

**CITY OF MINNEAPOLIS
CITY COUNCIL
ZONING AND PLANNING COMMITTEE**

In Re: Appeal of Zoning Administrator's
decision to grant reasonable accommodation
for supportive housing facility at
2118 Blaisdell Avenue

**FINDINGS OF FACT
AND
RECOMMENDATION**

The above-entitled matter came before the Standing Committee on Zoning and Planning of the Minneapolis City Council on Thursday, March 26, 2015, in Room 317, City Hall, 350 South Fifth Street, Minneapolis, MN 55415. On February 19, 2015, the Board of Adjustment denied an appeal by Ted Irgens, owner of 2115 Pillsbury Avenue, of the decision of the Zoning Administrator to grant reasonable accommodation under the Federal Fair Housing Amendments Act ("FHAA") to waive the quarter-mile spacing requirement for a proposed supportive housing facility in the existing building at 2118 Blaisdell Avenue. In denying Mr. Irgens' appeal, the Board of Adjustment adopted the proposed findings and recommendation to grant reasonable accommodation contained in the Community Planning and Economic Development Department ("CPED") staff report authored by Joseph Giant. Mr. Irgens appealed the Board of Adjustment's action to the City Council pursuant to Minneapolis Code of Ordinances ("MCO") § 525.180. Having held a public hearing on the appeal, the Committee now makes the following findings in support of its vote to deny the appeal and affirm the action of the Board of Adjustment and decision of the Zoning Administrator:

FINDINGS OF FACT

1. The proposed Findings and Recommendation to grant reasonable accommodation pursuant to the FHAA to waive the quarter-mile spacing requirement in MCO § 536.20 contained in the CPED staff report by Mr. Giant are hereby adopted and incorporated in

full by reference. The CPED staff report was presented at the public hearing on the appeal, is a part of the record herein, and is also attached as Exhibit A. In addition, the Committee makes additional Findings as follows in the ensuing paragraphs.

2. The Zoning Administrator's determination pursuant to MCO § 525.80 to classify the proposed use of the building located at 2118 Blaisdell as substantially similar to "supportive housing" was not appealed (NuWay initially appealed the determination, which was subsequently withdrawn before being heard). Despite having the opportunity to appeal the determination to the Board of Adjustment (and from the Board's decision to the City Council) and the corresponding obligation to exhaust administrative remedies if aggrieved by the decision, neither Mr. Irgens nor the neighborhood group filed an appeal or lodged any objection. The neighborhood group actually voiced support for the determination.
3. The proposal is not "inebriate housing" as argued for the first time by the appellant at the present appeal hearing. The proposed facility will serve to house individuals in chemical dependency *recovery*, which is a recognized disability under the FHAA. The appellant also did not appeal the initial use classification determination of the Zoning Administrator that the proposed facility would be supportive housing as noted in Paragraph 2 above and the argument is, therefore, not properly before the Council at this time.
4. The location of the proposed supportive housing facility, 2118 Blaisdell Avenue, is in an Office Residence 2 ("OR2") zoning district. Supportive housing is allowed as a conditional use in the OR2 district. Inebriate housing is prohibited. The applicant has

yet to apply for a conditional use permit (CUP) and site plan, which is required to establish the facility.

5. Waiver of the spacing requirement to allow NuWay to establish supportive housing at 2118 Blaisdell Avenue is necessary because it will affirmatively enhance the disabled residents' quality of life by ameliorating the effects of their disability. The proposed facility is located approximately one block from an existing NuWay counseling and treatment facility, which will make management of the proposed facility more efficient and effective. Residents of the proposed facility will be required to attend frequent counseling sessions at this existing treatment center. In addition, the surrounding area contains opportunities for additional treatment, access to employment, and varied amenities. Proximity to counseling and services while residing in a sober and supportive environment demonstrates necessity by directly ameliorating the effects of the disability.
6. The proximity of 2118 Blaisdell Avenue to the City's central business district, community retail services, several major bus lines, recreational and cultural venues, and government and social service providers is important to the viability of this housing facility for tenants in need of those varied services and who are expected to rely heavily on public transportation.
7. The assertion that the establishment of the proposed facility at 2118 Blaisdell is not in the best interests of the prospective residents due to the number of other people receiving supportive services in the area and because they are perceived to be "vulnerable" to criminal activity or actively "contribute" to criminal activity is unsubstantiated and largely anecdotal. Crime statistics for the area do not in any way correlate to a conclusion that the residents of the proposed facility will contribute to increased criminal

activity. Furthermore, assertions that the facility will have a detrimental effect on property values, development activity, business vitality, or the stability of the area are unsubstantiated by the evidence in the record.

8. The requested waiver of the spacing requirement is also reasonable and does not impose a financial or administrative burden on the City or fundamentally alter the City's land use scheme. The majority of the housing units in the surrounding area are multiple-family, rental housing. The zoning of the surrounding area (R5) allows for high-density residential use. Conversion of a building formerly housing a nursing home into 22 dwelling units on a 29,477 square foot lot is typical in OR2 zoning and less dense than is allowed on surrounding properties. Absent the requirement that all residents continue to receive counseling at the NuWay facility a block away, the proposed use might have been considered a multiple-family apartment. The City does not regulate the length of a residential tenancy; therefore, assertions that the proposed dwelling units do not constitute "housing" under the FHAA because of potential tenancy length are not valid.
9. The impact of an additional supportive housing facility is mitigated by the existing population density in the area (Whittier Neighborhood is the most populous and has the second-highest population density of any neighborhood in the City) and the prevalence of multiple-family residential dwellings.

Therefore, based on the foregoing Findings of Fact, the Committee makes the following recommendation:

RECOMMENDATION

1. That the full City Council deny the appeal and approve the request for reasonable accommodation.

2. That these Findings of Fact and Recommendation be adopted by the City Council and made part of the official record.



CPED STAFF REPORT
 Prepared for the City Attorney and
 Zoning Administrator

November 24, 2014
 BZZ-6915

LAND USE APPLICATION SUMMARY

Property Location: 2118 Blaisdell Ave
Project Name: 2118 Blaisdell Apartments
Prepared By: Joseph.Giant@minneapolismn.gov, City Planner, (612) 673-3489
Applicant: NuWay House, Inc.
Project Contact: Robert Nardi, on behalf of David Vennes
Request: Waiver of the quarter-mile spacing requirement for a supportive housing facility
Required Applications:

Reasonable Accommodation	<ul style="list-style-type: none"> Reasonable Accommodation to waive the specific development standard requiring that the proposed supportive housing facility be located at least a quarter-mile from other supportive housing facilities and community residential facilities.
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SITE DATA

Existing Zoning	OR2 High-Density Office Residential
Lot Area	29,477 square feet
Ward(s)	10
Neighborhood(s)	Whittier
Designated Future Land Use	Urban Neighborhood
Land Use Features	NA
Small Area Plan(s)	NA

Date Application Deemed Complete	October 5, 2014	Date Extension Letter Sent	NA
End of 60-Day Decision Period	December 5, 2014	End of 120-Day Decision Period	NA



BACKGROUND

For background purposes information has been prepared by the City of Minneapolis' Attorney's Office documenting the history of the Federal Fair Housing Amendments Act.

The Federal Fair Housing Amendments Act of 1988 ("FHAA" or the "Act"), 42 U.S.C. § 3201 et seq. makes it illegal to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of . . . that buyer or renter . . . or any person associated with that buyer or renter . . ." 42 U.S.C. § 3604(f)(1). "For purposes of this subsection, discrimination includes . . . a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling . . ." 42 U.S.C. § 3604(f)(3)(B).

Requests for reasonable accommodation pursuant to the FHAA will be analyzed on a case-by-case basis and are highly fact specific. The evaluation process for determining whether federal law requires an accommodation in how the City's zoning regulations are applied or enforced is broken down into three areas of inquiry. First is a determination whether the request is being made on behalf of a person or persons who are considered disabled under the provisions of the Act. The current, illegal use of or addiction to a controlled substance does not constitute a "disability" under the Act.

The second issue is whether the requested accommodation is necessary to afford such persons equal opportunity to use and enjoy a dwelling. One court has stated that the test of "necessity" is that "but for the accommodation, [disabled persons] likely will be denied an equal opportunity to enjoy the housing of their choice." *Smith & Lee Associates, Inc. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir. 1996).

Finally, it must be determined whether the requested accommodation is reasonable. With respect to accommodations of zoning requirements, an accommodation is not "reasonable" if it would: 1) impose an undue financial or administrative burden on a local government, or 2) if the requested modification to zoning requirements would create a fundamental alteration in a local government's land use and zoning scheme. Joint Statement of the Dept. of Justice and the Dept. of Housing and Urban Dev't, *Group Homes, Local Land Use, and the Fair Housing Act* (August 18, 1999).

SITE DESCRIPTION. The subject property, 2118 Blaisdell Ave, is located on a 29,477 square foot lot at the northwest corner of Blaisdell Ave and 22nd St W in the Whittier neighborhood of Minneapolis. Franklin St is one block to the north of the subject property and Nicollet Ave is one block to the east.

The subject property is zoned OR2-High Density Office Residence District. The surrounding properties are zoned R5 Multiple-family District, with the exception of the property to the north which is zoned C1 Neighborhood Commercial District.

The subject lot is adjacent to a 49-unit apartment building to the west, a bank to the north, 36- and 22 - unit apartment buildings across Blaisdell to the east, the Minneapolis Urban League Academy School to the southeast, and a 32-unit apartment building across 22nd St to the south.¹ Other properties in the vicinity contain large homes constructed in the early 20th Century and apartment buildings constructed in the mid-20th Century. Many of the large homes have been converted into multi-family housing, offices, and congregate living.

The existing structure on the subject property is composed of a 5-bedroom mansion constructed in 1913 and a 3-story addition constructed in 1962. The mansion was originally constructed for use as a single-family dwelling, and the addition was originally constructed for use as patient rooms when the structure contained a nursing home. The remainder of the property is comprised of landscaping, green space, and a surface parking lot containing 36 spaces. The current landscaping and screening is in excellent condition and would be retained.

PROJECT DESCRIPTION. The applicant, NuWay House, Inc., proposes to convert the existing building into 22 dwelling units for up to 47 residents. Twenty-one of the dwelling units would be one-bedroom or efficiency units located in the 3-story addition, and the remaining unit would be a five-bedroom apartment located in the original mansion. Each unit would have its own kitchen and bathroom facilities. No exterior changes would occur besides minor improvements required to bring the structure into compliance with the building code.

Residents of the facility would be limited to those persons receiving treatment for substance abuse at a nearby counseling center operated by NuWay. The facility would be staffed 24-hours per day, although staff would not reside at the facility. NuWay has operated as a non-profit organization in the Whittier neighborhood since 1966, and currently operates two similar facilities in the neighborhood. NuWay has provided a thorough description of the proposed facility as well as the rationale for its establishment which can be found in the Additional Materials accompanying this report.

The proposed use would be classified as supportive housing. According to Minneapolis Code of Ordinances ("MCO") Chapter 536.20, supportive housing facilities must be located at least a quarter-mile from other supportive housing facilities and community residential facilities. This buffer is measured from the property line of the subject property. Several uses that meet the definition of "community residential facilities" are located within a quarter-mile of the subject property. Therefore, NuWay House Inc. is seeking reasonable accommodation to waive the quarter-mile spacing requirement. Supportive housing is a conditional use in the OR2 district, so conditional use permit must still be obtained from the City Planning Commission to establish the facility.

¹ Data obtained November 5, 2014 from records maintained by the City of Minneapolis.

ANALYSIS

REASONABLE ACCOMMODATION

In accordance with Chapter 520, Introductory Provisions, Chapter 525, Administration and Enforcement, and Chapter 536, and Specific Development Standards, the Department of Community Planning and Economic Development has analyzed the application for Reasonable Accommodation. Based on the criteria as stated above the following has been determined:

I. Documented Disability

An individual with a disability is defined by the Americans with Disabilities Act as a "person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such impairment, or a person who is perceived by others as having such impairment."

According to the Americans with Disabilities Act of 1990, alcoholism and chronic drug use are considered disabilities. "The Fair Housing Act prohibits discrimination on the basis of disability in all types of housing transactions" and "defines persons with a disability to mean those individuals with mental or physical impairments that substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such impairment, or are regarded as having such impairment."²

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled under the Fair Housing Act, by virtue of that status."

However, the Act does protect persons who are recovering from substance abuse. Without adequate treatment, serious and persistent mental illnesses will result in significant physical and psychological impairment and can substantially limit an individual's major life activities.³

² United States Department of Justice. http://www.justice.gov/crt/about/hce/housing_coverage.php

³ United States Department of Justice. http://www.usdoj.gov/crt/housing/housing_coverage.php#disability

2. Necessity of Request

In order to determine that the requested modification of the zoning code is necessary, the applicant must demonstrate that the City's established and permitted procedures are insufficient to remedy the need for modification.

The facility was initially proposed as a 22-unit multi-family dwelling. However, questions were raised as to whether the facility met the definition of that use. On June 24, 2014, the Zoning Administrator made a determination as to whether the project was an allowed multiple family dwelling (apartment building), or a type of supportive housing. The determination is summarized below:

The property owner submitted a site plan review application contending that the proposed use is a rental apartment building. Questions subsequently arose from the community and staff regarding whether the proposed use is more appropriately categorized as supportive housing.

In a letter addressed to staff, dated June 9, 2014, the attorney representing the applicant stated that the intended use of the property is a 22-unit apartment building. However, the project description also stated that the residents of the apartments will not have leases, because they will not be paying rent. Instead, patients in NuWay's outpatient program will be able to reside at the building while they are enrolled in the outpatient program. The letter states that the average length of time a resident would reside in a dwelling unit would be about 10 weeks.

Under the Minneapolis Code of Ordinances ("MCO") Chapter 520.160 – Supportive housing, residents are required to participate in programs and services designed to assist residents with improving their daily lives. Clearly, NuWay's treatment programs are at a minimum designed and intended to improve patient's lives. The requirement of participation in a treatment program as a condition of residency is consistent with the definition and intent of a supportive housing facility.

Correspondingly, there is no ability for an individual who is not receiving treatment from NuWay to rent or occupy a unit in the building. In addition, based on the responses provided, it appears the intent is that the statutes governing the landlord/tenant relationship would not apply and that a resident can simply be "removed" for failure to comply with house rules, rather than through a legal eviction process (unlawful detainer).

Based on these use characteristics, the Zoning Administrator determined that the proposed facility is to be classified as **supportive housing** under the definition in MCO §520.160. This determination was not appealed.

Supportive housing is a **conditional use** in the OR2 zoning district. Thus, to commence operations, the facility must obtain a conditional use permit (CUP). The City Planning Commission evaluates CUPs based on the following findings:

1. The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.
2. The conditional use will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be

- provided.
4. Adequate measures have been or will be taken to minimize traffic congestion in the public streets.
 5. The conditional use is consistent with the applicable policies of the comprehensive plan.
 6. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

In addition to these findings, supportive housing facilities are required to meet specific development standards contained in MCO §536.20, copied below:

1. Supportive housing shall be located at least one-fourth ($\frac{1}{4}$) mile from all existing supportive housing and from all of the following uses, except in the B4H Overlay District:
 - a. Community correctional facility.
 - b. Community residential facility.
 - c. Inebriate housing.
 - d. Motel.
 - e. Overnight shelter.
2. On-site services shall be for residents of the facility only, except where part of a regimen of scheduled post-residential treatment.
3. To the extent practical, all new construction or additions to existing buildings shall be compatible with the scale and character of the surroundings, and exterior building materials shall be harmonious with other buildings in the neighborhood.
4. An appropriate transition area between the use and adjacent property shall be provided by landscaping, screening, and other site improvements consistent with the character of the neighborhood.
5. The operator shall submit a management plan for the facility and a floor plan showing sleeping areas, emergency exits and bathrooms.

Due to the presence of several nearby uses that meet the definition of "community residential facilities," the proposed facility is unable to meet the first specific development standard requiring that it be located at least a quarter-mile from other supportive housing facilities and community residential facilities. The spacing requirement can be reduced by variance only for the relocation of an existing use where the relocation will increase the spacing between such use and any use from which it is nonconforming as to spacing.⁴ Thus, a variance to establish a new facility within a quarter-mile of an existing facility cannot be granted. Because the use has been categorized as supportive housing, and because it cannot comply with the spacing requirement, there exists no mechanism in the zoning code to allow the proposed facility.

Therefore, the necessity of the request for reasonable accommodation stems from the combination of zoning and spacing restrictions imposed by the zoning code. Although the location restrictions affirmatively affect the subject property, this request is for reasonable accommodation is not solely warranted because the desired use doesn't work with this particular parcel. The combination of spacing

⁴ Minneapolis Code of Ordinances Chapter 525.520[22]

and zoning restrictions makes establishing supportive housing impossible nearly *anywhere* in the city.

Supportive housing is not permitted in low-density zoning districts, and is allowed only as a conditional use in medium- and high-density districts. Thus, only 7.6% of land in Minneapolis meets zoning requirements. Eligible properties must also comply with the quarter-mile spacing requirement. This further limits eligible properties to 1.7% of land in the city.⁵ This measurement does not take into account the practical viability of the qualifying sites. For instance, the land value may be too high, or the likelihood that such a use could ever be established on this land could be extremely low (for example, much of the University of Minnesota campus meets spacing and zoning requirements).

By contrast, approximately 74% of the city is residentially zoned, and 85.6% of the city allows residences as a permitted use.⁶ Limiting the housing locations for certain handicapped persons to 1.7% of the City's land area violates the intent of the 1988 FHAA and illustrates the necessity of the request.

Locations for supportive housing are also limited due to the broad range of services that are considered "community residential facilities." A community residential facility is defined as "a facility where one (1) or more persons reside on a twenty-four-hour per day basis under the care and supervision of a program licensed by the Minnesota Department of Human Services (DHS)."⁷ In addition to group homes, DHS licenses services such as adult and child foster care, children's residential facilities, and home and community based services. According to this definition, licensed services for a *single individual* constitute a community residential facility.

In most instances, no benefit is achieved by requiring separation between these uses. For example, no legitimate purpose is achieved by separating an immobile elderly person with a quarter-mile buffer from a home for mentally handicapped adults. However, the spacing requirement is technically applied regardless of the scope of services offered, the density of the area, or the size of the facility. For this reason, enforcement of the spacing requirement rarely occurs. However, enforcing the spacing requirement in some instances, but not in others, is tantamount to disparate treatment under the same law. Without reasonable accommodation, handicapped persons may lose equal access to housing.

⁵ The area of Minneapolis is 58.2 square miles (37,376 acres). Zoning districts in which supportive housing could potentially be located have an area of 4,917 acres, or 7.6% of the area. Of the 4,917 acres, only 628 acres meet both the zoning and quarter-mile spacing requirements.

⁶ 27,810 acres are residentially zoned (74% of the land area). Residential uses are permitted in all zoning districts except industrial. When considering the potential locations for residential uses, the total acreage available for residential uses is (32,001/37,376) 85.6%. This figure is a raw measurement of zoned area and does not take into account features such as rivers, lakes, infrastructure, and parks.

⁷ Minneapolis Code of Ordinances Chapter 520.160, *Community Residential Facility*.

⁸ Minnesota Department of Human Services – Licensed programs and services. <http://mn.gov/dhs/>

3. Reasonableness of Request

To meet the "reasonableness" standard of the Fair Housing Act Amendments, the request must not overburden the local government financially or administratively, and a nexus linking the treatment of the disability with the need for housing must be shown⁹. The proposed facility does not require any government funding, nor does it create an administrative burden. Thus, it satisfies the first prong of the "reasonableness" standard. The second prong requires demonstrating that a nexus exists between the treatment of the handicap and the proposed location.

The proposed facility would provide short-term housing for persons receiving outpatient treatment at a counseling center located approximately one block from the subject property at 2217 Nicollet Ave. The applicant describes the locational advantage of this site, stating "to help promote successful rehabilitation, barriers are removed by providing housing within walking distance to the source of a client's outpatient services." Persons recovering from substance abuse often are not able to drive, so walkability is especially important. In addition to the counseling center, the facility is located in close proximity to a large concentration of self-help facilities and several nearby organizations providing vocational training and/or the possibility of employment. The applicant states, "Isolation is a common relapse trigger for those in early recovery from substance addiction (and/or mental illness)." The supportive community setting eschews isolation and promotes community integration.

Nearby services and amenities make the location uniquely suited to accommodate the proposed facility. Due to the well-suited location, several group homes, including another facility operated by NuWay, are also located within a quarter-mile of the proposed facility. While a preponderance of group homes in a small geographic area could potentially lead to negative clustering effects, the density of the proposed location dampens the risk. The quarter-mile radius is in a dense urban neighborhood which encompasses a wide and intense array of land uses, greatly eliminating the risk of the proposed use overtaking the community.

In *Familystyle v. City of St. Paul*, the spacing requirement was found to advance the legitimate governmental purpose of the de-institutionalization of the mentally ill¹⁰. It is intended to discourage institutionalization, avoid clustering, and encourage community integration. However, it is not intended to put a limit on the number of handicapped persons that can live in a defined geographic area. Waiving the spacing requirement will not contribute to institutionalization or the effects of clustering because the location is well suited to accommodate the proposed use. The Whittier neighborhood is the most populous and has the second-highest population density of any neighborhood in Minneapolis. Congregate living arrangements are complemented by high-density apartments, a wide range of businesses, and many institutional uses. Waiving the requirement will contribute towards the treatment and recovery of handicapped persons by allowing them to live in a community setting close to amenities and services.

⁹ Harvard Law Review, ver.126:1392. *Three Formulations Of The Nexus Requirement In Reasonable Accommodations Law*
http://cdn.harvardlawreview.org/wp-content/uploads/pdfs/vol126_reasonable_accommodations_law.pdf

¹⁰ *Familystyle of St. Paul v. City of St. Paul*, 923 F.2d 91 (8th Cir.1991)

Reasonable Accommodation required findings.

The zoning administrator, or designee thereof, in consultation with the city attorney, shall have the authority to consider and act on requests for reasonable accommodation. In making the decision, the following factors have been considered:

1. Special need created by the disability.

Persons recovering from chemical dependency are considered disabled under the Federal Fair Housing Act Amendments of 1988. The special need created by the disability stems from the lack of non-institutional treatment options for recovering persons who have completed in-patient treatment but are not prepared for a more traditional housing arrangement.

Persons recovering from substance abuse often have a very poor rental and credit history, poor employment history, a high rate of other mental illnesses, lack of education, history of domestic violence, and lack of family support. Users who have recently completed treatment are often unemployed. These barriers can hinder recovering persons from finding housing that contributes toward their recovery.

2. Potential benefit that can be accomplished by the requested modification.

NuWay has been serving persons recovering from chemical dependency in the Whittier neighborhood since 1966. As an experienced care provider, they state, "without this combination of housing and outpatient services, history tells us our ability to help former addicts obtain and maintain long term recovery is greatly reduced." The facility would ease the transition between institutional care and a more traditional living arrangement by giving residents an opportunity to get back on their feet while living in an affordable, sober, supportive, and positive environment. Waiving the quarter-mile spacing requirement would provide residents convenient access to treatment as well as amenities and employment opportunities. Most destinations, including the Nicollet Ave treatment center, are within walking distance, and the property is close to several bus lines providing metro-wide connectivity.

3. Need for the requested modification, including alternatives that may provide an equivalent level of benefit.

The Zoning Administrator has categorized the facility as supportive housing. However, it shares characteristics with multiple-family housing and community residential facilities. These uses are defined as follows:

520.160. Multiple-family dwelling. *A building, or portion thereof, containing three or more dwelling units.*

520.160. Community residential facility. *A facility where one or more persons reside on a 24 hour per day basis under the care and supervision of a program licensed by the Minnesota Department of Human Services (DHS). Community residential facilities shall not include facilities that are also eligible for licensure by the Minnesota Department of Corrections (DOC).*

520.160. Supportive housing. *A facility that provides housing for 24 hours per day and programs or services designed to assist residents with improving daily living skills, securing employment or obtaining permanent*

housing. It does not include:

1. Elderly housing with congregate dining.
2. Inebriate housing.
3. Any facility licensed by the Minnesota Department of Human Services (DHS), Department of Health (DOH) or Minnesota Department of Corrections (DOC).
4. Any other county, state or federal community correctional facility.
5. Fraternities, sororities or other student housing.
6. Any facility owned, leased or operated by the Minneapolis Public Housing Authority (MPHA).
7. The use of one dwelling unit on one zoning lot which meets the occupancy requirements of the zoning district in which it is located.

By definition, community residential facilities must be licensed by the Minnesota Department of Human Services. The proposed facility will not be licensed, so it does not meet the definition of a Community Residential Facility.

The proposed facility closely resembles a multi-family dwelling. However, the residency requirements of the facility limit potential habitants to those persons receiving treatment at the Nicollet Ave treatment center, which aligns with the MCO§520.160 definition of supportive housing. Therefore, the facility is considered supportive housing rather than multi-family housing.

4. Physical attributes of and any proposed changes to the subject property and structures.

The existing structure is well suited to accommodate the proposed use. No significant exterior alterations would be required to convert the existing structure into 22 apartments. In order to function as a supportive housing facility, the structure must comply with health and safety regulations such as building, housing, and fire codes. Most of the required changes would occur within the building, although a handful of minor changes would be required on the building's exterior. According to the applicant, the only exterior changes would be partially infilling windows at an inside corner to create the code-required separation of wall openings, conversion of the existing loading dock on the north (interior) side of the addition to a window, and conversion of a window into the new handicapped-accessible entrance.

If the proposed facility ceased to operate, the property would be well suited for use as multi-family housing. Building code requirements for the proposed use would be similar to the requirements for multi-family housing, so relatively few changes would have to occur. With 36 off-street parking spaces, the use would exceed the 22-space parking requirement of a 22-unit apartment building.

5. Potential impact on surrounding uses.

The City of Minneapolis has a legitimate interest to preserve the character of its neighborhoods through laws that regulate structures, land uses, number of persons occupying a dwelling unit, and off-street parking. The proposed use anticipates a maximum occupancy of 47 persons in 22 units on a 29,477 square foot lot. This density is typical in the OR2 zoning district and similar to the population density in the surrounding area. The per-unit occupancy levels would not exceed those established by the zoning code or the building code. If the proposed supportive housing facility is managed in accordance with the documentation supplied to Staff and in compliance with the conditions of approval required by the City, the proposed facility would likely have use characteristics and impacts similar to an apartment building of comparable size.

The parking area is well screened and the property is well landscaped. As a condition of approval, all landscaping must be maintained, and all repairs and general maintenance to the structure must be undertaken in a timely manner. Although few residents are expected to drive, 36 on-site parking spaces exist, which is 3 times the minimum parking requirement for a 47-bed facility.¹¹

Potential residents would be limited to individuals who have been diagnosed with a physical or mental handicap. Current users of alcohol or drugs are not considered disabled under the 1988 FHAA. Likewise, individuals with low income, homeless individuals, and individuals with a criminal history are not eligible for residency unless the condition is accompanied by a documented disability.

The facility would be staffed on a 24-hour basis, and would utilize a Resident Agreement that sets forth specific residency requirements. In addition, House Rules would establish a strict code of conduct for residents and visitors. A copy of the Resident Agreement and House Rules can be found in the Additional Materials. In order to prevent future adverse off-site impacts, the City of Minneapolis shall be notified if there are any changes in use or maximum occupancy, or any changes to the house rules that could increase the potential for adverse off-site impacts. These changes include but are not limited to occupancy, building alterations, residency requirements, and modifications to house rules.

Based on the characteristics of the proposed site and its surroundings, and the characteristics of the use itself, the proposed use will have an impact similar to an apartment building of comparable size.

6. Whether the requested modification would constitute a fundamental alteration of the zoning regulations, policies, and/or procedures of the city.

Eliminating the spacing requirements would not constitute a fundamental alteration of the land use and zoning scheme of the city. The supportive housing facility would be located in the OR2 High-Density Office Residence zoning district. This zoning district is intended to provide a mixed-use environment of moderate to high-density dwellings and large office uses, with additional small-scale retail sales and services uses designed to serve the immediate surroundings.¹² It is often used as a transitional district between commercial areas and less-dense residential districts.

Supportive housing is a conditional use in the OR2 district. Thus, the facility can be allowed if certain conditions and required findings are met. The proposed density of 22 dwelling units on a 29,477 square foot lot is typical in the OR2 zoning district, and less dense than surrounding properties.

7. Whether the requested modification would impose an undue financial or administrative burden on the city.

¹¹ Per MCO§541.170, supportive housing facilities must provide 1 parking space for every 4 beds. The facility proposes approximately 47 beds, so 12 parking spaces would be required. The existing lot contains 36 spaces.

¹² MCO §547.280

The facility does not require government funding nor does it seek any type of licensure. It will not impose an undue financial or administrative burden upon the City.

8. Any other factor that may have a bearing on the request.

Waiver of the spacing requirement has precedent in Minneapolis. In 2004, a supportive housing facility was approved in the Ventura Village neighborhood by the Planning Commission, and upheld by City Council upon appeal, even though the subject property was located within a quarter-mile of 9 existing supportive housing facilities. The City Council decision was challenged and upheld by the 8th Circuit Court of Appeals on the ground that waiver of the spacing requirement was a "reasonable accommodation" required by the Fair Housing Amendments Act of 1988.¹³ The City's waiver of its spacing requirement permitted the creation of additional supportive housing and thereby increased the housing available to eligible handicapped persons.

The City submitted evidence that, since the Zoning Code was amended in 1995 to include the term "supportive housing," the City has approved all eleven applications for supportive housing developments.¹⁴

RECOMMENDATIONS

The Department of Community Planning and Economic Development recommends that the City Attorney and the City of Minneapolis Zoning Administrator adopt the above findings and **approve** this request for Reasonable Accommodation to waive the specific development standard requiring that the proposed supportive housing facility located at 2118 Blaisdell Avenue maintain a distance of at least one-quarter mile from other supportive housing facilities and community residential facilities, subject to the following conditions:

1. The facility must comply with health and safety regulations such as building and fire codes. Should the facility create a public nuisance or fail to conform to health and safety regulations, local governments may cause such conditions to be abated;
2. All current and future occupants of the subject property must be diagnosed with a documented disability as described by the Americans with Disabilities Act;
3. The exterior of the home and the yard will be kept in excellent physical condition. Damaged or worn out materials will be promptly repaired or replaced;

¹³ http://caselaw.findlaw.com/us-8th-circuit/1244865.html#footnote_4

¹⁴ <http://openjurist.org/419/f3d/725/ventura-village-inc-v-city-of-minneapolis-minnesota>

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4. The House Rules will be posted in a conspicuous location within the home. All residents, guests, and associated persons must comply with the House Rules and other applicable operational agreements at all times;
5. The City of Minneapolis shall be promptly notified in there are any changes in use or maximum occupancy, or any changes to the Residence Agreement or House Rules that could potentially increase the potential for adverse off-site impacts. These changes include but are not limited to occupancy, building alterations, and residency requirements.

Decision: _____ Date: _____

Signature of Zoning Administrator: _____ Date: _____

Signature of Planner or other Official: _____ Date: _____

Signature of City Attorney: _____ Date: _____