

City Council Staff Report

April 15, 2015

Applicant: Bud Harper

Location: 727 E 1100 S

Prepared by: Sean Conroy,
Community Development
Director

Public Hearing: No

Zone: A-2

Attachments:

1. City Council minutes dated 4/30/13.

REQUEST

Consideration of a review of a Permit approved for a residential care facility for persons with a disability located at 727 E 1100 S.

BACKGROUND AND PROJECT DESCRIPTION

On April 30, 2013 the City Council approved a permit to allow a single-family residence to be converted to a residential care facility for persons with a disability for a maximum of 10 occupants (5 male, 5 female). Several conditions were attached to the approval including a condition that the Council would review the permit on an annual basis to determine if the facility has been operating in conformance with the permit.

The facility opened for business in March of 2014. The purpose of this meeting is to comply with the condition for an annual review and to determine if any adjustments should be made to the original conditions.

EVALUATION

Staff has included the conditions of approval below followed by a staff response.

1. Prior to operation, the applicant shall obtain a building permit and comply with all building and fire code requirements related to the proposed facility.

Response: Building Permit #5154 was issued to the applicant for the upgrades to the facility. A Certificate of Occupancy was issued by the City on February 20, 2014. The applicant has complied with this condition.

2. Prior to operation, the applicant shall obtain a business license from the City.

Response: Business License #744 was issued to the applicant on February 28, 2014. The license is current and the applicant has complied with this condition.

3. Prior to operation, the applicant shall obtain a license from the Utah Department of Human Services. This license must remain active throughout the life of the facility.

Response: The applicant obtained a license with the UDHS on February 25, 2014. The license is current and the applicant has complied with this condition.

4. Placement of disabled individuals in the facility shall be on a strictly voluntary basis and not part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.

Response: There is no indication that the applicant has not complied with this condition.

5. No individual shall be admitted to the facility as a resident who has a history of criminal conviction, is a convicted sex offender, has been convicted of selling or manufacturing illegal drugs, is currently using drugs or alcohol, and/or who is a direct threat to the health and safety of other individuals and/or of causing substantial physical damage to the property of others. The owner or operator of the facility shall conduct an individualized assessment of each person who desires to become a resident of the facility to determine if such person would constitute a direct threat prior to allowing occupancy of the facility by such person. The assessment shall be performed and certified by an independent medical doctor, licensed clinical social worker (LCSW), licensed professional counselor (LPC), licensed psychologist or licensed psychiatrist through a facility that is licensed and approved by the Utah Department of Human Services Division of Licensing or other equivalent licensing board of another state as a provider for substance abuse. The person performing the assessment shall perform a background check for each potential resident.

Response: There is no indication that the applicant has not complied with this condition. Per special condition #6, the applicant is required to submit a quarterly affidavit to the City indicating by penalty of perjury that he is complying with the conditions of the permit. The applicant has submitted the quarterly affidavits as required. Staff has contacted the UDHS and verified that the applicant is in good standing with the state.

6. Prior to the occupancy of the facility and at least quarterly thereafter, the person or entity licensed or certified by the applicable regulatory state agency shall certify in a sworn affidavit to the City that based on the individualized assessment performed for each resident, no person will or does reside in the facility whose tenancy would likely 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. The affidavit will also state that no individuals have been admitted to the facility as a resident who has a history of criminal conviction, is a convicted sex offender, has been convicted of selling or manufacturing illegal drugs, and/or is currently using drugs or alcohol. Upon request by the City, the applicant shall provide documentation to support the affidavit(s).

Response: See response to #5 above.

7. The applicant shall immediately discharge any resident who uses illegal drugs or alcohol while residing at the facility.

Response: See response to #5 above.

8. The approval of this use is nontransferable and terminates upon transfer of ownership of the facility. The approval may also be revoked if any use other than that approved is operated on

site and/or if the facility is not in compliance with Mapleton City Code chapter 18.84.370.B.

Response: This condition continues to apply.

9. The property shall maintain the appearance of a single family residence.

Response: The property has maintained its single family appearance and the applicant has complied with this condition.

10. The City Council shall review this permit on an annual basis to ensure that the facility is in compliance with city standards and the conditions of this permit. The Council may amend the conditions of the permit if it is determined that new conditions are needed to ensure compliance with city standards.

Response: Staff has not received any complaints regarding the facility and all indications are that the facility is in full compliance with the conditions of the permit. Staff does not recommend any amendments to the permit at this time.

11. No on-street parking shall be permitted by the employees, residents or visitors of the facility.

Response: There is no indication that the applicant has not complied with this requirement.

RECOMMENDATION

Make no changes to the conditions of the permit.

MAPLETON CITY COUNCIL MEETING

April 30, 2013

PRESIDING AND CONDUCTING: Mayor Brian Wall

Council Members: Ryan Farnworth
Scott Hansen- Excused
Jim Lundberg
Mike Nelson
Jonathan Reid

Also Present: Cory Branch- City Administrator
Camille Brown- City Recorder
Gary Calder- City Engineer/Public Works Director
Sean Conroy- Community Development Director
Rick Hansen, Building Official
Eric Johnson, City Attorney
Chief Pettersson- Police Chief

Minutes Recorded by: Camille Brown- City Recorder

CALL TO ORDER: Mayor Wall called the meeting to order at 7:05 pm. Cl. Lundberg gave the invocation and Cl. Nelson led the pledge of allegiance.

APPROVAL OF MINUTES:

1. Approval of City Council meeting minutes- April 16, 2013

Motion: Cl. Lundberg moved to approve the minutes of the April 16, 2013 City Council meeting.

Second: Cl. Nelson seconded the motion.

Vote: Passed 4:0

PUBLIC HEARING ITEM:

- 2. Consideration of a request to convert an existing single family dwelling into a Residential Facility for Persons with a Disability located at 727 E 1100 S, and a request for a reasonable accommodation to allow up to 16 residents in the proposed facility.**

Sean Conroy, Community Development Director reviewed the staff report for those in attendance. He reported that Mr. Harper would like to convert his residence into a Residential Facility which would focus on drug and alcohol addiction. The maximum capacity is 16 adult residents at a time which would need anywhere from 30, 60 to 90 day programs. The residents would not have vehicles and would not be allowed off the property without supervision. The

subject property is located at 727 East 1100 South in Mapleton. Mr. Conroy further stated that The Federal Fair Housing Act (FHA) prohibits discrimination based on disability and drug and alcohol addiction are considered to be a disability. Federal law prohibits failure to grant reasonable accommodations to policies, rules and regulations, etc. when justified. Also the FHA does not allow exclusion of residential facilities based upon fear, speculation or stereotype about a particular disability or person with disabilities. Mr. Conroy reviewed the state law as it applies to residential treatment facilities and that they shall be permitted in all zones that allow residential uses.

Mr. Conroy stated that the Planning Commission has heard and approved this item and now the City Council needs to give approval or denial. The City Ordinance is in line with the Federal and State statutes for these types of facilities. The current ordinance allows for 3 unrelated individuals to occupy a home, however state law now requires at least 4. The applicant is requesting 16 which would be a benefit for group therapy and the ideal size would be 8 males and 8 females in order to make the program financially viable. Several questions were outlined for the Council's review of the reasonable accommodation request.

Bud Harper, the applicant, stated that he is aware there is a lot of speculation mixed with fact and fiction. He would like to talk about some of the issues regarding the facility. The program description they will have is an adult program, so no one under the age of 18 would be admitted. All residents will have to complete a detox program before entering the facility. No one is forced to come to this facility, therefore there will be no convicted individuals allowed. The program will be offered for 30, 60 and 90 days, with focus on the 90 day program, since the 90 day program is much more affective. They will open with a variety of addictions and move to a more specific prescription drug addiction facility over time. No one in the program will be walking through the neighborhood unsupervised. All activities will take place on the property or transportation will be provided by a van. Each month there will be a family day where there would be more cars around the facility than usual. In order to not burden the neighborhood, the families will be shuttled to the facility. This facility is twice the size of facilities that are in existence already. Alcohol and drug abuse is a mental disorder; substance means alcohol and drugs. Less than 16 beds would make it so that the facility would not be profitable. There are already in most facilities about 20 people on waiting lists at any period of time.

Cl. Reid asked Mr. Harper if he would be willing to stipulate to no street parking and he stated that yes he would.

Cl. Lundberg inquired about Ms. Maloney's statements about 6-8 members would be the ideal number for group therapy. If the group is too large, patients would be reluctant to share information. Mr. Harper stated that there will be up to 5 different types of therapy but all would

be together for educational things. It is common that women are not going to talk about certain issues if there are men in the room.

The public hearing was opened at 7:15 pm

Denise Maingot, 696 South 1200 East, stated that there are numerous people in the neighborhood that are concerned about this treatment facility going in and they have donated their time to research this issue. She doesn't want the council to perceive the lack of comment as lack of interest. She was the individual that put the spread sheet together about the homes in the area and how long the families have lived in this neighborhood. Also, she personally did visit all of the facilities that are listed. Most the homes in this neighborhood exceed 5000 sq. feet. The home that Mr. Harper lives in, which was built in 1980, was built for a family of 7 and at the time when Mr. Harper bought it his family consisted of 6. The neighborhood is very concerned about the type of people that this facility will bring, mostly those being transient people. Ms. Maingot talks how Mr. Harper wants to have 16 individuals and get anyone he can to enter the program. Everything is guess work, he has shown nothing as a profit and loss. She would recommend that the City Council deny this request.

Dan McDonald, Mapleton Fair Care, LLC, stated he is representing a group of citizens living in the same neighborhood as the applicant, Bud Harper, who is seeking to convert his home into a residential treatment facility for 16 recovering addicts and substance abuse users. Mr. McDonald reviewed federal cases that he has represented clients in similar matters. He stated that Courts continue to give substantial deference to local zoning laws and local zoning authorities, who are entitled to enforce their laws so long as enforcement does not result in discrimination. Mr. McDonald and their group has submitted several documents for consideration and he encouraged the council to review the documents before a decision is made. Different circuit courts are applying different laws across the country. There is not enough information from the applicant to make this decision.

Eric Johnson, City Attorney, stated that Ms. Maloney does not connect the dots as correctly as she could, she does not even say that group treatment is necessary, in light of that, to say well, there wasn't that extra dot that was needed, if the treatment was helpful to them, why wouldn't you allow them to have that.

James Ott who is a therapist and resident in Salt Lake City stated that there needs to be more treatment facilities and more programs. He stated that he was a clinical director and does not believe that this is the correct location to put this facility.

Sandra Taylor- stated that she owns the property at approximately 1057 South 800 East. They had a cash offer on their property and once the buyers heard of what was being proposed for the location to the west of her property, the buyers pulled their offer. She thinks that this will directly affect the character of the neighborhood.

Ben Card- 1090 East Falcon Circle, stated he is a past City Council member. He remembers that back in 2005 the council had to wrestle with this same type of application with Discovery Ranch. Discovery Ranch was approved along Hwy 89 which is surrounded by a high density housing zone. Our neighborhood will be changed forever, neighborhoods in Mapleton always have homes for sale, there will be huge implications if this is approved.

Richard Nance, stated that he is the Director of the Utah County Division of Substance Abuse. He stated that Mr. McDonald said that this facility should be in a commercial zone. From Mapleton alone, 36 individuals were booked into other treatment facilities within the county or into the County Jail and he thinks that it is viable for Mapleton to have a substance abuse program.

Cory Andersen, 641 West 550 South, stated that he has lived here in Mapleton for the last 8 years and he is a developer within the community. He stated that he is a recovering alcoholic, and he facilitates a 12 step meeting in Mapleton every week. He would ask the public to not be ignorant and not be hypocrites about “these people” that would be attending this program. We need to be open to this, this can be a very touchy subject, “these people” that he is one of, it is not what you think, these facilities have saved his life. He is here as a missionary for the church. This is a huge problem in his life, but that is the nature of this disease. He would ask that you as the public try to open your hearts and minds and be considerate when “these people” live in your community. He is here to shout out his addiction because he wants to help people, and would ask that the public not refer to these individuals as “riffraff or those people”.

Ron Frasier, 266 East 900 South, stated that he is all for Mr. Harper to be able to do this, but not for 16 people, 4 is plenty.

Kelly Cook- 665 East 1100 South, stated that in the Fair Housing Act, 16 is good, but why not 4, you would not be discriminatory, if you had 4 or 6, but if you had 16, you would feel the nature of the change of the neighborhood. The Federal Law is clear, you need to allow for 4 but why 16.

Rick Maingot, 696 South 1100 South stated first of all he would like to address Cory Anderson’s issues, we know they need to be helped, this is not the issue, we want to help people, but where is the appropriate place to put these people. He talked to Mr. Harper and he doesn’t

believe that this is the right place. If you need funding, let's do it, Discovery Ranch was brought up, this is an appropriate place, this is in a commercial area, with high density housing area in the back. This facility would be smack dab in the middle of a residential area, it is not the right size. No one is saying he can't have a facility, it is the number of people, there is going to be vans, at least 2 vans. The more people you have the more parking you are going to need. It doesn't have anything to do with the type of people, it is how many people are inside. Mayor it is like everyone has had their mind made up from the beginning.

Cl. Lundberg stated that Mr. Maingot seems somewhat accusatory. Cl. Lundberg stated that he does not have his mind made up and no one else has their mind made up. We have to look at the objective evidence. We have a duty to measure the evidence, he has to divorce himself from any personal opinion, speculation opinion is not evidence. He greatly appreciates the work all of you have done, you have produced subjective evidence, and in his mind he is trying to gather the evidence, which is his duty. He hopes that you don't take this questioning that his mind is made up, in the end, everyone has to measure the evidence. Thank you for what you have provided to the City Council.

Cl. Nelson stated that his sister and her husband started New Haven. He knows the process, and has visited Telos and Discovery Ranch and is familiar with other programs.

Larry Haines, 1005 South 800 East stated that almost every time a difficult issue comes up they ask for the input of the neighbors and there is not one neighbor that likes this for the neighborhood.

The Public Hearing was closed at 9:40 pm.

Eric Johnson stated that he would like to address some of the things that have been said about where this is in the community. The federal law gives the right for this use to be in this area. If people are allowed to reside in a zone then disabled people are allowed to reside in the zone. You should not apply the tests that Mr. McDonald has applied, that would be a misapplication from the 10th Circuit Court.

Cl. Lundberg stated that this facility would not lessen the character of the neighborhood. We have a legal duty to approve a facility under federal law. Ms. Maloney's evaluation of 5 and 5 in a group setting is minimal. Mixed therapy is perfectly viable and can be perfect group therapy.

Cl. Farnworth stated that with this being reasonable in the fair housing, we have to base it off of a reasonable decision, most laws can be interpreted. In his job, he has to make a judgment and initiate the arrest and has to base it on case laws.

Motion: Cl. Nelson moved to approve to convert an existing single family dwelling into a Residential Facility for Persons with a Disability located at 727 E 1100 S, and a request for a reasonable accommodation to allow up to 12 residents in the proposed facility for persons of 6 males and 6 females.

Motion failed for lack of second.

Motion: Cl. Reid moved to approve to convert an existing single family dwelling into a Residential Facility for Persons with a Disability located at 727 E 1100 S, and a request for a reasonable accommodation to allow up to 10 residents

Cl. Farnworth would like to amend to allow for 5 males and 5 females

Second: Cl. Nelson seconded the motion

Reid Nay

Nelson Aye

Lundberg Aye

Farnworth Aye

Vote: Amendment passed 3:1

Motion: Cl. Farnworth moved to approve to convert an existing single family dwelling into a Residential Facility for Persons with a Disability located at 727 E 1100 S, and a request for a reasonable accommodation to allow up to 10 residents of 5 men and 5 women

Second: Cl. Nelson seconded the motion.

Reid Aye

Nelson Aye

Lundberg Nay

Farnworth Aye

Vote: Passed 3:1

ACTION ITEMS:

3. The Ensign-Bickford Company requests approval of an amendment to Exhibit M-1, M-2 and M-3 of their Development Agreement as it relates to their offsite sewer alignment and crossing location for property located generally at 4000 South Hwy 89.

Cory Branch, City Administrator, reviewed the staff report for those in attendance. The Development Agreement was signed in August of 2011. During the last City Council meeting of April 16th the applicant was before the City Council for discussions relating to offsite sewer alignments and crossing alignments. The applicant would request an amendment of the Exhibits M-1, M-2 and M-3. Mr. Branch stated that staff has reviewed this and would