MEMORANDUM

CITY/BOROUGH OF JUNEAU
155 South Seward Street, Juneau, Alaska 99801

DATE: May 1, 2014

TO: Planning Commission

FROM: Beth McKibben, Planner
Community Development Department

FILE NO.: APL2014 0002 and APL2014 0004

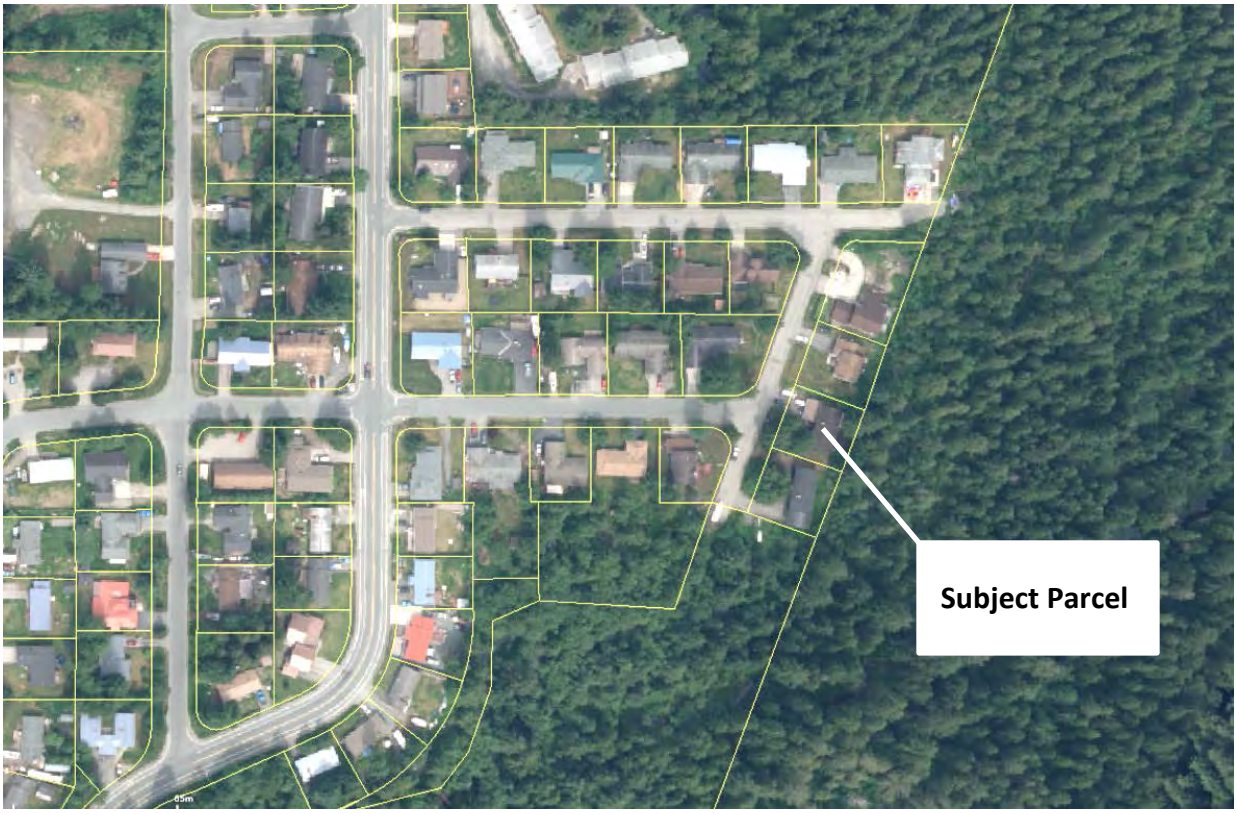
PROPOSAL: Planning Commission decision to hear or to not hear an appeal of the second Director's Decision regarding the operation of Haven House, a not for profit organization that wants to use an existing house in a D5 zone for transitional housing for women coming out of prison.

GENERAL INFORMATION

Applicant:	Tall Timbers Neighborhood Association (APL2014 0002) Haven House, Inc. (APL2014 0004)
Property Owner:	Grant Properties LLC
Property Address:	3202 Malissa Drive
Legal Description:	Tall Timbers 1 Block G Lot 3
Parcel Code No.:	5-B21-0-142-003-0
Site Size:	9,000 Square Feet
Comprehensive Plan Future Land Use Designation:	Medium Density Residential (MDR) Map G
Zoning:	D-5
Utilities:	City water & sewer
Access:	Malissa Drive
Existing Land Use:	Single family residential

Surrounding Land Use:
North - D5, single family residential, duplex
South - D5, single family residential, duplex
East - RR, vacant
West - D5, D15, single family/duplex, Glacier Valley Elementary

VICINITY MAP



Parties Referred to:

Tall Timbers Neighborhood Association (APL2014 0002) –Tall Timbers
Haven House, Inc. (APL2014 0004) – Haven House

Attachments (in reverse chronological order):

Attachment 1 – Email from Dan Hubert requesting to be an intervener in the Haven House appeal.
Attachment 2 - APL2014 0004 –Haven House Appeal of March 18, 2014 Director's Decision
Attachment 3 – APL2014 0002 - Tall Timbers Appeal of March 18, 2014 Director's Decision
Attachment 4 – March 18, 2014, Second Director's Decision regarding Haven House
Attachment 5 – March 10, 2014 letter from Pamela Finley for Haven House (and attachments)
Attachment 6 - APL2014 0001 –Haven House Appeal of January 24, 2014 Director's Decision regarding Haven House.
Attachment 7 – January 24, 2014 First Director's Decision regarding Haven House
Attachment 8 - BLD 2013-0767 – Haven House change of use application.

APPEAL PROCEDURE

Appeals to the Planning Commission are regulated under CBJ 49.20.110:

49.20.110 Appeals to the planning commission.

(a) Review by the commission of a decision of the director, may be requested by filing a notice of appeal stating with particularity the grounds therefore with the department within 20 days of the date of the decision appealed. The notice shall be considered by the commission at a regular scheduled meeting. The department and any aggrieved person, including the developer, may appear at that meeting and explain to the commission why it should hear the appeal. The appeal shall be heard unless it presents only minor or routine issues and is clear from the notice of appeal and any evidence offered at the consideration thereof, that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion.

(b) If the commission decides to hear the appeal, it shall announce whether it intends to review the entire decision, or merely a portion thereof and whether review shall be de novo or on the record. If the commission decides to hear the appeal, it shall give public notice thereof in a newspaper of general circulation in the municipality. The department shall prepare the record on appeal, which shall consist of the original application and supporting materials, written public comment thereon, and all notes, memoranda, minutes and other department material in relation thereto. The burden of proof in the appeal shall be on the party challenging the decision of the director. In a hearing de novo, proof shall be established by a preponderance of the evidence. If the appeal is heard on the record, argument may be heard, but no evidence outside

the record shall be admitted and the decision of the department shall be upheld if there is substantial evidence in support thereof and no policy error or abuse or discretion therein. The commission may confirm, reverse, or modify the director's decision, or change the conditions which the director placed on approval. The commission shall support its action with written findings.

CDD'S POSITION ON THE MERITS OF THE APPEAL

Pursuant to CBJ 49.20.110, the Planning Commission needs to take action on two related appeals that the Director has received regarding a Director's Decision.

Basic Facts

Haven House is a not for profit organization that wants to use an existing house in a D-5 zone for transitional housing for women coming out of prison.

On December 23, 2013, Haven House applied for a change of use permit from a single family to a transitional group home. A permit was not issued, but the application was assigned the following number, BLD 2013-0767.

On January 24, 2014, the Director issued a decision (Decision #1). (Attachment 7) Decision #1 stated that in a D-5 zone, group homes are allowed outright but halfway houses are not generally permitted. Decision #1 concluded that "because operating a halfway house is not a permitted use in this zoning district; Haven House cannot operate as described in the business plan in this location."

On February 11, 2014, Haven House appealed Decision #1. It was assigned the following case number APL 2014-0001.

On March 10, 2014, Haven House presented supplemental information and legal argument to clarify and explain the proposed use.

On March 18, 2014, the Director issued a second decision (Decision #2) (Attachment 4). Decision #2 concluded, after receiving the supplemental information and upon legal guidance, the Title 49 provisions regarding halfway houses and group homes are likely unenforceable as applied to Haven House. The Director concluded the proposed use was not a single family residence. The Director also concluded that the proposed use is a "use not listed," and it is or is most similar to a boardinghouse and rooming house. A boardinghouse and rooming house is allowed in a D-5 zone pursuant to a conditional use permit. The Director recommended that Haven House file applications for a "use not listed" and conditional use permit.

On April 1, 2014, the Tall Timbers Neighborhood Association ("Tall Timbers") filed an appeal of Decision #2. Tall Timbers asserts the following issues on appeal:

> TT1. Title 49 is enforceable with respect to halfway houses and group homes.

TT2. Haven House is not a boarding house or rooming house within the meaning of title 49.

TT3. Haven House is a halfway house within the meaning of title 49.

TT4. Haven House is not a use not listed pursuant to CBJ 49.20.320.

Tall Timbers requests that the Planning Commission adopt Decision #1 and that Haven House not be permitted in the D-5 zone.

On April 4, 2014, Haven House withdrew its appeal of Decision #1 and filed an appeal of Decision #2. Haven House requests the appeals be continued until after the use not listed/conditional use permit hearing. Haven House also challenges whether Tall Timbers has a right to appeal Decision #2. Haven House asserts the following issues on appeal:

HH1. Whether Tall Timbers has a right to appeal Decision #2.

HH2. Decision #2 erred in finding that Haven House is not a single family home as defined under CBJ 49.80.120.

HH3. Decision #2 erred in finding that Haven House is not a group home as defined by CBJ 49.80.120.

HH4. Decision #2 violates the Equal Protection and Due Process Clauses of the State and Federal constitutions by treating Haven House residents differently from other groups of people living together in a single dwelling unit, without a valid reason for the distinction.

Implicitly, Haven House requests the Planning Commission find that the proposed use is a single family home or group home.

On April 19, 2014, Tall Timbers requested to be an Intervenor in the Haven House Appeal.

Staff and Haven House have had two pre-application conferences, April 1 and April 28, regarding the submittals for the unlisted use and, if applicable, the conditional use permit. Haven House has indicated that it intends to submit an application for an unlisted use and, possibly, an application for a conditional use permit as a boardinghouse and rooming house. Haven House has requested the unlisted use hearing and the conditional use permit hearing occur at the same time. Assuming the application material is submitted before May 2, CDD can accommodate that request at the June 10, 2014, Planning Commission regular meeting.

In summary, Decision #1 was rescinded and Haven House's appeal has been withdrawn. The Planning Commission has two appeals related to Decision #2 that it needs to take action on. Substantively, the issues on appeal can be initially summarized by the following:

- **Whether the halfway house provisions in Title 49 are enforceable. (TT1, TT3, HH4)**

- **Whether the group home provisions in Title 49 are enforceable. (TT1, HH3, HH4)**
- **Whether Haven House is a use not listed. (TT2, TT3, TT4, HH2, HH3, HH4)**

Procedurally, the Planning Commission needs to decide:

1. **Whether Tall Timbers has a right to appeal Decision #2. (HH1)**

2. **Whether the Planning Commission will hear either or both appeals. CBJ 49.20.110(a) and (b).**

3. **Whether the Haven House and Tall Timbers appeals should be consolidated. *See* CBJ 1.50.030(e)(3).**

4. **If the appeals are not consolidated or if Tall Timbers does not have a right to appeal, then whether Tall Timbers' request to intervene in APL2014-004 should be granted.**

5. **Whether the Planning Commission will hear the appeal(s) *de novo* or on the record.**

6. **Whether the Planning Commission will schedule and treat the use not listed hearing also as a conditional use permit hearing.**

7. **Whether the Planning Commission will hear the appeal(s) before, after, or at the same time as the use not listed/conditional use hearing currently scheduled for June 10, 2014.**

Thus, the Planning Commission will need to decide how and when to schedule the appeals and the public hearings.

RECOMMENDATION

1. **Whether Tall Timbers has a right to appeal Decision #2.**

Staff recommends that the Planning Commission request supplemental briefing from all "parties" (CDD, Haven House, and Tall Timbers) before making a determination whether Tall Timbers has a right to appeal Decision #2. The following is likely relevant to determine whether Tall Timbers has a right to appeal:

- A person must be an aggrieved person to appeal a decision of the Director.[1]

[1] CBJ 49.20.110(a) (restricting standing in an appeal of a land use decision to an aggrieved person.); AS 29.40.050-060; *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741, 743 (Alaska 1993); *Griswold v. City of Homer*, 252 P.3d 1020. 1029 (Alaska 2011) (the Legislature

- Only entities that have corporate status or possess the right to sue have standing.[2]

2. Whether the Planning Commission will hear either or both appeals. CBJ 49.20.110(a) and (b).

Staff recommends:

- The Planning Commission hear the Haven House appeal.
- If the Planning Commission determines that Tall Timbers has a right to appeal Decision #2, then staff recommends that the Planning Commission hear that appeal.

3. Whether the Haven House and Tall Timbers appeals should be consolidated. *See* CBJ 1.50.030(e)(3).

Staff recommends:

- That if Tall Timbers can appeal Decision #2, the two appeals should be consolidated because the legal issues are nearly identical, originated from the same decision, and consolidation would be more efficient.

4. If the appeals are not consolidated or if Tall Timbers does not have a right to appeal, then whether Tall Timbers' request to intervene in APL2014-004 should be granted.

Staff recommends:

- The Planning Commission first determines whether Tall Timbers has a right to appeal Decision #2.
- If Tall Timbers can appeal Decision #2, then the two appeals should be consolidated.
- If the appeals are not consolidated and if Tall Timbers does not have a right to appeal, the Planning Commission should require briefing consistent with Civil Rule 24. Tall Timbers would be required to submit a motion describing why it believes intervenor status should be granted. The other parties would then have an opportunity to respond. See Appeal of AME2013-0015 (Bicknell Rezone) Order on Intervention (March 28, 2014) (requiring CR24 briefing to determine request for intervention).

5. Whether the Planning Commission will hear the appeal(s) *de novo* or on the record.

Staff recommends:

"eliminated taxpayer-citizen standing in land use cases by enacting AS 29.40.050-.060.")

[2] *Washington's Army v. City of Seward*, 181 P.3d 1102, 1104 n. 2 & 1105 (Alaska 2008).

- The Planning Commission hear the appeal(s) on the record because any appeal would focus on legal issues and additional evidence is not needed. An appeal of this type is a legal appeal and not a factual appeal.

The record in this case would include code provisions, history of relevant ordinances relied upon to make the Director's Decisions, materials supplied by Haven House (e.g., building permit application, supplemental information, etc.), and the Director's Decisions.

In an appeal on the record, Decision #2 shall be upheld if there is substantial evidence in support thereof and there was no policy error or abuse of discretion. Only argument may be heard because evidence outside the record is not admissible. In contrast, an appeal *de novo* the Planning Commission independently reviews Decision #2, which can allow for evidence from outside the record. CBJ 49.20.110(b).

In either type of appeal, the appellant (Haven House and/or Tall Timbers) has the burden of proof by a preponderance of the evidence. CBJ 49.20.110(b).

6. Whether the Planning Commission will schedule and treat the use not listed hearing also as a conditional use permit hearing.

Staff does not oppose combining the use not listed hearing with the conditional use permit hearing.

7. Whether the Planning Commission will hear the appeal(s) before, after, or at the same time as the use not listed/conditional use hearing on June 10, 2014.

Staff does not have a position or recommendation. However, if Tall Timbers cannot appeal Decision #2, then this issue is likely unripe because Haven House has stated it has no interest in pursuing its appeal prior to the use not listed/conditional use hearing. Instead, Haven House would start with the use not listed/conditional use hearing. If the Planning Commission denies their proposal, then Haven House would pursue their appeal. However, if the Planning Commission approved the Haven House proposal, for example as a boardinghouse and rooming house or as a new category, then Haven House would likely withdraw its appeal.

If the appeal occurs first, the Planning Commission could decide the foundational points on appeal before the public hearing, if necessary. However, the Planning Commission's schedule is tight, and it may not be able to hear and decide the appeal prior to June 10, 2014.

If the appeal occurs after June 10, 2014, the record and issues on appeal may be complicated by a decision based on the public hearing.

Alternatively, the Planning Commission could hear the appeal with the public hearing on June 10, 2014. While this approach simplifies the schedule, it may provide for a long and possibly complicated hearing.

Beth McKibben

From: Dan Hubert <danhubert@gmail.com>
Sent: Saturday, April 19, 2014 5:51 AM
To: Beth McKibben
Cc: Travis Goddard
Subject: Request

Dear Beth,

1. Tall Timbers Neighborhood Assn hereby petitions to be added as Intervenor on the Haven House Appeal APL2014 0004.

2. Without delay, please send me a scanned copy of all papers that Haven House has filed in order to initiate and support said appeal.

Regards,

Dan Hubert

Attachment 1

NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

Project Number	Project Name (15 characters)	Case Number	Date Received
		APL 20140004	4/4/2014

APPELLANT'S CONTACT INFORMATION:

Haven House — Appellant's Name

eHokeen@ — E-mail Address

586-4061 — Home Phone

957-4120 cell — Work Phone

Fax Number

c/o Mary Alice McKeen 212 W. Ninth Juneau AK 99821 — Mailing Address / City / State / Zip

X _____ President Haven House — Appellant's Signature

DECISION THAT IS BEING APPEALED

Decision of the Dept. concerning 3202 Mallissa Dr, ADL 3/18/14

Date of Director's Determination 3/18/14

*****Attach a copy of the Director's Decision (E-mail, Notice of Decision, Letter, etc.)*****

GROUNDS FOR APPEAL

See attached

SPECIFIC QUESTIONS YOU WOULD LIKE THE PLANNING COMMISSION TO ADDRESS

See attached two letters

APPEAL SPECIFICS (please fill in all that apply):

Parcel Number 5B2101420030 — Zoning District D-5

Case Number _____ — Code Section _____

Current Use of Land or Buildings Residential

Proposed Use of Land or Buildings Residential

Other _____

For more information regarding the process and the submittals required, please see the reverse side.

APPEAL FEE	Fees	Check No.	Receipt	Date
Notice Fees	$			
Refund (Yes/No)	$			
Total Fee	$ 200	2068	CDD4961	4/4/2014

Please attach a cover letter to fully explain the appeal if there is not adequate space on this form.

TO BE COMPLETED BY THE APPELLANT

ATTACHMENT 2

212 West Ninth Street
Juneau, Alaska 99801
April 4, 2014

Community Development Department
City and Borough of Juneau
155 S. Seward Street
Juneau, Alaska 99801

Re: Haven House Appeals of Decisions dated January 24, 2014 and March 18, 2014

To whom It May Concern:

There are three matters concerning the two referenced appeals. First, because Mr. Hart (in his March 18 decision) withdrew his January 24 decision, Haven House withdraws its appeal of the January 24 decision. Haven House, however, requests that the briefing that we submitted on March 10 be part of the record of the appeal of the March 18, 2014 decision.

Second, Haven House requests that the fee for the appeal of the January 24 decision be applied to its appeal of the March 18 decision, since CBJ withdrew its January 24 decision.

The third issue concerns the relationship of this appeal to the use not listed permit/conditional use permit, which Haven House will apply for shortly. Haven House prefers to have the appeal held in abeyance until the use not listed/conditional use permit issue is decided. However, Haven House is aware that an association and some individuals have also filed an appeal of the March 18 decision. Haven House objects to the association and those individuals being allowed to appeal a decision concerning property in which they have no legal interest, especially when the result of the March 18 decision will be a public hearing at which those individuals can appeal and present their positions. The association and the individuals ought not be allowed to use an appeal to defeat or delay a public process that will afford them an opportunity to be heard.

However, if the CBJ allows the association's and individuals' appeal, Haven House requests that their appeal of the March 18 decision, and Haven House's appeal of the March 18 decision, occur after the use not listed/conditional use permit hearing. Delaying the public hearing until after the appeal would further impede a project that has been brought to a complete halt for over three months, due in large part to well meaning but poorly drafted ordinances. In addition, the public hearing may produce facts and issues that would be relevant to the appeal or make it moot.

Please advise use whether the appeal of the association and the individuals will be allowed and, if so, what the schedule for the appeals will be.

Thank you for your assistance.

Sincerely,

June Degnan
President, Haven House

Mary Alice McKeen
Attorney for Haven House

HAVEN HOUSE SECOND POINTS ON APPEAL

1. The decision of March 18, 2014 (hereinafter the decision) erred in finding that Haven House is not a single family home as defined under CBJ Ord 49.80.120 ("one or more persons living as a single housekeeping unit") .

   A. In determining that Haven House is not a single family home, the decision erred in relying on the fact that the resident manager may receives free rent in exchange for services. The only services the resident manager will provide are supervising the home and house rules and giving help and advice to residents. These activities are not different in quality from those provided by a parent in a traditional nuclear family , including a family where one parent does not work outside the home, and therefore in some sense receives "free rent."

   B. In determining that Haven House is not a single family home, the decision erred in relying on the fact that two co-directors live off-site and come daily to provide services in the home. Again, the services to be provided are supervising the home and house rules and giving help and advice to residents, which are not different in quality from those services given in traditional nuclear families. The fact that the co-directors come to the home is not different from families in which a caregiver comes to the home in the day to take care of an elder, a child, or a mentally or physically disabled resident. In addition, the traffic disruption to the neighborhood is no greater than (and probably less than) the disruption caused by parents bringing their children to the day care facilities in the neighborhood.

   C. In determining that Haven House is not a single family home, the decision erred in relying on the payment by the payment of rent by the residents of $550 per month. While sharing of living expenses among residents is not typical of traditional nuclear families, the ordinance includes communal living situations (students living together, friends living together, legislators living together) as "family" because the definition of "family" does not require any sort of kinship, but only that the residents live together as a "single housekeeping unit." Sharing living expenses is not contrary to, and in fact supports, a description of people living together as a single housekeeping unit.

   D. In determining that Haven House is not a single family home, the decision erred in relying on the fact that the residents of Haven House will be women who have recently been released from prison and will most likely be on probation or parole and most likely will be under the supervision of parole /probation officers. This fact has no conceivable relevance to whether the residents are "living together as a single

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housekeeping unit." [CBJ 49,80.120] People on probation or parole live all over Juneau, including in residential districts. It is offensive to treat five legislators renting a house together as a family, as defined by CBJ 49.80.120., but not treat five persons living together who are on probation or parole as a family because these persons are on probation or parole. A person is no less a person because they are on probation or parole. It is no defense that the decision cited this factor factor among six factors. It is not valid to consider it at all. This factor means that the CBJ is regulating users, not uses.

E. In determining that Haven House is not a single family home, the decision erred in relying on the fact that, although residents may stay for up to two years, there is no minimum stay requirement and a resident could be removed from the home if she violated the client agreement (which covers payment of rent, search for employment or education, following house rules, etc.). The definition of "family" in CBJ 49.80.120 does not require that the group live together as a single housekeeping unit for any particular period of time. Moreover, traditional nuclear families can break up or have people move out for temporary periods of time. In other communal living situations a resident could be asked to leave if he or she fails to contribute to group living expenses or follow house rules. The two years that a resident of Haven House is likely to stay is much longer the 4 to 5 months that legislators would typically share living quarters, than the winter months that a seasonal employees of Eaglecrest would typically share living quarters, or the summer months that employees of a cruise ship company would typically share living quarters.

2. The decision erred in finding that Haven House is not a group home as defined by CBJ 49.80.120.

A. The decision of March 18, 2014 erred in finding that the definition of "group home" in CBJ 49.80.120 is unenforceable on the grounds that there is no justification for distinguishing group homes from other uses in which people are not serving a sentence. If "serving a sentence" is properly construed to mean "under official detention by the Department of Corrections," the definition of "group home" is defensible as prohibiting jails in residential areas. Haven House notes that the decision is defining "serving a sentence" to include persons that are on probation or parole but are not confined to a particular location and are not under official detention by the Department of Corrections.

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5. The decision violates the Equal Protection and Due Process Clauses of the State and Federal constitutions by treating Haven House residents differently from other groups of people living together in a single dwelling unit, without a valid reason for the distinction.

April 4, 2014
DATED

Mary Alice McKeen
Mary Alice McKeen
Attorney for Haven House

4

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

March 18, 2014

Pamela Finley, Attorney for
Haven House, Inc.
P.O. Box 22977
Juneau, AK 99802

RE: Haven House Transitional Housing located at 3202 Malissa Drive

Dear Ms. Finley:

Thank you for providing the requested additional information. That additional information allowed the Community Development Department ("CDD") to fully review the Haven House proposal and better understand how Haven House intends to operate at 3202 Malissa Drive. I have reached the following decision.

Upon reviewing the additional information provided by Haven House and upon legal guidance, I conclude the Title 49 provisions regarding Halfway Houses and Group Homes are likely unenforceable as applied to Haven House. Except the provisions specifically addressed below, Title 49 is presumed valid and enforceable.

I conclude Title 49 is likely unenforceable regarding Halfway Houses because of the following: (1) large halfway houses (10+ people) are allowed in residential zones but small Halfway House (less than 10) are not, and neither Title 49 nor the legislative history provide justification for the distinction; (2) neither Title 49 nor the legislative history provide justification for the change in prohibiting small Halfway Houses in residential areas; (3) neither Title 49 nor the legislative history provide justification for distinguishing Halfway Houses from other uses in which people are not serving a sentence; and (4) the Table of Permissive uses lists Halfway Houses in two different sections (1.450 and 7.400), table CBJ 49.25.300, which creates an arbitrary effect if CBJ 49.25.300(a)(3) is applied.

Similarly, I conclude Title 49 is likely unenforceable regarding Group Homes as applied to Haven House because of the following: (1) neither Title 49 nor the legislative history provide justification for distinguishing Group Homes from other uses in which people are not serving a sentence; and (2) neither Title 49 nor the legislative history provide justification for differentiating Group Homes with more than six residents and those with less than six residents.

For those reasons, I conclude that I cannot apply the Title 49 provisions regarding Group Homes and Halfway Houses to Haven House. Thus, I conclude Haven House cannot be classified as a Group Home or Halfway House.

Previously, I concluded that Haven House best fit the definition of a halfway house because the proposed use involved people, living together, who would be serving a sentence. However, based on the additional information, the reasoning provided above, and considering the proposed use does not now fit within one of the uses specifically listed in the Table of Permissive uses, I conclude the proposed use of

Haven House is a "use not listed." CBJ 49.20.320. In order to be considered for a "use not listed," Haven House will need to make an application to the CDD consistent with CBJ 49.20.320. This request would be evaluated by the Planning Commission sitting as the Board of Adjustment. This "use not listed" process requires public hearing and the associated public notice.

I conclude the proposed use of Haven House is currently boardinghouse and rooming house or is currently most similar to a boardinghouse and rooming house. CBJ 49.80.120 defines boardinghouse and rooming house as follows:

> *Boarding and rooming house mean a dwelling in which more than two bedrooms are used for commercial lodging provided by the owner or operator who lives on site. The term "boarding house and rooming house" includes houses offering bed and breakfast.*

I conclude that Haven House is not a single family residence per CBJ 49.80.120 because the use is a boardinghouse and rooming house or is more characteristic of a boardinghouse and rooming house. I find the following factors distinguish Haven House from a single family residence: (1) a house manager lives onsite and provides services in exchange for rent; (2) two part-time co-directors live offsite and come onsite daily to provide services in the home; (3) all nine of the clients pay rent of $550/month; (4) the clients will be recently released from prison and most will be on probation or parole; (5) most, if not all, of the clients will be under the supervision of probation or parole officers; and (6) despite allowing the clients to say up to two years, Haven House may actually be a transient structure because there are no minimum stay requirements and clients will be evicted for violating the client agreement. At no point has CDD adversely distinguished Haven House based on the actual or potential likelihood of any of its clients having a disability or handicap as protected by 42 U.S.C. 3602 (Fair Housing Act) or by 42 U.S.C. 12101 (Americans with Disability Act).

If the Board of Adjustment decides Haven House is similar to a boardinghouse and rooming house, an application for a conditional use permit can then be applied for and processed. The conditional use permit will be considered by the Planning Commission, after a public hearing. Alternatively, if the Board of Adjustment decides Haven House is more similar to a use that does not require a conditional use permit, then the underlying building permit application could be processed accordingly.

The CDD often hosts neighborhood meetings early in the conditional use permit process so that interested neighbors and other members of the public have an opportunity to learn about the project and the conditional use permit process. Both the "use not listed" and the conditional use decisions are appealable decisions.

The Director's Decision issued January 24, 2014, is rescinded. This Director's Decision is appealable pursuant to CBJ 49.20.110.

Please contact me at 586-0757 if you have any questions or would like to discuss this further.

Sincerely,

Hal Hart, AICP
Director

CITY CLERK
CBJ APR - 1 2014 CBJ
RECEIVED

OFFICE OF THE MUNICIPAL CLERK
155 S. Seward St., Room 202
Phone: (907)586-5278 Fax: (907)586-5385
eMail: Laurie_Sica@ci.juneau.ak.us

Notice of Appeal

This appeal is governed by CBJ 01-50, the Municipal Appellate Code. This code establishes the standards and procedures for appeals. Anyone who files an appeal should be familiar with the appellate code. The clerk can give you a copy of the code.

Attach a copy of the decision being appealed. Do not attach any other documents, exhibits, or additional pages to this form, except for any pages needed to continue the answers to the requested information below. The clerk will accept this form only if the appropriate filing fee is attached. The fee to file an appeal to the assembly is $250.00. To be timely, an appeal must be filed within 20 days of the date the decision being appealed is filed with the clerk.

Action Being Appealed

Board decisions are appealable: board recommendations and most staff decisions are not.

❑ Agency Appealed From:

Director of Community Development Department

❑ Description and Date of Decision:

Haven House Transitional Housing, March 18, 2014 letter of Hal Hart, Director CDD

Concerned Parties

Identify the people who have an interest in the action being appealed: yourself and others.

❑ Party Filing Appeal	Mailing Address	Telephone	Fax	Email
Tall Timbers Neighborhood Association c/o Gruening & Spitzfaden, APC, 217 2nd St, Ste 204, Juneau, AK 99801				
and individuals on attached list		907-586-8110, fax 907-586-8059, email: spitz@gci.net		

❑ Parties Who Won the Decision Appealed	Mailing Address	Telephone	Fax	Email
Haven House, Inc., PO Box 22977, Juneau, AK 99802				

-over-

Issues on Appeal[1]

Concisely describe the errors in the decision appealed. Do not argue them: argument will be heard later.

1. Title 49 is enforceable with respect to halfway houses and group homes.

2. Haven House is not a boarding house or rooming house within the meaning of title 49.

3. Haven House is a halfway house within the meaning of title 49.

4. Haven House is not a use not listed pursuant to CBJ 49.20.320.

Relief Requested

What should the Assembly do with the action being appealed: send it back, modify it, or something else?

Adopt Director Hall Hart's decision in his January 24, 2014 letter to Juna Degnan indicating

Haven House is a halfway house not permitted in the D-5 zoning district

Gavin Spitzfaden, Jr.
by Robert S. Spitzfaden 4-1-14

Signature **Date**

If you are representing any group, or a person other than yourself, you must sign a notarized statement that you are authorized to represent them.

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1 01.50.070 STANDARD OF REVIEW AND BURDEN OF PROOF. (a) The appeal agency may set aside the decision being appealed only if:
(1) The appellant establishes that the decision is not supported by substantial evidence in light of the whole record, as supplemented at the hearing;
(2) The decision is not supported by adequate written findings or the findings fail to inform the appeal agency of the basis upon which the decision appealed from was made; or
(3) The agency failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties.
(b) The burden of proof is on the appellant. (Serial No. 92-36, 2 (part), 1992).1

-over-

The undersigned seek to appeal the decision of Director Hal Hart found in his March 18, 2014 letter to Pamela Finley of Haven House, and further consent to be being represented by Gruening & Spitzfaden, APC and Robert S. Spitzfaden

Date: 3/27/14

By: Tom Sullivan
Address: 3204 Malissa Dr.
Juneau, AK 99801

Date: 3/27/14

By: SAM BERTONI
Address: P.O. Box 32993 Juneau AK 99803 (mail)
8614 Gail Ave

Date: 3/27/14

By: Andy HUGHES
Address: 3200 Malissa Drive
Juneau, AK 99801-9017

Date: 3/27/14

By: NOAH LAGER
Address: 8607 MARILYN AVE
JUNEAU AK 99801

Date: 3/27/14

By: Sammy Legg
Address: 3200 Malissa Dr
Juneau, AK 99801

Date: 3-27-14

By: DAN HUBERT
Address: 8597 MARILYN AVE
JUNEAU AK 99801

Date: 3-27-14

By: Shelly Lager
Address: 8607 Marilyn Ave
Juneau AK 99801

Date: 3-27-14

By: TERI J. MAXWELL
Address: 8610 GAIL AVENUE
JUNEAU, AK 99801

Date: 3/27/14

By: Paula Hubert
Address: 8597 Marilyn Ave
Juneau, AK 99801

Date: 3/30/14

By: Andrea D. Gallagher
Address: 8602 Marilyn Ave.
Juneau, AK 99801

Date: 3-30-14

By: Scott Reid
Address: 8619 Gail Ave
Jnu, AK 99801

Date: 3/30/14

By: Guy Holt
Address: 8610 Gail Ave
Juneau, AK 99801

Date: 3/30/14

By: David Marvel
Address: 8616 Gail Ave
Juneau AK 99801

Date: 3/30/14

By: Lynn Marvel
Address: 8616 Gail Ave
Juneau AK 99801

Date: 3-30-14

By: Teddy Kulhanek
Address: 8618 Gail Ave
Juneau AK 99801

Date: 3-30-14

By: Darlene F. Thorndal
Address: 8621 Gail Ave
Juneau, AK 99801

Date: 3/30/14

By:
Address: 8621 GAIL AVE
JUNEAU AK 99801

Date: 3/30/14

By: Blair Ramsdell
Address: 3154 Tongass Blvd
Juneau, AK 99801

Date: 3-28-14

By: Edward Larson
Address: 8613 Marilyn Ave
Juneau AK 99801

Date: 3-28-14

By: Paul Duran
Address: 3208 Melissa Dr
Juneau, AK

Date: 3-28-14

By: Lolita Duran
Address: 3208 Melissa Dr
Juneau AK

Date: 3-28-14

By: Sam Larson
Address: 8613 Marilyn Ave
Juneau AK

Date: 3/30/14

By: Becky L Nelson
Address: 8606 Marilyn Ave
Juneau, AK 99801

Date: 3/30/14

By: Rosena C. Salazar
Address: 8601 MARILYN AVE
JUNEAU, AK. 99801

Date: 3/30/14

By: KIMO SALAZAR
Address: 8601 MARILYN AVE
JUNEAU, AK 99801

Date: 3/30/14

By: Fernando LID
Address: 8609 MARILYN AVE
Juneau AK 99801

Date: 3-30-14

By:
Address: 8605 MARILYN AVE
JUNEAU AK 99801

Date: 3·30·14

Dixie S. Denton

By: Dixie S. Denton
Address: 8618 Gail Ave.
Juneau, AK 99801

Date: _____

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CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

March 18, 2014

Pamela Finley, Attorney for
Haven House, Inc.
P.O. Box 22977
Juneau, AK 99802

RE: Haven House Transitional Housing located at 3202 Malissa Drive

Dear Ms. Finley:

Thank you for providing the requested additional information. That additional information allowed the Community Development Department ("CDD") to fully review the Haven House proposal and better understand how Haven House intends to operate at 3202 Malissa Drive. I have reached the following decision.

Upon reviewing the additional information provided by Haven House and upon legal guidance, I conclude the Title 49 provisions regarding Halfway Houses and Group Homes are likely unenforceable as applied to Haven House. Except the provisions specifically addressed below, Title 49 is presumed valid and enforceable.

I conclude Title 49 is likely unenforceable regarding Halfway Houses because of the following: (1) large halfway houses (10+ people) are allowed in residential zones but small Halfway House (less than 10) are not, and neither Title 49 nor the legislative history provide justification for the distinction; (2) neither Title 49 nor the legislative history provide justification for the change in prohibiting small Halfway Houses in residential areas; (3) neither Title 49 nor the legislative history provide justification for distinguishing Halfway Houses from other uses in which people are not serving a sentence; and (4) the Table of Permissive uses lists Halfway Houses in two different sections (1.450 and 7.400), table CBJ 49.25.300, which creates an arbitrary effect if CBJ 49.25.300(a)(3) is applied.

Similarly, I conclude Title 49 is likely unenforceable regarding Group Homes as applied to Haven House because of the following: (1) neither Title 49 nor the legislative history provide justification for distinguishing Group Homes from other uses in which people are not serving a sentence; and (2) neither Title 49 nor the legislative history provide justification for differentiating Group Homes with more than six residents and those with less than six residents.

For those reasons, I conclude that I cannot apply the Title 49 provisions regarding Group Homes and Halfway Houses to Haven House. Thus, I conclude Haven House cannot be classified as a Group Home or Halfway House.

Previously, I concluded that Haven House best fit the definition of a halfway house because the proposed use involved people, living together, who would be serving a sentence. However, based on the additional information, the reasoning provided above, and considering the proposed use does not now fit within one of the uses specifically listed in the Table of Permissive uses, I conclude the proposed use of

Haven House is a "use not listed." CBJ 49.20.320. In order to be considered for a "use not listed," Haven House will need to make an application to the CDD consistent with CBJ 49.20.320. This request would be evaluated by the Planning Commission sitting as the Board of Adjustment. This "use not listed" process requires public hearing and the associated public notice.

I conclude the proposed use of Haven House is currently boardinghouse and rooming house or is currently most similar to a boardinghouse and rooming house. CBJ 49.80.120 defines boardinghouse and rooming house as follows:

> *Boarding and rooming house mean a dwelling in which more than two bedrooms are used for commercial lodging provided by the owner or operator who lives on site. The term "boarding house and rooming house" includes houses offering bed and breakfast.*

I conclude that Haven House is not a single family residence per CBJ 49.80.120 because the use is a boardinghouse and rooming house or is more characteristic of a boardinghouse and rooming house. I find the following factors distinguish Haven House from a single family residence: (1) a house manager lives onsite and provides services in exchange for rent; (2) two part-time co-directors live offsite and come onsite daily to provide services in the home; (3) all nine of the clients pay rent of $550/month; (4) the clients will be recently released from prison and most will be on probation or parole; (5) most, if not all, of the clients will be under the supervision of probation or parole officers; and (6) despite allowing the clients to say up to two years, Haven House may actually be a transient structure because there are no minimum stay requirements and clients will be evicted for violating the client agreement. At no point has CDD adversely distinguished Haven House based on the actual or potential likelihood of any of its clients having a disability or handicap as protected by 42 U.S.C. 3602 (Fair Housing Act) or by 42 U.S.C. 12101 (Americans with Disability Act).

If the Board of Adjustment decides Haven House is similar to a boardinghouse and rooming house, an application for a conditional use permit can then be applied for and processed. The conditional use permit will be considered by the Planning Commission, after a public hearing. Alternatively, if the Board of Adjustment decides Haven House is more similar to a use that does not require a conditional use permit, then the underlying building permit application could be processed accordingly.

The CDD often hosts neighborhood meetings early in the conditional use permit process so that interested neighbors and other members of the public have an opportunity to learn about the project and the conditional use permit process. Both the "use not listed" and the conditional use decisions are appealable decisions.

The Director's Decision issued January 24, 2014, is rescinded. This Director's Decision is appealable pursuant to CBJ 49.20.110.

Please contact me at 586-0757 if you have any questions or would like to discuss this further.

Sincerely,

Hal Hart, AICP
Director

Representation Statement

The undersigned is authorized to represent Tall Timbers Neighborhood Association and the persons signing the Notice Of Appeal.

Cordially,

Robert S. Spitzfaden

SUBSCRIBED AND SWORN TO before me this 1 of ~~March~~ April 2014, at Juneau, Alaska.

Gina M. White Notary Public State of Alaska

Notary in and for the State of Alaska
My Commission Expires: APR 2 6

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

March 18, 2014

Pamela Finley, Attorney for
Haven House, Inc.
P.O. Box 22977
Juneau, AK 99802

RE: Haven House Transitional Housing located at 3202 Malissa Drive

Dear Ms. Finley:

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Attachment 4

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The Director's Decision issued January 24, 2014, is rescinded. This Director's Decision is appealable pursuant to CBJ 49.20.110.

Please contact me at 586-0757 if you have any questions or would like to discuss this further.

Sincerely,

Hal Hart, AICP
Director

P.O. Box 22977
Juneau, AK 99802
March 10, 2014

Dear Mr. Hart,

Thank you for the opportunity to present more information concerning Haven House. Our response to the questions from the CBJ Attorney's office is attached, as is a memorandum supporting our legal position.

As an initial matter, I should state that we now realize that it was unnecessary for Haven House to request status as a "group home" because Haven House meets the CBJ's definition of a single family dwelling. That request was an innocent mistake by non-lawyers. Haven House apologizes for its mistake.

What we request at this point is the following:

(1) a determination by CDD that Haven House is a single family residence and therefore may operate in a D-5 district;
(2) in the alternative, a determination that Haven House is a group home and therefore may operate in a D-5 district;
(3) a determination that Haven House may operate in a D-5 district as a reasonable accommodation under the Fair Housing Amendments Act and the Americans With Disabilities Act; and
(4) if you cannot make any of these determinations, an explanation of what characteristics or activities you think disqualify Haven House from being a single family dwelling or group home or being unable to operate as a reasonable accommodation.

Although Haven House's legal position is explained in the attached memorandum, two things should be kept in mind. First, Haven House's use of the home will be much better and safer for the residents and the neighborhood than some other potential situations that would be allowed under the CBJ's zoning code. Given the CBJ's broad definition of "family", nothing in the CBJ's zoning code would prevent up to twelve persons, whether related or not, and including women just released from prison, from living together in the six bedroom house as a single housekeeping unit, just because they enjoyed each other's company, and without supervision from anyone. Haven House's plan limits the number of residents to nine, adds a house manager who will be at the house in the evenings and nights,and adds two part-time co-directors (one fulltime equivalent) who will be at the house during the day, all of whom will provide the residents with the same type of mentoring and support, suggestions, help, and friendship typically found in families of related persons, and frequently found in communal living situations of unrelated persons. They will also enforce house rules such as curfew and chores.

Secondly, because of the nature of the prison population, Haven House has long been aware that most, probably all, of Haven House's residents will be recovering from substance abuse or have mental health issues. Although its business plan that it submitted with the application of December 23, 2013 stated that 90% of the prison population had substance abuse issues, Haven House did not give you any supporting documents. Those are attached as Exhibits A and B to our accompanying legal memorandum. Also, Haven House is

designating at least 7 of its 9 beds for women coming out of prison who are committed to recovery from substance abuse. See Exhibit C to memo. Accordingly, Haven House is protected by the Fair Housing Act's prohibitions against discrimination.

There is one other matter in addition to Haven House's request for a determination as set out above. The CBJ ordinance provides that uses "similar" to a group home with five or fewer residents are to be regulated as single family dwellings. Haven House would be willing to open with only five residents, and wait to add more residents until its zoning status is finally resolved, either administratively or in the courts. This would be a temporary solution, but it would minimize Haven House's damages for a while. Please let me know if you object to this.

I should add that time is of the essence in this matter because Haven House is incurring costs of the residence, and there are already women who want to apply to live at Haven House. So, could you please let me know how long you estimate it will take for Haven House to receive the determinations requested in this letter?

Because a recent newspaper article referred to Haven House's legal representation, I should clarify that matter. Since we know that this case may end up in litigation, we have consulted with Northern Justice Project, LLC, www.njp-law.com, a law firm which has an established track record of representing persons and organizations whose civil rights have been violated. However, NJP is not representing Haven House at this time. The purpose of the attached brief and our answers to CBJ's questions is to avoid litigation such as occurred over the Karluk Manor in Anchorage. Instead, Haven House deeply and sincerely wishes to put its energy into opening Haven House and providing housing to a segment of our community that very much needs housing--women coming out of prison committed to recovery from addiction.

We would be happy to meet with you to discuss any of the above or any of the matters raised in the attached legal memorandum or answers to Mr. Palmer's questions. I will be out of town March 11 through 19th, but any other time is fine. Thank you very much for your attention to this important manner.

Sincerely,

Pamela Finley

Pamela Finley
Attorney for Haven House

cc. Jim Davis
Northern Justice Project, LLC

Rob Palmer
CBJ Department of Law

Haven House responds to the request for this information contained in an email from CBJ Department of Law to Pam Finley, Attorney for Haven House, dated March 6, 2014.

Basic purpose of Haven House

The basic purpose of Haven House is to provide housing in a single housekeeping unit for women being released from prison who are committed to recovery from addiction. Haven House will provide this housing in a loving structured environment.

Describe how Haven House believes it should be regulated (halfway house, group home, etc.)

Haven House believes that its use of the home at 3202 Malissa Drive is as a single family residence within the definition of family in CBJ 49.80.120. Haven House believes that its use of the property should be regulated as a single family residence. This is Haven House's first and primary contention. Depending on the CBJ's interpretationof "group home" in CBJ 49,80..120, Haven House's use of the property may also be as a "group home". These points are fully addressed in the attached legal brief.

Describe how the proposed use conforms with the Comprehensive Plan and Title 49

A single family residence in a D5 zone is fully in conformance with the Comprehensive Plan and Title 49. A group home in a D5 zone is also fully in conformance with the Comprehensive Plan and Title 49.

Describe the property at Malissa Drive (number of kitchens, number of bathrooms, number of bedrooms, square footage, landscaping, fencing, etc.)

The property is a typical residence with six bedrooms, an additional bedroom-sized room (without secondary egress) that could serve as an office or storage, a kitchen and dining and living room area, a family room, three full baths, a laundry room, a furnace room, and a two-car garage. A recent appraisal notes the house has 1403 square feet above grade and 1260 square feet in the lower level. The lot is 9000 square feet. Landscaping is minimal, the front yard is covered with bark chips under a large tree, the back yard has a narrow grass area with natural ground cover behind. There is a fenced area in the back yard, no fencing in front.

Describe the number of people Haven House intends to have residing at Malissa Drive

Our plans are to have up to nine residents. In addition, a supervisor will be there in the evening and at night.

Describe the people expected to live at Haven House: total number, number per room, length of stay, whether on probation or parole

The nine residents would be in double occupancy rooms (except for the smallest bedroom which would be single occupancy) and the night supervisor will have a single room. The residents will be recently released from prison and may be on probation or parole. We anticipate

that most residents will be on probation or parole. Of the nine residents, Haven House has reserved a minimum of seven spaces for women who are recovering from addiction. A resident can stay for up to two years.

If people are on probation or parole, will Haven House use a screening process to select potential residents; and what type of sentence/judicial conditions are likely to be imposed, if any (firearms, alcohol, drugs, visitation, supervision, etc.)

All persons seeking to live at Haven House must complete an extensive application which will include recommendations by Probation/Parole/Corrections Officers. All persons seeking to live at Haven House must interview with Haven House staff. The applications will be carefully reviewed by Haven House staff in consultation with Probation/Parole Officers. A high priority of the review process will be to provide a safe environment and to protect the potential success of the residents already living at Haven House. If the person is on probation, the court sets the terms of probation. The potential conditions of parole are set out in AS 33.16.150; the parole board determines which conditions to impose in a particular case. Haven Houseprohibits firearms, alcohol and drugs on the property , except prescription drugs for which the resident has a prescription. Haven House staff will also share information with Probation/Parole Officers as appropriate (Haven House residents will sign release forms allowing Probation/Parole Officers to share information with Haven House and vice versa as a condition of their application.)

Describe whether supervision would be provided or not ; and if so, describe the supervision/self-imposed "house rules"

The two co-directors of Haven House will provide supervision of the house during the day. A supervisor will be there in the evening and at night. Haven House will provide a level of supervision comparable to what a loving family might provide to older children still living at home. Haven House will establish house rules. The subjects addressed in house rules include curfew; random inspections of rooms; limits on visitation; absences from the home; compliance with conditions of parole/probation; the prohibition of firearms/alcohol/drugs; shared household chores. Haven House staff and the residents themselves will oversee adherence to house rules and will coordinate shared household chores and other communal activities.

Haven House is providing this information to cooperate with CBJ's request for information. Haven House notes that CBJ does not seek this information from other persons using property as a single family residence in Juneau.

Describe whether and how often caregivers, or counselors would frequent Haven House

Caregivers or counselors will not regularly visit Haven House. Residents may receive professional counseling services elsewhere.

Describe whether residents are seeking care (extended healthcare, or rehabilitative or recovery from any physical, mental, or emotional disability)

The majority, if not all, of Haven House residents will be in recovery from addiction. They will not receive professional services at Haven House.

Describe the parking available off street and on street and mitigation, if any

Haven House has a two-car garage and parking in front of the garage for four cars. Haven House residents will seldom own cars and the available parking is expected to be adequate.

Describe the anticipated traffic and visitation issues and mitigation, if any

Haven House does not anticipate traffic and visitation issues. Visitation to residents will be limited. We anticipate that Haven House will not have more traffic than similarly sized houses in D-5 and, we expect, Haven House will have less traffic than houses operating day care businesses.

Describe screening/noise mitigation, if any

No noise mitigation will be necessary. This will be a residence and noise will not be appreciably different from any other residence of comparable size.

Describe screening/visual/lighting mitigation, if any

No visual/lighting mitigation will be necessary. This will be a residence and lighting will not be appreciably different from any other residence.

3/10/14

HAVEN HOUSE'S MEMORANDUM IN SUPPORT OF ITS ZONING REQUEST

The Facts.

Haven House is a home for women recently released from prison, who are committed to recovery from substance abuse or mental health problems. As stated at Haven House's Business Plan, ("HHBP") p. 1," 90% of parolees have substance abuse issues. " Residence at Haven House is voluntary by mutual agreement of the resident and Haven House; the residents will be referred by parole and probation officers, treatment providers, counselors, and prison chaplains and then interviewed by Haven House staff. HHBP p. 2. A resident may stay up to two years. HHBP p. 1. Although Haven House will not provide substance abuse treatment programs, job-training problems, mental health counseling or the like, it will help women obtain such services in other places. HHBP p.1 and 3. In many respects, Haven House is similar to an Oxford House, see [redacted], except that Haven House will have two part-time co-directors who will be at the home during the day and a house manager who will be there during non-working hours, all of whom will provide community, individual mentoring and support, life-skills modeling and friendship. HHBP p. 2 - 3. Haven House will be located in a 6 bedroom, 3 bath house which, according to neighbors, previously housed a family of 12 or 13. Haven House plans to have nine residents, primarily double occupancy, and the house manager will have her own room. HHBP p. 3. Haven House anticipates that most residents will not have a vehicle, but the house has a double garage and driveway parking for 4 cars.

The Law

I. Preventing Haven House from locating in a residential district violates the Fair Housing Act and the Americans with Disabilities Act.

Most of the residents of Haven House will have a history of drug or alcohol addiction or an emotional or disorder such as depression, low self-esteem, or post-traumatic-stress disorder because 96 % of the population from which Haven House residents will be drawn (Alaska prisoners) have a history of substance abuse or mental health problems. According to the January 2009 Research Summary of the Institute of Social and Economic Research (ISER),

attached hereto as Exhibit A, 60% of Alaska inmates have substance abuse disorders, 6% have mental health disorders, and 30 percent have both mental health and substance abuse disorders. ISER , page 2, fig. 5. Only 4% of Alaska inmates have neither substance abuse nor mental health problems. The Alaska Prisoner Re-entry Task Force cites similar statistics in its strategic plan, the relevant pages of which are attached hereto as Exhibit B. It refers to a 1999 Alaska Judicial Report that two-thirds of those convicted of a felony had an alcohol problem and about one-half had a drug problem, and that 90% reported having had a substance abuse problem at some time in their lives. Given the nature of the prison population, Haven House has assumed that most if not all of the residents would be in recovery from substance abuse or have mental health problems or both. Accordingly, though it is probable that all of the residents will have a history of substance abuse or mental health problems, Haven House has designated a minimum of 7 of the 9 beds for women getting out of prison who are in recovery from substance abuse. See Exhibit C.

Under both the Fair Housing Act, 42 U.S.C. 3602, as amended (FHAA) and the Americans with Disabilities Act, 42 U.S.C. 12102 (ADA), past history of drug or alcohol abuse qualifies as a handicap or disability. U.S. v. Southern Management Corp., 955 F.2d 914 (4th Cir. 1992) (recovering drug addict covered by FHAA where attitudes of landlord prevented addict from renting apartment); U.S. v. City of Baltimore, 845 F. Supp.2d 640 at 648 (D. Md. 2012); Jeffrey O. v. City of Boca Raton , 511 F. Supp.2d. 1339 at 1346 (S.D. Fla 2007)("The position that recovering individuals can be considered disabled is supported both in case law and legislative history."). Similarly, anxiety and panic disorders are disabilities under the ADA, McAndlin v. County of San Diego, 192 F.3d 1226 (9th Cir. 1999),cert. den., 530 U.S. 1243, 120 S. Ct. 2689, 147 L.Ed 2d 961 (2000) (employment case; condition prevented interacting with others) as is being regarded as emotionally unstable. Lee v. City of Syracuse, 603 F. Supp.2d 417 (N.D. N.Y. 2009)(employment discrimination.) Organizations, like Haven House, providing shelter or services to the disabled also have standing to assert rights under the FHAA and the ADA, either as representatives of those they will serve, or because the discrimination frustrates the mission of the organization and requires diversion of resources to combat the discrimination. Smith v. Pacific Properties and Development Corp. 358 F. 3d. 1097 (9th Cir. 2004),

cert. den., 543 U.S. 869, 125 S. Ct. 106, 106 L.Ed. 2d 116 (2004). Moreover, the standing of the institution to invoke the FHAA's protection does not require that all residents fall within the applicable definition. Human Resource and Management Group v. Suffolk County, 687 F. Supp. 2d 237 at 251 (E.D.N.Y 2010)("the undisputed evidence indicates that ...on average, approximately one-half of all Oxford House residents are undergoing treatment while members of the houses.)

The FHAA covers zoning. City of Edmonds v. Oxford House, 514 US. 725, 115 S. Ct. 1776, 131 LEd.2d 801 (1995)(zoning provision covering the maximum number of persons in a "family" not exempt from FHAA); Jeffrey O. v. City of Boca Raton, supra. As one court said, the "FHAA protects the right of individuals to live in the residence of their choice in the community." Larkin v. Michigan Dept of Social Services, 89 F.3d 285 at 291 (6th Cir. 1996). The ADA also covers zoning decisions. Bay Area Addiction Research & Treatment Inc. v. City of Antioch, 179 F.3d 725 (9th Cir. 1999)(methadone clinic within 500 feet of residential area.) The FHAA does not merely cover outright zoning prohibitions, but also covers procedures and requirements that make housing more difficult to obtain. Neighbor notification requirements have been invalidated under the FHAA, as have spacing requirements. Potomac Group Home Corp. v. Montgomery County, 823 F. Supp. 1285 (D. Md. 1993)(neighbor notification); Larkin v. Michigan Dept of Social Services, supra (notification; spacing). Requiring a public hearing has been held to violate the FHAA because of the delays and costs that procedure imposes on the organization attempting to provide housing. Potomac Group Home Corp. v. Montgomery County, supra. In Human Resource and Management Group v. Suffolk County, 687 F. Supp. 2d 237 at 251 (E.D.N.Y 2010), which involved "Oxford Houses" for those in recovery, the court invalidated a requirement that a manager live on site and also a requirement that a home could not exceed six residents. On the latter point, the court pointed out that the maximum occupancy should depend on the size of the residence.

The FHAA prohibits zoning provisions or actions that (1) are discriminatory in intent (including facial discrimination in the ordinance itself); (2) are discriminatory in effect (even if the intent is benign); or (3)in the case of a zoning law that is otherwise valid , fail to make a reasonable accommodation for those covered by the FHAA. Potomac Group Home Corp. v.

Montgomery County, supra; Human Resource and Management Group v. Suffolk County, supra ; Dr. Gertrude A. Barber Center, Inc. v. Peters Township, 273 F. Supp. 2d 643 (W.D. Pa. 2003)(failure to allow 4 residents in home, where ordinance allowed only three unrelated persons, violated FHAA.) For those actions that are discriminatory in effect, the zoning authority can defend only by showing the discrimination furthers a legitimate public interest and that there is no less discriminatory way of protecting that interest. Jeffrey O. v. City of Boca Raton, supra; Human Resource and Management Group v. Suffolk County, supra ; Bangerter v. Orem City Corp., 46 F. 3d 1491 (10th Cir. 1995). If the zoning law is discriminatory on its face, the zoning authority can defend only by showing that the discrimination benefits the disabled or is necessary for legitimate public safety concerns. Bangerter, supra. A public safety justification must be supported by specific evidence rather than a generalized perception of threats from the residents of the house. Jeffrey O. v. City of Boca Raton, supra, 511 F. Supp. 2d at 1351 - 1352. This public safety exception in the FHAA is found in 42 U.S.C. 3604(f)(9)and requires "a direct threat to the health or safety of others." Assessment of whether the risk is significant and the harm serious, "requires a rigorous objective inquiry where the court focuses on objective evidence in the record of any dangers posed and does not focus merely on subjective judgment of people purportedly at risk." U.S v. City of Baltimore, 845 F. Supp. 2d 640 at 649 (D. Md. 2012)(residential treatment centers housing 16 or fewer recovering substance abusers allowed.) The ADA has a similar disqualification under 42 U.S.C. 12131, and the test for it is similar---"an individualized assessment of the facts", which "may not be based on generalizations or stereotypes". Bay Area Addiction Research and Treatment Inc. v. City of Antioch, 179 F. 3d 725 at 735 - 736. (9th Cir. 1999.) Restrictions predicated on public safety cannot be based on blanket stereotypes, but "must be tailored to particularized concerns about individual residents." Bangerter v. Orem City Corp., 46 F. 3d 1491 at 1503 (10th Cir. 1995)(emphasis added.)

When these principles are applied to the CBJ ordinance and Haven House, it is clear that the requirements of the FHAA can best be satisfied if Haven House is classified as a single family residence. Cases involving single family residences without reference to the FHAA are discussed below, but it is worth noting that in U.S. v. City of Baltimore, 845 F. Supp. 2d at 646, the court

observed that the reasonable accommodation used by the city was to allow residential treatment facilities to locate as single family dwellings, even though they exceeded the 4 unrelated person limit in the city's definition of "family". Jeffrey O. v. City of Boca Raton, supra also addresses the issue of residential use in the context of the FHAA. In that case, the ordinance defined a family as related persons or not more that three unrelated persons. The court held, under the disparate effect theory, that the three-person limit violated the FHAA because it did not make an exception for recovering substance abusers. Another part of the ordinance required residences (apparently even those meeting the three person requirement) to be in commercial areas if residents were required to participate in drug testing or treatment at a place other than the residence. The court also struck down this requirement, pointing out that neither drug testing nor off-site treatment changed the residential character of the use.

In the case of the CBJ ordinance, of course, there is no limit on the number of unrelated persons who can live together as a single housekeeping unit, and in fact, Haven House will have fewer residents than the family that lived in the house before. And, as was the case in Boca Raton, Haven House will not be providing services on site; as stated in its business plan "clients will be encouraged to participate in life skills development, job skills training, substance abuse recovery, and similar programs available through external organizations. Haven House will not be staffed to provide these services directly but will network with the providing organizations and coordinate client participation as possible." HHBP at 1. Since Haven House meets the CBJ's definition of "family" and will not be providing services of a commercial or medical nature, the simplest and most accurate way to satisfy the FHAA is to allow Haven House to locate as a single family residence.

It appears that the CBJ's definition of "group home" was an attempt to accommodate the requirements of the FHAA. While the goal was laudable, the CBJ's definition of "group home" may nevertheless violate the FHAA if it excludes supportive housing like Haven House. The requirement that a supervisor or caregiver live on site violates the FHAA. Human Resource and Management Group v. City of Suffolk, supra, 687 F. Supp. 2d 237 at 262. The Human Resource case also invalidated a 6 person limit, finding no evidence that the limit was necessary for public safety or to prevent overcrowding.

Neither of these limitations would disqualify Haven House, since Haven House will have only nine residents, there will be two co-directors who will be at the home during the day, and one house manager will be on site during the evening and night.

However, the requirement that residents not "be serving a sentence for a criminal act" could violate the FHAA, if it is not properly interpreted. If the phrase describes people who are still in official custody of the Department of Corrections---such as those at community restitution centers or residential treatment centers under AS 12.55.027---the requirement is defensible under the FHAA as a description of a jail, not a residence. If, however, the phrase includes people on probation or parole, then the limitation may violate the FHAA. A fuller discussion of what "serving a sentence" should mean is below, but the FHAA also affects this issue. If the requirement is intended to prevent parolees or probationers from living in a residential area on the theory that they present a danger to the public, the ordinance is relying on the blanket stereotypes prohibited by the FHAA. Banterger v. Orem, supra. Given the fact that the parole board may not grant discretionary parole unless it believes the parolee will not be a danger to the public, AS 33.16.100(a)(3), it is unlikely that the CBJ could make the sort of individualized finding of danger necessary for compliance with the FHAA.

Moreover, a prohibition on parolees or probationers living in supportive communal housing may be preempted by the FHAA. 42 U.S.C. 3607(b)(4)provides that "nothing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S. C. 802)." This provision removes the protection of the FHAA from people who have been convicted of certain specific crimes. If the CBJ ordinance purports to remove the protection of the FHAA from persons who are on parole or probation for any crime, it is thwarting the purpose of the FHAA and therefore invalid under either the Supremacy Clause or 42 U.S.C. 3615. U.S. Wisconsin, 395 F. Supp. 732 (W.D. Wis. 1975)(state statute prohibiting "testing" conflicted with the general scheme of the FHAA and was invalid under the Supremacy Clause.) Robards v. Cotton Mill Associates, 677 A. 2d 540 (Maine 1996)(Where

FHAA regulations permitted inquiry into disability, state statute prohibiting such inquiry was invalid as an obstacle to accomplishing the purposes of the FHAA.) If the CBJ ordinance's reference to "serving a sentence" is interpreted to prevent paroleas and probationers covered by the FHAA from living in group homes, the requirement is invalid.

The final part of the CBJ's definition of "group home" is that "additional non-residential support may be provided but shall not constitute the primary method of supervision or care provided." It is difficult to see what the purpose of this provision is, unless it is an attempt to distinguish the group home from supportive housing, which, like Haven House, provides housing, but no treatment. The court in U.S. v. Baltimore, 845 F. Supp. 2d 640 at 644(D. Md. 2012) discussed the different types of facilities, noting that the combination of treatment and housing distinguishes residential substance abuse treatment programs (RSATPs) from both supportive housing, which has a residential component, but no on-site treatment, and outpatient facilities, which involved treatment, but have no residential component. In the Baltimore case the court recognized that the treatment aspect of RSATPs made them a bit like medical facilities and that the fact that some residents had been sentenced to the RSATPs by a court and were under continuous monitoring (ankle bracelets) made them a bit like correctional facilities. Id. at 651. (Note that Haven House residents will not be sentenced to Haven House by a court, nor will they be subject to electronic monitoring). The court found that the conditional use process (which involved public hearings and several months' delay) was appropriate for RSATPs housing 17 or more so that the individual nature of the larger RSATPs and its residents could be considered, but that RSATPs under 16 should not have to undergo the costs and delay of asking for reasonable accommodation and should therefore be allowed in residential districts without administrative burdens. As mentioned above and more fully explained below, the most appropriate classification for Haven House is a single family residence because it supplies no treatment or similar services to the residents. However, if for some reason the CBJ is not willing to classify Haven House as a single family residence, then , as a reasonable accommodation under the FHAA, it should allow Haven House to locate as a group home without any further administrative procedures.

II. Haven House will be used a single family residence. Because Haven House meets the CBJ's definition of single family residence, its request for recognition as a "group home" was an innocent error by a layman. However, such an application does not prevent a person from later asserting status as a family. City of Fayetteville v. Taylor, 353 S.E. 2d 28 (Ga. 1987); Sammons v. Village of Batavia, 557 N.E. 2d 1246 (Ohio Ct. App. 1988). Under well-accepted principles of administrative adjudication, an applicant may amend or change an application, especially in the early stages of the process.

A. Definition of "Family". CBJ Ord. 49.80.120 defines "family" as "one or more persons living as a single housekeeping unit, as distinguished from a group occupying a group home." The definition does not set a limit on the number of unrelated persons who may live together as a family, nor does it set any minimum time that the individuals must live together. The CBJ's definition is similar to those in other jurisdictions that courts have found to describe living situations like Haven House.

In Saunders v. Clark County Zoning Dept., 421 N.E. 2d 152 (Ohio 1981), a foster care facility for up to nine delinquent boys operated by a married couple with the assistance of staff hired to assist in the care of the boys was held to meet the definition of a family as "a person living alone, or two or more persons living together as a single housekeeping unit, in a dwelling unit, as distinguished from a group occupying a boarding house, lodging house, motel or hotel fraternity or sorority house." The receipt of money from the state for the care of the boys did not make the household a "boarding house" any more than receipt of child support payments would.

In State ex rel Ellis v. Liddle, 520 S.W.2d 644 (Mo. 1975) up to ten dependent, neglected or delinquent boys lived with two counselors. They met the definition of a family as those "living together in one dwelling unit and maintaining a common household." The court found that the living situation would not present "a jail situation" despite the presence of some juvenile offenders, and that the property would "remain intact as a residence" and no evidence that the use would destroy or even change the character of the neighborhood.

In City of West Monroe v. Ouachita Ass'n. for Retarded Children, Inc., 402 So.2d 259 (La.Ct. App. 1981) the definition of "family" was "one or more

persons living together as a housekeeping unit, which may include not more than four lodgers or boarders." The court found that a home for six mentally retarded adults and two house parents met that definition, noting that there would be rules for household behavior and chores, and that the houseparent would see that the rules are followed, "much as in any home." See also City of Fayetteville v. Taylor, 353 S.E.2d 28 (Ga. 1987)(personal care home residents were "living as a single housekeeping unit, as distinguished from occupying a boarding house, lodging house, hotel or fraternity or sorority house."); Robertson v. Western Baptist Hospital, 267 S.W.2d 395 (Ky. 1954)(20 nurses and housemother were "living as a single housekeeping unit.")

The case of Township of Washington v. Central Bergen Community Mental Health Center, Inc., 383 A. 2d 1194 (N. J. Super. 1978) is especially instructive because both the ordinance and the situation are similar to the instant case. The definition of "family" was "any number of individuals living together as a single housekeeping unit and using certain rooms and housekeeping facilities in common." The home was occupied by former mental patients. One staff person was present and there would be 24 hour supervision. The staff person was to support the residents. Only homemaking activities would take place; there would be no therapy or treatment on the premises. The occupants would pay a share of the rent. Occupancy was a joint voluntary decision between staff and residents. The occupants could stay for an indefinite time, often a year. The township believed that the use of the residence was "quasi-institutional" because (1) the nonprofit organization Central was the tenant and did not reside at the home, (2) Central provided 24 hour supervision, and (3) the home was described as "a transitional home" for mental patients. The court found the use met the definition of a family residence because admittance was voluntary, occupation was not transitory, the responsibilities of the occupants were not distinguishable from those of other home dwellers, the supervision was to aid the reorientation of the residents to everyday living, no therapeutic or medical services were provided on site, and both the outward appearance and operation of the house were similar to other family residences. Id., 383 A. 2d. at 1209.

In short, courts have construed definitions of "family" that are identical or very similar to the CBJ's definition, to include many group living situations, including those like Haven House. The residents do not have to

be legally related. They may chose to live together for financial reasons, or because they share religious or political beliefs, or because they want to provide a nurturing environment for each other.

B. Relationship to other Definitions. Courts have also addressed the relationship between the definition of "family" and other definitions. In Human Services Consultants v. Zoning Hearing Bd. of Butler Township, 587 A. 2d 40(Pa. 1991), three mentally retarded men and their 24 hour staff met the definition of "family," but the Township argued that because institutional homes were expressly provided for elsewhere, the Township meant to exclude them from single family districts. The court rejected that argument:

> This argument is not persuasive, however, because the Township could have specifically excluded institutional homes from its definition of family, as it did for clubs, fraternal lodging and rooming houses. Moreover, a permitted use must be afforded the broadest interpretation so that landowners have the benefit of the least restrictive use and enjoyment of their land.

587 A. 2d at 42. Similarly, in City of West Monroe v. Ouachita Ass'n. for Retarded Children, 402 So.2d 259 (La.Ct. App. 1981), the trial court had disallowed a group home for mentally retarded adults in a residential district because it found that the use had some characteristics of a convalescent home, a boarding or rooming house, a sanitarium , and a residential facility for the aged or other persons whose physical or social or mental handicaps or limitations required supervision and special attention. The Court of Appeals rejected the trial court's reasoning, stating:

> [W]e find that the proposed use by the association falls squarely within the plain and unambiguous language of the ordinance defining one-family dwelling residential use. We find it unnecessary to search for unexpressed intentions or to attempt to analogize the use proposed by defendant to other uses set forth in the ordinance.

402 So. 2d at 262 - 263.

In the CBJ ordinance, the definition of "family" excludes "group home", but does not exclude other uses. In that respect, it is like Human Services Consultants, supra , and so other definitions are irrelevant. Also, following the reasoning of City of West Monroe, supra, because Haven House falls squarely within the definition of "family," speculations about other definitions or intent is inappropriate.

However, CBJ Ord. 49.25.300(a)(3)states that "where a use might be classified under more than one category, the more specific shall control" and "if equally specific, the more restrictive shall control." This provision may be unconstitutional for two reasons. First, it requires an applicant to guess which definition might be considered more "restrictive". Burien Bark Supply v. King County, 725 P.2d 994(Wash. 1986)(zoning ordinance must set out ascertainable standard; using the term "processing beyond a limited degree" was unconstitutionally vague.) Secondly, the preference for more restrictive classifications is contrary to property rights protected by the Due Process Clauses of the state and federal constitutions. While "the power to enact zoning ordinances is liberally construed in favor of the municipality, [a]mbiguous terms in an ordinance, however, are construed to favor the free use of property." State ex rel Harding v. Door County Bd. of Adjustment, 371 N.W. 2d 403, 404, fn. 2 (Wis. Ct. App. 1985), review denied, 375 N.W.2d 216 (Wis. 1985)(Because time share arrangement is not "unambiguously something other than a single family dwelling under the county ordinance, the proposed use of the building is not prohibited".) This rule of construction is grounded in the constitutional protection of property rights:

> Zoning resolutions are in derogation of the common law and deprive a property owner of certain uses of his land to which he would otherwise be lawfully entitled. Therefore, such resolutions are ordinarily construed in favor of the property owner. [citations omitted] Restrictions on the use of real property by ordinance, resolution, or statute must be strictly construed and the scope of the restrictions cannot be extended to include limitations not clearly prescribed.[citations omitted.]

Saunders v. Clark County Zoning Dept., 421 N.E.2d 152 at 154 (Ohio 1981)(foster parents and group of delinquent boys were single family residence, not boarding house.)

Assuming for the sake of argument that CBJ Ord. 49.25.300(a)(3) is applicable, it nevertheless does not apply to Haven House because no other definition, except perhaps, as discussed above in connection with the FHAA, "group home," describes Haven House's use of the property. It is not a boarding or rooming house or bed and breakfast because Haven House is not commercial or for profit. It is not a single room occupancy with shared facilities because the bedrooms will be shared by residents. It is not a temporary residence because most residents will be staying a year or two . Finally, as more fully discussed below, it is not a "halfway house."

III. Unless the CBJ Code is strictly construed, it will regulate users instead of uses, in violation of the Equal Protection and Due Process Clauses of the state and federal constitutions.

As mentioned earlier, zoning laws are strictly construed because they deprive owners of certain uses of their property. Saunders v. Clark County Zoning Dept., supra. Moreover, requiring a zoning permit for use by certain people, when the same use by other people would not require a permit, cannot be justified unless the residents would pose a special threat to the city's legitimate interests. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 87 L.Ed.2d 313, 105 S.Ct. 3249 (1985)(there was no rational basis for requiring special permit for home for mentally retarded; fears of neighbors not sufficient governmental interest). It is worth noting that the Cleburne case was not based on the notion that the mentally retarded were a legally protected class (which they later became under the FHAA), but rather on the lack of any justifiable reason for the different treatment.

The CBJ Code recognizes that the proper consideration for zoning ordinances is the use of the property, not the nature of the users. CBJ Ord. 49.05.200(b) states that the Comprehensive Plan contains policies to guide and direct "land use activities." CBJ Ord. 49.25.210 states that the zoning districts are designed to protect the area from " incompatible and disruptive

activities." CBJ Ord. 49.25.300 is a table of permissible uses.

Of course, zoning authorities are often tempted to use zoning to keep certain types of people out of residential neighborhoods, be they students, the disabled, or short-term renters. Ocean County Bd. of Realtors v. Township of Long Beach, 599 A. 2d 1309 (N.J. Super. 1991) contains an excellent discussion of cases where zoning authorities attempted to exclude classes of people by limiting the number of unrelated persons who could live together as a "family" or by requiring the relationship of the unrelated people to be "permanent" in order to qualify as a "family". The court found these regulations unconstitutional as irrational qualifications because they excluded groups whose use of the property was the same as a family of related persons. The court was sympathetic to the fact that the ordinance was an attempt to control obnoxious behavior by seasonal users, but it pointed out that obnoxious or antisocial behavior should be controlled by the police power, not zoning:

> Ordinarily, obnoxious personal behavior can best be dealt with officially by a vigorous and persistent enforcement of general police power ordinances and criminal statutes of the kind earlier referred to. Zoning ordinances are not intended and cannot be expected to cure or prevent most anti-social conduct in dwelling situations.

Id. at 599 A. 2d at 1312, quoting Kirsch Holding Co. v. Borough of Manasquan, 281 A. 2d 513 (N.J. 1971). Accord Borough of Glassboro v. Vallorosi, 568 A. 2d 888 (N.J.1990)("noise and other socially disruptive behavior are best regulated outside the framework of municipal zoning.")(ten college students who intended to reside together during college were family, as distinguished from house for recovering alcoholics where stay was only six months.)

As discussed more fully below, the need to interpret zoning regulations as based on uses rather than users applies to the construction of both (1)the phrase "supervision and other services" in the CBJ's definition of "halfway house" and (2) the phrase "serving a sentence" in the CBJ's definition of "group home" .

IV. Haven House is not a Halfway House. The director's decision stated that Haven House "best fits the definition of halfway house because it would be people, living together, who could be serving a sentence." Under CBJ Ord. §9.80.120, "halfway house" means:

> a single-family dwelling for not more than nine persons over the age of 12, together with not more than two persons providing supervision and other services to such persons, all of whom live together as single housekeeping unit. Residents may be serving a sentence for a criminal act. Uses with ten or more residents shall be regulated as institutional correction facilities.

As an initial matter, we note that the CBJ's definition of "halfway house" specifies that "not more than two persons" could be providing supervision and services to others. It therefore appears that Haven House would not be a "halfway house" under the CBJ definition if it had three "supervisors" for the residents. Does the CBJ agree?

Secondly, although residents of halfway houses may be serving a sentence, they do not need to be doing so. So, the effective parts of the definition (other than the maximum number of adult residents) is that there are also one or two persons "providing supervision and other services" to the other persons living there. The "supervision and services" requirement is all that distinguishes a halfway house from those living together as a "family". Initially, it should be noted that the house manager and co-directors of Haven Housewill be supervising activity in the home. However, the general supervision of the resident's activities elsewhere in the community will provided by probation and parole officers. In addition, as Haven House's business plan clearly indicates, Haven House staff will not provide services to the residents, but instead will encourage the residents "to participate in life skills development, job skills training, substance abuse recovery, and similar programs available through external organizations." Haven House's focus is on providing safety--"physical safety and safety from life patterns that lead back to prison." Co-directors and the house manager will provide only "community, individual mentoring/support, life skill modeling, and friendship," which describes the support given friends and family members,

not "services" provided to patients or clients.

Construing "services" as used in the definition of "halfway house" to mean only those of a commercial or medical nature makes sense because those uses may be inappropriate in a residential district. This is the distinction made in Township of Washington v. Central Bergen Community Mental Health Center, Inc., 383 A. 2d 1194 (N. J. Super. 1978), discussed above, between support and services similar to those given family members on the one hand and services typically given in a clinic or commercial setting on the other. The former do not change the residential nature of the dwelling's use, whereas the latter would.

Similarly, in Jeffrey O. v. City of Boca Raton, 511 F. Supp.2d 1339(S.D. Fla. 2007), the court found that an ordinance violated the FHAA when it excluded substance abuse treatment housing from residential areas simply because the housing required residents to be subject to drug testing. The city took the position that a treatment center that provided services of a commercial or medical nature was inappropriate in a residential area. The court did not disagree, but pointed out that no such services were being provided at the residence. The residents were required to undergo drug and alcohol testing as a condition of continued residence, but the court did not believe this was a prohibited medical "service". As the court stated, the drug testing requirement "would make no change to the outward appearance of the residence" and did not change the essential residential use of the housing . Id., 511 F. Supp. 2d at 1352. See also Sammons v. City of Batavia, 557 N.E. 2d 1246 (Ohio Ct. App. 1988)("uses of a service type" construed to include court reporting service business, as opposed to sales of goods; ambiguity in definition to be construed in favor of free use of property).

It may also be that the "supervision and services" aspect of the halfway house definition should be even more strictly construed so that the phrase describes the level of supervision and services present in a correctional facility. The CBJ definition indicates that what would be a halfway house with nine or fewer residents becomes an "institutional correction facility" when there are ten or more residents. Therefore the meaning of "supervision and services" that applies to the CBJ's definition of "halfway house" will also apply to "correction facility". Since the CBJ zoning ordinance does

not define "correction facility", the common meaning of the term would apply. Sammons v. City of Batavia, supra. AS 33.30.901(4) defines "correctional facility" as " a prison, jail, camp, farm, half-way house, group home, or other placement designated by the commissioner for the custody, care, and discipline of prisoners." "Prisoner" means a person held under authority of state law "in official detention". AS 33.30.901(12). "Official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release." AS 11.81.900(b)(41). "Official detention" does not include probation or parole. Williams v. State, 301 P.3d. 196(Alaska Ct. App. 2013). It does include time spent at a correctional restitution center (CRC) under AS 33.30.151 because the person is confined to the center except for limited purposes, e.g., when at work or doing community service. AS 33.30.181. Similarly, a person can be in official detention at a treatment facility if, among other things, the court ordered the person to the treatment facility and the program imposes "substantial restrictions on a person's liberty that are equivalent to incarceration" AS 12.55.027. Obviously the level of supervision and services provided at correctional institutions is not remotely similar to what is provided at Haven House. Subject to curfew, Haven House residents are free to come and go at will, whereas the movement of prisoners in correctional institutions, even low-security ones like CRCs or treatment facilities, is strictly controlled.

A strict construction of "supervision and services" is necessary to ensure that the CBJ is regulating uses instead of attempting to discriminate against users. As discussed above, the only significant difference between a "family" and a "halfway house" (aside from the maximum number of adults that can live in a halfway house) is that in a halfway house one or two people are providing "supervision and other services" to the others. Of course, in the typical family of related persons, one or two persons (parents, grandparents, aunts, etc.) are also providing what could be described as supervision and services to the others (children). Or, one member of the family (perhaps an adult child) may be giving supervision and services to an elderly parent or grandparent, or conceivably to both parents and both sets of grandparents (6 adults). If the difference between a family residence and a halfway house is to depend on the uses occurring in and about the

dwelling rather than the identity of the users, as it should, the "supervision and services" that delineate a halfway house have to be qualitatively different from the supervision and services a parent, grandparent, aunt or similar person would give to another family member. If, for example, a college alumni association decided to rent a house where six or seven foreign students could live together along with a housemother, or perhaps a head resident, and a member of the association regularly visited the house to see how the students were doing and help them find jobs, transportation, or recreation, this would not be a "halfway house" because the supervision and services are similar to those that would be provided by family members or friends. If six nuns and a Mother Superior lived together in a home, they would not be a halfway house because the supervision and services were of a familial nature, rather than commercial or correctional. If three adult couples and their children decided to live together for religious or philosophical reasons, or just because they liked living together, they would not constitute a halfway house because the supervision and services they would give to each other would be typical of a family. On the other hand, if "supervision and services" is construed to refer to the supervision and services given in what most people, and the state Department of Corrections, see Exhibit D, think of as a "halfway house", i.e., a correctional restitution center or a treatment center under AS 12.55.027, then the different treatment of halfway houses and family homes makes sense because the level of security and the therapeutic nature of the services is qualitatively different from the supervision and services given by family members.

Therefore, when the "supervision and services" requirement of the halfway house definition is properly construed--- to mean either services of a commercial or medical type, or services and supervision of the sort found in state correctional facilities--- it is clear that Haven House does not fall within that definition. Because Haven House will not be providing services of a medical or commercial nature to the residents and the women will no longer be in prison, it does not fall within the definition of a halfway house.

V. Residents of Haven House will "not be serving a sentence for a criminal act." The CBJ ordinance defining "group home" states: "Residents [of group

homes] must not be serving a sentence for a criminal act. CBJ Ord.49.30.120 Although the Director's letter did not conclude that a person on probation or parole is "serving a sentence," we understand that the Director's position might be that a person on parole or probation is "serving a sentence" and this might be grounds for the Director to deny Haven House's request for alternative relief as determination as a group home. Haven House will therefore address it.

Interpreting the phrase "serving a sentence for a criminal act" to include probation or parole would be unreasonable, and we urge CBJ not to adopt such an interpretation. That interpretation would be inconsistent with the common meaning of the term; with Alaska statutory provisions; with Alaska court decisions; with policy; and with a cardinal principle of zoning that zoning should regulate use rather than users. A city may not use zoning to keep "those people" out of a neighborhood. A city may use zoning to set rules for how property owners use their property.

A. Common meaning. Because "serving a sentence" is not defined in the CBJ ordinances, the common and usual meaning of the term should apply. Sammons v. City of Batavia, 557 N.E. 2d 1246 (Ohio Ct. App. 1988). In common speech a woman on probation or parole is not "serving a sentence" unless she is confined to a particular place that is a jail or a place with jail-like restrictions. A person on probation or parole generally can live anywhere, subject to the approval of the probation/parole officer. If a woman on probation is living in an efficiency apartment and is free to come and go at will, is she "serving a sentence for a criminal act" in her efficiency apartment? If that woman is living at her parent's house, is she "serving a sentence for a criminal act" at her mother's house? If that woman is living at the Glory Hole, is she "serving a sentence for a criminal act" at the Glory Hole?

Fairly answered, the answer to those questions is "no" because any reasonable construction of the term "serving a sentence" must mean serving a sentence *in a particular place*. Any reasonable construction of the term "serving a sentence" must include the element of confinement to a particular place and the significant curtailment of the right to leave that place. Thus, in common usage, a person is "serving" a sentence at the Lemon Creek

Correctional Facility or the Anka Street Halfway House because a court has ordered that the person must "serve" the sentence, or part of the sentence, at that particular correctional facility; because the person's liberty and freedom of movement is substantially curtailed while in that facility; and because the person will be guilty of the crime of escape within AS 11.56.300 - AS 11.56.320 if he or she leaves without lawful authority.

The common meaning attached to "serving a sentence" by professionals in the field is that a person is "serving a sentence" when in the custody of the Department of Corrections, or the functional equivalent thereof. See Statement of Tom Wagner, Attorney, attached as Exhibit D ("Accordingly, in my view, a person on probation is not 'serving a sentence for a criminal act.'") The Department of Corrections staff does not view Haven House as a part of the prison system. See Exhibit D.

A woman will reside at Haven House as a result of a voluntary agreement between the woman and Haven House. She will have freedom of movement to go to work, seek professional services, visit her family, go to church, visit her friends, etc. She will not be guilty of the crime of escape if she is absent without permission from the home. And, as explained below, under Alaska statutes and case law, if she goes back to prison for violating conditions of parole or probation, the time she spent living at Haven House will not be considered as time spent "serving a sentence."

If the City seeks to adopt an idiosyncratic definition of "serving a sentence" by interpreting it to include probation and parole. Haven House asks that the City explain any precedents it is relying on and explain its policy reasons for defining "group home" in a way that excludes from the definition a group of women coming out of prison who wish to live together in a home where the focus is recovery from addiction.

B. Statutory Provisions. Probation is granted by a court under AS 12.55.090, but since a defendant may refuse probation--i.e., since the court does not have the power to impose probation on a convicted defendant--- "when a defendant accepts probation conditions announced by the court, we [the courts] analyze the probation conditions as analogous to contracts between

the court and the defendant." Sweezey v State, 167 P.3d 79 at 80 (Alaska Ct. App. 2007). So, probation is an agreement between the defendant and the court, not, strictly speaking, a sentence. Parole is granted by the parole board. Under AS 33.16.010(a), prisoners (except those convicted of certain serious crimes) who follow the rules during their imprisonment are "entitled to a deduction of one-third of the term of imprisonment." In addition to this mandatory parole, the parole board may grant discretionary parole under AS 33.16.100 if, among other things, the parolee would not be a danger to society. Since the term of imprisonment is actually being reduced by one-third once the defendant has served two-thirds, the sentence really ends when parole is granted, subject to being reinstated if parole conditions are violated.

C.Court Decisions. However, the clearest indication that a person on parole or probation is not serving a sentence is the courts' treatment of time spent on parole or probation. If time on probation or parole were part of serving a sentence, then the person would have to receive credit for that time if parole or probation were revoked. For example, if a person serves two years of an initial three-year sentence, is released on mandatory parole and remains on parole for sixth months, and then violates conditions of parole and has his or her parole revoked, the question is: Does that person have to serve for six months more or one year more? If the person were serving a sentence while on parole, the person would have to serve only six months more. If, on the other hand, the person is not considered to be serving a sentence while on parole, then the person has one more year to serve. Alaska's courts are quite clear that the time on parole or probation (assuming the person is not subject to electronic monitoring) is not counted as serving of the sentence. In Paul v State, 560 P.2d 754 at 758 (Alaska 1977) Alaska's Supreme Court stated as follows:

> In permitting probation, the court, in an effort to rehabilitate Mr. Paul, permitted him to remain at liberty. While certain restrictions were imposed, they in no manner may be equated to serving a period of incarceration. We do not think that the term of probation should be credited against the original suspended sentence. This result is in accord with the several federal courts which have reached

> this issue. [citations omitted] We hold that Mr. Paul was not entitled to have the period he served on probation credited against his sentence.

It is even clearer that time spent on parole is not counted toward service of the sentence because AS 33.16.240(f) provides that "... the time the parolee was at liberty on parole does not alter the time the parolee was sentenced to serve." Based on this statute, Alaska's Court of Appeals stated that one "who remains 'in custody' for the purpose of maintaining the parole board's jurisdiction over him may still be deemed 'at liberty' for denying credit under AS 33.16.240(f)." Dulier v. State, 789 P.2d 372 at 374 (Alaska Ct. App. 1990). [1] Because Alaska's courts do not count time on probation or parole as part of service of a sentence, a person on probation or parole is not "serving a sentence" for a crime.

D. Policy . In addition to the technical reasons discussed above, there is a policy reason why persons on probation or parole should not be considered to be "serving a sentence" for purposes of the CBJ code---namely, they do not pose a high risk of danger to the public. A court will grant probation only if the judge believes that the defendant will not pose a danger to the public. Mandatory parole is not available for serious crimes such as first degree murders and sex offenses that are unclassified or class A felonies. AS 33.20.010(a). The parole board may grant discretionary parole only if it "determines a reasonable probability exists that...(3) the prisoner will not pose a threat of harm to the public if released on parole". AS 33.16.100(a)(3).

---

1. While it is unlikely that any residents at Haven House will be there before their sentence is imposed, time at Haven House would also not qualify as time served against a sentence before imposition of sentence because conditions at Haven House do not approximate "those experienced by one who is incarcerated." Nygren v. State, 658 P.2d 141 at 146 (Alaska Ct. App. 1983). Accord, McKinley v State, 215 P. 3d 378 (Alaska Ct. App. 2009)(no credit for aftercare program that did not require 24 hour custody or supervision). For those on probation or parole after sentence has been imposed, the degree of supervision is not even relevant because "official detention" does not include supervision on probation or parole, even though the parole or probation may include genuinely restrictive parole conditions. Williams v. State, 301 P.3d 196 , (Alaska Ct. App. 2013)

E. Regulation of use rather than user. Under the CBJ's interpretation of the phrase "serving a sentence", a person on probation or parole who otherwise qualified for residence in a "group home" would be prevented from living there. However, the presence of a person on probation or parole in a group home would in no way change the use of the residence or its effect on the neighborhood. The home would still be a place where persons sought healthcare, rehabilitation or recovery from disabilities in a family setting. Supervisors/caregivers would still live on site. The presence of a person on probation or parole would not change the use at all, and therefore would be an improper requirement. On the other hand, if "serving a sentence" were interpreted---as Haven House believes it should be--- to describe people who are still in official custody, the restriction would not limit the user so much as it would define the prohibited use as a jail. Under Haven House's interpretation, a residential treatment facility of the type defined in AS 12.55.027 would be excluded from the CBJ's definition of "group home" because the residents were still effectively in jail. This is a rational, constitutionally defensible exclusion because the level of security and supervision in a jail is inappropriate in a residential neighborhood. Preventing a parolee or probationer from living in a group home, however, is not reasonable because the person's status does not affect the use of the property.

VI. To the extent the CBJ Zoning Ordinances prevent Haven House from operating in a D-5 district, those ordinances are arbitrary and irrational, and therefore violate the Due Process Clauses of the state and federal constitutions. Due process requires that zoning ordinances be reasonable and not arbitrary. Seward Chapel Inc. v. City of Seward, 655 P.2d 1293, 1297 1298, citing Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct.114, 71 L.Ed. 303 (1926). Assuming that the director's decision is correct---that Haven House is not a "group home," but is "halfway house" and cannot operate in a D-5 residential district --- the CBJ zoning code is arbitrary and unreasonable. Under CBJ Ord 49.25.300, the following uses in a D-5 district require no permit except in conjunction with a building permit:

1. A single family, which means one or more persons living as a single housekeeping unit.

2. A duplex.

3. A group home (which may be a for-profit business) for 6 to 9 persons with mental, emotional, or physical disabilities, plus one or two supervisor/ caretakers, where the primary method of supervision or care is provided at the residence.

4. Child care or adult care for 8 or fewer people.

5. Home occupations.

The following uses are allowed in a D-5 residential district with a conditional use permit:

1. Day care for 9 - 12 children or adults.

2. Child care residence for 6 - 9 children under 18 , where not more than two adults supervise the children for compensation.

3. Rooming houses, boarding houses, bed and breakfasts, all of which are commercial (for profit) establishments.

4. Single room occupancies with shared facilities (where one person rents a room, but shares the use of bathroom and kitchen).

5. Professional offices of 1000 square feet or less.

6. Nursing care, where skilled nursing care and medical supervision is provided.

7. Assisted living (not defined).

8. Sheltered care (not defined).

7. Institutional correctional facilities (apparently those having 10 or more inmates) .

It is difficult to see any logical pattern that would allow these uses, but exclude Haven House. Clearly, up to twelve women on probation or parole who just wanted to save money and enjoy each other's company could live in the 6 bedroom house if they rented it together, shared rooms, and lived as a single housekeeping unit. They would unquestionably meet the CBJ's definition of a single family because no one would be providing anything that could possibly be called "services" to anyone, nor would they be seeking respite treatment for anything. Haven House will have 2 co-directors on site during the day, but this would be no more disruptive to the neighborhood than 8 children or adults arriving to receive day care, or a daily meals on wheels delivery, or a caregiver coming to stay with an elder during the day, or a babysitter

coming to stay with children during the day. Whatever "supervision" or "services" the women at Haven House would receive would certainly be no greater than those received by the disabled individuals living in an allowed group home, or those provided at conditionally allowed nursing care or assisted living facilities. Haven House will not even be a commercial establishment, as a group home could be and as rooming houses and bed and breakfasts definitely are. Finally, of course, institutional correctional facilities (jails) could be allowed with a conditional use permit, but Haven House cannot be allowed at all if the Director's decision is correct. Admittedly classifications do not need to be perfect, but the CBJ's is so irrational as to be unconstitutional.

Finally, it appears that the CBJ may believe that its definitions are actually regulatory provisions in disguise, and that these regulatory provisions can be interpreted and applied on an ad hoc basis, e.g., that "services" in the definition of "halfway house" means one thing if the residents are a certain type of person, but has an entirely different meaning if they are someone else; or that the CBJ can require certain levels or types of supervision for one group home, but a different type or level for another group home, without setting up a regulatory process for that determination or stating, in law, what factors would be used for that determination. The conditional use process, of course, does allow for specific projects to have specific conditions attached . But, a group home does not require a conditional use permit, nor is such a process even allowed for a halfway house in a D-5 district. What is at issue in this case is the meaning of the CBJ's definitions. Due process requires that those meanings be clearly stated in law and consistently applied in fact.

VII Summary.

Because most, and probably all, of Haven House residents will have a history of substance abuse or mental health problems, they---and organizations like Haven House that provide them with supportive housing--- are protected by the FHAA from discrimination in zoning. The most appropriate way to avoid that discrimination is to find Haven House to be a single family dwelling. It certainly meets the definition of "family" in the CBJ code.

Since Haven House will not be providing any services of a commercial, medical, or jail-like nature, its use of the dwelling will not be inconsistent with other uses in the neighborhood. It is simply supportive housing of the type that has been allowed in residential districts in cases involving the FHAA and in cases that did not involve the FHAA. Haven House does not present the complicating factor of treatment and services provided on-site that has bedeviled zoning schemes in other jurisdictions, and perhaps led to the adoption of the definition of "group home" in the CBJ code. Because the CBJ allows communal living by unrelated individuals as a general matter, it must also allow it for Haven House.

If, on the other hand, the CBJ believes that for some reason Haven House should not be treated as a single family, then the studies attached hereto as exhibits A - C should provide all the evidence needed that Haven House will indeed be providing housing for the disabled (recovering substance abusers and those with mental health problems), which was the reason the Director gave for denying Haven House status as a group home. In either case, Haven House should be allowed to locate in a D-5 district.

Pamela Finley 3/10/14

Pamela Finley, Alaska Bar #75-10066
P.O. Box 22977
Juneau, AK 99802
(907)500-9991

NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

Project Number	Project Name (15 characters)	Case Number	Date Received
		APL 20140001	02/11/14

APPELLANT'S CONTACT INFORMATION:

junadegnan@yhoo.com
E-mail Address / Fax Number

Haven House C/o June Degnan — 907-752-0030
Appellant's Name / Home Phone / Work Phone

2415 Willoughby Apt 507 — Juneau — AK — 99801
Mailing Address / City / State / Zip

X June Degnan
Appellant's Signature

DECISION THAT IS BEING APPEALED

Director's Decision dated Jan 24, 2014 concerning Haven House located at 3202 Malissa Dr

Date of Director's Determination 1/24/14

*****Attach a copy of the Director's Decision (E-mail, Notice of Decision, Letter, etc.)*****

GROUNDS FOR APPEAL

See attached

SPECIFIC QUESTIONS YOU WOULD LIKE THE PLANNING COMMISSION TO ADDRESS

Whether Haven House can operate at 3202 Malissa Dr as a single family residence or, in the alternative, as a group home

APPEAL SPECIFICS (please fill in all that apply):

Parcel Number 5B2101420032 — Zoning District D-5

Case Number BLD-2013-0767 — Code Section CBJ 49.80.120

Current Use of Land or Buildings Single Family

Proposed Use of Land or Buildings Single Family or, ~~&~~ in the

Other alternative, a group home

For more information regarding the process and the submittals required, please see the reverse side.

APPEAL FEE

	Fees	Check No.	Receipt	Date
Notice Fees	$250.00			
Refund (Yes/No)	$			
Total Fee	$250.00	2053	CDD4781	02/11/14

Please attach a cover letter to fully explain the appeal if there is not adequate space on this form.

TO BE COMPLETED BY THE APPELLANT

Attachment 6

OFFICE OF THE MUNICIPAL CLERK
155 S. Seward St., Room 202
Phone: (907)586-5278 Fax: (907)586-5385
eMail: Laurie_Sica@ci.juneau.ak.us

Notice of Appeal

This appeal is governed by CBJ 01-50, the Municipal Appellate Code. This code establishes the standards and procedures for appeals. Anyone who files an appeal should be familiar with the appellate code. The clerk can give you a copy of the code.

Attach a copy of the decision being appealed. Do not attach any other documents, exhibits, or additional pages to this form, except for any pages needed to continue the answers to the requested information below. The clerk will accept this form only if the appropriate filing fee is attached. The fee to file an appeal to the assembly is $250.00. To be timely, an appeal must be filed within 20 days of the date the decision being appealed is filed with the clerk.

Action Being Appealed

Board decisions are appealable: board recommendations and most staff decisions are not.

☒ Agency Appealed From: CBJ Community Development Dept.

☒ Description and Date of Decision: Decision dated Jan. 24, 2014 of Hal Hart concerning Haven House Housing located at 3202 Melissa Dr.

Concerned Parties

Identify the people who have an interest in the action being appealed: yourself and others.

☒ Party Filing Appeal	Mailing Address	Telephone	Fax	Email
June Degnan, as President of Haven House	415 Willoughby Ave. Apt 507 Juneau AK 99801	907-752 0030		junadegnan@yahoo.com

☐ Parties Who Won the Decision Appealed	Mailing Address	Telephone	Fax	Email
none				

RECEIVED
FEB 11 2014
PERMIT CENTER/CBJ

-over-

Issues on Appeal[1]

Concisely describe the errors in the decision appealed. Do not argue them: argument will be heard later.

Because the issues are too numerous to fit in this space, they are attached hereto as a separate sheet of paper.

Relief Requested

What should the Assembly do with the action being appealed: send it back, modify it, or something else?

The Community Development Department should be instructed to allow Haven House to operate at 3202 Melissa Dr. as a single family dwelling or, in the alternative, as a group home.

Feb 11, 2014

Signature **Date**

If you are representing any group, or a person other than yourself, you must sign a notarized statement that you are authorized to represent them.

---

1 01.50.070 STANDARD OF REVIEW AND BURDEN OF PROOF. (a) The appeal agency may set aside the decision being appealed only if:

(1) The appellant establishes that the decision is not supported by substantial evidence in light of the whole record, as supplemented at the hearing;

(2) The decision is not supported by adequate written findings or the findings fail to inform the appeal agency of the basis upon which the decision appealed from was made; or

(3) The agency failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties.

(b) The burden of proof is on the appellant. (Serial No. 92-36, 2 (part), 1992).1

-over-

Haven House's Statement of Issues on Appeal of Decision of Hal Hart dated Jan 24, 2014.

1. The decision that Haven House cannot operate in a D-5 district is erroneous because Haven House meets the definition of single family residence under the CBJ Code.

2. The decision that Haven House is a half-way house is erroneous because Haven House will not provide "supervision and other services," as that phrase is properly interpreted, to women living at Haven House.

3. As an alternative to #1 above, the decision erred in finding that women living at Haven House would not be seeking "extended health care, rehabilitation or recovery from any physical, mental, or emotional disability" and that therefore Haven House did not qualify as a "group home".

4. The decision erred to the extent that it found that women on probation or parole , and not subject to electronic monitoring, are "serving a sentence for a criminal act."

5. As interpreted by the decision, the CBJ zoning code violates the Equal Protection and Due Process Clauses of the state and federal constitutions because it prohibits Haven House from providing a group living situation for women on probation or parole in a D-5 district, but allows in a D-5 district both "group homes" for other people with disabilities (as an allowable use) and correctional facilities (as a conditional use.)

6. As interpreted by the decision, the CBJ zoning code violates the Equal Protection and Due Process Clauses of the state and federal constitutions by attempting to regulate the nature or identity of residents in a zoning district rather than the nature of uses in a zoning district.

7 The decision violates the federal Fair Housing Act, 42 U.S.C. 3600 et seq. and the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.

Haven House reserves the right to amend or add to these issues on appeal.

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

January 24, 2014

Juna Degnan, President
Haven House, Inc.
P.O. Box 20875
Juneau, AK 99802

RE: Haven House Transitional Housing located at 3202 Malissa Drive

Dear Ms. Degnan:

The City and Borough of Juneau (CBJ) Community Development Department has reviewed the business plan for Haven House, Inc. submitted with Building Permit application BLD20130767. The project description on the building permit is "change of use from single family to transitional group home". According to the business plan Haven House, Inc. is a faith based organization to provide supported and structured living opportunities to foster healing and self-sufficiency for women coming out of prison.

CBJ 49.80.120 defines a Group Home as follows:

> *Group home means a residential use such as a roominghouse or dwelling for at least six but not more than nine persons of any age seeking extended healthcare, rehabilitation or recovery from any physical, mental, or emotional disability, or any combination thereof, in a family setting. Residents must not be serving a sentence for a criminal act. One to two supervisors/caregivers must live on site. Residents and supervisors/caregivers live together as single housekeeping unit. Additional non-residential support may be provided but shall not constitute the primary method of supervision or care supplied. Similar uses with five residents or less shall be regulated as single-family residences. Uses with ten or more residents shall be regulated as institutional residential or healthcare facilities.*

CBJ 49.80.120 defines a Halfway House as follows:

> *Halfway house means a single family dwelling for not more than nine persons over the age of 12, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit. Residents may be serving a sentence for a criminal act. Uses with ten or more residents shall be regulated as institutional correction facilities.*

The house which Haven House, Inc. proposes to use for transitional housing at 3202 Malissa Drive is located within the D-5 zoning district. In the D-5 zoning district group homes are allowed outright, and halfway houses are not permitted. After reviewing the business plan and the definitions of Title 49, the Community Development Department has determined that Haven House is not a group home because the shelter would not be housing people "seeking extended healthcare, rehabilitation or recovery from any physical, mental, or emotional disability". Haven House best fits the definition of a halfway house because it would be people, living together, who could be serving a sentence.

Because operating a halfway house is not a permitted use in this zoning district, Haven House cannot operate as described in the business plan in this location. An option available to Haven House, Inc. is to find a location in a zoning district where halfway houses are permitted. These are Light Commercial, General Commercial, Mixed Use, Mixed Use 2, and Rural Reserve. In all of these zoning districts an approved conditional use permit is required before operations and housing can begin.

Please contact me at 586-0757 if you have any questions or would like to discuss this further.

Sincerely,

Hal Hart, AICP
Director

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

January 24, 2014

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Please contact me at 586-0757 if you have any questions or would like to discuss this further.

Sincerely,

Hal Hart, AICP
Director

Attachment 7

City & Borough of Juneau
Alaska's Capital City

BUILDING PERMIT

Permit No
BLD20130767

* NOTE: "Building Permit" is a generic term which includes Building Safety Inspection, Grading Permits, and permits for Electrical, Plumbing and Mechanical work.

Your special attention is called to the following:

This permit is granted on the express conditions that the construction shall, in all respects, conform to the ordinances of the City and Borough of Juneau. It may be revoked at any time upon violation of any of said ordinances.

The granting of this permit does not authorize the violation of any federal, state or local law regulating construction for the violation of the terms of any deed or covenent or any zoning or other regulation.

If plan review was required, this permit must be attached to the approved drawings. The permit, plans and record of inspections must be available on site at all times while the construction is in progress and before final inspection.

The yellow posting notice must be prominently displayed to show a permit has been issued and to assist the inspectors in location of the project. This permit becomes null and void if work or construction authorized is not commenced within one year or if work or construction is suspended or abandoned for a period of one year at any time after work has commenced.

Note: City Ordinances REQUIRE a Final Inspection be approved for every Building Permit.

Inspections

Inspections can be arranged by telephoning **586-1703** or by written or faxed notification.
The Online Building Inspection Request Form is at: **www.juneau.org/permits/inspect_request.php.**
Work shall not proceed until the inspector has approved the various stages of construction. An approved Final Inspection is required.
Call before 7:00 AM for same day inspections.
Please provide the following information: 1 Permit Number, 2 Address, 3 Type of Inspection, 4 Date and Time and 5 Contact Name and Phone Number.

Job Address: **3202 MALISSA DR**
Permit Number: **BLD20130767**
Project Description: Change of Use from single family to transitional group home.

Issued Date : **12/23/2013**
Parcel No: **5B2101420030**

Parcel Information : TALL TIMBERS 1 BL G LT 3

Setbacks: Zone: :
Front: 20.00 Ft.
Rear: 20.00 Ft.
Street Side: 13.00 Ft.
Side 1: 5.00 Ft.
Side 2: 5.00 Ft.
Comments:

Owner : WILLIAM W TOW
PO BOX 289
HOBSON MT 59452-0289

Applicant : HAVEN HOUSE
PO BOX 20875
JUNEAU AK 99802

Fee Type	Date	Receipt	Amount Paid
BLD- Bldg Permit Fee	12/23/2013	04639	$54.00
	Total Fees Paid:		$54.00

Valuation for Permit Fee Calculations:

S.F.	Type	Rate	Amount

Total Valuation:

Project Conditions and Holds:
None

Inspections Required: Call for inspection before covering or concealing any of the work described below. Inspections may be combined.
B-Building Final

Attachment 8