

Mapleton City Planning Commission Staff Report

Meeting Date: April 11, 2013

Item: 2

Applicant: George E. Harper

Location: 727 E 1100 S (Parcel # 46:274:0017)

Prepared by: Sean Conroy, Community Development Director

Public Hearing Item: Yes

Zone: A-2

REQUEST

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.

BACKGROUND AND PROJECT DESCRIPTION

The project site consists of a two acre parcel that is developed with a single family residence. The residence has approximately 10,598 square feet of finished floor area and six covered parking spaces. The applicant is requesting to convert the existing residence to a Residential Facility for Persons with a Disability. The facility would include a maximum of 16 residents and five to six employees. The facility would provide treatment for individuals with past addiction to alcohol and drugs, but would focus primarily on prescription drug addictions. The applicant plans to offer 30, 60 and 90 day treatment programs (see attachment "1").

The applicant is also requesting a reasonable accommodation to allow more unrelated residents to occupy the building than would otherwise be allowed by City code. This project requires review by the Planning Commission and final approval by the City Council. The Planning Commission continued this item on March 14, 2013 with a request for additional information.

EVALUATION

Unrelated Occupants: It has come to the City's attention that Utah Municipal Code section 10-9a-505.5 has been recently amended and prohibits the City from establishing a maximum number of unrelated individuals that can occupy a single family dwelling to anything less than four. Therefore, if no accommodation is given to the applicant, up to four residents would be permitted, not three as currently stated in City code.

Planning Commission Review: On March 19, 2013 the Planning Commission received both written and oral comments on the proposed project. One of the written comments from "Mapleton Fair Care" included a list of 34 items. Staff has reviewed these comments and provided a response to each comment (see attachment "2"). The City Attorney has also reviewed the oral comments and has determined that the majority of the comments did not qualify as objective evidence in which to base a decision to deny or modify the requested accommodation.

Below is a summary of the information the Planning Commission requested as part of its continuance followed by a staff response.

1. *What type of traffic impacts could be anticipated (food service, other deliveries, employees, visitors, etc.)*

Response: The applicant has indicated that the residents will not be permitted to have vehicles. Therefore, the primary traffic to and from the property will be from the employees. The applicant has indicated that there will be approximately five to six employees during the day and two employees at night. When the

residents are being taken off site for activities or other reasons, they will be transported in a van. It is not anticipated that traffic from the minimal number of employees and/or from the transport of the residents will create any significant traffic impacts in the neighborhood.

The site has six covered parking spaces and two large driveways. The applicant has indicated that all parking needs, even during family visiting days, would be adequately provided on site. In order to minimize any impacts on the neighborhood, the applicant is supportive of a condition prohibiting on-street parking by employees or visitors.

Staff has contacted some residential care facilities to request information on what might be expected as far as food service, maintenance, deliveries, etc. The Telos facility in Orem is a 48 bed facility (note, it is in a commercial zone, not a residential zone). They estimate that they have a carpet cleaning company that comes about once every two months, a company that comes in to clean the commercial oven about every three months and several UPS deliveries a week. Most of the food is purchased by the facility staff.

The Anthem House is a 12 bed facility in Orem that operates jointly with the Telos facility. This facility has no deliveries because of its connection to Telos. It is reasonable to assume that if the two facilities were not related that several UPS deliveries a week would likely occur.

- 2. How many people could be expected at the facility on a daily basis, including family visiting days?*

Response: The applicant estimates that on the busiest days, such as family visiting days, that up to twelve visitors could be expected along with the residents of the facility and employees. The applicant has indicated that it is unlikely that every resident of the facility would have family visiting during each visiting day for several reasons. While not likely, it is conceivable that at least on some occasions all 16 residents could have visitors. If it was assumed that all 16 residents had two visitors, along with the six employees, that up to 54 people could be at the facility at one time. Again, the applicant has indicated that he would agree to a condition that no on-street parking would be permitted. The applicant has also indicated that if the existing on-site parking was going to be insufficient on a particular day, that a shuttle service would be arranged.

- 3. Method by which screening occurs (both by the applicant and by the City)*

Response: The applicant has indicated that potential residents would be interviewed by a marketing director, clinical director, and others as deemed appropriate. The screening would include a background check. State law does not allow the City to perform background checks unless investigating a case against, or in the process of arresting a resident of the facility. In discussions with other cities, it appears that most cities primarily allow the state licensing process to handle this issue. Once a facility has been approved, most cities are not involved in the screening of residents.

Some cities do have procedures for ensuring that the facilities are in compliance with city code. Orem City for example requires the applicant to submit quarterly affidavits indicating that residents are being properly screened to meet city standards. Lindon City performs an annual review of its residential care facilities. If problems have occurred, the conditions associated with the facility can be modified to address those problems. Staff is supportive of the approach both Lindon and Orem have taken and has added a special condition to address this issue.

4. *Discussion of the potential burden on the city (public safety, other staffing issues)*

Response: The City’s police chief contacted the police departments of several cities including Provo, Orem, Alpine, Spanish Fork and Sandy, all of which have residential care facilities within their city limits. None of the police departments for these cities have experienced any significant burden on city resources, nor could they document that facilities have impacted crime rates in the neighborhoods in which they are located. The most common problems that have occurred have been primarily with runaways from youth facilities. As mentioned in #3 above, it appears most cities primarily rely on the state to monitor the facilities once they have been approved.

The City anticipates a slight increase in police patrol activity due to the proposed facility, but nothing that would be classified as a burden. The level of burden on administrative staff would ultimately depend on the conditions imposed by the City Council if the project is approved. Staff is currently recommending that the applicant submit quarterly affidavits indicating compliance with city standards and an annual review of the permit with the City Council. Staff time will be required to follow up on the quarterly affidavits and in preparing reports and information for the annual City Council meeting. However, these responsibilities do not appear to be a significant burden on staff.

5. *More information from the applicant on why 16 is needed*

Response: Mapleton City Code (MCC) Chapter 18.84.370.B(5)(b) requires the applicant to describe why the requested accommodation is necessary to afford the disabled an equal opportunity to use and enjoy residential housing. The applicant has outlined why 16 residents is an appropriate request based on the benefits of group therapy. The applicant has also included a letter from a licensed clinical social worker (LCSW) and doctor or psychology (PsyD) outlining why a request for 16 residents is appropriate (attachment “1”). The applicant has submitted objective evidence that support the request for 16 residents.

The applicant has also stated that 16 residents are required in order for the facility to be profitable, and therefore provide access to housing for people with disabilities. This is a legitimate reason to request an accommodation but should also be accompanied by objective evidence if it is the sole basis for granting the accommodation. The Commission could request that the applicant provide a business pro-forma to support this claim. However, staff notes that if the Commission determines that the applicant properly justifies the requested accommodation based on nonfinancial reasons, the financial viability of the facility would not need to be justified in order to grant the accommodation.

OPTIONS

1. Recommend approval of the project as proposed to the City Council.
2. Recommend approval of the project with special conditions to the City Council.
3. Recommend approval of a Residential Facility at the subject location but defer to the Council on the number of residents that should be permitted.
4. Continue the application with a request for additional information (this option is not recommended as the application has already been continued once).
5. Recommend denial of the project to the City Council.

STAFF RECOMMENDATION

Approve the proposed Residential Facility for Persons with a Disability and the requested Reasonable Accommodation to allow up to sixteen (16) residents with the attached special conditions.

SPECIAL CONDITIONS

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.
2. Prior to operation, the applicant shall obtain a business license from the City.
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.
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.
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.
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).
7. The applicant shall immediately discharge any resident who uses illegal drugs or alcohol while residing at the facility.
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.
9. The property shall maintain the appearance of a single family residence.
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.

ATTACHMENTS

1. Application materials.
2. Response to Comments.
3. New Correspondence.

Attachment “1”

Application Materials

G.E. (Bud) Harper
727 East 1100 South
Mapleton, Utah 84664

March 21, 2013

Mapleton City Corporation
125 West Community Center Way
Mapleton, Utah, 84664

Attn: Sean Conroy, Community Development Director:

The purpose of this letter is to respond to concerns addressed during the March fourteenth, 2013 city Planning meeting in which the request to begin a residential treatment program at 727 E. 1100 South was discussed. Below is a list of the concerns and the responses:

- 1) What type of traffic impacts could be anticipated (food services, other deliveries, employees, visitors, etc.)?
 - a) FOOD SERVICE – Food service will not be required. All food supplies will be purchased and brought in by staff members. No outside food preparation is required.
 - b) OTHER DELIVERIES – No other deliveries are required. In addition, all residents will be using traditional tableware and a trash compactor will be used to compact trash. Therefore, no special needs are required for trash pick-up.
 - c) EMPLOYEES – Six employees during daytime hours. Two employees during the night.
 - d) VISITORS – Visitors could include contracted individuals such as a doctor or psychiatrist to see a resident. Family visitors could be expected on scheduled weekly family days. Not all residents will have visitors; residents in the first thirty days of the program are not allowed visitors for program purposes. Additionally, since some residents may come from out of state, their families may not be able to visit. The number of visitors' vehicles would likely be a maximum approximately eight. Therefore, the likely number of people visiting could be up to ten or twelve. In the unlikely scenario that the number of cars exceeded the capacity of the various driveways, no parking will be allowed on the street. Any additional vehicles would be required to park at a public parking area such as the church or school parking lot and be picked up. Contract employees will not be seeing residents on those appointed days.
 - e) RESIDENTS – From a community standpoint, it makes little difference as to the number of residents, as none are allowed to bring or drive their personal vehicles. In addition,

residents may not enter or leave the premises without being driven in a vehicle by a staff member.

- 2) How many people could be expected on a daily basis, including family visiting days?
Refer to 1 (d).
- 3) Method by which screening occurs?
 - a) Interviews will be conducted by the Marketing Director, Clinical Director, and others who are deemed as appropriate. The screening process includes a thorough assessment of the client, an interview, a questionnaire and a background check. Upon request, the city may receive patient information, in accordance with HIPAA guidelines.
- 4) What is the potential burden on the city regarding public safety and other staffing issues?
 - a) There are no additional burdens on the city regarding either public safety or other staffing issues.
- 5) Why are sixteen beds required?
 - a) The most commonly used approach for alcohol and substance abuse addiction is Group Therapy. The ideal size of an interactional therapy group is comprised of eight to twelve individuals. Groups commonly used in substance abuse treatment are as follows:
 - 1) Psychoeducational group - Teaching group. The ideal size for this group is fifteen to twenty individuals.
 - 2) Skills development group – Provides clients with the ability to identify triggers such as anger which may be their cause for using. This group assists clients to cope and deal with those issues. The ideal size for this group is eight.
 - 3) Cognitive behavior group – Thought process group. Helps individuals identify their thoughts and actions that may be the cause of their substance abuse. The ideal size for this group is eight to ten.
 - 4) Support group - Forum which allows individuals to discuss their abstinence and share personal experience with one another regarding how to manage substance free daily living. The ideal size for this group is eight.
 - 5) Interpersonal process group – This group focuses on major issues that contribute to addiction or interfere with recovery i.e. sexual abuse or cultural issues. This group would likely be a homogeneous group. Homogeneous groups are groups in which members are alike in the some way other than their dependency problem. Such groups may include individuals of a particular gender, age group or psychological issue. The ideal size for this group is eight.

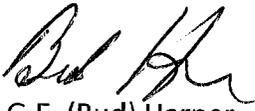
This facility will consist of sixteen beds providing for eight women and eight men. This will allow the necessary diversity for the heterogeneous group (mixed on all levels i.e. by age, gender, culture, etc.). This also provides for the homogeneous group such as eight women dealing with sexual abuse issues or eight men dealing with anger management issues. Additionally, sixteen beds are ideal because some of the individuals will not be able to attend group for various reasons, for example, individual stage of recovery, medical appointment, personal crisis, not suited for particular group, etc. This information is based on information found in the following journal entries: "What Is The Ideal Size For A Therapy Group?" by Paul Grantham, Julia Budnick and Peter Musham and "Psychoeducational Group Therapy For Alcohol and Drug Dependent Recovery" by K. Chandiramani, MD; B.M. Tripathi, MD.

- b) Profitability – Sixteen beds are necessary for the following reasons:
 - 1) This facility is more than twice the size of other facilities having sixteen residents. The costs of running and maintaining a residence of approximately eleven thousand square feet on two landscaped acres far exceeds that of a much smaller residence on less acreage.

- 2) As the same with any business the facility must be profitable. Limiting the capacity of the facility to anything less than sixteen beds would place the profitability into question and would likely eliminate the interest of any investor (invited to offset construction costs associated with meeting ADA, fire and health requirements).
- 3) Because the residents enter and leave the program on random dates, there will often be gaps leaving less than sixteen residents in the facility at any given time, thereby limiting profitability. Limiting the facility to something less than sixteen beds would seriously impact the profitability and could make the facility unprofitable.
- c) Federal guidelines allow for sixteen beds in a residential treatment facility in a single family dwelling, providing minimal space and bathroom requirements for residents are met.
- d) State guidelines allow for sixteen beds in a residential treatment facility in a single family dwelling, providing minimal space and bathroom requirements for residents are met.
- e) State licensing guidelines allow for sixteen beds in a residential treatment facility in a single family dwelling, providing minimal space and bathroom requirements for residents are met.
- f) Residential treatment programs in an industrial code building are not limited to any specific number, providing minimal space and bathroom requirements are met.
- g) The courts have ruled that alcoholics and addicts benefit therapeutically from living in homes together in residential neighborhoods.
- h) All of the various groups, regardless of how they are divided, benefit from the dynamic of having sixteen residents, as opposed to a smaller number.
- i) There is a tremendous need for additional beds for residential treatment facilities. There are facilities that have as many as twenty people on waiting lists for a bed.
- j) Having sixteen beds vs., fewer number, makes little difference to the community, since all offsite activities will be arranged as group outings, traveling in one single van.

Thank you for the opportunity to address these concerns. Please get back to me if you would like to further discuss anything addressed in this letter.

Sincerely,



G.E. (Bud) Harper

ROSEMONDE MALONEY, LCSW, PsyD

Mr. Bud Harper
727 E. 1100 South
Mapleton, Utah 84664

March 27, 2013

Dear Bud,

Per our conversation, below is information that you requested regarding the ideal size for group therapy:

1. *American Group Psychotherapy Association, (2007)* guidelines indicate the general size of group to be between seven to ten participants.
2. Irvin Yalom, PhD, *The Theory and Practice of Group, (2005)*
Studies with four or less members experience:
 - a) limited interaction
 - b) passivity
 - c) Negative group image
 - d) poor group development – groups should start out bigger to account for dropouts
3. Most research stipulates five to 15 members, with six to eight the ideal number for an effective group.
Battegay, (1974), Cole, (1998), and Howe & Schwartzberg, (1995).

If the group is too large clients may be reluctant or uncomfortable in expressing themselves and may not participate, and if too small, they become bored due to the lack of variety.

Six to eight group members can establish interpersonal relationships and remain interested in each other.

Stein & Cutler, *Psychosocial Occupational Therapy; A Holistic Approach*

Based on the above information, sixteen beds would be an ideal number for your residential treatment center. Although, it may appear that you would have sixteen residents participating,

the reality is this would allow for day to day activities that occur which may prevent residents from attending group on any particular day such as; discharges, admits, sick call or other miscellaneous appointments. In essence, the group size would be approximately ten to twelve members as determined to be an "ideal" number.

As discussed, your program will incorporate various types of groups to ensure a well-balanced program. One being, *homogeneous*, this particular group is composed of individuals who experience some sort of similarity, i.e., gender. If your facility was to be limited to less than sixteen, given credence to what is stated above regarding allowances for non-participation, the groups may not be successful because it would be difficult to facilitate with too few individuals. Should there be sixteen, (eight women and eight men), again taking into account those who aren't able to attend, the group process would be able to remain constant.

The literature on group size is limited and continues to be redirected to Yalom as the forerunner, and forefather of group psychotherapy. In his work, *The Theory and Practice of Group*, (2005), he clearly indicates that the most suitable number for the group process is eight members.

I hope you find this information to be beneficial. I wish you great success in the future development of your residential treatment center.

Sincerely,

R. Maloney, LCSW, PsyD

Rosemonde Maloney, LCSW, PsyD

G.E. (Bud) Harper
727 East 1100 South
Mapleton, Utah 84664

February 21, 2013

Mapleton City Corporation
125 West Community Center Way
Mapleton, Utah, 84664

Attn: Sean Conroy, Community Development Director:

The purpose of this letter is to provide the city with information regarding the proposed project. Below is a summary of how the facility will operate and a request for reasonable accommodation to allow up to 16 residents on the site.

1. Type of assisted living that is proposed.
 - Residential treatment for alcohol and drug addiction. Our primary focus will be related to prescription drug addiction.
2. Number of residents.
 - The maximum number of residents allowed in a single family residence for this purpose is sixteen, based on meeting state minimal size requirements. The proposal is for sixteen residents. This residence far exceeds minimal requirements for that number.
3. Type of treatment that clients will receive.
 - The program is 30, 60 or 90 days, based on the twelve step program and will be administered on an individual basis depending on individual needs. Treatment with appropriate medication, individual and group therapy, faith-based learning, experiential learning and brain retraining are some of the treatment components.
4. Number of employees.
 - Five to six daytime employees. Two nighttime employees, one male, one female.
5. Description of how residents will be vetted by the facility.
 - This residence is not equipped for detox. Therefore, all clients must successfully complete detox prior to entering the residence, as appropriate.
 - The proposal is for adult treatment only. Therefore, all clients must be at least eighteen years of age.
6. Request for Reasonable Accommodation to allow more than three unrelated individuals to occupy the structure.
 - Request to include items identified in code section.
 - A. The applicant shall identify the ordinance or regulation the applicant seeks to have waived or modified.
 - 18.84.370(C) – D.2.a.(3) – Compliance with zoning requirements limiting the maximum number of unrelated occupants that are applicable to similar structures permitted within the zone.
 - B. The applicant shall identify the nature of the disability requiring accommodation.
 - Recovering alcoholics and addicts. Recovering alcoholics and addicts are considered people with disabilities under federal and state fair

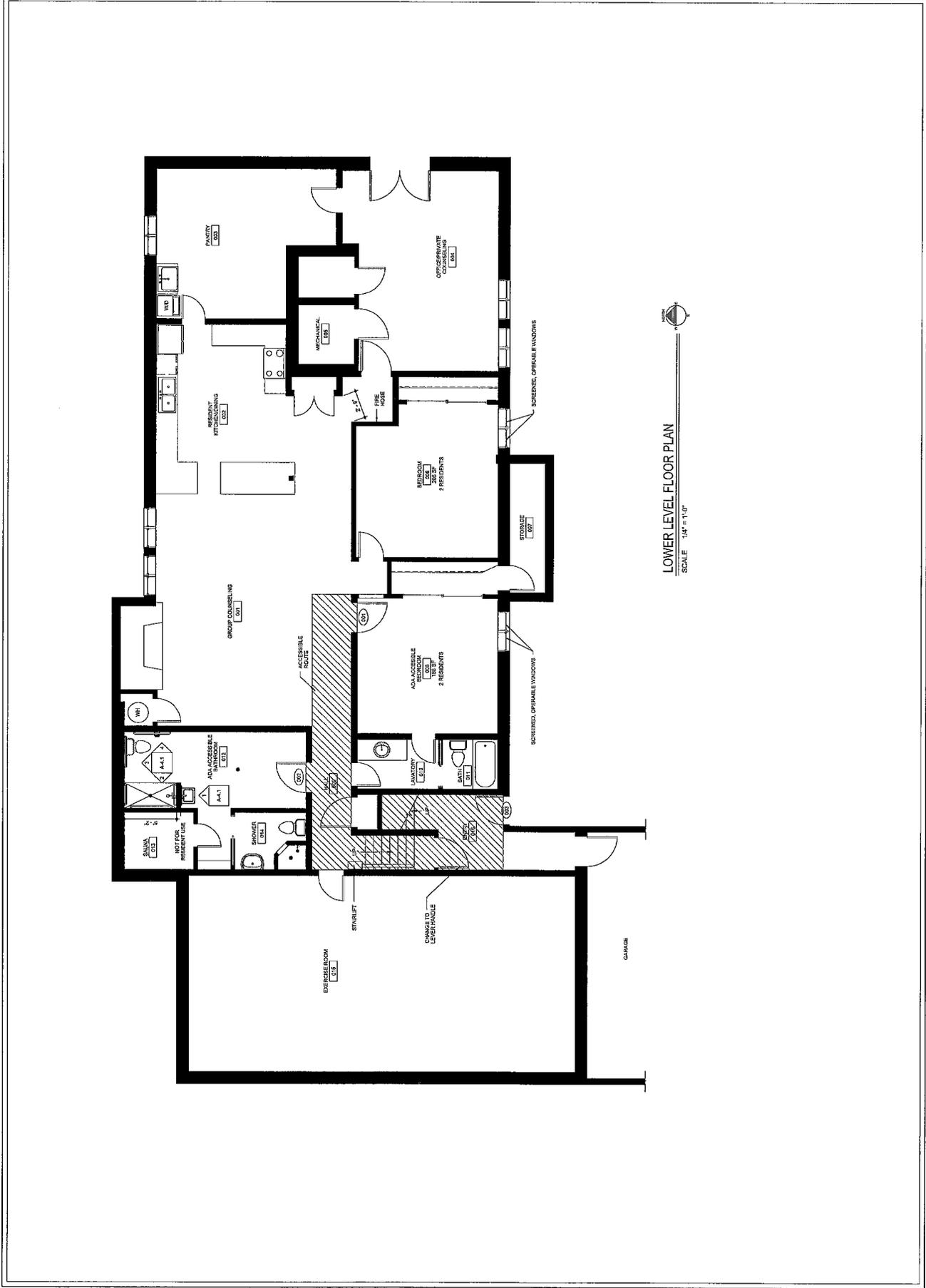
- housing laws, and are thus entitled to a reasonable accommodation in zoning ordinances.
- C. The applicant shall describe the nature of the requested accommodation
- That a maximum of sixteen residents be allowed to reside in the residence during their recovery program, in accordance with state licensing guidelines.
- D. The applicant shall describe why the accommodation is necessary to afford the disabled an equal opportunity to use and enjoy residential housing.
- The accommodation affords the disabled an opportunity to live with others suffering from similar addictions in a home-like atmosphere where they can work on their individual recovery with the help of licensed professionals.
- E. The applicant shall describe what impact, if any, the applicant perceives that the requested accommodation shall have on the existing neighborhood and whether the requested accommodation is consistent with the character and neighborhood.
- The requested accommodation will have no impact on the neighborhood. Some of the reasons for this are as follows:
 - All clients will be pre-screened prior to acceptance into the program.
 - Clients enter the program of their own free will. Should a client wish to leave the program, the client will be provided transportation to a predetermined location.
 - Clients are not allowed off the property without a staff member.
 - This is an adult program. No minors will be admitted into the program.
 - There is garage parking for six cars. Therefore, most parking will be inside the garages.
 - Clients are not allowed to have a vehicle on the premise.
 - Since clients will be involved in activities tailored to their recovery most of the time, visiting periods are very limited and scheduled. Also, it is anticipated that many clients will be coming from areas outside the state of Utah and, therefore, would have seldom, if any visits.
- F. The applicant shall identify any burden or expense the accommodation would impose on the city.
- The accommodation will not impose any burden or expense to the city.

Item "E" above outlines many of the mitigation factors that will be incorporated into the facility to ensure that the residential character of the neighborhood is protected and maintained.

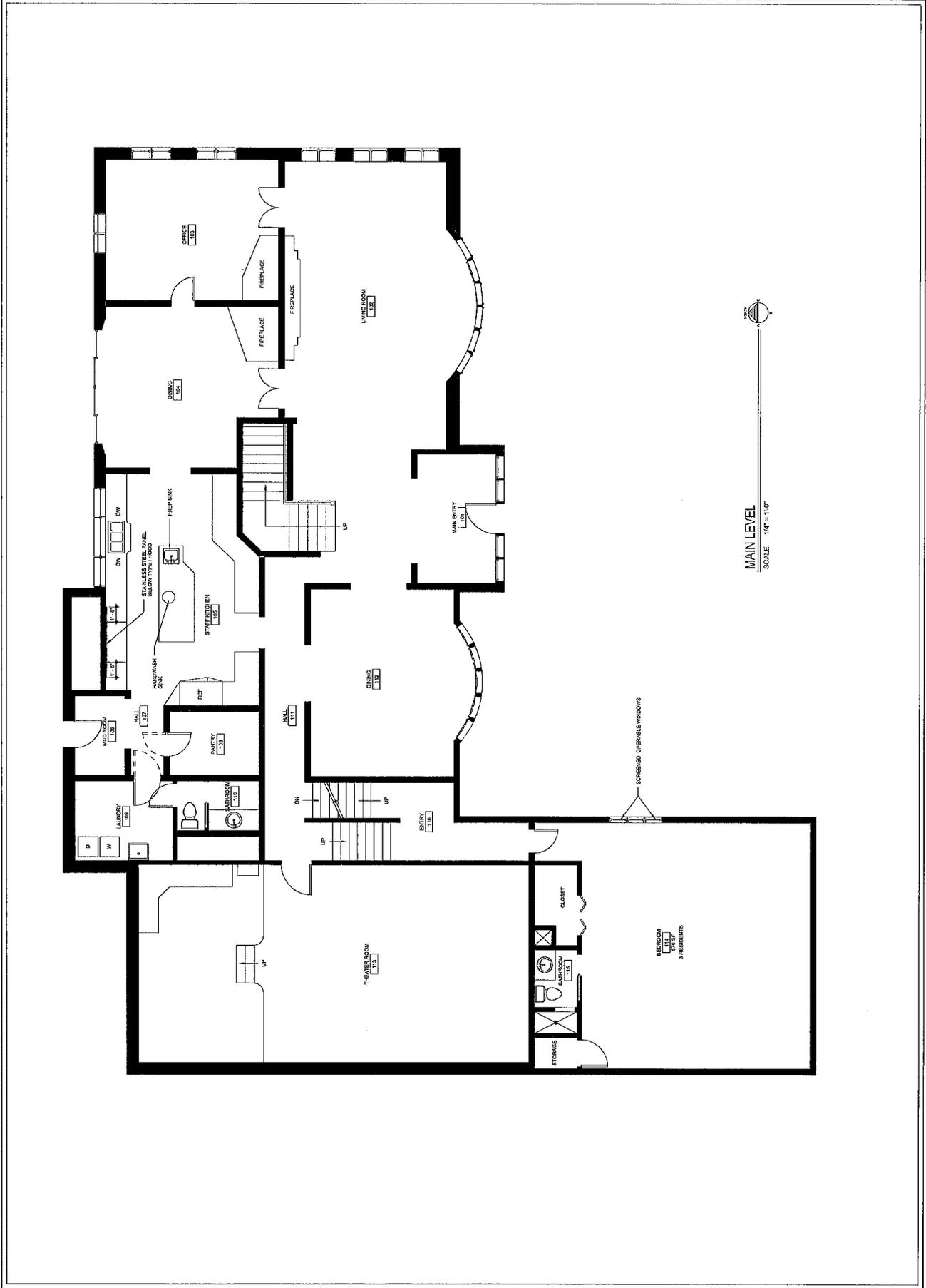
Thank you for considering this application.

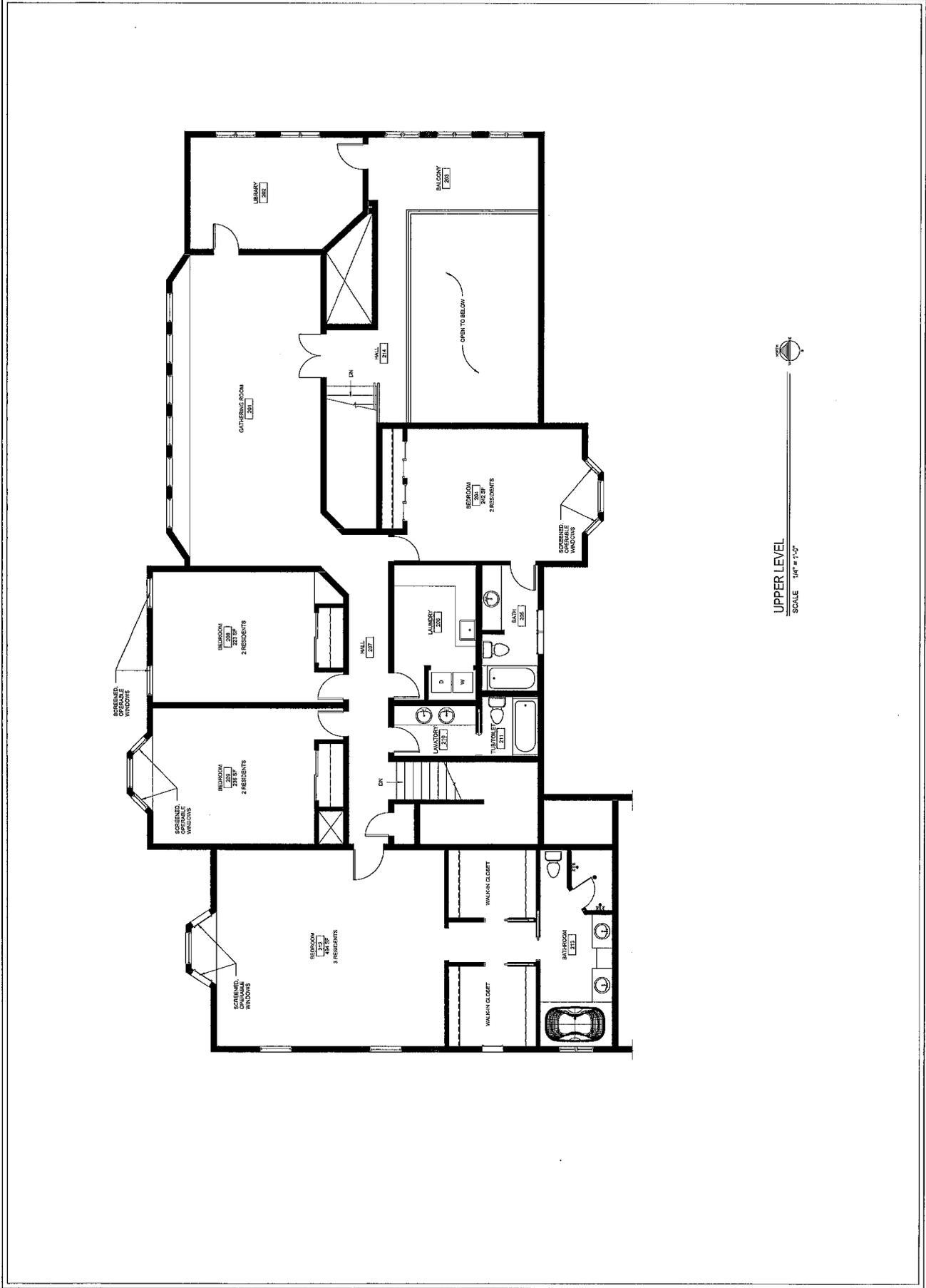
Sincerely,

G.E. (Bud) Harper

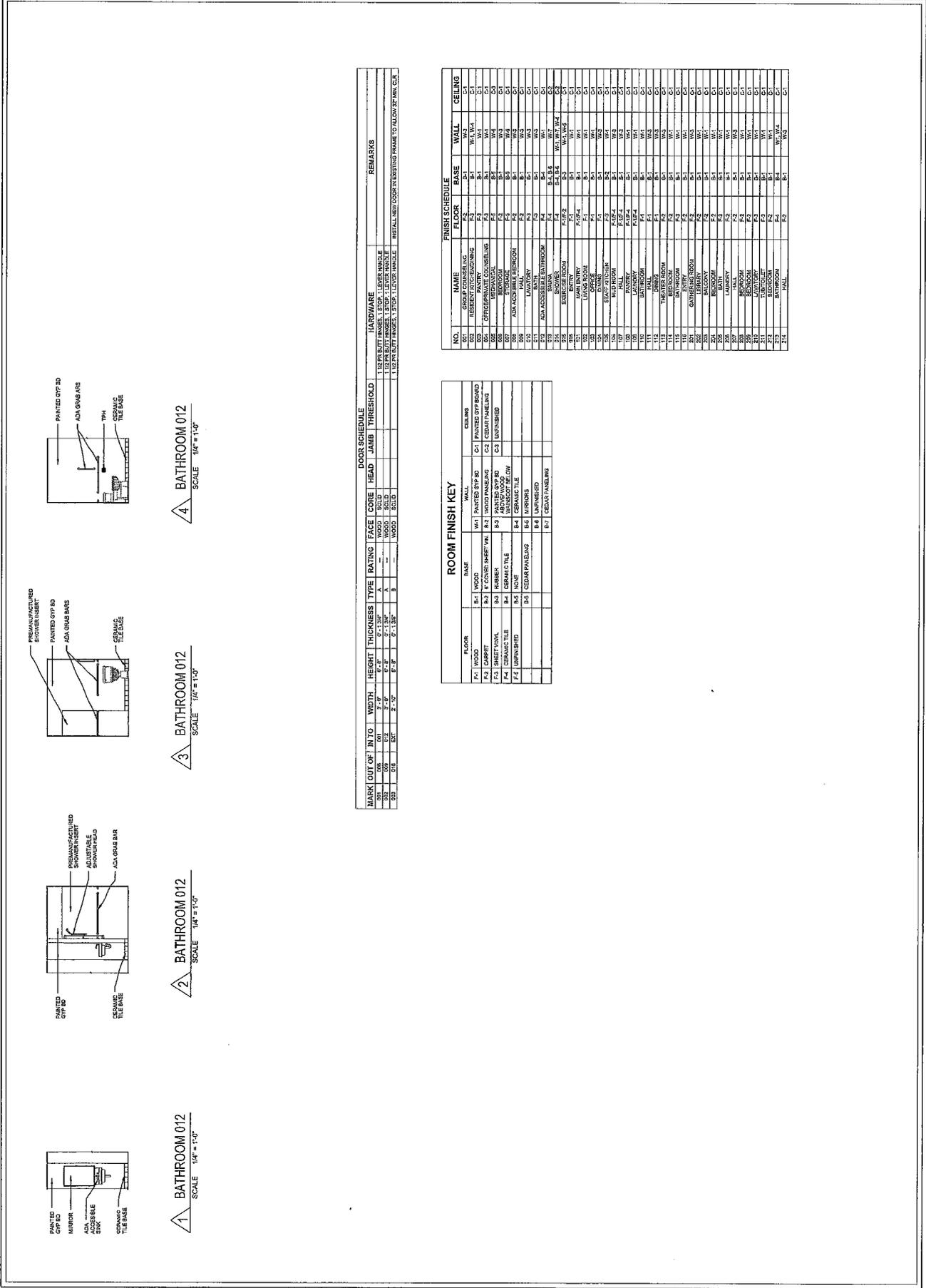


LOWER LEVEL FLOOR PLAN
 SCALE 1/4" = 1'-0"





UPPER LEVEL
 SCALE 1/4" = 1'-0"



DOORS SCHEDULE															
NO.	MARK	OUT OF	INTO	WIDTH	HEIGHT	THICKNESS	TYPE	RATING	FACE	CORE	HEAD	JAMB	THRESHOLD	HARDWARE	REMARKS
001		001	001	7'-0"	8'-7"	2-1/8"	A		WOOD SOLID	WOOD SOLID				1.00 PR BLT BRGSL, 1.50 P, 1.00 V, 1.00 W, 1.00 T	
002		002	002	7'-0"	8'-7"	2-1/8"	A		WOOD SOLID	WOOD SOLID				1.00 PR BLT BRGSL, 1.50 P, 1.00 V, 1.00 W, 1.00 T	
003		003	003	7'-0"	8'-7"	2-1/8"	A		WOOD SOLID	WOOD SOLID				1.00 PR BLT BRGSL, 1.50 P, 1.00 V, 1.00 W, 1.00 T	

ROOM FINISH KEY			
FLOOR	BASE	WALL	CEILING
F-1 WOOD	B-1 WOOD	W-1 PAINTED OFF BID	C-1 PAINTED OFF BID
F-2 CERAMIC TILE	B-2 MIRROR SHEET VIN	W-2 CERAMIC PANELING	C-2 CERAMIC PANELING
F-3 SHEET VINYL	B-3 MIRROR SHEET VIN	W-3 PAINTED OFF BID	C-3 UNFINISHED
F-4 CERAMIC TILE	B-4 CERAMIC TILE	W-4 UNFINISHED	C-4 UNFINISHED
F-5 UNFINISHED	B-5 NONE	W-5 CERAMIC TILE	C-5 CERAMIC TILE
F-6 UNFINISHED	B-6 CERAMIC PANELING	W-6 MIRROR	C-6 UNFINISHED
F-7 UNFINISHED	B-7 CERAMIC PANELING	W-7 CERAMIC PANELING	C-7 CERAMIC PANELING

FINISH SCHEDULE					
NO.	NAME	FLOOR	BASE	WALL	CEILING
001	WOOD SOLID	F-1	B-1	W-1	C-1
002	WOOD SOLID	F-2	B-2	W-2	C-2
003	WOOD SOLID	F-3	B-3	W-3	C-3
004	WOOD SOLID	F-4	B-4	W-4	C-4
005	WOOD SOLID	F-5	B-5	W-5	C-5
006	WOOD SOLID	F-6	B-6	W-6	C-6
007	WOOD SOLID	F-7	B-7	W-7	C-7
008	WOOD SOLID	F-8	B-8	W-8	C-8
009	WOOD SOLID	F-9	B-9	W-9	C-9
010	WOOD SOLID	F-10	B-10	W-10	C-10
011	WOOD SOLID	F-11	B-11	W-11	C-11
012	WOOD SOLID	F-12	B-12	W-12	C-12
013	WOOD SOLID	F-13	B-13	W-13	C-13
014	WOOD SOLID	F-14	B-14	W-14	C-14
015	WOOD SOLID	F-15	B-15	W-15	C-15
016	WOOD SOLID	F-16	B-16	W-16	C-16
017	WOOD SOLID	F-17	B-17	W-17	C-17
018	WOOD SOLID	F-18	B-18	W-18	C-18
019	WOOD SOLID	F-19	B-19	W-19	C-19
020	WOOD SOLID	F-20	B-20	W-20	C-20
021	WOOD SOLID	F-21	B-21	W-21	C-21
022	WOOD SOLID	F-22	B-22	W-22	C-22
023	WOOD SOLID	F-23	B-23	W-23	C-23
024	WOOD SOLID	F-24	B-24	W-24	C-24
025	WOOD SOLID	F-25	B-25	W-25	C-25
026	WOOD SOLID	F-26	B-26	W-26	C-26
027	WOOD SOLID	F-27	B-27	W-27	C-27
028	WOOD SOLID	F-28	B-28	W-28	C-28
029	WOOD SOLID	F-29	B-29	W-29	C-29
030	WOOD SOLID	F-30	B-30	W-30	C-30
031	WOOD SOLID	F-31	B-31	W-31	C-31
032	WOOD SOLID	F-32	B-32	W-32	C-32
033	WOOD SOLID	F-33	B-33	W-33	C-33
034	WOOD SOLID	F-34	B-34	W-34	C-34
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036	WOOD SOLID	F-36	B-36	W-36	C-36
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038	WOOD SOLID	F-38	B-38	W-38	C-38
039	WOOD SOLID	F-39	B-39	W-39	C-39
040	WOOD SOLID	F-40	B-40	W-40	C-40
041	WOOD SOLID	F-41	B-41	W-41	C-41
042	WOOD SOLID	F-42	B-42	W-42	C-42
043	WOOD SOLID	F-43	B-43	W-43	C-43
044	WOOD SOLID	F-44	B-44	W-44	C-44
045	WOOD SOLID	F-45	B-45	W-45	C-45
046	WOOD SOLID	F-46	B-46	W-46	C-46
047	WOOD SOLID	F-47	B-47	W-47	C-47
048	WOOD SOLID	F-48	B-48	W-48	C-48
049	WOOD SOLID	F-49	B-49	W-49	C-49
050	WOOD SOLID	F-50	B-50	W-50	C-50

Attachment “2”

Response to Comments

Mapleton City Drug Rehab Residential Facility
Community Discussion Points
(Staff responses shown in underline)

- 1) This is an important and far-reaching issue for our city. It needs to be dealt with carefully and with full consideration. The planning commissioners and city councilmen must do their homework.

Response: Staff agrees.

- 2) Did the city give appropriate notice to the residents, regarding the inclusion of this ordinance? It may have been legal, but was it appropriate and in the best interest of the community?

Response: When the Council considered the ordinance, proper legal notice was provided. If the Council determines that the ordinance should be reevaluated, it could do so, but not as part of the review of this application.

- 3) Should this business venture be held to the same strict requirements of a home-based business?

Response: The proposed residential facility is not considered a home occupation per CMC Chapter 18.84.380. Home occupations are not required by state law to be a permitted use in all residential zones like residential facilities for the disabled are.

The following is from the Fair Housing Act regarding group homes:

- 4) The Fair Housing Act does not allow us to treat persons of disabilities less favorably. However, it does not require us to treat them **more favorably**.

Response: The FHA does require that requests for reasonable accommodation from rules, policies, procedures, etc. be considered.

- 5) We cannot refuse to make reasonable accommodations for persons of disabilities to enjoy housing. Higher density living is not required for them to **enjoy housing**. It is only a means for profit. The Act is not about protecting an individual's profit. It is about protecting the rights of the disabled. They do not require the special accommodations from the City that the applicant is requesting. They only require reasonable access to housing, similar to that of the other neighbors in the area.

Response: Applicants are allowed to make a request for reasonable accommodation to rules, policies, procedures, etc. The applicant is required to demonstrate why the accommodation is necessary. The recognized benefit of group therapy is a common reason for allowing more unrelated occupants than typically allowed for a standard single family dwelling.

- 6) The Fair Housing Act says reasonable accommodation is a case-by-case determination. The applicant must present **compelling evidence** to show discrimination against reasonable accommodation for his residents.

Response: Staff agrees.

- 7) The Act says that not all requested modifications of zoning laws are reasonable. They cannot impose an undue **financial or administrative burden** on the City. What burdens would this put on our City? Public safety (police, ambulance, fire), administration (code enforcement, resident qualification screening and enforcement), financial.

Response: See staff report.

- 8) The Act says it is not a reasonable accommodation if it creates a fundamental **alteration** in a local government's land use and **zoning** scheme. This new commercial business venture will alter the land use scheme of this ultra low-density, rural area. (Huge contrast). Zoning:
- a) The A-2 zone is established to provide areas in which agricultural pursuits can be encouraged and supported within the municipality. The A-2 zone is designed and intended to protect agricultural uses from encroachment of typical urban development. Uses permitted in the A-2 zone, in addition to agricultural and residential uses, must be incidental thereto and should not change the basic agricultural character of the zone.

Response: As required by state law, the proposed use is permitted in any residential zone, including the A-2 zone. Therefore, it cannot be argued that the use itself would fundamentally alter the zoning scheme, especially when there is already a residential facility in the A-2 zone in the City. It could be argued that the reasonable accommodation (request for 16 residents) could alter the zoning scheme of low density development and the non-transient nature of neighborhoods in the A-2 zone if it is accompanied by objective evidence.

- b) A. The A-2 agricultural-residential zone has been established as a zone in which the primary use of the land is for agricultural and livestock raising purposes. Land within this zone is characterized by residential estates, open fields, ranches, and farms devoted to the production of food, fiber, animals, and general agricultural uses.

B. Representative of the use within this zone are large residential estates, barns, corrals, row crops, and the raising of livestock.

C. The objectives in establishing the A-2 agricultural-residential zone are:

1. To protect and encourage the continued use of agricultural land within the zone for agricultural purposes and to discourage the preemption of agricultural land for nonagricultural purposes;
2. To discourage commercial and industrial uses, and any other use which tends to thwart or mitigate the use of the land for agricultural purposes;
3. To prevent the soil from becoming polluted.

Response: See response to "a" above.

9) Persons who “**currently**” use **illegal drugs** are not protected under this law. What constitutes “current”? How long do they have to be “clean”? 1 day, 2 weeks, 6 months? How will the City enforce this? Will they screen the new patients? Will they do drug testing?

Response: See staff report.

10) Persons who have been **convicted** of the manufacture or sale of illegal drugs are not protected. What if they were selling “legal” drugs (medicine cabinet prescription drugs)?

Response: If a person has “a history of criminal conviction”, regardless of the nature of the conviction, they shall not be permitted in the facility.

11) Persons who present a **direct threat** to the persons or property of others are not protected. Who decides this? What are the criteria? Who does the background check? How will the City monitor this? The Act states “Determining whether someone poses such a direct threat must be made on an individualized basis.” That is a lot of demand on the City.

Response: See staff report.

12) The Act says that local government has primary power and is not preempted by the Act. The City just can’t be discriminatory to the handicapped (drug addicts). They can still **regulate housing** of this kind.

Response: Staff agrees. However, any requirements, such as limiting occupancy, must be accompanied by objective evidence.

13) The Act states that we cannot treat groups of unrelated persons with disabilities (aka - drug addict group home) less favorably than similar groups of unrelated persons (aka – residential home with more than one unrelated residents). So our requirements for the business can be as strict as those on homes. How many **unrelated persons** are allowed in one home in Mapleton? What restrictions are placed on such a residence?

- a) 3 unrelated persons
- b) Have to count the staff and the owner

Response: Utah state code was recently amended to prohibit cities from establishing a maximum number of unrelated individuals to less than four (10-9a-505.5). If no accommodation is granted, the maximum number of unrelated persons should be four. Again, the applicant can request a reasonable accommodation to allow for more unrelated persons than is typically permitted. If the staff is not sleeping/living in the facility, they would not be counted in the total occupancy number.

14) To supersede the above requirement, the group home could get an exception or waiver if they meet the criteria for **reasonable accommodations**. It must be decided on a case-by-case basis, the Act says. 1. Does it impose an undue burden or expense on the City? 2. Does the use create a fundamental alteration in the zoning scheme? Those questions were answered above.

Response: The applicant has a responsibility to justify the need for the reasonable accommodation. If the city denies, or limits the request, the decision must be based on objective evidence.

- 15) To qualify for the exception, it must show that it will have no **more impact** on parking, traffic, noise, utility use, and other typical concerns of that zoning. What are the effects of the commercial venture in this particular rural zoning that are out of line with what a normal residence would create?
- a) A. Each home located on a lot or parcel in the A-2 zone shall have on the same lot or parcel two (2) off street enclosed parking spaces.
 - i) Zone calls for 2+ but facility would require much larger amount

Response: The ordinance does not state that in order to qualify for the reasonable accommodation that the facility cannot have more impacts on parking, traffic, noise, utility use, and other zoning concerns when compared with a typical single family dwelling. The ordinance does state that the City can **consider** the impact of the requested accommodation on the neighborhood and whether the impact fundamentally alters the character and/or nature of the neighborhood and/or existing zoning regulations [CMC Chapter 18.84.370.B(5)(c)(1)(A)].

The A-2 zone requires a minimum of two off-street enclosed parking spaces, it does not establish a maximum. The proposed facility complies with the required off-street parking standards.

- b) How many staff will be needed per patient? How many off-street parking spaces will be required for staff, visitors (family, friends, doctors, therapists, etc.), and residents?
 - i) (B) Compliance with site development standards including parking, traffic, landscape, utility use, and other standards applicable to similar structures permitted within the zone **without** structural or landscape **alterations that would fundamentally change the structure's residential character and/or nature**
 - (1) The large # of additional off-street parking required would fundamentally change the character.

Response: The applicant is not proposing any modifications to the existing site to accommodate the required parking. The applicant has indicated that he would be supportive of a condition prohibiting employees and visitors from parking along the street. It is important to note that the A-2 zone does allow uses such as commercial greenhouses and equestrian riding centers associated with a single family residence that could result in similar traffic and parking impacts as the proposed facility. While equestrian riding centers are limited to no more than six off-street parking spaces (in addition to the two required for the residence), commercial greenhouses may be required to provide much more. On February 13, 2013 the Planning Commission approved a conditional use permit for a greenhouse in the A-2 zone and required 16 off-street parking spaces.

- 16) The Act asks “Would the rural character of the neighborhood be **fundamentally altered**?” If the answer is yes – then he should not receive the exception.

Response: Correct, as long as there is objective evidence to support the conclusions.

17) The DOJ and HUD say “a **50-bed nursing home** would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons...but it might not create a fundamental change in a neighborhood zoned for multi-family housing.” With the same logic, this statement would suggest that a 16-bed addict home would not be appropriate in a rural neighborhood either. It would be better suited in a higher density area.

Response: The DOJ and HUD statement does not indicate what type of single family neighborhood the statement was addressing. It would be speculative to assume that they would apply the same logic to a 16-bed facility in a residential agricultural zone.

18) “The scope and magnitude of the modification requested, and the features of the **surrounding neighborhood** are among the factors that will be taken into account”

Response: Staff agrees.

19) Appropriate **health and safety requirements** can be imposed on a group home specific to the welfare of their residents. What requirements should be imposed on this home?

Response: The building is classified as an R-4 occupancy according to the International Building Code. All applicable building, fire and accessibility requirements will apply.

20) The City needs be willing to fight for what is right for the community – not cover due to the threat of a lawsuit/fight. Citizens and municipalities must take a stand and push back at the Fed’s overreaching arm. If we have non-discriminatory reasons to reject the request – then the City should **stand firm** on the merits of the situation.

Response: No comment.

21) Does not fit with the **City’s vision statement**

Response: The vision statement is meant to help inform long-range planning decisions generally for the city. It is not meant to address specific projects. While it can be argued that the proposed facility could be inconsistent with some of the principles of the vision statement, the vision statement does not supersede state and federal law.

22) What can we do if a potential resident has been arrested for a crime, but not convicted? How will it be determined if someone is a “threat” (as stated in the ordinance)?

Response: See staff report.

The following is from the Mapleton code regarding group homes:

23) Mapleton code says “Disability does not include **current illegal use** of, or addiction to, any federally controlled substance, as defined in section 102 of the controlled substances act, 21 USC 802.” How does the City regulate whether or not they are still addicted?

Response: The City will rely primarily on the state licensing process and enforcement for this issue. See also staff report special conditions.

24) Mapleton code recommends approval if: There is compliance with zoning requirements limiting the maximum number of unrelated occupants that are applicable to similar structures permitted within the zone.

a) This would be **3 occupants**

Response: See #13 above.

25) Wording of Mapleton code requires the occupants to only be **court-sentenced addicts**. “Placement of disabled individuals in the facility shall be on a strictly voluntary basis and a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility;”

a) Is this worded poorly and was intended to mean that they can be there in lieu of being sentenced to a correctional facility? Or does it mean the business can only accept people who are coming in lieu of treatment in a correctional facility?

Response: This is a typo in the ordinance the “and” in the ordinance should read “and not part of...”.

26) Mapleton City code calls for the Planning Commission and City Council to weigh the **evidence of the individuals** to determine if they are a direct threat. How will this be accomplished?

Response: See staff report.

27) Proposed use is a **profit center**. Owner stands to gain substantially in recurring income, as well as the ability to sell for a large gain (new ownership would just apply and receive the same permit and/or accommodation). This is not the intent of the zoning ordinance for this area.

Response: The City does not get involved in regulating profits or losses. There is no guarantee that a new owner would be granted the same accommodation.

28) Failure to comply with the requirements of the code **terminates** the use. There should be strict conditions applied to this business that can be easily monitored and measured, at the business’ expense.

Response: See staff report.

29) Why is this listed in the City code?:” Any decision of the city council may be **appealed** to the district courts within thirty (30) days of the council’s written decision.” Is that statement required to be in there or is it an invitation for litigation?

Response: The statement simply outlines the process if an appeal is filed.

30) For an accommodation, “The applicant shall describe why the accommodation is necessary to afford the disabled an **equal opportunity** to use and enjoy residential housing;”. There is no need to the drug addicts to have that high of density. The accommodation only serves to increase profitability.

The City's job is not to make individuals profitable – it is to serve and protect the members of the city as a whole, while not discriminating. Approval of this accommodation would be similar to approving an apartment building in a low density zone only because a developer wanted a higher profit.

Response: The applicant is required to demonstrate the need for the reasonable accommodation. Unless the applicant is basing the request for accommodation on finances, the City does not get involved in determining whether a business will or will not be profitable.

31) To get approval from the City, the establishment must show that it has obtained state licensure. City should require the Policies and Procedures manual for this facility.

Response: The policies and procedures manual is reviewed, approved and monitored by the state. The City does not play a role in the adoption or enforcement of this manual.

32) What ADA requirements will have to be met? If the application is protected under the ADA laws – then it should comply with all of the requirements for a business.

Response: See #19 above.

33) What fire code requirements will be imposed on the home?

Response: See #19 above.

34) Does the street have the width for fire trucks with parking on both sides?

Response: The paved street is approximately 20' wide, but the right-of-way is approximately 56' wide and has space for vehicles to park along the street. However, the applicant has indicated that employees and visitors will not be parking along the street. If vehicles are parked along the street so as to block the travel lane, the police department should be contacted so the vehicles could be ticketed or towed.

Attachment “3”

New Correspondence

Sean Conroy

From: ajmurillo <
Sent: Thursday, March 28, 2013 3:34 PM
To: Sean Conroy
Cc: 'robin'
Subject: Proposed facility

Sean,

Thank you for your letter concerning the proposed facility in my neighborhood. I will not be able to attend because of prior commitments, but, nevertheless, I would like to comment on this matter.

I purchased my home in 1990 when I relocated my family from Honolulu, Hawaii. The home is in a wonderful neighborhood and is ZONED RESIDENTIAL. The proposed facility would be directly in back of my house and this proposal is a business and should be in a COMMERCIAL ZONE.

I am flabbergasted and is incomprehensible, someone would actually consider a business proposal of this particular type in a residential neighborhood.

There could be culpable liability if the city would approve such a business facility in a residential area and one of the "patients" in this proposed facility commits a horrific crime in the neighborhood because of city approval for this facility.

Anybody and any city or corporation can try and "bullet proof" a specific matter but anyone can still be sued for liability for just about anything in our litigious society.

I would hope the City declines and disapproves this proposed facility

If you would like to contact me, please feel free to reach me at 801.404.5200

Appreciate you,

Alex Murillo
590E 900 S
Mapleton, UT 84664

_____ Information from ESET Endpoint Security, version of virus signature database 8173 (20130328)

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