



ZONING BOARD OF APPEALS

Tuesday, September 4, 2018

1. Roll Call – 7:00 P.M. – Community Room, City Hall
2. Approval of Minutes – July 10, 2018
3. Public Comment
4. Updates
5. Adjournment



ZONING BOARD OF APPEALS

July 10, 2018

A regular meeting of the City of Petoskey Zoning Board of Appeals was conducted in the City Hall Council Chambers on Tuesday, July 10, 2018. Roll was called at 7:00 P.M.

Present: Michael Karr, Chair
Ben Crockett
Chris Hinrichs
Jim Knibbs
Scott Morrison
Lori Pall

Staff: Amy Tweeten
Rob Straebel, City Manager
James Murray, City Attorney
Lisa Denoyer, Administrative Assistant

Also Present: John & M. Agria, 714 Baxter Street
Abby Badgley and family, 415 Kalamazoo Avenue
Gary Barknecht, 514 Waukazoo Avenue
Nan Casey & Jim Dunn, 114 East Lake Street
Charles Donaldson, 300 West Jefferson
Jim Ehrnst, 702 Elizabeth Street
Rose Fitzgerald, 514 Elizabeth Street
Nancy Foltz-Adams, 5878 LaCanada, Harbor Springs, MI
Fred Geuder, 1056 Newberry Avenue
Jeff and Sandy Grantham, 701 Baxter Street
Brady Harper, no address given
Bill Hoffman, 215 Sunset Avenue
Suzanne Hug, 3125 West Levering Road, Harbor Springs, MI
Tim Janzen, 209 Cloudy Lake Road
Tim Kepford, 5750 LaCanada, Harbor Springs, MI
Mark Manker, 4456 Blackbird Road
Kate Marshall, 1015 East Mitchell Street
Noah Marshall-Rashid, 414 Grove Street
Jennifer Martin, 7740 Racoon Run, Harbor Springs, MI
Paul Matthews, Hill Street
Patrick McGinn, Harbor Hall, 704 Emmet Street
William Perkins, 709 Jackson Street
George & Sharon Ramey, 433 State Street
Bentley Renker, 1986 Fairview, Harbor Springs, MI
Larry Rochon, 641 Harbor View Lane
Lee Rousseau, 7975 Red Pine Trail, Alanson, MI
Dustin Smallwood, 218 Lincoln Street, Boyne City, MI
Jeff VanTreese, Harbor Hall Attorney, Holland, MI
David Washburn, 5036 Cook Avenue, Conway, MI

Upon motion and support, the minutes of the June 5, 2018 meeting were approved 6-0, with corrections made on page 3.

**Case #826 – Variance Request for
Front Yard Fence at 415 Kalamazoo Avenue**

Staff provided an overview of the request for a variance for an existing fence at 415 Kalamazoo Avenue showed photos of the backyard and explained that the property owner had been informed that a fence was only permitted in the side and rear yards, not the front yard.

Abby Badgley, 415 Kalamazoo Avenue, commented that she was unaware of the fence ordinance until she received a letter in the mail from the City. She stated that she believed that residents should be allowed to grow gardens in their green space and that Amy Tweeten had mentioned that if temporary, the fence may be considered differently. Ms. Badgley asked the board to approve her request as she felt her permanent fence was more appealing than a temporary fence and was installed to keep critters out of their garden.

At this time, the meeting was opened for public comment.

There being no public comment, the public hearing was closed.

Board member Pall commented that it appeared there was room for a garden in the backyard where a fence would be allowed and noted the house was for sale and any variance would run with the land.

Board member Knibbs asked the applicant if it was not possible to plant the garden in the backyard to which Ms. Badgley commented that they have a small garden in the backyard but it does not get much sun and the only other option would have been to put their trampoline in the front yard as the yard is not as large as it looked in the pictures presented by the City Planner.

Chairperson Karr commented that while a garden is not prohibited in the front yard, the fence is. He also commented that the fence was well made and recommended that the applicant reach out to the Planning Commission or City Council representative and voice her concerns or issues with the current ordinance.

Board member Hinrichs stated that he supported their ambition and intention but the ordinance is very clear that front yard fences are not permitted and that the proposed hardship is not specific to their lot, it is a universal hardship. He also commented that he believed a change in the ordinance was needed.

Board member Morrison commented that the intent of the ordinance is to keep broad streets, open spaces and green spaces. He also commented that while the fence is very well done, it is not the role of the board to pick and choose when it should be allowed.

Vice Chairperson Crockett commented that there are other front yard fences in the area and asked staff why they are there.

Staff responded that some of the fences predate the ordinance and the others have been installed without a permit. Some owners have been notified that a variance will need to be

granted or the fence taken down and that enforcement of more temporary fences did not rise to the top of the list.

Chairperson Karr commented that temporary fences do not usually look good and can end up being installed for five plus years and the goal is to try to enforce them equally.

Board member Hinrichs made a motion to deny the variance request for a front-yard fence at 415 Kalamazoo Avenue due to the lack of a practical difficulty specific to the subject property. Support for the motion was made by Board member Pall. Motion carried 6-0.

**Case #827 – Variance Request from the Required Maximum 15-foot
Front Yard and Corner-Front Yard Setbacks at 114 Rush Street**

Staff informed the board that applicant, Harbor Hall, is proposing a new women's facility at 114 Rush Street that fronts Emmet Street and Rush Street, making these the front and corner-front yards. This parcel is zoned B-2B and requires a minimum front and corner-front yard setback of 5-feet and a maximum setback of an average of the buildings on adjacent lots, or 15-feet, whichever is greater. As none of the adjacent lots front Emmet or Rush Streets, the 15-foot setback is required. Due to the presence of the sewer easement, it would not be possible to build a structure within 15-feet of the property line on Emmet Street. The proposed building is adjacent to the easement at the southeast corner, making it 27-feet, 8-inches from the property line, and with the angle of the property line, the building is then 70-feet, 1-inch from the Emmet Street property line at the northeast corner of the building. The setback would be measured from the closest portion of the building, or 27-feet, 8-inches, for a resulting variance from the 15-foot requirement of 12-feet, 8-inches.

On the Rush Street frontage, the building is proposed to be placed 20-feet, 9-inches from the property line, resulting in a 5-foot, 9 inch variance request.

Chairperson Karr asked staff if the board were to approve the variance request would the parking, shape of building, etc. be forwarded to the Planning Commission for approval to which staff replied that the site plan would go to the Planning Commission for approval and that the board was only considering the setback variance request.

Tim Janzen, consultant for Harbor Hall, stated that due to the easement and inability to build in that area that there was no practical way to build closer to the property line on Emmet Street and that they were asking for a slight variance on Rush Street because the property takes up most of the block and they would prefer not to have a back yard where residents could gather and not be seen but rather a front yard where they would be visible.

At this time, the meeting was opened for public comment.

Jeff Grantham, 801 Baxter Street, commented that he was an immediate neighbor to the west and that his issue only with the request is that they are at the design stage and that as a builder and a designer he believes it is the perfect opportunity to work within the City's ordinance.

James Ehrnst, 702 Elizabeth Street, voiced concerns about the variation of setback rules and that stated that he believes it would change the neighborhood and that he would like the character to remain the same on Emmet Street. This is a large project that will encroach on the neighbors to the north and west and it will affect the Old Town Emmet plan. He also voiced concerns about parking due to the increase in employees and guests and will have a lot of impact on the neighborhood, and that there should be sidewalks on Rush Street. He asked the board to consider these things when making their decision.

Mr. Janzen commented that the proposed building and the existing buildings differ greatly. The proposed building has a much smaller footprint than the existing building and looks much nicer than the existing building.

Jeff VanTreese, Attorney for Harbor Hall, commented that they could not physically build on or change the sewer easement.

There being no further comments, the public hearing was closed.

Board member Knibbs asked if the board could address each setback individually or if they had to be addressed as one request to which Chairperson Karr responded that they could be addressed separately.

Board member Hinrichs commented that the characteristic of the sewer easement is unique to the property along Emmet Street but not to the Rush Street side.

Board member Morrison asked about the current width of Rush Street. Staff responded that it is 33-foot wide, which is half of the width of a typical city street.

Board member Pall asked if there were any upgrades planned for Rush Street. Staff responded that there weren't any planned.

Chairman Karr commented that he could not see a reason to grant a variance on Rush Street as the setback shown was a preference, not a need.

Board member Pall commented that the applicant could have a design that meets the setback on Rush Street and that the sewer easement is a practical difficulty on Emmet Street.

Board member Morrison asked what the purpose was to have the courtyard in the front yard.

Mr. Janzen responded that the site has a small backyard that backs up to the Gruler property, that they own property on both sides of Rush Street so keeping the resident gathering place in the front where they are visible improves the operation.

Chairperson Karr suggested that there is a possibility of the applicant building a portion of the building at the maximum setback along Rush Street rather than the entire wall and meeting the ordinance. He also noted that it is the Planning Commission that would review parking and sidewalk locations, not the Board of Appeals.

Board member Knibbs stated that he could see the need for the variance for Emmet Street but the practical difficulty for Rush Street he did not see..

Staff commented that the board could make a motion for the front yard setback variance request and a separate motion for the corner-front yard setback variance request.

The Board reviewed the Zoning Ordinance Regulation Variance Checklist:

1. Will strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose?

Board members concurred that the sewer easement prevented a building from being placed a maximum of 15 feet from the Emmet Street property line, but that it could be at 15 feet along Rush Street.

2. Is there a way to accomplish the same purpose without a variance or with a lesser variance regardless of convenience or expense?

Board members discussed the difference between the two street frontages, that a building placed at the sewer easement along Emmet Street was the least variance that could be granted, and that the setback on Rush was stated to be a preference.

3. Is the need for the variance due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district?

Board members concurred that the sewer easement along Emmet Street was unique but there was nothing unique about Rush Street that prevented them from meeting the maximum setback requirement.

4. If granted, will the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties?

Board members concurred that it was fair to neighboring properties along Emmet Street but given the lack of a practical difficulty on Rush Street, it did not meet the standard.

5. Has the need for the variance been created through previous action of the applicant?

Board members concurred that a different design could meet the Rush Street setback so the standard was not met.

Board Chairman Karr then asked members to take time to develop a motion for consideration.

Board member Knibbs then made a motion to approve a 12' 8" front-yard variance along the the sewer easement due to the practical difficulty of not being able to build over an easement and to deny the variance request along Rush Street due to a lack of practical difficulty. Support for the motion as made by Board member Hinrichs.

Chairman Karr asked for a clarification whether the setback variance would be along the entire length of the easement, to which Mr. Knibbs and Mr. Hinrichs confirmed. When asked by the applicant whether they were requiring a triangular building, Mr. Knibbs replied that if needed, yes.

The motion to approve a 12' 8" front-yard variance along the the entire length of the sewer easement due to the practical difficulty of not being able to build over an easement and to deny the variance request along Rush Street due to a lack of practical difficulty of being able to meet the maximum setback carried on a 6-0 vote.

Case #828 – Request for Reasonable Housing Accommodation at 114 Rush Street

Staff informed board members Harbor Hall had completed the required application form for consideration of a reasonable accommodation under the Federal Fair Housing Act (FFHA) for occupants protected under the Americans with Disabilities Act ("ADA"). Harbor Hall is seeking a reasonable accommodation to allow 35 unrelated individuals – versus the four (4) allowed by the

Zoning Ordinance -to live as a family or single housekeeping unit as a women's alcohol and drug recovery facility at 114 Rush Street. She further stated that Harbor Hall had provided with their application an opinion letter from Dr. John M. Majer stating that a minimum of 8 residents provides recovery home residents the best outcomes, and that the board had also received an analysis of the request by Paul leBalnc, AICP, a planning consultant retained by Plunkett and Cooney.

Staff also stated that the Zoning Board of Appeals should take into account the following factors and make findings pursuant to the Ordinance as follows:

- a) Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws;
- b) Whether the requested accommodation is necessary to make housing available to an individual with disabilities under the fair housing laws;
- c) Whether the requested accommodation would impose an undue financial or administrative burden on the City;
- d) Whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning plan;
- e) Whether there is an alternative accommodation which may provide an equivalent level of benefit to the applicant;

As the requested accommodation was for a residential treatment facility, the following factors also needed to be considered:

- a) Whether the recovery residence is state licensed as a substance use disorder facility;
- b) Whether the recovery residence is a certified member of an established entity that conducts its own inspections and has its own standards for the benefit of occupants, e.g., CARF International, National Alliance for Recovery Residences (NARR) or any equivalent entity having similar requirements for membership;
- c) Whether the property should be managed by a person living on site;
- d) Whether and how the requested accommodation will benefit the people in the program; and
- e) Whether the property is within 400-feet of another property granted accommodations for use by four (4) or more unrelated persons under this section.

The Zoning Board of Appeals should consider the totality of all of the factors above before making a decision on the request for a reasonable accommodation. In doing so, the Zoning Board should also consider whether Harbor Hall has met the following three standards:

- 1) Reasonable. The accommodation request must be reasonable. Accommodation requests are only reasonable when they impose no "fundamental alteration in the nature of the City's Zoning Plan" or "undue financial or administrative burdens on the City".
- 2) Equal opportunity. The Zoning Board of Appeals must weigh the FHAA's requirement that the City to give handicapped individuals the right to choose to live in single family neighborhoods the same as others.
- 3) Necessity. Harbor Hall is required to prove that the accommodation is not only reasonable but also "*necessary*." This can best be defined by analyzing whether "*but for the accommodation*" Harbor Hall will likely be denied an equal opportunity to enjoy the housing of their choice.

Staff informed the Board that pursuant to the City's Zoning Ordinance, the Zoning Board of Appeals must act on the request no later than July 27, 2018 or the request for reasonable accommodation would automatically be approved.

Chairperson Karr asked Mr. VanTreese for clarification on the request stating the agenda item was for accommodation of the number of unrelated individuals living as a single housekeeping unit within 400 feet of another facility granted accommodation, however the application stated the application was seeking accommodation for "any and all" requirements of the zoning ordinance which was a very broad request.

Mr. VanTreese responded that the only portion he was aware of was Section 201 that prohibits more than four unrelated persons to reside within a single residential unit, but had requested that the City Planner confirm that was all the accommodation they needed.

James Murray, City Attorney, informed the Board that the applicant has only asked for accommodation from the Section 201 definition of family and "any and all" is ambiguous.

Chairperson Karr asked the Board if they had any questions before having the applicant present its case. Seeing none, the applicant was asked to address the Board.

Larry Rochon, 641 Harbor View Lane, Board President of Harbor Hall, stated that Harbor Hall is a non-profit 501(c)(3) that has been at the corner of Emmet and Grove Streets for 44 years as a substance abuse treatment center for men. For the past 20 years they have had a vision to build a women's facility and approximately three years ago they purchased the neighboring property in hopes of creating a closed campus. Mr. Rochon also stated that Harbor Hall has always been a substance abuse center, not a boarding house and asked the Board to allow them to build a treatment center for women to provide services as they have for men for the past 44 years.

Fred Geuder, 1056 Newberry Avenue, Board Treasurer of Harbor Hall, informed the Board that the annual budget is based on the current costs at Harbor Hall and it is estimated that annual expense will be around \$2.1 million, which includes the addition of 25 +/- full time employees with benefits, electronic record keeping, a registered nurse, psychologist, psychiatrist and possibly a physicians assistant. A women's facility next to the current facility would allow for shared costs of these expenses. He also informed the Board that they will need 80-90% occupancy to cover the fixed cost of the facility and the estimated project cost is \$15 million to build and furnish the facility. Mr. Geuder also stated that as a former city manager he knows that non-profits have less impact than commercial entities.

Patrick McGinn, 704 Emmet Street, CEO of Harbor Hall, informed the Board of his certifications and licenses and that Harbor Hall has treated more than 10,000 men since 1974. Mr. McGinn also informed the Board that women are underserved with residential facilities with the closest location in Traverse City and in a joint effort with Hazelton Betty Ford their goal is to build a state of the art facility to treat women in northern Michigan. He then explained the levels of care ranging from Level 1 to Level 3.5 and read aloud an excerpt from a report by John M. Majer, Ph.D. arguing that it is necessary to have a minimum of eight residents and a maximum of what the dwelling can accommodate to provide the therapeutic benefit of a recovery home. Mr. McGinn also informed the Board that their residents are very active in participating with community services with the Gold Mine, Salvation Army, Chamber of Commerce, etc.

Mr. VanTreese thanked the Board for their time and reminded them that the Fair Housing Act is a federal law that requires the City to grant reasonable accommodation if the applicant has shown reasonable cause and that there is no undue cost to the City, either financial or administratively, should they approve their request. He stated that the courts require the applicant to show financial or therapeutic reasons and he believes they have done so with the evidence provided by Dr. Majer and that for these reasons, the Board should grant the requested accommodation for the new and

existing facilities. He also commented on how nice the property would look by replacing an old liquor warehouse with a new \$15 million facility.

At this time, the meeting was opened for public comment.

Jennifer Martin, 7740 Racoon Run, Harbor Springs, read aloud a poem and informed the Board that she has been in long-term recovery for three decades and is a contributing member to society. For the past 27 years she has sponsored dozens of women in recovery, attended 12-step meetings in Petoskey that usually have 35 to 40 women in attendance and has worked with women in the Emmet County jail where two-thirds of the women incarcerated have addiction problems. She asked the Board to think about the women in their lives and if they needed help, wouldn't they want them to get the best care for recovery.

Kim Wills, 204 State Street, has been a neighbor to Harbor Hall for 40 years and has not had any problems with the men living there. She stated that she is thankful for the help they have given to over 10,000 men in 44 years and asked the Board to help them fulfill their vision for a women's facility and not create roadblocks. She stated that we all need to help people in our society that have fallen apart and help care for them.

Dustin Smallwood, 218 Lincoln Street, Boyne City, stated that he is a graduate of Harbor Hall's inpatient and transition programs and is now a recovery coach, small business owner and Resident Manager of Nathan's House in Boyne City. Harbor Hall saved his life and taught him to become a contributing member of society.

James Ehrnst, 702 Elizabeth Street, stated that he has watched Harbor Hall grow over the years and has not had many problems but he believes that the zoning is the issue and the proposed facility is massive with parking negatively affecting the neighborhood. He voiced concerns about construction noise and asked the board to think about the community and how a 40% increase in residents will affect the neighborhood. He felt a cap of 50 residents, including women was more reasonable.

Nan Casey, 114 East Lake Street, stated that she volunteers at Brother Dan's and has made every commitment to help Harbor Hall in going every week for Sunday open meetings and has made several attempts to offer to help but no one will return her calls. She also commented that there is a desperate need for housing for the men that graduate from Harbor Hall as many of them want to stay in the area.

Paul Matthews, Hill Street, stated that he has been in recovery for 34 years and chose to recently move his family and life here. He supports the construction of a women's facility and believes it would be good for the City.

Joh Agria, 714 Baxter Street, stated that he values what Harbor Hall has to offer but that is not the issue before the Board but rather if it is a reasonable accommodation of which he believes that doubling their occupancy is not reasonable.

Bill Hoffman, 215 Sunset Avenue, stated that he does not believe that asking for 35 residents is reasonable when the ordinance only allows for four unrelated residents.

Jeremy Wills, 204 State Street, Fourth Ward Councilmember, commented that over the years Harbor Hall has been a good neighbor and asset to the community and hopes they will continue to be in the future. He asked if a nine-fold increase was reasonable and stated that he believed that the new facility would add an unreasonable financial burden as they are tax exempt and would create additional traffic in the neighborhood. He also stated that he fully supports a facility for

women, that the location is good for cutting costs for Harbor Hall but asked that they keep it reasonable for the community.

Mrs. Wills commented that Emmet Street consists of commercial and residential uses and that it is a main emergency route out of Petoskey and not your typical neighborhood street. She stated that 35 people is not that many people and commented that there are many residences in town that have more than four unrelated people living in them.

Rose Fitzgerald, 514 Elizabeth Street, stated that she understands the need but that she believes Harbor Hall made a mistake in purchasing the property without knowing the regulations or just disregarded them. She believes the facility will have a large impact on the neighborhood and that the Board needs to take the zoning ordinance into account and that there is a big difference between 8 and 35.

Charlie Donaldson, 300 West Jefferson, informed the Board that he has been sober for 31 years and stated that he hopes the community can help those that want and need help.

Jeff Grantham, 801 Baxter Street, stated that he has lived here for over 30 years and that Baxter Street is entirely owner occupied (with the exception of one) and he would like to keep it that way. He believes in the mission and need but objects to the size, location and density and believes there is a possibility for it to grow larger still. He would like the neighborhood to have an equal opportunity to enjoy their housing as they have come to know it.

David Washburn, 5036 Cook Avenue, Conway, commented that he has been in recovery for five years and compared the situation to veteran loans after World War II and how the government approved loans for white veterans but denied loans for black veterans. He stated that these women need treatment and this governmental body is making that decision.

There being no further comments, the public hearing was closed.

Vice Chairperson Crockett asked what the average length of stay was for residents and about the justification of the financial need of the client, specifically what was the client out of pocket cost.

Mr. VanTreese commented that residents can stay up to 90 days but the average stay is 62 days.

Mr. McGinn commented that approximately 95% of resident insurance is Medicaid and Healthy Michigan and there is minimal out of pocket cost. They were recently approved to accept Blue Cross Blue Shield of Michigan and Priority Health as well.

Chairperson Karr applauded the mission and goal of Harbor Hall, but stated that the heart of the question is what is reasonable for housing in the specific zoning district and asked for an explanation of the leap from the recommendation of eight residents to 35 residents. Was there a therapeutic benefit of greater numbers?

Mr. VanTreese commented that eight residents was the minimum and not a requirement and the greater the number of residents, the better the results and they are asking for the number of residents that could live in a building that size. He said that the FFHA takes precedence over local ordinances.

Board member Pall commented that she believed the application was asking for two accommodations, not just one. The first being reasonable accommodation and the second being within 400-feet of another property granted accommodations.

Mr. VanTreese responded that there was no accommodation in place for the existing facility. He commented that they have downsized the building significantly and believes that if it were a for-profit business building they could build tomorrow. He also stated that they are there to represent people with disabilities and there are no size or dimensional issues, they are only asking for reasonable accommodation and they believe they have shown what is required.

Vice Chairperson Crockett commented that Dr. Majer's report gave foundation for eight people living together as being beneficial and does not show evidence supporting larger numbers and asked Mr. VanTreese if his position was that more people equaled more support. He was looking for the nexus between the number of residents and outcomes and could see the connection for eight but not for 35.

Mr. VanTreese responded that there are better outcomes with people living together in a recovery campus community. The number of residents usually has to do with the size of the facility but research has not been done on larger unit sizes. Dr. David Best of the University of Sheffield, England has done research but it has not been published yet, he has verbally expressed that the larger the support group the better the outcome.

Tim Kepford, 5750 LaCanada, Harbor Springs, commented that every unit at Hazelton Betty Ford has 30 to 40 residents. Their original plan was for 80 residents, but after looking at Hazelton Betty Ford in Saint Paul, they decided on 35 residents as that is what works best for Hazelton, which is the best recovery treatment in the world.

Board member Pall commented that Dr. Majer's report references the Oxford House which houses six to 10 residents and the applicant is proposing inpatient care, outpatient care and supervised withdrawal treatment.

Mr. VanTreese responded that the campus would have an office area, clinical service area and recovery housing area. Oxford house is a Level 1 facility that does not have any staff or management. Level 2 and 3 facilities have staff and paid staff and Level 4 is a treatment center that offers clinical treatment. There are 2,000 Oxford houses so they are easy to study.

Board member Hinrichs asked if a residential care and treatment facility was permitted under the current zoning classification. Mr. Murray responded that it was not a permitted use in the B-2B but noted that the application was made by Harbor Hall under the Fair Housing Act as Harbor Hall claims they have a need for a reasonable accommodation based on the claim that the new structure is a dwelling as defined under the Act. There is some question whether Harbor Hall is a dwelling as defined by the Act and courts have come to different conclusion based on the facts particular to each case, including duration of time occupants intend to stay and whether it is a place residents will return to. For example, a motel is not a dwelling. Harbor Hall seems to be a complex combination of uses. Some residential treatment centers have been seen as dwellings covered by FFHA but unanswered questions remain concerning Harbor Hall. For example, whether occupants are ordered by a court to reside at Harbor Hall as well as the other non-residential uses noted by Paul LeBlanc in his report.

Chairperson Karr commented that it is a question of whether Harbor Hall is a boarding house or residential treatment center and asked if there currently are any areas in the zoning ordinance that would allow for a treatment facility with an unlimited number of residents. Staff responded that the H-2 Hospital District did not have a resident limits, with other districts limited to a maximum of six residents.

Vice Chairperson Crockett asked if residents could bring family with them to Harbor Hall which Mr. VanTreese stated they could not due to house rules. Mr. Crockett asked that if they were pursuing

Fair Housing Accommodation, wouldn't it be considered discriminatory do deny families? Mr. VanTreese stated that he is unaware of any women's facilities with children and that bringing them in may bring out other issues.

Board member Pall asked what districts would allow a residential care and treatment facility and stated that she believed allowing this use would be a fundamental change.

Staff responded that RM-2 and any district that allows RM-2 Uses – B3, B3-A, B3-B, I-1 and I-2 allow residential care and treatment facilities with a maximum of six residents and the H-2 Hospital District would allow the facilities without a limit on number of residents.

Board Member Pall noted Mr. LeBlanc's review that there were nine districts that allowed residential care and treatment facilities.

Mr. Murray noted that it is important for the Board to find whether they believe the change to 35 residents is a fundamental change or an unreasonable change.

Board member Pall asked what the definition of a dwelling was and Mr. Murray read aloud the FFHA definition of a dwelling found at USC 42 3602(b) and stated that the Fair Housing Act does not define residence and not every treatment facility is automatically deemed to be a dwelling. If it is a dwelling as defined by the FFHA then they are entitled to request reasonable accommodation. The Board must consider whether the request for an accommodation of 35 residents is a reasonable request applying the factors enumerated in the City's ordinance and by applying the applicable law under the FFHA regarding reasonableness, equal protection and necessity as outlined and whether the request creates a fundamental change to the City's zoning.

Chairperson Karr asked the applicant if the number of residents desired had changed over the past one to three years. He also asked if there was any room for negotiation to bring the number of residents closer to four to six residents and if the applicant could have 35 residents at a different site, would that be possible.

Mr. Rochon responded that they originally had come to City Council to vacate Rush Street to create closed campus and were looking to have 40 residents but have since decreased that number to 35.

Vice Chairperson Crockett questioned whether Harbor Hall was a dwelling by the statute definition and if the accommodation was directly related to the disability, are 35 residents better for the operation or the treatment, and felt that they were very narrow questions.

Board members discussed adjournment options or continued discussion.

Board member Morrison asked if there was one request or two and if Harbor Hall was all one unit.

Mr. VanTreese commented that there is an office and housing on the property. The office is in one section of the property and the remaining area of the property is all residential housing.

Chairperson Karr stated that he struggles with only one district allowing such a facility and had concern whether it was reasonable under fair housing accommodation requirements that this use was only allowed in one district. He felt there was a smaller number of residents that is closer to what the ordinance allows that would provide reasonable accommodation.

Board member Pall commented that they could follow the Oxford House model and that she believes that what they are doing is more in line with services that a hospital offers.

Vice Chairperson Crockett agreed that the request was more in line with a hospital and that it was difficult to see it as a dwelling.

Chairperson Karr questions whether it was reasonable that only one district allows more than four unrelated individuals to reside in a residence and stated that he struggles with the fact that only the H-2 district would allow the facility being proposed and that McLaren owns all properties in the H-2 district. Was having a single zoning district allowing reasonable accommodation?

Board member Knibbs stated that he was sympathetic to the cause but the Board needs to take the emotional part out of it and needs to respect the ordinances that are in place.

Board member Pall commented that it is not the only district and that they could go to one of the other eight districts and request accommodation. What is proposed is acute care.

Chairman Karr noted that the largest use of the building is meeting space.

Vice Chairperson Crockett stated that he believed it was a gray area as to whether or not it is a dwelling and if it is something in between that it should err on the side of the applicant. It might pass the test for a dwelling but the applicant has not shown proof for the need of 35 residents for the specific disability. A smaller number would be possible but he believes it would be unreasonable to approve that large of a number of beds.

Board member Pall commented that she does not believe it is a dwelling as it is not a place residents want to return to. Board member Hinrichs agreed.

Chairperson Karr commented that the Oxford Homes are very different models from how Harbor Hall operates and asked whether anyone but McLaren owned property in the H2 District. Staff responded that there were no other property owners.

Mr. VanTreese informed the Board that he had spoken with his clients and they were willing to reduce the number of residents to 30 if the Board would agree to grant reasonable accommodation and that Harbor Hall would not come back for Fair Housing Accommodation.

Board member Crockett stated that the accommodation directly affects people with disabilities, asked if this size building is necessary to treat someone with this disability, and stated that the Board needed to think only about the nature of the disability and accommodation for this disability.

Board member Crockett then made a motion to grant a reasonable accommodation to Harbor Hall at 114 Rush Street for nine unrelated individuals and to grant an accommodation from the 400-foot distance requirement based on the expert testimony that eight unrelated persons and one leader is an ideal size for adults with the disability. Board member Hinrichs supported the motion, which carried on a vote of 4-2.

Seeing no further business, the meeting was adjourned at 10:34 P.M.