

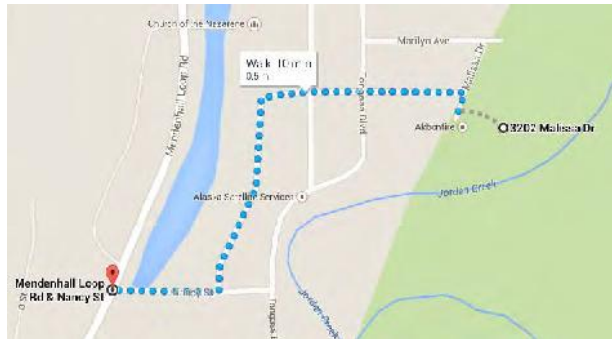
A note specifically from Larry Talley, Haven House Board Secretary: I would welcome Haven House in my neighborhood. It is worth noting that my children are now sixteen and older, but I would introduce my children to Haven House staff and, to the extent comfortable to all parties, to Haven House residents. I would talk to my children about crime and prison and prisoners and recovery from substance abuse and re-entry into society after coming out of prison. I would try to find one or more Haven House participants who might feel comfortable with my family, and make an attempt to integrate that person or persons into my neighborhood, my church, my community, my circle of family friends. If my children were younger I would introduce my children to the Haven House staff if convenient but would otherwise expect my children and the residents of Haven House to be mostly unaware of each other. In other words, I would treat residents of Haven House like people.

**Professional License Details**

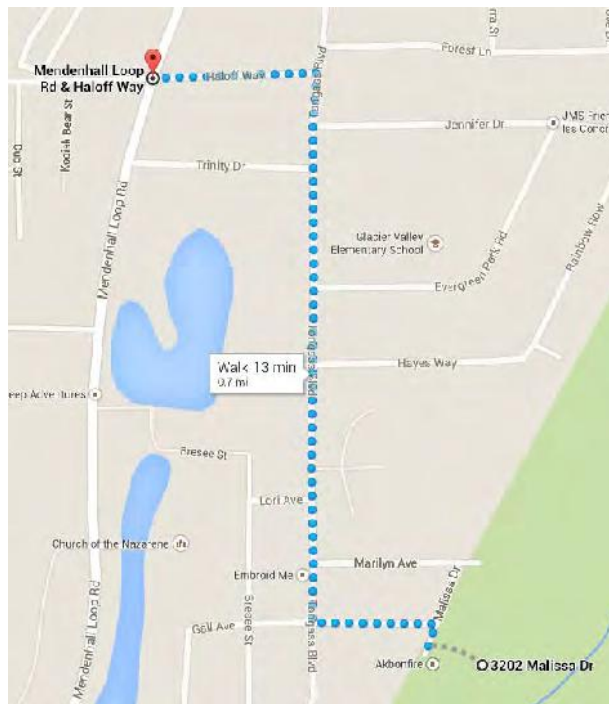
**Name:** JAMES R. WAKEFIELD  
**DBA:**  
**License Number:** 13040  
**License Type:** IS A LICENSED SALESPERSON  
**Status:** EXPIRED  
**Address:** 17325 POINT LENA LOOP ROAD JUNEAU AK 99801  
**Expiration Date:** 01/31/2008  
**Current Issue Date:** 02/06/2006  
**First Issue Date:** 11/04/1991  
**Additional Info:**  
  
**Employing Broker Name:** HONEY BEE ANDERSON  
**Office Name:** POWELL REALTY, INC.

Contact Phone: (907) 465-2550   Email Professional Licensing

Bus stop at corner of Mendenhall Loop Road and Nancy Street, walking time 10 minutes, 0.5 miles.



Bus stop at corner of Mendenhall Loop Road and Haloff Way, walking time 13 minutes, 0.7 miles.



RECEIVED

MAR 10 2014

PERMIT CENTER/CDD

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.

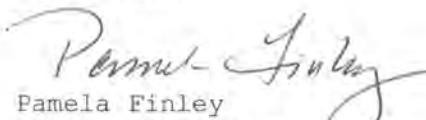
There is one other matter in addition to Haven House's request for a determination as set out above. The CBJ ordinance provides that uses "similar" to a group home with five or fewer residents are to be regulated as single family dwellings. Haven House would be willing to open with only five residents, 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](http://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 19<sup>th</sup>, but any other time is fine. Thank you very much for your attention to this important matter.

Sincerely,

  
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 interpretation of "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 House prohibits 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 [www.oxfordhouse.org](http://www.oxfordhouse.org), 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 U.S. 725, 115 S. Ct. 1776, 131 L.Ed.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 than 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 parolees 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