



Planning Commission Minutes

Note: Anyone wishing to speak at any Planning Commission meeting is encouraged to do so. If you wish to speak, please rise and, after you have been recognized by the Chair, give your name and complete address for the record. You will then be allowed to speak. Please note the public testimony may be limited by the Chair.

January 14, 2025

REGULAR MEETING

Minutes

I. CALL TO ORDER:

Chair Verner called the meeting to order at 7:00 p.m. at the Civic Center Council Chambers, 1175 E. Main Street. Commissioners Perkinson and Phillips attended the meeting via Zoom.

Commissioners Present:

Lisa Verner
Eric Herron
Gregory Perkinson
Russell Phillips
Susan MacCracken Jain
Kerry KenCairn

Staff Present:

Brandon Goldman, Community Development Director
Derek Severson, Planning Manager
Carmel Zahran, Assistant City Attorney
Michael Sullivan, Executive Assistant

Absent Members:

Council Liaison:

Vacant

II. ANNOUNCEMENTS

1. Staff Announcements:

Community Development Director Brandon Goldman made the following announcements:

- The City's annual town hall meeting was scheduled for January 22, 2025.
- The Jackson County Planning Commission will be hearing a request for the Urban Growth Boundary line adjustment related to 375 and 475 East Nevada Street on January 15, 2025. This item previously came before the Commission in 2021, PA-T2-2021-00031.
- City Manager Sabrina Cotta will present the updated Commissions and Committees handbook at the January 28, 2025 Study Session.
- Appointments for Council Liaisons to Commissions and Committees will be determined by the Mayor and are scheduled for January 21, 2025.
- The Commission will review an application for the annexation of 300 Clay Street at its February 11, 2025 meeting.

2. Advisory Committee Liaison Reports – None

III. CONSENT AGENDA

1. Approval of Minutes

- December 10, 2024 Regular Meeting





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Commissioner MacCracken Jain asked that her question on page 3 of the minutes be amended to more accurately reflect her inquiry regarding the density requirements of Area 7.

Commissioners Perkinson/Phillips m/s to approve the Consent Agenda with the correction requested by Commissioner MacCracken Jain. Voice Vote: All AYES. Motion passed 6-0.

IV. **PUBLIC FORUM** – None

V. **FINISHED BUSINESS**

A. Approval of Findings for PA-T2-2024-00054, Kestrel Park Phase III

Chair Verner stated that a non-substantive spelling error in the findings had been pointed out by Commissioner Phillips to staff. This change was made to the draft findings prior to the meeting.

Commissioners MacCracken Jain/Phillips m/s to approve the findings with the non-substantive correction noted by Commissioner Phillips. Commissioners KenCairn and Herron recused themselves due to past involvement with the applicant. Roll Call Vote: All AYES. Motion passed 4-0.

VI. **TYPE II PUBLIC HEARINGS**

PLANNING ACTION: PA-T1-2024-00255

SUBJECT PROPERTY: 110 Terrace St.

OWNER: Shirley D Patton Trust

APPLICANT: Rogue Planning & Development

DESCRIPTION: This is a request for a formal interpretation of the Ashland Land Use Ordinance as it applies to how a Peer Respite Home (as defined at ORS 430.626) are regulated. The interpretation requests that the proposed Peer Respite Home in the existing residence at 110 Terrace Street be classified as a similar use to types of Group Living that are permitted in all residential zones, and that such interpretation would provide a reasonable accommodation consistent with the Fair Housing Act and Americans with Disability Act.

COMPREHENSIVE PLAN DESIGNATION: Single-Family; **ZONING:** RR-.5; **MAP:** 39-1E-09-BC; **TAX LOT:** 8000

Chair Verner noted that staff had received numerous public comments since the meeting packet had been distributed (see attachment #1).





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Ex Parte Contact

Commissioners MacCracken Jain, KenCairn, Herron, and Verner disclosed site visits.

Chair Verner disclosed ex parte contact with a member of the public who informed her that this item was on the agenda.

Commissioner MacCracken Jain disclosed three ex parte contacts, but stated that they were unsolicited and did not get into the content of the project, merely that this meeting was scheduled.

Staff Presentation

Mr. Goldman briefly described a Peer Respite Center and that the interpretation request argued that the proposed Peer Respite Home in the existing residence at 110 Terrace Street should be classified as a similar use to Group Living, that are permitted in all residential zones, and that such interpretation would provide a reasonable accommodation consistent with the Fair Housing Act and Americans with Disabilities Act. Mr. Goldman stated that staff's focus of the interpretation came down to a determination of whether the proposed Peer Respite Center is a group-living situation, as suggested by the applicant, or a Traveler's Accommodation as interpreted by staff per the Ashland Municipal Code (AMC).

Questions of Staff – None

Applicant Presentation

Property owner Kent Patton stated that this facility would serve the community by assisting those who suffer from mental illness or are unable to help themselves.

Attorney for the applicant Jennifer Bragar stated that federal law requires a dialogue between the City and the applicant for such a project, but that the City does not have reasonable accommodation processes and has not been in communication with the applicant since the proposal was submitted. Ms. Bragar stated that only one Peer Respite Center had been approved in Jackson County thus far.

Ms. Bragar stated that no person seeking respite would be charged rent, unlike short-term tourists, and that residents would return to it when needed, which would designate the facility as a home under the Fair Housing Act.

Questions of the Applicant

Commissioner Herron asked if the owner would live on site. Ms. Bragar responded that they would not.

Commissioner MacCracken Jain asked if the applicant sought other locations for the facility that



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would not require accommodations. Ms. Bragar responded that no RR.5 Zone would permit this facility.

Public Comments

The following public speakers spoke in favor of the applicant:

- Tom Stenson
- Victor Rico
- Debbie Neisewander
- Grace Pettygrove

The following speakers spoke in favor of the staff interpretation:

- Rob Patridge
- Sydnee Dreyer
- Ron Rusnak
- Karen Grove
- Jay Ach
- David Allman
- David Downey Jr.
- James McGinnis

Mr. Goldman read a public comment that was submitted into the record by the Fair Housing Council of Oregon just prior to the meeting (see attachment #2).

Applicant Rebuttal

Applicant Shirley Patton stated that she regretted any distress that the application had caused her former neighbors but that the proposed home would benefit those in need. Ms. Bragar requested that the meeting be continued and that the record be left open to allow additional testimony to be submitted.

The Public Hearing was closed at 8:45 p.m.

The Public Record was left open to allow written testimony to be submitted by 4:30 p.m. on January 22, 2025. Any party-of-record will then have until 4:30 p.m. on January 30, 2025 to offer a rebuttal to those comments received by January 22. The applicant will have until 4:30 p.m. on February 7, 2025 to offer final arguments or comments.

PLANNING ACTION: PA-T1-2024-00254

SUBJECT PROPERTY: The Oaks of Ashland Open Space – Sutton Place (Tax Lot #1600)
554 Sutton Place (Tax Lot #1500)
562-570 Sutton Place (Tax Lot #1800)





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PROPERTY OWNERS: The Oaks of Ashland Homeowners Association (HOA) (Tax Lot #1600)

Mukesh & Sheetal Sheoran (554 Sutton Place, Tax Lot #1500)

Bruce A. Theisen Trust (562-570 Sutton Place, Tax Lot #1800)

APPLICANTS: Vincent Haynes, Michael Thornton and Fred Frantz for The Oaks of Ashland HOA

DESCRIPTION: A request for an amendment of The Oaks of Ashland subdivision approval (PA #2000-127) to remove a condition of approval which required that a Public Pedestrian Access Easement (PPAE) be provided to connect Highway 66 to Sutton Place through the subdivision open space and continuing on between the properties at 554 Sutton Place and 562/570 Sutton Place. **COMPREHENSIVE PLAN DESIGNATION:** Single-Family; **ZONING:** R-1-10; **MAP:** 39 1E 11 DD; **TAX LOTS:** 1500, 1600 & 1800

Ex Parte Contact

Commissioners Herron, KenCairn, and Verner disclosed site visits. Chair Verner disclosed that she was approached by a former Commissioner about this project.

Staff presentation

Planning Manager Derek Severson briefly described the subject easement, properties, and as-built plans from the Public Works Department. He stated that the planned pedestrian connectivity had not been realized and that existing slopes discouraged the easement's full use. Staff recommended that the Commission approve the requested modifications to Condition #17 of the Oaks of Ashland Subdivision approval, PA-2000-127, with the addition of two conditions suggested by staff.

Applicant Presentation

Applicant Vincent Haynes, President of the Oaks of Ashland Homeowner's Association (HOA) stated that the removal of the easement would not deprive nearby residents of any key aspects of the HOA, and the its removal would benefit the neighborhood and requested that the application be approved.

Chair Verner closed the Public Hearing and Public Record at 9:06 p.m.

Deliberations and Decision

Commissioners Perkinson/KenCairn m/s to support staff's recommendation and approve the request with the two conditions suggested by staff. Roll Call Vote: All AYES. Motion Passed 6-0.

VII. OPEN DISCUSSION

Chair Verner asked if any Commissioners wished to put forth a candidate for Vice-Chair.

Commissioners Phillips/Herron m/s to elect Commissioner KenCairn as Vice-Chair. Voice Vote: All



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AYES. Motion Passed 6-0.

Chair Verner stated that the Mayor had appointed John Maher to occupy the vacant seat on the Commission.

VIII. ADJOURNMENT

Meeting adjourned at 9:12 p.m.

*Submitted by,
Michael Sullivan, Executive Assistant*





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January 14, 2025

BY HAND DELIVERY

City of Ashland Planning Commission
20 E Main Street
Ashland, OR 97520

Re: Applicant's Planning Commission Hearing Submittal
City File No. PA-T1-2024-00255

Dear Commissioners:

As you know, this office represents Stabbin' Wagon ("Applicant"), a grant recipient of the Oregon Health Authority ("OHA"). The OHA grant enables Applicant to operate a respite home at property located at 110 Terrace Street, Ashland, Oregon (the "Mountain Beaver House"). Applicant wishes to provide peer respite housing and services to four members of the community experiencing mental illness at a time, and to use the Mountain Beaver House as a stable, safe environment for providing such services.

This letter is submitted in further support of the application for a reasonable accommodation to allow this use and to respond to the Community Development Director's ("Staff") memorandum (the "Staff Report") to the Planning Commission recommending against the Applicant's reasonable accommodation request entered under the Fair Housing Act ("FHA") and Americans with Disability Act ("ADA"). Please include this letter in the record.

I. The City misunderstands its role and responsibilities in the face of a reasonable accommodation request.

A request for a reasonable accommodation differs from a land use application in that federal law requires a dialogue between the party seeking the accommodation and the governmental body responsible for considering the request. The City does not have an adopted process for consideration of a reasonable accommodation. While existing zoning review processes can be used as a structure for consideration of a reasonable accommodation, it must still include a dialogue with give and take between the Applicant and the City to reach an accommodation that allows for flexibility to allow people with disabilities, including mental illness, to enjoy the opportunity to live in neighborhoods with comprehensive plan designations of Single Family, and RR-.5 zoning.

Staff has not reached out to the Applicant to start a dialogue since the application was submitted. This lack of dialogue is already increasing the cost and burden to people with mental illness who need some extra care with peer respite workers, to enjoy housing in the RR-.5 zone at this specific location—the Mountain Beaver House. The increased cost and burden is evidenced

by the content and effort to prepare and submit this letter, and to address the tone set for the public by the Staff Report. But, the Planning Commission can remedy this lack of dialogue by meaningfully engaging with the Applicant in a conversation about the reasonable accommodation request.

As the federal Department of Housing and Urban Development has ably described, a reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others may deny them an equal opportunity to use and enjoy a dwelling.

Here, the Staff Report does not approach Applicant's request with a willingness to engage in conversation, but rather the Staff Report defaults to proposed solutions which are discriminatory in their effects, set up as a strawman comparison to tourist use in reference to Traveler's Accommodations, which the City has specifically found to be an intense use not suited for the RR-.5 zone. City Ordinance No. 3108. Instead of addressing the small-scale of Applicant's proposed use, the Staff Report adopts the position of tourist or short-term rental use in order to deny any flexibility as to the application of the Ashland Land Use Ordinance (the "Code" or "ALUO") to this Applicant who requests a reasonable accommodation.

The Staff Report responds to Applicant's reasonable accommodation request by recommending that either:

- 1) The Commission should uphold the Staff Report's interpretation that peer respite homes are most comparable to Traveler's Accommodations, and, accordingly, require Applicant to site its use in another zone where transient lodging is allowed **only** through a conditional use permit process; or
- 2) Should the Commission agree with Applicant that peer respite homes are most comparable to Group Living usages (*e.g.*, Residential Care Homes), the Commission should adopt a sweeping, legislative fix by amending the ALUO to explicitly include Peer Respite Centers as a permitted use in all residential zones.

The Staff Report's first proposed resolution increases burdens and costs to the Applicant and those with disabilities seeking residential use. The second proposed resolution improperly implies that a legislative action is required before granting the Applicant's reasonable accommodation for this request to house four people with mental illness in one existing house on a property that is 1.72 acres in size.

II. The Staff Report's recommendations will have a discriminatory effect on people with disabilities.

Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals, by, for example, requiring an occupancy permit for persons with disabilities to live in a single-family

home while not requiring a permit for other residents of single-family homes, can amount to discrimination.

Similarly, discrimination can occur when people with disabilities who want to live in a group setting are effectively prohibited from doing so in a single-family neighborhood. This is what Staff would have the Commission do here by equating Applicant's proposed use to a Traveler's Accommodation, rather than a Residential Care Home.

As Applicant's materials state, and to make it abundantly clear, the Mountain Beaver House is intended as a home for disable people in crisis, to avoid forcing them into a hospital setting, and to keep Applicant's clients, who are Ashland residents experiencing mental illness, from residing in shelters, hotels/motels, or on the street. As found by the court in *Step by Step, Inc. v. City of Ogdensburg*, 176 F. Supp. 3d 112, 126 (N.D.N.Y. 2016), respite housing is not a Traveler's Accommodation, rather it is treatment housing,

"In the complaint, SBS alleges that its proposed facility would provide 'supportive housing, **respite** / hospital diversion housing, rental office space and mental health support services' to its mentally ill patients. ... It states that SBS's motive for moving to the Site is to provide its patients suffering from mental illness with housing opportunities and a 'safe and secure environment' where they could 'live independently.' ... The complaint notes that SBS seeks to move its mentally ill clients from 'out of shelters, hotels/motels or off the street.' ...

While SBS's complaint does not delineate the exact amount of time it is seeking to provide housing for its mentally ill clients, the complaint clearly contemplates providing housing in order to divert these individuals from hospitals or homelessness. **Such housing would therefore be more similar** to a homeless shelter or **treatment facility**, rather than a motel or other transient establishment, in that SBS's clients would view such housing as "a place to return to" during their period of stay. Accordingly, plaintiff has sufficiently pleaded that the housing it proposes to provide its clients constitutes a dwelling under the FHA." (Emphasis added).

The Planning Commission should reach the same conclusion as the court did in *Step by Step*.

Further, Applicant's services are not for tourism purposes or for profit and the residents will use the Mountain Beaver House for its intended residential purpose. Applicant's intended use is in stark contrast to Traveler's Accommodations, which are,

"transient lodging in a residential zone having a room, rooms, or dwellings rented or kept for rent to travelers or transients for a charge or fee paid or to be paid for rental or use of such facilities on one or more occasions for a period of less than 30 consecutive days."
ALUO 18.6.1.

However, Traveler's Accommodations serve "travelers or transients," people who are not residents of Ashland, but rather, are just passing through. One of the main purposes for this improper suggestion that the use is a Traveler's Accommodation is to rely on the City Council's findings in Ordinance 3108 to "preserve the neighborhood character" of the RR-.5 zone, which language is often cited as a method to exclude protected classes. But, more to the point, the housing of four people experiencing mental illness, does not transform the character of the neighborhood. There is no difference to the character of the neighborhood between four people in a family experiencing mental illness living together in a house in the RR-.5 zone and the four people who will be living in the Mountain Beaver House, but require a reasonable accommodation to allow peer respite service providers.

Applicant targets people throughout Ashland for respite housing. Significantly, mental illness and trauma cut across socio-economic lines. The people who seek respite include, but are not limited to, Ashland residents who may be housed but cannot remain in their housing due to mental illness, may be currently houseless but are still residents of Ashland, or may be victims of domestic violence. No person seeking respite will be charged for their stay. That Staff likens Applicant's proposed use to "short-term rentals for tourists" is unsupported—Staff has no basis for their assumption that Applicant's clients are not a part of Ashland's community in need of housing.

Both the FHA and ADA impose liability for intentional discrimination, as well as for the discriminatory effects of facially benign actions. 24 CFR 100.500; 28 CFR 35.130(a) and 42 USC 12101(a)(5). Under the FHA, a practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of disability. 24 CFR 100.500(a). In drafting the ADA, Congress expressly recognized that persons with disabilities suffer not just intentional discrimination, but "the discriminatory effects of ... overprotective rules and policies, failure to make modifications to existing ... practices." 42 USC § 12101(a)(5).

Excluding people experiencing mental illness, particularly those who need and desire respite housing as a means to stabilize their mental illness, from living in the RR-.5 zone, and for that matter all single-family zones, is likely to reinforce existing patterns of segregation and to have a disparate impact on people with disabilities.¹ Traveler's Accommodation are not allowed in the RR zone, and only conditionally or specially allowed in the R-2 and R-3 zones. Requiring, as Staff Report suggests, a conditional use permit for a structure in a multi-family zone severely limits the neighborhoods where people with disabilities may live and increases the cost of their housing—particularly as compared to an existing house which requires no permits or major modifications to allow respite housing, such as the Mountain Beaver House located at 110 Terrace Street. Conditional use processes are adversarial, uncertain, and increase the cost to obtain approval.

Additionally, classifying Applicant's proposed use as a Traveler's Accommodation, which is heavily restricted under both local and state law, adds numerous additional complications that

¹ Though Applicant's reasonable accommodation request pertains only the subject property, which is zoned RR-.5, The Staff Report also discusses, without explanation, all single family zones (R-1, RR, and WR).

are likely to exacerbate the disparate impact. For example, under ALUO 18.2.3.220, a Traveler's Accommodation is subject to restrictions including, but not limited to,

1. Must be on or within 200 feet of a boulevard, avenue, or neighborhood collector
2. Must be a 20 year-old or older structure; and
3. Must be business owner-occupied (the operator is required to reside on-site).

The people experiencing mental illness under the peer respite statute need the peer support of people who will work at the Mountain Beaver House, and require living in a homelike setting. This is completely opposite of a for profit business catering to tourists or other transients renting a room in a house. The accommodation requested is to allow people with mental illness to stabilize their lives on a large property in a rural, quiet area, with peer staff support. This is not an accommodation for the Applicant to run a for profit business. Applicant has requested the least adjustment to the Code necessary and has **voluntarily** agreed to limit occupancy to four people with mental illness even though its grant would permit up to six residents.

The Staff Report's second alternative, forcing Applicant and its clients to wait for a legislative fix, especially when what Applicant has requested is a reasonable accommodation, will have a discriminatory effect on people with disabilities. While Applicant would support such revision to the Code to explicitly include Peer Respite homes as a permitted use in all residential zones, such a solution would result in undue delay to the provision of housing for people with disabilities and, further, is not directly responsive to Applicant's small-scale request for accommodation of one house to be occupied by four people, as one of only four respite homes funded by the state legislature. House Bill 2980 (2021), §1(2)(a). The record and legislation does not support an assumption that respite homes are going to proliferate because of this single application.

The Staff Report's proposed solutions are more difficult and more tenuous than Applicant's request and unnecessarily place a greater burden on people with disabilities to enjoy the opportunity to live in the RR-.5 zone at the location of the Mountain Beaver House.

III. The Staff Report's recommendations are unjustified.

The Staff Report does not demonstrate that the requested modifications would fundamentally alter the essential nature of the City's zoning scheme. 28 CFR § 35.130(b)(7). This proposal is for the residential use of an existing house at no cost, on a large property by four people experiencing mental illness who need the support of peer respite service providers to help the residents stabilize their situation and coordinate access to other services for long-term care and/or housing. Housing four people in an existing house does not fundamentally alter the rural residential zoning scheme because it makes anticipated use of an existing property for continued residential purposes. The short-term duration is set by state statute but does not mean the City lacks the ability to flexibly apply the portion of the code for people with mental illness who need respite to stabilize their housing situation. Further, this application represents the single Southern Oregon Peer-Run Respite program funded under House Bill 2980 (2021), §1(2)(a).

Instead of recognizing the request for what it is, the Staff Report, including the City Attorney's memorandum slavishly focus on the duration of stay as the one aspect of the use that, without explanation, is a fundamental alteration of the of zoning regulations. But, the Applicant seeks a flexible application of the code for a single house in the RR-.5 zone with enough bedrooms to allow people with disabilities to live in the space without altering the residential nature of the area. This proposal is similar to a Residential Care Home.

The Staff Report makes an assumption without support that residents of Residential Care Homes located in the City's residential zones occupy their space for more than 30 days to exceed the Traveler's Accommodation duration definition in the code. But, there is no guaranty that a person who enters a sober living facility remains for 30-days or that a person recovering from surgery or a hospital stay would be required to stay in a Residential Care Home for 30 days. In fact, some sober living homes require sobriety and a person who fails to remain substance free can be forced to leave the facility in under 30-days.

Moreover, the Staff Report repeatedly makes reference to the concept that the use of the Mountain Beaver House will be of a higher intensity than other residential use, but has no support for the statement. Again, the peer respite staff are the kind of staff that will help mentally ill residents to enjoy the opportunity to recover in this rural residential zoned property, which is why the accommodation is requested. But, no measure of intensity has been shown where the proposed use would exceed that of other households in the neighborhood, such as parents and their four children who travel to and from the house for work, school, doctor's appointments, and other trips to grocery stores. Nothing out of the ordinary residential use of the Mountain Beaver House is being proposed here.

Further, the Staff Report's focus on the concept of preserving residential character does not originate in the Comp Plan or the ALUO. Rather, this is a construct that appears to be taken from the justification for regulating short-term rentals as Traveler's Accommodation which have nothing to do with providing housing for mentally ill residents of Ashland.

Significantly, the policies of the Comp Plan's Housing Element serve as support for granting this reasonable accommodation request. The following policies specifically aim to provide housing for people with disabilities:

Goal 1: Ensure a range of different dwelling types that provide living opportunities for the total cross section of Ashland's population.

Policy 1: Provide for a mix of housing types that are attractive and affordable to a diversity of ages, incomes, household sizes, and household types.

Policy 2: Support accessible design and housing strategies that provide housing options for seniors and for disabled persons.

Policy 3: Integrate housing with other compatible land uses through flexible zoning provisions.

Policy 4: Housing opportunities should be available to all residents without discrimination and consistent with local, state, and federally recognized protected classes under fair housing law.

Policy 6: Promote methods to use or adapt the City's existing housing stock to provide needed housing types.

Goal 2: Support the creation and preservation of housing that is affordable to low and moderate income households and that is commensurate with the incomes of Ashland's workforce.

Policy 12: Cooperate with for-profit and non-profit affordable housing providers in locating low and moderate income units in Ashland.

Policy 13: Work in partnership among various levels of government, public agencies, and non-profit organizations to address homeless and low-income housing needs.

The Housing Element of the Comp Plan, not the Economic Development portion improperly relied on by Staff Report, provides clear direction to consider this reasonable accommodation proposal. The Comp Plan expressly invokes anti-discrimination in Goal 1, Policy 4, and this non-profit Applicant seeks to provide no cost housing for people experiencing mental illness. Thus, the reasonable accommodation should be granted to help the City achieve the goals set forth in the Comp Plan.

Nothing about Applicant's proposed use fundamentally alters the City's zoning scheme. The Staff Report draws arbitrary lines between Applicant's proposed use and other uses already allowed in the RR-.5 zone, and fails to support its assertion that the proposed use is somehow more intense. For example, given the size of the subject property, the minimum lot size in the RR-.5 zone, and even assuming topographical constraints, it would be possible to divide the property into two separate lots, that could each be developed with a single-family home and an accessory dwelling unit ("ADU") as of right. Many more than four residents would be permitted to live on the property if it was developed in this manner, which is allowed under the Code without any accommodation.

The Staff Report's narrow focus on the length of time that Applicant's clients will reside in the Mountain Beaver House ignores everything in Applicant's letter calling attention to the fact that the City does not police single-family residential households that may violate the requirements in the Ordinance for the RR-.5 zone and other single-family zones, whether by having large numbers of individuals (related or unrelated) living together or by hosting guests for less than the minimum term of residential occupancy on an ongoing basis. Treating people with mental illness more stringently than other residents in the RR-.5 zone is prohibited if it has a discriminatory effect. This disparate treatment should be avoided and Applicant's reasonable accommodation for the Mountain Beaver House should be granted.

TOMASI BRAGAR DUBAY

January 14, 2025

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III. The Staff Report fails to identify the procedures it is applying.

In the Staff Report fails to identify whether it is following ALUO 18.1.5.060 and a Type II process, or following ALUO 18.1.5.070 and a Type III process. As discussed throughout this letter, in its recommendations, the Staff Report asks the Planning Commission to adopt the Staff Advisor's interpretation of the Ordinance, apparently in keeping with ALUO 18.1.5.060 and a Type II process. Alternative, the Staff Report asks the Commission to amend the Code, implying a Type III process would apply under ALUO 18.1.5.070. Despite the lack of clarity and absence of any identification of the land use process being applied to advise the Applicant as to its rights under the review process, Applicant requests a Type II process, as this request is made for a single house in the RR-.5 zone located at 110 Terrace Street.

CONCLUSION

For the foregoing reasons, Applicant respectfully reiterates its request for a reasonable accommodation and asks that the Commission decline to adopt the recommendations made by Staff Report. The Planning Commission should approve the reasonable accommodation request to allow up to four people experience mental illness to reside in the Mountain Beaver House to receive respite services for 14 days as allowed by statute at 110 Terrace Street, Ashland, Oregon.

Sincerely,



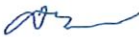
Jennifer M. Bragar

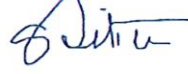
cc: (all by email)
client
Representative Pam Marsh
Matthew Tschabold
Oregon Health Authority

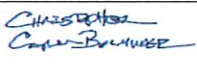
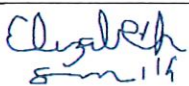
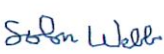
DATE: January 13, 2025
TO: The Ashland Planning Commission
PLANNING ACTION: PA-T1-2024-00255
SUBJECT PROPERTY: 110 TERRACE STREET
RE: Peer Respite Center Use Interpretation

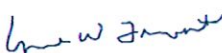
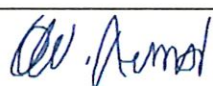
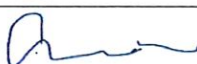
We, the neighbors and community members, believe that the current zoning of the property located at 110 Terrace Street in the City of Ashland prohibits the operation of a Peer Respite Center as defined by ORS 430.626. We believe the Planning Commission should adopt the interpretation of the Ashland Municipal Code per the Memorandum dated January 14, 2025, to the Planning Commission by Brandon Goldman, Community Development Director, which is attached. Further, the Memorandum includes the legal opinion of Carmel Zahran, Assistant City Attorney, which we believe is the correct legal conclusion. We hope that after your deliberations, you will reach the same conclusion that your neighbors and your staff have made that the current interpretation by City staff is correct and that the zoning would prohibit a Peer Respite Center.

Thank you for your consideration.

Signature	Printed Name
Rob Patridge	
Karen Grove	
Jay Ach	
Diana Fairweather	
Danilo Decena	
Benjamin Garber	
Ron Rusnak	

Signature	Printed Name
Janette Cavecche	
Laurie McManus	
Lats Berg	
Elizabeth Lane	
Kevan Hunt	
Gayle Titus	
Tim Lane	
Chris Mckean	
Elle Miner	
Thomas Counts	
Lisa Michelbink	
Mary Patridge	
Owen Patridge	
Patricia Jeffery	
Tim Stephenson	
Lisa Zingarelli	

Signature	Printed Name
Michael Mesmer	
Jomayra Bermudez Otero	
Stephen McMillan	
Christopher Cooper Bermudez	
James Bronk	
Drew Noble	
Rickey King	
Sid DeBoer	
Karen DeBoer	
Marcus Smith	
Elizabeth Smith	
Suzanne Becker Bronk	
Bob Palermini	
Brock Dumont	
Jung Oddo	
Solon Webb	

Signature	Printed Name
Phyllis de Vries	
Carson Waller	
Carly Waller	
Lynne Frevert	
David Allman	
Claire Stanley	
Alexis Campbell Jansky	
Patricia Jeffery	
Barry Harris	
Carolyn Allman	
Mark Chirgwin	
Makenzie Vasquez	
Brent Carr	
David Downey, Jr	
Savannah Downey	

Memo

DATE: January 14, 2025
TO: Planning Commission
FROM: Brandon Goldman, Community Development Director
RE: Peer Respite Center Use Interpretation

Background

This memo provides an interpretation of the Ashland Land Use Code regarding the proposed use of the property at 110 Terrace Street as a peer respite center. Pursuant to [AMC 18.1.5.020](#), the applicant has requested that this interpretation be reviewed by the Planning Commission.

The applicant seeks to classify the use of the residence at 110 Terrace Street as a Residential Care Home under the City of Ashland's zoning code, arguing it aligns with the definition of "Group Living." Peer respite centers, funded by the Oregon Health Authority (OHA), are described as providing voluntary, nonclinical, short-term residential support for individuals in mental health crises for up to 14 days. The services are peer-led and emphasize recovery support in a homelike setting.

The applicant invokes the Fair Housing Act (FHA) and Americans with Disabilities Act (ADA) to request reasonable accommodations in zoning. These laws prohibit discrimination in housing based on disability and require municipalities to make adjustments to ensure equal housing access for people with disabilities.

State Authorization

Legislation Supporting Peer Respite Centers

Peer respite centers are authorized under [ORS 430.275](#), which defines peer respite services as:

- "Voluntary, nonclinical, short-term residential peer support provided in a homelike setting to individuals with mental illness or trauma response symptoms who are experiencing acute distress, anxiety, or emotional pain."

Legislative Comparisons and Zoning Implications

- Unlike the legislative approval for emergency shelters under **House Bill 2006**, which explicitly exempted emergency shelters from local land use regulations thereby authorizing them in any zone without land use review, the authorizing legislation for peer respite centers did not

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provide such exemptions. As a result, peer respite centers are subject to local land use regulations.

Incomplete Rulemaking

The implementing legislation for peer respite centers also specified that additional administrative rules would be developed to guide the establishment and operation of such facilities. These rules have not yet been completed, leaving municipalities to interpret zoning compatibility within the existing Land Use Ordinance framework.

Similar Use Interpretation:

The applicant asserts the proposed peer respite use is similar to Group Living uses (e.g., Residential Care Homes), which are allowed in all residential zones in Ashland. Group Living uses do not include self-contained units but rely on shared facilities, as would the peer respite center. The applicant's letter provided as an attachment clarifies their request and interpretation of similar use.

The Staff Advisor interprets the proposed use of the property as most similar to a Traveler's Accommodation due to the transient nature of the occupancy, with stays limited to 14 days. By contrast, uses such as Residential Care Homes or Group Living are intended to provide long-term residential accommodations where the occupants treat the property as their primary residence. The short-term overnight stays of visitors of the proposed peer respite center do not align with the characteristics of the residential uses in which the occupants reside for 30 days or more as their primary residence.

Ashland Land Use Ordinance Interpretation

Interpretation Process

The interpretation process outlined in the Ashland Land Use Ordinance allows the Staff Advisor or Planning Commission to provide clarification when a proposed use is not explicitly listed or is ambiguous in its alignment with zoning regulations. Per [AMC 18.1.5.020](#), the process begins with a written request from the applicant, after which the Staff Advisor evaluates the proposed use in the context of the Comprehensive Plan, the intent of the zoning ordinance, and established criteria. The interpretation must ensure consistency with the purpose of the zoning code and cannot amend existing ordinances. If the matter is complex or contentious, it may be referred to the Planning Commission for review to ensure transparency and expedite a final decision. Appeals of the interpretation follow standard land use review processes.

To expedite the applicant's request for an interpretation and a final decision by the City, and specifically to avoid delays that might result from an appeal of the Community Development Director's (Staff Advisor) interpretation to the Planning Commission, this item has been scheduled for Planning Commission review.

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This memo also addresses relevant state laws and legislation, as referenced by the applicant's representatives, to clarify the basis for this interpretation under the Ashland Land Use Ordinance and includes a criteria evaluation as required under [AMC 18.1.5.030](#).

Nature of the Use

Under Oregon law, a Peer Respite Center is defined as a facility offering voluntary, nonclinical, short-term residential peer support in a homelike environment to individuals experiencing acute distress, anxiety, or emotional pain that may lead to the need for higher-level care, such as psychiatric inpatient services. These centers are operated by peer-run organizations and staffed by individuals with lived experience in mental health recovery or trauma response.

(https://oregon.public.law/statutes/ors_430.275)

In contrast, a Residential Care Home (five or fewer individuals) or Residential Care Facility (to six or more individuals) is a state-licensed establishment that provides long-term residential care, including assistance with daily living activities, to residents who may have physical disabilities, cognitive impairments, or chronic illnesses. These facilities are staffed by trained professionals and are regulated to ensure the provision of necessary medical and personal care services.

(<https://www.oregon.gov/odhs/rules-policy/apdrules/411-054.pdf>)

The primary distinctions between the two are:

- **Nature of Services:** Peer Respite Centers offer nonclinical, peer-led support, focusing on short-term stays to alleviate immediate distress, whereas Residential Care Homes and Facilities provide ongoing, professional care for residents with long-term needs.
- **Duration of Stay:** Stays at Peer Respite Centers are limited by statute to no more than two weeks, emphasizing brief intervention, while Residential Care Homes and Facilities accommodate long-term residency.
- **Operational Model:** Peer Respite Centers are peer-operated, leveraging shared experiences for support, whereas Residential Care Facilities are professionally managed and staffed.

Comparison to Existing Uses

Peer Respite Center is not a defined use in the Ashland Land Use Ordinance. Upon evaluation of the operational model, duration of stays, and nature of services of such a center, the Staff Advisor finds it is a land use which is most similar to a Traveler's Accommodation, defined in the Land Use Ordinance as transient lodging for stays of less than 30 days, such as short-term rentals or hotels (see definition in 18.61 at the end of this memo).

Zoning Implications

As a use most similar to Traveler's Accommodations, peer respite centers may be established in Multi-Family Residential (R-2, R-3) Zones or Commercial Zones, where transient lodging can be permitted through the Conditional Use Permit Process.

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R-1 Zone Compatibility

The subject property at 110 Terrace Street is located in the R-1 single-family residential zone, which prohibits transient lodging uses to maintain its function as providing housing for residents of Ashland. Based on an interpretation of the Ashland Land Use Ordinance identifying a Peer Respite Center as most similar to a Transient Accommodation, the proposed use does not align with the permitted or conditional uses allowed in the R-1 zone.

ALUO 18.15.020 Criteria Evaluation

A. Consistency with Applicability Policies of the Comprehensive Plan

The Ashland Comprehensive Plan emphasizes the preservation of neighborhood character and the appropriate allocation of land uses to maintain community integrity. Specifically, the Plan outlines policies to:

Preserve the character of Ashland's neighborhoods by ensuring that new developments are compatible in scale and type.

- o VII-2 Policy – The City shall design the Land Use Ordinance to provide for:
 - c) Specific development guidelines which will ensure that:
 - 4) Retail, office, and traveler's accommodations and neighborhood shopping in residential areas, at development intensities that are appropriate to the area.

Direct higher-intensity uses to appropriate areas to prevent adverse impacts on residential neighborhoods.

Maintain a clear distinction between different land use types to uphold the quality of life for residents.

The Staff Advisor Interpretation classifies the proposed peer respite center as a transient lodging use, similar to Traveler's Accommodations, based on the intermittent short-term stays of individuals seeking temporary respite. This interpretation aligns with the Comprehensive Plan's policies by:

- Preserving the residential character of the R-1 Single-Family Residential Zone consistent with the permitted and conditional uses outlined in the Ashland Land Use Ordinance.
- Directing transient lodging uses to zones designated for higher-intensity activities, such as Multi-Family Residential or Commercial zones.

The Housing Element of the Comprehensive Plan defines various housing types, all of which are explicitly intended to provide stable, long-term housing options for the full cross section of Ashland residents. These include single-family homes, multi-family dwellings, group living arrangements, and other forms of residential accommodations designed to meet the diverse housing needs of the community.

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Under the Housing Element (Section 6.10), the goals and policies prioritize the provision of permanent housing that fosters neighborhood stability, affordability, and inclusivity. The applicants argue under the Fair Housing Act that clients of a Peer Respite Center should be considered as utilizing the facility as their residence, and that such a Center functions as a form of government-subsidized housing. However, this interpretation does not align with the Comprehensive Plan or the state legislative requirements governing Peer Respite Centers. The duration of stay limit established by the legislation of a maximum of 14 days clearly defines these facilities as offering temporary support and accommodations during times of crisis, rather than providing a housing type. This distinction highlights the application's misalignment with the Housing Element's goals and policies.

In adopting Land Use Standards that prohibit Traveler's Accommodations in R-1 zoned properties, the City aimed to preserve existing housing for community residents, ensuring these homes remain available for long-term residency rather than being converted into short-term rentals for tourists. The applicant references the Housing Element's Goal 6.10 to *"Ensure a range of different dwelling types that provide living opportunities for the total cross-section of Ashland's population."* These provisions discourage the conversion of housing in single-family zones into transient accommodations, as such conversions reduce the availability of housing intended for long-term residents, undermining the Housing Element's objectives to maintain housing stability and availability for Ashland's population. This Staff Advisor interpretation does not speak to the value of Peer Respite Centers in assisting individuals in addressing crisis, as defined under ORS 430.275, by providing voluntary, nonclinical, short-term residential peer support in a homelike setting. Rather, it distinguishes the proposed use based primarily on the short-term of occupancy, which aligns more closely with transient accommodations than with long-term residential uses.

B. Consistency with the Purpose and Intent of the Ordinance

The Ashland Land Use Ordinance (ALUO) aims to ensure that land uses within each zoning district are compatible and that the purposes of each district are upheld. The R-1 Single-Family Residential Zone is intended to:

- Protect the residential character by limiting uses to those that are residential in nature.
- Prevent the introduction of transient lodging uses that could disrupt neighborhood stability.

The proposed peer respite center, characterized by short-term stays, aligns more closely with transient lodging uses. Allowing such a use in the R-1 zone would be inconsistent with the zone's purpose and intent. Therefore, this interpretation maintains the integrity of the ordinance by ensuring that uses permitted in the R-1 zone are consistent with its residential character.

- **ALUO 18.1.5.020 – Land Use Ordinance Interpretation**

This section governs the process for interpreting ambiguous or undefined uses under the ordinance. It allows the Staff Advisor to evaluate whether a proposed use aligns

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with permitted or conditional uses within a zone. This is central to determining whether a Peer Respite Center can be considered a "Group Living" use or a transient accommodation.

- **AMC 18.2.2.030 - Allowed Uses by Zone**

This table outlines the permitted, conditional, and prohibited uses within Ashland's various zones. The R-1 Single-Family Residential Zone specifically prohibits transient lodging uses, a critical factor in evaluating the compatibility of a Peer Respite Center in this zone.

Under the Group Living section of the Allowable Use Table a *Residential Care Home* is listed as permitted outright in R-1 zones, a *Residential Care Facility* requires conditional use permit approval, and a *Room and Board Facility* is not permitted in R-1.

- **ALUO 18.6.1 - Definitions**

18.6.1:

Group Living: Group living is characterized by the long-term residential occupancy of a structure by a group of people. The size of the group typically is larger than the average size of a household. Group Living structures do not include self-contained units but rather have common facilities for residents including those for dining, social and recreational, and laundry. Residential Care Homes, Residential Care Facilities, and Room and Board Facilities are types of Group Living.

Residential Care Home: A residential treatment or training or adult foster home licensed by or under the authority of the department, as defined in ORS [443.400](#), under ORS [443.400](#) to [443.825](#), a residential facility registered under ORS [443.480](#) to [443.500](#) or an adult foster home licensed under ORS [443.705](#) to [443.825](#) that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. (See also, ORS [197.660](#)).

Residential Facility: Residential facilities provide housing and care for 6 to 15 individuals who need not be related as defined under ORS [430.010](#) (for alcohol and drug abuse programs); ORS [443.400](#) (for persons with disabilities); and ORS [443.880](#). Staff persons required to meet State-licensing requirements is not counted in the number of facility residents and need not be related to each other or the residents.

Room and Board Facility: Group living establishment located in a dwelling or part thereof, other than a travelers' accommodation or hotel, where lodging, with or without meals, is provided for compensation for a minimum period of 30

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STABBIN WAGON GRANT AGREEMENT 180848 - PEER RUN RESPITE

Invoice #	Date	Amount	Approved/Denied	Notes from Grant Recipient
1	11/23/23	\$25,000	Approved	Description 3 Employee Salaries \$8,250.00 Benefits \$2,062.50 Insurance (CGL & PL Liability and Workers Comp) \$9,000.00 Employee fingerprinting & background checks \$860.00 Bookkeeping, payroll and other admin support \$3,000.00 Advisory Board, Community Participants, Participant Incentives, Volunteers \$1,827.50 TOTAL \$25,000.00
2	12/16/2023	\$11,200	Approved	Description Up-front lease costs for 110 Terrace Street, Ashland, OR - Includes first and last month rent and security deposit. Lease will run 1/1/24 - 12/31/25. Monthly rent is \$3,850.00. Admin support/Indirect costs \$1,000.00 TOTAL \$11,200.00
3	12/16/23	\$395,180	Approved	This is an invoice for service start-up costs totaling \$395,180. Please see the next page for a detailed description of start-up costs. (see detail below**) By submitting this invoice, we attest that we will be ready to provide services within 6 months of receiving the start-up cost funding.
250	5/21/2024	\$318,620	Approved	Description Staffing wages, on call stipends, per diem coverage, and employee taxes \$138,443.43 Part time and full time benefits \$50,000 Rent \$20,000 Utilities \$5,000 Office, House and Cleaning Supplies \$8,176.57 Phone and Internet Services \$4,000 Staff Training and Development \$25,000 Arts and House Activities \$5,000 Transportation Fund \$13,000 Home Furnishing and Office Equipment \$5,000 ADA Home Requirement & Other Home Modifications \$10,000 Bookkeeping, payroll and other admin support - Includes land use and zoning consultations. labor and fees \$35,000 TOTAL \$318,620
500	9/30/2024	\$187,500	Denied	*2024-2025 Q1 quarterly disbursements*
600	9/30/2024	\$187,500	Denied	*2024-2025 Q2 quarterly disbursements*
TOTAL APPROVED Amount to Date		\$750,000		

**

Stabbin Wagon

Invoice

Submitted on 11/23/2023

Invoice for Oregon Health Authority Payable to Stabbin Wagon Invoice Period Dates 11/23/23 - 12/31/23

Grant Agreement # 180848 Invoice # 1

Description	Line Item
3 Employee Salaries	\$8,250.00
Benefits	\$2,062.50
Insurance (CGL & PL Liability and Workers Comp)	\$9,000.00
Employee fingerprinting & background checks	\$860.00
Bookkeeping, payroll and other admin support	\$3,000.00
Advisory Board, Community Participants, Participant Incentives, Volunteers	\$1,827.50
TOTAL	\$25,000.00

Stabbin Wagon

Invoice

Submitted on 12/16/2023

Invoice for Oregon Health Authority Payable to Stabbin Wagon Invoice Period Dates 12/16/23 - 1/5/24

Grant Agreement # 180848 Invoice # 2

Description	Line Item
Up-front lease costs for 110 Terrace Street, Ashland, OR - Includes first and last month rent and security deposit. Lease will run 1/1/24 - 12/31/25. Monthly rent is \$3,850.00.	\$10,200.00
Admin support/indirect costs	\$1,000.00
TOTAL	\$11,200.00

Stabbin Wagon

Invoice

Submitted on 12/16/2023

Invoice for

Oregon Health Authority

Grant Agreement #

180848

Payable to

Stabbin' Wagon

Invoice #

3

Invoice Period Dates

12/16/23 - 5/31/24

Invoice and Description

This is an invoice for service start-up costs totaling \$395,180. Please see the next page for a detailed description of start-up costs. By submitting this invoice, we attest that we will be ready to provide services within 6 months of receiving the start-up cost funding.

Stabbin Wagon

Invoice

Submitted on 5/21/2024

Invoice for

Oregon Health Authority

Grant Agreement #

180848

Payable to

Stabbin' Wagon

Invoice #

450

Invoice Period Dates

Startup period (2023-2024 fiscal year)

Invoice and Description

Description	Line Item
Staffing wages, on call stipends, per diem coverage, and employee taxes	\$138,443.43
Part time and full time benefits	\$50,000
Rent	\$20,000
Utilities	\$5,000
Office, House and Cleaning Supplies	\$8,176.57
Phone and Internet Services	\$4,000
Staff Training and Development	\$25,000
Arts and House Activities	\$5,000
Transportation Fund	\$13,000
Home Furnishing and Office Equipment	\$5,000
ADA Home Requirement & Other Home Modifications	\$10,000
Bookkeeping, payroll and other admin support - includes land use and zoning consultations. labor and fees	\$35,000
TOTAL	\$318,620



January 14, 2024

By First Class Mail and Electronic Mail

City of Ashland Planning Commission
20 E. Main Street
Ashland, OR 97520

Re: Refusal of reasonable accommodations related to 110 Terrace Street – Planning Action PA-T1-2024-00255

Dear Commission Members:

I am writing as the legal director from the Fair Housing Council of Oregon (FHCO). We were advised of the commission's refusal to allow a reasonable accommodation in its rules, policies, practices or procedures related to the citing of a group respite home at 110 Terrace Street.

The request was made on December 6, 2024 on behalf of Applicant Stabbin' Wagon, who's request for reasonable accommodation was for the city to recognize a respite home as a similar use to a group living home, such that its development would be permitted in the RR-.5 zone that includes the subject address. *See Attachment A.*

The City's planning director and attorney advised against granting the reasonable accommodation, citing primarily their assertion that because the maximum time of occupancy in a respite home is 14 days, it does not fulfill "long-term occupancy" characterization of group living in AMC 18.6.1.030. The City asserts that since residents only occupy a peer respite home for a maximum of 14 days, that it is more similar to transient lodging, which is not permitted in the zone. *See Attachment B, and see Attachment C.*

On January 13, 2024, Disability Rights Oregon (DRO) sent a letter to the City's Planning Commission to challenge the city's reasoning, and to point out that the city's basis for denying Stabbin' Wagon's request was either disingenuous, poorly reasoned, or both. *See Attachment D.* FHCO cannot restate these objections with more accuracy or force that DRO has already provided. We agree with the assertions made by DRO. We adopt and incorporate their objections and reasoning as our own.

In addition to and furtherance of DRO's objections, FHCO offers the following:

The City Cannot Deny a Request for Reasonable Accommodation by appealing to its rules and policies.

1221 SW Yamhill Street, Portland, Oregon 97205



Aside from the ethical implication inherent in this land use decision, the most troubling aspect of the city's refusal is a fundamental misunderstanding of disability law and reasonable accommodations.

The Fair Housing Act and Americans with Disability Act apply to municipal governments making zoning decisions. *See* 42 USC 3604; 42 USC 12132; *and see City of Edmonds v. Oxford House, Inc.*, 415 U.S. 725 (1995)(FHA applied to municipal government to conclude that zoning laws cannot be used to discriminatory effect). Under both the FHA and ADA, it is unlawful discrimination for a state actor to refuse an applicant's request for reasonable accommodation if that accommodation is necessary for the applicant to have an equal opportunity to use and enjoy the dwelling, or to equally participate in or benefit from the services, programs, or activities of a public entity.

A respite house, by definition, is occupied solely by persons with disabilities. ORS 430.275(1). It is therefore appropriate that the request would be made by or on behalf of the disabled occupants of 110 Terrace Street.

The applicant's request for reasonable accommodation was for the city to identify a peer respite home as a similar use to a group living home, since peer respite homes are not explicitly listed as an allowed or disallowed use in RR-.5 zones, and Group Living Homes are. In addition to making their reasonable accommodation request, applicant outlined why a peer respite home was substantially similar to a group living home, dispelling any future assertions that granting the reasonable accommodation would present an undue administrative burden or cause any safety concerns to the city.

The city responded by asserting that the peer respite home is most similar to transient lodging, which is not allowed in RR-.5 Housing and concluding that the peer respite home would not be permitted in RR-.5 zones, effectively denying the reasonable accommodation request.

This response belies a fundamental misunderstanding by the City and its Counsel as to the nature of Applicant's request. It is not a request for clarification, or for a more clear definition or classification of a peer respite home. It is a request for a reasonable accommodation in existing rules, policies and procedures such that the city cannot appeal to its rules policies and procedures as grounds for denying the reasonable accommodation. Indeed, if the city's existing rules, policies and procedures permitted the citing of a peer respite home at 110 Terrace Street, the applicant's request would not have been necessary.

When a request for reasonable accommodation is made, the recipient has limited grounds upon which they can deny the request. To deny a request for reasonable accommodation, the state actor must show that the request is unreasonable. *Giebler v. M&B Assoc.*, 343 F.3d 1143, 1156 (9th Cir. 2003). A request is generally understood to be unreasonable if it presents an undue financial or administrative burden on the city, would require a change in the nature of the city's business, or poses a threat to safety or property. U.S. Dept. of Housing and Urban Dev. & U.S.

1221 SW Yamhill Street, Portland, Oregon 97205



Dept. of Justice, "Joint Statement of the Dept. of Housing and Urban Dev. and the Dept. of Justice: Reasonable Accommodations Under the Fair Housing Act" (2004).

No serious argument was presented by the City to assert that granting the Applicant's request for reasonable accommodation would be unreasonable. The city relies primarily on the assertion that the short-term residency inherent in the peer respite home make it more substantially similar to transient lodging than a group living home. That analysis is dubious, and likely insincere—City does not consider the stark differences between transient lodging and a respite home, including traffic volume and commercial activity common only to the former—but more importantly the analysis is unnecessary in determining whether the applicant's request is reasonable.

While the Applicant is not required to prove to the city at this time that the request is reasonable, the Applicant's December 6 request and DRO's January 13 letter do an excellent job of dispelling any future objections that granting Applicants request will pose any undue burden or pose any undue risk to safety or property.

The City has not responded to the Applicant's request for reasonable accommodation except to use the discretion at their disposal to close doors to disabled members of their community. This unacceptable response warrants revisiting, such that the City must give a legally defensible reason for denying the Applicant's request, or else grant it. The City is not permitted to hide behind its municipal code or newly adopted interpretations thereof as grounds for discriminating against disabled community members.

We wish the planning commission and city council the best of luck in reaching their decision.

Sincerely,

A handwritten signature in black ink, appearing to read "SAC", written over a horizontal line.

Steven M. Crawford
he/him/his
Legal Director

scrawford@fhco.org
503.223.8197 x 112

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December 6, 2024

City of Ashland Planning Division
Attn: Brandon Goldman, Community Development Director
20 E Main Street
Ashland, OR 97520

Re: Reasonable Accommodation Request and Code Interpretation

Dear Mr. Goldman,

This office represents Stabbin' Wagon ("Applicant"), a grant recipient of the Oregon Health Authority ("OHA"). The OHA grant enables Applicant to operate a respite home at property located at 110 Terrace Street, Ashland, Oregon (the "House"). This letter is submitted in conjunction with Rogue Planning & Development Services, LLC's application materials to provide additional support for the requested code interpretation coupled with a reasonable accommodation request under the Fair Housing Act ("FHA") and Americans with Disability Act ("ADA").

I. Applicant's request for a Reasonable Accommodation

Under Ashland Municipal Code ("AMC") 18.1.5.040 Similar Uses, the code states,

"Where a proposed use is not specifically identified by this ordinance or the ordinance is unclear as to whether the use is allowed in a particular zone the Staff Advisor may find the use is similar to another use that is permitted, allowed conditionally or prohibited in the subject zone and apply the ordinance accordingly."

Ashland's Group Living definition states that "Group living is characterized by the long-term residential occupancy of a structure by a group of people... Group Living structures do not include self-contained units but rather have common facilities for residents including those for dining, social and recreational, and laundry." AMC 18.6.1.030. The definition then lists some types of Group Living facilities, including Residential Care Home, Residential Facility, and Room and Board Facility. Nothing in the definition language states that the list is exhaustive.

The Applicant intends to use the House for long-term residential occupancy by a group of people, with the group changing periodically. Applicant's peer respite housing OHA grant allows up to four (4) to six (6) individuals to stay at the House for up to fourteen (14) days for individuals experiencing mental illness. This respite allows individuals to be housed and provides time to reset their mental and/or physical state and be linked to other services to help them out of their crisis.

ATTACHMENT A

ORS 430.275(1) defines peer respite services:

"(a) 'Peer respite services' means voluntary, nonclinical, short-term residential peer support provided:

(A) *In a homelike setting to individuals with mental illness or trauma response symptoms who are experiencing acute distress, anxiety or emotional pain* that may lead to the need for a higher level of care such as psychiatric inpatient hospital services; and

(B) By a peer-run organization and directed and delivered by individuals with lived experience in coping with, seeking recovery from or overcoming mental illness or trauma response challenges." (Emphasis added).

Therefore, by definition, the individuals who will reside in the House qualify as disabled under the FHA and ADA, and state law. 42 U.S.C. §§ 3601-19, 42 U.S.C. §§ 12010, 12132, ORS 659A.145(2)(c).

The respite service use of the House is most similar to the definition of Group Living, with individual rooms and communal space as contemplated in the City code. Further, during the respite, individuals will treat the House as a dwelling. Courts have given the FHA's definition of dwelling a generous construction, where the length of stay is not the only factor, rather the intended use of the property is included in the determination. *Louisiana Acorn Fair Housing v. Quarter House*, 952 F. Supp. 352, 359 (E.D. La. 1997). As the individuals who will reside at the House have an intent to treat the House as a temporary dwelling place, the House is a dwelling under the FHA. *Woods v. Foster*, 884 F. Supp. 1169, 1173 (N.D. Ill. 1995). The fact that the Oregon Health Authority is funding the use of the House so that residents will not be required to pay rent does not defeat the protection of the individuals who will reside therein. *Id.* at 1175.

When requested, the ADA and FHA require municipalities to make reasonable modifications to their zoning laws to allow housing for people with disabilities. On behalf of disabled individuals who will reside in the House that would be allowed after this similar use interpretation, the Applicant makes this reasonable accommodation request. If the City enforces AMC requirements that place additional burdens on properties designated for people with disabilities or allows discrimination in zoning against people with disabilities, they are deemed invalid, or otherwise need to be modified to allow the proposed housing to be accommodated. The Applicant requests a reasonable accommodation and asks that the City not apply any vague or discretionary standards, including any conditional use criteria, to approve this application and allow respite at the House as a permitted use, and to find the use is similar to Group Living facilities allowed as permitted uses in residential zones.

II. Applicant's request for a Similar Use Interpretation

With this introduction and justification for a reasonable accommodation, the following are the Applicant's proposed findings for an interpretation to allow the respite use of the House. The code provisions are italicized and the proposed findings in regular font.

AMC 18.1.5.030 Interpretation Criteria

Any interpretation made through the foregoing procedures shall be based on the following criteria:

A. *The interpretation is consistent with applicability policies of the Comprehensive Plan.*

Proposed Finding:

The requested interpretation is consistent with applicable policies of the Comprehensive Plan relevant to Land Use Classifications which speak to the purpose of the residential categories as establishing land use intensity by assigning different densities to different areas. Comprehensive Plan Section 2.04 (Land Use Classifications). The residential classifications are not intended to specify types of uses but rather the number of dwelling units per gross acre.

The use does not impact the density, or intensity of use in the neighborhood as nothing prevents a similar residential house in this zone from having visitors stay at their house for up to two weeks at any time throughout the year with no other regulation. Other family use of dwellings in this zone place no limit on occupancy as families can be as large as desired, and often married couples share rooms, as do children. In contrast to how a typical family is allowed to intensely use their house in this zone, the Applicant proposes to limit the maximum respite use of the House to four individuals to sleep in each available bedroom. Further, the use of a four bedroom dwelling for four individuals does not impose a greater demand on public facilities than anticipated when the home at 110 Terrace Street was originally built, which is also consistent with the Comprehensive Plan. As imagined in the Ashland Comprehensive Plan, density regulations are adopted in the code, and this House is a pre-existing house that meets the City's density requirements. Comprehensive Plan Section 2.04.

As the City considers the Applicant's request and these findings, it should continue to keep in mind the Applicant's reasonable accommodation request. The FHA prohibits disability-related discrimination in housing matters, including the zoning and land use process. 42 U.S.C. § 3604. Title II of the ADA also prohibits government agencies from discriminating against people with disabilities. 42 U.S.C. § 12132. Instead of engaging in a notion that the proposed interpretation should not be granted, the City should consider the effect on people with disabilities who would be denied housing when families residing in residentially zoned areas are not treated to the same type of restrictions and monitoring of its occupants as a respite home.

Further, the Comprehensive Plan at Section 5.21 recognizes that Ashland has some of the lowest incomes in Jackson County, and Section 5.23 recognizes that population growth will increase the cost of housing. Thus, when low income people experience mental illness, they also lack the personal financial strength to find care, housing, and services. The Applicant's peer respite proposal is consistent with the types of solutions necessary to address the stated Goal at Comprehensive Plan Section 5.25 by providing for the needs of the expected population growth, including low income individuals through this housing opportunity and connection to services for such low income individuals.

Allowing use of an existing dwelling on a pre-existing residential lot is consistent with the Housing Element. Further, the Housing Element, Comprehensive Plan Section 6.04, recognizes that subsidized housing would be used to meet the needs of low income residents. *See also* Comprehensive Plan Section 6.11(4)(b). OHA's grant for the House is an example of such subsidized housing and is consistent with the Comprehensive Plan's anticipated method of providing low income housing. Moreover, the Comprehensive Plan states that detached single family housing will "unfortunately only be available to persons of relatively high income." Comprehensive Plan Section 6.05. Applicant's proposal broadens the opportunity for low income people to access otherwise exclusionary housing types. The stated goal in the Housing Element is, "Provide Housing Opportunities For The Total Cross-Section Of Ashland's Population, Consistent With Preserving The Character And Appearance Of the City." Comprehensive Plan Section 6.10. Since no outward changes are required to the façade of the House, except for some ADA-accessible adjustments, and the proposed respite use provides housing opportunities for an often ignored segment of the population, this goal of the Comprehensive Plan will also be achieved.

The proposed use of the House as a peer respite is most similar in type, kind and function as a Group Living use, which includes a type of group living use that is permitted in all residential areas. For example, a similar use, Residential Care Homes, are permitted in all residential zones. AMC Table 18.2.2.030. From an intensity of use perspective, Residential Care Homes, house five or fewer individuals, and would be allowed at 110 Terrace Street. AMC 18.6.1.030 and ORS 443.400. From a land use and housing perspective, the use by individuals who benefit from peer respite are not significantly different from residents of Residential Care Homes. Based on this context, Applicant's reasonable accommodation request and interpretation should be approved.

B. The interpretation is consistent with the purpose and intent of the ordinance provision that applies to the particular ordinance section, or sections, in question.

Proposed Finding:

The requested interpretation is consistent with the purpose of the residential zones, which is linked to the general purpose of the Land Use Ordinance under AMC 18.2.2.010 and 18.1.2.020.¹ Under AMC 18.1.2.020,

"The purpose of the Land Use Ordinance is to encourage the most appropriate and efficient use of land; to accommodate orderly growth; to provide adequate open space for light and air; to conserve and stabilize the value of property; to protect and improve the aesthetic and visual qualities of the living environment; to aid in securing safety from fire and other dangers; to facilitate adequate provisions for maintaining sanitary conditions; to provide for adequate access to and through property; and in general to promote the public health, safety, and the general welfare, all of which is in accordance with and in implementation of the Comprehensive Plan. Race, color, religion, sexual orientation, gender identity,

¹ AMC 18.2.2.010 is essentially a cross reference to AMC 18.1.2.020 where it states, "Chapter 18.2.2 regulates allowed land uses pursuant to the Comprehensive Plan and the purposes of this ordinance, per chapter 18.1.2." As stated under subsection A, the Applicant's requested interpretation is consistent with the Comprehensive Plan.

national origin, or disability shall not be an adverse consideration in making any decision under this ordinance."

Applicant's proposed use as a peer respite in a pre-existing dwelling meets the purpose of the residential development standards and Land Use Ordinance in general as the use of the dwelling will remain at the level of use anticipated when the House was constructed – to house people in a manner consistent with the code.

Further, the interpretation to allow peer respite as an allowed use similar to Residential Care Homes does not interfere with achieving the purpose of the residential regulations. The Planning Commission can make the interpretation that the proposed use is similar in type, kind, and function to a Residential Care Home. A Residential Care Home includes residential treatment under ORS 443.400, which is a facility that provides for five or fewer individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties. Peer respite homes are similar in type, kind and function to Residential Care Homes. Peer respite staff are state-certified and work with individuals seeking respite to link them with needed services to ensure options are available at the end of the respite stay. Since Residential Care Homes are a type of Group Living use allowed in all residential zones, a reasonable accommodation should be granted to allow the similar use of a respite home in this residential zone as a permitted use.

C. The interpretation is consistent with the opinion of the City Attorney.

Proposed Finding:

With this application, the opinion of the City Attorney has been requested.

CONCLUSION

Based on the foregoing, the Applicant requests approval of the requested code interpretation to allow peer respite use of the House as a permitted use, Group Living Facility at 110 Terrace Street, Ashland, Oregon, as a reasonable accommodation to allow equal access to housing in the City limits for people with disabilities.

Sincerely,



Jennifer M. Bragar

cc: (all by email)
client
Representative Pam Marsh
Matthew Tschabold
Oregon Health Authority

Memo

DATE: January 14, 2025
TO: Planning Commission
FROM: Brandon Goldman, Community Development Director
RE: Peer Respite Center Use Interpretation

Background

This memo provides an interpretation of the Ashland Land Use Code regarding the proposed use of the property at 110 Terrace Street as a peer respite center. Pursuant to [AMC 18.1.5.020](#), the applicant has requested that this interpretation be reviewed by the Planning Commission.

The applicant seeks to classify the use of the residence at 110 Terrace Street as a Residential Care Home under the City of Ashland's zoning code, arguing it aligns with the definition of "Group Living." Peer respite centers, funded by the Oregon Health Authority (OHA), are described as providing voluntary, nonclinical, short-term residential support for individuals in mental health crises for up to 14 days. The services are peer-led and emphasize recovery support in a homelike setting.

The applicant invokes the Fair Housing Act (FHA) and Americans with Disabilities Act (ADA) to request reasonable accommodations in zoning. These laws prohibit discrimination in housing based on disability and require municipalities to make adjustments to ensure equal housing access for people with disabilities.

State Authorization

Legislation Supporting Peer Respite Centers

Peer respite centers are authorized under [ORS 430.275](#), which defines peer respite services as:

- "Voluntary, nonclinical, short-term residential peer support provided in a homelike setting to individuals with mental illness or trauma response symptoms who are experiencing acute distress, anxiety, or emotional pain."

Legislative Comparisons and Zoning Implications

- Unlike the legislative approval for emergency shelters under **House Bill 2006**, which explicitly exempted emergency shelters from local land use regulations thereby authorizing them in any zone without land use review, the authorizing legislation for peer respite centers did not

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provide such exemptions. As a result, peer respite centers are subject to local land use regulations.

Incomplete Rulemaking

The implementing legislation for peer respite centers also specified that additional administrative rules would be developed to guide the establishment and operation of such facilities. These rules have not yet been completed, leaving municipalities to interpret zoning compatibility within the existing Land Use Ordinance framework.

Similar Use Interpretation:

The applicant asserts the proposed peer respite use is similar to Group Living uses (e.g., Residential Care Homes), which are allowed in all residential zones in Ashland. Group Living uses do not include self-contained units but rely on shared facilities, as would the peer respite center. The applicant's letter provided as an attachment clarifies their request and interpretation of similar use.

The Staff Advisor interprets the proposed use of the property as most similar to a Traveler's Accommodation due to the transient nature of the occupancy, with stays limited to 14 days. By contrast, uses such as Residential Care Homes or Group Living are intended to provide long-term residential accommodations where the occupants treat the property as their primary residence. The short-term overnight stays of visitors of the proposed peer respite center do not align with the characteristics of the residential uses in which the occupants reside for 30 days or more as their primary residence.

Ashland Land Use Ordinance Interpretation

Interpretation Process

The interpretation process outlined in the Ashland Land Use Ordinance allows the Staff Advisor or Planning Commission to provide clarification when a proposed use is not explicitly listed or is ambiguous in its alignment with zoning regulations. Per [AMC 18.1.5.020](#), the process begins with a written request from the applicant, after which the Staff Advisor evaluates the proposed use in the context of the Comprehensive Plan, the intent of the zoning ordinance, and established criteria. The interpretation must ensure consistency with the purpose of the zoning code and cannot amend existing ordinances. If the matter is complex or contentious, it may be referred to the Planning Commission for review to ensure transparency and expedite a final decision. Appeals of the interpretation follow standard land use review processes.

To expedite the applicant's request for an interpretation and a final decision by the City, and specifically to avoid delays that might result from an appeal of the Community Development Director's (Staff Advisor) interpretation to the Planning Commission, this item has been scheduled for Planning Commission review.

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This memo also addresses relevant state laws and legislation, as referenced by the applicant's representatives, to clarify the basis for this interpretation under the Ashland Land Use Ordinance and includes a criteria evaluation as required under [AMC 18.1.5.030](#).

Nature of the Use

Under Oregon law, a Peer Respite Center is defined as a facility offering voluntary, nonclinical, short-term residential peer support in a homelike environment to individuals experiencing acute distress, anxiety, or emotional pain that may lead to the need for higher-level care, such as psychiatric inpatient services. These centers are operated by peer-run organizations and staffed by individuals with lived experience in mental health recovery or trauma response.

(https://oregon.public.law/statutes/ors_430.275)

In contrast, a Residential Care Home (five or fewer individuals) or Residential Care Facility (to six or more individuals) is a state-licensed establishment that provides long-term residential care, including assistance with daily living activities, to residents who may have physical disabilities, cognitive impairments, or chronic illnesses. These facilities are staffed by trained professionals and are regulated to ensure the provision of necessary medical and personal care services.

(<https://www.oregon.gov/odhs/rules-policy/apdrules/411-054.pdf>)

The primary distinctions between the two are:

- **Nature of Services:** Peer Respite Centers offer nonclinical, peer-led support, focusing on short-term stays to alleviate immediate distress, whereas Residential Care Homes and Facilities provide ongoing, professional care for residents with long-term needs.
- **Duration of Stay:** Stays at Peer Respite Centers are limited by statute to no more than two weeks, emphasizing brief intervention, while Residential Care Homes and Facilities accommodate long-term residency.
- **Operational Model:** Peer Respite Centers are peer-operated, leveraging shared experiences for support, whereas Residential Care Facilities are professionally managed and staffed.

Comparison to Existing Uses

Peer Respite Center is not a defined use in the Ashland Land Use Ordinance. Upon evaluation of the operational model, duration of stays, and nature of services of such a center, the Staff Advisor finds it is a land use which is most similar to a Traveler's Accommodation, defined in the Land Use Ordinance as transient lodging for stays of less than 30 days, such as short-term rentals or hotels (see definition in 18.61 at the end of this memo).

Zoning Implications

As a use most similar to Traveler's Accommodations, peer respite centers may be established in Multi-Family Residential (R-2, R-3) Zones or Commercial Zones, where transient lodging can be permitted through the Conditional Use Permit Process.

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R-1 Zone Compatibility

The subject property at 110 Terrace Street is located in the R-1 single-family residential zone, which prohibits transient lodging uses to maintain its function as providing housing for residents of Ashland. Based on an interpretation of the Ashland Land Use Ordinance identifying a Peer Respite Center as most similar to a Transient Accommodation, the proposed use does not align with the permitted or conditional uses allowed in the R-1 zone.

ALUO 18.15.020 Criteria Evaluation

A. Consistency with Applicability Policies of the Comprehensive Plan

The Ashland Comprehensive Plan emphasizes the preservation of neighborhood character and the appropriate allocation of land uses to maintain community integrity. Specifically, the Plan outlines policies to:

Preserve the character of Ashland's neighborhoods by ensuring that new developments are compatible in scale and type.

- VII-2 Policy – The City shall design the Land Use Ordinance to provide for:
 - c) Specific development guidelines which will ensure that:
 - 4) Retail, office, and traveler's accommodations and neighborhood shopping in residential areas, at development intensities that are appropriate to the area.

Direct higher-intensity uses to appropriate areas to prevent adverse impacts on residential neighborhoods.

Maintain a clear distinction between different land use types to uphold the quality of life for residents.

The Staff Advisor interpretation classifies the proposed peer respite center as a transient lodging use, similar to Traveler's Accommodations, based on the intermittent short-term stays of individuals seeking temporary respite. This interpretation aligns with the Comprehensive Plan's policies by:

- Preserving the residential character of the R-1 Single-Family Residential Zone consistent with the permitted and conditional uses outlined in the Ashland Land Use Ordinance.
- Directing transient lodging uses to zones designated for higher-intensity activities, such as Multi-Family Residential or Commercial zones.

The Housing Element of the Comprehensive Plan defines various housing types, all of which are explicitly intended to provide stable, long-term housing options for the full cross section of Ashland residents. These include single-family homes, multi-family dwellings, group living arrangements, and other forms of residential accommodations designed to meet the diverse housing needs of the community.

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Under the Housing Element (Section 6.10), the goals and policies prioritize the provision of permanent housing that fosters neighborhood stability, affordability, and inclusivity. The applicants argue under the Fair Housing Act that clients of a Peer Respite Center should be considered as utilizing the facility as their residence, and that such a Center functions as a form of government-subsidized housing. However, this interpretation does not align with the Comprehensive Plan or the state legislative requirements governing Peer Respite Centers. The duration of stay limit established by the legislation of a maximum of 14 days clearly defines these facilities as offering temporary support and accommodations during times of crisis, rather than providing a housing type. This distinction highlights the application's misalignment with the Housing Element's goals and policies.

In adopting Land Use Standards that prohibit Traveler's Accommodations in R-1 zoned properties, the City aimed to preserve existing housing for community residents, ensuring these homes remain available for long-term residency rather than being converted into short-term rentals for tourists. The applicant references the Housing Element's Goal 6.10 to *"Ensure a range of different dwelling types that provide living opportunities for the total cross-section of Ashland's population."* These provisions discourage the conversion of housing in single-family zones into transient accommodations, as such conversions reduce the availability of housing intended for long-term residents, undermining the Housing Element's objectives to maintain housing stability and availability for Ashland's population. This Staff Advisor interpretation does not speak to the value of Peer Respite Centers in assisting individuals in addressing crisis, as defined under ORS 430.275, by providing voluntary, nonclinical, short-term residential peer support in a homelike setting. Rather, it distinguishes the proposed use based primarily on the short-term of occupancy, which aligns more closely with transient accommodations than with long-term residential uses.

B. Consistency with the Purpose and Intent of the Ordinance

The Ashland Land Use Ordinance (ALUO) aims to ensure that land uses within each zoning district are compatible and that the purposes of each district are upheld. The R-1 Single-Family Residential Zone is intended to:

- Protect the residential character by limiting uses to those that are residential in nature.
- Prevent the introduction of transient lodging uses that could disrupt neighborhood stability.

The proposed peer respite center, characterized by short-term stays, aligns more closely with transient lodging uses. Allowing such a use in the R-1 zone would be inconsistent with the zone's purpose and intent. Therefore, this interpretation maintains the integrity of the ordinance by ensuring that uses permitted in the R-1 zone are consistent with its residential character.

- **ALUO 18.1.5.020 – Land Use Ordinance Interpretation**

This section governs the process for interpreting ambiguous or undefined uses under the ordinance. It allows the Staff Advisor to evaluate whether a proposed use aligns

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with permitted or conditional uses within a zone. This is central to determining whether a Peer Respite Center can be considered a "Group Living" use or a transient accommodation.

- **AMC 18.2.2.030 – Allowed Uses by Zone**

This table outlines the permitted, conditional, and prohibited uses within Ashland's various zones. The R-1 Single-Family Residential Zone specifically prohibits transient lodging uses, a critical factor in evaluating the compatibility of a Peer Respite Center in this zone.

Under the Group Living section of the Allowable Use Table a *Residential Care Home* is listed as permitted outright in R-1 zones, a *Residential Care Facility* requires conditional use permit approval, and a *Room and Board Facility* is not permitted in R-1.

- **ALUO 18.6.1 – Definitions**

18.6.1:

Group Living: Group living is characterized by the long-term residential occupancy of a structure by a group of people. The size of the group typically is larger than the average size of a household. Group Living structures do not include self-contained units but rather have common facilities for residents including those for dining, social and recreational, and laundry. Residential Care Homes, Residential Care Facilities, and Room and Board Facilities are types of Group Living.

Residential Care Home: A residential treatment or training or adult foster home licensed by or under the authority of the department, as defined in ORS [443.400](#), under ORS [443.400](#) to [443.825](#), a residential facility registered under ORS [443.480](#) to [443.500](#) or an adult foster home licensed under ORS [443.705](#) to [443.825](#) that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. (See also, ORS [197.660](#)).

Residential Facility: Residential facilities provide housing and care for 6 to 15 individuals who need not be related as defined under ORS [430.010](#) (for alcohol and drug abuse programs); ORS [443.400](#) (for persons with disabilities); and ORS [443.880](#). Staff persons required to meet State-licensing requirements is not counted in the number of facility residents and need not be related to each other or the residents.

Room and Board Facility: Group living establishment located in a dwelling or part thereof, other than a travelers' accommodation or hotel, where lodging, with or without meals, is provided for compensation for a minimum period of 30

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days. Personal care, training, and/or treatment is not provided at a room and board facilities. Examples include dormitories, fraternities, sororities, and boarding houses.

Traveler's Accommodation: Transient lodging in a residential zone having a room, rooms, or dwellings rented or kept for rent to travelers or transients for a charge or fee paid or to be paid for rental or use of such facilities on one or more occasions for a period of less than 30 consecutive days. See also, definition of Accessory Travelers' Accommodation.

C. Consistency with the Opinion of the City Attorney

The Staff Advisor interpretation and Applicant's interpretation request have each been reviewed by the City Attorney's office, who concurs with Staff Advisor interpretation and concluded the following in their attached memo:

In conclusion, the Applicant's proposed use of the property does not meet the definition of "group living" as defined in the Ashland Municipal Code. This determination is supported by the temporary nature of the occupancy, the 14-day residency limit imposed by the OHA grant, and the lack of evidence to support a "long-term" residential interpretation.

Additionally, while the City is committed to ensuring compliance with the FHA and the ADA, the interpretation of zoning regulations must remain consistent with established definitions. This conclusion in no way diminishes the value of the program and the benefit it would likely provide to members of the community. Rather, it is through a fair, impartial, and neutral reading of the ordinance and its surrounding context that we disagree with the Applicant's interpretation of "group living" to authorize the Peer Respite Center in an R-1 zone.

Staff Recommendation

The Planning Commission is asked to review and consider the Staff Advisor's interpretation and the Applicant's request. Should the Commission uphold the interpretation, it would clarify that:

1. Peer respite centers with limited-duration stays of less than 30 days are most similar to short-term Traveler's Accommodations.
2. Such uses are not permitted in the R-1 Single-Family Residential Zone but may be established in other zones where transient lodging is allowed through a Conditional Use Permit process.

Alternatively, should the Planning Commission concur with the applicant's interpretation, that a peer respite center qualifies as a type of Group Living, it would be valuable for the Planning Commission to clarify that due to the limited number of individuals occupying the center, the appropriate

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designation is that of a Residential Care Home despite the limited term of occupancy. This Residential Care Home designation would classify the use as a permitted activity within the R-1 Single-Family Residential Zone. This interpretation would not amend the Land Use Ordinance but would provide a pathway for the project at 110 Terrace to proceed while clarifying that the limited occupancy standards inherent to Residential Care Homes (five or fewer individuals) is appropriate although the minimum 30-day time frame provided for in the code should not be applied to Peer Respite Centers. If the Planning Commission determines that a Peer Respite Center is most comparable to a Residential Care Home, as suggested by the applicant, staff recommends amending the Land Use Ordinance to explicitly include Peer Respite Centers as a permitted use in all residential zones. This amendment would be incorporated during the next routine housekeeping update of the Land Use Code for clarity.

In Staff's assessment, the first determination that the use is most similar to a Traveler Accommodation, ensures consistency with the Land Use Code and provides clarity for the applicant while respecting the residential character of single-family zoned neighborhoods.

REFERENCES & ATTACHMENTS

- Attachment #1:** Reasonable Accommodation and Interpretation Request Letter from Attorney Jennifer Bragar, of Tomasi Bragar DuBay , on behalf of the applicant, dated December 6, 2024
- Attachment #2:** Memo from Carmel Zahran, City of Ashland Assistant City Attorney, regarding Letter of Interpretation 110 Terrace Street Ashland Or, dated Jan 3, 2025

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Memo

To: City of Ashland Planning Commission

From: Carmel Zahran, Assistant City Attorney

Date: 1/3/2025

Re: Letter of Interpretation – Re. 110 Terrace Street, Ashland OR

Introduction

This matter was introduced to the City of Ashland (“City”)’s legal department by Rogue Planning and Development (the “Applicant”), who requested a land use interpretation according to the procedure outlined in Ashland Municipal Code (“AMC”), Chapter 18.1.5 regarding the Applicant’s request to operate a “Peer Respite Center” (as defined in ORS 430.275.1) at 110 Terrace Street, Ashland, Oregon, within an R-1 zone.

Issue:

The Applicant asserts that the use is permissible under the Ashland Municipal Code, specifically arguing it falls under the definition of “group living.” It is this office’s opinion that the structure and 14-day maximum occupancy for those individuals who might utilize the Peer Respite Center does not constitute a “long-term residential occupancy,” which is a key component of the “group living” definition:

“Group Living. Group living is characterized by the long-term residential occupancy of a structure by a group of people. The size of the group typically is larger than the average size of a household. Group Living structures do not include self-contained units but rather have common facilities for residents including those for dining, social and recreational, and laundry. Residential Care Homes, Residential Care Facilities, and Room and Board Facilities are types of Group Living.” AMC 18.6.1.030.

Application:

The Applicant’s central argument hinges on the interpretation of “long-term residential occupancy.” They contend that while the individuals served by the respite center will stay only up to 14 days, the consistency of the group served (individuals experiencing mental health challenges) equates to long-term occupancy in a functional sense. However, it is a misapplication to apply the consistency of a group, rather than the individual, to the legal standard of who constitutes to be a “long-term” resident.

The definition of “group living” is anchored in the duration and permanency of individuals’ residency, which is supported by a plain reading of the ordinance and its surrounding context.

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The three specific examples provided in the code as forms of “Group Living” are “Residential Care Homes,” “Residential Care Facilities,” and “Room and Board Facilities.” The first two examples contain the word “residential” in their titles, implying that these homes and care facilities serve as the permanent residences of the individuals who live and receive professional care at these facilities. Similarly, the definition of Room and Board Facilities also implies a level of permanency, citing examples such as dormitories, fraternities, sororities, and boarding houses, and explicitly states that these facilities must have a minimum stay of 30 days.

While it's true that individuals served by the respite center may share common characteristics, this does not negate the temporary nature of an individual's stay. The Applicant's argument more appropriately applies to short-term rentals or other temporary accommodations, which are not considered “long-term” residential occupancies. Notably, the defined terms “Travelers' Accommodation” and “Travelers' Accommodations” specify that the duration of occupancy is to be less than 30 days. AMC 18.6.1.030.

The Applicant points to the context behind the program, which is funded by the Oregon Health Authority (OHA), implying that this funding demonstrates the long-term nature of the operation. However, this funding merely supports the project's temporary operational goals, which are aligned with a short-term program. The 14-day limit explicitly defined in the OHA grant contradicts the notion of long-term residency. This limitation indicates a temporary, short-term service model that is incompatible with the definition of “group living,” as provided in the AMC. The nature of the OHA grant strengthens the argument that this is a short-term assistance program.

The Applicant raises concerns regarding FHA and ADA compliance, suggesting that the City's denial amounts to discriminatory housing and disability rights practices. The City fully acknowledges the importance of ensuring equal and non-discriminatory housing and zoning practices. However, the City's denial is not based on the Applicant's outreach goals but rather on a reasonable interpretation of the existing zoning regulations. In other words, the City is not rejecting the Applicant but is instead rejecting the proposed use based on existing land use code (i.e., the interpretation of short-term versus long-term).

The two cases cited by the Applicant exhibit significant differences from the subject application. In *Louisiana Acorn Fair Housing v. Quarter House*, 952 F. Supp. 352 (E.D. La. 1997), the defendant, Quarter House, operated as a timeshare resort that engaged marketing representatives to recruit prospective residents. However, their qualification criteria were discriminatory against various protected categories, explicitly stating that prospective buyers could not be “1) African American; 2) aliens; 3) of mid-Eastern or Indian cultures or religions; 3) physically unable to climb stairs; and pregnant women, families with more than two children or families with children under the age of 10” (Id. at 354). In *Woods v. Foster*, 884 F. Supp 1169 (1995), the Defendant was a homeless shelter where Plaintiff's ability to stay and receive

Memo

assistance depended on providing sexual favors to facility managers. In both cases, the court recognized the clear and overt discrimination against these vulnerable individuals, extending FHA protection to the Plaintiffs based on their interpretation of the term "dwelling."

However, the Applicant's assertion that the ADA and FHA "require municipalities to make reasonable modifications to their zoning laws," using these two cases as a basis for their conclusion, is misleading because neither case involved the court instructing a municipality to change existing zoning regulations. In fact, the terms "zone" and "zoning" were not mentioned once in either case. The Applicant's argument would be more appropriately applied if the City were, hypothetically, denying individuals access to a properly-zoned shelter care in a discriminatory manner—which the City neither does nor would ever do.

The City's commitment to providing reasonable accommodations under the ADA and its obligations to comply with applicable FHA regulations are distinct from the proposal to fundamentally alter zoning regulations to accommodate a specific use that does not conform to existing definitions. The Applicant is encouraged to seek alternative locations that are properly zoned to accommodate the services they provide. Although arguments regarding the FHA's applicability to "dwellings" may be valid in contexts involving discriminatory treatment of individuals or groups denied housing access, this particular scenario does not fit that framework.

Conclusion:

In conclusion, the Applicant's proposed use of the property does not meet the definition of "group living" as defined in the Ashland Municipal Code. This determination is supported by the temporary nature of the occupancy, the 14-day residency limit imposed by the OHA grant, and the lack of evidence to support a "long-term" residential interpretation.

Additionally, while the City is committed to ensuring compliance with the FHA and the ADA, the interpretation of zoning regulations must remain consistent with established definitions. This conclusion in no way diminishes the value of the program and the benefit it would likely provide to members of the community. Rather, it is through a fair, impartial, and neutral reading of the ordinance and its surrounding context that we disagree with the Applicant's interpretation of "group living" to authorize the Peer Respite Center in an R-1 zone.

January 13, 2025

City of Ashland Planning Commission
20 E. Main Street
Ashland, OR 97520

Letter Re Application PA-T1-2024-00255, Subject Property : 110 Terrace Street

Chair Verner, Vice-Chair Knauer, and Members of the Planning Commission:

On behalf of Disability Rights Oregon, I submit the attached letter as a comment regarding the discussion of the proposed development of the above-captioned proceeding at 110 Terrace Street in Ashland. I am the Deputy Legal Director for Disability Rights Oregon, a federally-designated nonprofit that represents the rights of people with disabilities throughout Oregon, protecting them from abuse and neglect. The housing development at issue here is designed to promote independent living for people with mental illness, by allowing respite housing with peer supports.

Disability Rights Oregon does not have any kind of representation agreement with any of the prospective residents of the respite housing program. DRO instead writes at this time as a nonprofit designated by the federal government to promote the rights of people with disabilities. See *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1113-1116 (9th Cir. 2003) (holding DRO, formerly known as the Oregon Advocacy Center, had standing to seek judicial relief on behalf of class of individuals with mental illness).

Across the state and within Jackson County, people with mental illness find limited access to housing an enormous barrier to living in the community, often forcing them to remain in institutional settings or, alternately, to live without any housing at all. Ashland's own self-analysis of barriers to fair housing specifically identified land use rules as a source of discrimination and a barrier to housing.¹ The review found "In Ashland, discrimination appears to primarily impact peoples who experience a physical or mental disability." *Id.* at 31. Ashland reports that the "majority of fair housing issues reported are issues pertaining to peoples with disabilities." *Id.* at 12. People with mental illness should not be denied the right to live in the community based on discriminatory attitudes and prejudice.

Backdrop of Federal Nondiscrimination Law

Many state and federal laws promote equal access to housing and prohibit discrimination on the basis of a person's disability. Their history and the ways courts have interpreted them are important to understand the current matter.

The federal Fair Housing Act prohibits disability-related discrimination in housing matters,

¹ City of Ashland, 2020-2024 *Fair Housing Analysis of Impediments to Fair Housing Choice, Update for the City of Ashland*, June 1, 2020, at 34 available at <https://ashlandoregon.gov/DocumentCenter/View/1472/2020-2024-Analysis-of-Impediments-Update-PDF>

including the zoning and land use process. 42 U.S.C. § 3604. In *Pacific Shores Properties, LLC v. City of Newport Beach*, the Ninth Circuit denied a motion to dismiss a challenge to local ordinances that, while not prohibiting group homes outright, permitted land use hearing officers to find “plenty of . . . hooks and standards . . . to deny an application” for a group home. 730 F.3d 1142, 1152 (9th Cir. 2013). Evidence of either an intent to discriminate against people with disabilities or an effect of preventing people with disabilities from getting housing gives rise to a claim under the Fair Housing Act. *Id.* at 1162-63.

Title II of the Americans with Disabilities Act also prohibits a government agency from discriminating against people with disabilities. 42 U.S.C. § 12132. In *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, the Ninth Circuit ordered a trial court to enjoin a city’s efforts through its zoning processes to halt the establishment of a methadone clinic within the city. 179 F.3d 725, 730 (9th Cir. 1999). The Second Circuit affirmed a preliminary injunction granting a permit to a drug clinic, where the only reason for permit denial was “the need to alleviate the intense political pressure from the surrounding community brought on by the prospect of drug- and alcohol-addicted neighbors.” *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 49 (2d Cir. 1997). “Although the City certainly may consider legitimate safety concerns in its zoning decisions, it may not base its decisions on the perceived harm from such stereotypes and generalized fears.” *Id.*

In addition to prohibitions of intentional discrimination and disparate impact discrimination, both the ADA and the Fair Housing Act require public bodies, such as a land use board or planning commission, to make reasonable accommodations to people with disabilities and homes designed for people with disabilities. *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994), *aff’d sub nom. City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995); *Pac. Shores Properties*, 730 F.3d at 1157 n.15. People with disabilities have the right to “live in the residence of their choice in the community” and to end the “unnecessary exclusion” of people with disabilities. *City of Edmonds*, 18 F.3d at 806.

Other anti-discrimination laws apply to this matter. The Rehabilitation Act prohibits any entity that receives federal funds from discrimination against people with disabilities. 29 U.S.C. § 794. The Equal Protection Clause of the Fourteenth Amendment prohibits discrimination because of irrational bias. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985) (requiring a special use permit for a home for people with disabilities where other residential uses would not was based only in irrational bias and violated the Fourteenth Amendment). Oregon state law also prohibits making distinctions in the availability of real property based on whether the person intended to occupy the property has a disability. ORS 659A.145(2)(c).

General Principles of Non-Discrimination Law in Zoning and Land Use Decisions

Decisions of courts interpreting zoning laws and land use decisions, as understood in light of the nondiscrimination laws described above, distill down to three simple requirements: 1) local governments cannot impose restrictions or conditions on housing for group homes and other housing for people with disabilities that are not imposed on conventional residential housing, 2) local governments must offer reasonable accommodations to people with disabilities in the zoning and land use process, and 3) local governments may not rely on broad, generic negative stereotypes about people with disabilities. *City of Cleburne*, 473 U.S. at 449; *Innovative Health Sys.*, 117 F.3d at 47; *Bay Area Addiction*, 179 F.3d at 735; *Pacific Shores Properties*, 730 F.3d at

1165. The government cannot deny a permit in an act of public discrimination, and it may not incorporate private discrimination—especially that received through public testimony—in its decision-making process. *Innovative Health Sys.*, 117 F.3d at 49 (describing as evidence of discrimination public testimony “replete with discriminatory comments about drug- and alcohol-dependent persons based on stereotypes and general, unsupported fears”). To deny this application on the basis of generalized “fears of jeopardized safety and falling property values” would put local zoning ordinances above the federal nondiscrimination laws that apply. *Innovative Health Sys.*, 117 F.3d at 42.²

Placing the Proposal in the Context of the Ashland Code

The petitioner is seeking approval for development of a home for people with mental illnesses. The home would serve four to six people at a time. The home would offer respite services, a “homelike setting” living in a common environment for people with mental illnesses over a time period of up to 14 days at a time. ORS 473.275. The residents would receive services from peer supports. The proposed site is located in a low density RR-.5 rural residential single family residential zone.

A “dwelling” is a “structure conforming to the definition of a dwelling under applicable building codes and providing complete, independent living facilities for one family, including permanent provisions for living, sleeping, eating, cooking, and sanitation.” Ashland Muni. Code 18.6.1.030. A “single-family dwelling” is a “detached or attached structure containing one dwelling unit located on one lot.” *Id.* A “family” is an “individual or two more persons related by blood, marriage, legal adoption, or guardianship; or not more than five persons who are not related by blood, marriage, legal adoption, or guardianship.” *Id.* “Group living” is “characterized by the long-term residential occupancy of a structure by a group of people. . . typically larger than the average size of a household” with common areas for dining and other functions. *Id.* A “residential care home” is a “residential treatment or training or adult foster home” regulated by the state, providing care “alone or in conjunction with treatment or training or a combination thereof for five or fewer people who need not be related.” *Id.*

Under Table 18.2.2.030, the only permitted uses in an RR zone are agriculture, a single-family dwelling, a park or other recreational facility, a public school, and a residential care home. Other uses fall under the special or conditional use provisions, or are outright prohibited. A peer support respite care setting is not defined in the code. The first question appears to be whether the proposed use constitutes or strongly resembles another characteristic permitted use in the RR zone.

The Proposed Use Should Be Compared to a Single-Family Dwelling

² Disability Rights Oregon views any limitation of federal law on the Ashland Municipal Code as mandated by the Supremacy Clause of the United States Constitution, which makes federal statutes “the supreme law of the land.” U.S. Const., Art. VI. State laws and local ordinances should be interpreted in a manner that does not conflict with federal law. In the alternative, DRO would propose that the City of Ashland should grant a reasonable accommodation or reasonable modification of policy to ensure that private discrimination does not keep people with disabilities from finding housing, by declining to enforce those municipal law provisions in this instance. 42 U.S.C. § 3604(f)(3)(B); 28 C.F.R. § 35.130(b)(7).

Here, the proposed use appears to qualify, with one possible exception, as a single-family dwelling. The proposed use involves placement of 4-6 people in a common dwelling equipped with provisions for cooking, living, sleeping, and sanitation. Although the staff report discusses the meaning of “long-term” residency at length in the report, the definition of “dwelling,” “single-family dwelling,” and “family” nowhere require long-term cohabitation. Indeed, it would be bizarre if the city of Ashland began policing single family residences to ensure that children coming home to visit their parents always stayed for at least 30 days.

The sole definitional problem potentially challenging the use as a single family dwelling would be those instances where all six beds were taken up. However, under the federal Fair Housing Act, a definition of family that allows any number of related people to live in the same household, while restricting the number of unrelated people who live in the same household may tend to discriminate against people with disabilities and reasonable accommodations to such a requirement under this provision may be necessary. *City of Edmonds*, 18 F.3d at 807. Here, because the proposed respite site would not always exceed the limitation on more than five unrelated people in any “family,” and on those occasions that it would, it would at maximum hold only six unrelated people, rather than five, offering to treat the respite home as a single-family home for zoning purposes would be at best a mild tweak to a condition for occupancy which, one assumes, is rarely enforced. *Children's All. v. City of Bellevue*, 950 F. Supp. 1491, 1499 (W.D. Wash. 1997) (invalidating occupancy requirements that treated people with disabilities differently than dwellings comprised solely of relatives); *ReMed Recovery Care Centers v. Twp. of Willistown*, 36 F. Supp. 2d 676, 688 (E.D. Pa. 1999) (expanding zoning restriction of 5 unrelated residents to 8 was reasonable and would not defeat purposes of occupancy requirement).

DRO assumes that numerous cohabiting and hybrid families occupy single family residences in Ashland and greatly doubts that the city of Ashland routinely checks marriage licenses and birth certificates to review familial ties among residents. Technically, Ashland’s policies appear to make it illegal for, say, an unmarried couple to reside in a single family home, each with two children from other relationships, or for a cohabiting unmarried couple to have four foster children. DRO also assumes that numerous single family homes in Ashland’s residential districts, like most other areas, have frequent guests and visitors that periodically tip the occupancy requirements outlined for a single family home. If Ashland is prepared to deny this reasonable accommodation, it should be prepared to show that it routinely polices the requirements of familial relationships by checking marriage licenses and birth certificates. Ashland is unlikely to prevail in showing a nondiscriminatory purpose or that the proposed accommodation is unreasonable, if Ashland only polices the details of this occupancy requirement for homes for people with disabilities.

The Proposed Use Could Also Be Compared to Group Living

The Ashland City Code does permit group living in one context in the RR zone: a residential care home. Table 18.2.2.030, Ashland Municipal Code. In response to the petitioner’s request to treat the respite home like a group living setting, Ashland’s planning staff has object that group living must be “long-term residential occupancy.” Ashland has refused either to treat the respite home as a permitted group living arrangement or to offer a reasonable accommodation to waive the “long-term” element. “Long-term” occupancy indicates occupancy for 30 days or more.

Ashland’s response on this point does not explain why the long-term element is so essential that it

cannot be waived. Many other permitted uses in the RR zone involve short-term use or periodic high rates of use. For instance, schools and parks are permitted in the RR zone, both of which have times of very high use, as anyone who has lived across from an elementary school at 8 AM on a weekday or across from a municipal park on a Saturday afternoon in the spring could say. “If anything, it will subject the neighborhood to less traffic, fewer parking problems and fewer disruptions to the neighborhood than any or all of the uses specially referred to.” *Judy B. v. Borough of Tioga*, 889 F. Supp. 792, 800 (M.D. Pa. 1995). For that matter, even the city’s definition of a single-family dwelling does not require a long-term occupancy. Nothing in the code clearly prevents homeowners from leasing or subleasing their home for short periods of time. A quick review of VRBO and AirBnB postings shows dozens of homes for rent for short periods of time in residential zones of Ashland, either where traveler’s accommodations are prohibited or where conditional use permits are required but are not listed in the advertisement.³ Taking steps to enforce a short-term occupancy requirement selectively against homes for people with disabilities violates the FHA. *Pac. Shores Properties*, 730 F.3d at 1164.

Further, the area in question is carved up virtually block-by-block into numerous small zones, close together. This is not some large, homogenous residential zone. The Terrace Street location lies in the immediate vicinity of Lithia Park, a heavily traveled central tourist attraction for the city. The site in question is a few blocks away from dedicated bed and breakfasts and a very short distance from the main downtown zone of Ashland.

In fact, the *only* context of the “long-term” requirement that has any effect in the Ashland Municipal Code is on the “group living” definition, which largely regulates homes for people with disabilities. Ashland may not impose on homes for people with disabilities a long-term use requirement that the code does not impose on other people, nor does Ashland actively enforce such a requirement against people without disabilities.

The staff report and legal memorandum describes “long-term residential occupancy” as a “key component” of the zoning law but provides no explanation as to what municipal interests lie with temporary residency as opposed to long-term residency. A temporary resident will, presumably, use the streets, sewers, utilities, and other common resources of the community to more or less the same extent as a long-term resident, especially to the extent that “long-term” residency includes renters for periods of only 30 days. Residents staying for 30 or 60 days are not particularly more likely to forge a community, to plant trees, or to make capital investments in their homes than residents staying for 14 days. Nor does the staff report or legal memorandum explain why short-term residency is incompatible with other permitted uses of the space, like parks and schools, nor why the permitted use of a single-family dwelling does not require long-term occupancy.

Ordinarily, the short-term occupancy of a residence is not at odds with the long-term occupancy requirements in a residential area, such that the short-term occupancy or respite usage is inconsistent with the residential character of a neighborhood. *Step By Step, Inc. v. City of Ogdensburg*, 176 F. Supp. 3d 112, 126 (N.D.N.Y. 2016) (housing for “respite/hospital diversion” constituted a “dwelling” for Fair Housing Act purposes); *Connecticut Hosp. v. City of New London*, 129 F. Supp. 2d 123, 134 (D. Conn. 2001) (short-term shelter residents with disabilities “are not transient guests” for FHA purposes); *Corp. of Episcopal Church in Utah v. W. Valley City*, 119 F.

³ City of Ashland, FAQ: Can I Operate a Traveler’s Accommodation in a Residential Area, at <https://www.ashlandoregon.gov/FAQ.aspx?QID=76>.

Supp. 2d 1215, 1222 (D. Utah 2000) (city was required to engage in interactive process to determine reasonable accommodation, even while city asserted short-term shelter would be “essentially a hotel” not permitted in the zone). Short-term placements and shelters have often found substantial support in the Fair Housing Act, and Ashland presents no evidence or theory for why short-term residency is dramatically worse in the present setting—indeed, it has presented no argument for why short-term residency is particularly bad at all, other than treating short-term residency as somehow an evil in itself.

Requirements to Make Reasonable Accommodations

The City of Ashland states baldly that its “commitment to providing reasonable accommodations” is “distinct from the proposal to fundamentally alter zoning regulations to accommodate a specific use that does not conform to existing definitions.” Legal Memo, Jan. 3, 2025. To the extent that the city understands the application to require the city to *amend* its ordinance, I believe the city misunderstands both the proposal of the applicant and the scope of the reasonable accommodation. However, the city never explains what about its zoning requirements, either around the “long-term” requirement or the occupancy standards are so essential that they cannot be waived in this instance. The city states, without explanation, that “interpretation of zoning regulations must remain consistent with established definitions.” In short, the city’s response indicates that no reasonable accommodation is possible that would require result in an outcome at odds with its zoning laws. The city fundamentally misunderstands the applicable law which prohibits “refusal to make reasonable accommodations in rules, policies, practices, or services. . . .” 42 U.S.C. 3604(f)(3)(B).

In passing the Fair Housing Act, Congress made it “illegal to refuse to make reasonable accommodation . . . if necessary to permit a person with handicaps equal opportunity to use and enjoy a dwelling.” *Giebler v. M & B Assocs.*, 343 F.3d 1143, 1148 (9th Cir. 2003) *quoting* H.R. Rep. No. 100–711, at 25 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2186. “It is well-settled that 42 U.S.C. § 3604(f)(3)(B) imposes an ‘affirmative duty’ on public agencies to reasonably accommodate disabled individuals by modifying administrative rules and policies.” *McGary v. City of Portland*, 386 F.3d 1259, 1264 (9th Cir. 2004). This requirement extends to municipal zoning ordinances. *Id.* This obligation to provide reasonable accommodations in zoning likewise stems from the ADA as well. *Id.* at 1269. The city’s apparent determination that its zoning laws cannot possibly bear any exception in order to accommodate the needs of people with disabilities is unlawful.

Instead, once a person makes a reasonable accommodation request and demonstrates that the accommodation is possible, the burden of proof then *shifts* to the municipality to “produce rebuttal evidence that the requested accommodation is not reasonable. *Giebler*, 343 F.3d at 1156. The City has produced no evidence that the proposed accommodation—to allow development of a respite care home for 4-6 people in an RR-zoned location—is not reasonable, beyond stating that it can make no exceptions to its zoning laws. The City’s refusal to respond meaningfully and to engage in an interactive process violates the ADA and the Rehab Act. *Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th Cir. 2002).

Although hardly essential to this analysis, this writer notes that no such integrity of the zoning ordinances is at stake. A peer respite group home is not specially described anywhere in the zoning ordinances of the city. The city’s position relies, not on a specific determination of the city council

that a peer respite group home is unsuitable in this zone, but upon a fairly strained comparison between the proposed usage and the definition of “traveler’s accommodations,” even though the individuals in question are not travelers, and the rooms are not “rented or kept for rent.” The staff analysis elevates the duration of the stay as the single determinative factor, without explaining why that element is essential. The staff analysis asserts somehow that Ashland’s focus is on “permanent” housing, without reconciling this supposed interest in Ashland’s willingness to accept stays of 30 days or more—hardly “permanent housing.” The gulf between a 14-day stay and a 30-day stay is not so enormous or self-evident as the analysis suggests.

An ordinary person cannot reserve a room at this group home. Instead, the home is heavily regulated by the Oregon Health Authority, and the residency of the group home will be determined by the clinical decision-making. Residents will not be engaged in tourism, but using the home as a residence. Perhaps most importantly, the home is being used for a specific statewide benefit, to ensure that people with disabilities can live in a home-like environment, be stabilized and find respite before moving on to their next home. The state legislature required the creation of those “home-like” environments, particularly requiring one in Southern Oregon.

The city council adopted a Homeless Services Masterplan in 2024 that included in its proposal that the city could “establish medical respite beds (step down housing after hospitalization/treatment),” “explore the need for more transitional housing,” “make zoning changes to facilitate innovation around service provision,” “establish a housing-focused transitional shelter,” or a “short-term shelter, typically 1-4 weeks, with case management.”⁴ The proposed respite group home would benefit all of Ashland and all of Southern Oregon. If the city abuses the law to pass on this opportunity, it would prove Ashland—like so many other communities—wants services and supports to happen someday, somewhere else, in someone else’s town, in someone else’s backyard. Throughout Oregon, we hear the constant demand for someone else to do the work we don’t want to do, that someone else’s community should support the work we know we need. These refrains make it sure that we never get what we need. Someday is now. Somewhere is here.

Sincerely,

/s/

Thomas Stenson
Deputy Legal Director
Disability Rights Oregon

⁴ City of Ashland, 2024 Homeless Services Masterplan Report, at 25, 60, 78 at <https://or-ashland.civicplus.com/DocumentCenter/View/2244/Homeless-Services-Masterplan-Report-PDF>.