AGENDA
TRAVERSE CITY BOARD OF ZONING APPEALS
REGULAR MEETING
TUESDAY, MAY 10, 2016
7:00 P.M.
Commission Chamber, Governmental Center, 2nd Floor
400 Boardman Avenue
Traverse City, Michigan 49684
231-922-4464

1. **CALL MEETING TO ORDER**

2. **ROLL CALL**

3. **APPROVAL OF MINUTES-** Approval of the October 13, 2015 regular meeting minutes.

4. **REQUEST 16-BZA-01 – A REQUEST FROM THOMAS GILBERT, PRESIDENT OF TC RETREAT, P.O. BOX 1941, TRAVERSE CITY, MICHIGAN** for:

   An appeal from a determination of the City of Traverse City Zoning Administrator dated January 20, 2016 that the use of the property commonly known as **1702 Comanche Street** is a Residential Care and Treatment Facility and is not a permitted use in the R-1b, Single Family Dwelling District.

5. **PUBLIC COMMENT**

6. **OTHER BUSINESS**

7. **ADJOURNMENT**

The City of Traverse City does not discriminate on the basis of disability in the admission or access to or treatment or employment in, its programs or activities. Penny Hill, Assistant City Manager, 400 Boardman Avenue, Traverse City, Michigan, 49684, 922-4440, T.D.D., 922-4766, has been designated to coordinate compliance with the non-discrimination requirements contained in Section 35.107 of the Department of Justice regulations. Information concerning the provisions of the Americans with Disabilities Act, and the rights provided thereunder, are available from the ADA Coordinator. If you are planning to attend and you have a disability requiring any special assistance at the meeting and/or if you have any concerns, please immediately notify the ADA Coordinator.

MINUTES
TRAVERSE CITY BOARD OF ZONING APPEALS
REGULAR MEETING
TUESDAY, OCTOBER 13, 2015
7:00 P.M.
Committee Room, Governmental Center, 2nd Floor
400 Boardman Avenue
Traverse City, Michigan 49684
231-922-4464

PRESENT: Members Wegener, Colombo, Szajner, Carol, Matson, Bergman, and Vice-Chairperson Callison.
ABSENT: Members Raferty, Hanley, Donaldson and Chairperson Cockfield.

1. **CALL MEETING TO ORDER**

The meeting was called to order at 7:00 p.m.

2. **APPROVAL OF MINUTES-** Approval of the September 8, 2015 regular meeting minutes.

Motion by Member Matson, seconded by Vice-Chairperson Callison to approve the September 8, 2015 regular meeting minutes as presented. Upon vote the motion carried 7-0.

3. **REQUEST 15-BZA-11 – A REQUEST FROM MARY BETH KELLEY-LOWE, 410 FIFTH STREET, TRAVERSE CITY, MICHIGAN** for:

A dimensional variance to allow for a new attached garage to be located 2.8 feet from the side (east) property line located at the property mentioned.

Mary Beth Kelly-Lowe presented drawings and answered questions from the Board.

Jeffery Schwaiger, 10452 East Easling Drive, Suttons Bay, Michigan, presented drawings and answered questions from the Board.

There was no public comment.

Motion by Member Bergman, seconded by Member Matson to grant a dimensional variance to allow for a new attached garage to be located 2.8 feet from the side (east) property line located at the property commonly known as 410 Fifth Street, Traverse City, Michigan based on the Statements

of Conclusions and Findings of Fact contained in the Order Granting for Variance No. 15-BZA-11. Upon vote the motion carried 7-0

4. PUBLIC COMMENT

None.

5. OTHER BUSINESS

None.

6. ADJOURNMENT

The meeting was adjourned at 7:20 p.m.

_____

David Weston, Planning and Zoning Administrator

Date: _____

DRAFT

CITY OF TRAVERSE CITY
ORDER AUTHORIZING
VARIANCE NO. 15-BZA-11

Pursuant to the City of Traverse City Code of Ordinances § 1324.05(d), Variances, the Board of Zoning Appeals hereby authorizes a dimensional variance for the following:

Street Address:	410 Fifth Street, Traverse City, Michigan.
Property Description:	LOTS 28 & W 15 FT OF LOT 27, BLOCK 3 HANNAH LAY & CO'S 10TH ADD.
Variance Granted:	A dimensional variance to allow for a new detached garage to be 2.8 feet from the side (east) property line.
Applicant/Owner:	Mary Beth Kelley-Lowe.

It is determined that the Applicant has demonstrated a hardship as well as showing of good and sufficient cause authorizing a variance by the City of Traverse City Code of Ordinances. The findings of fact and reasons upon which this determination is based are as follows:

1. The attached Statements of Conclusions and Findings of Fact are incorporated herein by reference.

2. The procedures and requirements for variance decisions by law and ordinance have been followed.

This Order shall not be deemed to be City approval for anything other than the variance authorized by this Order and shall not relieve the owner or occupier of the land from obtaining any other license, permit or approval required by law or ordinance.

I hereby certify that the above Order was adopted on _____, _____, at a regular meeting of the Board of Zoning Appeals for the City of Traverse City at the County Committee Room, Governmental Center, 400 Boardman Avenue, Traverse City, Michigan.

Date: _____

_____
David Weston, Planning and Zoning Administrator

Note: A decision of the Board of Zoning Appeals shall be final. However, any party having a substantial interest affected by an order, determination or decision by the Board of Zoning Appeals may appeal to the Circuit Court, if made to the Court within twenty-eight (28) days after rendering the final decision or upon grant by the Court of leave to appeal. Codified Ordinances of Traverse City Michigan.

DRAFT

STATEMENTS OF CONCLUSIONS AND FINDINGS OF FACTS 15-BZA-11

The following are the Statements of Conclusions supported by evidence submitted to the Board of Zoning Appeals in connection with a request for a dimensional variance, Request No. 15-BZA-11, for the property commonly known as **410 Fifth Street**, Traverse City, Michigan.

(A) In granting the variance, the spirit of the Zoning Code is observed, public safety is secured and substantial justice is done based on the following facts:

1. *A variance to the side yard setback would allow the homeowner to build an attached, one-car garage with a second parking space in front which is consistent with the other houses on the block. Currently, 410 Fifth Street is one of two houses on the block without a garage.*
2. *The new garage would be built according to current building codes with fire rating considerations due to its proximity to neighboring lots and structures. The construction and use of the new garage would also allow the owner to vacate the use of a nonconforming on-street parking area that disrupts the street and tree lawn in front of the house.*
3. *Per the State of Michigan Court of Appeals decision No.282701 from the Ottawa Circuit Court, the homeowner per the phrase "substantial property right" has the right to build a garage on property regulated for residential use. Granting this variance on this narrow, uniquely defined property allows the homeowner the same right all other homeowners in the area enjoy.*

(B) There will be no substantial adverse effect on property values in the immediate vicinity or in the district where the property is located will occur as a result of granting this variance based on the following facts:

1. *The construction of an attached garage and new front porch at 410 Fifth Street are consistent with the historic character of the neighborhood and will add value to the property, which will generally benefit property values in the neighborhood. The final plans will need to be approved by the Historic Districts Commission.*
2. *The property to the east (406 Fifth Street) will not be adversely affected by the construction of a new attached garage and front porch. The garage addition may provide additional privacy for the property. 406 Fifth Street is a double lot that maintains access from the rear of the property and is not adjacent to the proposed attached garage at 410 Fifth Street.*

(C) The difficulty presented by the applicant in support of the request for a variance is not so general or recurrent in nature that a formulation of a general regulation for such condition is preferable based on the following fact:

1. *Most properties in the general neighborhood have larger lots with alley access. 410 Fifth Street is a narrow lot with falling topography and a creek in the rear yard.*

(D) The practical difficulty or hardship is unique to the property and not to the general neighborhood and shall apply only to property under control of the applicant based on the following fact.

1. *While all the lots on the face block have hardship due to no alley access, 410 Fifth Street is unique in terms of the narrowness of the lot. It is the narrowest lot on the block. 410 Fifth Street is a 40' wide lot, while the other lots on the block range from 50' to 75' wide.*
2. *There is a 5 to 6 foot high concrete retaining wall supporting a significant grade change from the front of the property to the back of the property, which prevents the garage from being placed to the rear of the house. The retaining wall is connected to the foundation walls of both 410 Fifth Street and 406 Fifth Street making its removal difficult. This condition is unique to this property.*
3. *Most other properties on the block already have garages.*

(E) Granting the variance is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district based on the following fact:

1. *A variance to the side-yard setback dimension is necessary for the construction of a garage on the property which is a right enjoyed by most of the houses on the block and which is allowed in Zone R-1b. The east side yard of 410 Fifth Street is the only reasonable location for a garage on the property because of the lack of alley access and the grade limitations. The proposed single-car attached garage is very modest in dimension (exterior wall would be 12'-3" beyond existing exterior house wall) but would still require a variance to the side-yard setback.*

(F) There is a clear showing of an unnecessary hardship in that the property as a whole cannot reasonably put to a use authorized by the Zoning Code based on the following fact:

1. *Because of the hardship created by the location of Kids Creek (and its floodplain) in the rear yard, the lack of an alley, the narrowness of the lot, and the grade change/retaining wall in the side yard, the proposed location is the only reasonable location for a garage on the property.*

(G) The difficulty is not solely economic and is based on the reasonable use of a particular parcel of land based on the following fact:

1. *The Hardships are not economic. The hardships are created by the lack of an alley as well as physical and topographic constraints. The detailing of the proposed porch and garage will be high quality and consistent with the historical character of the neighborhood.*

(H) The difficulty was not the result of an act of the applicant or a person in privity or concert with the applicant based on the following fact:

1. *The applicant purchased the property in October of 2012 and has not made any significant changes to the structures on the property. The hardships mentioned are not created by the applicant, but were created during the historic siting, construction, and modification of the property much of which occurred before the current zoning ordinances.*

DRAFT

Communication to the Board of Zoning Appeals

FOR THE MEETING OF:	MAY 10, 2016
FROM:	DAVID WESTON, ZONING ADMINISTRATOR DMW
SUBJECT:	REQUEST 16-BZA-01
DATE:	MARCH 6, 2016

You have an appeal from my determination, dated January 20, 2016 by Thomas Gilbert, President of TC Retreat, P.O. Box 1941, Traverse City, Michigan, that the use of the property commonly known as **1702 Comanche Street** is a Residential Care and Treatment Facility and is not a permitted use in the R-1b, Single Family Dwelling District.

At the time of my determination, I relied on information I received from TC Retreat's Facebook page (which has been updated), Articles of Incorporation, and information I received from the neighborhood. I have attached those documents.

The applicant has provided a detailed response as to why he feels that that 1702 Comanche Street is not Residential Care and Treatment Facility. The City Attorney provided a memo regarding TC Retreat's submission and will be attending the meeting. Below are two example motions if you wish to affirm my determination or reverse it.

"Motion to affirm the determination of the City of Traverse City Zoning Administrator dated January 20, 2016 that the use of the property commonly known as 1702 Comanche Street is a Residential Care and Treatment Facility and is not a permitted use in the R-1b, Single Family Dwelling District."

"Motion to reverse the determination of the City of Traverse City Zoning Administrator dated January 20, 2016 that the use of the property commonly known as 1702 Comanche Street is a Residential Care and Treatment Facility and is not a permitted use in the R-1b, Single Family Dwelling District."

Memorandum

The City of Traverse City

TO: Board of Zoning Appeals

COPY: Dave Weston, Zoning Administrator

FROM: Lauren Trible-Laucht, City Attorney LTL

DATE: March 3, 2016

SUBJECT: 1702 Comanche Street

I have reviewed the Zoning Administrator's determination (dated January 20, 2016) regarding the above and the Applicant's request appealing the determination (dated February 8, 2016).

The Determination issued by the Zoning Administrator was based upon available information provided by the Applicant as well as other publically available information such as materials posted by the Applicant through Facebook and filings submitted to the State of Michigan. The Zoning Administrator had multiple correspondences with the Applicant prior to issuing the determination, however the information supplied by the Applicant at that time was inconsistent and the Applicant now admits conflicts with the actual use of the property. The Applicant indicates that it is inappropriate for the Zoning Administrator to rely upon information made available to him from surrounding property owners and publicly available information in addition to the information it provided. In the absence of adequate or consistent information supplied by the Applicant upon request it was appropriate and necessary for the Zoning Administrator to seek out available information from other sources to attempt to verify the facts in relation to the requirements of the ordinance. A major factor in the determination that the subject property is being used as a residential care and treatment facility was the documentation showing that treatment, programs and services were being carried out on site. Much of that documentation was posted by the Applicant online and filed by the Applicant with the State of Michigan. If treatment, programs and services were being carried out on site the use would fall squarely into the definition of a "residential care and treatment facility" under the City's ordinance.

1320.07 DEFINITIONS. ***Residential Care and Treatment Facility*** means a facility providing:
1. Services, programs ***and*** temporary shelter for residents who are undergoing alcohol or substance abuse rehabilitation;
2. Temporary emergency shelter and services for battered individuals and their children in a residential structure. (emphasis provided)

Because ordinances are treated as statutes for purposes of interpretation and review, the goal of construction and interpretation of an ordinance is to discern and give effect to the intent of the legislative body. The most reliable evidence of that intent is the language of the ordinance itself and, therefore, the words used in an ordinance must be given their plain and ordinary meanings. Bonner v. City of Brighton, 495 Mich. 209, 221-22, 848 N.W.2d 380, 388 cert. denied sub nom. Bonner v. City of Brighton, Mich., 135 S. Ct. 230, 190 L. Ed. 2d 134 (2014).

The Applicant indicated to the Zoning Administrator that the length of residence for individuals in the subject property was a minimum of 6 and a maximum of 12 months. "Temporary" is defined by Merriam-Webster's Collegiate Dictionary (Eleventh Edition) as "lasting for a limited time" and by Black's Law Dictionary (Eighth Edition) as "lasting for a time only; existing or continuing for a limited (usu. Short) time; transitory." Therefore the maximum of 12 months possible meets the plain definition of "temporary." However the definition of a Residential Care and Treatment Facility requires that the temporary nature of the residency be coupled with services and programs provided by the facility. This is due to the use of the word "and" highlighted above.

The Applicant has now submitted information indicating that there are no services or programming provided in the home; there are no licensed, certified or paid positions within the residence. While it is unfortunate that the relevant information was not supplied sooner, it appears that the subject property is not being used as a residential care and treatment facility for this reason. Rather, it appears it is a residential rental home consistent with the definition of ***Dwelling, single-family***. "Single-family dwelling" which means a detached building containing one dwelling unit and designed for or occupied by only one family. The City has never asserted that the issue is related to the composition of the individuals living in the subject property or whether they meet the definition of a ***Family*** (i.e. one or more persons occupying a dwelling unit and living as a single housekeeping unit, whether or not related to each other by birth or marriage, as distinguished from persons occupying a boarding house, lodging house or hotel.) The sole issue is whether services and programs were being provided on site. Because the newly-supplied information indicates that no programs or services are supplied on site, the Zoning Administrator's determination should be reversed.

It is not necessary to reach the issue of whether the City's ordinance regulating residential care and treatment facilities is valid because the subject property does not meet the definition of a residential care and treatment facility.

The City of Traverse City

Planning Department

GOVERNMENTAL CENTER
400 Boardman Avenue
Traverse City, Michigan
49684

January 20, 2016

Traverse City Retreat, Inc.
Attn: Thomas Gilbert
531 Randolph Street
Traverse City, MI 49684

Dear Mr. Gilbert,

The property commonly known as 1702 Comanche Street is zoned R-1b (Single Family Dwelling District) and allowed uses in this district are as follows:

- Accessory Dwelling Units (with conditions)
- Adult foster care Family home
- Boat houses
- Community gardens
- Dwellings, single family
- Essential services
- Golf courses
- Home occupations (with conditions)
- Medical Marihuana cultivation (with conditions)
- Playgrounds
- Tourist homes (with conditions)
- Other uses allowed by Special Land Use Permit

The City of Traverse City Zoning Code does not mention or define a "Sober Living Home" or a "Recovery Home" but it does define what a Residential Care and Treatment Facility is. A Residential Care and Treatment Facility is defined as a "facility providing services, programs and temporary shelter for residents who are undergoing alcohol or substance abuse rehabilitation."

I have reviewed the material in my file including correspondence with you, material submitted by neighbors, material from State filings, and the TC Retreat Facebook page. Using these sources, it is my understanding that TC Retreat is an affordable recovery program that is a temporary shelter (min. 6 months, max. 12 months) for male individuals undergoing substance rehabilitation. The TC Retreat Facebook page indicates that the property at 1702 Comanche is

an "immersion program," a "spiritually based program," "offers an affordable recovery program," is a "private pay model but may be covered under a health savings account (HSA)," that "insurance deductibles may be higher than the entire fee." Finally it indicates that "We do not want money to be the reason people cannot access our services."

The Articles of Incorporation filed by Traverse City Retreat with the State of Michigan indicate that the purpose of the entity is to "aid individuals and families in the recovery from Substance Use Disorder with a spiritually grounded, community based residential program." The purpose and activities of the entity are said to be "recovery support services" through a residential program.

Residents are guests of TC Retreat and do not pay rent; they pay a "shared living expense" to TC Retreat. Anyone suspected of drug or alcohol use will be immediately required to take a test. Residents will be instructed to watch each other and report suspected drug or alcohol use. Residents will be required to attend a weekly house governance meeting and Big Book study (Alcoholics Anonymous meetings). Residents will be subject to other requirements such as employment, curfews, no overnight guests and eating together.

The documentation and information that I have reviewed to date suggests that TC Retreat is a Residential Care and Treatment Facility because it is a facility providing services, programs and temporary shelter for residents who are undergoing alcohol or substance abuse rehabilitation. The documents and information filed with the State of Michigan by TC Retreat and posted to Facebook by TC Retreat identify it as a program providing services for a temporary period of time (i.e. 6-12 months). Some of the information provided by TC Retreat through correspondence is inconsistent with that which was filed with the State or posted to Facebook. The requirements / rules are indicative of services and programs and support the self-identification of TC Retreat as a Residential Care and Treatment Facility.

That being said, I find that the use, as described, at 1702 Comanche Street as a "Sober Living Home" or a "Recovery Home" meets the definition of a Residential Care and Treatment Facility per Section 1320.07 of the City of Traverse City Zoning Code and is not an allowed use in the R-1b (Single Family Dwelling District). Attached is an application to the Board of Zoning Appeals if you feel I have errored in this determination.

Sincerely,

David Weston
Planning and Zoning Administrator
231-922-4464

FACEBOOK PAGE

Jeff Home 20+

Create Page

TC Retreat

Like Message

Timeline **About** Photos Likes More

About TC Retreat

Page Info

Page Owners

PAGE INFO

Start Date	Founded in October 2013
Short Description	TC Retreat is a non-profit, community based, Big Book and 12 Step Immersion program; rooted in the 12 Steps of Alcoholics Anonymous.
Impressum	Chat (Off) 49684
Company Overview	TC Retreat is a spiritually based program that helps

people to recover from drug and alcohol use by utilizing community support.

Long Description

Our program is to show how the first 100+ men and women of a 12 step program; "recovered" from a seemingly hopeless state of mind and body.

If you need treatment, we will send you to a community based treatment model, if you need detoxification from drugs and/or alcohol, we will send you to a detoxification center. We work exclusively with Addiction Treatment Services in the community as they model a community based recovery approach.

TC Retreat offers an affordable recovery program for alcoholic and chemically dependent men and their families that are supportive and educational in nature and grounded in the spiritual principles of the Twelve Steps. Our philosophy is simple and straightforward and relies heavily on an integrated community approach. We take people who are motivated for change and surround them with those who are living their recovery at the highest level, making a life of recovery both attractive and within reach. We employ volunteers that carry a recovery message based on their own experience. TC Retreat is a private pay model but may be covered under a health savings account (HSA). Often times people find that their insurance deductibles are more than our entire fee. We also have scholarship available based on need. We do not want money to be the reason people cannot access our services. Our staff is in recovery and we understand what you are going through because we have been there. The phones are answered 24/7 so call anytime.

General Information

Closely modeled after The Retreat in Wayzata, Minnesota; TC Retreat is a non-clinical, community based place where men recover from a seemingly hopeless state of mind and body by immersing themselves in the 12 steps of Alcoholics Anonymous.

Mission

TC Retreat's mission is to improve the quality of life for individuals and families affected by alcohol and/or drug dependency by providing affordable, effective support services based upon the Twelve Step principles of Alcoholics Anonymous. TC Retreat offers time away from day to day stresses and worries while you focus on developing a sober life. We provide a non-clinical, mutual aid support to the problem of alcohol and drug dependency. By providing a safe and supportive environment to study and practice these principles, TC Retreat opens the door to a life of contented sobriety. "We believe that if we provide a dignified, safe and supportive environment, accurate information about the problem and the solution, and a solid bridge to Alcoholics Anonymous, people will recover." – Tom Gilbert

Products	TC Retreat offers a sober living residence that is grounded in the principles of Alcoholics Anonymous. We expect you to attend at least three AA meetings per week, be full-time employed and engage in a community based volunteer program each week.
Email	tcretreat@yahoo.com
Website	http://www.tcretreat.org

BCS/CD-502 (Rev. 12/03)

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH
BUREAU OF COMMERCIAL SERVICES

NOV 1 8 2013

Date Received
NOV 0 5 2013
OCT 1 6 2013
SEP 3 0 2013

(FOR BUREAU USE ONLY)

FILED

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

NOV 1 8 2013

Tran Info: 18966028-1 09/27/13
Chk#: 2178 Amt: $20.00
ID: TOUCHSTONE PROF SERVICES

By Administrator
Corporation Division

EFFECTIVE DATE:

Name: Thomas S. Gilbert

Address: 3180 Racquet Club Dr. Suite G. PO Box 1941

City: Traverse City State: MI Zip Code: 49685

Document will be returned to the name and address you enter above. If left blank document will be mailed to the registered office.

71420W

ARTICLES OF INCORPORATION

For use by Domestic Nonprofit Corporations

(Please read information and instructions on the last page)

Pursuant to the provisions of Act 162, Public Acts of 1982, the undersigned corporation executes the following Articles:

ARTICLE I

The name of the corporation is: Traverse City Retreat

ARTICLE II

The purpose or purposes for which the corporation is organized are:

To aid individuals and families in the recovery from Substance Use Disorder with a spiritually grounded, community based residential program.

ARTICLE III

1. The corporation is organized upon a Nonstock basis.
(Stock or Nonstock)

2. If organized on a stock basis, the total number of shares which the corporation has authority to issue is _____. If the shares are, or are to be, divided into classes, the designation of each class, the number of shares in each class, and the relative rights, preferences and limitations of the shares of each class are as follows:

ARTICLE III (cont.)

3. a. If organized on a nonstock basis, the description and value of its real property assets are: (if none, insert "none")

None

b. The description and value of its personal property assets are: (if none, insert "none")

None

c. The corporation is to be financed under the following general plan:

See Attached.

d. The corporation is organized on a Directorship basis.
(Membership or Directorship)

ARTICLE IV

1. The address of the registered office is:

3180 Racquet Club Dr. Suite G. Traverse City, Michigan 49685
(Street Address) (City) (ZIP Code)

2. The mailing address of the registered office, if different than above:

_____, Michigan _____
(Street Address or P.O. Box) (City) (ZIP Code)

3. The name of the resident agent at the registered office is:

Thomas S. Gilbert

ARTICLE V

The name(s) and address(es) of the incorporator(s) is (are) as follows:

Name	Residence or Business Address
Thomas S. Gilbert	3180 Racquet Club Dr. Suite G. PO Box 1941 Traverse City MI 49685
Mark Leslie, M.D.	701 W. Front St. Traverse City MI 49684
Paula Swink	PO Box 722 Leland MI 49654
Mike Holland	PO Box 2035 Traverse City MI 49685

Article III

It is intended that this corporation shall have the status of a corporation, which is exempt from federal income taxation under section 501 of the Code and be financed through private contributions. These Articles shall be construed accordingly, and all powers and activities of the Corporation shall be limited accordingly. No substantial part of the activities of the Corporation shall be carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501 of the Code (or the corresponding provisions of any future revisions or amendments of the United States Internal Revenue Code), or (2) by a corporation, contributions to which are deductible under the Section 170(c)(2) of the Code (or the corresponding provisions of any future revisions or amendments to the United States Internal Revenue Code).

Use space below for additional Articles or for continuation of previous Articles. Please identify any Article being continued or added. Attach additional pages if needed.

Full copy of Articles of Incorporation attached.

I, (We), the incorporator(s) sign my (our) name(s) this 23rd day of September 2013.

	MICHAEL T. HOLLAND
	THOMAS G. GILBERT
	Mark S. Leslie
	PAULA J. SWIAK

CSCL/CD-2000 (05/14)

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
NONPROFIT CORPORATION INFORMATION UPDATE
2014

Due October 1, 2014 **This report can be filed online at www.michigan.gov/fileonline**

Identification Number	Corporation name
71420W	TRAVERSE CITY RETREAT

Resident agent name and mailing address of the registered office

THOMAS S GILBERT
3180 RACQUET CLUB DR STE G
TRAVERSE CITY MI 49685

FILED
MAR 16 2015
CORPORATIONS DIVISION

RECEIVED
20 DEC 08 2014
LARA

The address of the registered office

3180 RACQUET CLUB DR STE G
TRAVERSE CITY MI 49685

If no change in the address of the registered office and/or resident agent proceed to Item 4.

1. Mailing address of registered office in Michigan (may be a P.O. Box)
PO Box 1941, Traverse City MI 49685

2. Resident Agent
Tom Gilbert

3. The address of the registered office in Michigan (a P.O. Box may not be designated as the address of the registered office)
3180 Racquet Club Dr
Suite G, Traverse City MI 49686

4. Describe the purpose and activities of the corporation during the year covered by this report:
Recovery Support Services

5. NAME and BUSINESS OR RESIDENCE ADDRESS

If different than President	President (Required)	Thomas S. Gilbert 529 Washington Traverse City MI 49684
	Secretary (Required)	Emilee Syrewicze 2980 Arborvitae Dr, Apt 15, Traverse City MI 49685
	Treasurer (Required)	~~Paula Swink~~ Emilee Syrewicze 2980 Arborvitae Dr Apt 15 Traverse City MI 49685
	Vice President	Paula Swink PO Box 722, Leland MI 49654
Required 3 or more directors	Director (Required)	Norm Dickson, 438 County Road 612 NE Kalkaska MI 49646
	Director (Required)	Rich Ellis 3271 Powell, Harbor Springs, MI 49740
	Director (Required)	Paula Swink, PO Box 722, Leland MI 49654

6. **Report due October 1, 2014.**
Filing Fee $20.00.

File online at www.michigan.gov/fileonline
or mail your completed report with a check or money order payable to the State of Michigan.

Return to: Corporations Division
P.O. Box 30767
Lansing, MI 48909
(517) 241-6470

Signature of authorized officer or agent	Title	Date	Phone (Optional)
Thos. Gilbert	President	12/3/14	231-590-9800

If more space is needed additional pages may be included. Do not staple any items to report. This report is required by Section 911, Act 162, Public Acts of 1982, as amended. Failure to file this report may result in the dissolution of the corporation.

JJ

CSCL/CD-511 (Rev. 05/15)

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

FILED
AUG 24 2015
ADMINISTRATOR
CORPORATIONS DIVISION

Date Received

AUG 21 2015

(FOR BUREAU USE ONLY)

ADJUSTED PURSUANT TO TELEPHONE AUTHORIZATION
Per

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

Tran Info:1 20639809-1 08/20/15
Chk#: 1022 Amt: $10.00
ID: 71420W

Name

Address

City State ZIP Code

EFFECTIVE DATE:

Document will be returned to the name and address you enter above. If left blank, document will be returned to the registered office.

RESTATED ARTICLES OF INCORPORATION
For use by Domestic Nonprofit Corporations
(Please read information and instructions on the last page)

Pursuant to the provisions of Act 162, Public Acts of 1982, the undersigned corporation executes the following Restated Articles:

1. The present name of the corporation is:

   TRAVERSE CITY RETREAT

2. The identification number assigned by the Bureau is: 71420W

3. All former names of the corporation are:

4. The date of filing the original Articles of Incorporation was: NOVEMBER 18, 2013

The following Restated Articles of Incorporation supersede the Articles of Incorporation as amended and shall be the Articles of Incorporation for the corporation:

ARTICLE I

The name of the corporation is:

TRAVERSE CITY RETREAT

ARTICLE II

The purpose or purposes for which the corporation is formed are:

To aid individuals and families in the recovery from Substance Use Disorder with a spiritually grounded, community based residential program. This corporation is organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

see cont.

ARTICLE III

1. The corporation is formed on a Nonstock basis.
(stock or nonstock)

2. If formed on a stock basis, the aggregate number of shares that the corporation has authority to issue is _____. If the shares are or are to be divided into classes, the designation of each class, the number of shares in each class, and the relative rights, preferences, and limitations of the shares of each class to the extent that the designations, numbers, relative rights, preferences, and limitations have been determined are as follows:

The corporation is to be financed under the following general plan:

Donations

The corporation is formed on a Directorship basis.
(membership or directorship)

ARTICLE IV

1. The name of the resident agent is: Thomas S Gilbert

2. The address of the registered office is:

3180 Racquet Club Drive, Suite G	Traverse City	, Michigan	49684-4770
(Street Address)	(City)		(ZIP Code)

3. The mailing address of the registered office, if different than above:

PO Box 1941	Traverse City	, Michigan	49685-1941
(Street Address or P.O. Box)	(City)		(ZIP Code)

Article II (cont.)

It is intended that this corporation shall have the status of a corporation, which is exempt from federal income taxation under section 501 of the Code and be financed through private contributions. These Articles shall be construed accordingly, and all powers and activities of the Corporation shall be limited accordingly. No substantial part of the activities of the Corporation shall be carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on (1) by a corporation exempt from federal income tax under Section 501 of the Code (or the corresponding provisions of any future revisions or amendments of the United States Internal Revenue Code), or (2) by a corporation, contributions to which are deductible under the Section 170(c)(2) of the Code (or the corresponding provisions of any future revisions or amendments to the United States Internal Revenue Code).

ARTICLE V (Additional provisions, if any, may be inserted here; attach additional pages if needed.)

5. COMPLETE SECTION (a) IF THE RESTATED ARTICLES WERE ADOPTED BY THE UNANIMOUS CONSENT OF THE INCORPORATOR(S) BEFORE THE FIRST MEETING OF THE BOARD OF DIRECTORS, OTHERWISE, COMPLETE SECTION (b). **DO NOT COMPLETE BOTH.**

a. ☐ These Restated Articles of Incorporation were duly adopted on the _____ day of _____, _____, in accordance with the provisions of Section 641 of the Act by the unanimous consent of the incorporator(s) before the first meeting of the Board of Directors under Section 611(1)(a).

Signed this _____ day of _____, _____

_____ _____

_____ _____

(Signatures of a Majority of Incorporators; Type or Print Name Under Each Signature)

b. ☑ These Restated Articles of Incorporation were duly adopted on the 10 day of August, 2015, in accordance with the provisions of section 641 of the Act: (check one of the following)

☐ by the Board of Directors without a vote of the members or shareholders. These Restated Articles of Incorporation only restate and integrate the articles and include only amendments adopted under section 611(1) or section 611(2) of the Act and there is no material discrepancy between those provisions and the provisions of the Restated Articles of Incorporation.

☑ were duly adopted by the shareholders, the members, or the directors (if organized on a nonstock directorship basis). The necessary number of votes were cast in favor of these Restated Articles of Incorporation.

☐ were duly adopted by the written consent of all the shareholders or members entitled to vote in accordance with section 407(3) of the Act.

☐ were duly adopted by the written consent of all the directors pursuant to section 525 of the Act as the corporation is formed on a directorship basis.

☐ were duly adopted by the written consent of the shareholders, members, or their proxies having not less than the minimum number of votes required by statute in accordance with section 407 of the Act. Written notice to members or shareholders who have not consented in writing has been given. (Note: Written consent by less than all of the shareholders, members, or their proxies is permitted only if such provision appears in the Articles of Incorporation).

Signed this 17 day of August, 2015

By [signature]
(Signature of Authorized Officer or Agent)

THOMAS S. GILBERT, President of Board
(Type or Print Name) (Type or Print Title)

CSCL/CD-2000 (05/15)

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
NONPROFIT CORPORATION ANNUAL REPORT
2015

Due October 1, 2015 **File Online at www.michigan.gov/fileonline**

Identification Number	Corporation name
71420W	TRAVERSE CITY RETREAT

Resident agent name and mailing address of the registered office

THOMAS S GILBERT
P.O. BOX 1941
TRAVERSE CITY MI 49685

RECEIVED
20 AUG 10 2015
LARA
CORPORATIONS DIVISION

FILED
AUG 31 2015

The address of the registered office

3180 RACQUET CLUB DR STE G
TRAVERSE CITY MI 49685

☐ To certify there are no changes from the previous year filed report, check this box and proceed to item 6.
If the resident agent and/or registered office has changed, proceed to item 1 and do not check this box.
If only officer and director information has changed, proceed to item 4 and do not check this box.

1. Mailing address of registered office in Michigan if changed (may be a P.O. Box)
P O Box 1941 Traverse City MI 49685-1941

2. Resident Agent if changed
Thomas S Gilbert

3. The address of the registered office in Michigan if changed (a P.O. Box may not be designated as the address of the registered office)
3180 Racquet Club Dr Suite G Traverse City MI 49684-4770

4. The purposes and general nature and kind of business in which the corporation engaged in during the year covered by this report:
Recovery Support Services

5. NAME and BUSINESS OR RESIDENCE ADDRESS

	President: Thomas Gilbert 529 Washington, Traverse City, MI 49684
If different than President	Secretary: Bill Pirch, 4075 Jefferson, Traverse City MI 49684
	Treasurer: Bill Pirch, 4075 Jefferson, Traverse City MI 49684

If the corporation is a private foundation or formed to provide care to a dentally underserved population, check the following box.
If box is checked the board shall consist of 1 or more directors. The board of all other corporations shall consist of 3 or more directors. ☐

Required Director(s)	Director: Norm Dickson, 438 County Road 612 NE, Kalkaska MI 49646
	Director: Rich Ellis, 3271 Powell Road, Harbor Springs MI 49740
	Director: Chuck Bethea, 540 W 7th St, Traverse City MI 49686

6. **Report due October 1, 2015.**
Filing Fee $20.00.

File online at www.michigan.gov/fileonline
or mail your completed report with a check or money order payable to the State of Michigan.

Return to: Corporations Division
P.O. Box 30767
Lansing, MI 48909
(517) 241-6470

Signature of authorized officer or agent	Title	Date	Phone (Optional)
[signature]	Board President	8/6/15	

If more space is needed additional pages may be included. Do not staple any items to report. This report is required by Section 911, Act 162, Public Acts of 1982, as amended. Failure to file this report may result in the dissolution of the corporation.

TCRetreat-Public Meeting
Tom Gilbert – Presenter

Dave Weston, Traverse City, Zoning Administrator

Impressions from the Neighborhood Meeting as presented by Tom Gilbert;

1. It seems that Tom Gilbert presented this meeting for the Neighborhood more to assuage the Neighborhood community's feelings than to share or ask permission for his project.
2. It seems that Tom Gilbert, in having experienced an addictive period and recovery-process in his personal life, has discovered an opportunity for personal financial gain, with limited personal involvement or liability, by opening a TCRetreat in a Traverse City family oriented neighborhood.
3. It seems that this initial venture might be more of Tom Gilbert "running a flag up the flag-pole" to see the impact for himself: time-wise, profit-wise, and liability-wise for additional TCRetreat endeavors with community acceptance or resignation in attempting to fight it.
4. It seems that Tom Gilbert has tried to create economic and liable wiggle room for himself in this project by carefully avoiding over-sight from any governmental agency or health agency, as a non-licensed operation, while he lauds the significance (his position) of this important step for recovering addicts to the neighborhood and community sympathies.
5. In order to have transparency of this operation and establish safeguards for the neighborhood, it seems to me, there has to be: By-Laws, Policy and Procedures (for the home), a vetting process for "residents" selected for the home to avoid criminal, mental, and societal issues, and this information should be available, at the least, to the city's attorney for review and over-view, to assure the neighborhood safety. It was stated by Tom Gilbert that the TCRetreat residents would govern themselves in a "Democratic-way" – that sounds extremely open-ended, for 30-day recovering addicts, and fraught with potential problems.
6. The realization is that the potential occupants of this home will only have undergone 30 days of rehabilitative treatment for their addiction which is just the initiation of the addictive recovery process, and suggests a high-potential problem setting for a multitude of unpleasant scenarios'. It sounds like there will be no licensed employee, of any type, in the residence.
7. Being a charitable non-profit, it appears, Tom is trying to avoid taxation on income from the occupants of the home. Each occupant is obligated to pay $500.00 for room and (?) and is obligated to find employment and work for that money. The types of jobs available to these people might necessitate occupants coming/going all hours of the day and night.
8. Tom Gilbert identified resident occupants of six or seven men at $500.00 each, which would produce $3,000.00 to $3,500.00 of gross income per month on a mortgage of less than $1,000.00 per month with no employee's on the premises and no recovery program offered by TCRetreat.
9. At the monthly gross-income suggested above it seems these men could/should find a similar rental residence on their own and reduce their individual costs.
10. If TCRetreat found itself with open beds how far might it reach "geographically", "societally", and gender to fill those empty beds.
11. Tom Gilbert stated that if an occupant/resident did not adhere to the, self-governed, democratic rule of the TCRetreat they will be asked to leave – legally what would it take to remove an occupant, a court-order? Tom also stated that if there was any neighborhood problem with a resident that the aggrieved neighbor simply had to call Tom and he would come over and straighten the problem out – does he mean 24hrs/day, 365days/year?

12. It seemed that Tom Gilbert's presentation was dubious at best and suggested that Tom is really not concerned about the safety of the neighborhood or conforming to its Zoning, but suggests more of by- passing the intent of the city Zoning, single family residence, to fit his own purpose – which appears to be financial-gain with no personal liability.
13. Would another site be more suitable for this endeavor?

Ray Antel
mrantel2002@yahoo.com
1-231-564-0346

RECEIVED

FEB 09 2016

PLANNING DEPT
CITY OF
TRAVERSE CITY

City of Traverse City

APPLICATION FEE:	$240.00	Date of Application:	2-9-16
Check Number:	1079	Date of Public Hearing:	3-8-16
Receipt Number:	18134	Case Number:	16-BZA-01

TRAVERSE CITY BOARD OF ZONING APPEALS

APPLICATION

for Variance, Exception, Appeal, Ordinance Interpretation or Reconsideration

PROPERTY DESCRIPTION (legal description AND property address): 1702 Comanche St, Traverse City, MI, 49684

REQUEST AND PROPOSED PROJECT: Appeal Zoning Administrators Decision Dated 1/20/16 on abovered named Sober Living Residence

TO BE COMPLETED BY ZONING ADMINISTRATOR:

Request: Appeal for Administrative Decision _____
Interpretation of Ordinance _____
Exception _____
Variance _____

Name: TC Retreat by Bd President Tom Gilbert Phone: 231-390-8800 Fax: 231-933-4032

Address: PO Box 1941, Traverse City, MI 49685

Signature of Owner: Thos. Gilbert, TC Retreat Bd President

Signature of Applicant (if different): _____

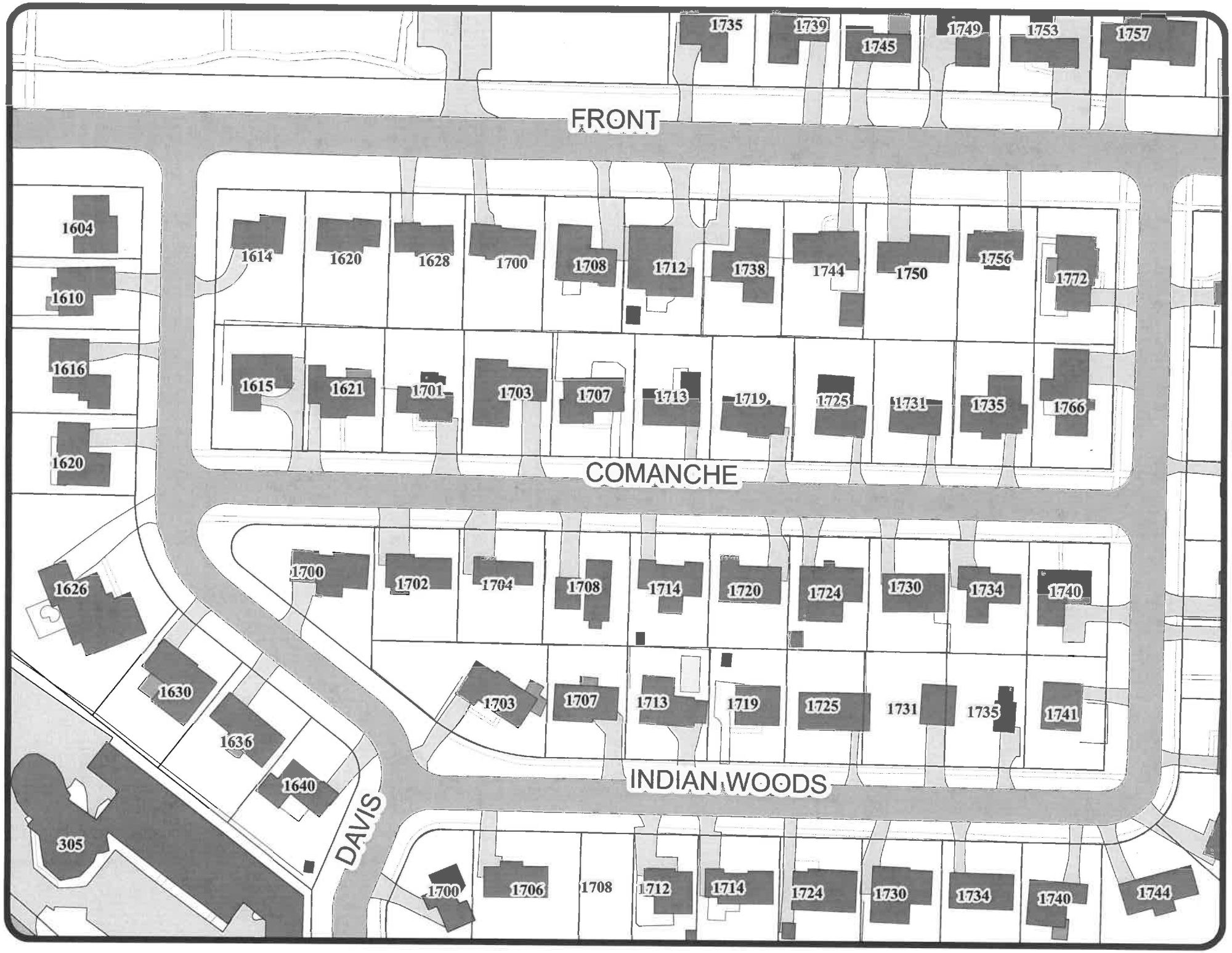
Relationship of Applicant to Owner: _____

APPLICATIONS MUST BE RECEIVED A MINIMUM OF 21 DAYS PRIOR TO THE MEETING AT WHICH THE REQUEST WILL BE CONSIDERED.

REPRESENTATION AT HEARING: THE APPLICANT OR THE APPLICANT'S AUTHORIZED AGENT MUST BE PRESENT AT THE PUBLIC HEARING TO PROPERLY ANSWER QUESTIONS CONCERNING THE APPEAL. IF THE APPLICANT OR AGENT IS NOT PRESENT, THE APPEAL MAY BE DEFERRED UNTIL THE NEXT MEETING OR DISMISSED AT THE DISCRETION OF THE BOARD.

***** PLEASE NOTE THE REVERSE SIDE FOR SITE PLAN REQUIREMENTS *****

Per Dave Weston Site Plan Requirements are Excused - He will supply Aerial Photo of Lot.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TCRetreat is opening a Quality Sober Living Residence for Men

If you have 30-days sobriety (or are being discharged from an approved facility) and are willing to work a 12-step program, you may have what it takes to begin a life beyond your wildest dreams.

Expectations include:

- 100% complete abstinence from all mind altering substances
- Minimum Six-month commitment to the residence
- Active involvement in 12-step recovery
- Attend weekly house governance meeting, meal & Big Book study.
- Work full time and pay rent/bills on time.

This residence is a self-governing, mutually managed sober living facility for men providing a community based bridge to 12-step recovery. TCRetreat gives individuals the opportunity to practice the principles of recovery in their daily lives with close proximity to meetings, coffee houses and employment opportunities. Residents become fully immersed in the recovery community and are provided the time, structure, safety and support essential to building a strong foundation of recovery.

If interested, please contact Jenny at (231) 590-7034 or send email to tcretreat@yahoo.com for application.

CITY OF TRAVERSE CITY
ZONING BOARD OF APPEALS
MEMORANDUM REGARDING 1702 COMANCHE STREET
TC RETREAT SOBER LIVING HOME

I. INTRODUCTION

On January 20, 2016, Planning and Zoning Administrator David Weston ("Administrator") issued an opinion regarding the Sober Living Home ("Home") located at 1702 Comanche Street (**Exhibit 1**). In that letter, the Administrator opines that the Home meets the definition of a Residential Care and Treatment Facility, which is not compliant with the zoning district, R-1b (Single Family Dwelling District) in which it is located.

The Administrator's opinion relies heavily on marketing material and corporate organizational documents which admittedly conflict with the actual use of the property. These inconsistencies have been addressed—the marketing materials are a work in progress. The relevance of the corporate documents is discussed below.

The Home is functionally no different than any other residence located in the neighborhood—in most shared living arrangements roommates subscribe to a set of rules. The rules of the Home revolve around maintaining sobriety. No treatment occurs at the home. As such, the designation of the house as a Residential care and Treatment Facility is incorrect. Further, the exclusion of sober living homes through zoning determinations has been repeatedly overturned in federal court, in many cases exposing the municipality to significant liability. As such, we asks that the Zoning Board of Appeals ("ZBA") reverse the determination of the Administrator.

II. FACTS

Traverse City Retreat (TC Retreat) is a non-profit charitable organization organized under the statues of Michigan and Internal Revenue Service Code 501(c)(3), and began meeting November 2013. It was granted charitable status by the IRS in July of 2014.The organization is managed by a volunteer 7-member board of directors. The officers are, Tom Gilbert, President, Terry Newton, Vice-President, and Bill Pioch, Treasure/Secretary. TC Retreat has one employee, a part time administrator.

TC Retreat purchased a home located at 1702 Comanche St, Traverse City, MI and took possession December 1, 2015. The property was purchased to develop and run a sober home, consistent with TC Retreat's mission to assist individuals into and maintain long term recovery from substance use disorders. On the first day of possession, December 1, a next-door neighbor angrily "welcomed" TC Retreat into the neighborhood, following up by stuffing the neighbor's mailboxes with his version of what was happening at the house (**Exhibit 2**). In response, TC Retreat invited the

neighborhood residents to a meeting held at the Civic Center, which was moderated by a local retired pastor, on Wednesday December 9th. The neighborhood meeting was attended by approximately 70 people, covered by TV 7&4, lasted about 2 hours and gave neighbors a chance to voice their concerns. Board President, Tom Gilbert explained what the sober home was and what it was not, addressing neighbors' concerns to the best of his ability. The concerns expressed were then addressed in writing by a letter dated January 20th and mailed to each neighbor (**Exhibit 3**).

The home is democratically run and mutually managed sober living home. This means that potential residents fill out an application, agree to a back ground check (including criminal history) and agree to abide by the house rules and expectations (**Exhibit 4**). Once the initial screening is completed by staff, the application is forwarded to the house. The residents of the house conduct the interview to decide if the candidate is serious about recovery, and would be a "good fit" for the house and neighborhood. If approved, by the current residents, the potential resident must pay a $200 sobriety deposit and first month's guest fee of $550 (their portion of shared living expenses).

Residents (Guests) conduct a weekly governance meeting in which they discuss issues needing to be addressed such as: household chores, individual efforts at recovery, service to recovery community and neighborhood, compliance with house expectations, employment and anything else on their mind. This is usually conducted during a household meal prepared by one of the Guests and is mandatory attendance. A reading and study of the "big Book" Alcoholics Anonymous follows the meeting and meal.

Potential Guests must have 30 days of sobriety (or successful discharge from an approved facility) and must agree to abide by the house rules and expectations. Use of drugs or alcohol are strictly forbidden and subjects Guests to immediate exit. Violence or threat of violence are not tolerated and also subject Guests to immediate exit. Guests make a commitment to live in the house for a minimum of 6 months.

There are no services provided in the home by TC Retreat or anyone else. There is no programming or treatment occurring in the home at any time. There are no licensed, certified or paid positions within the residence. Guests agree to participate in random drug/alcohol screening, house meetings and attend mutual aid meetings (12-step). Residents are self-supporting, paying their portion of shared living expenses.

This long-term sober-living Residence in the Indian Woods neighborhood serves as a transitional, self-governing sober living home for men. The residence gives individuals the opportunity to practice the principles of recovery in their daily lives. With close proximity to 12-step meetings, coffee houses and employment opportunities, residents become fully immersed in the local recovery community and are provided the time, structure and support essential to building a strong foundation of recovery. Men work closely with sponsors to create a safe and supportive environment while establishing a solid foundation for recovery.

TC Retreat is a member in good standing of the West Michigan Association of Recovery Residence (WMARR) which is an affiliate of the Michigan and National Associations. The home on Comanche is considered to be a level 1 (peer-run) recovery residence in levels of support to its residents, (**Exhibit 5**).

III. ANALYSIS

Below, TC Retreat sets forth the following: (1) ZBA Chair Jeff Cockfield must disqualify himself from participating in the appeal; (2) the Home meets the requirements of the Zoning Ordinance for the R-1b district; and (3) excluding the Home based on the Zoning Ordinance is a violation of the Americans with Disabilities Act and Fair Housing Act.

a. ZBA Chair Must Disqualify Himself from Participation in the Appeal

The Board of Zoning Appeals Rules and Procedures, Rule of Procedure (i) provides that "A member shall disqualify himself or herself from a vote in which the member has a conflict of interest." Mr. Cockfield, ZBA Chair, is a resident in the neighborhood in which the Home is located. He attended the neighborhood meeting arranged by TC Retreat on December 9, 2015. At that meeting, he discussed his personal opposition to the Home prior to having reviewed the relevant information. Moreover, he has a personal interest in the neighborhood, and as such, has a conflict of interest in hearing this appeal. Consequently, we request his disqualification.

b. The Home is Definitionally Permissible in the R-1b District

An analysis of the propriety of a sober living home under the Ordinance must begin with a review of the applicable rules and definitions. First, the area is zoned R-1b, which has the following permitted uses: Adult foster care family home; dwelling, single family; and tourist homes, under certain conditions. Also allowed by Special Land Use Permit are adult foster care small group homes and group day care homes. The relevant definition to the following discussion is "Dwelling, single family;" however, the other enumerated items are listed to demonstrate the flexibility in the district to accommodate premises uses somewhat distinct from traditional single family residences—however, as detailed in the following section, the Ordinance discriminates against individuals recovering from substance abuse related problems.

Turning to the relevant definition, "Dwelling, single-family," the individual words of the definition also defined in the Ordinance. First, a "Dwelling" is "any building or portion thereof which is designed for or used exclusively for residential purposes and containing one or more dwelling units." The Home is designed and used exclusively for residential purposes. Within the Home, there is no commercial activity, nor is there any substance abuse treatment. The tenants will sleep, prepare and eat meals, and engage in other typical domestic activities. Merely because the tenants are in recovery does not alter the residential character of their land use.

> ***Family*** means one or more persons occupying a dwelling unit and living as a single housekeeping unit, whether or not related to each other by birth or marriage, as distinguished from persons occupying a boarding house, lodging house or hotel.

The guests residing in the sober house fit squarely within this definition. Multiple individuals will be living together as a single housekeeping unit.

Given the foregoing, the sober home is definitionally a "Dwelling, single-family:"

> "Single-family dwelling" means a detached building containing one dwelling unit and designed for or occupied by only one family.

The Administrator, characterized the house as a Residential Care and Treatment Facility[1], which is not the case:

> ***Residential Care and Treatment Facility*** means a facility providing:
>
> 1. Services, programs and temporary shelter for residents who are undergoing alcohol or substance abuse rehabilitation;
>
> 2. Temporary emergency shelter and services for battered individuals and their children in a residential structure.

Subsection 1 outlines substance abuse treatment facilities. This is a conjunctive definition, with three introductory qualifiers. "Services, programs ***and*** temporary shelter." Statutory interpretation requires a full reading of the definition, that to be a residential care and treatment facility, the structure must be used for all three items listed. The sober home involves none, i.e. provides no services, provides no programs and is not temporary shelter.

First, the Home does not provide temporary shelter. It is a long term residence. The six month *minimum* commitment cannot be described as temporary under any provision of the Ordinance. Where the word "temporary" it is used in the

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[1] The Home has received significant pushback from community members, and the Administrator's opinion letter cites the use of "material provided by neighbors." This is a questionable procedure, as neighboring property owners do not have a vested property interest in a neighboring property's zoning determinations, and thus lack standing to challenge any ruling in court. *See Johnson Trust v City of Charlevoix*, Unpublished Opinion of the Michigan Court of Appeals, Docket No. 315397 (August 19, 2014).

definition chapter of the ordinance, it refers to a period of a night to several nights.[2] Nothing in the entire ordinance characterizes residency in excess of six months as "temporary." The Administrator's statement that six to twelve months is a "temporary period" is unsupported by the ordinance or any other relevant law.

Second, there are neither programs nor services provided at the Home. The Administrator points to TC Retreat's Facebook Page in order to characterize the Home as providing a "program." This is an incorrect interpretation of what is considered to be a treatment program or service, and what is referred to in 12-step recovery parlance as a "the program." In other words, being honest, working for a living, treating others with respect, engaging in a spiritual practice, being part of the community of other recovering people, and acting in service to others are all collectively "working the 12-step program." This is no way constitutes a "treatment program."

Conversely, treatment is defined under the Mental Health Code at MCL 330.1100d(17) as follows:

> "Treatment" means care, diagnostic, and therapeutic services, including the administration of drugs, and any other service for the treatment of an individual's serious mental illness or serious emotional disturbance.

"Substance use disorder treatment and rehabilitation services" is defined under the Mental Health Code at MCL 330.1100d(12) as follows:

> (13) "Substance use disorder treatment and rehabilitation services" means providing identifiable recovery-oriented services including:
>
> > (a) Early intervention and crisis intervention counseling services for individuals who are current or former individuals with substance use disorder.
> >
> > (b) Referral services for individuals with substance use disorder, their families, and the general public.

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[2] ***Lodging Facility*** means a commercial establishment with one or more buildings whose primary use is to provide temporary overnight accommodations within individual guest rooms or suites to the general public for compensation. Accessory uses may include eating places, meeting rooms and other similar uses.

Recreational vehicle means a vehicle primarily designed and used as a temporary living quarters for recreational, camping, or travel purposes including a vehicle having its own motor power or a vehicle mounted on or drawn by another vehicle.

> (c) Planned treatment services, including chemotherapy, counseling, or rehabilitation for individuals physiologically or psychologically dependent upon or abusing alcohol or drugs.

The Administrator's opinion fails to point to any activities occurring at the property that reflect the above definitions. As stated in the facts above, no counseling, referring, or treatment occurs at the property. If such activities were occurring there, it would need to secure a license. MCL 333.6233 sets for the requirements for licensure:

> (1) A person not otherwise licensed to provide psychological, medical, or social services shall not establish, conduct, or maintain a substance use disorder services program unless it is licensed under this part.

Admittedly, some of the language used on the Facebook page was not indicative of the actual use of the Home. This is a result of the newness of the organization, future plans yet to be realized, and an early attempt to market the entire TC Retreat Concept. Consequently, the Facebook page has been edited to more accurately reflect the Home's actual use. However, even the words formerly on the Facebook page do not indicate a treatment program. The page merely used the word "program."

Turning to the Administrator's reliance on the Articles of Incorporation of TC Retreat, the organizational documents do not bear on the instant inquiry. TC Retreat is a nonprofit corporation, having offices located at 3180 Racquet Club Dr., Suite G, and with its own employees. The Articles of Incorporation of this nonprofit corporate entity are not relevant in regards to how the land is used at 1702 Comanche Street.

TC Retreat's role at the subject property is no different than that of a property management company: setting rules and regulations residents must abide by, collecting income, and performing administrative services to maintain the property. Simply requiring resident sobriety as part of the required rules by a third party manager does not change the nature of the land use from residential to a treatment facility.

Case law demonstrates that merely shifting the role of setting rules for the household regarding substance use from the residents to a third party does not change the residential character of occupancy. The federal District Court for the Southern District of Florida held that a city must set forth "evidence which demonstrated that a sober living arrangement provided by a third party destroys the residential character of a neighborhood more than a sober living arrangement organized by the residents themselves." *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339, 1354 (S.D. Fla. 2007). The City of Boca Raton was unable to set forth such evidence, since it is simply impossible to do. It does not matter if the rules are determined by TC Retreat or by the residents themselves. There will be no different impact on the community.

Moreover, the Michigan Department of Health and Human Services has published a technical advisory regarding recovery housing, which is attached with a letter of explanation from Dave Schneider, CEO of Northern Michigan Regional Entity.[3] **(Exhibit 6).** As described in the document, a Level 1 – Peer Run sober living home is not a treatment facility. It is an unlicensed residential home.

In sum, there is no activity occurring at the Home that would indicate it is a Residential Care and Treatment Facility. The Administrator's opinion letter relies on specific words taken from (1) a Facebook page that does not necessarily reflect the specific activities occurring at the Home, and (2) the organizational documents of a corporate entity that is located at a different location.

Zoning ordinances are permitted governmental regulation regarding land use. As described above, the residence located on Comanche Street is used as a single family residential dwelling. Zoning ordinances do not regulate marketing materials or organizational documents. The Administrator's determination based on those materials is clear error and should be reversed by this Board of Appeals.

c. Violations of the Fair Housing Act and the Americans With Disabilities Act

The Zoning Ordinance is discriminatory on its face and is being applied in a discriminatory manner under the Americans with Disabilities Act and Fair Housing Act. Individuals that suffer from addiction are "handicapped" within the meaning of the Fair Housing Act and 24 C.F.R. 100.201 (a)(2), and are "qualified persons with disabilities" within the meaning of the Americans with Disabilities Act, 42 U.S.C. § 12102(2) and 28 C.F.R. 35.104.

The position that recovering individuals can be considered disabled is supported both in case law and legislative history. "As a medical matter, addiction is a chronic illness that is never cured but from which one may nonetheless recover." *S. Mgmt. Corp.*, 955 F.2d at 920. "Alcoholism, like drug addiction, is an 'impairment' under the definitions of a disability set forth in the FHA, the ADA, and the Rehabilitation Act." *Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 46 (2d Cir. 2002)("*RECAP*"). Congress intended to treat drug addiction as a significant impairment constituting a handicap unless excluded, such as by current drug use in accordance with 42 U.S.C. §3602(h). *See Lakeside Resort Enters., LP v. Bd. Of Supervisors of Palmyra Township*, 455 F.3d 154, 156 n.5 (3d Cir. 2006); *RECAP*, 294 F.3d at 46; *MX Group, Inc. v. City of Covington*, 293 F.3d 326, 338-39 (6th Cir. 2002); *S. Mgmt. Corp.*, 955 F.2d at 919. The Fourth Circuit specifically spoke to the need for addicts to be given equal access to housing, instead of being denied housing on the basis of their constant craving and its accompanying dangers. *S. Mgmt. Corp.*, 955 F.2d at 922.

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[3] The Northern Michigan Regional (NMRE) entity is one of ten Prepaid Inpatient Health Plans (PIHPs) in the state of Michigan to manage the behavioral health (mental health, intellectual disability and substance use disorder) services for people enrolled in Medicaid.

At the same time this appeal is being submitted, we are also submitting a request for Reasonable Accommodation. If the ZBA affirms the interpretation of the Zoning Ordinance made by the Administrator, then it is required to make a reasonable accommodation for the disable individuals requesting the same. The Zoning Ordinance is (1) facially discriminatory, as it places specific requirements on facilities that treat substance abuse, and (2) being applied in a discriminatory manner by characterizing activities necessary to maintaining a sober environment as impermissible in a residential area.

i. The Zoning Ordinance is Facially Discriminatory

In *Jeffrey O. v City of Boca Raton,* 511 F. Supp. 2d 1339 (S.D. Fla. 2007) (**Exhibit 7)**, the U.S. District Court for the Southern District of Florida ruled on a situation nearly identical to the instant situation:

> "Ordinance 4649 defines substance abuse treatment facilities and requires them to be in the City's medical district or with a conditional permit in a motel/business district. An ordinance facially discriminates against the handicapped where it singles them out and applies different rules to them. *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1500 (10th Cir. 1995); *Marbrunak, Inc. v. City of Stow*, 974 F.2d 43, 46-47 (6th Cir. 1992). As applied to this case, the question is not whether the City was specifically intending to discriminate against Plaintiffs, but rather whether the ordinance on its face treats recovering drug addicts and alcoholics different from non-handicapped individuals. *See Larkin,* 89 F.3d at 290 (discussing how a defendant's benign motive does not prevent a statute from being discriminatory on its face); *see also Alexander v. Choate*, 469 U.S. 287 (1985)(discussing how discrimination against the handicapped is often the result of thoughtlessness, not particular offensive anger). The language of the Ordinance singles out recovering individuals where they are the individuals who would be residing in a substance abuse treatment facility. *See McWright v. Alexander*, 982 F.2d 222, 228 (7th Cir. 1992)(discussing how discrimination against an individual because of his or her handicap is often aimed at an effect of the handicap rather than the handicap itself). While this does not mean that all recovering individuals live in a substance abuse treatment facility, there was no evidence, nor did anyone argue that non-recovering individuals live in substance abuse treatment facilities. Accordingly, Ordinance 4649 treats recovering individuals differently from non-recovering individuals where it requires the individuals who live in substance abuse treatment facilities, recovering individuals, to live in the City's medical

> zone or with conditional approval in a motel/business zone. This is sufficient to establish a prima facie case of discrimination."
> [Id. at 1349-50.]

The court determined that limiting the locations where a recovering person could live through specific language singling out those individuals in an ordinance was unlawful:

> "[T]he City's justification of grouping like uses together is not a sufficient justification where protecting the residential character of its neighborhoods could have been legislated in a less discriminatory way such that it did not substantially limit the availability of residential housing to recovering individuals."
> [Id. at 1355.]

In another case, a federal district court held that a provision that permitted group foster care homes in a residential district, while excluding sober living homes, was facially discriminatory. The Traverse City Ordinance allows for Adult Foster Care Family Homes in the R-1b district, while under the Administrator's interpretation, excludes Sober Homes. The court stated the following in *Oxford House, Inc. v. City of Baton Rouge, La.*, 932 F. Supp. 2d 683 (M.D. La. 2013):

> "Ordinance defining "special homes" was discriminatory in violation of Fair Housing Act (FHA) and Americans with Disabilities Act (ADA) both facially and as applied; ordinance granted a blanket reasonable accommodation for group homes that were licensed and staffed on a 24–hour basis, regardless of the needs of the individuals in the group home, without any need to show that requested accommodation was reasonable and necessary, but required unlicensed group homes or those not staffed on a 24–hour basis, which included group homes for recovering alcoholics and drug addicts, to show that requested accommodation was reasonable and necessary. Fair Housing Act, § 804(f)(1), 42 U.S.C.A. § 3604(f)(1); Americans with Disabilities Act of 1990, § 201 et seq., 42 U.S.C.A. § 12131 et seq.

Again, the court affirmed that under federal law, an ordinance may not discriminate against individuals recovering from substance abuse disorders.

Traverse City's Zoning Ordinance makes specific requirements for land uses that involve recovering individuals. This constitutes a facially discriminatory ordinance and cannot be lawfully enforced.

ii. Applying the Zoning Ordinance in a Manner that Excludes the Sober Home is Contrary to Federal Law

If the City were allowed to enforce its Ordinance in the manner suggested by the Administrator, defining a sober living home as a Residential Care and Treatment Facility, an individual in early recovery cannot live in the same housing that is available to non-disabled individuals, i.e., those who are not in the early stages of addiction recovery.

The Fair Housing Act, 42 U.S.C. §3604(f) prohibits discrimination by a public entity against handicapped or disabled persons or on the basis of disability. The FHA applies to a municipality's zoning decisions and enforcement actions. The City's selective enforcement of the Ordinance violates FHA because its actions discriminate against persons disabled by drug addiction or alcoholism on the basis of their disabled and handicapped status.

Title II of the Americans with Disabilities Act, 42 U.S.C. §§12131, et. seq., prohibits discrimination by a public entity against handicapped or disabled persons or on the basis of disability. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132.

We would also note that any finding that the City has violated either the ADA or FHA would allow for the award of attorney's fees, damages, and if there were a finding of purposeful discrimination, possible exemplary damages.

In light of the foregoing, the City and this Board of Appeals cannot selectively enforce its Ordinance in a manner which discriminates against a defined class of disabled individuals. Doing so not only violates law, it exposes the municipality to significant liability.

IV. CONCLUSION

TC Retreat's Sober Home is necessary and is a valuable resource to the community at large. Those diagnosed with addiction and in early recovery are entitled, and will greatly benefit from the Sober Home. As stated by another federal district court, "[t]hose recovering from addiction have been shown to benefit from living with others in similar situations, and their presence in residential neighborhoods allows the recovering individuals to re-integrate into the community at large." *Corp. of Episcopal Church in Utah v. W. Valley City*, 119 F. Supp. 2d 1215, 1222 (D. Utah 2000).

In light of the foregoing, it is clear that the Home meets the definition of a Dwelling, single-family. Any other interpretation of the Ordinance is going to run afoul of federal law meant to protect disabled individuals from the very sort of discrimination that could occur here. We encourage members of the Board of Appeals to review the

outstanding case law on the subject. Courts have consistently found in favor of Sober Homes.

TC Retreat's Sober Home is a valued institution in this community, and we hope to allay some of the social stigma, fear and misunderstanding surrounding the disease of addiction. We hope that the Board of Appeals will permit the organization to move forward with its mission to help those in need and benefit our community.

Respectfully Submitted,

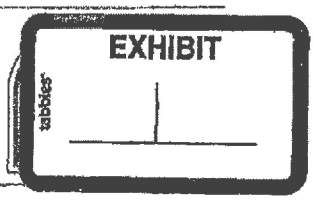
Dated: February 8, 2016

/s/ Thomas Gilbert
TC Retreat
By: Thomas Gilbert, its President

The City of Traverse City

Planning Department

GOVERNMENTAL CENTER
400 Boardman Avenue
Traverse City, Michigan
49684



January 20, 2016

Traverse City Retreat, Inc.
Attn: Thomas Gilbert
531 Randolph Street
Traverse City, MI 49684

Dear Mr. Gilbert,

The property commonly known as 1702 Comanche Street is zoned R-1b (Single Family Dwelling District) and allowed uses in this district are as follows:

- Accessory Dwelling Units (with conditions)
- Adult foster care Family home
- Boat houses
- Community gardens
- Dwellings, single family
- Essential services
- Golf courses
- Home occupations (with conditions)
- Medical Marihuana cultivation (with conditions)
- Playgrounds
- Tourist homes (with conditions)
- Other uses allowed by Special Land Use Permit

The City of Traverse City Zoning Code does not mention or define a "Sober Living Home" or a "Recovery Home" but it does define what a Residential Care and Treatment Facility is. A Residential Care and Treatment Facility is defined as a "facility providing services, programs and temporary shelter for residents who are undergoing alcohol or substance abuse rehabilitation."

I have reviewed the material in my file including correspondence with you, material submitted by neighbors, material from State filings, and the TC Retreat Facebook page. Using these sources, it is my understanding that TC Retreat is an affordable recovery program that is a temporary shelter (min. 6 months, max. 12 months) for male individuals undergoing substance rehabilitation. The TC Retreat Facebook page indicates that the property at 1702 Comanche is

an "immersion program," a "spiritually based program," "offers an affordable recovery program," is a "private pay model but may be covered under a health savings account (HSA)," that "insurance deductibles may be higher than the entire fee." Finally it indicates that "We do not want money to be the reason people cannot access our services."

The Articles of Incorporation filed by Traverse City Retreat with the State of Michigan indicate that the purpose of the entity is to "aid individuals and families in the recovery from Substance Use Disorder with a spiritually grounded, community based residential program." The purpose and activities of the entity are said to be "recovery support services" through a residential program.

Residents are guests of TC Retreat and do not pay rent; they pay a "shared living expense" to TC Retreat. Anyone suspected of drug or alcohol use will be immediately required to take a test. Residents will be instructed to watch each other and report suspected drug or alcohol use. Residents will be required to attend a weekly house governance meeting and Big Book study (Alcoholics Anonymous meetings). Residents will be subject to other requirements such as employment, curfews, no overnight guests and eating together.

The documentation and information that I have reviewed to date suggests that TC Retreat is a Residential Care and Treatment Facility because it is a facility providing services, programs and temporary shelter for residents who are undergoing alcohol or substance abuse rehabilitation. The documents and information filed with the State of Michigan by TC Retreat and posted to Facebook by TC Retreat identify it as a program providing services for a temporary period of time (i.e. 6-12 months). Some of the information provided by TC Retreat through correspondence is inconsistent with that which was filed with the State or posted to Facebook. The requirements / rules are indicative of services and programs and support the self-identification of TC Retreat as a Residential Care and Treatment Facility.

That being said, I find that the use, as described, at 1702 Comanche Street as a "Sober Living Home" or a "Recovery Home" meets the definition of a Residential Care and Treatment Facility per Section 1320.07 of the City of Traverse City Zoning Code and is not an allowed use in the R-1b (Single Family Dwelling District). Attached is an application to the Board of Zoning Appeals if you feel I have errored in this determination.

Sincerely,

David Weston
Planning and Zoning Administrator
231-922-4464

EXHIBIT

2

December 2, 2015

Good morning neighbors, when yesterday arrived I felt secure in my homestead at 1700 Comanche Street, however the security vanished when I found out that the house next door was being purchased for use as a recovery home for recovering alcoholics and drug users. I was informed by the intended owner that he intended to place six men in the house. I do not want an alcohol and drug recovery house in the neighborhood and not adjacent to my home. If you feel as I do I suggest you contact the Traverse City mayor, attorney, the Record Eagle news, the local TV news and your minister for help in stopping this disturbing entrance in the Comanche Street and Indian Woods area. Such an influence will result in loss in value of our property as well as making us feel that we must watch our children and grandchildren when they are visiting. I am doing the above suggested things and could use your help if you agree. The intended owner is TouchStone an intervention & professional services in recovery of alcoholics & drug users. TouchStone Phone 231 933-8845 & cell 231 590-8800.

Claude Osbourne

231 935-4845

EXHIBIT
3

T C RETREAT

January 20, 2016

Dear Neighbors,

Thank you for the opportunity to get together on December 9th at the Civic Center to share fears, hopes and concerns. Our home 1702 Comanche is owned by TC Retreat a 501(c)(3) charitable organization whose only mission is to help individuals and families into and maintain long term recovery from substance use disorder.

I'm sorry if I was not able to effectively communicate some of the answers. I'd like to take a few moments and address some of the questions a little more thoroughly.

The zoning administration will soon make a decision whether the recovery home fits within the definition of a single family dwelling as defined in the ordinance. The concerns about being a commercial or boarding house endeavor will also be dealt with through the zoning process and whether there are services or programs occurring there that make the home fall under the treatment center portion of the ordinance. I suspect whoever is unhappy with his decision will appeal. I pledge TC Retreat will follow all rules and procedures and will abide by whatever **final** decision is rendered.

Concerns about criminal histories were also expressed. TC Retreat will not allow anyone on the sex offender registry or a convicted arsonist to live at the house. Other situations will be dealt with on a case by case manner after application review, background check and interview process. We want a safe home and safe neighborhood as much as you do and will make decisions accordingly.

All residents and visitors will be informed of the parking rules and encouraged to follow the rules. If violations are observed we would like to handle it internally through me, Jenny or Walli, please give us a call. We have 5 parking spots (2 in garage, 3 next to garage) which should be enough for residents and visitors-we want to be good neighbors and follow the rules.

Residents agree to submit to random drug and alcohol tests upon request. We have the same type preliminary breath test units that the police use and a good relationship with Lab One for immediate testing. Please know this is a sober recovery home and residents will be exited immediately if they drink alcohol or use drugs. If you suspect a problem, please call us.

Another concern expressed was what happens to a resident who gets exited for using drugs/alcohol, threatens violence or otherwise violates law or house expectations. The resident who breaks the rules is exited immediately and offered: detox if appropriate, friends/family in sober environment or other options. We are committed to helping a guest find and get to an appropriate and safe place if he is willing, but I can assure you that place will not be at the TC Retreat Recovery Home.

We will give preference to those from northern Michigan. No resident will be "court ordered" to TC Retreat. We will not be marketing to downstate residents. The need is great overall in our community. and we recognize the importance of taking care of our own first. Our first resident came from Cadillac, MI and our second one graduated high school from Elk Rapids and has family in Grand Traverse County even though he has moved back from California.

Our residents make a commitment to live in the house and abide by the rules for 6 months to one year. With hotels, dorms, student housing on the next block over I don't think we are particularly transient but you are certainly free to disagree.

It is our sincere hope to be good neighbors, we pledge to keep up the house, smile and wave and help you out when you need it. It's a nice house and in a nice neighborhood and we pledge to keep it that way. We share your goals of having a safe, quiet neighborhood where property values are

maintained. We pledge to do our best. This is what has occurred in other communities where recovery homes are located. We trust it will happen here.

We are your brother, sons, uncles and fathers and if you have any concerns please call or visit and we'll do our best to address them immediately.

May God Bless you and yours during this New Year.

Most Sincerely,

Tom

Tom Gilbert (231)590-8800
TC Retreat Board President

Jenny Elmblad

Jenny Elmblad (231) 590-7034
TC RETREAT Administrator

Walli Soles (231) 878-3670
TC RETREAT First Resident

Walli Soles

EXHIBIT
4

Responsibilites & Expectations

In choosing to live at TC Retreat. A mutually – managed, democratically operated quality sober living environment, you are agreeing to abide by the following rules and expectations:

1. There are three rules at TCRETREAT: (1) No use of mood altering chemicals including alcohol; (2) No exclusive relationships with any guest of TCRETREAT (male or female); (3) No violence or threats of violence. Violations of these rules will be grounds for immediate dismissal from TCRETREAT. You will not receive a refund of your sobriety deposit and you are not entitled to the pro-rated portion of your paid shared living expenses.
2. If you relapse you will have to leave the house **immediately**-NO EXCEPTIONS! You will not receive a refund of your sobriety deposit and you not entitled to the pro-rated portion of your paid-shared living expenses.
3. Your monthly shared-living expenses must be paid in a timely manner to TCRETREAT staff. A $25 fee will be charged for late payments (received after the 5th day of the month) and for NSF checks. Failure to pay shared living expenses on time may result in dismissal from the house.
4. Because we are a group dedicated to practicing the principals of recovery, we are expected to participate in at least 4 outside AA/NA meetings per week, and a minimum of one service commitment per week and to work closely with a sponsor. It is essential that each member commit to practicing their own spiritual disciplines, positively contribute to the recovery environment at the residence and be willing to take direction and guidance from others.
5. We commit, while residing at TCRETREAT, to refrain from all romantic, exclusive or sexual relationships. Our focus during this short window of time in our lives is on our recovery and on developing relationships with GOD, our sponsor, Alcoholics Anonymous, Service in AA and creating lasting friendships. We are committed during this time at TCRETREAT to living our personal and spiritual recovery disciplines, to developing a strong work ethic and practicing these principles in all our affairs.
6. We are expected to attend all weekly community meetings, Big Book Studies, and special house meetings. Unexcused absences may result in dismissal from TCRETREAT.
7. We are expected to respect each other's right to anonymity. *Who you see here, what you hear here, let it stay here.*
8. No overnight stays are permitted within your first 30 days at TCRETREAT.
9. After your first 30 days, TCRETREAT staff, and housemates must be notified if you will be gone overnight. As a courtesy, it is expected that you give a number where you can be reached in case of an emergency. Only occasional overnights will be acceptable.
10. We are expected to have a full-time job within 2 weeks of entering TCRETREAT and maintain a full-time job throughout your stay.
11. All prescription and over- the- counter medication must be kept with your own personal belongings. You are expected to follow all doctors' orders for self-care and medication. All prescribed medications must have a label from the pharmacy where they were obtained.
12. Do not use anyone's personal items without permission. Mark all your personal items with your initials. Taking someone else's personal property without permission constitutes theft and will be dealt with immediately by the house.
13. You may store valuables including cash, jewelry, etc., in safekeeping at TCRETREAT, or be responsible for them.
14. Gambling or loaning money is prohibited.
15. Loaning your car to another resident is prohibited.

16. If you notice something in disrepair anywhere in the building (FIX IT!) or notify TCRETREAT staff.
17. FAILURE TO ADHERE TO THE EXPECATIONS AND RESPONSIBILTIES OF TCRETREAT MAY CONSTITUE DISMISSAL FROM THE RESIDENCE AND THE DEPOSIT WILL NOT BE REFUNDED.
18. All food and beverages are restricted to the kitchen and dining area. NO FOOD OR BEVERAGES are allowed in the bedrooms.
19. We are expected to keep our rooms neat and clean at all times. Beds are made by 9am daily. It is each guests' responsibility to keep the residence neat and in order. Failure to do your chore may result in dismissal from the residence.
20. Guests are encouraged to prepare and eat meals together as much as possible and help with cleanup for all meals. Dishes must be clean and put away after each use.
21. Turn off lights, TV and radios when not in use. Keep the volumes DOWN!
22. You are expected to give a minimum of one-month (30 days) notice when moving out of the residence or you will not receive a refund of your deposit.
23. Please keep your feet off the furniture. No sleeping in the community areas.
24. There is NO SMOKING permitted anywhere inside residence.
25. All the food in the refrigerator must be labeled with the name and date. Please do not eat other people's food without permission.
26. No pornography (magazines, videos, cable stations) will be permitted in the house at any time.
27. The appearance of TCRETREAT residence should always be neat and in good order. If you make a mess clean it up promptly.
28. Do your assigned chore completely and during the scheduled time.
29. No visitors allowed in the bedrooms. No visitors allowed in the residence between the hours of 10:30pm and 9:00am.
30. The curfew is midnight on weeknights and 1:00am on weekends.
31. When there is a phone call for someone who is unavailable you must agree to take a written message. If you listen to voicemail, take a written message before you erase the message.
32. Please keep your shower time to a minimum. There are others who may need hot water.
33. It is the responsibility of the guests of the residence to maintain the yard and sidewalks to the highest standard possible.
34. Do not smoke in front of the house. Use backyard for gathering and smoking .

I understand and agree to abide to the above responsibilities and expectations.

_____

Guest Signature / Date

_____

Witness Signature / Date

EMERGENCY CONTACT INFORMATION:

Name	Relation	Phone Number(s)

EXHIBIT 5

NARR National Association of Recovery Residences

Attachment 1

STANDARDS CRITERIA	RECOVERY RESIDENCE LEVELS OF SUPPORT			
	LEVEL I Peer-Run	LEVEL II Monitored	LEVEL III Supervised	LEVEL IV Service Provider
ADMINISTRATION	• Democratically run • Manual or P&P	• House manager or senior resident • Policy and Procedures	• Organizational hierarchy • Administrative oversight for service providers • Policy and Procedures • Licensing varies from state to state	• Overseen organizational hierarchy • Clinical and administrative supervision • Policy and Procedures • Licensing varies from state to state
SERVICES	• Drug Screening • House meetings • Self help meetings encouraged	• House rule / provide structure • Peer run groups • Drug screening • House meetings • Involvement in self help and/or treatment services	• Life skill development emphasis • Clinical services utilized in outside community • Service hours provided in house	• Clinical services and programming are provided in house • Life skill development
RESIDENCE	• Generally single family residences	• Primarily single family residences • Possibly apartments or other dwelling types	• Varies – all types of residential settings	• All types – often a step down phase within care continuum of a treatment center • May be a more institutional environment
STAFF	• No paid positions within the residence • Perhaps an overseeing office	• At least 1 compensated position	• Facility manager • Certified staff or case managers	• Credentialed staff

September 6, 2011

Northern Michigan Regional Entity

1420 PLAZA DR • PETOSKEY, MI 49770 231-487-9144 • OFC. 231-487-9059 • FAX NMRE.ORG

EXHIBIT 6

January 28, 2016

Thomas Gilbert
President of the Board
TC Retreat
P.O. Box 1941
Traverse City, Michigan 49685

Dear Mr. Gilbert:

I am writing this letter to support the TC Retreat's Sober Living House. The Michigan Department of Health and Human Services has a published a technical advisory regarding Recovery Housing, which I have enclosed for your review.

As noted in this document, a "Level I – Peer Run" recovery house is not a treatment facility. While drug screenings may occur, that is not treatment. There is no treatment staff, licensed or otherwise, involved in this setting. Additionally, this is not a licensed setting, and does not have a license to provide substance use disorder treatment services.

I commend you and your organization for developing this residence. Transition to community living is a critical stage for people in recovery. The opportunity to make that transition in a structured, supportive environment is much needed in our communities. As the state designated entity responsible for substance use disorder services, we welcome this incredible recovery housing residence.

I wish you the best in this endeavor. Please feel free to call if we can be of assistance.

Sincerely,

Dave Schneider
Chief Executive Officer

Encl.

OFFICE OF RECOVERY ORIENTED SYSTEMS OF CARE

TREATMENT TECHNICAL ADVISORY #11

SUBJECT: Recovery Housing

ISSUED: July 31, 2015

EFFECTIVE: October 1, 2015

PURPOSE:

The purpose of this advisory is to provide guidance to the field on developing and supporting recovery housing for *Prepaid Inpatient Health Plans (PIHPs)* and interested programs.

SCOPE:

This advisory impacts *PIHPs* and their provider network.

BACKGROUND:

The Michigan Department of Health and Human Services, Office of Recovery Oriented Systems of Care (OROSC) began researching opportunities for recovery housing in late 2011. A request was sent to all states and several of the former coordinating agencies, for information regarding their recovery housing standards and structures. In addition, the *National Association of Recovery Residences' (NARR)* standards were reviewed. Many states endorsed the *Oxford House* model, while others had a combination of housing options available for their recovery population. States that have been awarded *Access to Recovery Grants* had developed extensive standards to monitor recovery housing and funding that went along with it.

Clarification regarding using *Substance Abuse Block Grant (SABG)* funds for recovery housing was sought from the *Center for Substance Abuse Treatment*. *SABG* funds may not be used to fund an individual's lodging in recovery housing. However, *SABG* funding can be used in conjunction with a treatment service category to provide room and board for any individual, to the extent that it is integral to the treatment process. In addition, the *SABG* set aside for pregnant and parenting women does allow payment to provide housing eligible women. Recovery Housing for the pregnant and parenting population will ideally be offered through a designated program to ensure that all of their needs are met.

Definitions

OROSC has defined "recovery housing" as follows:

> *Recovery housing provides a location where individuals in early recovery from a behavioral health disorder are given the time needed to rebuild their lives, while developing the necessary skills to embark on a life of recovery. This temporary arrangement will provide the individual with a safe and secure environment to begin*

the process of reintegration into society, and to build the necessary recovery capital to return to a more independent and functional life in the community. These residences provide varying degrees of support and structure.. Participation is based on individual need and the ability to follow the requirements of the program. (Excerpt from the proposed *Substance Use Disorder Benefit Package* for the state of Michigan).

RECOMMENDATIONS:

From the review of standards available nationally, OROSC determined that there were certain aspects of the establishment and maintenance of recovery housing that was necessary for success. They are as follows:

- Maintain an alcohol-and illicit-drug-free environment.
- Maintain a safe, structured, and supportive environment.
- Set clear rules, policies, and procedures for the house and participating residents.
- Establish an application and screening process for potential residents.
- Endeavor to be good neighbors and get residents involved in their community.

Recovery Housing Standards

After careful consideration of the options available, OROSC has come to the determination that the levels of recovery housing and standards identified by *NARR* most closely fit the vision of recovery housing for Michigan. The levels are as follows:

- **Level I - Peer Run** – staff positions within the residence are not paid; setting is generally single family residences; services include drug screenings and house meetings; and residence is democratically run with policies and procedures.
- **Level II - Monitored** – staff consists of at least one compensated position within the house; setting is primarily single family residences, potentially apartments or other types of dwellings; services include house rules, peer run groups, drug screens, and house meetings; and residence is administered by house manager with policies and procedures.
- **Level III - Supervised** – staff includes a facility manger, certified staff or case manager(s); setting is all types of residential; services include clinical services accessed in the community, service hours within the house, and in-house life skill development; and residence has administrative oversight with policies and procedures.
- **Level IV - Service Provider** – staff are credentialed; setting is all types of residential, often a step down phase within care continuum of a treatment center; services include in-house clinical services and life skill development; and residence has clinical and administrative supervision with policies and procedures.

The following are samples of the standards identified by *NARR*; they are representative of the interests and activities that OROSC supports. Recovery residences must:

- Identify clearly the responsible person(s) in charge of the recovery residence to all residents.
- Collect and report an accurate process and outcome data for continuous quality improvement.
- Maintain an accounting system that fully documents all resident's financial transactions, such as, fees, payments, and deposits.

- Use an applicant screening process that helps maintain a safe and supportive environment for a specific group of persons in recovery.
- Foster mutually supportive and recovery-oriented relationships between residents and staff through peer-based interactions, house meetings, community gatherings, recreational events, and other social activities.
- Encourage each resident to develop and participate in his/her own personalized recovery plan.
- Provide non-clinical, recovery support and related services.
- Encourage residents to attend mutually supportive, self-help groups, and/or outside professional services.
- Maintain the interior and exterior of the property in a functional, safe, and clean manor that is compatible with the neighborhood.
- Provide rules regarding noise, smoking, loitering, and parking that are responsive to a neighbor's reasonable complaints.

The full *NARR* standards can be found at http://narronline.org/wp-content/uploads/2013/09/NARR-Standards-20110920.pdf

In addition to the standards developed by *NARR*, recovery residences should maintain a prevention license through the Michigan Department of Licensing and Regulatory Affairs. This will help ensure a minimum level of housing standards throughout the state.

REFERENCES:

National Association of Recovery Residences. (2011). Standard for Recovery Residences. Retrieved October 6, 2014, from http://narronline.org/wp-content/uploads/2013/09/NARR-Standards-20110920.pdf

Oxford House International. (2011). Oxford House Manual. Retrieved May 25, 2012, from http://www.oxfordhouse.org/userfiles/file/doc/man_house.pdf.

Ocean State Coalition of Recovery House Standards. (2011). Standards. Retrieved May 25, 2012, from http://www.recoveryhousingri.com/

U.S. Code of Federal Regulations, Public Health Service, 45 CFR Part 96 § 129. (2001). *Revolving funds for establishment of homes in which recovering substance abusers may reside.* Retrieved May 25, 2013, from http://www.gpo.gov/fdsys/pkg/CFR-2009-title45-vol1/xml/CFR-2009-title45-vol1-sec96-129.xml.

APPROVED BY: _____

Deborah J. Hollis, Director
Office of Recovery Oriented Systems of Care

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80178-CIV-MIDDLEBROOKS/JOHNSON

JEFFREY O. et al.,

Plaintiffs,

vs.

CITY OF BOCA RATON,

Defendant.
_____/

FINAL ORDER

This cause came before the Court for final disposition during a non-jury trial from January 22, 2007 through January 29, 2007. Plaintiffs brought suit against the Defendant City of Boca Raton in March 2003, alleging that it violated the Fair Housing Act, 42 U.S.C. §3601 et seq. (FHA), Title II of the Americans with Disabilities Act, 42 U.S.C. §12131, et seq. (ADA), and the 14th Amendment to the United States Constitution by passing Ordinance 4649, as amended by Ordinance 4701, and Section 28-2. Primarily, Plaintiffs allege that the City's actions discriminate against them based on their handicapped status where these two zoning provisions limit the ability of Plaintiffs to reside in residential areas of the City. Pursuant to Federal Rule of Civil Procedure 52(a), I make the following findings of fact and conclusions of law.

Facts

Plaintiffs are individuals who are recovering alcoholics and drug addicts ("Individual Plaintiffs"), as well as corporate entities ("Provider Plaintiffs") which provide housing and additional services to approximately 390 recovering individuals in areas zoned for residential use

within the Defendant City of Boca Raton ("City"). Steve Manko is the president of Provider Plaintiffs who own a number of apartment buildings which are marketed to recovering individuals as sober housing. In their sober housing, Provider Plaintiffs provide different levels of oversight to their residents, including, but not limited to drug testing, curfews, room checks, medication controls, and group meetings.

In 2002, the City was faced with the dilemma of how to regulate sober houses, such as Provider Plaintiffs'. Ordinance Number 4649 was proposed to deal with the issue. At the city council meeting where the council took up this ordinance, many residents of the City spoke specifically about Provider Plaintiffs' facilities and their impact on the neighborhood. Provider Plaintiffs served approximately 390 individuals in 14 apartment buildings, all of which are within a quarter of a mile of each other. The residents of the City expressed many concerns, including the way in which Provider Plaintiffs operated their business. Specifically, residents spoke to Provider Plaintiffs' policy of evicting individuals who relapse while keeping the person's deposit[1] and kicking individuals out with no where to go when they relapsed. The residents were also concerned about the changing dynamic of their neighborhood where the individuals living in Provider Plaintiffs' buildings frequently loitered in front of the apartment buildings, did not stay for more than a few months, and were often from out of town. There were also a lot of broad generalizations made by residents at the meeting, regarding the negative impact a high concentration of recovering individuals had on their neighborhood. One resident testified that he was able to purchase drugs at Boca House. At that meeting, the city council passed Ordinance Number 4649. The city council later passed Ordinance 4701 which amended Ordinance 4649. Ordinance Number 4649, as amended by Ordinance Number 4701 ("Ordinance 4649") states:

[1] Residents of Provider Plaintiffs paid rent by the week, rather than on a monthly basis. There was testimony that at least one individual relapsed multiple times in a one-month span, allowing Manko to keep the individual's deposit each time. This testimony was further supported by Provider Plaintiffs' damage expert who when calculating lost profits included over ten percent of Provider Plaintiff's total income as that derived from lost deposits.

> Substance Abuse Treatment Facility shall mean a service provider or facility that is: 1) licensed or required to be licensed pursuant to Section 397.311(18). Fla. Stat. or 2) used for room and board only and in which treatment and rehabilitation activities are provided at locations other than the primary residential facility, whether or not the facilities used for room and board and for treatment and rehabilitation are operated under the auspices of the same provider. For the purposes of this subparagraph (2), service providers or facilities which require tenants or occupants to participate in treatment or rehabilitation activities, or perform testing to determine whether tenants or occupants are drug and/or alcohol free, as a term or condition of, or essential component of, the tenancy or occupancy shall be deemed to satisfy the "treatment and rehabilitation activities" component of the definition contained in this section.

The Ordinance requires that Substance Abuse Treatment Facilities as defined above be located in the City's Medical Center District, or with approval, in a Motel/Business district.

The City put forth evidence to establish that in passing Ordinance 4649 it was attempting to group together compatible uses and separate non-compatible uses. For example, the City's Mayor testified that Provider Plaintiffs engaged in commercial and medical uses, therefore making them appropriately placed in medical or commercial zones. The City's planning and zoning director testified that Provider Plaintiffs' facilities which offered a "unique recovery program" were different from normal apartment buildings. The planning and zoning director also explained that the services provided by Provider Plaintiffs were not residential in character. Therefore, where the services provided were not residential in character, Provider Plaintiffs' facilities should not be located in a residential area according to the planning and zoning director.

Provider Plaintiffs' buildings are located in an area with other multi-family residences. In addition, the area in which Provider Plaintiffs' buildings are located is very close to commercial areas. The appearance of Provider Plaintiffs' buildings does not stand out in the area. There was no evidence at trial as to how Provider Plaintiffs' facilities impacted the surrounding residential area, including but not limited to additional cars in the area, additional foot traffic in the area, a burden on public resources, or even an appearance that was out of character with the area.

Also involved in this case, is a provision of the City Code, Section 28-2, which defines the term family as:

> 1 person or a group of 2 or more persons living together and interrelated by bonds of consanguinity, marriage, or legal adoption, or a group of persons not more than 3 in number who are not so interrelated, occupying the whole or part of a dwelling as a separate housekeeping unit with a single set of culinary facilities. The persons thus constituting a family may also include gratuitous guests and domestic servants. Any person under the age of 18 years whose legal custody has been awarded to the state department of health and rehabilitative services or to a child-placing agency licensed by the department, or who is otherwise considered to be a foster child under the laws of the state, and who is placed in foster care with a family, shall be deemed to be related to a member of the family for purposes of this chapter. Nothing herein shall be construed to include any roomer or boarder as a member of a family.

The City requires a residential dwelling unit be occupied by one family. Therefore, this provision limits the amount of unrelated people who can live in a residential dwelling unit in the City.

Individual Plaintiffs and the current residents of Provider Plaintiffs who testified were all recovering alcoholics or drug addicts. Because of their addiction, these individuals lost jobs and families, and some were unable to keep a roof over their head during their active addiction. One Plaintiff testified that personal hygiene was the first ability he lost during a relapse. He did not take care of himself, including self-grooming and eating. A current resident of Provider Plaintiffs testified that during her active addiction she was homeless. Each of the recovering individuals testified as to the difficulties they were faced with as addicts, including an inability to possess large amounts of money, have an intimate relationship with another person, or be around people consuming alcohol or using drugs. Recovery from alcohol or drug addiction is an ongoing process, which for many individuals can be a lifelong process. At one time each of the Individual Plaintiffs lived in Provider Plaintiffs' apartment buildings. They also testified that if they relapsed they would return to live in Provider Plaintiffs' residences. The restrictions

imposed by Provider Plaintiffs during the residents' early stages of recovery aided these individuals as they advanced through their recovery.

Plaintiffs' expert, Riley Regan, testified as to the impact addiction has on one's life, not just during active addiction, but also for the rest of his or her life. It is common for recovering individuals to need to live in an environment that is drug and alcohol free in order to further their recovery. Regan stated that without drug testing there is no way for everyone to be sure that the living environment is drug and alcohol free. This testimony was also supported by the recovering individuals who testified that drug testing kept them motivated to stay sober and kept them safe. Regan also testified about the need for recovering individuals not to live alone because loneliness can trigger a relapse and living with other individuals imposes an accountability to other people. This testimony was in line with that of the recovering individuals who testified where they described loneliness and boredom as possible triggers to relapses. This is not to say that some of the individuals wanted to live alone and did live alone, but many acknowledged the benefits they had and could reap from living with other recovering individuals.

Provider Plaintiffs provided many tools to recovering individuals to aid in their recovery. It is more than just housing, it was also characterized as a treatment model. While this is arguably a laudable endeavor on Manko's behalf, his business model did not always appear to be so altruistic. Manko's positions regarding what services he provided and what legal arrangement he had with his residents shifted depending on the implications of such for his business model, more than for the therapeutic needs of his residents. For example, prior to this litigation, recovering individuals executed a license agreement with Provider Plaintiffs in what may have been an effort to escape traditional landlord/tenant laws. However, such individuals now execute a lease. This change in terminology coincides with Manko's current suit which seeks protection from the Fair Housing Act and his attempt at differentiating himself from the commercial use

that concerned the City. Instead, Manko is attempting to focus on the housing aspect of the services he provides. Provider Plaintiffs continue to market themselves in the recovering community as a provider of a "unique recovery program." Provider Plaintiffs' marketing literature uses terms like "Three-Phase Transitional Recovery Program." All of these facts support the conclusion that Provider Plaintiff is providing more than housing.

Manko's history with the City and his shifting position is also exemplified by his agreement with the City to comply with Section 28-2, but failing to do so. In 1996, Manko was cited for violating the occupancy limitation of the City code. That same year Manko entered in a stipulation with the City agreeing not to have more than three unrelated persons occupying a single unit. Again in 2001, Manko was cited with the same violation and again informed the City that he was seeking to comply with Section 28-2, although occasionally violated the limitation because of unexpected events. At trial it became clear that Manko never consistently limited his units to three individuals. Furthermore, at trial Manko argued that having more than three individuals in a unit[2] was essential to the residents' recovery. However, Manko's decision to continue to put more than three individuals in a unit could reasonably have been based on economics. Provider Plaintiffs charged $170 a week for each recovering individual. With four people in a unit, Provider Plaintiffs grossed approximately $2,720 a month per unit. Manko testified that the same unit rented to a family of four would go for approximately $1,200, less than half of what Provider Plaintiffs made by placing more than three recovering individuals in each unit. This calculation may have played into Manko's continued violation of Section 28-2. Provider Plaintiffs' continued profitability is exemplified by their ability to acquire a significant number of apartment buildings in the area.

Manko's questionable business practices aside, the evidence at trial did demonstrate that

[2]Manko's position at trial was that each bedroom needed to have two people in it to be most therapeutically effective. This position made Section 28-2 applicable to most of Manko's units where most of the apartments in his apartment buildings had more than one bedroom.

the two provisions Plaintiffs challenge limit the ability of recovering individuals to obtain housing within the residential areas of the City. The recovering individuals testified about the importance of living in a residential area because there are many more temptations in commercial zones, such as bars and hotels which recovering addicts would frequent during their active addition. Therefore, it would be more difficult for them to maintain their sobriety while living in such areas. As discussed above many recovering individuals need, at least at one point during their recovery, to live in a substance-free environment and their recovery is further supported by group living arrangements, both for the practicality of day-to-day living, as well as, the economic viability of such housing arrangements.

Plaintiffs' claims include a claim for a reasonable accommodation. The City put forth evidence that its Petition for Special Case Approval form was the form an individual would use to request a reasonable accommodation. This form makes no mention of a reasonable accommodation or a disability. The City attorney testified that this form is how a person or entity would request a reasonable accommodation. The form lists five different options for which it is a petition for, none of which is a reasonable accommodation. The City attorney testified that an applicant would check the sixth box which states Other (specify), with a blank line. The City's zoning code made no provision for individuals to request a reasonable accommodation from zoning and land use restrictions based on disability.

Law

Plaintiffs bring claims under the Fair Housing Act, 42 U.S.C. §3601 et seq., the American with Disabilities Act, 42 U.S.C. §12131 et seq., and the 14th Amendment to the United States Constitution. I begin with Plaintiffs' Federal Fair Housing Act claim because I think that is where the crux of this case lies.

Standing

Plaintiffs assert they have standing to bring a claim under the FHA because they are

disabled due to their recovering status. The City disagreed asserting, amongst other things, that the evidence supported the position that the recovering individuals could complete all major life activities. The FHA defines handicap with respect to an individual as having "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such impairment; or (c) being regarded as having such an impairment." 42 U.S.C. §3602(h). The existence of such handicap must be examined on a case-by-case basis. *See Albertson's Inc. v. Kirkingburg*, 527 U.S. 555, 566 (1999).[3] Major life activities include walking, learning, performing manual tasks, getting an apartment, being unable to perform a class of jobs, and caring for oneself. *Rossbach v. City of Miami*, 371 F.3d 1354, 1357-59 (11th Cir. 2004); *U. S. v. S. Mgmt. Corp.*, 955 F.2d 914, 919 (4th Cir. 1992). To substantially limit means a long-term, permanent restriction, or considerable. *See Toyota Motor Mfg., Kentucky, Inc. v. Williams*, 534 U.S. 184, 196 (2002)(speaking to the definition of substantial as including considerable); *Rossbach*, 317 F.3d at 1357. The recovering individuals testified about the negative impact their addiction had on their lives, including preventing them from caring for themselves or keeping a home at times, and losing jobs and families. All of these things impacted their everyday lives in a significant way. All Individual Plaintiffs and current residents of Provider Plaintiffs testified, that at one time, they had because of their addiction been unable to perform one of these major life activities. For some the deprivation was long-term. For others the deprivation may have been short-term, but repeated itself with frequency when he or she would relapse and again find themselves without their family, their home, their job, or ability to care for his or herself. The evidence established that the individuals involved suffered an impairment which qualified them as disabled under the FHA.

The position that recovering individuals can be considered disabled is supported both in

[3]While the *Kirkingburg* case dealt with the American with Disability Act, as courts have noted the definitions under the two acts, one of disability and the other using the term handicap, are "almost verbatim." *Bragdon v. Abbot*, 524 U.S. 624, 631 (1998). Accordingly, I will use the terms and applicable analyses interchangeably.

case law and legislative history.[4] "As a medical matter, addiction is a chronic illness that is never cured but from which one may nonetheless recover." *S. Mgmt. Corp.*, 955 F.2d at 920. "Alcoholism, like drug addiction, is an 'impairment' under the definitions of a disability set forth in the FHA, the ADA, and the Rehabilitation Act." *Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 46 (2d Cir. 2002)("*RECAP*"). Congress intended to treat drug addiction as a significant impairment constituting a handicap unless excluded, such as by current drug use in accordance with 42 U.S.C. §3602(h). *See Lakeside Resort Enters., LP v. Bd. of Supervisors of Palmyra Township*, 455 F.3d 154, 156 n.5 (3d Cir. 2006); *RECAP*, 294 F.3d at 46; *MX Group, Inc. v. City of Covington*, 293 F.3d 326, 338-39 (6th Cir. 2002); *S. Mgmt. Corp.*, 955 F.2d at 919. The Fourth Circuit specifically spoke to the need for addicts to be given equal access to housing, instead of being denied housing on the basis of their constant craving and its accompanying dangers. *S. Mgmt. Corp.*, 955 F.2d at 922. I do not pass on the question of a *per se* disability for recovering alcoholics or drug addicts. As a matter of fact I do not think a *per se* rule is appropriate in these circumstances where the court's obligation is to do a case-by-case evaluation to determine if an individual is handicapped. However, that does not preclude these individuals from satisfying the definition. Their testimony was moving and credible.

The definition of disability includes two other possibilities by which Plaintiffs can demonstrate their standing under the FHA, having had a record of the type of impairment discussed above, or being regarded as having such an impairment. 42 U.S.C. §12102(2). In order to demonstrate that an individual is handicapped due to having had a record of an impairment, the individual must have satisfied the first definition at some point. *See Burch v.*

[4]This position is also supported by 28 C.F.R. §35.104(4)(1)(ii) which specifically references drug addiction and alcoholism as one meaning of physical or mental impairment in regards to nondiscrimination on the basis of disability in state and local government services. This section of the Code of Federal Regulations also directly addresses individuals who have successfully completed a rehabilitation program. 28 C.F.R. §35.131(a)(2) states "[a] public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in the current use of drugs and who - -" is participating in a supervised rehabilitation program or successfully completed a rehabilitation program.

Coca-Cola Co., 119 F.3d 305, 321 (5th Cir. 1997). All the individuals who testified at trial had experienced active drug or alcohol addiction at one point in their lives. As discussed above, the Individual Plaintiffs and current residents had been homeless, unable to hold down a job, or take care of themselves during their active addiction. Active addiction and its recovery are not short-term problems. They are long-term and for many require permanent diligence to maintain their sobriety. Their addiction particularly in its active stages substantially limited major life activities. This evidence supported these individuals having met the first definition, at the very least during their active addiction. Therefore, even if the above analysis is incorrect as to the individuals currently satisfying the first definition, where during their active addiction they satisfied the first definition, Individual Plaintiffs have a record of such an impairment making them handicapped under the second definition of the FHA.

There are two additional points I would like to make regarding the matter of standing in this case. First, is that the Individual Plaintiffs are not current residents of Provider Plaintiffs. However, they did testify that if they were to relapse they would return to Provider Plaintiffs' residences for some period of time during their recovery after they completed detoxification. For cases brought under the FHA, standing is to be as broad as the Constitution permits. *See Jackson v. Okaloosa County, Fla.*, 21 F.3d 1531, 1537 (11th Cir. 1994). *Jackson* involved a plaintiff's challenge to the site selection process regarding a public housing project. *Id.* Plaintiff was wait-listed for the project and stated her intention to probably move in once it was built. *Id.* In this case, Individual Plaintiffs stated their intention to return to Provider Plaintiffs' residences should they relapse, which is a constant significant risk for recovering individuals. This is a similar position to that of the plaintiff in *Jackson*. Given Individual Plaintiffs' stated intention to return upon the happening of a certain likely event and the broad policy of standing under the FHA, I

conclude the Individual Plaintiffs have standing to challenge the City's action.[5]

The other point I want to make involves the propriety of Provider Plaintiffs' standing. FHA cases are often brought by a provider of housing on behalf of the residents it seeks to house. *See Brandt v. Vill. of Chebanse, Ill.*, 82 F.3d 172, 173 (7th Cir. 1996); *Smith & Lee Assocs., Inc. v. City of Taylor, Mich.*, 102 F.3d 781 (6th Cir. 1996). Moreover, Provider Plaintiffs' status as a profit enterprise does not negate such standing. *See Brandt*, 82 F.3d at 173(case brought by residential housing developer); *Smith & Lee Assocs., Inc.*, 102 F.3d at 781(suit brought by profit owner of group home). Accordingly, all parties to this action have standing to bring their FHA claims.

Merits of Plaintiffs' claims under the Fair Housing Act

This case tests the limits of the protection provided by the FHA and a municipality's ability to legislate in an effort to preserve the character of its residential neighborhoods. Legally this is a difficult case where Plaintiffs are protected by the FHA, but exactly how that protection impacts the City's acts is unclear. The case is made more difficult by its facts where the City claims it was attempting to do something that while possibly permissible under the law, is not what it did by passing the Ordinance. My conclusion in this case is that the City's actions challenged here are limited by the FHA, the question is how limited.

Plaintiffs argued that the City's ordinances are discriminatory and thus, in violation of the FHA. The City responded that it was merely trying to move commercial/medical uses out of residential areas. 42 U.S.C. §3604(f) of the FHA prohibits a public entity from discriminating against disabled persons by denying such persons the ability to live in a dwelling. The amendments to the FHA, which added handicapped individuals, were a statement by Congress of the commitment to end the unnecessary exclusion of individuals with disabilities from American

5 This is also supported by the statute which talks about who may bring a suit under the FHA as an aggrieved person which is defined to include any person who "believes that such person *will be* injured by a discriminatory housing practice that is about to occur." 42 U.S.C. §3602(i)(emphasis added).

mainstream where such exclusion was often based on generalizations and stereotypes of people's disabilities and the attendant threats of safety that often accompanied these generalizations. *See Elliot v. City of Athens, GA*, 960 F.2d 975, 978 (11th Cir. 1992)(discussing the House Report on the Fair Housing Amendments Act) *abrogated by, City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995). Congress intended for the FHA to apply to zoning ordinances. *See Larkin v. State of Mich. Dep't of Soc. Servs.*, 89 F.3d 285, 289 (6th Cir. 1996)(discussing the explicit intent of Congress to have the FHA apply to zoning laws). However, the FHA does not pre-empt or abolish a municipality's power to regulate land use and pass zoning laws. *See Hemisphere Bldg. Co., Inc. v. Vill. of Richton Park*, 171 F.3d 437, 440 (7th Cir. 1999); *Bryant Woods Inn, Inc. v. Howard County, Md.*, 124 F.3d 597, 603 (4th Cir. 1997). "Land use restrictions aim to prevent problems caused by the 'pig in the parlor instead of the barnyard.'" *City of Edmonds,* 514 U.S. at 732 (quoting *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926)). The amendments to the FHA were intended to prohibit the use of zoning regulations to limit "the ability of [the handicapped] to live in the residence of their choice in the community." H.R.Rep. No. 100-711, 100th Cong., 2d Sess 24 (1988), U.S. Code Cong. & Admin. News 1988, pp. 2173, 2185. The intersection between these two principles is where this case meets.

It is against this backdrop that I address Plaintiffs' claims. Plaintiffs challenge two provisions of the City's zoning code, Ordinance 4649 and Section 28-2. Plaintiffs' argument is that each ordinance on its own, and the two in combination effectively limit the ability of recovering individuals to live in residential areas of the City in violation of the FHA. There are two ways to prove a violation of the FHA. *See Larkin,* 89 F.3d at 289. First is by showing that the defendant was motivated by a discriminatory intent against the handicapped. *Id.* The second is where a defendant's actions are neutral, but have a discriminatory effect, thus having a disparate impact on the handicapped. *Id.* Plaintiffs argued they have proven a violation of the FHA under both avenues. This case does implicate both avenues. Plaintiffs' claim as to

Ordinance 4649 is best analyzed under the discriminatory intent theory while Plaintiffs' claim as to Section 28-2 is most appropriately analyzed under the disparate impact theory. Accordingly, I will address them separately.

Ordinance 4649

I begin with Plaintiffs' challenge to Ordinance 4649. Ordinance 4649 defines substance abuse treatment facilities and requires them to be in the City's medical district or with a conditional permit in a motel/business district. An ordinance facially discriminates against the handicapped where it singles them out and applies different rules to them. *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1500 (10th Cir. 1995); *Marbrunak, Inc. v. City of Stow*, 974 F.2d 43, 46-47 (6th Cir. 1992). As applied to this case, the question is not whether the City was specifically intending to discriminate against Plaintiffs, but rather whether the ordinance on its face treats recovering drug addicts and alcoholics different from non-handicapped individuals. *See Larkin,* 89 F.3d at 290 (discussing how a defendant's benign motive does not prevent a statute from being discriminatory on its face); *see also Alexander v. Choate*, 469 U.S. 287 (1985)(discussing how discrimination against the handicapped is often the result of thoughtlessness, not particular offensive anger). The language of the Ordinance singles out recovering individuals where they are the individuals who would be residing in a substance abuse treatment facility. *See McWright v. Alexander*, 982 F.2d 222, 228 (7th Cir. 1992)(discussing how discrimination against an individual because of his or her handicap is often aimed at an effect of the handicap rather than the handicap itself). While this does not mean that all recovering individuals live in a substance abuse treatment facility, there was no evidence, nor did anyone argue that non-recovering individuals live in substance abuse treatment facilities. Accordingly, Ordinance 4649 treats recovering individuals differently from non-recovering individuals where it requires the individuals who live in substance abuse treatment facilities, recovering individuals, to live in the City's medical zone or with conditional approval in a motel/business zone. This is

sufficient to establish a prima facie case of discrimination. However, my analysis does not end here.

Next, I must determine if the City's differential treatment of recovering individuals is justified such that it is not in violation of the FHA. The Eleventh Circuit has not addressed the standard a governmental defendant must meet to justify disparate treatment under the FHA.[6] Therefore, I look to other circuits for guidance on what the City is required to prove to establish that this distinction is not discriminatory under the FHA. *See McAbee v. City of Fort Payne*, 318 F.3d 1248, 1252 (11th Cir. 2003)(looking to other circuits for guidance as to what standard to apply where the Eleventh Circuit had not adopted one yet). Four United States Courts of Appeals have addressed this issue. *Cmty. House, Inc. v. City of Boise, Idaho*, 468 F.3d 1118 (9th Cir. 2006); *Larkin*, 89 F.3d 285; *Bangerter*, 46 F.3d 1491; *Familystyle of St. Paul, Inc. v. City of St. Paul, Minn.*, 923 F.2d 91 (8th Cir. 1991). The Eighth Circuit was the first to develop a test to be used in these situations, but none of the other circuits confronted with the issue have chosen to follow the Eighth Circuit's analysis. In *Familystyle*, the Eighth Circuit adopted the rational relation test finding no FHA violation where a defendant demonstrated that its action was rationally related to a legitimate governmental interest. Two of the other three circuits which have addressed this issue determined that once a plaintiff has established an ordinance is facially discriminatory, a defendant can present one of two possible justifications for the discriminatory ordinance: (1) legitimate public safety concerns; or (2) that the restriction benefits the protected class. *Cmty. House, Inc.*, 468 F.3d at 1125 (9th Cir.); *Bangerter*, 46 F.3d at 1503-04 (10th Cir.).

[6]In a recent unpublished opinion, the Eleventh Circuit employed the test from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) in an FHA context. *See Boykin v. Bank of Am. Corp.*, 162 Fed. Appx. 837 (11th Cir. 2005). However, the facts of *Boykin* are substantially different than those in the present case. In *Boykin*, the plaintiff was challenging a bank's treatment of her loan application. Therefore, the case involved a discriminatory act during a residential real-estate related transaction against an individual being established through circumstantial evidence. This case involves two pieces of legislation passed by a City and a facial discrimination challenge. Plaintiffs' claims do not rely on circumstantial evidence, but instead relied on the City's legislation and its impact on handicapped individuals. Therefore, the instant situation is not sufficiently analogous to the facts of *Boykin* to cause me to determine that the Eleventh Circuit would employ a *McDonnell Douglas* test here. *See Cmty. House, Inc. v. City of Boise, Idaho*, 468 F.3d 1118, 1124 (9th Cir. 2006)(discussing how the *McDonnell Douglas* test is inapplicable to facial discrimination challenges under the FHA).

In refusing to use the rational relation test employed in *Familystyle*, the Tenth Circuit discussed how an equal protection analysis is misplaced where in an FHA claim a handicapped plaintiff is bringing a claim based on a statute of which he or she is the "direct object of the statutory protection." *Bangerter*, 46 F.3d at 1503. The Ninth Circuit adopted the Tenth Circuit test arguing a similar distinction. It discussed how those protected by the FHA were not necessarily protected classes for constitutional purposes, thereby not making the rational relation test appropriate. *Community House, Inc.*, 468 F.3d at 1125 (discussing how this standard is also more in line with the Supreme Court's analysis in *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.v. Johnson Controls, Inc.*, 499 U.S. 187 (1991)). The Sixth Circuit did not adopt either the *Bangerter* or the *Familystyle* test, but instead stated that "in order for facially discriminatory statutes to survive a challenge under the FHAA, the defendant must demonstrate that they are 'warranted by the unique and specific needs and the abilities of those handicapped persons' to whom the regulations apply." *Larkin*, 89 F.3d at 290 (quoting *Marbrunak, Inc.*, 974 F.2d at 47). I agree that a rational relation test is not appropriate where the individuals bringing this statutory claim are the direct object of its protection, the protection of which appears to have been intended to be greater than that provided by the rational relation test. I agree that the presence of either of the *Bangerter* justifications would allow a facially discriminatory statue to survive an FHA challenge.

However, I am not sure that the *Bangerter* test includes all possible justifications. As discussed below, I recognize a municipality's interest in protecting the residential character of a neighborhood, as was argued strenuously here, and its ability to legislate such protection. While I agree with the City that this is a legitimate interest, I also recognize that this protection must be legislated with the needs of those protected by the FHA in mind.

Having articulated possible justifications that would allow Ordinance 4649 to survive Plaintiffs' FHA challenge, this issue becomes whether such justifications are present in this case.

This is a difficult analysis where the City's primary justification was grouping compatible uses together, which is not one of the *Bangerter* justifications, nor is it a justification recognized by any of the other circuits that have addressed this issue. That being said, I will evaluate all justifications the City put forth for Ordinance 4649 in an effort to determine whether, even if in combination, they support the Ordinance and allow it to withstand Plaintiffs' challenge. There was some evidence at trial regarding public safety concerns[7] the City had about Provider Plaintiffs' residences. In *Bangerter*, the court pointed out that the statute itself states that "[n]othing in this subsection requires that a dwelling be made available to 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." *Bangerter*, 46 F.3d at 1503 (quoting 42 U.S.C. §3604(f)(9)). The legislative history indicates that generalized perceptions of threats to safety should not support discrimination. *See* H.R. Rep. No. 100-711, 1988 U.S. Code Cong. Admin News at p. 2179. The residents spoke at the city council meeting about their fears that stemmed from Provider Plaintiffs' residences. However, the transcript and video tape of the meeting admitted at trial did not support of a finding that any safety justification for this Ordinance was supported by a direct threat to the safety and health of others more so than generalized perceptions. The City did not put forth any evidence regarding the relationship between the crime involved at the halfway houses and crime occurring at other non-halfway house residences in the area. Accordingly, this evidence did not support a finding that Provider Plaintiffs' residences, or others that would fit the definition of substance abuse treatment facility, posed a direct threat to the health or safety of other individuals.

The City's main justification was that the Ordinance was passed to group together compatible uses, a common use of zoning ordinances. Specifically, the City's argument was that

[7]The evidence consisted of a memorandum from the Chief of Police of the City detailing cases involving fatalities at the subject properties in a year and a half period and a list of incidents involving halfway houses in the City.

service providers or facilities that would meet the definition of a substance abuse treatment facility under the Ordinance, were commercial and medical in nature and therefore did not belong in a residential area. However, the only activity required to bring a service provider or facility within the purview of the Ordinance is that the service provider or facility require tenants to perform testing to determine if they are drug and alcohol free as a term of their tenancy. The language of the Ordinance[8] goes to a service provider or facility "used for room and board only and in which treatment and rehabilitation activities are provided at locations other than the primary residential facility, whether or not the facilities used for room and board and for treatment and rehabilitation are operated under the auspices of the same provider. For purposes of this subparagraph (2), service providers or facilities which require tenants or occupants to participate in treatment and rehabilitation activities, or perform testing to determine whether tenants or occupants are drug and/or alcohol free, as a term or condition of, or essential component of, the tenancy or occupancy shall be deemed to satisfy the 'treatment and rehabilitation activities' component of the definition contained in this section." It is not clear how this condition of tenancy turns a dwelling into a commercial facility, or at least more of a commercial facility than any residence rented or leased to occupants which would be by definition a commercial facility where it is viewed with regard to a profit. The condition of tenancy would make no change to the outward appearance of the residence, be it a single family home or an apartment building. The City put forth no evidence that an apartment building that required its tenants to be drug tested would somehow negate the fact that those individuals were

[8]The Ordinance also includes in its definition of substance abuse treatment facilities a service provider or facility that is "[l]icensed or required to be licensed pursuant to F.S. §397.311(18)." Florida Statute Section 397.311(18) defines "Licensed service provider" as "a public agency under this chapter, a private for-profit or not-for-profit agency under this chapter, a physician or any other private practitioner licensed under this chapter, or a hospital that offers substance abuse impairment services through one or more of the following licensable service components" and then goes on to list such components. As discussed in further detail in the remedies section of this order, I conclude that this section of the Ordinance can remain.

living in the apartment building, making it their home.[9] Instead, the City put forth evidence to establish that the residences offered by Provider Plaintiffs were more of a profit driven enterprise than a place where people actually lived.

I do not disagree with the City's position on this point. However, Ordinance 4649 did not capture the use it was attempting to segregate. The City was looking at Provider Plaintiffs and the services they provided to recovering addicts, including a program with three different phases, drug testing on site, transportation, group therapy meetings, medication control, money control, Alcoholic Anonymous and Narcotics Anonymous meetings on site, curfews, room inspections, bed checks, and individual therapy. Recovering individuals spent limited time in each phase, requiring them to move from building to building. The City also looked at Provider Plaintiffs' business model where they were marketing themselves as unique recovery programs, had a large office use in the main facility, charged individuals by the week with no regard for what unit they were in or how many individuals were living in the unit, and kept deposits from individuals who relapsed regardless of how many times they had previously relapsed while staying with Provider Plaintiffs. The City found the combination of these uses and Provider Plaintiffs' business practices commercial in nature. As I expressed at trial and earlier in this order, some of Provider Plaintiffs' business practices give me pause, particularly where Provider Plaintiffs are seeking protection from a statute which protects handicapped individuals, because many of the business practices employed by Provider Plaintiffs do not appear to serve the therapeutic needs of these handicapped individuals. However, questionable business practices aside, the Ordinance does not capture the commercial and medical uses that underlie the City's justification, nor did the City prove either of the *Bangerter* factors justified the passage of the Ordinance.

[9]Even the City's planning and zoning director testified that Provider Plaintiffs' apartment buildings look just like an apartment building.

Instead, the Ordinance, which hinges the location of a housing provider in a residential zone to whether that housing provider requires its residents to be subjected to drug testing as part of his or her occupancy, substantially limits the housing options for recovering individuals in the City. Recovery from substance abuse is an ongoing struggle for many, which for a large number of such individuals may require at least some period of time living in a drug and alcohol free environment. Regan's testimony established the substantial risk of relapse recovering individuals face and their need to be in a supportive drug and alcohol free environment to decrease such risk. Regan testified that one can not absolutely determine if a living environment is drug and alcohol free unless its residents are drug tested. There was also testimony at trial, by Regan, and the recovering individuals, as to the role a group living arrangement plays in their recovery, including helping to keep them clean because of the transparency, but also providing them with less opportunities for loneliness, a major trigger for relapse. Other courts have acknowledged the role a group living arrangement plays in the recovery of substance abusers. *See Corp. of the Episcopal Church in Utah*, 119 F.Supp.2d 1215, 1217-18 (D. Utah 2000); *Oxford House, Inc. v. Town of Babylon*, 819 F.Supp. 1179, 1183 (E.D. NY 1993); *U. S. v. Borough of Audubon, N.J.*, 797 F.Supp. 353, 358-59 (D. NJ 1991). The need for handicapped people to live in group arrangements for support or to pool caretaker staff has been described as essential. *Brandt,* 82 F.3d at 174; *see also Smith & Lee Assocs., Inc.*, 102 F.3d at 795-96 (discussing the need to allow group homes for the elderly to have at least nine residents in them for economic viability). Such group living arrangements which are drug and alcohol free, thus necessitating drug testing, at the very least off site, fall within the purview of the Ordinance. Based on this evidence the restriction that a housing provider who requires drug testing as an essential part of a tenant's occupancy only provide housing in a medical district or possibly in a motel/business district cannot be seen as a restriction that benefits recovering individuals. Thereby, the City has limited the opportunities for recovering individuals to live in residential

areas of Boca Raton.

As discussed above, the City argued the Ordinance was aimed at commercial and medical uses. The City's list of such uses is much longer than just drug testing. However, the Ordinance includes none of these other uses. The City argued the Ordinance did not capture a mere housing provider that required drug testing where the Ordinance only captured "service providers or facilities." The Ordinance does use this language, however the distinction between who imposes the requirement, the residents of the group living arrangement or their landlord appears to be without significance to the impact on the residential character of the neighborhood. For example, a entity which wanted to provide substance free housing to twenty recovering individuals in ten one-bedroom apartments complete with drug testing as part of their lease to insure the substance free component of their environment, and AA and/or NA meetings in the building's common area would have to provide such housing in the medical district or apply for a conditional use in a motel/business district. Yet, under the City's distinction a building housing 90 people in 30 apartments subject to the same drug testing requirement discussed above and having the same AA and/or NA meetings, could be in the residential zone so long as the residents themselves got together and agreed to put the restrictions on themselves and arrange for the AA and/or NA meetings themselves. It is not clear that the difference of who imposes the requirements on residents is significant to the analysis of whether the use is a commercial one.[10] The City put forth no evidence which demonstrated that a sober living arrangement provided by a third party destroys the residential character of a neighborhood more than a sober living arrangement organized by the residents themselves.[11] Based on the evidence presented, the City's distinction does not cure the Ordinance's discriminatory impact. This is not to say that the City is precluded

[10] As discussed in the Joint Statement of the Department of Justice and the Department of Housing and Urban Development, group homes are often provided by an organization that provides housing and various services for individuals in the group homes. *See* Joint Statement of the Department of Justice and the Department of Housing and Urban Development, Group Homes, Local Land Use, and the Fair Housing Act *available at* http://www.usdoj.gov/crt/housing/final8_1.htm.

[11] *See supra* n. 9.

from attempting to separate the commercial from the residential. As I stated earlier, Provider Plaintiffs' residences include a lot more services than drug testing, and perhaps more than is therapeutically necessary.

Therefore, my ruling regarding the Ordinance is not intended to limit the City's ability to regulate what it sees, and what I saw as well from the evidence, as a commercial operation. My concerns are similar to those discussed by the Supreme Court in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) where it stated:

> The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.
> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within Berman v. Parker, supra. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

Boraas, 416 U.S. at 9. The sheer volume of individuals Provider Plaintiffs are housing within a small geographic location contributes to setting Provider Plaintiffs' housing opportunities apart from the residences that surround it. This is in addition to the transitory nature of the housing where residents are shifted through different buildings depending on what phase of the program they are in. I recognize that Provider Plaintiffs' facilities are apartment buildings amidst other apartment building and therefore to the naked eye one may not see Provider Plaintiffs' buildings as the pig in the parlor. However, because of the congregation of Provider Plaintiffs' facilities and the multitude of services offered by Provider Plaintiffs, a closer examination would bring to light the difference between Provider Plaintiffs' facility and an average residential apartment building. As discussed in *Boraas,* the ability to protect the residential nature of a neighborhood is not limited to controlling the negatives that obviously do not conform with the area, but includes the ability to set apart areas where people make their home from the rest of the City. While I agree that recovering individuals need to be given the opportunity to live in group

arrangements as discussed earlier, such arrangements need not include approximately 390 people in a group of buildings all within a quarter of a mile of each other. Once again the City's Ordinance does not directly address this concern. Even though I agree with the City's ability to protect the residential character of the neighborhood and Provider Plaintiffs' possible impact on that character in this case, the link between the Ordinance and the protection of the residential character of the neighborhood is not a direct one.

The City did not present sufficient evidence to justify the Ordinance based on legitimate public safety concerns or to demonstrate that the restriction imposed benefitted the recovering individuals. In this case, neither of the *Bangerter* justifications are present. In addition, the City's justification of grouping like uses together is not a sufficient justification where protecting the residential character of its neighborhoods could have been legislated in a less discriminatory way such that it did not substantially limit the availability of residential housing to recovering individuals.

Section 28-2

I must now turn to Section 28-2 of the City Code, the City's definition of family. The analysis regarding this Section is different than that of the Ordinance. Section 28-2 by its own terms does not refer to recovering individuals or substance abuse. Instead, Section 28-2 treats all individuals, handicapped and non-handicapped, provided they are unrelated or not within the Section's two exceptions, foster children and domestic servants, alike. Four non-handicapped non-related people cannot live in a single dwelling, just as four recovering individuals cannot live in a single dwelling. Therefore, this Section is more appropriately examined for its disparate impact on handicapped individuals. *See RECAP*, 294 F.3d at 52. A disparate impact analysis should be employed where a facially neutral section of the city code is examined to determine its differential impact on a protected group under the FHA. *See RECAP*, 294 F.3d at 52. To succeed on a disparate impact theory, plaintiffs must provide evidence that the neutral practice

had a disproportionate impact on the protected class. *RECAP*, 294 F.3d at 52-53; *2922 Sherman Ave. Tenants' Ass'n v. D.C.*, 444 F.3d 673, 681 (D.C. Cir. 2006). The question in this case is whether limiting the occupancy of a single dwelling in the City to three unrelated people has a disproportionate impact on recovering individuals.

Plaintiffs' argument at trial was that it did where recovering individuals often require the availability of group living arrangements as part of their recovery. The City argued that this provision does not violate the FHA where there are other possibilities for a group home of recovering individuals in a residential area of the City. The evidence at trial supported the conclusion that recovering individuals often need group living arrangements as part of their recovery for a variety of reasons. Two of the reasons, as discussed by Regan, are decreasing the possibility of relapse by decreasing the feelings of loneliness and increasing the supervision due to the accountability present when people live together. Regan's testimony has previously supported such findings. *See Town of Babylon*, 819 F.Supp. at 1183. The last reason, as discussed earlier in this order, is the economic viability of providing housing to handicapped people. This reason has also been recognized in the law. *Brandt*, 82 F.3d at 174; *Smith & Lee Assocs., Inc.*, 102 F.3d at 795-96. Plaintiffs' position is further bolstered by an examination of the Oxford House model. Oxford Houses, the work of a non-profit organization which helps recovering individuals establish group sober homes, require a minimum of six residents to receive a charter for the proposed home. The Oxford House Manual, *available at* http://www.oxfordhouse.org. The City argued that groups of recovering individuals could live together under other provisions of the City Code. For example, the City pointed to the community residential homes allowed for by the City Code and detailed in Florida Statute Section 419.001. However, the Florida statute requires community residential homes to be licensed by the Agency for Health Care Administration or that the handicapped residents of such a home be a client of one of four different state agencies. Fla. Stat. §419.001. Limiting the

possibility of recovering individuals to live in a residential area only if they become licensed or are clients of a state agency limits their housing options. Based on the foregoing, I agree with Plaintiffs that Section 28-2 impacts recovering individuals more than non-recovering individuals.

Once Plaintiffs establish this disproportionate impact on the handicapped, the burden is shifted to the City to prove that the action furthered "a legitimate, bona fide governmental interest and that no alternative would serve that interest with less discriminatory effect." *Huntington Branch, N.A.A.C.P. v. Town of Huntington*, 844 F.2d 926, 936 (2d Cir. 1988); *See Town of Babylon*, 819 F.Supp. at 1183. The City argued that this definition of family furthered a variety of governmental interests, including controlling population density and preserving the single family character of the City's residential areas. I agree that the preservation of a residential character is a legitimate governmental interest. However, in this case the City did not demonstrate that there was no less discriminatory alternative means to accomplish this goal. Section 28-2 makes no exception for a group home for recovering individuals who merely want to live in a single family home and would not impact the residential character of the neighborhood. Section 28-2 provides two other exceptions and the City put forth no evidence to explain why allowing a similar exception for recovering individuals would destroy the residential character of the neighborhood.

The no less discriminatory means is further exemplified by the City's lack of any established procedure by which handicapped individuals could request a reasonable accommodation to the occupancy limitation. Discrimination under the FHA includes denying or making a dwelling unavailable because of a handicap, including refusing to make reasonable accommodation in rules, policies, practices, or services such that would be necessary to afford such person the opportunity to use and enjoy a dwelling. *See* 42 U.S.C. §3604(f)(3)(B). There was no evidence that a reasonable accommodation to Section 28-2 was available. The City put

forth evidence of a Petition for Special Case Approval form which it argued an individual would use to request for reasonable accommodation. Neither reasonable accommodation, nor disability were mentioned on the form. There was no evidence of such form having been used historically by handicapped individuals to request a reasonable accommodation. There was no evidence that the form was referenced anywhere else in the City Code that dealt with reasonable accommodation requests. Where Section 28-2 itself provides no exception for handicapped individuals and the City's Code has no clearly established procedure that would allow a handicapped individual, group of individuals, or provider of group homes, to request a reasonable accommodation of the occupancy limitation, the City has not demonstrated that no less discriminatory alternative to Section 28-2 would serve the same interest. Therefore, Section 28-2 as written violates the FHA.

This is not to say that the City's occupancy limitation of three unrelated people is not permitted should the City legislate it in a less discriminatory fashion. The Plaintiffs argued that *City of Edmonds* suggests that such caps violate the FHA. I do not read *City of Edmonds* to make such suggestion. *City of Edmonds*, 514 U.S. 725. *City of Edmonds* held that the type of limitation used here, "the family-defining kind," is not exempted from the FHA by 42 U.S.C §3607(b)(1). *Id.* at 728. Instead, the Court held, the exemption only applies to "total occupancy limits, i.e., numerical ceilings that serve to present overcrowding in living quarters." *Id.* The question before me is not whether Section 28-2 falls within 42 U.S.C. §3607(b)(1)'s purview.

I do not think the FHA is violated merely by having a cap on the number of unrelated individuals who can live in a single family dwelling. Furthermore, I find nothing wrong with the number three that the City has chosen. A city must draw a line somewhere. The number chosen is in line with the average occupants per unit within the City. The number of individuals per unit on average was less than three. As eloquently stated by Justice Holmes, "[n]either are we troubled by the question where to draw the line. That is the question in pretty much everything

worth arguing in the law." *Irwin v. Gravit*, 45 S.Ct. 475, 476; *see Boraas*, 416 U.S. at 8 (stating that every line a legislature draws leaves out some that might as well have been included, the use of such discretion is a legislative function); *see also Smith & Lee Assocs., Inc.*, 102 F.3d at 797 n. 13 (discussing the fine line drawn between a group home of nine residents not substantially altering the residential character of a single-family neighborhood while a twelve resident group home would more likely do so). While I find no legal problem with the cap of three unrelated individuals per se, the limitation without any exception for handicapped individuals or an established reasonable accommodation procedure violates the FHA.

This is not to say that recovering individuals should have a blanket exemption from a cap on the number of unrelated people that can live in a dwelling in a residential district of the City. Nor is it to say that the City cannot limit Provider Plaintiffs' units to three unrelated people per unit. There was testimony at trial that Provider Plaintiffs could be profitable and have therapeutic success with only three people per apartment. All of this can be considerations in attempting legislate a capacity limitation that complies with the FHA.

My ruling here is not intended to limit the City's ability to regulate the residential character of its neighborhoods. As discussed above, I agree with the City that preservation of the residential character of its neighborhoods is a legitimate governmental interest. However, the impact of these two zoning sections limits the ability of recovering individuals to obtain housing in residential areas of Boca Raton. They did not with little, if any, evidence as to how the presence of recovering individuals destroys the residential character. The City may regulate the residential character of its neighborhoods, so long as they devise a means to protect the ability of recovering people to live in the residential neighborhoods in a meaningful way which takes in mind their need for a group living substance free environment.

Remedies

At the conclusion of the bench trial, I asked each of the parties, and the Department of

Justice, who has a related case pending against the City, to submit recommendations as to an appropriate remedy in this case. I told the parties "I would like to accomplish the purpose but do it as narrowly[12] as possible." Despite this request, both parties essentially argued their positions again, including suggesting the broadest remedy available to each of them. I decline to adopt any of the positions offered given the facts of the case and the precedent on the issue of remedies.

Having found that the Ordinance and Section 28-2 violate the FHA, the question before me is whether they should both be stricken, as Plaintiffs suggest, or if I should more narrowly tailor the relief as I alluded to at the conclusion of the bench trial. The precedent supports a narrow tailoring. *See Ayotte v. Planned Parenthood of N. New England, et al.*, 546 U.S. 320, 126 S.Ct. 961 (2006). In *Ayotte*, Justice O'Connor addressed a similar predicament. The Court specifically held "that invalidating the statute entirely is not always necessary or justified, for lower courts may be able to render narrower declaratory and injunctive relief." *Ayotte*, 126 S.Ct. at 964. In this case I attempt to achieve the result I think is necessary as narrowly as possible.

As to Ordinance 4649, the primary difficulties with this Ordinance involve the second definition and its subsection. I find no violation of the FHA by the City's first definition, those service providers or facilities that are "licensed or required to be licensed pursuant to Section 397.311(18) Fla. Stat." This statute details various licensable service components and defines an entity as a licensed service provider if it offers substances abuse impairment services through one or more such licensable service components. Nothing in the statute indicates that by not allowing a licensed service provider to be located in a residential area, the City is precluding recovering individuals from living in residential areas where recovering individuals can reasonably live in residential areas of the City without needing two or more of the licensable service components listed in Section 397.311(18). Accordingly, section one of Ordinance 4649

[12] I went further to explain that "It doesn't help me to say just strike everything and enjoin everything. . . . I need something better than that. And the same thing goes for the city. You know, the more specificity --in fact, even – if you were going to deal with the ordinances, specific excisements, if that's how we would handle it. And if there's procedure that you would suggest I order, a specific language. You know, concepts aren't as much helpful at this point to me as language."

shall remain in effect. While I have ideas, some of which are expressed herein and others of which were discussed at trial, about how section two of the Ordinance could be written to better serve the City's justification and comply with the FHA, I decline to re-write the Ordinance. My decision is based on the roles of the legislature and judiciary, but also on a principle Justice O'Connor discussed in *Ayotte*. Courts should not determine to whom a statute should apply where a legislature has cast its net widely because this would put the judiciary in the legislature's role. *See Ayotte*, 546 U.S. at 968. Therefore, I decline to parse the second definition or to add my own words to it. The City is enjoined from enforcing section two of Ordinance 4649.

Section 28-2 is not susceptible to parsing either. However, given my discussion above, I am going to temporarily enjoin enforcement of section 28-2 against recovering addicts until such time as the City passes a reasonable accommodation procedure. The City must provide a process by which a request for reasonable accommodation on the basis of one's disability could be requested.[13] Accommodations are to give consideration for the limitations caused by the disability. This remedy does not enjoin the City against enforcing this provision of the City Code against Provider Plaintiffs. I reach this conclusion not only because of my position that while recovering individuals need an accommodation to allow for group living situations, I found no evidence which persuaded me that this maxim requires Provider Plaintiffs to have more than three individuals in each of their units. As discussed above there was evidence that Provider Plaintiffs' facilities can be therapeutically successful and profitable with three individuals per unit.

My position as to Provider Plaintiffs being excluded from this temporary enjoinment is also based on Provider Plaintiffs' unclean hands where they previously agreed to comply with section of the City Code demonstrating their ability to do so and continue to offer housing to

[13]As discussed in the Joint Statement, local governments should "make efforts to insure that the availability of [reasonable accommodation request] mechanisms is well known within the community." Joint Statement at page 4. There was no evidence that the Petition for Special Case Approval form was well known as the avenue to a reasonable accommodation. Instead, the testimony was that the Petition for Special Case Approval form was a catch all application.

recovering individuals. Misconduct by a plaintiff which impacts the relationship between the parties as to the issue brought before the court to be adjudicated can be the basis upon which a court can apply the maxim of unclean hands. *See Mitchell Bros. Film Group v. Cinema Adult Theater*, 604 F.2d 852, 863 (11th Cir. 1979). The maxim of 'he who comes into equity must come with clean hands' has been said to close the door of equity to a litigant tainted by inequitableness as to the matter about which the litigant seeks relief. *See Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945). This principle requires the litigant to act "fairly and without fraud or deceit as to the controversy in issue." *Id.* at 814-15. Where Provider Plaintiffs can continue to provide housing to recovering individuals while complying with Section 28-2 and they previously agreed to, I find it unnecessary to enjoin enforcement against them.

Damages

As to damages, the Individual Plaintiffs asserted that their injury included the humiliation of community disdain, the compromise of their anonymity as to their recovering status, and the stress of possibly losing their sober housing. I do not doubt the humiliation the Individual Plaintiffs felt as they listened to the city council meeting where the Ordinance was addressed. However, many of them did not even attend the meeting. Their testimony regarding their emotional harm was conclusory and was not specific such that it convinced me of the nature and extent of their emotional harm. *See, e.g., Bailey v. Runyon*, 220 F.3d 879, 880-81 (8th Cir. 2000)(discussing how a plaintiff's own testimony can be sufficient but is not necessarily the sine qua non to establishing evidence of emotional harm). Plaintiffs did not put forth any evidence of ramifications of their emotional distress. *See, e.g., Price v. City of Charlotte, N.C.*, 93 F.3d 1241, 1254-56 (4th Cir. 1996). The City was required to hold the public meeting and allow members of the public to speak to the Ordinance. *See* Fla. Stat. §166.041. In this case, I find the statements made at a democratic function were not sufficient to establish injury. The City

delayed application of the Ordinance until 18 months after the rendition of a final non-appealable order in this case. The Individual Plaintiffs did not have to suffer the loss of sober housing and have had ample opportunity to address such a possibility where this lawsuit has been pending for over three years. I do not find Individual Plaintiffs established a concrete injury sufficient to sustain a compensatory damage award.

Similarly, the damages claimed by Provider Plaintiffs are unwarranted where they are speculative. A damage award must be based on substantial evidence, not speculation. *See Kenner v. Sizzler Family Steak House*, 597 F.2d 453, 457 (5th Cir. 1979).[14] Provider Plaintiffs claimed lost revenues where they were unable to grow their business due to the uncertainty of this litigation, mainly premised on their inability to obtain financing for another apartment building due to this litigation. Provider Plaintiffs presented a damages expert. However, he relied on an appraisal price of the building with no evidence to establish Provider Plaintiffs could have bought the building at that price. There was no evidence regarding the listing price of the building and the seller's agreement to Provider Plaintiffs' price. There was also no evidence regarding the increased demand for the type of housing Provider Plaintiffs provided such that they would be able to fill another building. In sum, the evidence was speculative that Provider Plaintiffs would have made the profits articulated, but for the Ordinance and Section 28-2.

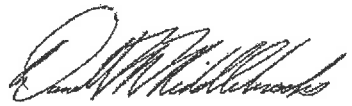
Despite not having found sufficient evidence to establish a need for compensatory damages, I do think that Plaintiffs are entitled to an award of nominal damages. "Nominal damages are a trifling sum awarded to a plaintiff in an action, where there is no substantial loss or injury to be compensated, but still the law recognizes a technical invasion of his rights or breach of the defendant's duty, or in case where, although there has been a real injury, the plaintiff's evidence fails to show its amount." BLACK'S LAW DICTIONARY 392 (6th ed. 1990). While the Eleventh Circuit has stated that merely a violation of a purely statutory right does not

[14]Decisions of the United States Court of Appeals for the Fifth Circuit that as existed on September 30, 1981 are binding on the United States Court of Appeals for the Eleventh Circuit. *See Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1207 (11th Cir. 1981).

mandate an award of nominal damages for such statutory violation, it has not precluded such an award where the district court finds it appropriate. *See Walker v. Anderson Elec. Connectors*, 944 F.2d 841, 845 (11th Cir. 1991). The Supreme Court has recognized the role that nominal damages play in cases where there is no concrete damage to compensate, but it is important to observe an individuals' rights. *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 308 n. 11 (1986). The Sixth Circuit has stated that at a minimum an award of nominal damages would be appropriate where a plaintiff proved a violation of the FHA and that he suffered a non-quantifiable injury as a result. *See Hamad v. Woodcrest Condo. Ass'n*, 328 F.3d 224 (6th Cir. 2003); *see also Baltimore Neighborhoods, Inc. v. LOB, Inc.*, 92 F.Supp.2d 456, 464 (D. Md. 2000)(finding an award of nominal damages appropriate in a violation of the FHA case where plaintiff failed to show actual damage). Plaintiffs did not present evidence sufficient to sustain a damage award. However, this should not detract from the finding that the City violated the FHA. This is particularly true where as discussed above the statutory claim which Plaintiffs bring entitles them to greater protection than their constitutional rights would provide to a similar claim and nominal damages are required for a violation of constitutional rights. *See Walker*, 944 F.2d at 845(discussing how *Carey v. Piphus*, 435 U.S. 247 (1978) applies only to violations of constitutional magnitudes). In order to not take away the importance of such violation, I conclude that an award of nominal damages is appropriate.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Judgment is entered in favor of Plaintiffs as to their Federal Fair Housing Act claims. Judgment is entered in favor of Plaintiffs against Defendant in the amount of $1.00 as to each Plaintiff. It is FURTHER ORDERED AND ADJUDGED that the City is enjoined from enforcing section 2 of Ordinance 4649 and is enjoined from enforcing Section 28-2 as to recovering individuals until such time as the City passes a reasonable accommodation procedure. Plaintiffs' remaining claims are dismissed. Judgement shall be entered in accordance with this Order.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 26th day of February, 2007.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record

The City of Traverse City

Planning Department

GOVERNMENTAL CENTER
400 Boardman Avenue
Traverse City, Michigan
49684

1707 Indian Woods
Cindy Robertson
David Smith

* We're fine with Mr. Gilbert's proposal & support him.

NOTICE OF PUBLIC HEARING

BOARD OF ZONING APPEALS

Please take notice that the Traverse City Board of Zoning Appeals will hold a public hearing at 7:00 p.m. on **Tuesday, May 10, 2016** in the Commission Chamber on the second floor of the Governmental Center, 400 Boardman Avenue, Traverse City, Michigan, for the following request:

An appeal from a determination of the City of Traverse City Zoning Administrator dated January 20, 2016 by Thomas Gilbert, President of TC Retreat, P.O. Box 1941, Traverse City, Michigan, that the use of the property commonly known as **1702 Comanche Street** is a Residential Care and Treatment Facility and is not a permitted use in the R-1b, Single Family Dwelling District.

You are hereby invited to voice your opinion by attending the public hearing or by sending a letter to the Traverse City Board of Zoning Appeals, 400 Boardman Avenue, Traverse City, Michigan, stating your opinions.

This request was originally scheduled for a public hearing on March 8, 2016, but was postponed to May 10, 2016 per the request of the applicant.

Sincerely,

D M Weston

David Weston
Planning and Zoning Administrator
231-922-4464

* Thank You for your good work.
Cindy
(231) 360-3772

The City of Traverse City does not discriminate on the basis of disability in the admission or access to or treatment or employment in, its programs or activities. Penny Hill, Assistant City Manager, 400 Boardman Avenue, Traverse City, Michigan, 49684, 922-4440, T.D.D., 922-4412, has been designated to coordinate compliance with the non-discrimination requirements contained in Section 35.107 of the Department of Justice regulations. Information concerning the provisions of the Americans with Disabilities Act, and the rights provided thereunder, are available from the ADA Coordinator. If you are planning to attend and you have a disability requiring any special assistance at the meeting and/or if you have any concerns, please immediately notify the ADA Coordinator.

Dave Weston <dweston@traversecitymi.gov>

1702 Comanche Street

1 message

Cathie Cline <cacline@charter.net> Sun, Mar 6, 2016 at 11:56 AM
To: dweston@traversecitymi.gov
Cc: Tom Gilbert <tgilbert@touchstonerecovery.net>

Dear Mr. Weston,

I am unable to attend the Zoning Appeals meeting Tuesday, March 8.

I am a resident in the vicinity of 1702 Comanche Street, TC Retreat's home for men to get a handle on how they can better live sober lives.

My home is at the opposite end of Comanche Street, and two houses south on Indian Woods Drive. I have absolutely no objections to this purposeful home being in my neighborhood. I have met three of the men living in the home and find them to be quiet, courteous and certainly non-threatening.

Mr. Gilbert has said they carefully screen the applicants and will not allow violent criminals, convicted arsonists or men on the sex offender registry. Residents agree to random drug and alcohol testing and there is zero-tolerance for use.

Mr. Gilbert pledges the residents will be good neighbors, and will keep our safe, quiet neighborhood just the way it is today.

I am hoping you will reverse your initial decision and allow the men in recovery to continue living at 1702 Comanche Street. Please consider this a letter of approval for the Record.

Sincerely,

Cathie Cline

1749 Indian Woods Drive

Dave Weston <dweston@traversecitymi.gov>

(no subject)

Deborah Rysso <drysso@ryssoandwingfield.com> Thu, Dec 10, 2015 at 9:43 AM
To: dweston@ci.traverse-city.mi.us, Lauren Trible-Laucht <ltlaucht@traversecitymi.gov>

Dear Mr. Weston and Lauren,

I am a resident of Comanche Street, where Tom Gilbert, on behalf of Touchstone, is planning on opening a recovery house. Last night I attended his meeting at the Civic Center. I would like to share with you Mr. Gilbert's comments as well as my reading of the zoning ordinances as they would apply to the recovery home.

Mr. Gilbert agreed that the street is zoned for single family dwellings.

As I am sure that you know, the odinance states, "Single-family dwelling" means a detached building containing one dwelling unit and designed for or occupied by only one family.

Family means one or more persons occupying a dwelling unit and living as a single housekeeping unit, whether or not related to each other by birth or marriage, as distinguished from persons occupying a boarding house, lodging house or hotel.

First, I would argue that the recovery home falls within the category of boarding house or lodging house.

Lodging Facility means a commercial establishment with one or more buildings whose primary use is to provide temporary overnight accommodations within individual guest rooms or suites to the general public for compensation. Accessory uses may include eating places, meeting rooms and other similar uses.

"Boarding house" is not defined in the ordinance. Black's Law Dictionary defines it as:

A boarding-house is not in common parlance, or in legal meaning, every private house where one or more boarders are kept occasionally only and upon special considerations. But it is a quasi public house, where boarders are generally and habitually kept, and which is held out and known as a place of entertainment of that kind. Cady v. McDowell, 1 Laus. (N. Y.) 486. A boarding-house is not an inn, the distinction being that a boarder is received into a house by a voluntary contract, whereas an innkeeper, in the absence of any reasonable or lawful excuse, is bound to receive a guest when he presents himself. 2 El. & Bl. 144. The distinction between a boarding-house and an inn is that in a boarding-house the guest is under an express contract, at a certain rate for a certain period of time, while in an inn there is no express agreement; the guest, being on his way, is entertained from day to day, according to his business, upon an implied contract. Willard v. Steinhardt, 2 E. D. Smith (N. Y.) 148.

It is my opinion that what Touchstone is proposing would fall under the definition of boarding house or lodging facility . First, it is a commercial establishment. It is owned by a company and the residents will pay to live there. The residents will be "genarally and habitually kept", under an express voluntary contract, for no more than 12 months, and abide by certain rules.

From a simple common sense perspective, the recovery house clearly was not what the drafters intended when they were intending to have neighborhoods used for single family dwellings. In no way do transient strangers moving in and out frequently and paying to be in a residence owned by a company constitute a "family".

Further, I understand there is a question of whether it would be something similar to being a "residential care and treatment facility", which would not be permitted in that area. The code defines "Residential Care and Treatment Facility" as a facility providing: Services, programs and temporary shelter for residents who are undergoing alcohol or substance abuse rehabilitation.

That is clearly what this is. It is temporary shelter for people undergoing substance abuse rehabilitation, but it also provides services and programs. Merriam Webster defines "program" as a plan of things that are done in order to achieve a specific result, and "services" as help, use, benefit or contribution to the welfare of others.

Mr. Gilbert advised that anyone suspected of drug or alchol use will be immediately required to take a drug or alcohol test. He advised that the residents will be instructed to watch each other and report suspected drug or alcohol use. The residents will be required to attend four AA meetings per week. They will be subject to other requirements such as employment , curfews, no overnight guests, and eating together. These would constitute services and programs; they are done in order to achieve the specific result of sobriety, and they are being done to help, benefit, and contribute tot the welfare of the residents.

Thank you for listening to me. I would appreciate it if I could be included in any discussions on this matter.

Sincerely,

Deborah Rysso

–
Deborah Rysso

Rysso & Wingfield, PLLC
Elder Law & Special Needs Attorneys
807 West Front Street, Suite A
Traverse City, MI 49684
(231) 933-5207/ Fax (231) 932-1373

www.ryssoandwingfield.com

February 23, 2016

David Weston
Planning and Zoning Administrator
400 Boardman Avenue
Traverse City, MI 49684

Dear Mr. Weston and Board Members of Zoning Appeals:

I wish to respond to the letter sent "Notice of Public Hearing" requesting my opinion regarding change of zoning to allow TC Retreat facility to occupy property 1702 Comanche St. as a business residential care and treatment facility. I own 1620 Indian Woods St. property in this single family dwelling neighborhood. My investment into this neighborhoods residential property was and is for it to stay and continue now and into the future as is currently zoned for single family residential use. Allow me to express my strong desire and sincere appeal for you to maintain the current zoning of R-1b, Single Family Dwelling District for my residential neighborhood.

Sincerely,

Sarah J. White

Sarah J. White
White, Sarah J. Trust

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FEB 2 3 2016
PLANNING DEPT
CITY OF
TRAVERSE CITY

February 25, 2016

Traverse City Board of Zoning Appeals
Government Center
400 Boardman Avenue
Traverse City, MI 49686

Dear Sir,

I am writing in regard to the use of the property at 1702 Comanche Street as a "Sobriety House". Mr. Gilbert refers to himself in a letter to the Traverse City Board of Zoning Appeals as the President of the Traverse City Retreat. The letter from the Traverse City Board of Zoning Appeals undated refers to the 1702 Comanche Street home as "Residential Care and Treatment Facility"; this title sounds like a business to this community resident.

What the property was being used for was first brought to my attention at a neighborhood meeting held at the Civic Center by Mr. Gilbert. At that meeting Mr. Gilbert informed the community that the 1702 Camanche St. residence had already been purchased and an overseer, Wally, had already moved in and was preparing the residence for 1 to 6 men that would live there. Wally is not a Therapist, Counselor nor has he any experience in Social Work. His sole purpose is to ensure the residents do not violate the "house rules".

I have been informed that at this time there are four men with substance abuse issues living on the property in spite of the determination by the zoning board that the property is zoned for single family dwellings only.

I am a retired single woman living on a property that abuts the aforementioned property. I have been in my home for over 25 years and have never been confronted with an issue as frustrating as this one. I no longer feel happy, comfortable or secure in my own home.

These men who Mr. Gilbert stated would be sober for at least 30 days. These men will be in the residence from 6 months to 1 year provided they continue to meet all the requirements for living in the residence. This creates a revolving door situation, not a very stable environment for a family based community. We were informed these men will be coming from anywhere in the state and many varied backgrounds and histories.

According to Mr. Gilbert these men will not be receiving any counseling or therapy on site. This seems to be counter-productive along with the fact that they are within close proximity to the Cambria Suites cocktail lounge and the local 7-11 store. This is a situation that gives them ready access to alcohol. This area also has an elementary school, high school and college in close proximity to this neighborhood not to mention the children the who live in this neighborhood. All have the potential to be affected by the individuals living in this single family residence.

At the aforementioned meeting called by Mr. Gilbert it was stated that the property values would not be affected. I personally have trouble believing that Mr. Gilbert can guarantee, beyond a shadow of a doubt that this home he has established in our single family community would not decrease the property values in the area.

In closing, I would like to state that I am completely and totally against this "Sobriety House" being in my neighborhood. I would respectfully request that the zoning board decline Mr. Gilberts appeal to this proposal since it is not being utilized as a "Single Family dwelling".

Sincerely,

Nancy A. Ward

Nancy A. Ward
1703 Indian Woods Ave
Traverse City, MI 49686

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FEB 2 0 2016
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CITY OF
TRAVERSE CITY

Dave Weston <dweston@traversecitymi.gov>

Fwd: comanchee zoning

1 message

jan <jancartertc@aol.com> Fri, Feb 26, 2016 at 1:20 PM
To: dweston@ci.traverse-city.mi.us

jan
jancartertc@aol.com

—Original Message—
From: jan <jancartertc@aol.com>
To: dweston <dweston@traversecity.mi>
Sent: Fri, Feb 26, 2016 1:13 pm
Subject: comanchee zoning

hello,
i will miss the meeting on zoning (although i didn't receive information on the meeting & learned from neighbors).
i am opposed to placing the tc retreat house in our residential neighborhood. i have a history with recovering people & have compassion for the process. i feel this is opening the door in all neighborhoods & the zoning should not allow transient housing.
thank you for your work & accepting input in this matter.
best to you,
jan carter
1734 comanche

jan
jancartertc@aol.com

1713 Comanche Street
Traverse City, Michigan 49686
March 2, 2016

The City of Traverse City Planning Department
Board of Zoning Appeals
Governmental Center
400 Boardman Avenue
Traverse City, Michigan 49684

Dear Mr. Weston and Board Members,

Please accept my gratitude to the Board of Zoning Appeals for the recent determination that the property at 1702 Comanche Street to be used as a Residential Care and Treatment Facility is not permitted under the Zoning R-1b as a Single Family Dwelling. I applaud your decision and appreciate the time and effort you have made to arrive at this decision.

This is to request that you, as the Board of Zoning Appeals stand by your decision and not honor the request of the President or the members of TC Retreat to continue using 1702 Comanche Street as a Residential and Treatment Facility. Thank you for upholding the law in this very important decision.

Sincerely yours,

Ann Reincke

(Sent by email so unsigned)

P.S. At this time, I am unsure if I will be able to attend your meeting since I have another meeting earlier that evening. My hope is that I will be able to attend both!

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White, Sarah J. Trust

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FEB 29 2016

PLANNING DEPT
CITY OF
TRAVERSE CITY

February 25, 2016

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Government Center
400 Boardman Avenue
Traverse City, MI 49686

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Traverse City, MI 49686

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1713 Comanche Street
Traverse City, Michigan 49686
March 2, 2016

The City of Traverse City Planning Department
Board of Zoning Appeals
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Dave Weston <dweston@traversecitymi.gov>

TCRetreat

1 message

Deni Scrudato <deniscrudato@yahoo.com> Mon, Mar 7, 2016 at 10:02 AM
To: jeffcockfield@gmail.com, khenningcallison@gmail.com, keedanlex@gmail.com, ddonaldson@co.leelanau.mi.us, jimbo1748@chartermi.net, clawrencecarol@gmail.com, quinnraftery@gmail.com, matt@rhhk-law.com, lkoebert@gmail.com, bcmatson@gmail.com, lecolombo@yahoo.com
Cc: Dave Weston <dweston@ci.traverse-city.mi.us>

BZA members,
I am unable to attend the BZA meeting tomorrow night but I'd like to weigh in on the location of this facility. Besides determining whether or not "treatment services" are provided, where does our zoning ordinance allow boarding houses in R1/R1a single family zones?
The occupants of this facility are not related to each other, they pay rent to a business known as TCRetreat, and they will come and go. Mr. Gilbert has continued to operate his new facility despite receiving notice in January of being in violation. He's even continuing to advertise for more "clients."
The furor seems to be emotional in nature, and many from the recovery community will no doubt speak in support of allowing TCRetreat to operate in its current location...zoning be damned. But a boarding house full of nuns isn't allowed in R1, is it? Or circus performers? Or fraternity brothers?
It's all about zoning and protecting our neighborhoods.
As a TC taxpayer, I am expected to abide by our zoning code and I expect the same of others.
I learned quite some time ago that there may be a manager (someone I know personally) residing on site at TCRetreat. Please ask the question. Again, is such a facility an allowed use in R1/R1a? Not that I can see from reading our ordinance.
Residence at TCRetreat is based on a 12-Step program, which is a "program for recovery." Does that constitute "treatment?" Do the rules and regulations the clients are expected to adhere to constitute "treatment?" I don't know the answer but maybe the city attorney can address this. I suspect the city's definition of "treatment services" is weak.
As a person in long term recovery myself, I know many of the folks from the recovery community who are planning to speak at Tuesday's BZA meeting. Some are carpooling in from other towns. While their hearts are in the right place, they apparently just don't understand why we have zoning.
Our single family neighborhoods need to be protected. The city's Master Plan clearly spells this out. Operating a boarding house in a single family zone is a violation of the city's zoning ordinance. Period. There are many other areas where such a facility IS an allowed use, especially in the surrounding townships.
Please stand fast, enforce the single family zoning and reaffirm the violation.
Thank you,
Deni Scrudato
422 E State

From my iPad.

March 2, 2016

TO: David Weston, Traverse City Planning and Zoning Administrator
FR: Jackie Anderson, Homeowner, 1725 Comanche St.
RE: TC Retreat Zoning Decision

I am writing to support your January 20 decision that TC Retreat (1702 Comanche St.) is not an allowed use in an R-1b district.

While your decision was well-grounded in evidence that TC Retreat is a Residential Care and Treatment Facility, there is also some merit in defining TC Retreat simply as a typical business enterprise more appropriate for location in a commercially-zoned district. Here are the facts regarding TC Retreat's business model:

- It incorporated in the State of Michigan in 2013 as a "domestic nonprofit corporation" formed on a non-stock basis. This status protects the financial assets of its president Mr. Gilbert, officers and directors from personal liability in the event of any business loss.

- It creates healthy rental revenues of almost $40,000 annually from a single business location.

- Fees are structured to generate, when fully occupied, income that is almost double the market rate rent of a comparable property in Traverse City. The gross profits, therefore, are likely to be at least 50% of income.

- Traverse City Retreat Inc. purchased the property in question in November 2015 for the full listing price of $229,900. This represented a windfall of almost $55,000 to sellers Daniel and Amy Richards who owned the home for only 29 months. It appears that the corporation paid an above-market price to acquire a residentially-zoned property, perhaps to test the commitment of the City to enforcement of zoning laws.

- The purpose of the business/corporation as stated in its Articles of Incorporation and 2015 Corporation Annual Report is variously described as "Recovery Support ***Services***" and "To aid individuals and families in the recovery from Substance Abuse Disorder with a spiritually grounded, community based residential ***program***." Both of these descriptions were noted in your finding that TC Retreat qualifies as a Residential Care and Treatment Facility, and not a traditional residence.

Mr. Gilbert argues that enforcement of residential zoning discriminates against the residents of 1702 Comanche St. who are disabled due to their recovery process from alcohol and substance abuse. I would propose that TC Retreat – which states it is in the *business* of providing housing to those in recovery – should be treated no differently in terms of zoning enforcement than a dry cleaner, a florist, or an apartment building. None of these businesses would be allowed to locate and operate in an R1-b district.

Mr. Gilbert has used social media to smear the reputations of homeowners living nearby his business, spreading his unsupported opinion throughout the local recovery community that we are bigots and fear-mongers. I for one am entirely and without reservation a supporter of addiction recovery . . . just as I am entirely a supporter of the imperative for zoning enforcement to build and sustain a stronger community.

Thank you for adding my comments to the record of the Zoning Board of Appeals meeting scheduled for Mar. 8, 2016.

Sincerely,