

Mapleton City Planning Commission Staff Report

Meeting Date: January 26, 2012

Item #: 4

Applicant: Bud Harper

Prepared by: Cory Branch

Public Hearing Item: Yes

Council Action Required:

Yes

REQUEST:

Bud Harper requests to amend Title 18, Development Code, Part III; Zoning, Section 18.84.370(B), Residential Facility for Handicapped Persons, in order to allow residential facilities for persons with a disability as a permitted use in any zone where residential dwelling uses are permitted.

FINDINGS OF FACT:

1. The applicant is requesting a text amendment to Section 18.84.370(B), Residential Facility for Handicapped Persons, which would allow a residential facility for persons with a disability as a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.
2. Attachment 1 includes the text that is being proposed by both Mapleton City staff and the applicant. The applicant is requesting a couple of changes to the proposed text and those changes have been bolded, underlined, and a line drawn through the selected text in order to identify what changes the applicant is requesting. (see Attachment #1 – Proposed Text)
3. Utah Code 10-9a-520(1) requires each municipality to adopt an ordinance which allows for residential facilities for persons with a disability. (see Attachment #2 – Utah Code 10-9a-520)
4. Utah Code 10-9a-103(44), reads, as follows:
"Residential facility for persons with a disability" means a residence:
(a) in which more than one person with a disability resides; and
(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or
(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.
5. As per Utah Code 10-9a-520 a residential facility for persons with a disability may also include substance abuse facilities.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed text excluding the changes requested by the applicant.

ATTACHMENTS:

1. Proposed Text – Section 18.84.370
2. Utah Code – 10-9a-520
3. Existing Mapleton City Code – Section 18.84.370(B)

18.84.370: RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY.

A. Purpose and policy.

1. The purpose of this section is to:
 - a. Comply with Utah Code Ann. § 10-9a-520;
 - b. Provide clear direction to citizens and applicants regarding the necessary requirements and procedure for establishing residential facilities for persons with a disability; and
 - c. Establish an application process for locating residential facilities for persons with a disability in a residential community that both avoids discrimination against the disabled and protects the character and nature of the city's residential communities.
2. Pursuant to Utah Code Ann. § 10-9a-520(2)(a), this ordinance is intended to comply with the Utah Fair Housing Act of Title 57, Chapter 21 and the Federal Fair Housing Amendments Act of 1988, 42 U.S.C., Sec. 3601 **& 3604** et seq.

B. Definitions. For purposes of this regulation, the following definitions shall apply:

1. "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.
 - a. "Physical or mental impairment" include:
 - (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
 - (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism **recovering addicts and alcoholics.**

b. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

~~Disability does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.~~

Recovering addicts and alcoholics are classified as people with disabilities under the Fair Housing Amendments Act, 42 U.S.C. 3604.

2. "Residential facilities for persons with a disability" means a 24-hour group living environment with one or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, and/or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies., and that is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities, or is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act. Residential treatment does not include a boarding school or foster home.

C. State regulation of residential facilities.

1. Prior to commencing operation, all applicants and operators of residential facilities for persons with a disability shall obtain a license from the Department of Health under Title 26, Chapter 21 ("Health Care Facility Licensing and Inspection Act") and/or the Department of Human Services under Title 62A, Chapter 2 ("Licensure of Programs and Facilities"), as is appropriate and required for the nature of the facility's operations and services.

2. All residential facilities for persons with a disability shall maintain a current license from the Department of Health and/or the Department of Human Services as a condition for their continued operation.

D. Municipal approval process for residential facilities.

1. A residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.

2. Prior to commencing the maintenance or operations of a residential facility for persons with a disability, the owner/operator of such a facility must first obtain a recommendation from the planning commission and final approval from the city council. In order to obtain such approval, the owner/operator of the facility must establish that:

a. The facility complies with existing zoning regulation for the desired location, including:

(1) Compliance with building, safety, and health regulations applicable to similar structures permitted within the zone, including obtaining permits relating thereto;

(2) Compliance with site development standards including parking, traffic, landscape, utility use, and other standards applicable to similar structures permitted within the zone without structural or landscape alterations that would fundamentally change the structure's residential character and/or nature; and

(3) Compliance with zoning requirements limiting the maximum number of unrelated occupants that are applicable to similar structures permitted within the zone.

b. The facility has obtained and maintains appropriate state agency licensure for the facility, as provided herein;

c. Placement of disabled individuals in the facility shall be on a strictly voluntary basis and a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility;

d. No individual shall be admitted to the facility as a resident who has a history of criminal conviction, is a convicted sex offender, has been convicted of selling or manufacturing illegal drugs, is currently using drugs or alcohol, and/or who is a direct threat to the health and safety of other individuals and/or of causing substantial physical damage to the property of others. In determining whether proposed residents are likely to represent a direct threat as outlined above, the planning commission and city council shall consider, on the basis of objective evidence:

(1) the nature, duration, and severity of the risk;

(2) the probability that potential injury will actually occur; and

(3) whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk; and

e. The residential facility will not fundamentally alter the character and nature of the subject residential neighborhood.

3. Granting Permit: If the city council determines that the residential facility for persons with a disability is in compliance with these requirements and this ordinance, the city shall grant the requested permit to that facility.

4. Use nontransferable: The use granted and permitted by this section is nontransferable and terminates upon:

- a. Transfer of the ownership of the facility **business**;
- b. Any use other than that approved by the city council in the process outlined above; and/or
- c. failure of the structure, its management, and/or any of its residents to comply with any aspect or provision of this ordinance.

5. Denial of permit: if the city council determines that the residential facility for persons with a disability is not in compliance with these requirements and this ordinance, the city shall deny the requested permit to that facility, and the city council shall provide a written explanation outlining the bases for the denial. Any decision of the city council may be appealed to the district courts within thirty (30) days of the council's written decision.

E. Reasonable accommodation and related procedure.

1. None of the requirements in the Municipal Approval Process outlined above shall be interpreted to limit any reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for persons with a disability.

2. Any person or entity who wishes to request a reasonable accommodation shall make a written request for the same to the planning commission for recommendations and city council for final approval. Within such a request:

- a. The applicant shall identify the ordinance or regulation the applicant seeks to have waived or modified;
- b. The applicant shall identify the nature of the disability requiring accommodation;
- c. The applicant shall describe the nature of the requested accommodation;
- d. The applicant shall describe why the accommodation is necessary to afford the disabled an equal opportunity to use and enjoy residential housing;
- e. The applicant shall describe what impact, if any, the applicant perceives that the requested accommodation shall have on the existing neighborhood and whether the requested accommodation is consistent with the character and nature of the neighborhood; and

f. The applicant shall identify any burden or expense the accommodation would impose on the city.

3. The planning commission and city council shall make a reasonable accommodation to any aspect of the municipal approval process outlined above where it receives a written request for accommodation and the city council determines that such an accommodation is reasonable and necessary in order that a disabled individual may have an equal opportunity to use and enjoy residential housing.

a. In considering whether a proposed accommodation is reasonable and necessary, the planning commission and city council shall:

(1) Consider the impact of the requested accommodation on the neighborhood in light of existing zoning and use, including any impact on neighborhood parking, traffic, noise, utility use, safety, and other similar concerns, and whether any such impact fundamentally alters the character and/or nature of the neighborhood and/or existing zoning regulations;

(2) Consider whether, based on objective evidence and on an individualized basis, a particular accommodation would pose a direct threat to the health or safety of other individuals and/or would result in substantial physical damage to the property of others. In determining the likelihood of direct threat or substantial damage, the planning commission shall consider:

(i) the nature, duration, and severity of the risk;

(ii) the probability that the potential injury will actually occur; and

(iii) whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk; and

(3) Consider whether granting the accommodation would impose any significant or undue expense and/or administrative burden on the city.

b. The city council shall draft a written opinion letter explaining its findings, indicating whether the requested accommodation is granted and detailing any related conditions that may be imposed therewith.

4. Appeals process. Any party that requests a reasonable accommodation that is denied by the city council may appeal to the district courts within thirty (30) days of the council's written decision.

10-9a-520. Residences for persons with a disability.

(1) Each municipality shall adopt an ordinance for residential facilities for persons with a disability.

(2) Each ordinance under Subsection (1) shall:

(a) comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.; and

(b) to the extent required by federal law, provide that a residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.

(3) Subject to Subsection (2), an ordinance under Subsection (1) may:

(a) require residential facilities for persons with a disability:

(i) to be reasonably dispersed throughout the municipality;

(ii) to be limited by number of occupants;

(iii) for residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, to provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:

(A) a security plan satisfactory to local law enforcement authorities;

(B) 24-hour supervision for residents; and

(C) other 24-hour security measures; and

(iv) to obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zone to similar uses that are not residential facilities for persons with a disability; and

(b) provide that a residential facility for persons with a disability that would likely create a fundamental change in the character of a residential neighborhood may be excluded from a zone.

(4) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

(a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and

(b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Attachment #3 – Existing Mapleton City Code - Section 18.84.370(B)

B. Residential Facility For Handicapped Persons: A residential facility for handicapped persons shall be consistent with existing zoning of the desired location.

1. Conditions: A residential facility for handicapped persons shall:

- a. Be occupied on a twenty four (24) hour per day basis under the supervision of a house family or manager;
- b. Conform to all applicable standards and requirements of the department of human services; and
- c. Be operated by or operated under contract with that department.

2. Residential Facility For Handicapped Persons As A Permitted Use: A residential facility for handicapped persons is a permitted use in any area where residential dwellings are allowed except an area zoned to permit exclusively single-family dwellings.

To obtain a permit for the maintenance or operations of residential facility for handicapped persons, a permit must first be obtained by the owner or operator of the facility. To obtain a permit, the owner or operator must establish, to the satisfaction of the planning commission that:

- a. The facility meet all municipal building, safety, and health ordinances applicable to similar dwellings;
 - b. The operator of the facility provide assurances that the residents of the facility will be properly supervised on a twenty four (24) hour basis;
 - c. The operator of the facility establish a municipal advisory committee through which all complaints and concerns of neighbors may be addressed;
 - d. The operator of the facility provide adequate off street parking space;
 - e. The facility be capable of use as a residential facility for handicapped persons without structural or landscaping alterations that would change the structure's residential character;
 - f. No residential facility for handicapped persons be established or maintained within three-quarters ($3/4$) mile of another residential facility for handicapped persons;
 - g. No person being treated for alcoholism or drug abuse be placed in a residential facility for handicapped persons;
 - h. No person who is violent be placed in a residential facility for handicapped persons; and
 - i. Placement in a residential facility for handicapped persons be on a strictly voluntary basis and not a part of, or in lieu of, confinement, rehabilitation or treatment in a correctional facility.
3. Granting Permit: If the city determines that the residential facility for handicapped persons is in compliance with these ordinances, the city shall grant the requested permit to that facility.

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