve a conditional use if reasonable conditions are proposed to mitigate anticipated detrimental effects. See Utah Code 17-27a-506(2)(a)(ii).
12. The proposal is for 8 or fewer residents in the home in compliance with the code. Since there is a built-in accommodation within WCC, there is no reasonable accommodation needed or requested.
13. The use in in an existing residential home. The only exterior changes that will be made to the home is a fence and 7 additional parking stalls behind the front façade.
14. Each individual that will be staying at Cascade Home will be diagnosed by a medical professional as having either OCD or anxiety and is unable to function normally in daily life.
15. WCC 16.04 defines a handicapped person as someone who "…requires a combination or sequence of special interdisciplinary or generic care, treatment or other services that are individually planned or coordinated to allow the person to function in, and contribute to, a residential neighborhood."
16. Due to Federal Legislation, from a zoning standpoint, except for the express requirements in Wasatch County Code Sect. 16.21.17(B), this home must be treated the same as any other residential home, otherwise it would be illegal discrimination.
17. The proposal, in the opinion of the planning commission, based on their findings and motion, is in compliance with Section §16.23.07 Conditional Uses. In the opinion of the planning commission the conditions required mitigated any negative effects and they determined that the use is not incompatible with the surrounding uses.
18. Notice was sent to neighboring property owners within 500 feet of the property for the public hearings with the planning commission.
19. There were a larger number of concerns regarding this application and these concerns have been stated in a public meeting.
20. The proposal, in the opinion of the planning commission, is in compliance with Section §16.21.17(B) of the Wasatch County Code regarding persons with disabilities. The Planning Commission did not err in their determination of the approval regarding this section of the code and found that all aspects of this section of the code were met.
21. Under the FHA, individuals with disabilities have the right to live independently in the

community with any supports they need, such as health care services, a care-giver or live in aide, or other short or long-term services or supports.

22. The Development Review Committee has reviewed the project and has provided a favorable recommendation of approval.
23. The General plan states that, “lot sizes of permitted development shall increase as the distance from population centers increase. This statement does not refer to density or limiting number of occupants in a home.
24. The proposal complies with the parking requirements as part of the conditional use approval and as required by code for size and number based on employees at the highest work shift.
25. The building official has provided a positive recommendation of the proposal and has stated that the structure can and will comply with the IBC requirements for the intended use.

Conditions:

The following conditions were required by the planning commission which they felt mitigated any negative effects of the proposal.

1. A total of 10 parking stalls including 3 in the garage. Stalls must be a minimum of 9’x18’ if the front of the car can pull over landscaping otherwise parking must be 9’x20’. Required parking must be behind the front façade of the home. The stall closest to the road must be removed so that all stalls are behind the front façade.
2. A solid fence/wall that starts behind the facade of the home to buffer the parking stalls from the neighboring property must be installed.
3. All issues raised by the DRC, as noted in the DRC report dated March 29, 2023, shall be resolved to the satisfaction of the applicable review department.
4. The Applicant shall, at all times, only operate a “Recovery residence for girls with anxiety with emphasis on OCD” within the meaning of Utah Code Ann. § 62A-2-101(33). No other programs or services shall be delivered or occur at the Property, including those licensed under the Utah Human Services Code.
5. Pursuant to 42 U.S.C. § 3604(f)(9), the Applicant shall not allow any registered sex offenders or any resident convicted of a violent crime or sex offense to reside at the Property and shall otherwise ensure that no resident imposes a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others within the meaning of 42 U.S.C. § 3604(f)(9).
6. The Applicant shall, at all times, comply with all applicable rules and regulations for recovery residences, including, but not limited to, regulations promulgated under the authority of Utah Code Ann. § 62A-2-108.2 and set forth in Utah Admin. Code R501, including the Core Rules contained in Rule 501-2.
7. The Applicant shall promptly notify the County of any material change in the information required by Utah Code Ann. § 62A-2-108.2, any change or material departure from the description of its program, and any suspension, alteration, or revocation of its licensure under the Utah Human Services Code.
8. Any suspension, alteration, or revocation of the Applicant’s licensure under the Utah Human Services Code shall be grounds for terminating the conditional use and business license.
9. The Applicant shall comply with all other applicable provisions of the Wasatch County Code, including, without limitation, its zoning regulations and all applicable fire, safety and building codes.

10. Not allow a person who is violent to be placed in a residential facility for persons with disabilities

ALTERNATIVE ACTIONS

The following is a list of possible motions the Board of Adjustment can make. If the action taken is inconsistent with the potential findings listed in this staff report, the Board of Adjustment should state new findings.

1. Affirm the motion by the planning commission. This action may be taken if the Board of Adjustment finds that here was no error made by the planning commission and the findings cited in their motion are correct.

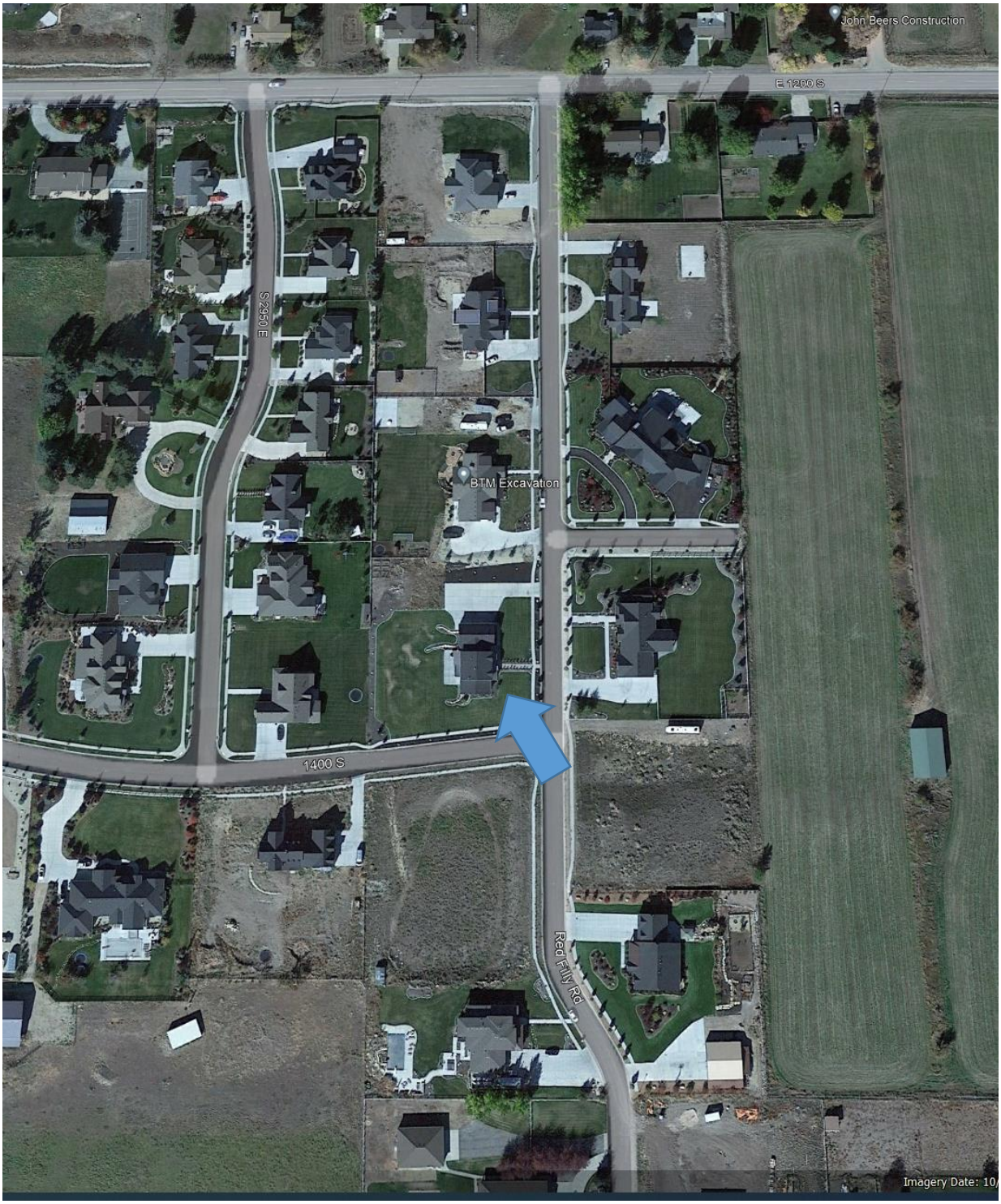
2. Continue. This action can be taken if the Board of Adjustment needs additional information before a decision, if there are issues that have not been resolved, or if the application is not complete.

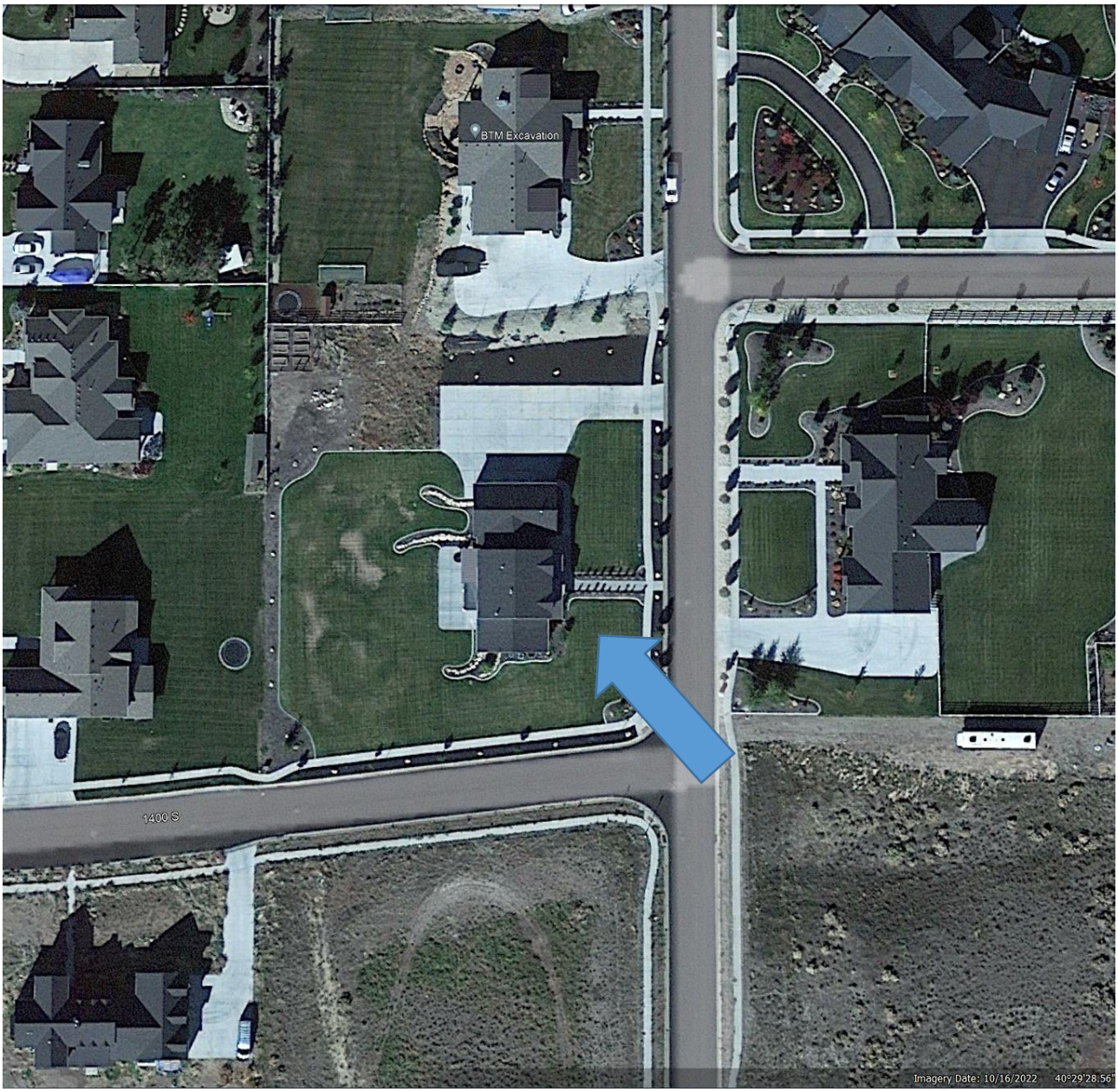
3. Overturn the motion of the planning commission. This action can be taken if the Board of Adjustment finds that there was an error made by the planning commission.

EXHIBITS

A. Vicinity Maps
B. Site Plan
C. Land use matrix
D. Applicants letter to appeal the conditional use
E. Property owners letter of response to appeal
F. April 13th PC minutes
G. May 11th PC minutes
H. DRC report
I. Applicant request
J. Joint Statement of the department of Housing and Urban Development and the Department of Justice
K. Response from the applicants attorney regarding the concerns/issues from Planning Commission and Public Hearing of April 13th
L. License for treatment facility
M. DSM definitions for OCD and anxiety

EXHIBIT A – Vicinity Maps

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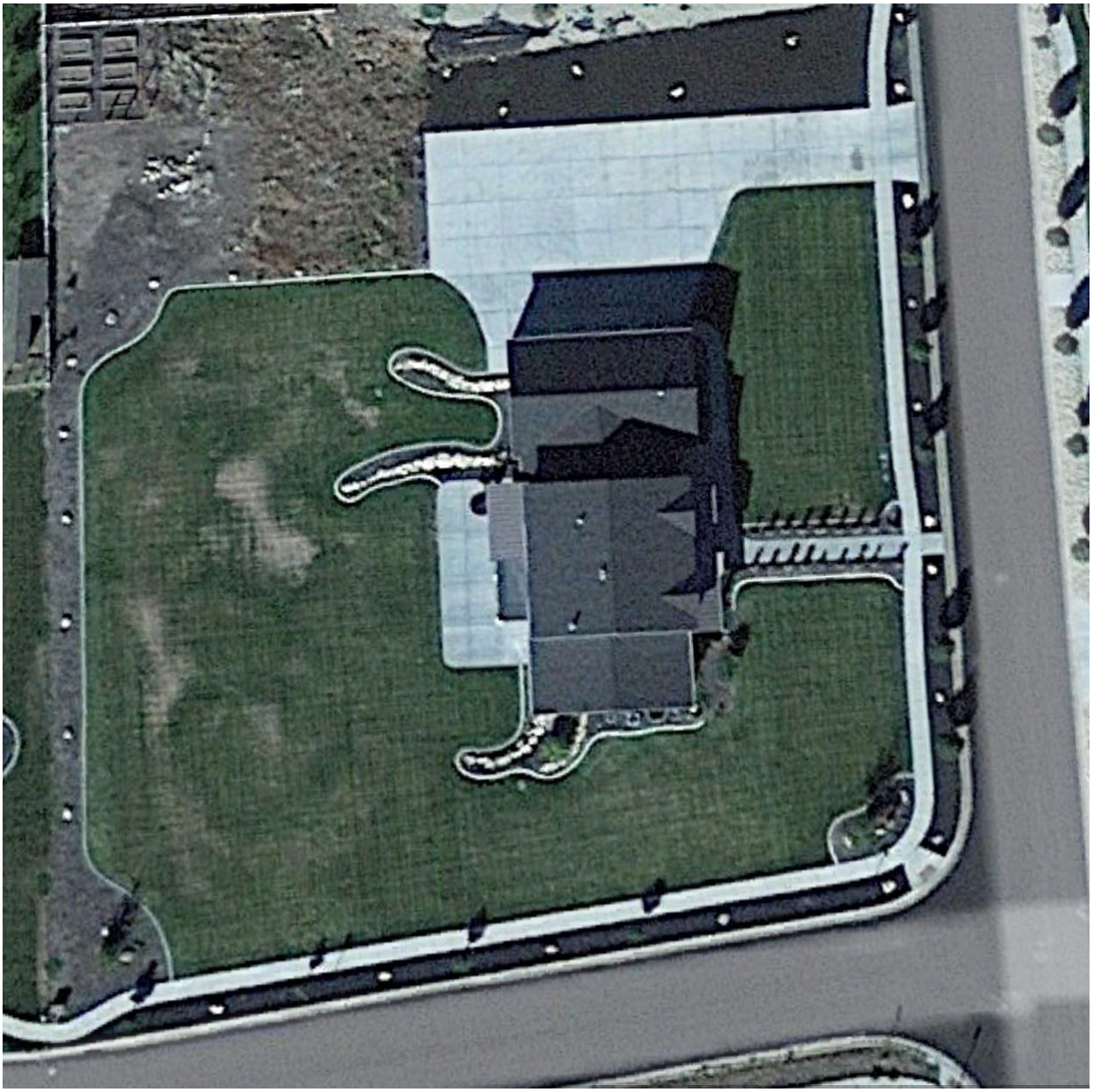

EXHIBIT B – Site Plan

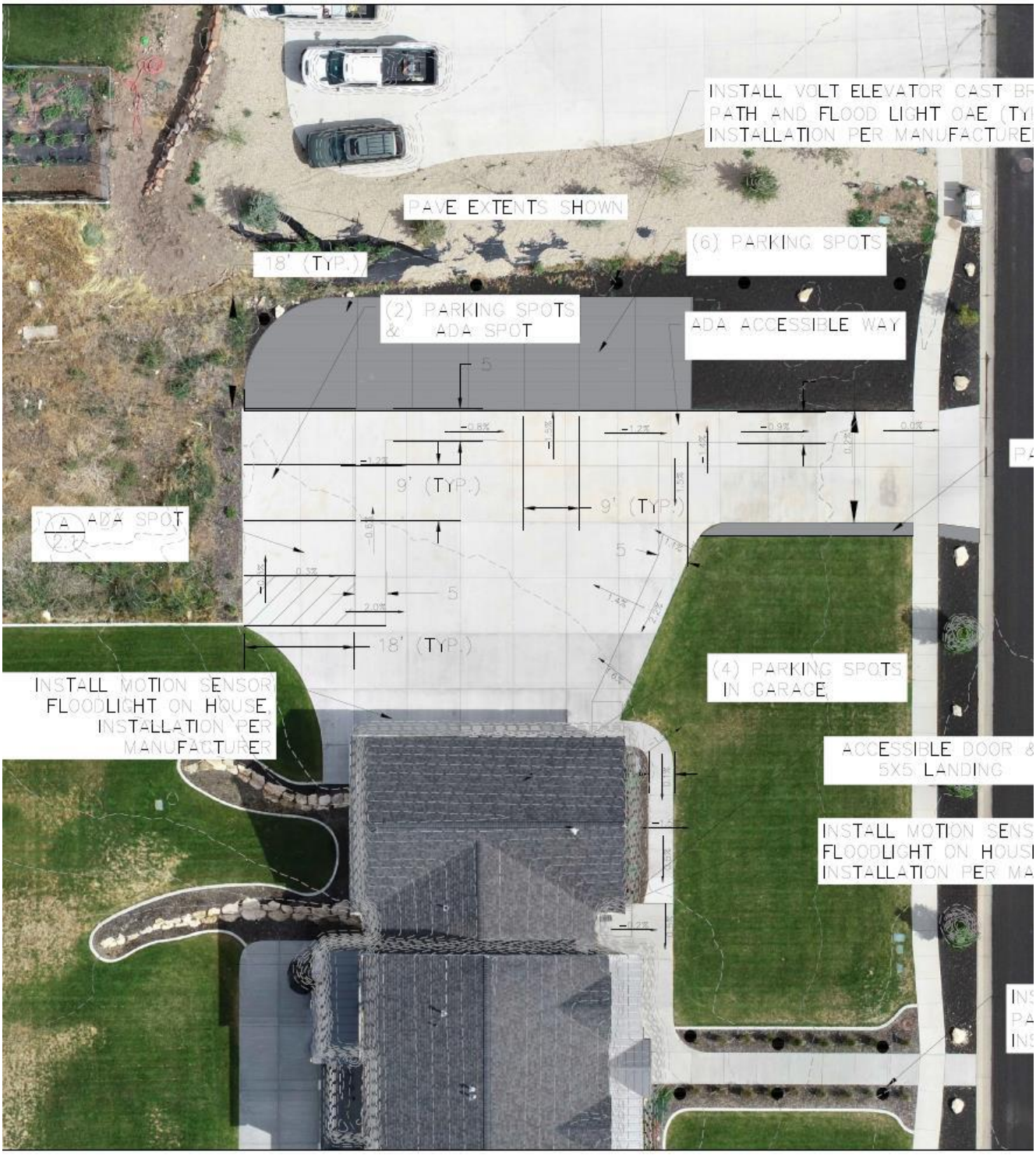

EXHIBIT C- Land Used Classification

16.08.03: CONDITIONAL USES

The following uses and structures are permitted in the **residential-agricultural zone (RA-1) only after a conditional use permit has been approved,** and subject to the terms and conditions thereof:

CONDITIONAL USES IN THE
RESIDENTIAL-AGRICULTURAL ZONE (RA-1)

Use Number	Use Classification
1292	**Residential facility for handicapped persons**
1293	Residential facility for elderly
1516	Bed and breakfast

EXBHIBIT D – Appeal letter from applicant

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June 12, 2023

Merry Duggin - Chair
Greg McPhie - Vice Chair
Anissa Wardell
Jay Eckersley
Wasatch County Board of Adjustment
25 N. Main
Heber City, Utah 84032

Via Online Submission

Re: Appeal of Planning Commission's Approval of the Conditional Use Permit for Cascade Academy, ULA LLC, Application No. DEV6850

Dear Board of Adjustment,

On behalf of our clients, Dustin Sidwell, Marie Shelton, and Brian Myers ("**Appellants**"), we hereby respectfully submit this appeal ("**Appeal**") regarding the administrative "land use decision"[1] approval of the conditional use permit ("**CUP**") issued on May 11, 2023, for an eight (8) bed residential care facility ("**Facility**") at 1374 Red Filly Road, Heber City, UT 84032 ("**Subject Property**") by the Wasatch County Planning Commission ("**Planning Commission**"). The Planning Commission is the "land use authority."[2] The Wasatch County Board of Adjustment ("**Board**") is the "land use appeal authority."[3] The Board is authorized to hear and act on this Appeal of the granting of the CUP.

Identity & Location of Appellants

The Appellants are all residents of Wasatch County who live in close proximity to the Subject Property. Mr. Sidwell lives at 2924 E. 1400 S., Heber City, UT 84032, which is two lots down the street from the Subject Property, and is an "adversely affected party" as defined in Utah Code Ann. § 17-27a-103(2)(b) and Wasatch County Code ("**WCC**") § 16.02.09(A). Mr. Sidwell will suffer "damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision [i.e. approval of the CUP] being appealed."[4] Mrs. Shelton live at 2945 Wild Mare Way, Heber City, Utah 84032, which is less than one block away from the

[1] *See* Utah Code Ann. § 17-27a-103(35).

[2] *See* Utah Code Ann. § 17-27a-103(34).

[3] *See* Utah Code Ann. §17-27a-103(5).

[4] *See* Utah Code Ann. § 17-27a-103(2)(b) and WCC § 16.02.09(A).

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Subject Property and has a direct view of the Subject Property from the existing residence, and similarly (i) is an adversely affected party as defined in Utah Code Ann. § 17-27a-103(2)(b) and WCC § 16.02.09(A), (ii) will suffer "damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision [i.e. approval of the CUP] being appealed."[5] Mr. Myers lives at 1336 S. Red Filly Road, Heber City, Utah 84032 which adjoins the Subject Property and is an adversely affected party as an adjoining owner."[6] Each of the Appellants live in the same Summit Meadows Subdivision as the Subject Property.

Factual & Administrative Background of the Subject Property and Facility

a. Factual Background

The Subject Property is a single-family dwelling located in Heber City's Residential-Agricultural zone (RA-1) and is also located on Lot 4 of the Summit Meadows Subdivision.

The "**CUP Application**," which is the subject of this Appeal, is for a conditional use permit to operate a residential treatment center for up to eight (8) unrelated girls between the ages of thirteen (13) and eighteen (18) suffering from extreme anxiety, obsessive compulsive disorder and similar conditions.

b. Administrative Background

Cascade Academy/ULA LLC ("**Applicant**") submitted the CUP Application to the County Planning Department. The CUP Application went before the Planning Commission on April 13, 2023, for a public hearing.[7] At the well-attended hearing on April 13, 2023, the CUP Application was continued to the May 11, 2023, Planning Commission meeting.[8,9] The CUP Application was approved, and the CUP was granted on May 11, 2023.

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[5] Id.

[6] *See* Utah Code Ann. § 17-27a-103(2)(a) and WCC § 16.02.09(A).

[7] A copy of the official Minutes of the April 13, 2023, Planning Commission meeting are attached hereto as **Exhibit A** and incorporated by this reference. A copy of the Staff Report for the April 13, 2023, hearing is attached hereto as **Exhibit B** and incorporated by this reference.

[8] A copy of the Staff Report for the May 11, 2023, hearing is attached hereto as **Exhibit C** and incorporated by this reference. The official minutes of the May 11, 2023, for the CUP Application are attached as **Exhibit D**. No Report of Action or similar document has yet been issued on this item.

[9] Written analysis of the various failures of the CUP Application and Facility to satisfy requirements was submitted to the Planning Commission prior to the May 11, 2023, Planning Commission meeting. A copy of the analysis is attached hereto as **Exhibit E** and incorporated by this reference.

This Appeal is made within the thirty-day period following the May 11, 2023, Planning Commission action as provided in Wasatch County Code ("**WCC**") § 16.02.09: Appeals Procedure and Utah Code Ann. § 17-27a-704.

Property & Zoning History

a. *Subdivision and Neighborhood Summary*

The Summit Meadows Subdivision and surrounding community is a residential area characterized by a non-transient population and a traditional single-family housing style. The neighborhood is known for its visually harmonious environment, light traffic, and a rural and open space feel. The existing housing densities are relatively low, with an average occupancy of around three persons per home, with lot sizes generally one acre or larger. The community's RA-1 zone designation and land use objectives aim to preserve the residential character and prevent the introduction of uncharacteristic elements such as increased traffic, high density, and transiency. Overall, the neighborhood's composition and objectives align with the General Plan and zoning ordinances of the County.

b. Subject Property Summary

The Subject Property is a one-acre single-family lot in the Summit Meadows Subdivision with a single-family dwelling. It is situated on the northwest corner of 1400 South and Red Filly Road. The Subject Property and immediately adjacent lots generally form a flat, even-surface area. There is no elevation screening from or around the Subject Property. Aside from the occasional home business, the surrounding area is occupied by agricultural and large-lot single-family residential uses. There are no businesses, parking lots, parks, churches, or similar uses for several blocks in any direction.

Standard of Review of the Board

Under WCC, "[a]ny person . . . [adversely] affected by an administrative decision applying this title [i.e., Title 16 – Land Use and Development Code], or a decision by the planning commission in which it is acting as the land use authority, may appeal that decision to the board of adjustment by alleging that there is an error in any . . . decision or determination by an official." WCC § 16.02.09(A). Pursuant to WCC § 16.02.09(J), the Board is authorized to "reverse or affirm, wholly or partly, or may modify the . . . decision or determination appealed from and may make such . . . decision or determination as ought to be made."

In performing its "quasi-judicial"[10] function, the Board has a twofold mandatory duty: (1) the Board must "determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations;" and (2) the Board must "interpret and apply a

[10] Utah Code Ann. § 17-27a-707(5)(a) ("An appeal authority's land use decision is a quasi-judicial act.").

land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application." Utah Code Ann. § 17-27a-707(4)(a) & (b). Because the WCC "fails to designate a scope of review of factual matters," the Board has a mandatory duty "to review the [appeal] matter *de novo*, **(without deference)** to the land use authority's determination of factual matters." Id. § 17-27a-707(2) (emphasis added). The term *de novo* "means literally 'anew, afresh, a second time.'" *Bernat v. Allphin*, 2005 UT 1, ¶ 30, 106 P.3d 707 (internal citation omitted). "In practice, this means [the Board] must make its own, independent determination of whether the [Planning Commission's interpretation and] decision was reasonable—with no deference to the [such interpretation] and decision." *Salt Lake City Corp. v. Jordan River Restoration Network*, 2018 UT 62, ¶ 46, 435 P.3d 179.

Utah Code designates the scope of review for appeal authorities. Utah Code Ann. § 17-27a-707(1) and (2). "If the county fails to designate a scope of review of factual matters, the appeal authority [Board of Adjustment] shall review the matter *de novo*, without deference to the land use authority's determination of factual matters. Where the WCC does not designate a scope of review of factual matters, the Board is required to review those matters on a *de novo* basis. (WCC § 16.02.09).[11]

Lastly, the "person . . . making the appeal has the burden of proving that an error has been made" WCC § 16.02.09(I); *see also* Utah Code Ann. § 17-27a-705 ("The appellant has the burden of proving that the land use authority erred.").

Errors in the Land Use Decision Approving the CUP

a. *Review of the Application & Approval of the CUP applying the Americans with Disabilities Act and Fair Housing Act was Error.*

The approval of the CUP Application should be reversed for three independent reasons.

The Planning Commission's erroneously determined the residents of the Facility are a protected class under the Americans with Disabilities Act of 1990 ("**ADA**"). The Planning Commission then invoked the "accommodation" in WCC § 16.21.17(B) and the Fair Housing Act ("**FHA**") requirement that a disabled person be allowed equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B). Both of these determinations were legal errors. Upon correction of each error the Board must reverse the granting of the CUP and deny the CUP Application filed by the Applicant.

The Appellant's arguments fall broadly into three categories: (i) the ADA and FHA do not apply because at least some of the patients are not disabled; (ii) the Planning Commission erred in

[11] This is distinct from the arbitrary, capricious, or illegal standard applicable to some appeals. *See* Utah Code Ann. § 17-27a-801(3)(b)(ii). But the Board need not address this analysis as this is a non-deferential, *de novo* review where the Board reviews the CUP Application as though it were the original land use authority.

characterizing the CUP Application for a "Residential Facility for Handicapped Persons" when the Facility is a treatment facility, not a residential facility; and (iii) even if the ADA applied and the use was proper, the Subject Property cannot meet the minimum requirements to be suitable for the Facility.

a. *Not All Proposed Patients are Handicapped or Disabled.* The first threshold error is that the Applicant has failed to demonstrate that all the proposed patients at the facility have a "handicap" or "disability." And that disqualifies them from protected class status under federal law and city code.

b. *The Subject Property is Not "Fully Handicap Accessible."* The second threshold error is that the Applicant has failed to demonstrate that the Facility is "fully handicap accessible" as required by 2010 ADA compliance mandates. Applicant has made no showing as to whether the Facility complies with the ADA. And there are several apparent shortcomings in the Facility under the ADA.

c. *There is No Proof that it is "Necessary and "Reasonable" to Place an 8-Bed Treatment Facility in a Residential Neighborhood.* Even assuming that the above hurdles did not exist, the Application should still be denied because the Applicant has failed to show that it is "necessary" and "reasonable" to place a facility like this (an eight (8)-bed treatment facility) in a residential neighborhood.

    i. There is no discrimination because no similar groups have a right to live together in groups of more than three (3) unrelated persons. Fair housing law does not guarantee maximum access to treatment. It just guarantees equal housing opportunities. So, the first question is whether comparable housing opportunities are available to similarly situated groups of non-disabled persons. *See Cinnamon Hills Youth Crisis Center, Inc. v. Saint George City*, 685 F.3d at 923. Here there is no discrimination because no non-disabled groups of unrelated persons would be permitted to live together in the Facility in a residential neighborhood.

    ii. There is no therapeutic need for a treatment facility in a residential neighborhood. To show a basis for a reasonable accommodation the Applicant would have to demonstrate that there is a therapeutic need to place this Facility in a residential neighborhood. No such showing can be made. There is no research to back up the therapeutic need for this type of treatment facility in a residential neighborhood. (Certainly, the Applicant has presented no such research, and it is the Applicant's burden of proof.)

    iii. There is no therapeutic need for an eight (8)-bed facility for this type of treatment. To establish a basis for a reasonable accommodation the Applicant would also have to show that there is a therapeutic need for eight (8) unrelated persons to be living together for this type of treatment. No

such showing was or can be made. The Applicant has presented no research to show such a therapeutic need. The research in this field establishes that larger numbers can actually be detrimental to therapy and recovery.

iv. The proposed accommodation is not "reasonable" because it will interfere with the goals set out in existing zoning laws. Under the law an accommodation should be denied if it is "unreasonable." And reasonableness must be judged by whether the accommodation would undermine the purposes and effects of existing zoning laws. The Applicant's proposed accommodation is unreasonable because it is a large-scale commercial use of a single-family residence that is inconsistent with the General Plan, it is uncharacteristic for residential neighborhoods (in that it would fundamentally alter parking and other aspects of the neighborhood. It will create visual disharmony; it will increase traffic, and introduces uncharacteristic transiency and density.

d. The Applicant has failed to demonstrate the accommodation is reasonable.

After explaining the legal definition of what is or is not "reasonable," and giving the Planning Commission some case law examples of how these general principles have been applied in other cases, we will now show how the facts of this case necessitate denial of Cascade Academy's accommodation request because it is not "reasonable."

As a threshold matter, the Applicant altogether failed to adequately address how the accommodation would impact the goals set out in the General Plan and the applicable zoning regulations. For example, the parking lot does not comply with Wasatch Code 16.21,16.23, and the Wasatch County General Plan. That, alone, necessitates denial because it is the Applicant who carries the burden of proving "reasonableness" in order to upset the status quo and justify the accommodation.

Additionally, the evidence discussed in the following subsections shows that the accommodation would be inconsistent with Wasatch County legitimate land use objectives by, among other things, causing parking congestion, creating visual disharmony, significantly increasing traffic, injecting commercial uses into a residential neighborhood, creating uncharacteristic transiency, adding uncharacteristic population densities, and thwarting the County zoning objectives embodied in the definition of "family" as either: (a) an individual, (b) two (2) or more persons related by law, blood, marriage or adoption, or (c) up to three (3) persons, living together in a single dwelling unit and maintaining a common household."

1. The Application fails to meet the definition of a "reasonable accommodation."

"An '[a]ccommodation is not reasonable if it either (1) imposes undue financial and administrative burdens on a [city] or (2) requires a fundamental alteration in the nature of [a]

program.'" *Schwarz*, 544 F.3d at 1220 (quoting *Sch. Bd. of Nassau Cty. v. Mr. Harperine*, 480 U.S. 273, 288 n. 17, 107 S.Ct. 1123, 94 L.Ed.2d 307 (1987) (quotation marks, alteration, and citations omitted)). In assessing whether an accommodation is reasonable, "a court may consider as factors the extent to which the accommodation would undermine the legitimate purposes and effects of existing zoning regulations . . . ." *Bryant Woods Inn*, 124 F.3d at 604.

The basic purpose of zoning is to bring complementary land uses together, while separating incompatible ones. *See Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388, 47 S.Ct. 114, 71 L.Ed. 303 (1926) ("A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard."). "Thus, ordering a municipality to waive a zoning rule ordinarily would cause a 'fundamental alteration' of its zoning scheme if the proposed use was incompatible with surrounding land uses." *Schwarz*, 544 F.3d at 1221. "On the other hand, if the proposed use is quite similar to surrounding uses expressly permitted by the zoning code, it will be more difficult to show that a waiver of the rule would cause a 'fundamental alteration' of the zoning scheme." Id.

A few examples help make sense of these general principles. In *Bryant Woods Inn* the operator of a group home for elderly residents suffering from Alzheimer's and dementia sought a variance allowing it to expand the home from eight (8) to fifteen (15) residents. After the local zoning board denied the request, concluding that the expansion would only worsen already-prevalent parking congestion on streets near the facility, the operator sued. The Fourth Circuit found no violation of the reasonable-accommodation requirement because the zoning board's concerns about parking congestion were justified. *See Bryant Woods Inn*, 124 F.3d at 604. In other words, the proposed expansion was incompatible with the surrounding area because of the congestion it would cause.

In *Schwarz*, 544 F.3d at 1223, the court held that relaxing an occupancy-turnover rule to accommodate two halfway houses in a residential zone would amount to a fundamental alteration of the City's zoning scheme. The court reasoned:

> Given Treasure Island's considered judgment on the importance of stability in RU-75 zones, the recognition other courts have afforded the value of stability in single-family residential neighborhoods, and the deference we normally accord to local land use regulation, we have little trouble concluding that limited turnover is an essential aspect of the RU-75 zones. And there can be no doubt that Gulf Coast's two halfway houses in RU-75 zones undermine that low-turnover policy. .... Accordingly, we hold that relaxing the occupancy-turnover rule to accommodate the two halfway houses in the RU-75 zones would amount to a "fundamental alteration" of Treasure Island's zoning scheme, and, therefore, that Gulf Coast's reasonable accommodation claim concerning the properties at 10214 Tarpon Drive and 10101 Tarpon Drive must fail.

Id.

In applying these factors, the federal appeals courts have given substantial deference to the decisions of local zoning officials stating "[R]egulation of land use is perhaps the quintessential state activity." *FERC v. Mississippi*, 456 U.S. 742, 767 n. 30, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982). State and local officials have experience in these areas and know best the needs of their citizenry. We doubt Congress meant for the federal courts to ignore entirely the considered judgments of these officials when deciding what is reasonable in a particular case.

Id.

As the foregoing case law discussion illustrates, the Board looks at the question of "reasonableness" from both the normative/theoretical standpoint of the goals and objectives set forth in relevant land use regulations and the actual composition of the surrounding neighborhoods to be impacted—i.e., "the extent to which the accommodation would undermine the legitimate purposes and effects of existing zoning regulations . . . ." Bryant Woods Inn, 124 F.3d at 604 (emphasis added). See also Schwarz, 544 F.3d at 1221 (decisionmaker examines whether the accommodation "was incompatible with surrounding land uses").

With that legal backdrop, the Board should consider whether, under the particular facts of this case, the use of the Facility at eight (8) patients would be reasonable. The Planning Commission erred when it determined the Applicant had carried its burden of demonstrating that an accommodation at eight (8) patients would not "undermine the legitimate purposes and effects of existing zoning regulations," *Bryant Woods Inn*, 124 F.3d at 604, and is not "incompatible with surrounding land uses," *Schwarz*, 544 F.3d at 1221.

2. *The Applicant failed to produce evidence that the accommodation is "reasonable."*

According to the Wasatch County General Plan, "The specific intent in establishing this residential-agricultural zone (RA-1) is to promote the protection of natural resource areas, prominent features of the site, farmland and other large areas of open land, while permitting residential development at low, rural densities…and maintain, as much as possible, the rural character of the County." The first of several objectives underlying this goal is to maintain and enhance the pleasing appearance and environmental quality of existing residential neighborhoods by avoiding encroachment of land uses which would adversely impact residential areas (i.e. increased traffic, noise, visual disharmony, etc.) and by providing adequate screening and buffering of any adjacent commercial development.

The Applicant failed to mention or discuss the impact the accommodation would have on these critical components of the County land use regulations and whether the accommodation is compatible with those land use goals and objectives. The Applicant also failed to describe or identify what the surrounding land uses are and how the accommodation would affect or impact them. This failure to carry its evidentiary burden justifies reversal of the decision of the Planning

Commission and denial of the Application without further analysis. However, as shown below, accommodating the Applicant at eight (8) patients would, in fact, "undermine the legitimate purposes and effects of existing zoning regulations," *Bryant Woods Inn*, 124 F.3d at 604, and is "incompatible with surrounding land uses," *Schwarz*, 544 F.3d at 1221, as explained more fully below.

b. The Planning Commission erred in characterizing the CUP Application as one for a "Residential Facility for Handicapped Persons."

The Planning Commission erroneously considered the CUP Application as a "Residential Facility for Handicapped Persons" under WCC § 16.08.03 (identifying conditional uses in the RA-1 Zone).

"Residential Facility for Handicapped Persons" is not defined in the Definitions Chapter for the Development Code (WCC § 16.04.02). The only places that term appears are as a permitted use in the RA-5 Zone (WCC § 16.07.02), as a conditional use in the RA-1 Zone (WCC §16.08.03), and in the "Living Areas" Appendix (WCC §16.36.01). Notably, "residential facility for handicapped persons" is found in the "group quarters" category 1200, given the category "Other group quarters, NEC – 1292 – Handicapped (residential facility for handicapped persons)." None of these references add clarity to what a "residential facility for handicapped persons" is.

"Living Areas" are properties where:

> structures on the land and corresponding area used primarily as places to live, whether on a temporary (e.g., transient lodging, hotel), semipermanent (e.g., hotel, fraternity, sorority) or permanent (e.g., home or apartment) basis. This category may also include structures on parcels and corresponding area that are **used for two (2) or more activities, yet the *dominant use of the structure is for living purposes*. An example of dual use of a structure where living is secondary might be a convalescent home. *Since medical service is the primary use of the property,* convalescent home is coded under *services 6516*.**

WCC § 16.36.01. (emphasis added)

The Applicant and Facility should definitely be in the 6000 category for Services. It is primarily a business providing services to people who temporarily live there in order to receive those services. Living is secondary to the medical and rehabilitation treatment being provided. The Facility would fit well under the 6516 category - Sanitariums, Convalescent and Rest Home Services (lodging and meals offered with full time medical staff) or under the 6515 category code – Behavior Drug and Alcohol Treatment Centers, since HIPAA licenses it as an "Emotionally Disturbed Children's Residential Treatment Center." The Applicant's stated purpose is to treat mentally ill girls with severe anxiety disorders and Obsessive-Compulsive Disorder. They list their staff as including medical staff, a clinical director, therapists, and a psychiatrist. They have a

HIPAA license. There is no doubt that this facility falls into the 6500 Medical Services category, and not a 1000 Living Areas category.

The most analogous definition found in the WCC is the definition of "residential facility for elderly persons" as "[a] single-family or multiple-family dwelling unit that is **not a business and offers primary care** to a limited number of nonrelated elderly persons." (WCC § 16.04.02) (emphasis added). Further, "residential facility for elderly persons" appears in the same category and context as "residential facility for disabled persons" as it is found in the "group quarters" category 1200, given the category "Other group quarters, NEC – 1299 – Residential facility for elderly persons)."

If the County desired to have convalescent homes and businesses providing in-patient care in the RA-1 Zone, it would have authorized those "services" codes such as convalescent homes, Code 6516 or other 6500 Medical Services. The Planning Commission could not reasonably conclude that a residential facility for disabled persons was fundamentally from other "living areas" listed in WCC § 16.36.01 and escape the clear requirements that the "dominant purpose is for living purposes." Nor could it properly conclude that a business use is permitted for a "residential facility" given the only definition of residential facility expressly excludes business operations.

c. *The Planning Commission erred in finding that the CUP Application met minimum and required standards.*

a. *The Planning Commission erred in granting the CUP because the CUP Application failed to meet applicable minimum standards.*

According to WCC § 16.23.07, the Planning Commission may only approve a conditional use permit if the applicant demonstrates compliance with all requirements of the County Development Code and if reasonable conditions can mitigate any detrimental effects of the proposed use. However, the Planning Commission failed to adequately address or mitigate the potential detrimental impacts of the proposed use. The Planning Commission did not and could not identify sufficient evidence or reasoning to support their decision that the proposed use would not adversely affect the health, safety, or welfare of the residents and visitors of the County.

Accordingly, the Planning Commission committed reversible error in concluding that the CUP Application satisfied minimum County Code requirements. Thus, it is unreasonable and therefore erroneous to conclude that the CUP Application could or should have been granted.

b. *The Planning Commission erred in granting the CUP because the CUP Application is incompatible with uses in the surrounding area.*

WCC § 16.23.07 states that the proposed use should be compatible with surrounding structures in terms of use, location, scale, mass, design, and circulation. The Applicant failed to demonstrate how the proposed use meets these compatibility standards, and the Planning

Commission similarly failed to support its decision with sufficient evidence. There is no clear evidence or analysis provided regarding the potential impacts of the proposed use on the surrounding structures or the community.

c. *The Planning Commission erred in granting the CUP because the conditions imposed on the CUP Application fails to mitigate any of the anticipated negative effects.*

WCC § 16.23.07 also requires that any issues related to lighting, parking, location, nature of the proposed use, character of surrounding development, traffic capacities, and environmental factors should be adequately mitigated through conditions. However, the Planning Commission did not outline specific mitigation measures or conditions to address any of these adverse effects. The Planning Commission's failure to provide detailed conditions for mitigating the adverse impacts suggests that it did not thoroughly consider the potential adverse effects of the Facility on the Appellants and other nearby residents.

d. *The Planning Commission erred in granting the CUP as the CUP Application and Facility fail to demonstrate compliance with the General Plan and Wasatch County Zoning Ordinance objectives.*

According to WCC § 16.23.07, the proposed use should be consistent with the Wasatch County General Plan. The Planning Commission did not provide sufficient evidence or analysis to show how the proposed use in the Application aligns with the General Plan. Without such evidence, it is difficult to determine if the Planning Commission adequately considered the long-term goals and vision of the County.

According to the Wasatch County General Plan, the residential-agricultural zone (RA-1) aims to protect natural resource areas, maintain the rural character of the County, and ensure the quality of existing residential neighborhoods. One of the primary objectives is to prevent the encroachment of land uses that would negatively impact residential areas, such as increased traffic, noise, and visual disharmony. Additionally, the General Plan emphasizes the importance of adequate screening and buffering between residential and commercial developments.

The Applicant has failed to provide evidence regarding the reasonableness of the proposed accommodation. They have not addressed the potential impact of the accommodation on the County's land use goals and objectives, nor have they described the surrounding land uses and how the accommodation would affect them. Based on this failure to meet the evidentiary burden, the Board should reverse the approval of the CUP Application. Moreover, it can be demonstrated that accommodating the Applicant with eight patients would undermine the legitimate purposes and effects of the existing zoning regulations and prove incompatible with the surrounding land uses, as explained in more detail below.

Reversing the approval of the CUP is necessary as the proposed accommodation undermines the legitimate purposes and effects of existing zoning regulations and proves incompatible with surrounding land uses.

i. *The facility is a large-scale commercial use of the Property*. Its nature resembles that of a small inpatient hospital or clinic rather than a traditional single-family residence. Considering the WCC, "Hospital Services" and "Medical, Dental, & Health Clinic Services / small, outpatient type services" are expressly prohibited in the RA-1 zone. Permitting a facility that is fundamentally incompatible with the surrounding neighborhood would violate the goal of screening and buffering residential areas from adjacent commercial development.

ii. *The facility's parking arrangements would deviate from the typical parking patterns in residential neighborhoods*. The Applicant has not sufficiently analyzed the parking impact of the proposed accommodation, especially in relation to the General Plan's objective of reducing traffic in residential areas. The evidence provided by the Applicant regarding the availability of off-street parking to accommodate eight (8) residents and over sixteen (16) staff members during the daytime shift alone is inadequate. The proposed parking plan does not account for visitor parking, family member parking, delivery vehicles, or the need for large dumpsters. As a result, this would significantly increase traffic in an area where children play, particularly during school bus pick-up and drop-off times. The experiences of other treatment facilities in Utah demonstrate that these types of facilities inherently create parking problems that are atypical for residential neighborhoods. Therefore, managing parking in this context is infeasible.

iii. *The Facility will create visual disharmony*. The General Plan expressly states its goal to reduce "visual disharmony" in residential neighborhoods. Despite the Applicant's claim that most of the necessary renovations are internal to the single-family residence, the nature of the exterior changes is significant and should not be disregarded. For instance, the presence of multiple trash receptacles on the street would alter the neighborhood's appearance. It is not characteristic of single-family dwellings to have 5-6 trash receptacles or commercial dumpsters, but facilities of this size would introduce such elements to the neighborhood. Similarly, a large parking lot and screening apparatus for the parking lot are uncharacteristic of residential neighborhoods in Wasatch County.

iv. *The Facility will increase traffic.* There would be a significant increase in traffic, exceeding the trip generation rates for single-family dwellings. The anticipated number of trips per day, based on the Applicant's request, would

be 62.8 - 78.6, which is more than six to eight times the trip generation for a typical single-family dwelling.

v. *The facility would introduce an uncharacteristic level of transiency to the neighborhood.* The treatment center's nature entails short tenancies as residents graduate from the program and are replaced by new residents, resulting in stays lasting only 45-90 days per resident. (*See* May 11, 2023, Staff Report, Ex. C, at p.1.) However, the current composition of neighborhoods in Wasatch County is characterized by low transiency rates and a preference for long-term residency. The Facility being used for eight (8) residents would introduce an element of transiency inconsistent with the existing neighborhood dynamics and the General Plan's objective of maintaining traditional single-family residences as the primary housing style.

vi. *The facility would significantly increase the population density.* The General Plan includes a specific goal of preserving the rural and open space feel of Wasatch County. The proposed occupancy density (excluding staff) would be at least 2.5 times higher than the existing housing densities in Wasatch County, thereby introducing a level of density incompatible with the surrounding residential neighborhoods. When considering the staff, the occupancy of the Facility would be closer to 7.5 times higher than existing occupancies. Additionally, use of the Facility at eight (8) residents would detract from the land use goal of perpetuating the rural and open space feel of Wasatch County.

vii. *Use of the Facility for eight (8) residents would undermine the County's zoning objectives as defined in the "family" category.* The definition of a "family" in WCC § 16.04.0-2 as "Either: (a) an individual, (b) two (2) or more persons related by law, blood, marriage or adoption, or (c) up to three (3) persons, living together in a single dwelling unit and maintaining a common household." restricts the number of unrelated individuals in a single dwelling unit to three. This requirement aims to maintain the existing residential characteristics of living in Wasatch County, aligning with the average household densities identified in the U.S. Census data. Use of the Facility as proposed would deviate from this definition and disregard the importance of preserving the residential nature of the County.

viii. *Reversing the approval of the CUP is justified as any group living arrangements in this zone would be unreasonable.* The United States Supreme Court has recognized the inherent reasonableness of municipal restrictions on the definition of "family" due to the acknowledged differences between single-family living and group living arrangements, irrespective of disability. Overturning the legitimate land use objectives and

> concluding that allowing eight unrelated residents would not substantially detract from the land use objectives and neighborhood realities mentioned above requires stronger evidence than what the Applicant has provided. Therefore, the Board reverse the approval of the CUP Application based on these errors, which are unrelated to the handicaps or disabilities of the proposed patients and would apply to any group living arrangement, including groups of non-disabled, unrelated individuals. These concerns align with the United States Supreme Court's recognition of their validity and utmost importance in maintaining the integrity of a legitimate land use and zoning plan. The Applicant has not made any attempt to demonstrate the reasonableness of the requested accommodation.

In conclusion, the Board should reverse the approval of the requested accommodation. The Applicant has not demonstrated the necessity of locating a large inpatient treatment clinic in a residential neighborhood or the need for eight (8) residents. And the Applicant has not established the reasonableness of the use of the Subject Property for the Facility. On the contrary, the evidence shows that it fundamentally contradicts the General Plan, zoning ordinances, and the actual composition of the neighborhood.

Thus, the Planning Commission incorrectly interpreted and applied the General Plan and objectives of the Wasatch County Code given the context, which is a reversible legal error. Therefore, we respectfully request that the Board of Adjustment reverse the approval of the requested accommodation and the CUP.

Conclusion

Based on the foregoing arguments, we respectfully request that the Board (a) Reverse the Planning Commission's approval of the CUP Application filed by Cascade Academy/ULA LLC and (b) Deny the CUP Application for the Facility.

We look forward to a hearing before the Board of Adjustment where we may present this and other evidence and argument to the Board and answer any questions the Board may have. Please advise us of the time, date, and place of the next available Board meeting. Thank you for your attention to our Appeal.

Request to Submit the Administrative Record to the Board

Finally, we formally request the Wasatch County Planning Department and Planning Commission submit the official record of the administrative land use decision approving the CUP be submitted to the Board for consideration and in accordance with WCC § 16.02.09.G.

Respectfully,
SMITH HARTVIGSEN, PLLC

J. Craig Smith
Jay L. Springer

Encl.

cc: Dustin Sidwell
Marie Shelton
Brian Myers
Scott Sweat, Wasatch County Attorney (via email: Attorney@wasatch.utah.gov)
Doug Smith, Wasatch County Planning Director (via email: Planning@wasatch.utah.gov)

4868-2029-9113 | Si026-001

EXHIBIT E – Property owner attorney response to appeal

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June 27, 2023

Via E-Mail

Wasatch County Board of Adjustment
35 South 500 East
Heber City, Utah 84032

Doug Smith, Director
Wasatch County Planning Department
35 South 500 East
Heber City, Utah 84032

Re: Appeal of Planning Commission's Approval of a Conditional Use Permit for Cascade House, Application No. DEV-6850

Dear Doug,

This letter is in response to the appeal submitted by Dustin Sidwell, Marie Shelton, and Brian Myers (the "**Appeal**") of the approval of a conditional use permit ("**CUP**") for a residential treatment facility for handicapped persons (the "**Facility**") within a single-family home located at 1374 Red Filly Road, Heber City, Utah (the "**Property**"). This firm represents ULA LLC, the applicant for the CUP. We do not feel it necessary to respond to every detail or claim in the Appeal, as most of the arguments are entirely off-point, but we did want to remind the Wasatch County Board of Adjustment, the authority that will hear the Appeal, of a few items that are determinative.

In summary, (1) the Facility is governed under the Wasatch County Code (the "**WCC**") as a residential facility for handicapped persons and as a residential facility for persons with disabilities, (2) a residential facility for handicapped persons is allowed as a conditional use in the RA-1 zone, and (3) where the standards for a conditional use and residential facility for persons with disabilities are satisfied, the Facility is entitled to a CUP.

1. Residential Facility for Handicapped Persons.

The Appeal claims that because the WCC does not provide a separate definition for a residential facility for handicapped persons the Facility should actually be considered a sanitarium, convalescent home, rest home, or behavior drug and alcohol treatment center. The justification for this categorization is strained, and entirely unnecessary. The WCC does not provide a definition for every term used, particularly where the plain meaning of the words is clear. That said, we do agree with the Appeal that the most relatable defined term is of a residential facility for elderly persons. The Facility

would clearly fall within this definition if the term "elderly persons" was exchanged for "handicapped persons." WCC § 16.04.02 states:

> RESIDENTIAL FACILITY FOR ELDERLY PERSONS: A single-family or multiple-family dwelling unit that is not a business and offers primary care to a limited number of nonrelated elderly persons.

Note that the clause "that is not a business" is modifying "unit," meaning the building is not designed for a business. Clearly those operating a facility offering care to nonrelated elderly persons would have to operate as a business, otherwise there would be no one who "offers primary care."

The Facility meets the definition of a residential facility for handicapped persons, either by using the plain meaning of those words or assuming a definition analogous to that of a residential facility for elderly persons. The Facility is operated within a single-family dwelling and the residents will live at the Property as their full-time residence while receiving treatment. The residents will live together as a single household, eating meals together, participating in activities together, and sharing chores and household responsibilities. The dwelling unit itself was not designed for a business and will only require slight modifications to comply with the Americans with Disabilities Act and the parking requirement imposed with the CUP. The operator of the Facility will offer care and treatment to the residents, who will each have been previously diagnosed by treating physicians as having either obsessive compulsive or anxiety disorder. The Facility will be limited to eight residents. As demonstrated by these facts, to conclude somehow that the Facility is not a residential facility for handicapped persons would ignore the plain meaning of the words and the analogous definition in the WCC.

Moreover, because the applicant has requested a CUP for a residential facility for handicapped persons, if there were any elements of the proposed Facility that the Planning Commission, or now the Board of Adjustment, did not think were consistent with a residential facility for handicapped persons, it could impose conditions as part of the approval that would ensure the Facility operates within the parameters of a residential facility for handicapped persons.

While the WCC uses both the term residential facility for handicapped persons and residential facility for persons with disabilities, these terms are interchangeable. The Fair Housing Act uses and defines the term "handicap," and the Americans with Disabilities Act uses and defines the term "disability."[1] The definitions of the two words under the different acts are nearly identical.

[1] *See*, Fair Housing Act, 42 U.S.C. § 3602(h) and Americans with Disabilities Act of 1990, 42 U.S.C. § 12102(1).

2. Conditional Use in the RA-1 Zone.

The Wasatch County Council has already determined that a residential facility for handicapped persons is appropriate in the RA-1 zone by designating it as a conditional use under WCC § 16.08.03. Any argument that a residential facility for handicapped persons is unfit to be in the RA-1 zone is contrary to the WCC.

The Appeal claims that the CUP should be denied because the Facility would introduce additional transiency, increase population density, and undermine the "family" category in the WCC. However, these effects were determined acceptable when the Wasatch County Council included residential facilities for handicapped persons as a conditional use in the RA-1 zone and did not identify these as detrimental effects requiring reasonable mitigation. This is further evidenced by the fact that the following uses, all of which would have these same effects, some to an even greater degree, are also allowed as conditional uses in the RA-1 zone: (a) residential facility for elderly, (b) bed and breakfast, (c) group transient lodging, and (d) guest accessory dwelling unit.[2]

3. Standards for Approval.

In allowing conditional uses, state law requires that the land use ordinance identify objective standards under which they may be approved.[3] A conditional use shall be approved "if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards."[4] In other words, a land use authority cannot speculate about potential detrimental effects, it can only look to the standards already set forth in applicable ordinances and make sure that those potential detrimental effects have been reasonably (not completely) mitigated.

In addition to other general standards, such as parking and setbacks, that are applicable to all uses in the RA-1 zone, the WCC imposes two sets of standards specific to the Facility. The Facility must meet the conditional use criteria set forth in WCC § 16.23.07 and must also comply with the criteria for a residential facility for persons with disabilities set forth in WCC § 16.21.17. These standards and how the Facility complies therewith were discussed at length in the April 13th and May 11th Planning Department staff reports prepared for and presented to the Wasatch County Planning Commission, but as these criteria are determinative to whether the CUP was properly approved and should be affirmed by the Board of Adjustment, they are further discussed below.

[2] WCC § 16.08.03.

[3] Utah Code Ann. § 17-27a-506.

[4] *Id.*, emphasis added.

The following are the objective standards identified by the Wasatch County Council to obtain a conditional use, as set forth in WCC § 16.23.07:

a. The application complies with all requirements of this title;

The application submitted in connection with the CUP complied with the requirements of the WCC and the existing home and improvements located on the Property were already in compliance with WCC requirements as evidenced by a certificate of occupancy issued after the home was constructed. The Appeal did not raise a challenge to this requirement.

b. The business shall maintain a business license, if required;

The applicant will obtain a business license prior to opening the Facility; this requirement was imposed as a condition of CUP approval. The Appeal did not raise a challenge to this requirement.

c. The use will be compatible with surrounding structures in use, location, scale, mass, design and circulation;

This criterion is about compatibility with surrounding structures. The Facility will be operated out of the existing single-family home, which is very similar to other homes in the neighborhood. The only modifications will be accessibility requirements for the interior and additional parking as required by the CUP. The Appeal claims the Facility is a large-scale commercial use and therefore incompatible with the surrounding neighborhood, but this is wrong on two fronts. First, the use is residential, the residents occupy the home as their full time residence while receiving treatment, and the Wasatch County Council determined that this type of use is residential by classifying a residential treatment facility for handicapped persons under the "living areas" category.[5] And second, the requirement is to be compatible with surrounding structures, and both the Property and surrounding properties contain large single-family homes on large lots.

d. The visual or safety impacts caused by the proposed use can be adequately mitigated with conditions;

The only visual impact is the additional parking, which the applicant has agreed to place behind the setback line of the home. There are no safety issues related

[5] WCC § 16.36.01.

to the diagnosis of obsessive compulsive and anxiety disorders. The Appeal claims that multiple trash receptacles and a large parking lot create visual disharmony. However, many single-family homes in residential neighborhoods have multiple trash receptacles, and those, like the receptacles for the Facility, are only on the street for a few hours each week. If anything, with full-time staff at the Facility the trash receptacles will be out for less time and will be more orderly. And as to the parking, from the street the parking will look essentially the same as it does today and will be largely screened with an opaque fence, as required in the CUP approval. Moreover, from an aerial view of the neighborhood it is apparent that many homes have large, paved areas that can accommodate a significant number of vehicles. As compared to these homes the Property will have less visual impact because much of the parking will be screened.

e. The use is consistent with the Wasatch County general plan;

The Property is located within the Eastern Planning Area as described in the General Plan.[6] The General Plan is primarily concerned with the provision of utilities and preservation of existing agriculture for the Eastern Planning Area. Because the Facility is proposed within an existing home, none of the concerns identified in the General Plan for this area are applicable to the CUP. Other general policies and goals set forth in the General Plan are also not affected by the Facility operating in an existing home. The Appeal's challenge to compliance with the General Plan completely ignores the fact that the Facility will wholly operate within an existing single-family home. While the Facility will require utilities similar to a large family, it will actually have less impact on public resources because the residents will not attend public school while living at the Property.

f. The effects of any future expansion in use or scale can be and will be mitigated through conditions;

There are no plans for expansion either of the home located on the Property or the number of residents, which will be limited to eight. The Appeal did not raise a challenge to this requirement.

[6] Wasatch County General Plan, 2001-2016, Wasatch County Planning Commission, last amended February 4, 2010 (the "**General Plan**"). *See* General Plan, Chapter 4 and Map 44, found at wasatch.utah.gov/Departments/Planning-Dept#61923-general-plan, last visited June 22, 2023.

g. All issues of lighting, parking, the location and nature of the proposed use, the character of the surrounding development, the traffic capacities of adjacent and collector streets, the environmental factors such as drainage, erosion, soil stability, wildlife impacts, dust, odor, noise and vibrations have been adequately mitigated through conditions;

The differences between a residential facility for handicapped persons and a family occupying a home relate only to parking and traffic. Otherwise, the impact of the Facility is the same as a large family occupying a single-family home. The Planning Commission determined that additional parking would be needed so that staff supporting the Facility would not park on the street. The applicant agreed to provide 10 parking spaces, screened by a solid fence behind the front façade of the home. Planning staff determined that the traffic capacity of the adjacent street was adequate for the Facility. The Appeal claimed that the parking would create disharmony, which is addressed above; the Appeal did not claims that the Facility had inadequate parking.

h. The use will not place an unreasonable financial burden on the county or place significant impacts on the county or surrounding properties, without adequate mitigation of those impacts;

Again, as compared to the impact of a large family, the impacts of the Facility on surrounding properties relate to parking for staff and more traffic trips-per-day from staff shift changes and additional supply deliveries. The traffic and parking have been addressed as described above. The Appeal did not raise a challenge to this requirement.

i. The use will not adversely affect the health, safety or welfare of the residents and visitors of Wasatch County; and

Note that this requirement is applicable to all residents and visitors of Wasatch County, not to any single particular resident, or even to the local neighborhood. Overall, the Facility will have a positive impact on the community, providing a few skilled and well-paid jobs and providing a place for treatment for community members with qualifying disabilities. The Facility will also increase tax revenue by purchasing from local vendors. The Appeal did not raise a challenge to this requirement.

j. Any land uses requiring a building permit shall conform to the international uniform building code standard.

Applicant has obtained building permits for an internal fire suppression system and bathroom remodels to comply with the ADA. The Appeal did not raise a challenge to this requirement.

The appeal did not challenge any of the criteria for a residential facility for persons with disabilities, as set forth in WCC § 16.21.17. As these criteria were all thoroughly addressed in the staff reports, we do not feel it necessary to discuss them here.

As you can see, the Facility complies with the objective standards set forth in the WCC for a CUP and therefore the CUP should be affirmed by the Board of Adjustment.

Please let us know if any clarification is needed on any of the above information. We will plan on participating at the Board of Adjustment hearing regarding this matter, to be held on August 15, 2023.

Sincerely,

Melanie R. Clark

4870-5699-5947

EXHIBIT F – April 13th Planning Commission minutes

ITEM 3 **BRAD GERRARD, REPRESENTING ULA LLC, REQUESTS A CONDITIONAL USE PERMIT FOR CASCADE ACADEMY, A PROPOSAL TO CONVERT A SINGLE FAMILY RESIDENTIAL HOME TO AN EIGHT BED RESIDENTIAL FACILITY FOR PERSONS WITH DISABILITIES, LOCATED AT 1374 RED FILLY ROAD IN THE RESIDENTIAL AGRICULTURE 1 (RA-1) ZONE. (DEV-6850; NATHAN ROSVALL)**

Staff

Nathan Rosvall, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that this proposal is located at 1374 Red Filly Road on lot 4 in the Summit Meadows Subdivision. The proposal, Cascade Home, is a residential treatment facility for up to eight adolescent girls between the ages of 13-18 with severe anxiety disorders with specialized treatment for Obsessive-Compulsive Disorder (OCD). This is identified as a protected class by the Americans with Disabilities Act of 1990. Wasatch County Code has an accommodation for disabled persons built in, allowing for eight unrelated persons in a group home, WCC Section 16,21.17(B). Since Cascade Home is going to be providing residential treatment for eight disabled persons, the request for the CUP fits squarely within what is allowed by WCC.

Nathan Rosvall indicated that while enrolled, the average length of stay is 45-90 days with 24 hour supervision. Cascade runs a similar home in Midway, Utah called Cascade Academy which has been a successful residential treatment facility in Wasatch County. Cascade Home will obtain and maintain a business license for operation as well as seek licensure from the State of Utah Department of Health and Human Services. Cascade Home will be compatible with the surrounding structures in use, location, scale, mass, design and circulation. The visible impacts to the neighborhood will be some additional hard surface off street parking for the necessary employees. There will not be any changes to the exterior of the building for ADA compliance as all ADA requirements are done internally.

Nathan Rosvall went through some key issues to consider.

1. The Americans with Disabilities Act of 1990 considers this proposal as a Protected Class.
2. The proposal is a Conditional Use in the RA-1 zone of Wasatch County, Wasatch County Code Section 16.08.03.
3. The Fair Housing Act supports residential treatment in residential neighborhoods for persons with disabilities.
4. Proposal complies with Section 16.23.07 of the current Wasatch County Code related to Conditional Use Permits.
5. The proposal complies with Section 16.21.17(B) of the Wasatch County Code regarding residential facilities for persons with disabilities.

Nathan Rosvall indicated that the application complies with all requirements of 16.21.17 and 16.21.17(B). The business shall maintain a business license if required. The use will be compatible with surrounding structures in use, location, scale, mass, design, and circulation. The visual or safety impacts caused by the proposed use can be adequately mitigated with conditions. The use is consistent with the Wasatch County General Plan. The effects of any future expansion in use or scale can be and will be mitigated through conditions. All issues of lighting, parking, the location and nature of the proposed use, the character of the surrounding development, the traffic capacities of adjacent and collector streets, the environmental factors such as drainage, erosion, soil stability, wildlife impacts, dust, odor, noise and vibrations have been adequately mitigated through conditions. The use will not place an unreasonable financial burden on the county or place significant impacts on the county or surrounding properties, without adequate mitigation of those impacts. The use will not adversely affect the health, safety or welfare of the residents and visitors of Wasatch County and any land uses requiring a building permit shall conform to the international uniform building code standard. The applicant also is aware of the requirements of Section 16.21.27(B), Uses for the Elderly and Persons with Disabilities, and has committed to comply with them. Also information furnished by neighboring landowners can be helpful but the decision on whether or not to approve or deny a conditional use permit cannot be solely based on public's concerns. A land use authority shall approve a conditional use if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with notable standards.

Nathan Rosvall indicated that the proposal has been reviewed by the various members of the Development Review Committee, DRC, for compliance with the respective guidelines, policies, standards, and codes. The DRC has accepted the item for Planning Commission to render a decision.

Nathan Rosvall then went through the DRC comments:

PLANNING comments:

- The biggest concern the Development Review Committee has for the residential treatment home is regarding the parking. The first concern is the parking stall placement. The two slanted stalls will need to be relocated as they are blocking ingress and egress of the covered parking access (garage). There is land to the north of the driveway, with a driveway expansion, would be an ideal placement for parking while eliminating blocking the covered parking and giving additional spaces for a shift change to occur without having to utilize the residential street as parking. Please revise the parking plan and resubmit. The rest of the application looks to be compliant with Wasatch County Code and will receive Planning approval once the parking plan has been resolved. Thank you.

ENGINEERING comments:

- My biggest concern would be on-site parking based on the narrative submitted for daily use. It would be difficult to utilize only on-site parking say during a shift change. The goal is to keep cars off the street especially during winter months hampering snow plowing activity. My recommendation is to use the property to the north if possible for added parking.

TCSSD comments:

- Based on the information provided for the project, the Twin Creeks Special Service District (TCSSD) produced a feasibility letter that was sent to Brad Gerrard on 1/30/2023. The feasibility study shows that the water requirement for the house/dwelling has changed from its original calculation. The additional water will need to be dedicated to TCSSD prior to approval of the project. Details of the water requirement are included in the letter sent.

Nathan Rosvall went through the proposed findings:

1. The staff analysis indicates the proposal complies with Section 16.23.07 of the current Wasatch County Code related to Conditional Uses.
2. Notice has been sent to neighboring property owners within 500 feet of the property.
3. There have been multiple concerns regarding this application and these concerns have been forwarded to the Planning Commission.

4. There are no known zoning violations on the property at this time.
5. The proposal will be in compliance with Section 16.21.17 of the Wasatch County Code regarding persons with disabilities.
6. Residents will be identified as a protected class by the Americans with Disabilities Act of 1990. Under the Fair Housing Act from the Department of Housing and Urban Development, individuals with disabilities have the right to live independently in the community with any supports they need, such as health care services, a care giver or live in aide, or other short or long-term services or supports.
7. The Development Review Committee has reviewed the project and has provided a favorable recommendation of approval.

Nathan Rosvall went through the proposed conditions:

1. All issues raised by the DRC, as noted in the DRC report dated January 19, 2023 shall be resolved to the satisfaction of the applicable review department.
2. The applicant shall, at all times, only operate a "Recovery residence for girls with anxiety with emphasis on OCD" within the meaning of Utah Code Ann. Section 62A-2-101(33). No other programs or services shall be delivered or occur at the Property, including those licensed under the Utah Human Services Code.
3. Pursuant to 42 U.S.C. Section 3604(f)(9), the Applicant shall not allow any registered sex offenders or any resident convicted of a violent crime or sex offense to reside at the Property and shall otherwise ensure that no resident imposes a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others within the meaning of 42 U.S.C. Section 3604(f)(9).
4. The applicant shall, at all times, comply with all applicable rules and regulations for recovery residences, including, but not limited to, regulations promulgated under the authority of Utah Code Ann. Section 62A-2-108.2 and set forth in Utah Admin. Code R501, including the Core Rules contained in Rule 501-2.
5. The Applicant shall comply with Section 16.21.16 of the Wasatch County Code regarding outdoor lighting.
6. The Applicant shall promptly notify the County of any material change in the information required by Utah Code Ann. Section 62A-2-108.2, any change or material departure from the description of its program, and any suspension, alteration, or revocation of its licensure under the Utah Human Services Code.
7. Any suspension, alteration, or revocation of the Applicant's licensure under the Utah Human Services Code shall be grounds for terminating the reasonable accommodation/conditional use granted.
8. The Applicant shall comply with all other applicable provisions of the Wasatch County Code, including, without limitation, its zoning regulations and all applicable fire, safety and building codes.
9. Failure to comply with the conditions set forth in the written accommodation from the County shall result in revocation of the reasonable accommodation/conditional use permit.
10. The reasonable accommodation/conditional use permit shall be particular to this Property only and this use only.

Alex Stoedter, Assistant Wasatch County Attorney, addressed the Wasatch County Planning Commission and indicated that this decision is not what you consider a public hearing and doesn't require the public to give input. This isn't a policy making body. This will be a residential treatment facility for people with disabilities and limited to eight people. To deny the application would create concerns that we are going against the built in accommodation, against the protected class and there are obvious concerns that could arise from that.

Commissioner Doug Grandquis indicated that he would like to read the document myself and make my own conclusions. We not only have that thirty one page document and have other documents as well to go over. We, the Commission Members, did not receive this until late this afternoon and have not been able to read that material. In order to give a fair hearing on this matter we ought to continue this item until such time that the Commission can review those documents. In fairness we need to do that. Alex Stoedter replied that this matter has been continued before. This is the second time that it has been before the Commission and the applicant does have an interest as well. Nathan Rosvall replied that why it was continued because of some water right issues and that has been resolved.

Applicant

Brad Gerrard, the applicant and current director of operations and co-founder of Cascade Academy and the proposed Cascade Home on 1374 Red Filly here Heber, the matter has been delayed a number of times. I would turn my time over to Caleb Cottle, co-founder and director of business development for Cascade Academy and also the proposed Cascade Home and will describe Cascade Academy. Rebecca Schuler will talk specifically to what is done at the academy.

Caleb Cottle, co-founder of Cascade Academy, addressed the Wasatch County Planning Commission and indicated that Cascade Academy is a residential treatment center and school for adolescent girls, ages thirteen to eighteen, who struggle with anxiety and OCD (Obsessive Compulsive Disorder) and specifically anxiety and OCD, which is our specialty. We have worked with over seventy four families since opening in 2020 to provide therapy, academics, recreational therapy and a host of other services that have served these young adolescents and their families to go through society better. We have a good success rate. Caleb then showed a brief video regarding our facility to the Planning Commission.

Rebecca Schuler, CEO, addressed the Wasatch County Planning Commission and went through what takes place in this facility. This is a very specific type of treatment and specialized. The kids aren't violent and don't have sexual concerns. The kids have a fear of certain things. OCD is a mental disorder that is least talked about and individuals with this have a hard time functioning in society. The Cascade facility in Midway has not diminished the property value of people's homes. We have shift changes three times a day and there are not many vehicles at the facility. Rebecca indicated that we would like to have anybody that have any questions to come to the facility and we will take them on a tour of the facility. The primary way that people find us is their kids haven't been able to attend school or have other problems. All of our kids have gone through mental health services and have been recommended to our facility and some have had psychiatric testing and have had licensed professionals that are qualified to do that. Also would not admit anybody that didn't have OCD and anxiety.

Commissioner Mark Hendricks asked with regard to the facility in Midway how many complaints have you had. Rebecca replied that since opening I don't know of a single one. Nathan Rosvall replied that as a code officer for Wasatch County there have been no written complaints. Doug Smith, the Wasatch County Planner, replied that the facility is in Midway City and we would not receive complaints on but he was with the Midway City Planner recently and the Midway City Planner indicated that he has never had a complaint.

Vice Chair Wendell Rigby asked, how did you go about picking this particular site and why did you pick it in the middle of a residential area? Rebecca replied the kids need to have a community feeling or walk in a neighborhood and be in a home environment.

Vice Chair Wendell Rigby also asked, how many staff members are you going to have? Rebecca replied that total staff would be around twenty. The peak number at one time would probably be less than ten during that shift change. Also our current parking plan have been accommodated for that have been submitted in addition of some extra parking area and off street. Also the water concern has been addressed with additional water being purchased.

Commissioner Scott Brubaker voiced a concern about receiving comments in a timely manner like this thirty-one page document that was received today should have been received fourteen days ago.

Public Comment

Vice Chair Wendell Rigby then opened the public hearing up for public comment and reminded that those speaking will be limited to three minutes and will be strictly enforced.

AUDRA SIDWELL: I live across the street from the proposed site. I never received notice of what was going on in this area and wasn't given time to look into the matter further.

MARIE SHELTON: I am a family practice physician and practiced in the past twelve years. Most of my patients are going through mental health. I help some of these patients get disability approval from the government. Very familiar with someone getting a patient disability diagnosis and getting state funding for that. Anxiety and OCD can qualify as a disability but it doesn't automatically qualify as a disability. There are certain criteria that needs to be met in order for the government and ADA to consider such a facility. First it has to be long term or permanent. People in this facility would not qualify for this type of criteria and people would need to qualify with other criteria. They might qualify for one or two of the criteria but not for all. Also there are fines that will be imposed to facilities that have people in them that do not meet certain criteria for disability. Commissioner Mark Hendricks voiced a concern about having the knowledge to determine the different types of disabilities and programs concerning that from the government and how to qualify people who meet certain criteria.

JULIE SCHWARTZ: A conditional use permit is not necessary because these girls already have homes to live in. They can receive the necessary treatment in their own communities and while remaining in their comfortable homes, familiar surroundings with their families, friends, school and pets. To have them in such a facility is not a benefit. This facility would cause a harm to our

neighborhood and such approval is not reasonable. There is no need for this facility to be in a residential neighborhood zoned strictly for single family homes. Having anxiety or OCD does not require a person to live in a group home in a RA-1 zone.

GINNY TUITE: I want to read a comment from Erik Asarian who is out of the country and wanted me to read his comments. He lives directly behind the Midway Cascade Academy facility. He indicated that we have had various encounters with our children with the people in the facilities using foul language etc.; regarding myself I don't have any problems with the program but have problems on how this is brought through. Also a facility like this can expand in other areas and not residential areas.

DAVE HADLEY: I have been associated with a medical clinic in downtown Salt Lake and have patients like this. These kids have alcohol problems or sex issues. These problems are with everybody. You can't make the claim that these kids have none of those problems. The Americans with Disabilities Act and Fair Housing Act do require reasonable accommodations for housing for disabled people. This only applies to permanent based housing. The Cascade facility do not meet these requirements and therefore do not qualify for any accommodation. Cascade Home is a medical treatment facility and not a permanent residence. Cascade Home is a segregated institution that does not meet the requirements for integrated community based housing.

JILL JOHNSON: Cascade is primarily a business providing medical services to people who temporarily live there in order to receive the services.

BRIAN MYERS: I live right next door to the house. The major concern that I have is just overall. We have got five young kids. Safety is a concern to me. Also traffic that is coming up and down the road. I haven't heard anything to mitigate these concerns. My kids will interact with these kids.

MICHAEL FISER: I have a concern about safety and the other concern is the parking. Cascade Home does not meet the Wasatch County requirements of parking. The parking lot does not meet the ADA requirements for a rehabilitation facility. Because of the parking issues this plan cannot be approved.

WAYNE FRISBY: The Cascade Home has to be consistent with all federal and state laws. The zoning does not meet the federal laws for this to be given approval. Cascade Home is a business for profit.

BEN JONES: I live down the street from this project. Cascade Home does not meet Wasatch County Code. This is a for profit business that is being placed in the middle of a community. This will not be adequately mitigated with conditions. Increased traffic and the parking lot cannot be mitigated either. Not consistent with the General Plan. The approval of this permit would lower property values in the area which will impact surrounding properties. There will be safety issues due to the traffic and parking. The County shall not issue a permit unless these standards are met and I do not believe that they are met.

KRISTEN BROWN: I never knew this was happening in my neighborhood and would have liked to have had an opportunity to check into this matter. I am concerned about safety. This facility should be on a large piece of property away from a residential area.

ELAINA GILLESPIE, adjacent property owner: There is no good research or documentation that putting a residential treatment center in the middle of a neighborhood provides any better care or improvement or success. We ask, since they are a business and not coming in as a residential partner, that they be held to the highest possible standard to meet all codes for the County, ADA and for the American Disability Act. Concerned about safety.

TOM LATIMER: I just live around the corner of this proposal. Concerned about the parking facilities especially during shift changes. Parking on the street is illegal because it completely blocks one side of the road. Concerned about safety.

HAROLD NICOL: Our doors face each other and that is the CC&R's. When I moved in to this area I did my due diligence and did a lot of research to make sure something like this didn't happen. CC&R's are that if there is any change to the CC&R's it has to be done in accordance with all the members that are part of that neighborhood.

RODNEY EARNSHAW: My biggest concern is what will happen to the property value.

MARGARET NADAULD: This is a business for profit. This should be located in a zone that is developed for businesses where there is an adequate place for parking and other things for a business to survive. Please don't allow this business to locate in a sweet family residential neighborhood. Let's help Cascade find a location that is suitable that meets the requirements for such a business of this to survive.

Vice Chair Wendell Rigby then closed the public comment period.

Nathan Rosvall indicated that there were four parking spots in the garage. They have to be ADA parking stalls and then have parking on the north side. In the voided space there will be landscaping as well. They do meet the parking requirements as well. With regard to garbage pickup it is just trash cans. This is a residential house and neighborhood.

Commissioner Mark Hendricks indicated that his concern is that we have got members of the public who may or may not be qualified and let's assume that they are and are saying it is not in compliance. So much that is coming up people are challenging whether the facts comply with an ordinance or they don't. We are not a trier of fact. What is being proposed, is that compliant with code with regard to parking? We don't want to approve something that is not in compliance with the law. Jon Woodard replied that I cannot say that I have analyzed this application. I trust staff knows how to do their analysis but I haven't myself looked at this issue. Nathan Rosvall replied that on the parking computation the assisted living facilities that is the closest thing that we could have. That states that parking consists of one per two units. This will be four total required staff parking for eight girls.

Commissioner Doug Grandquis replied that my concern is that it is beginning to look like a business basically established in a residential neighborhood. I have concerns that the person who supports this activity should have looked at those CC&R's, the HOA. I am not going to be in favor of this I can tell you that right now. This could have been located in some other part of the County.

Brad Gerrard, the applicant, replied that we will be going with the regular trash pickup that everybody else does. Regarding parking we have gone with two different scenarios with Planning and Zoning. We are planning on making and pour an additional pad in the gravel space that you see is next to black rock, black gravel so that we don't have the parking on the road side. We will have motion sensors, no signage, motion sensors on the corner of the drive, no dumpsters and deliveries are done by typically a pharmacy and done in a regular vehicle usually once a week. There won't be a lot of people coming and going. The patients are being referred by their parents and not being forced against their will.

Commissioner Doug Hronek asked if you were aware of the CC&R's and HOA on this property. Brad Gerrard replied nothing specifically no. Jon Woodard replied there are some provisions of CC&R's that very, very rarely the County has gotten involved in and part of the CC&R's that relate to provisions of the code but we don't enforce CC&R's. We used to play a more active role in making sure that the HOA thought that the application was compliant with the CC&R's. We stopped doing that because we had HOA's that just not being well organized to not wanting to give an answer. They want to participate in the process and was making it so applications weren't moving forward as were required to process under State law. The other thing that we became concerned about is if we were being used as a hammer to force private covenants we could get pulled into the lawsuit in the event that those are found illegal. That would be very much my concern here is if this was found to violate the Fair Housing Act or the ADA. If we were tried to deny it on the basis of CC&R's we would definitely be pulled into that.

Commissioner Mark Hendricks replied that you have got CC&R's, HOA's in a home there are laws at the local, state and federal level that supersede all that. Jon Woodard replied that he would strongly advise the County using CC&R's that could being applied in violation of federal law as a basis for denying this application. Commissioner Mark Hendricks replied that we can't use that to say that we are not going to do it because of the CC&R's and the County will be sued.

Commission Comments

Commissioner Scott Brubaker indicated that we need in the community not necessarily this spot. Some laws may require us to approve it. There are strong neighborhood concerns. It might violate the codes and definitions of the ADA so it becomes a legal issue. Neighborhood safety could be a problem. The shift change and traffic and parking is a real concern. My feeling is I would not vote for this to go through in this location unless we are required to by a federal and state statute. My concerns are mostly the same legal type issues and so rather than denial I would be glad to go along with vote on a continuance.

Commissioner Kimberly Cook replied that I want to make sure that we go by the code. We need to go by the code. Are we violating any codes? Conditional uses are put in there for a reason. I want to make sure that we have got all the information and we are following it and just make sure that we are not violating things. I would rather continue the matter just so we nail this down.

Commissioner Doug Grandquis replied that I think we have some discretion and we can't simply say at this point it is black and white. There is an interpretation here. It is a hard one and I really hate to see those residential neighborhoods affected and I think that is the way society is going. My vote is denial as well. There are a lot of federal and state laws that you have to work around.

When I came into this meeting tonight I was for continuation of it before but listening to both sides of the argument now I think my biggest concern is just changed the complexity and character of that neighborhood. That is really what gets to me and I have changed my view and I would go for denial.

Commissioner Mark Hendricks replied that there is a federal, local and state set of rules that allow this and that is not the same as saying oh you have to approve it. That is two different things. Nobody expects when they buy their home and yes he was given the CC&R's when he bought it. Nobody expects to have a commercial group home in their quiet neighborhood. The federal government says there are circumstances that you can go past things and go ahead and plot something that shouldn't be in a neighborhood and doesn't mean we have to approve it. One of the issues is with the public comment from the doctor. She was giving us one definition of disability and not sure that her definition that she was describing is the same disability that would apply in this kind of conditional use permit and I don't know that. The applicant needs to make sure that you can explain under what definition of disability you are following. Also this whole permanent versus temporary treatment and were given an analysis of the ADA and is qualified to make that analysis and I don't know that I don't analyze the ADA and I am not sure whether it makes a difference. Whether this had to be owned or leased by the disabled didn't make sense to me. Is this primary use medical or is it living and that suggests to me these two categories under our county code. I am not clear on that and that concerns me. The whole parking analysis and we need to make sure that is correct. There may be other concerns of that parking that we need to look in and not comfortable that we have complied with all the parking. The lighting and have been told there are no flood lights and signs so we need to stop worrying about that. The argument about lower property values that comes up every other Planning Commission and if you let this go in my property value is going to go down and nobody has brought data in for that. We can't rely on that without data of that. The whole thing about notice and those laws all laws we didn't set those laws that is the way it is done and they publish it where they publish it and nobody is going to send you a letter unless the law requires you to do it. Keeping them to the highest standards and if they don't comply with the conditions they lose their conditional use and he goes away but you do have some protection. My biggest concern is not being clear on application of the right legal regime given disputes about certain key facts. That is why I am uncomfortable voting in favor of this at this time. Now if the applicant can deal with all this and understand what these objections are and get it squarely in the legal regime then the community has to realize they complied with the law and hopefully make the most of it. That is my feeling on it.

Vice Chair Wendell Rigby indicated that there are still a number of questions that need to be answered and also the last minute comments that we received. I would like to make sure I understand everything that came in to us because I don't want to discount the comments that were in writing. The reason it was postponed last time was because the applicant did not have something that they needed to have to complete the application. I don't feel that we're at the point where we can make a decision.

Commissioner Hendricks indicated that the applicant has a right for a decision tonight if they want it and I would have to vote no. Once that has been denied are they precluded from coming again? Jon Woodard replied that they could try again and try appealing it. There isn't anything in this particular application at this stage that makes it so we need to approve it or deny it.

Commissioner Doug Grandquis indicated that his biggest concern, after hearing both sides of the argument, is that it just changes with the complexity, and the character of that neighborhood, therefore I have changed my view and I think we ought to move and I would go for denial.

Commissioner Mark Hendricks indicated that I would want to make sure that an applicant gets every opportunity, so I would rather continue it, because I am not comfortable with what I know tonight.

Commissioner Kimberly Cook indicated that she would also rather continue it, just so we nail this down.

Commissioner Scott Brubaker indicated that his concerns are legal type issues, so would like to continue it.

Motion

Commissioner Doug Grandquis made a motion for denial because I think that we have heard enough to make that decision.

There was not a second to this motion so the motion failed.

Motion

Commissioner Mark Hendricks, I would move to continue Item No. 3 on the agenda tonight and with that encourage the applicant to consider all the challenges and objections of concern what the community has and see if they can't adequately address that and give confidence to the Planning Commission and the community that they are in compliance with the legal regime that would govern this. Also to continue this matter to the Planning Commission Meeting next month on May 11, 2023.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:
AYE: Doug Hronek, Kimberly Cook, Scott Brubaker, Vice Chair Wendell Rigby, Mark Hendricks.
NAY: Doug Grandquis.

Vice Chair Wendell Rigby indicated that the public comment period is closed so there won't be any public comment at the Planning Commission meeting on May 11, 2023.

EXHIBIT G – May 11, 2023 Planning Commission minutes

ITEM 2 **BRAD GERRARD, REPRESENTING ULA LLC, REQUESTS A CONDITIONAL USE PERMIT FOR CASCADE ACADEMY, A PROPOSAL TO CONVERT A SINGLE FAMILY RESIDENTIAL HOME TO AN EIGHT BED RESIDENTIAL FACILITY FOR PERSONS WITH DISABILITIES, LOCATED AT 1374 RED FILLY ROAD IN THE RESIDENTIAL AGRICULTURE 1 (RA-1) ZONE. (DEV-6850; DOUG SMITH).**

Staff

Doug Smith, the Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that this item was in front of this Commission last month and then gave a brief recap concerning what this matter is about. It is a residential facility for handicapped person which would allow up to eight girls that are thirteen to eighteen years old with severe anxiety. They are considered a protective class. The proposal to be in an existing plat 5,454 square foot home on one acre in an RA -1 Zone. Code requires parking that is nine feet wide by eighteen feet deep. Doug Smith then went through some paragraphs taken from his staff report that he made last time which will help you understand this proposal more. The County has already determined this use is treated as a residential use. County Council has determined this use is appropriate in residential areas and allowed it as a conditional use in the RA-1 Zone and may be allowed with conditions to mitigate negative effects. Girls living at the proposed facility are a protected class. Reasonable accommodations is not being requested with this application. Reasonable accommodation is not necessary since there is already a built in accommodation in Wasatch County Code. Allows for eight people. A ramp needs to be built in the front set back. Asking for more occupants than the eight that is allowed by code. This home must be treated the same as any other residential home. Staff do not believe that four parking stalls proposed by the applicant is adequate but would ask for ten stalls. The applicant has agreed to that. Ten parking stalls need to be provided for the employees. A solid fence has been discussed which would block headlights, etc. No dumpster. CCR's were brought up. Code refers to a residential facility for a handicap persons.

Doug Smith indicated that there are twelve criteria and then went through those twelve criteria for a residential facility for persons with disabilities (RFPD). A residential facility for persons with disabilities shall be consistent with all applicable federal and state laws, and the existing zoning of the desired location, and shall:

1. Be occupied on a twenty four hour per day basis by eight or fewer persons with disabilities;
2. Conform to all applicable standards and requirements of the Department of Human Services;
3. Be operated by or operated under contract with that department;
4. Meet all county building, safety and health ordinances applicable to similar dwellings;
5. Provide assurances that the residents of the facility will be properly supervised on a twenty four hour basis;
6. Establish a county advisory committee through which all complaints and concerns of neighbors may be addressed;
7. Provide adequate off street parking space, as required under this title. See section 16.33.13, "Parking Computation", parking computation matrix, of this title;
8. Be capable of use as a residential facility for persons with disabilities without structural or landscaping alterations that would change the structure's residential character;
9. Not be established or maintained within one mile of another residential facility for the elderly or persons with disabilities;
10. Not allow treatment for alcoholism or drug abuse to be performed on the premises of a residential facility for persons with disabilities. This shall not preclude the residence from being used for temporary housing for persons who are being treated for such disabilities on an outpatient basis at an approved facility for such treatment;
11. Not allow a person who is violent to be placed in a residential facility for persons with disabilities; and
12. Require that placement in a residential facility for persons with disabilities be on a strictly voluntary basis.

Doug Smith then indicated that the County shall not issue a conditional use permit unless the issuing department or commission finds the following:

A. The application complies with all requirements of this title;
B. The business shall maintain a business license, if required;
C. The use will be compatible with surrounding structures in use, location, scale, mass, design and circulation;

D. The visual or safety impacts caused by the proposed use can be adequately mitigated with conditions;
E. The use is consistent with the Wasatch County General Plan;
F. The effects of any future expansion in use or scale can be and will be mitigated through conditions;
G. All issues of lighting, parking, the location and nature of the proposed use, the character of the surrounding development, the traffic capacities of adjacent and collector streets, the environmental factors such as drainage, erosion, soil stability, wildlife impacts, dust, odor, noise and vibrations have been adequately mitigated through conditions;
H. The use will not place an unreasonable financial burden on the county or place significant impacts on the county or surrounding properties, without adequate mitigation of those impacts;
I. The use will not adversely affect the health, safety or welfare of the residents and visitors of Wasatch County; and
J. Any land uses requiring a building permit shall conform to the international uniform building code standards.

Doug Smith then went through the DRC report and all departments have signed off on it:

ENGINEERING comments:

- My biggest concern would be on site parking based on the narrative submitted for daily use. It would be difficult to utilize only on site parking say during a shift change. The goal is to keep cars off the street especially during winter months hampering snow plowing activity. My recommendation is to use the property to the north if possible for added parking.

Doug Smith then went through the proposed findings:

1. The proposal is providing housing for a protected class as defined by the ADA and the FHA.
2. The County code allows uses for protected classes.
3. The girls living at the facility are a protected class because they meet the definition of "handicapped" under the Fair Housing Act.
4. The WCC provides for "Residential Facilities for persons with disabilities" in section 16.21.17.
5. By the stated use names of "Residential Facility for Handicapped Persons" (16.08.03) and "Residential Facilities for Persons with Disabilities" (16.21.17) and land use number 1292 under the larger heading of "Living Areas" the County Council has already determined that this use is a residential use allowed in residential areas.
6. Land use 1292 is considered a conditional use in the RA-1 zone. Utah Code states that a land use authority shall approve a conditional use if reasonable conditions are proposed to mitigate anticipated detrimental effects. See Utah Code 17-27a-506(2)(a)(ii). --*The code, adopted by the legislative body, has already made a determination that a Residential Facility for Handicapped Persons is allowed in the RA-1 zone but may require conditions to mitigate negative effects.*
7. The proposal is for 8 or fewer residents in the home in compliance with the code and does not require a reasonable accommodation.
8. Due to Federal Legislation, from a zoning standpoint, except for the express requirements in Wasatch County Code Section 16.21.17, this home must be treated the same as any other residential home, otherwise it would be illegal discrimination.
9. The proposal, in staff's opinion, is in compliance with Section 16.23.07 of the current Wasatch County Code related to Conditional Uses as long as the conditions stated are required.
10. Notice has been sent to neighboring property owners within 500 feet of the property.
11. There have been a large number of concerns regarding this application and these concerns have been stated in a public meeting.
12. The proposal, in staff's opinion, is in compliance with Section 16.21.17 of the Wasatch County Code regarding persons with disabilities.
13. Under the Fair Housing Act from the Department of Housing and Urban Development individuals with disabilities have the right to live independently in the community with any supports they need, such as health care services, a care-giver or live in aide, or other short or long-term services or supports.
14. The Development Review Committee has reviewed the project and has provided a favorable recommendation of approval.

Doug Smith then went through the proposed conditions:

1. A total of 10 parking stalls including 3 in the garage. Stalls must be a minimum of 9 feet by 18 feet if the front of the car can pull over landscaping otherwise parking must be nine feet by twenty feet. Required parking must be behind the front facade of the home. The stall closest to the road must be removed so that all stalls are behind the front facade.

2. A solid fence/wall that starts behind the facade of the home to buffer the parking stalls from the neighboring property must be installed.
3. All issues raised by the DRC, as noted in the DRC report dated March 29, 2023, shall be resolved to the satisfaction of the applicable review department.
4. The applicant shall, at all times, only operate a "Recovery residence for girls with anxiety with emphasis on OCD" within the meaning of Utah Code Ann. Section 62A-2-101(33). No other programs or services shall be delivered or occur at the Property, including those licensed under the Utah Human Services Code.
5. Pursuant to 42 U.S.C. Section 3604(f)(9), the Applicant shall not allow any registered sex offenders or any resident convicted of a violent crime or sex offense to reside at the Property and shall otherwise ensure that no resident imposes a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others within the meaning of 42.U.S.C. Section 3604(f)(9).
6. The applicant shall, at all times, comply with all applicable rules and regulations for recovery residences, including, but not limited to, regulations promulgated under the authority of Utah Code Ann. Section 62A-2-108.2 and set forth in Utah Admin. Code R501, including the Core Rules contained in Rule 501.2.
7. The applicant shall promptly notify the County of any material change in the information required by Utah Code Ann. Section 62A-2-108.2, any change or material departure from the description of its program, and any suspension, alteration, or revocation of its licensure under the Utah Human Services Code.
8. Any suspension, alteration, or revocation of the applicant's licensure under the Utah Human Services Code shall be grounds for terminating the conditional use and business license.
9. The applicant shall comply with all other applicable provisions of the Wasatch County Code, including, without limitation, its zoning regulations and all applicable fire, safety and building codes.
10. Not allow a person who is violent to be placed in a residential facility for persons with disabilities.

Alex Stoedter, Assistant Wasatch County Attorney, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that the State Code allows the County to provide standards in an ordinance that would mitigate some of the concerns of a conditional use. There is a difference between handicap and disability. The State Code defines handicap but does not define those with disabilities. The County Code has to be consistent with Federal Law. The people using this facility do meet that definition. The Council does allow for a facility like this and allow a facility for eight or less people. From the Council's ruling, the Wasatch County Attorney's Office is recommending that this application be approved based on everything that has been presented today.

Melanie Clark, representing the applicant, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that she represents the applicant. This is protected under the Fair Housing Act and need to go under the federal definition. The definition under the FHA indicates that it is unlawful to discriminate in the sale or rental. FHA does prohibit state and local land use law from discriminating based on the characteristic that is protected. A county ordinance can't discriminate based on disability in this instance. Prohibits from land use laws from imposing restrictions on group homes that are not imposed on family or other groups of unrelated individuals. The conditions that could be imposed here on this home it can't be related to the girls have a disability and related to something else. Also the ADA is a totally different thing. The Wasatch County Council has determined that the use is appropriate in this zone in residential neighborhoods as long as the conditions are met. You are confined by the Wasatch County Code here. The burden is on the land use authority to put forth the evidence and there has to be substantial evidence presented here that the code requirements have been met. Not by public clamor but supported by evidence. These are teenage girls and should be treated like any other teenage girl. The conditional use should be approved if reasonable conditions can be imposed to mitigate any detrimental effect.

Commission Comments

Commissioner Mark Hendricks wanted to clarify some things and there is a large body of Federal Law and a lot of body of Utah State Law and a large body of Wasatch County Law regulations that all contemplate the notion that there has to be a path to having group homes in the residential areas. Melanie replied that is correct. Commissioner Mark Hendricks indicated that is the environment that we are working in. A licensed medical professional has documented conditions that for any of these patients that would fall under CFR which is the Code of Federal Regulation for all these patients that they would meet this definition the impairment of major life activities outlined in that code section.

Jon Woodard, Assistant Wasatch County Attorney, asked, how do you know that these girls fall under the protected class under the Fair Housing Act? Melanie replied that they look at their diagnosis history and working with their prior to therapists and providers. Jon Woodard asked if all of them have been diagnosed. Melanie replied yes.

Chair Chuck Zuercher indicated that we are not going to have any public comment this evening. Also you have heard what has been presented tonight. We basically have to approve this facility or else we get into some lawsuits. Doug Smith indicated that they have to renew their business license every year and if there are problems we will have to take those into account.

Commissioner Mark Hendricks agreed that the County does not typically have sufficient resources to monitor and enforce every regulation and/or every condition upon which a Conditional Use Permit is granted. However, if there are violations of the conditions either discovered, or brought to the attention of the Planning Department, enforcement, including revocation of the Conditional Use Permit is possible. In addition, there are other governmental entities that have granted certain authority to operate this facility. For example, the County's business licensing department, or the State's licensing authorities. Those three layers of government oversight are all there to assure the operation of this facility in compliance with the law. Neither me personally, nor the Planning Commission, nor the Planning Department want this facility to create problems in the community. At the same time, there are no reasons given tonight or earlier in this process that would justify denial of this application. While there are concerns about potential problems, we have had no problems yet, and if and when there are, they can be addressed, which may include revocation of any Conditional Use Permit.

Motion

Commissioner Mark Hendricks made a motion to approve in light of the findings and in light of the public input and subject to all of the conditions outlined. That we approve Item No. 2 the application by ULA L.L.C. for a conditional use permit for Cascade Academy in light of the findings and consideration of the public concern and subject to all of the conditions outlined in the staff report in order to address those concerns as best we can at this time.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote;
AYE: Scott Brubaker, Kimberly Cook, Mark Hendricks, Chuck Zuercher, Wendell Rigby
NAY: Doug Grandquis.

- **Doug Grandquis indicated that I voted no because the original Fair Housing Act was dealt with long term residential housing. This is a medical treatment facility and I think that the federal government has extended its authority beyond what is reasonable. I also am highly concerned in this state and in the nation about the property rights of individual neighborhoods and communities and are being superseded by local, state and federal governments particularly with HOA, CC&R's that they are basically saying that those are no rights that are recognized by those various governmental authorities. For that reason that on principal I am voting NAY.**

ITEM 3 BRIAN BALLS, REPRESENTING COLEMAN MT FAMILY TRUST AND CMC READY MIX, REQUESTS A CONDITIONAL USE PERMIT FOR A CONCRETE BATCH PLANT (LAND USE 3263) LOCATED AT 2375 S. 390 W. ON PARCELS 09-6060 AND 20-4134 IN THE INDUSTRIAL (I) ZONE. (DEV-7495; NATHAN ROSVALL)

Staff

Nathan Rosvall, Assistant Wasatch County Planner, addressed the Wasatch County Planning Commission and indicated that this item should be continued because a staff report was not prepared when the applicant's engineer didn't provide some promised information in time. The code says that for a matter to go forward there has to be a staff report prepared. After a discussion with the applicant the Wasatch County Planning Commission agreed to have a special hearing for this matter which was set for May 18, 2023 at 6:00 p.m.

Motion

Commissioner Mark Hendricks made a motion that we continue this matter for the Special Meeting to be held on May 18, 2023 at 6:00 p.m.

Commissioner Wendell Rigby seconded the motion.

EXHIBIT H – Development Review Committee Report

Wasatch County Design Review Committee (DRC) Comments

Project ID: DEV-6850
Project Name: CUP - Cascade Home
Vesting Date: 1/11/2023
Review Cycle #: 3

Review Cycle Status: Approved

Project comments have been collected from reviewers for the above noted review cycle and compiled for your reference below. Please review the comments and provide revised plans/documents if necessary. **Resubmittals must include a plan review response letter** outlining where requested changes and corrections can be found. Failure to provide such a letter will result in the project being returned to you.

When uploading revisions please name your documents exactly the same as it was previously uploaded. Revision numbers and dates are automatically tracked. There is no need to re-upload documents that aren't being changed. DO NOT DELETE documents and then upload new ones.

Once you have addressed all of your items and successfully uploaded your revisions, be sure to re-submit your project for review. Resubmittal must be made through the portal in order to receive official review. Projects requiring Planning Commission approvals or recommendations will not be placed on a planning commission agenda until all DRC reviewers have recommended the item to move forward.

Entity	Decision
DRC - Twin Creeks SSD	Approved
Planning Department	Approved

Approved = Reviewing entity has approved the project under consideration of their applicable codes. Any open comments are considered conditions of the entities recommendation.

Ready for Decision = Reviewing entity recommends the project move forward to a Planning Commission meeting (if applicable). Any open comments are considered conditions of the entities recommendation.

Changes Required = Reviewing entity has identified an issue(s) that needs to be resolved before recommending the project move forward.

No Action = Reviewing entity has not taken any action for the review cycle.

Overall Project Comments

Project Document Sheet Comments by Reviewing Entity

DRC - Engineering Dept		
Comment ID	**Sheet Name**	**Comment**
DRC-ENG1	Site Plan - Cascade Academy 12.20.22 pages [1] UTAH - 11	My biggest concern would be on site parking based on the narrative submitted for daily use. It would be difficult to utilize only on site parking say during a shift change. The goal is to keep cars off the street especially during winter months hampering snow plowing activity. My recommendation is to use the property to the north if possible for added parking.

EXHIBIT I - Applicant Request

Cascade Home Project Description

History:

Cascade Academy is a residential treatment center located in Midway, Utah for adolescent girls between the ages of 13 and 18 with severe anxiety disorders. This diagnosed mental health disorder has prevented them from achieving their goals and living the life they desire. Cascade students are incredibly smart and capable, yet they struggle finding success because of their extreme anxiety and avoidant behaviors. Cascade Academy does not work with girls who have drug addictions, aggressive behaviors, or violent histories. While enrolled, students participate in clinical work, academics, recreational therapy, and other forms of therapeutic programming. The average length of stay for each student is between 8 and 10 months. During that time Cascade Academy provides 24 hour a day supervision and mentorship. Following their stay at Cascade Academy students return home and resume their lives in their previous high school or move on to college.

While treating students diagnosed with an anxiety disorder, Cascade Academy encounters students who display symptoms of obsessive-compulsive disorder (OCD). The profile of this student is the same as those mentioned above meaning they are not violent, they do not have drug addictions, and they are not aggressive. The treatment is specialized in that they need a shorter 45–90-day length of stay and a smaller space with less stimulation in a quiet peaceful community atmosphere.

Proposed Description:

The intention of One Cascade Development, LLC (Cascade Home) is to open a small 8-bed residential treatment center that specializes in the treatment of 13–18 year old girls with obsessive compulsive disorder at the address 1374 Red Filly Rd in Wasatch County. Adolescent girls diagnosed with obsessive compulsive disorder have been identified as a protected class by the Americans with Disabilities Act of 1990. Under the Fair Housing Act, Individuals with disabilities have the right to live independently in the community with any supports that they need, such as health care services, a caregiver or live-in aide, or other short or long-term services or supports. Access to community-based housing and or group home options is also necessary to ensure that individuals with disabilities are not forced to remain in institutional settings.

The intention of this Conditional Use Permit is to request and receive permission to open and operate a Group Home on a one-acre lot located at 1374 Red Filly Rd. in Wasatch County that will be run by One Cascade Development LLC. There is currently

a 5,454 sq. ft. residence on the property. Cascade House will obtain and maintain a business license for operation as well as seek licensure from the state of Utah DHHS. Cascade House will be compatible with the surrounding structures in use, location, scale, mass, design, and circulation. There will not be visual, or safety impacts caused by this use, and the use is consistent with the Wasatch County general plan, the Fair Housing Act and the Americans with Disabilities Act. Cascade Home proposes and is requesting approval for installing a Fire suppression and notification system with smoke alarms and connection to county services. While our population will be ambulatory we will provide adaptive services for access to facilities by installing a wheelchair lift in the garage and meeting the Federal & local ADA standards on our Master Bedroom and master bathroom main floor access as well as parking. Plans and permit approval pending of course. There will not be other issues of lighting, parking, the location and nature of the proposed use, the character of the surrounding development, the traffic capacities of adjacent and collector streets, the environmental factors such as drainage, erosion, soil stability, wildlife impacts, dust, odor, noise and vibrations that will require additional conditions to be adequately mitigated. An unreasonable financial burden will not be placed on the county due to the presence of this Group Home for girls. The use of this property for the reasons stated above will not adversely affect the health, safety or welfare of the residents and visitors of Wasatch County and any future building permits will certainly conform to the international uniform building code standard. Cascade House provides 24 hour a day supervision and mentorship and we are applying for licensure from the Department of Health and Human Services - State of Utah.

Additional Information:

- ***Current Administrative Team*** and owners have well over 100 years of Group Home and treatment experience.
- ***Total staff*** est. to be around 20 total for 24hr. - 7 days a week care.
- ***Staff work in shifts*** 7:00 am - 3:00 pm, 3:00 pm - 11:00 pm, 11:00 pm - 7:00 am
- ***Ratios*** for awake staff are 1:4 (one staff minimum to 4 clients) Medical staff, therapists, support staff and administration are not included in this ratio.
- ***Day staffing*** will include: In addition to the two direct care staff (mentors) - 1 Clinical Director, 1 Assistant Admission Director, 1 therapist, two and ½ AM & PM nursing staff, one and ½ chefs all on site. Executive Director on both Academy and Cascade Home sites along with, Psychiatrist, recreational therapy, maintenance and other support staff.
- ***Total number of vehicles*** for the home and transport of clients will be two, which will be stored in the garage.

- ***The maximum number of staff cars*** would be around 10 with average around 6 - 7 total vehicles, off-street parking will not occur and staff will be instructed to park along East driveway.
- Every effort will be made to ***maintain a neighborhood environment*** as this is what we want for our clients as well. Much of the focus is on normalizing the processes of receiving care and treatment.
- Part of the clients treatment is to ***provide service to others*** in the community and the larger world beyond the Cascade house. This occurs on a regular basis and is supported and encouraged by the treatment team which reviews each client's progress weekly.

We look forward to addressing your questions and concerns in the next meeting.

Respectfully submitted;

Brad Gerrard, Founder & Director of Operations
801-655-3886
bgerrard@cascadeacademy.com

EXHIBIT J- Joint Statement of the department of Housing and Urban Development and the Department of Justice

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

Washington, D.C.
November 10, 2016

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUSING ACT

INTRODUCTION

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the Federal Fair Housing Act ("the Act"),[1] which prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status (children under 18 living with a parent or guardian), or national origin.[2] The Act prohibits housing-related policies and practices that exclude or otherwise discriminate against individuals because of protected characteristics.

The regulation of land use and zoning is traditionally reserved to state and local governments, except to the extent that it conflicts with requirements imposed by the Fair Housing Act or other federal laws. This Joint Statement provides an overview of the Fair Housing Act's requirements relating to state and local land use practices and zoning laws, including conduct related to group homes. It updates and expands upon DOJ's and HUD's Joint

[1] The Fair Housing Act is codified at 42 U.S.C. §§ 3601–19.
[2] The Act uses the term "handicap" instead of "disability." Both terms have the same legal meaning. *See Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of "disability" in the Americans with Disabilities Act

Statement on Group Homes, Local Land Use, and the Fair Housing Act, issued on August 18, 1999. The first section of the Joint Statement, Questions 1–6, describes generally the Act's requirements as they pertain to land use and zoning. The second and third sections, Questions 7–25, discuss more specifically how the Act applies to land use and zoning laws affecting housing for persons with disabilities, including guidance on regulating group homes and the requirement to provide reasonable accommodations. The fourth section, Questions 26–27, addresses HUD's and DOJ's enforcement of the Act in the land use and zoning context.

This Joint Statement focuses on the Fair Housing Act, not on other federal civil rights laws that prohibit state and local governments from adopting or implementing land use and zoning practices that discriminate based on a protected characteristic, such as Title II of the Americans with Disabilities Act ("ADA"),[3] Section 504 of the Rehabilitation Act of 1973 ("Section 504"),[4] and Title VI of the Civil Rights Act of 1964.[5] In addition, the Joint Statement does not address a state or local government's duty to affirmatively further fair housing, even though state and local governments that receive HUD assistance are subject to this duty. For additional information provided by DOJ and HUD regarding these issues, see the list of resources provided in the answer to Question 27.

Questions and Answers on the Fair Housing Act and State and Local Land Use Laws and Zoning

1. How does the Fair Housing Act apply to state and local land use and zoning?

The Fair Housing Act prohibits a broad range of housing practices that discriminate against individuals on the basis of race, color, religion, sex, disability, familial status, or national origin (commonly referred to as protected characteristics). As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic. Housing includes not only buildings intended for occupancy as residences, but also vacant land that may be developed into residences.

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is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

[3] 42 U.S.C. §12132.

[4] 29 U.S.C. § 794.

[5] 42 U.S.C. § 2000d.

2. What types of land use and zoning laws or practices violate the Fair Housing Act?

Examples of state and local land use and zoning laws or practices that may violate the Act include:

- Prohibiting or restricting the development of housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status, by, for example, placing a moratorium on the development of multifamily housing because of concerns that the residents will include members of a particular protected class.
- Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes.
- Imposing restrictions on housing because of alleged public safety concerns that are based on stereotypes about the residents' or anticipated residents' membership in a protected class, by, for example, requiring a proposed development to provide additional security measures based on a belief that persons of a particular protected class are more likely to engage in criminal activity.
- Enforcing otherwise neutral laws or policies differently because of the residents' protected characteristics, by, for example, citing individuals who are members of a particular protected class for violating code requirements for property upkeep while not citing other residents for similar violations.
- Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy the housing, by, for example, denying a request to modify a setback requirement so an accessible sidewalk or ramp can be provided for one or more persons with mobility disabilities.

3. When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?

Intentional discrimination is also referred to as disparate treatment, meaning that the action treats a person or group of persons differently because of race, color, religion, sex, disability, familial status, or national origin. A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the

decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

A land use or zoning practice may be discriminatory on its face. For example, a law that requires persons with disabilities to request permits to live in single-family zones while not requiring persons without disabilities to request such permits violates the Act because it treats persons with disabilities differently based on their disability. Even a law that is seemingly neutral will still violate the Act if enacted with discriminatory intent. In that instance, the analysis of whether there is intentional discrimination will be based on a variety of factors, all of which need not be satisfied. These factors include, but are not limited to: (1) the "impact" of the municipal practice, such as whether an ordinance disproportionately impacts minority residents compared to white residents or whether the practice perpetuates segregation in a neighborhood or particular geographic area; (2) the "historical background" of the action, such as whether there is a history of segregation or discriminatory conduct by the municipality; (3) the "specific sequence of events," such as whether the city adopted an ordinance or took action only after significant, racially-motivated community opposition to a housing development or changed course after learning that a development would include non-white residents; (4) departures from the "normal procedural sequence," such as whether a municipality deviated from normal application or zoning requirements; (5) "substantive departures," such as whether the factors usually considered important suggest that a state or local government should have reached a different result; and (6) the "legislative or administrative history," such as any statements by members of the state or local decision-making body.[6]

4. Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?

Yes. Even absent a discriminatory intent, state or local governments may be liable under the Act for any land use or zoning law or practice that has an unjustified discriminatory effect because of a protected characteristic. In 2015, the United States Supreme Court affirmed this interpretation of the Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*[7] The Court stated that "[t]hese unlawful practices include zoning laws and other housing restrictions that function unfairly to exclude minorities from certain neighborhoods without any sufficient justification."[8]

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[6] *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–68 (1977).
[7] ___ U.S. ___, 135 S. Ct. 2507 (2015).
[8] *Id.* at 2521–22.

A land use or zoning practice results in a discriminatory effect if it caused or predictably will cause a disparate impact on a group of persons or if it creates, increases, reinforces, or perpetuates segregated housing patterns because of a protected characteristic. A state or local government still has the opportunity to show that the practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. These interests must be supported by evidence and may not be hypothetical or speculative. If these interests could not be served by another practice that has a less discriminatory effect, then the practice does not violate the Act. The standard for evaluating housing-related practices with a discriminatory effect are set forth in HUD's Discriminatory Effects Rule, 24 C.F.R § 100.500.

Examples of land use practices that violate the Fair Housing Act under a discriminatory effects standard include minimum floor space or lot size requirements that increase the size and cost of housing if such an increase has the effect of excluding persons from a locality or neighborhood because of their membership in a protected class, without a legally sufficient justification. Similarly, prohibiting low-income or multifamily housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification.

5. **Does a state or local government violate the Fair Housing Act if it considers the fears or prejudices of community members when enacting or applying its zoning or land use laws respecting housing?**

When enacting or applying zoning or land use laws, state and local governments may not act because of the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents' protected characteristics. Doing so violates the Act, even if the officials themselves do not personally share such bias. For example, a city may not deny zoning approval for a low-income housing development that meets all zoning and land use requirements because the development may house residents of a particular protected class or classes whose presence, the community fears, will increase crime and lower property values in the surrounding neighborhood. Similarly, a local government may not block a group home or deny a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities or a particular type of disability. Of course, a city council or zoning board is not bound by everything that is said by every person who speaks at a public hearing. It is the record as a whole that will be determinative.

6. Can state and local governments violate the Fair Housing Act if they adopt or implement restrictions against children?

Yes. State and local governments may not impose restrictions on where families with children may reside unless the restrictions are consistent with the "housing for older persons" exemption of the Act. The most common types of housing for older persons that may qualify for this exemption are: (1) housing intended for, and solely occupied by, persons 62 years of age or older; and (2) housing in which 80% of the occupied units have at least one person who is 55 years of age or older that publishes and adheres to policies and procedures demonstrating the intent to house older persons. These types of housing must meet all requirements of the exemption, including complying with HUD regulations applicable to such housing, such as verification procedures regarding the age of the occupants. A state or local government that zones an area to exclude families with children under 18 years of age must continually ensure that housing in that zone meets all requirements of the exemption. If all of the housing in that zone does not continue to meet all such requirements, that state or local government violates the Act.

Questions and Answers on the Fair Housing Act and Local Land Use and Zoning Regulation of Group Homes

7. Who qualifies as a person with a disability under the Fair Housing Act?

The Fair Housing Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, diseases and conditions such as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection, developmental disabilities, mental illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

The term "major life activity" includes activities such as seeing, hearing, walking breathing, performing manual tasks, caring for one's self, learning, speaking, and working. This list of major life activities is not exhaustive.

Being regarded as having a disability means that the individual is treated as if he or she has a disability even though the individual may not have an impairment or may not have an impairment that substantially limits one or more major life activities. For example, if a landlord

refuses to rent to a person because the landlord believes the prospective tenant has a disability, then the landlord violates the Act's prohibition on discrimination on the basis of disability, even if the prospective tenant does not actually have a physical or mental impairment that substantially limits one or more major life activities.

Having a record of a disability means the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

8. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning; land use and zoning officials and the courts, however, have referred to some residences for persons with disabilities as group homes. The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. A household where two or more persons with disabilities choose to live together, as a matter of association, may not be subjected to requirements or conditions that are not imposed on households consisting of persons without disabilities.

In this Statement, the term "group home" refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Sometimes group homes serve individuals with a particular type of disability, and sometimes they serve individuals with a variety of disabilities. Some group homes provide residents with in-home support services of varying types, while others do not. The provision of support services is not required for a group home to be protected under the Fair Housing Act. Group homes, as discussed in this Statement, may be opened by individuals or by organizations, both for-profit and not-for-profit. Sometimes it is the group home operator or developer, rather than the individuals who live or are expected to live in the home, who interacts with a state or local government agency about developing or operating the group home, and sometimes there is no interaction among residents or operators and state or local governments.

In this Statement, the term "group home" includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act. Although a group home for persons in recovery may commonly be called a "sober home," the term does not have a specific legal meaning, and the Act treats persons with disabilities who reside in such homes no differently than persons with disabilities who reside in other types of group homes. Like other group homes, homes for persons in recovery are sometimes operated by individuals or organizations, both for-profit and not-for-profit, and support services or supervision are sometimes, but not always, provided. The Act does not require a person who resides in a home for persons in recovery to have participated in or be currently participating in a

substance abuse treatment program to be considered a person with a disability. The fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.

9. In what ways does the Fair Housing Act apply to group homes?

The Fair Housing Act prohibits discrimination on the basis of disability, and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home. State and local governments may not discriminate against persons with disabilities who live in group homes. Persons with disabilities who live in or seek to live in group homes are sometimes subjected to unlawful discrimination in a number of ways, including those discussed in the preceding Section of this Joint Statement. Discrimination may be intentional; for example, a locality might pass an ordinance prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities. These ordinances are facially discriminatory, in violation of the Act. In addition, as discussed more fully in Q&A 10 below, a state or local government may violate the Act by refusing to grant a reasonable accommodation to its zoning or land use ordinance when the requested accommodation may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling. For example, if a locality refuses to waive an ordinance that limits the number of unrelated persons who may live in a single-family home where such a waiver may be necessary for persons with disabilities to have an equal opportunity to use and enjoy a dwelling, the locality violates the Act unless the locality can prove that the waiver would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality's zoning scheme. Furthermore, a state or local government may violate the Act by enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community. Unlawful actions concerning group homes are discussed in more detail throughout this Statement.

10. What is a reasonable accommodation under the Fair Housing Act?

The Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may sometimes deny them an equal opportunity to use and enjoy a dwelling.

Even if a zoning ordinance imposes on group homes the same restrictions that it imposes on housing for other groups of unrelated persons, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. What constitutes a reasonable accommodation is a case-by-case determination based on an individualized assessment. This topic is discussed in detail in Q&As 20–25 and in the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

11. Does the Fair Housing Act protect persons with disabilities who pose a "direct threat" to others?

The Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. Nevertheless, the Act does not protect an individual whose tenancy would constitute a "direct threat" to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others unless the threat or risk to property can be eliminated or significantly reduced by reasonable accommodation. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (for example, current conduct or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate or significantly reduce the direct threat. See Q&A 10 for a general discussion of reasonable accommodations. Consequently, in evaluating an individual's recent history of overt acts, a state or local government must take into account whether the individual has received intervening treatment or medication that has eliminated or significantly reduced the direct threat (in other words, significant risk of substantial harm). In such a situation, the state or local government may request that the individual show how the circumstances have changed so that he or she no longer poses a direct threat. Any such request must be reasonable and limited to information necessary to assess whether circumstances have changed. Additionally, in such a situation, a state or local government may obtain satisfactory and reasonable assurances that the individual will not pose a direct threat during the tenancy. The state or local government must have reliable, objective evidence that the tenancy of a person with a disability poses a direct threat before excluding him or her from housing on that basis, and, in making that assessment, the state or local government may not ignore evidence showing that the individual's tenancy would no longer pose a direct threat. Moreover, the fact that one individual may pose a direct threat does not mean that another individual with the same disability or other individuals in a group home may be denied housing.

12. Can a state or local government enact laws that specifically limit group homes for individuals with specific types of disabilities?

No. Just as it would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities, it is illegal under the Act for local land use and zoning laws to exclude or limit group homes for individuals with specific types of disabilities. For example, a government may not limit group homes for persons with mental illness to certain neighborhoods. The fact that the state or local government complies with the Act with regard to group homes for persons with some types of disabilities will not justify discrimination against individuals with another type of disability, such as mental illness.

13. Can a state or local government limit the number of individuals who reside in a group home in a residential neighborhood?

Neutral laws that govern groups of unrelated persons who live together do not violate the Act so long as (1) those laws do not intentionally discriminate against persons on the basis of disability (or other protected class), (2) those laws do not have an unjustified discriminatory effect on the basis of disability (or other protected class), and (3) state and local governments make reasonable accommodations when such accommodations may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling.

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats persons with disabilities less favorably than families and unrelated persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together without violating the Act as long as the restrictions are imposed on all such groups, including a group defined as a family. Thus, if the definition of a family includes up to a certain number of unrelated individuals, an ordinance would not, on its face, violate the Act if a group home for persons with disabilities with more than the permitted number for a family were not allowed to locate in a single-family-zoned neighborhood because any group of unrelated people without disabilities of that number would also be disallowed. A facially neutral ordinance, however, still may violate the Act if it is intentionally discriminatory (that is, enacted with discriminatory intent or applied in a discriminatory manner), or if it has an unjustified

discriminatory effect on persons with disabilities. For example, an ordinance that limits the number of unrelated persons who may constitute a family may violate the Act if it is enacted for the purpose of limiting the number of persons with disabilities who may live in a group home, or if it has the unjustified discriminatory effect of excluding or limiting group homes in the jurisdiction. Governments may also violate the Act if they enforce such restrictions more strictly against group homes than against groups of the same number of unrelated persons without disabilities who live together in housing. In addition, as discussed in detail below, because the Act prohibits the denial of reasonable accommodations to rules and policies for persons with disabilities, a group home that provides housing for a number of persons with disabilities that exceeds the number allowed under the family definition has the right to seek an exception or waiver. If the criteria for a reasonable accommodation are met, the permit must be given in that instance, but the ordinance would not be invalid.[9]

14. How does the Supreme Court's ruling in *Olmstead* apply to the Fair Housing Act?

In *Olmstead v. L.C.*,[10] the Supreme Court ruled that the Americans with Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent. The Fair Housing Act ensures that persons with disabilities have an equal opportunity to choose the housing where they wish to live. The ADA and *Olmstead* ensure that persons with disabilities also have the option to live and receive services in the most integrated setting appropriate to their needs. The integration mandate of the ADA and *Olmstead* can be implemented without impairing the rights protected by the Fair Housing Act. For example, state and local governments that provide or fund housing, health care, or support services must comply with the integration mandate by providing these programs, services, and activities in the most integrated setting appropriate to the needs of individuals with disabilities. State and local governments may comply with this requirement by adopting standards for the housing, health care, or support services they provide or fund that are reasonable, individualized, and specifically tailored to enable individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible. Local governments should be aware that ordinances and policies that impose additional restrictions on housing or residential services for persons with disabilities that are not imposed on housing or

[9] Laws that limit the number of occupants per unit do not violate the Act as long as they are reasonable, are applied to all occupants, and do not operate to discriminate on the basis of disability, familial status, or other characteristics protected by the Act.

[10] 527 U.S. 581 (1999).

residential services for persons without disabilities are likely to violate the Act. In addition, a locality would violate the Act and the integration mandate of the ADA and *Olmstead* if it required group homes to be concentrated in certain areas of the jurisdiction by, for example, restricting them from being located in other areas.

15. Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?

A "spacing" or "dispersal" requirement generally refers to a requirement that a group home for persons with disabilities must not be located within a specific distance of another group home. Sometimes a spacing requirement is designed so it applies only to group homes and sometimes a spacing requirement is framed more generally and applies to group homes and other types of uses such as boarding houses, student housing, or even certain types of businesses. In a community where a certain number of unrelated persons are permitted by local ordinance to reside together in a home, it would violate the Act for the local ordinance to impose a spacing requirement on group homes that do not exceed that permitted number of residents because the spacing requirement would be a condition imposed on persons with disabilities that is not imposed on persons without disabilities. In situations where a group home seeks a reasonable accommodation to exceed the number of unrelated persons who are permitted by local ordinance to reside together, the Fair Housing Act does not prevent state or local governments from taking into account concerns about the over-concentration of group homes that are located in close proximity to each other. Sometimes compliance with the integration mandate of the ADA and *Olmstead* requires government agencies responsible for licensing or providing housing for persons with disabilities to consider the location of other group homes when determining what housing will best meet the needs of the persons being served. Some courts, however, have found that spacing requirements violate the Fair Housing Act because they deny persons with disabilities an equal opportunity to choose where they will live. Because an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.

Where a jurisdiction has imposed a spacing requirement on the location of group homes for persons with disabilities, courts may analyze whether the requirement violates the Act under an intent, effects, or reasonable accommodation theory. In cases alleging intentional discrimination, courts look to a number of factors, including the effect of the requirement on housing for persons with disabilities; the jurisdiction's intent behind the spacing requirement; the existence, size, and location of group homes in a given area; and whether there are methods other than a spacing requirement for accomplishing the jurisdiction's stated purpose. A spacing requirement enacted with discriminatory intent, such as for the purpose of appeasing neighbors' stereotypical fears about living near persons with disabilities, violates the Act. Further, a neutral

spacing requirement that applies to all housing for groups of unrelated persons may have an unjustified discriminatory effect on persons with disabilities, thus violating the Act. Jurisdictions must also consider, in compliance with the Act, requests for reasonable accommodations to any spacing requirements.

16. Can a state or local government impose health and safety regulations on group home operators?

Operators of group homes for persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities. State or local zoning and land use ordinances may not, consistent with the Fair Housing Act, require individuals with disabilities to receive medical, support, or other services or supervision that they do not need or want as a condition for allowing a group home to operate. State and local governments' enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.

Governments must also consider requests for reasonable accommodations to licensing and regulatory requirements and procedures, and grant them where they may be necessary to afford individuals with disabilities an equal opportunity to use and enjoy a dwelling, as required by the Act.

17. Can a state or local government address suspected criminal activity or fraud and abuse at group homes for persons with disabilities?

The Fair Housing Act does not prevent state and local governments from taking nondiscriminatory action in response to criminal activity, insurance fraud, Medicaid fraud, neglect or abuse of residents, or other illegal conduct occurring at group homes, including reporting complaints to the appropriate state or federal regulatory agency. States and localities must ensure that actions to enforce criminal or other laws are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities. For example, persons with disabilities residing in group homes are entitled to the same constitutional protections against unreasonable search and seizure as those without disabilities.

18. Does the Fair Housing Act permit a state or local government to implement strategies to integrate group homes for persons with disabilities in particular neighborhoods where they are not currently located?

Yes. Some strategies a state or local government could use to further the integration of group housing for persons with disabilities, consistent with the Act, include affirmative marketing or offering incentives. For example, jurisdictions may engage in affirmative marketing or offer variances to providers of housing for persons with disabilities to locate future homes in neighborhoods where group homes for persons with disabilities are not currently located. But jurisdictions may not offer incentives for a discriminatory purpose or that have an unjustified discriminatory effect because of a protected characteristic.

19. Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities (see Q&A 5), a local government violates the law if it blocks a group home or denies a reasonable accommodation request because of neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

20. When does a state or local government violate the Fair Housing Act by failing to grant a request for a reasonable accommodation?

A state or local government violates the Fair Housing Act by failing to grant a reasonable accommodation request if (1) the persons requesting the accommodation or, in the case of a group home, persons residing in or expected to reside in the group home are persons with a disability under the Act; (2) the state or local government knows or should reasonably be expected to know of their disabilities; (3) an accommodation in the land use or zoning ordinance or other rules, policies, practices, or services of the state or locality was requested by or on behalf of persons with disabilities; (4) the requested accommodation may be necessary to afford one or more persons with a disability an equal opportunity to use and enjoy the dwelling; (5) the state or local government refused to grant, failed to act on, or unreasonably delayed the accommodation request; and (6) the state or local government cannot show that granting the accommodation would impose an undue financial and administrative burden on the local government or that it would fundamentally alter the local government's zoning scheme. A requested accommodation may be necessary if there is an identifiable relationship between the requested accommodation and the group home residents' disability. Further information is provided in Q&A 10 above and the HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act.

21. Can a local government deny a group home's request for a reasonable accommodation without violating the Fair Housing Act?

Yes, a local government may deny a group home's request for a reasonable accommodation if the request was not made by or on behalf of persons with disabilities (by, for example, the group home developer or operator) or if there is no disability-related need for the requested accommodation because there is no relationship between the requested accommodation and the disabilities of the residents or proposed residents.

In addition, a group home's request for a reasonable accommodation may be denied by a local government if providing the accommodation is not reasonable—in other words, if it would impose an undue financial and administrative burden on the local government or it would fundamentally alter the local government's zoning scheme. The determination of undue financial and administrative burden must be decided on a case-by-case basis involving various factors, such as the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in the group home.

When a local government refuses an accommodation request because it would pose an undue financial and administrative burden, the local government should discuss with the requester whether there is an alternative accommodation that would effectively address the disability-related needs of the group home's residents without imposing an undue financial and administrative burden. This discussion is called an "interactive process." If an alternative accommodation would effectively meet the disability-related needs of the residents of the group home and is reasonable (that is, it would not impose an undue financial and administrative burden or fundamentally alter the local government's zoning scheme), the local government must grant the alternative accommodation. An interactive process in which the group home and the local government discuss the disability-related need for the requested accommodation and possible alternative accommodations is both required under the Act and helpful to all concerned, because it often results in an effective accommodation for the group home that does not pose an undue financial and administrative burden or fundamental alteration for the local government.

22. What is the procedure for requesting a reasonable accommodation?

The reasonable accommodation must actually be requested by or on behalf of the individuals with disabilities who reside or are expected to reside in the group home. When the request is made, it is not necessary for the specific individuals who would be expected to live in the group home to be identified. The Act does not require that a request be made in a particular manner or at a particular time. The group home does not need to mention the Fair Housing Act or use the words "reasonable accommodation" when making a reasonable accommodation request. The group home must, however, make the request in a manner that a reasonable person would understand to be a disability-related request for an exception, change, or adjustment to a rule, policy, practice, or service. When making a request for an exception, change, or adjustment to a local land use or zoning regulation or policy, the group home should explain what type of accommodation is being requested and, if the need for the accommodation is not readily apparent or known by the local government, explain the relationship between the accommodation and the disabilities of the group home residents.

A request for a reasonable accommodation can be made either orally or in writing. It is often helpful for both the group home and the local government if the reasonable accommodation request is made in writing. This will help prevent misunderstandings regarding what is being requested or whether or when the request was made.

Where a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed. If no procedure is specified, or if the procedure is unreasonably burdensome or intrusive or involves significant delays, a request for a reasonable accommodation may,

nevertheless, be made in some other way, and a local government is obligated to grant it if the requested accommodation meets the criteria discussed in Q&A 20, above.

Whether or not the local land use or zoning code contains a specific procedure for requesting a reasonable accommodation or other exception to a zoning regulation, if local government officials have previously made statements or otherwise indicated that an application for a reasonable accommodation would not receive fair consideration, or if the procedure itself is discriminatory, then persons with disabilities living in a group home, and/or its operator, have the right to file a Fair Housing Act complaint in court to request an order for a reasonable accommodation to the local zoning regulations.

23. Does the Fair Housing Act require local governments to adopt formal reasonable accommodation procedures?

The Act does not require a local government to adopt formal procedures for processing requests for reasonable accommodations to local land use or zoning codes. DOJ and HUD nevertheless strongly encourage local governments to adopt formal procedures for identifying and processing reasonable accommodation requests and provide training for government officials and staff as to application of the procedures. Procedures for reviewing and acting on reasonable accommodation requests will help state and local governments meet their obligations under the Act to respond to reasonable accommodation requests and implement reasonable accommodations promptly. Local governments are also encouraged to ensure that the procedures to request a reasonable accommodation or other exception to local zoning regulations are well known throughout the community by, for example, posting them at a readily accessible location and in a digital format accessible to persons with disabilities on the government's website. If a jurisdiction chooses to adopt formal procedures for reasonable accommodation requests, the procedures cannot be onerous or require information beyond what is necessary to show that the individual has a disability and that the requested accommodation is related to that disability. For example, in most cases, an individual's medical record or detailed information about the nature of a person's disability is not necessary for this inquiry. In addition, officials and staff must be aware that any procedures for requesting a reasonable accommodation must also be flexible to accommodate the needs of the individual making a request, including accepting and considering requests that are not made through the official procedure. The adoption of a reasonable accommodation procedure, however, will not cure a zoning ordinance that treats group homes differently than other residential housing with the same number of unrelated persons.

24. What if a local government fails to act promptly on a reasonable accommodation request?

A local government has an obligation to provide prompt responses to reasonable accommodation requests, whether or not a formal reasonable accommodation procedure exists. A local government's undue delay in responding to a reasonable accommodation request may be deemed a failure to provide a reasonable accommodation.

25. Can a local government enforce its zoning code against a group home that violates the zoning code but has not requested a reasonable accommodation?

The Fair Housing Act does not prohibit a local government from enforcing its zoning code against a group home that has violated the local zoning code, as long as that code is not discriminatory or enforced in a discriminatory manner. If, however, the group home requests a reasonable accommodation when faced with enforcement by the locality, the locality still must consider the reasonable accommodation request. A request for a reasonable accommodation may be made at any time, so at that point, the local government must consider whether there is a relationship between the disabilities of the residents of the group home and the need for the requested accommodation. If so, the locality must grant the requested accommodation unless doing so would pose a fundamental alteration to the local government's zoning scheme or an undue financial and administrative burden to the local government.

Questions and Answers on Fair Housing Act Enforcement of Complaints Involving Land Use and Zoning

26. How are Fair Housing Act complaints involving state and local land use laws and practices handled by HUD and DOJ?

The Act gives HUD the power to receive, investigate, and conciliate complaints of discrimination, including complaints that a state or local government has discriminated in exercising its land use and zoning powers. HUD may not issue a charge of discrimination pertaining to "the legality of any State or local zoning or other land use law or ordinance." Rather, after investigating, HUD refers matters it believes may be meritorious to DOJ, which, in its discretion, may decide to bring suit against the state or locality within 18 months after the practice at issue occurred or terminated. DOJ may also bring suit by exercising its authority to initiate litigation alleging a pattern or practice of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

If HUD determines that there is no reasonable cause to believe that there may be a violation, it will close an investigation without referring the matter to DOJ. But a HUD or DOJ

decision not to proceed with a land use or zoning matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to land use disputes to explore reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation or conciliation of the HUD complaint. HUD attempts to conciliate all complaints under the Act that it receives, including those involving land use or zoning laws. In addition, it is DOJ's policy to offer prospective state or local governments the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

27. How can I find more information?

For more information on reasonable accommodations and reasonable modifications under the Fair Housing Act:

- HUD/DOJ Joint Statement on Reasonable Accommodations under the Fair Housing Act, *available at* https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0 or http://www.hud.gov/offices/fheo/library/huddojstatement.pdf.

- HUD/DOJ Joint Statement on Reasonable Modifications under the Fair Housing Act, *available at* https://www.justice.gov/crt/fair-housing-policy-statements-and-guidance-0 or http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf.

For more information on state and local governments' obligations under Section 504:

- HUD website at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504.

For more information on state and local governments' obligations under the ADA and *Olmstead*:

- U.S. Department of Justice website, www.ADA.gov, or call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).
- Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, *available at* http://www.ada.gov./olmstead/q&a_olmstead.htm.
- Statement of the Department of Housing and Urban Development on the Role of Housing in Accomplishing the Goals of *Olmstead*, *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=OlmsteadGuidnc060413.pdf.

For more information on the requirement to affirmatively further fair housing:

- Affirmatively Furthering Fair Housing, 80 Fed. Reg. 42,272 (July 16, 2015) (to be codified at 24 C.F.R. pts. 5, 91, 92, 570, 574, 576, and 903).
- U.S. Department of Housing and Urban Development, Version 1, Affirmatively Furthering Fair Housing Rule Guidebook (2015), *available at* https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf.
- Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Vol. 1, Fair Housing Planning Guide (1996), *available at* http://www.hud.gov/offices/fheo/images/fhpg.pdf.

For more information on nuisance and crime-free ordinances:

- Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims of Domestic Violence, Other Crime Victims, and Others Who Require Police or Emergency Services (Sept. 13, 2016), *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=FinalNuisanceOrdGdnce.pdf.

EXHIBIT K – Response from the applicant's attorney regarding the concerns/issues from Planning Commission and Public Hearing of April 13th

Cascade House

CUP

Concerns/Issues from Planning Commission and Public Hearing:

1. Definition of disability and permanent vs. temporary

    a. FHA applies to a person with a "handicap," which is defined as "(1) a physical or **mental impairment** which **substantially limits one or more of such person's major life activities**, (2) a **record of having such an impairment**, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of title 21)." 42 U.S.C. § 3602(h).

        i. Does not refer to "activities of daily living" as used to receive social security disability insurance; these are different standards.

        ii. According to the Code of Federal Regulations, "Major life activities include, but are not limited to: (i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, **learning**, reading, concentrating, thinking, writing, communicating, **interacting with others**, and working; and (ii) The operation of a major bodily function, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, **neurological, brain**, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system."[1]

        iii. Does not require that the condition is permanent.

    b. Wasatch County Code ("WCC") § 16.04: Definitions. "HANDICAPPED PERSON: A person who has a severe, chronic disability attributable to a mental or physical impairment, or to a combination of mental and physical impairments, which is likely to continue indefinitely, and which results in a substantial functional limitation in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living or economic self-sufficiency; and who requires a combination or sequence of special interdisciplinary or generic care, treatment or other services that are individually planned or coordinated to allow the person to function in, and contribute to, a residential neighborhood."

    c. Because the WCC only permits, as a conditional use, a "Residential Facility for Handicapped Persons," and does not permit other types of group housing for people with disabilities, the County must use the federal definition of handicapped, otherwise the County would be discriminating against people who fall within the

[1] 28 CFR § 35.108(e)(1).

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federal definition and are not covered by the County definition. In other words, if there is a gap and "handicapped" under WCC does not cover everyone who meets the definition of "handicapped" under federal law, the people in that gap would be illegally discriminated against if the County does not give them the same rights and protections and those who meet the definition under the WCC. Accordingly, the County must use the federal definition in considering this conditional use permit ("CUP").

d. Obsessive compulsive disorder and anxiety disorders are listed in the DSM (Diagnostic and Statistical Manual of Mental Disorders).

2. Facility owned or leased by person with disability

a. The Fair Housing Act (42 U.S.C. § 3604(f)(1)) makes it unlawful to "discriminate in the sale or rental, **or to otherwise make unavailable or deny, a dwelling** to any buyer or renter **because of a handicap of**—(A) that buyer or renter, (B) **a person residing in** or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that buyer or renter.

b. In other words, the County cannot prohibit the owner of the property from making this home available to girls with disabilities. "The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act."[2]

c. The FHA prohibits local land use laws from "Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family home while not requiring a permit for other residents of single-family homes."[3] Therefore, because the County would not require a CUP for a large family, arguably even requiring a CUP for residential treatment facilities for persons with disabilities violates the FHA.

3. Primary use (medical service vs. living)

a. WCC § 16.36.01 states the "living areas" category applies to structures "used primarily as places to live, whether on a **temporary** (e.g., transient lodging hotel), semipermanent (e.g., hotel, fraternity, sorority) or permanent (e.g., home or apartment) basis. This category may also include structures on parcels and corresponding area that are used for two (2) or more activities, yet the dominant use of the structure is for living purposes."

b. By categorizing a "residential facility for handicapped persons" as 1292, the County

[2] Joint Statement of the Department of Housing and Urban Development and the Department of Justice, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, November 10, 2016, available at justice.gov/opa/file/912366/download ("Joint Statement").
[3] *Id.*, p. 3.

has already determined that the dominant use is for living purposes.

4. Compatibility with residential neighborhood

    a. Rather than the burden being on an applicant to prove that a residential treatment facility is compatible, if denying a CUP based on incompatibility the land use authority must have substantial evidence that the facility would **not** be compatible.[4]

    b. The County cannot deny the CUP based on comment from the public that the use is incompatible with a residential neighborhood. "While the reasons given by the Clearfield City Council for denying the permit might be legally sufficient if supported, the trial court was correct in concluding that the offered reasons are without factual basis in the record. What the court found to be the real reason for the action, 'public clamor,' is not an adequate legal basis for the city's decision."[5]

    c. WCC § 16.21.17 does not require "compatibility with surrounding neighborhood" as a criteria. By designating a residential treatment facility for handicapped persons as a conditional use, the county has already determined that the use is compatible with the zone if the 12 criteria are met.

    d. WCC § 16.23.01 "If properly and carefully planned, these conditional uses may become compatible and appropriate."

    e. Prohibiting individuals with disabilities who choose to live in group settings from living in residential neighborhoods would violate the FHA. "State and local governments may not discriminate against persons with disabilities who live in group homes." "[I]t would be illegal to enact a law for the purpose of excluding or limiting group homes for individuals with disabilities."[6]

    f. The ADA prohibits segregating people with disabilities into institutional settings rather than allowing them to live in family neighborhoods.[7]

5. Parking

    a. A land use authority cannot base a denial of a land use application only on evidence that parking is a problem from public comment.[8]

    b. WCC § 16.04 "DWELLING UNIT: A single unit providing complete, independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking and sanitation." This property contains a single-family dwelling unit.

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[4] In *Uintah Mountain RTC, L.L.C. v. Duchesne County*, 127 P.3d 1270 (Utah 2005), the Utah Supreme Court overturned a County's denial of a CUP for a residential treatment facility based on it being incompatible with a residential neighborhood because there was not substantial evidence of incompatibility.

[5] *Davis County v. Clearfield City*, 756 P.2d 704 (Utah App. 1988) (overturning denial of a conditional use permit for a residential treatment facility).

[6] Joint Statement, pp. 8 and 10.

[7] *Olmstead v. L.C.*, 527 U.S. 581 (1999)

[8] *Ralph L. Wadsworth Construction, Inc. v. West Jordan City*, 2000 UT App 49.

c. For single-family dwellings the WCC § 16.33.13 requires **2 spaces per unit plus 1/4 space per bedroom above 3**, with a minimum of 2 covered spaces. Accordingly, to comply with the WCC the property must have 4 parking spaces.

   i. Home has 5,454 sq ft (per footnote 2 of WCC § 16.37.11 this equals 1.1 "units"; one unit for the first 5,000 sq ft and 0.1 units for each 500 additional sq ft), which would require 2.2 parking spaces (2 x 1.1 = 2.2).

   ii. Home has 7 bedrooms, which requires an extra 1 parking space (1/4 space for the 4th, 5th, 6th, and 7th bedrooms).

   iii. 2.2 + 1 = 3.2, rounded up to 4 parking spaces.

d. Other parking provided is required for state licensing and to comply with the ADA.

Additional Notes:

- Approval of the CUP is not about making a reasonable accommodation under the ADA; it is about discrimination against people with disabilities in housing being illegal under the Fair Housing Act. A reasonable accommodation under the ADA would be adjusting otherwise applicable restrictions. So if the parking necessary to comply with the ADA is within the front yard setback that is otherwise required to be landscaped, the County may need to grant a reasonable accommodation to allow such parking.

- Strongly encourage commissioners to read the Joint Statement of the Department of Housing and Urban Development and the Department of Justice, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, November 10, 2016.

- If this CUP is denied, the planning commission would essentially be saying that there are no circumstances under which a group home for people with disabilities would be allowed in a single family zone, which is a violation not just of the WCC, but is illegal under the FHA. The very fact that a group home requires a CUP, where the same size group without disabilities would not require a CUP, potentially violates the FHA.[9]

- These girls deserve the same residential neighborhood that everyone else does. Forcing them to live in a commercial area is illegal discrimination.

- County is required under U.C.A. § 17-27a-506 to approve a CUP if anticipated detrimental effects are **mitigated**; they do not have to be **eliminated**.

- County is required under U.C.A. § 17-27a-508 to approve the CUP if the applicant complies with the WCC.[10]

[9] "If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or **requires it to seek a use permit, the ordinance would violate the Fair Housing Act**." Joint Statement, p. 11.
[10] *See also, Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980).

EXHIBIT L – License for a treatment facility

Utah Department of Health & Human Services
Licensing & Background Checks

LICENSE FOR RESIDENTIAL TREATMENT

Name of Facility: Cascade Academy LLC
Address: 430 West 200 North, Midway, UT. 84049
Speciality: Mental Health
Capacity Type: Youth
Capacity: 26

Date Issued: April 1, 2023
License No: F22-93281
Date of Expiration: March 31, 2024

Simon Bolivar
Office of Licensing
Director

Our Vision: *Quality health and safety services for people in Utah!*

This document must be posted in a conspicuous place, and is not transferable to any other owner, director, or location.

Wasatch County Board of Adjustment

August 15, 2023

Item #2

Craig E Carroll

Variance to Wasatch County Code 16.21.08(F) – Location of Accessory Buildings

WASATCH COUNTY
Board of Adjustment Staff Report
Variance Request

ITEM 2 Craig E Carroll requests a variance to Wasatch County Code 16.21.08(F), Location of Accessory Buildings, which requires accessory buildings to be located in the rear or side yard for properties less than 5 acres in size. The applicant desires to build the accessory building in the front yard of a home located at 1624 S Ridgeline Dr. in the Mountain (M) zone. (DEV-8167; Austin Corry)

PROJECT SUMMARY

Applicant: Craig E Carroll
Property Owner: Craig Everett Carroll Trust
Report Date: 7 August 2023
Hearing Date: 15 August 2023

Existing Zone: Mountain (M)
Current Legal Use: Single Family Dwelling
Acreage: 1.27
Request: Accessory Building Location (front yard)

BACKGROUND

The subject property is located in the Timberlakes area approximately three quarters of a mile from the main gate. There is an existing home with an attached garage on the property currently. In reviewing the applicant submitted documents, the site plan is unclear on the location of Ridgeline drive relative to the home. The site plan shows two different drawn roads labeled ridgeline drive. The first is 30 feet offset from the front property line while the second is showing that the built road may be inside the property some distance. Because of this, setback distances cannot be analyzed for compliance since the requirement is 60 feet from the centerline of the road. It is also unclear from the documents what the height of the proposed structure is from existing grade. This is important to note because the requested variance to build an accessory structure in the front yard, even if granted, may violate setbacks and height restrictions. Staff is unable to provide any analysis to this because the applicant's documents are not clear and the applicant has not requested a variance from those standards.

The applicant is seeking a variance from Wasatch County Code §16.21.08(F) that regulates the maximum size and location for accessory buildings regardless of the zone. The applicant desires to construct a detached accessory building in the front yard of a home on a 2.39 acre lot. County code requires that lots of this size must place the accessory buildings in the rear or side yards behind the front façade of the main building and no closer than 50 feet from the front property line. The section reads as follows:

> ***16.21.08: ACCESSORY BUILDINGS***
>
> *F. Maximum area and location of Accessory Buildings: Accessory Buildings are subject to the following restrictions:*

Lot Area	*Maximum square footage of detached accessory structures on lot*	*Allowed Location (relative to street frontage)*	*Maximum lot coverage*	*Maximum building height**
Less than 1 acre	*Up to 800 sf. permitted. 801-2,000 sf. conditional. No more than 2,000 sf of all accessory structures on site combined.*	*Rear yard only*	*40% maximum lot coverage including all other buildings and impervious paving*	*20 feet*
1-1.99 acres	*Up to 2,000 sf. permitted. 2,001-3.000 sf. conditional. No more than 4,000 sf of all accessory structures on site combined.*	*Rear or side yard. Accessory structure must be behind the front facade of the main building and have a minimum setback of 50' from the front property line.*	*40% maximum lot coverage including all other buildings and impervious paving*	*25 feet*
2-4.99 acres	*Up to 4,000 sf. permitted. 4,001-5,000 sf. conditional. No more than 8,000 sf of all accessory structures on site combined.*	*Rear or side yard. Accessory structure must be behind the front facade of the main building and have a minimum setback of 50' from the front property line.*	*40% maximum lot coverage including all other buildings and impervious paving*	*25 feet*
5-9.99 acres	*Up to 5,000 sf. permitted. 5,001-15,000 sf. conditional. No more than 25,000 sf of all accessory structures on site combined.*	*Rear, or side yard. May also be located in the front yard in the area between a side property line and a line projecting from the side facade of the home to the front property line and cannot block view of the front door from the street.*	*20% maximum lot coverage including all other buildings and impervious paving*	*25 feet*

** Structures can go 1 additional foot in height for every 2 feet of additional setback from the required setbacks for a maximum increase of 10 feet.*

^ Due to unique circumstances of corner lots, and to achieve the intent of this ordinance, corner lots may have an accessory structure encroach on the interior side yard so long as more than 40% of the accessory structure remains in the rear yard, and the accessory structure is set back from the front facade of the primary structure a minimum of 10 feet.

KEY ISSUES TO CONSIDER

- Variances are intended to provide a path for relief for an unreasonable hardship where special circumstances exist that deprive the property of privileges granted to other properties in the same district.
- State and County Code require specific findings in order to grant a variance. Variances cannot be granted if the specific findings cannot be made.
- In order to grant a variance, an unreasonable hardship must exist that is peculiar to the property and not from conditions general to the neighborhood.
- A claimed hardship cannot be self-imposed and cannot be economic in nature.
- The burden of proof that an unreasonable hardship exists is the responsibility of the applicant.
- The request is to allow construction of a detached accessory building in the front yard.
- The applicant claims that existing topography is an unreasonable hardship. No evidence has been presented by the applicant to supports the claimed hardship.
- Staff analysis has not identified an unreasonable hardship with a direct relationship to the site topography.
- There are no county codes that are restricting the construction of the accessory building in a location otherwise allowed under 16.21.08. This makes the request self-imposed.
- The construction of an accessory building is at the desire of the applicant and not necessary to enjoy the substantial property right of a single-family residence. This makes the request self-imposed.
- The applicant has not met the burden of proof necessary to grant a variance.
- A variance is not intended to deviate from code requirements simply because a code requirement is not understood or agreed with by an applicant, administrative, or quasi-judicial body. If the individual/body feels that the code should be inapplicable, the individual/body should make a request to have the County Council as the legislative body consider amending the law.

STAFF ANALYSIS

– VARIANCE PROCEDURE –

Wasatch County Code 16.02.08 outlines the findings that are required in order for the Board of Adjustment to approve a variance. Per paragraph C of the section, the *"applicant for a variance shall bear the burden of proving that all of the foregoing conditions are satisfied."* The required findings are as follows (Staff responses provided in **bold**):

E. Requirements For Granting Variance: The board of adjustment may grant a variance only if all of the following conditions are met:

1. *Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title;*
   Response: Wasatch County Code 16.21.08 requires accessory building on lots less than 5 acres to be located in a side yard or rear yard. This restriction exists for all homes in every zone in the County. The applicant has stated a desire to construct an accessory building in the front yard on a flatter portion of the lot, while understandable, is not required by applicable codes. Wasatch County Code 16.02.08, which mirrors Utah Code, states "the board of adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic." Because the location selection is solely at the choice of the applicant, the request is self-imposed.

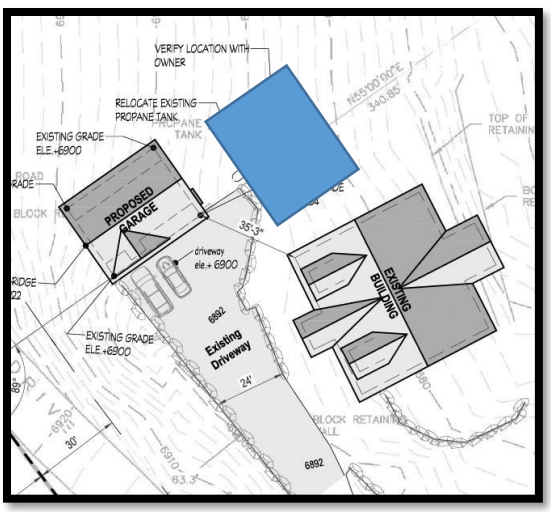
   The applicant states that steepness of the lot makes other locations unreasonable on the site. However, the applicant has not met the burden of proof necessary to support this claim.

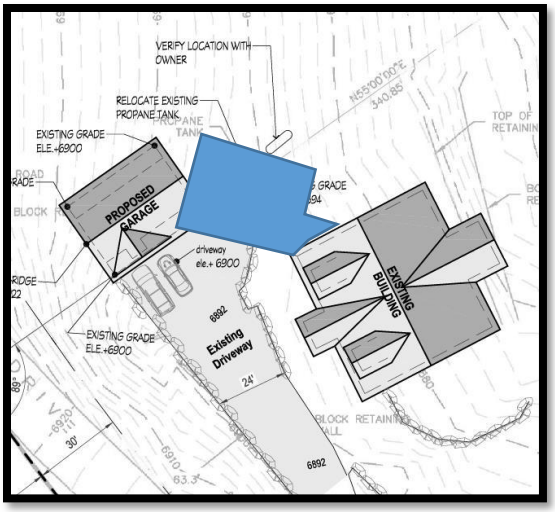
2. *There are special circumstances attached to the property that do not generally apply to other properties in the same districts;*
Response: The applicant states that steep topography and a septic system exists that precludes the ability to construct the accessory building elsewhere on the property. However, nothing in the documentation provided by the applicant demonstrates what "steep topography" means and no code was cited that precludes the construction elsewhere on the site. Staff's general knowledge of the Timberlakes area is that it is located in a mountainous area where topography is certainly more steep than the valley floor. However, this condition exists for all properties in Timberlakes and is not unique to this particular property, which the applicant acknowledges in the documentation. It should also be noted that there is no county code applicable to the Timberlakes subdivision that precludes the construction of an accessory building, even if evidence of steep slopes were encountered. Septic systems are also common for the subdivision since there is no sewer service to that area of the county.

The applicant has not provided any evidence that special circumstances exists that are not generally applicable to other properties in the same district.

3. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same districts;*
Response: Understanding what a substantial property right is will be important in answering this criteria. The property right of the subject property in this instance is that of a single-family residence. That right is currently existing and would not be restricted by the options available that would comply with county code. The applicant suggests that the addition of garage space beyond the existing garage on the property would be "a major convenience." While the desire for additional garage space is understandable, the State criteria required in order to grant a variance do not give discretion to the county based on desires or conveniences, but instead require the county to identify that code is precluding property rights because of an unreasonable hardship.

To reiterate, the construction of another garage on the property is not part of the substantial property right, however, it should be noted that it does appear that the construction of the building could be done in a few ways without the need for a variance. Understanding that information provided on the application is limited, it appears that two options could be implemented without significant difference to the proposed construction from the applicant. The first would be to make a slight rotation of the proposed accessory building and shifting it rearward to place the structure in the side yard. Topography appears very similar based on the contours from the application documents and access to the driveway would remain almost identical. The second option would be to move the structure closer to the main building and attach the structures so that the proposed new structure would no longer be an accessory building and therefore, no longer subject to the location requirements under 16.21.08. A rough graphic representation is made below to conceptualize these two potential options.





This is not to suggest these would be the only options available, but instead is to demonstrate that compliance with code is possible without the need for a variance. With options available that comply with county code, it is not evident that enforcement of the county ordinances would preclude the ability to enjoy the substantial property right, which is the ability to use the property for a single-family dwelling. The applicant has not met the burden of proof that a substantial property right is precluded by the applicable zoning ordinances.

4. *The variance will not substantially affect the general plan and will not be contrary to the public interest;*
   Response: The applicant's response to this criteria did not address the General Plan in any way. The applicant's response indicates that the Timberlakes HOA has approved the design and suggests there is no opposition to the proposed plan. When considering that the code was written applicable to the county as a whole, it does not appear that the public interest has been considered in the response.

   The applicant has not met the burden of proof.

5. *The spirit of this title is observed and substantial justice done;*
   Response: The applicant response states "I would not be asking for this variance if there were any feasible way to comply with the County code." Staff spoke with the applicant before processing the application to make it clear that it appears potential options exist as has been indicated in the response to criteria #3 above. The applicant has not me the burden of proof as required by applicable laws.

– CONCLUSIONS –

A variance is not a discretionary decision. State and County codes permit the Board of Adjustment to "grant a variance *only* if" certain criteria are met. Those criteria must be tied to an unreasonable hardship that cannot be self-imposed. In hearing a variance request, the applicant bears the burden of proving that the hardship exists and that the criteria for granting a variance can be met. The provided documentation from the applicant and the stated hardship do not meet the threshold necessary to grant a variance.

DEVELOPMENT REVIEW COMMITTEE

This proposal has been reviewed by the various members of the Development Review Committee (DRC) for compliance with the respective guidelines, policies, standards, and codes. A report of this review has been attached in the exhibits. The Committee has sent the item for Board of Adjustment to render a decision.

POTENTIAL MOTION

Move to *Deny* consistent with the findings presented in the staff report.

Findings:

1. Wasatch County Code §16.21.08 requires accessory structures on lots up to 4.99 acres to be located in the rear or side yard.
2. The subject property is a 2.39 acre lot in the Timberlakes No. 12 subdivision.
3. The subject property has an existing home with an attached garage currently.
4. The applicant is requesting a variance to allow the construction of an accessory garage in the front yard.
5. Wasatch County Code §16.04 provides definitions for front, side, and rear yards.
6. The applicant's responses to the findings required in Section 16.02.08 of the current Wasatch County Code cites topography and septic location as an unreasonable hardship requiring a variance. No slope data was provided to support this claim and no septic information was provided.
7. Timberlakes is a non-conforming subdivision recorded before any slope ordinances in the county. Therefore, there is not an applicable county code that precludes construction of an accessory structure on steep slopes in the area.
8. WCC §16.02.08(F)(2)(b)(2) requires that the special circumstances of a property must be specifically related to the hardship and deprive the property of privileges granted to other properties in the same district. If the topography was applicable as a hardship, it is still unclear how the topography could meet the criteria of a "special circumstance not applicable to other properties in the same district." Septic location would be similar.
9. A variance request is not a discretionary decision afforded to a jurisdiction. The County must follow state code and must satisfy all required findings in order to grant a variance.
10. The applicant's submitted responses to findings required under §16.02.08 have not met the burden of proof required by state and local laws.
11. Staff analysis of the required findings from §16.02.08 have not been able to identify an unreasonable hardship that is not self-imposed.
12. WCC §16.02.08(F)(2)(a) precludes the ability of granting a variance if the hardship is self-imposed.
13. Without evidence supporting the existence of an unreasonable hardship caused by enforcement of the county code, criteria #1 of the required findings is not met.
14. Without evidence of special circumstances peculiar to the property that is not applicable to other properties in the same district, criteria #2 of the required findings is not met.
15. An accessory garage is not part of the substantial property right for a single-family home. Regardless, the ability to construct an accessory garage in compliance with code exists, which demonstrates that criteria #3 of the required findings cannot be met.
16. The applicant has not met the burden of proof for criteria #4 or #5 that the public interest is protected and that the spirit of the title is observed.
17. If the variance were granted, it is still unclear from the applicant documents whether the requested location would comply with the front setback requirements or the height maximums.
18. Whether or not the location of accessory buildings in general should be regulated differently is a policy decision reserved for the legislative authority (Wasatch County Council). Neither Planning Staff, nor the Board of Adjustment, can make legislative decisions. If it is believed that the regulation restricting the location of accessory buildings should not be applicable, that decision can only be made through legislative action to amend the ordinance.

ALTERNATIVE ACTIONS

The following is a list of possible motions the Board of Adjustment can take. If the action taken is inconsistent with the potential findings listed in the staff report, the Board of Adjustment should state new findings.

1. Deny. This action can be taken if the Board of Adjustment finds that the proposal does not meet the necessary criteria found in State Law and Wasatch County Code. ***This action would be consistent with the staff analysis.****

2. Continue. This action can be taken if the Planning Commission needs additional information before making a recommendation, if there are issues that have not been resolved, or if the application is not complete.

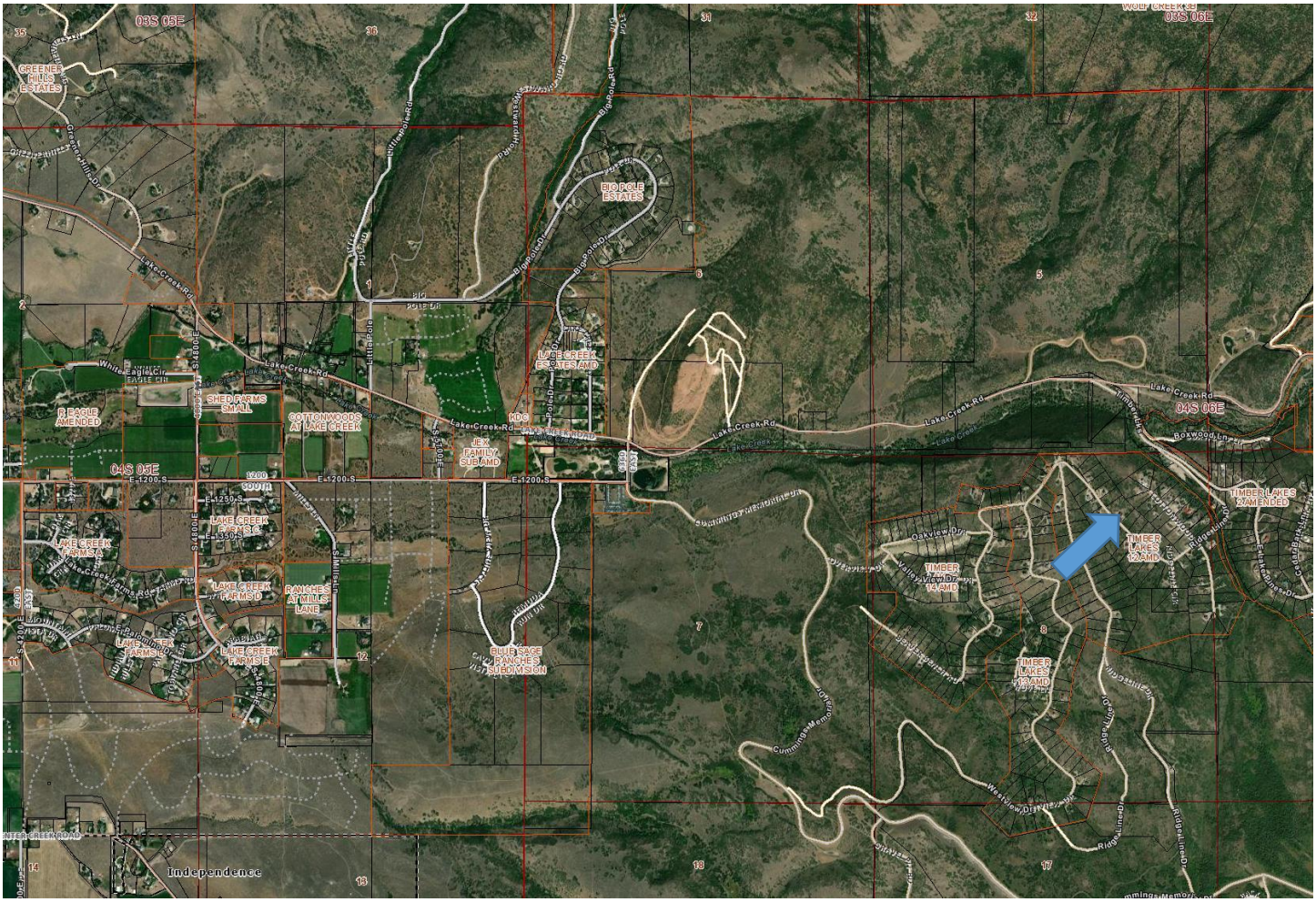
3. Approve with Conditions. This action can be taken if the Board of Adjustment feels that impacts of the variance request can be mitigated to be compliant with Wasatch County Code and State Law.

4. Approve. This action may be taken if the Board of Adjustment finds that the variance request meets the necessary variance criteria found in State Law and that the request is consistent with Wasatch County Code and all other applicable ordinances.

EXHIBITS

A. Vicinity Plan
B. Applicant Request
C. Applicant Plans
D. DRC Report

EXHIBIT A – Vicinity Plan




Ridge Lino Dr
03-4954
1679 S
1276
03-4962
1673 S
1666 S
03-4566
1277
03-4970
1659 S
1652 S
1278
03-4588
1645 S
03-4996
1640 S
TIMBER LAKES 12 AMD
03-4541
1638
1639 S
1624 S
1252
03-4533
1621 S
1610 S
1231
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1605 S
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1593 S
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1592 S
03-4624
1284
1293
03-5126
1282
1291
03-5001
03-5019
03-5027

EXHIBIT B – Applicant Request

July 7, 2023
Wasatch County Planning Department
Board of Adjustors

RE: Variance Request

Board Members,

Below I have tried to explain why you should consider granting a variance for the location of my proposed garage. After experiencing last winter, which was our first winter in Timber Lakes, it became apparent to me that trying to access our basement garage was near impossible. I felt for our safety and well being we needed a garage on the driveway level. My wife and I are in our early 70's and this issue will become more of a problem as time goes on.

1. LITERAL ENFORCEMENT OF THE LAND USE ORDINANCE WOULD CAUSE AN UNREASONABLE HARDSHIP FOR THE APPLICANT THAT IS NOT NECESSARY TO CARRY OUT THE GENERAL PURPOSE OF THE LAND USE ORDINANCE.

   Because of the unique topography to my particular parcel, the only reasonable location to place the garage would be to the front and west of the home at the end of the existing driveway. Placing the garage on the west side of the home is unreasonable because of the steepness of the lot. The west side of the home has an existing driveway to a basement ga garage that is inaccessible during the winter again because of the steepness. Putting the g garage in the back of the home is impossible because of the septic tank and leach field. So the only reasonable location for the garage would be as indicated on the site plan.

2. THERE ARE SPECIAL CIRCUMSTANCES ATTACHED TO THE PROPERTY THAT DO NOT GENERALLY APPLY TO OTHER PROPERTIES IN THE SAME DISTRICT.

   There are special circumstances, in that being the steep topography on this particular parcel. I'm certainly not unique to some other properties on the mountain who have similar topography but my lot is on the side of the mountain. The home was built 11 years ago with not a lot of thought put in to accommodate full time residents.

3. GRANTING THE VARIANCE IS ESSENTIAL TO THE ENJOYMENT OF A SUBSTANTIAL PROPERTY RIGHT POSSESSED BY OTHER PROPERTY IN THE SAME DISTRICT.

   Having a usable garage on a flat level with our driveway would make life a lot easier for us as we are in our golden years. Most property owners can access their garage, which is a major convenience. Having the same opportunity would be essential to our safety and happiness.

4. THE VARIANCE WILL NOT SUBSTANTIALLY AFFECT THE GENERAL PLAN AND WILL NOT BE CONTRARY TO THE PUBLIC INTEREST.

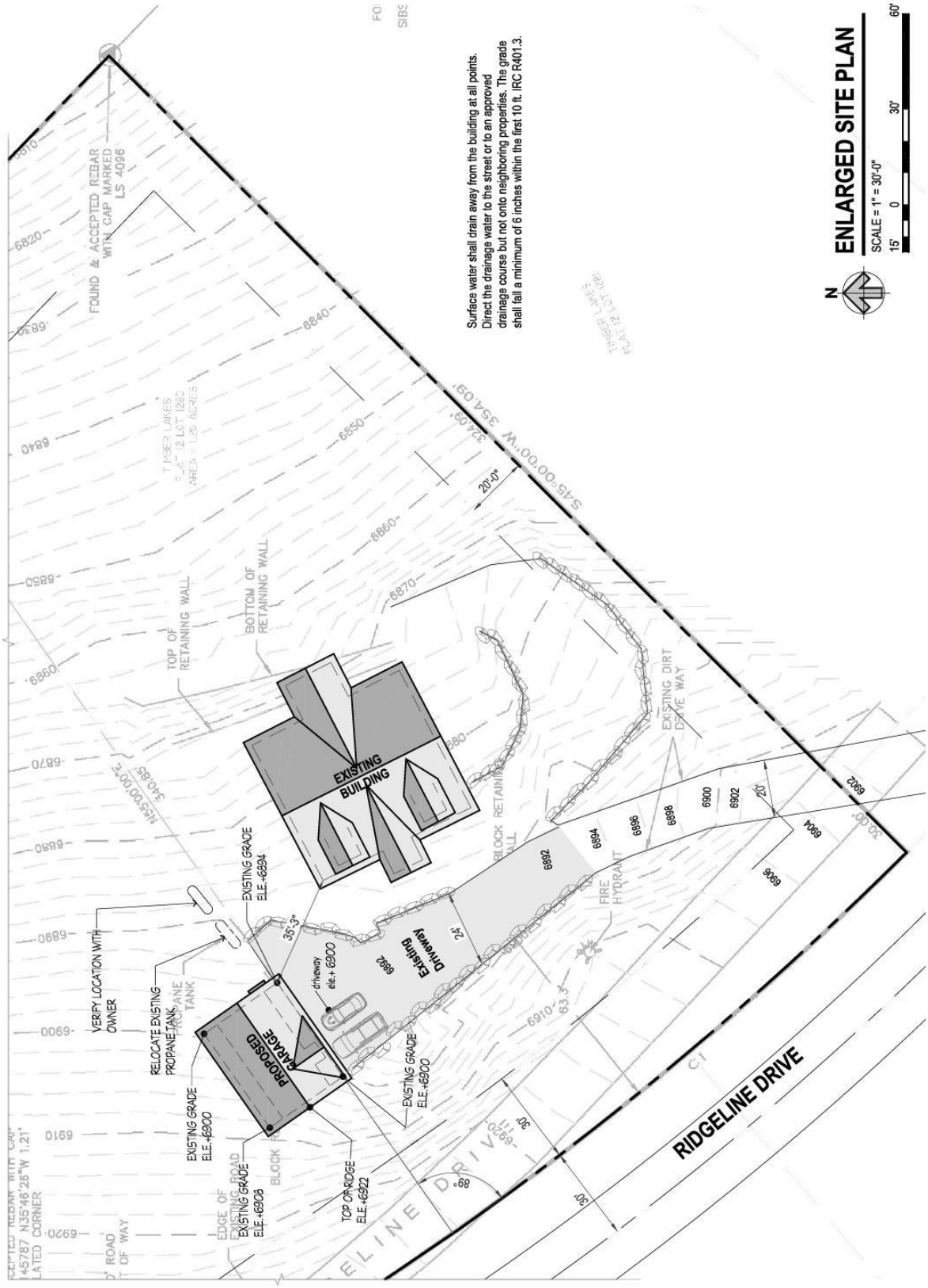
   First of all Timber Lakes HOA Architectural Committee has already approved of the design and location of the proposed garage. Secondly, because of the topography and road location, the garage will barely be visible to anyone. So I doubt if there is any opposition to this proposed plan.

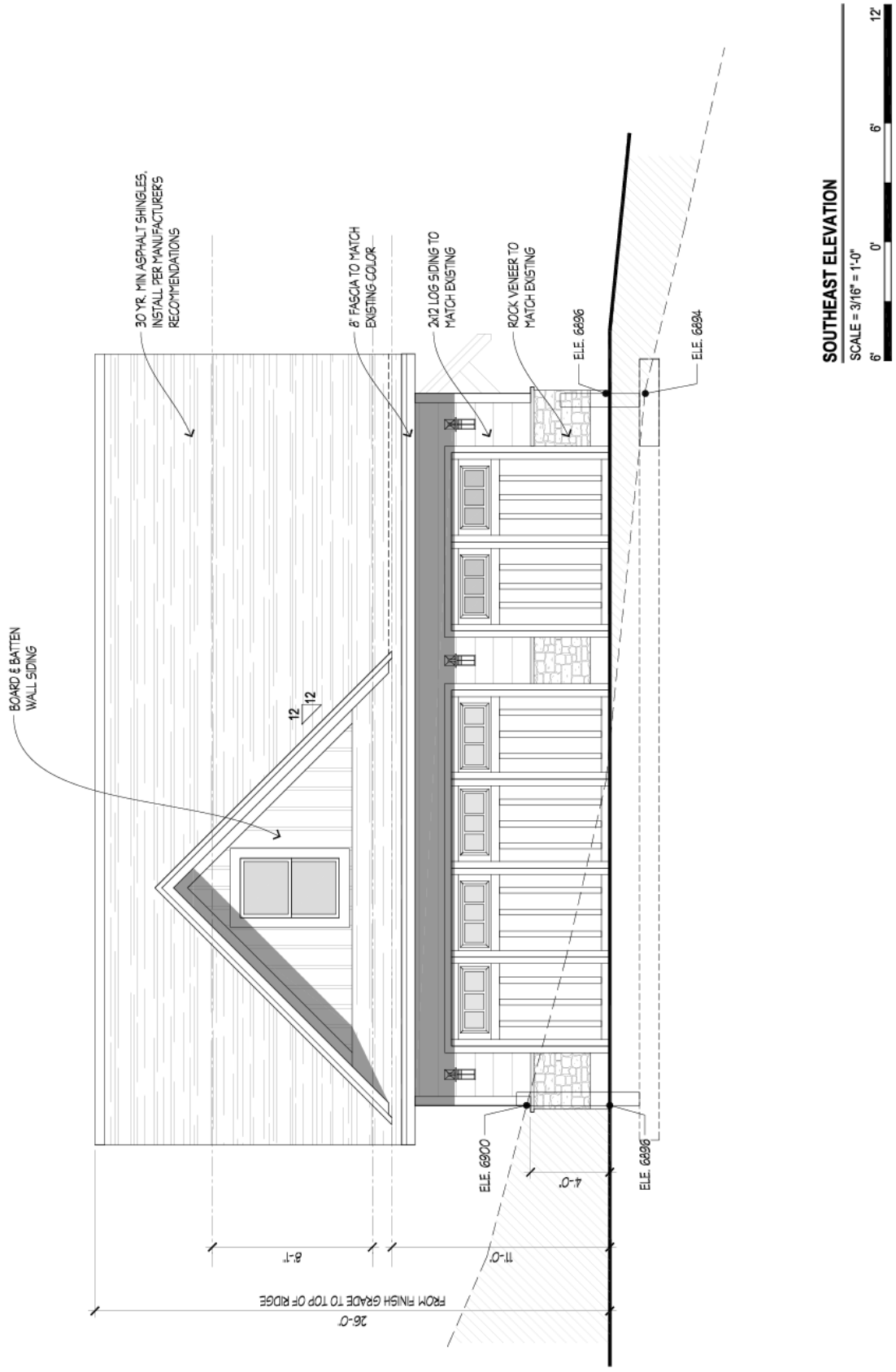
5. THE SPIRIT OF THE LAND USE ORDINANCE IS OBSERVED AND SUBSTANTIAL JUSTICE DONE.

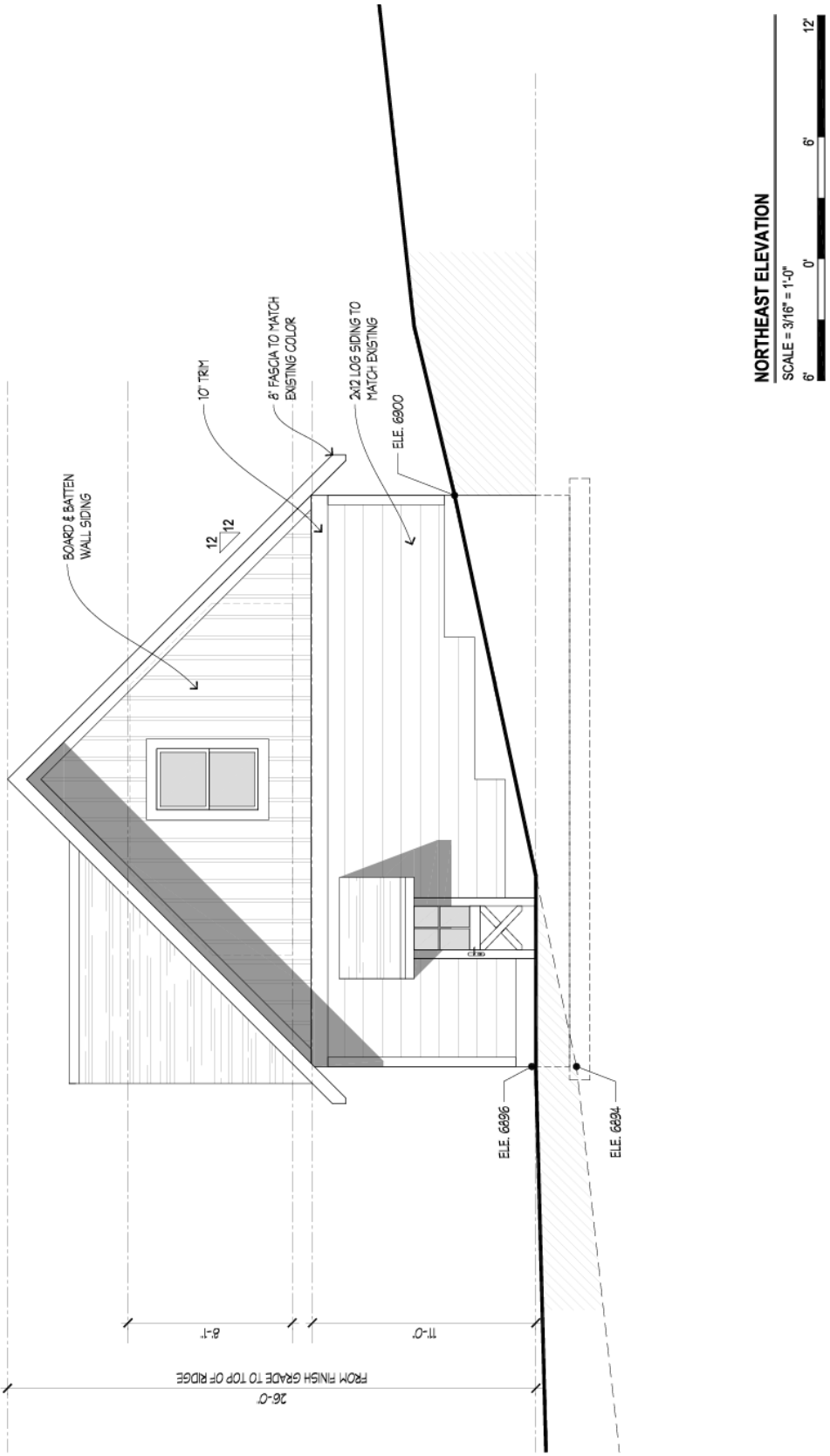
I would not be asking for this variance if there were any feasible way to comply with the County code. The proposed garage is to one side, not directly in front of the house. I believe I have done everything possible to comply in keeping with the spirit of the Land Use Ordinance.

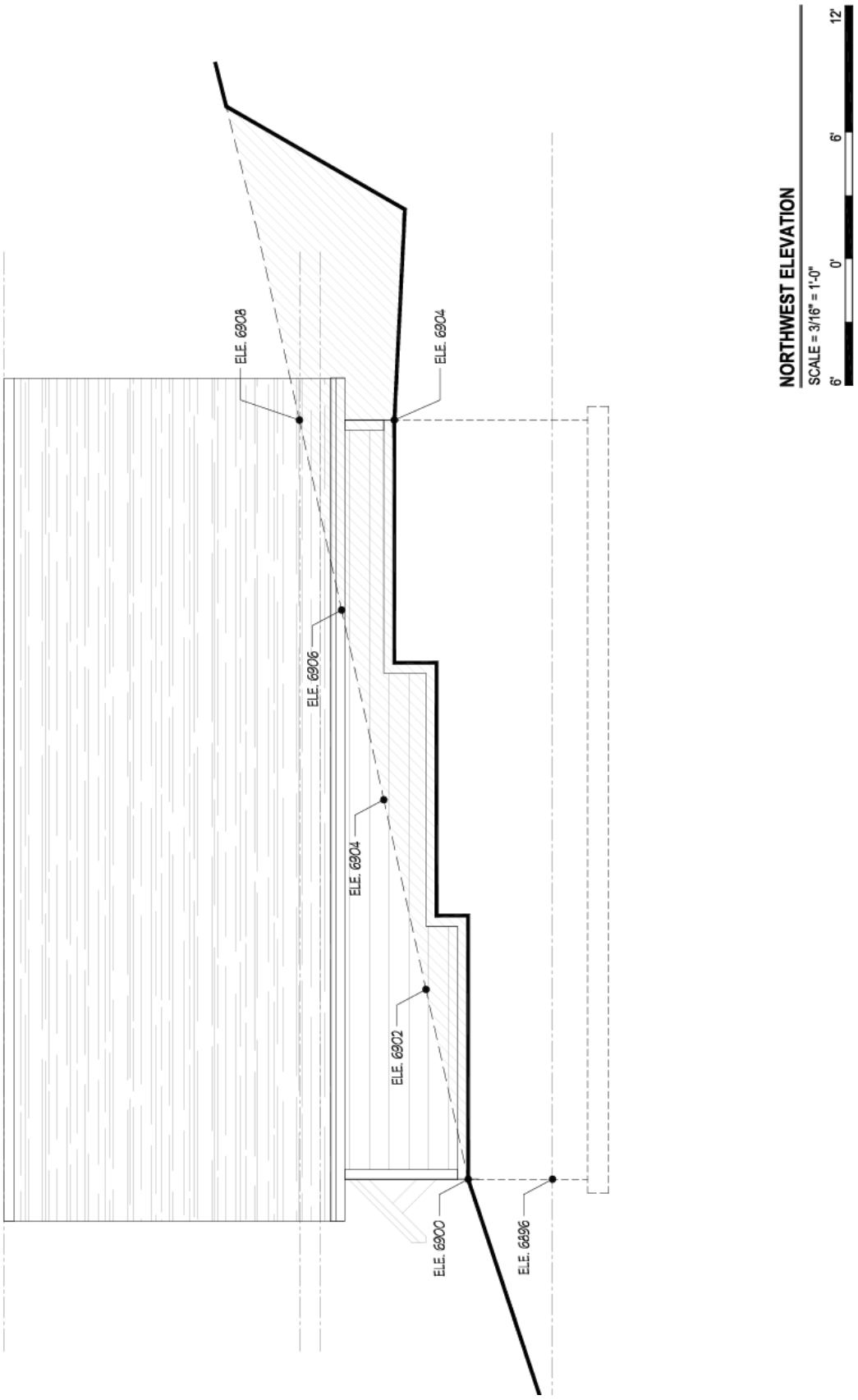
South side of existing home

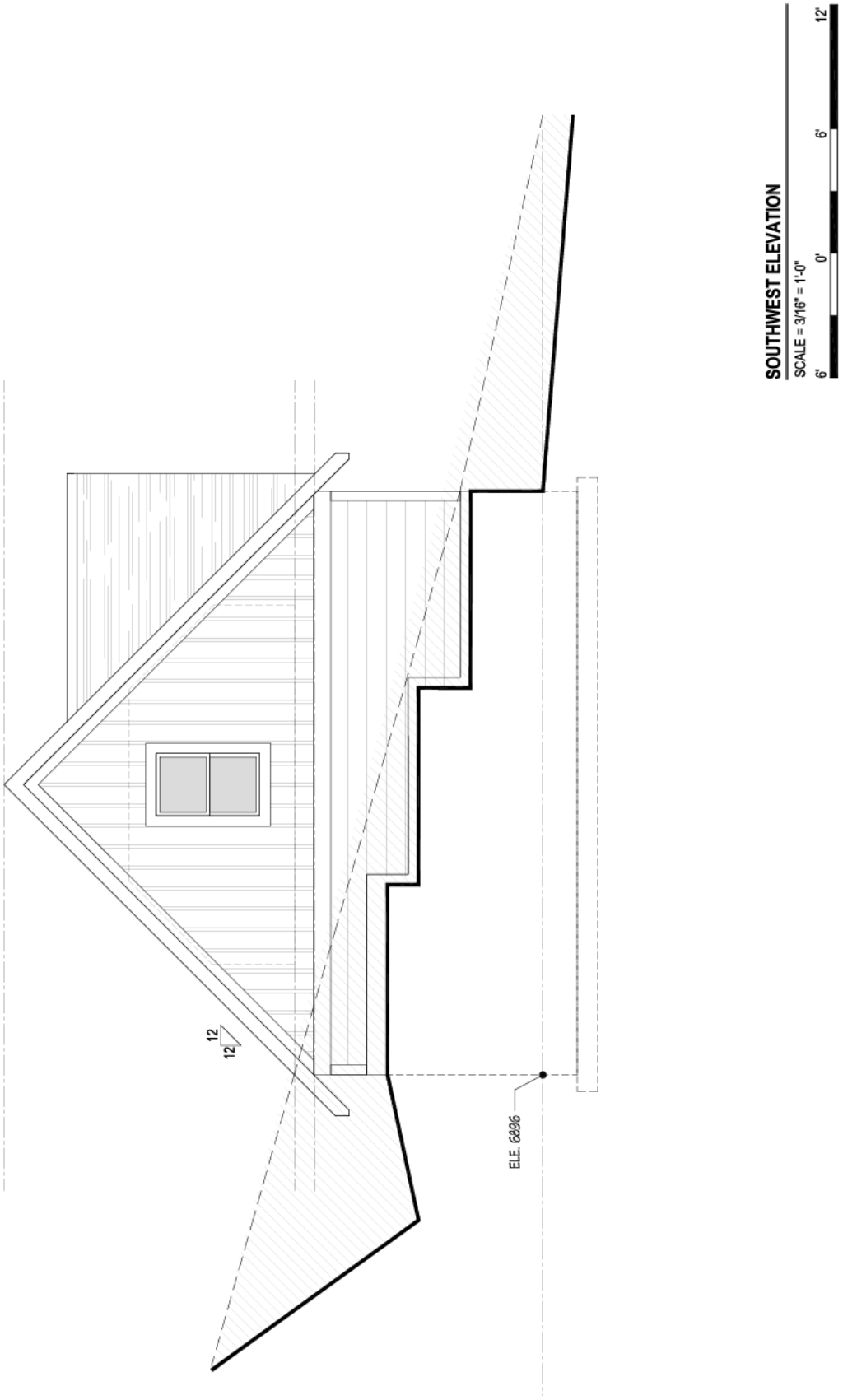
EXHIBIT C – Applicant Plans

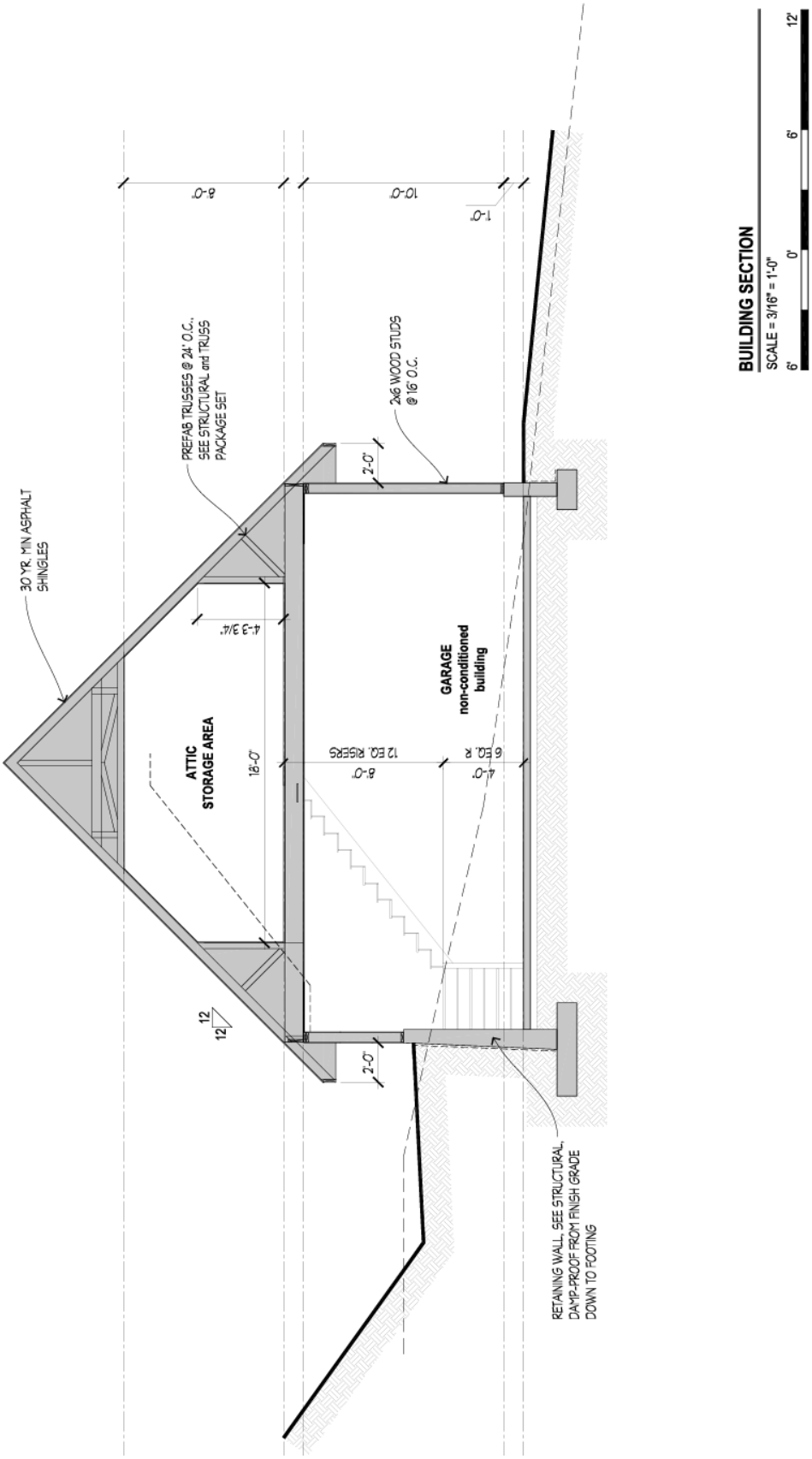



SOUTHEAST ELEVATION
SCALE = 3/16" = 1'-0"
0'
6'
12'
30 YR. MIN ASPHALT SHINGLES, INSTALL PER MANUFACTURERS RECOMMENDATIONS
8" FASCIA TO MATCH EXISTING COLOR
2x12 LOG SIDING TO MATCH EXISTING
ROCK VENEER TO MATCH EXISTING
ELE. 6896
ELE. 6894
BOARD & BATTEN WALL SIDING
12
12
ELE. 6900
ELE. 6896
4'-0"
11'-0"
8'-1"
FROM FINISH GRADE TO TOP OF RIDGE
26'-0"


NORTHEAST ELEVATION
SCALE = 3/16" = 1'-0"
6'
0'
6'
12'
BOARD & BATTEN WALL SIDING
10" TRIM
8" FASCIA TO MATCH EXISTING COLOR
2x12 LOG SIDING TO MATCH EXISTING
ELE. 6900
12
12
ELE. 6896
ELE. 6894
11'-0"
8'-1"
26'-0"
FROM FINISH GRADE TO TOP OF RIDGE


NORTHWEST ELEVATION
SCALE = 3/16" = 1'-0"
6'
0'
6'
12'
ELE. 6908
ELE. 6904
ELE. 6906
ELE. 6904
ELE. 6902
ELE. 6900
ELE. 6896


SOUTHWEST ELEVATION
SCALE = 3/16" = 1'-0"
6'
0'
6'
12'
12
12
ELE. 6896


BUILDING SECTION
SCALE = 3/16" = 1'-0"
0'
6'
12'
8'-0"
10'-0"
1'-0"
30 YR. MIN ASPHALT SHINGLES
PREFAB TRUSSES @ 24" O.C., SEE STRUCTURAL and TRUSS PACKAGE SET
2x6 WOOD STUDS @16" O.C.
2'-0"
4'-3 3/4"
ATTIC STORAGE AREA
18'-0"
12 EQ. RISERS @ 8"-0"
6 EQ. R @ 4'-0"
GARAGE non-conditioned building
12
12
2'-0"
RETAINING WALL, SEE STRUCTURAL, DAMP-PROOF FROM FINISH GRADE DOWN TO FOOTING

area: 1,008 s.f.
GARAGE FLOOR PLAN
SCALE = 3/16" = 1'-0"
0'
6'
12'
28'-0"
22'-0"
6'-0"
48"x48" conc. landing
switch to photocell w/motion sensor & override, verify w/ owner
3/0x6/8
sub panel
up to loft level
GFCI + 18"
MOTOR GFCI
3-CAR GARAGE
9' x 8' overhead garage door
16' x 8' overhead garage door
3-0"
9'-0"
18'-0"
36'-0"
3-1"
4-8"
3-4 1/2"

GARAGE ATTIC PLAN
SCALE = 3/16" = 1'-0"
area: 678 s.f.
STORAGE
down to main level
GFCI
SOFFIT GFCI
3/0x5/0 single hung
28'-0"
18'-0"
9'-0"
5'-0"
14'-0"
22'-0"
8'-0"
6'-0"
3'-0"
3'-1"
8'-3"

EXHIBIT D – DRC Report

Wasatch County Design Review Committee (DRC) Comments

Project ID: DEV-8167
Project Name: Variance - Detached Garage
Vesting Date: 7/20/2023
Review Cycle #: 1

Review Cycle Status: Ready For Decision

Project comments have been collected from reviewers for the above noted review cycle and compiled for your reference below. Please review the comments and provide revised plans/documents if necessary. **Resubmittals must include a plan review response letter** outlining where requested changes and corrections can be found. Failure to provide such a letter will result in the project being returned to you.

When uploading revisions please name your documents exactly the same as it was previously uploaded. Revision numbers and dates are automatically tracked. There is no need to re-upload documents that aren't being changed. DO NOT DELETE documents and then upload new ones.

Once you have addressed all of your items and successfully uploaded your revisions, be sure to re-submit your project for review. Resubmittal must be made through the portal in order to receive official review. Projects requiring Planning Commission approvals or recommendations will not be placed on a planning commission agenda until all DRC reviewers have recommended the item to move forward.

Entity	Decision
Planning Department	Ready for Decision
Building Department	Ready for Decision
Engineering Department	Ready for Decision
Fire SSD	Ready for Decision

Approved = Reviewing entity has approved the project under consideration of their applicable codes. Any open comments are considered conditions of the entities recommendation.

Ready for Decision = Reviewing entity recommends the project move forward to a Planning Commission meeting (if applicable). Any open comments are considered conditions of the entities recommendation.

Changes Required = Reviewing entity has identified an issue(s) that needs to be resolved before recommending the project move forward.

No Action = Reviewing entity has not taken any action for the review cycle.

Overall Project Comments

Project Document Sheet Comments by Reviewing Entity

DRC – Planning Dept		
Comment ID	**Sheet Name**	**Comment**
DRC-PLN1	Request Letter	The stated hardship is topography. Under analysis of Utah Code, this does not appear to qualify as a hardship for the following reasons: 1) The construction of an additional garage is self-imposed. 2) There is no applicable zoning code that precludes the construction of the proposed building because of the topography. 3) The topography is not unique to the parcel since the same topography exists on nearly all properties in the same area. 4) The substantial property right is a single-family home, and not an accessory building. Even so, the proposal could be modified to comply with code without the need for a variance, therefore, it is even more clear that there is no substantial property right being precluded. Given that the proposal does not meet the required standards set forth in State Code, the variance request cannot be supported. UCA 17-27a-702(2) Further analysis and detail will be provided in the staff report to the Board of Adjustment.