

**CITY OF AUSTIN**  
**Board of Adjustment/Sign Review Board**  
**Decision Sheet**

**DATE: Monday, December 1, 2014**

**CASE NUMBER: C15-2014-0144**

<input type="checkbox"/> Y	Jeff Jack
<input type="checkbox"/> Y	Stuart Hampton - Michael Von Ohlen (out)
<input type="checkbox"/> Y	Ricardo De Camps <b>2<sup>nd</sup> the Motion</b>
<input type="checkbox"/> Y	Bryan King
<input type="checkbox"/> Y	Vincent Harding
<input type="checkbox"/> Y	Melissa Hawthorne <b>Motion to PP to 2-9-15 to determine hearing date</b>
<input type="checkbox"/> Y	Sallie Burchett

**APPLICANT: Matt Gorman**

**OWNER: Katie Van Dyk**

**ADDRESS: 505 BARTON SPRINGS RD**

**VARIANCE REQUESTED:** The applicant has filed an appeal challenging the Planning & Development Review Department's decision interpreting a sober living facility (described in appeal application) would be classified as a Group Home, Class 1 (General) if it had fewer than 15 residents.

**BOARD'S DECISION:** The public hearing was closed on Board Member Melissa Hawthorne motion to Postpone to November 10, 2014 to decide on meeting date, Board Member Sallie Burchett second on a 5-2 vote (Board member Jeff Jack, Bryan King nay); **POSTPONED TO November 10, 2014 TO DECIDE ON MEETING DATE TO HEAR THE APPLICATION.**

**BOARD'S DECISION:** Nov 10, 2014 A SPECIAL CALLED MEETING IS SCHEDULED TO HEAR THIS CASE ON December 1, 2014 AT 7:00 PM AT OTC IN ROOM 325.

The applicant has filed an appeal challenging the Planning and Development Review Department's Land Use Determination that a sober living facility (as described in the appeal application) would be classified as a Group Home, Class 1 (General) if it had fewer than 15 residents.

**BOARD'S DECISION: DEC 1, 2014 -** The public hearing was closed on Board Member Melissa Hawthorne motion to Postpone per applicant and staff request to February 9, 2015 to decide on meeting date, Board Member Ricardo De Camps second on a 7-0 vote; **POSTPONED TO FEBRUARY 9, 2015 TO DECIDE ON MEETING DATE TO HEAR THE APPLICATION.**

**February 9, 2014 -**

**FINDING:**

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:
2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:
3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:

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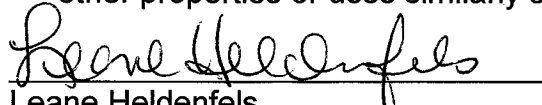
Leane Heldenfels  
Executive Liaison


---

Jeff Jack  
Chairman

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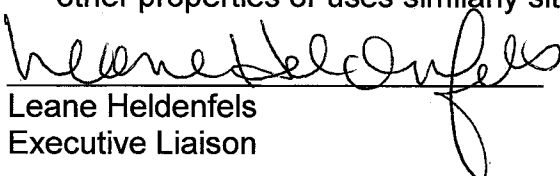
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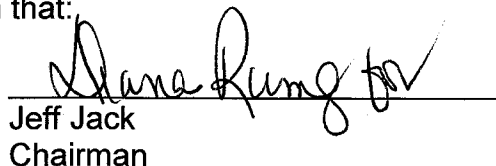
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Leane Heldenfels  
Executive Liaison

  
\_\_\_\_\_  
Jeff Jack  
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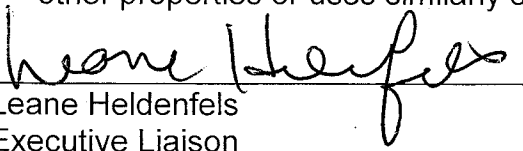
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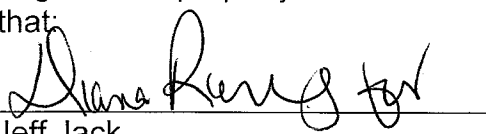
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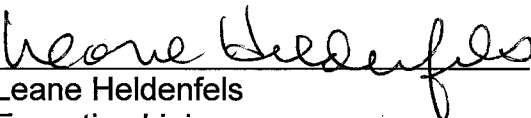
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Leane Heldenfels  
Executive Liaison

  
Jeff Jack  
Chairman



October 23, 2014

Ms. Leane Heldenfels  
City of Austin  
505 Barton Springs Road  
Austin, Texas 78704

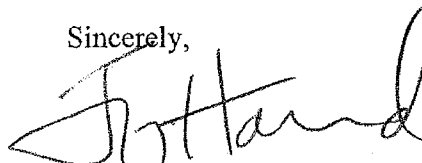
RE: Request for Postponement of Land Use Determination Appeal in Case No. C15-2014-0144 Scheduled for October 27, 2014

Dear Ms. Heldenfels:

I represent Mathew Gorman, and I am writing to request a three-week postponement of the above-referenced case from the October 27, 2014 meeting of the Board of Adjustment. This is the applicant's first request to postpone this case. The applicant requests this postponement in order to allow applicant to continue discussion with City staff about this matter in an effort to resolve it without a hearing.

Please do not hesitate to contact our office if you have any questions.

Sincerely,



Jeffrey S. Howard

cc: Mathew Gorman

or

or

15-2014-0144  
Row 11233004  
Row 0202000119

**CITY OF AUSTIN APPLICATION TO BOARD  
OF ADJUSTMENT INTERPRETATIONS  
PART I: APPLICANT'S STATEMENT  
(Please type)**

STREET ADDRESS: N/A; City File No. UD-2014-0001

LEGAL DESCRIPTION: Subdivision –

N/A

Lot (s) \_\_\_\_\_ Block \_\_\_\_\_ Outlot \_\_\_\_\_ Division \_\_\_\_\_

ZONING DISTRICT: N/A

I/WE Katie Van Dyk on behalf of myself/ourselves as  
authorized

Agent for Mathew Gorman affirm that on the 22nd

Day of September, 20 14, hereby apply for an interpretation hearing before the Board of  
Adjustment.

Planning and Development Review Department interpretation is:

The staff interpretation is that the operation of a recovery community which houses more than 15 individuals is classified as a "Residential Treatment" use under the Land Development Code, because Group Home, Class I (General) use is limited to 15 residents, and the described use is for greater than 15 residents. The interpretation seems to indicate, and staff has told the applicant, that a recovery home use is a Group Home if under 15 people, but that the recovery home use changes if it exceeds 15 people.

I feel the correct interpretation is:

The operation of a recovery community with more than 15 residents is classified as Group Home, Class I (General) use, because a recovery home meets every element of that definition except the number 15. Individuals who suffer from addiction (but who are no longer using or addicted to a controlled substance) are considered disabled under the Fair Housing Amendments Act of 1988, and are protected from housing discrimination based on the number of occupants. Local governments, under the FHAA, have an "affirmative duty" to provide "reasonable accommodation," or flexibility, when making decisions about zoning and land use regarding housing for persons with disabilities. Since the 15 person cap violates federal law, it is inapplicable and the proposed use meets Group Home, Class I (General).

**NOTE:** The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

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( (

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that: \_\_\_\_\_

We originally sought a use determination because a recovery community with greater than 15 residents meets every substantive elements of Group Home, Class I (General) except the number of residents. On the other hand, it fits none of the elements of the Residential Treatment. A recovery community cannot legally provide any of the services listed in the Residential Treatment use definition. Staff informed the applicant that the use is considered Group Home, Class I (General) if it has less than 15 people; however, when the number exceeds 15, the underlying use of the property does not change. The actual use should be the critical factor. The court in Oxford House-C v. City of St. Louis, citing the Fair Housing Amendments Act of 1988, held that an ordinance limiting group homes for recovery purposes to 8 residents was discriminatory because it was not necessary to preserve the residential character of the neighborhood, and because recovery communities often need to house more residents to "operate viably from both a financial and a therapeutic standpoint."

2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because: \_\_\_\_\_

Group Home, Class I (General) use is the use of a site for the provision of a family-based facility providing 24-hour care in a protected living arrangement and includes foster homes; homes for the physically and mentally impaired; homes for the developmentally disabled; congregate living facilities for persons 60 years of age or older; maternity homes; emergency shelters for victims of crime, abuse, or neglect; and residential rehabilitation facilities for alcohol and chemical dependence. A recovery community is similar to every example listed in the Group Home, Class I (General) definition, and is more similar to a home for disabled individuals than a facility for those convicted of drug related crimes who are under supervision as a condition of probation or parole. Fellowship is an important element of relapse prevention for recovering addicts, and recovery communities offer that essential familial support to residents.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: \_\_\_\_\_

The use determination request was not project- or property-specific, so an alternative interpretation of the use classification of a recovery community use will not grant any special privilege to any particular property.

**APPLICANT/AGGRIEVED PARTY CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Katie Van Dyk Printed Katie Van Dyk

Mailing Address 901 S. Mopac Expressway, Bldg. II, Suite 225

City, State & Zip Austin, TX 78746 Phone 512-328-2008

**OWNER'S CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed N/A - non-project-specific use determination Printed \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State & Zip \_\_\_\_\_ Phone \_\_\_\_\_

CC

CC



September 22, 2014

Leane Heldenfels  
City of Austin  
505 Barton Springs Road  
Austin, Texas 78704

via hand delivery

**RE: Land Use Determination Appeal Application ("Application") to the Board of Adjustment for Interpretation; Letter of Standing to Appeal Status**

Dear Leane:

Please find enclosed the above-referenced Application requesting an appeal of an administrative decision to the Board of Adjustment, for interpretation of the decision. Pursuant to Section 25-1-131, as the agent for Mathew Gorman, the party interested in and originally requesting the land use determination, I assert that I have standing to file this appeal.

The original land use determination application was a non-project-specific use determination request, which requested an interpretation of the classification of the use of a property as a recovery home for more than 15 individuals. My firm initially submitted the request and urged that the use be classified as Group Home, Class I (General), because a recovery center use fits all of the substantive elements of the definition of Group Home, Class I (General) under the City of Austin Land Development Code ("Code"). The only element of the proposed recovery home use that does not fit the definition of Group Home, Class I (General) is the maximum number of residents, fifteen (15).

However, Jerry Rusthoven, the Manager of the Planning Division of the Planning and Development Review Department, determined on September 8, 2014, that the proposed recovery home use fits the definition of Residential Treatment under the Code, rather than Group Home, Class I (General).

The enclosed Application: (i) describes the Planning and Development Review Department's interpretation of the proposed recovery home use; (ii) provides a description of what I believe is the correct interpretation; (iii) details why there is a reasonable doubt or difference of interpretation as to the specific intent of the regulation at issue; (iv) explains why the appeal clearly permits a use which is in character with the uses enumerated for Group Home,

CC

CC

REQUESTS FOR INTERPRETATION  
(Appeal of an Administrative Decision)

REQUIRED ITEMS FOR A COMPLETE APPLICATION:

The following items are required in order to file an application for interpretation to the Board of Adjustment.

- ☒ A completed application with all information provided. Additional information may be provided as an addendum to the application.
- ☒ Standing to Appeal Status: A letter stating that the appellant meets the requirements as an Interested Party as listed in Section 25-1-131(A) and (B) of the Land Development Code. The letter must also include all information required under 25-1-132(C).
- ☐ Site Plan/Plot Plan drawn to scale, showing present and proposed construction and location of existing structures on adjacent lots.
- ☒ Payment of application fee for residential zoning or for commercial zoning. See Current Fee Schedule (<http://www.austintexas.gov/departments/fees>) for Applicable Fees. Checks should be made payable to the City of Austin.

**An appeal of an administrative decision must be filed by the 20<sup>th</sup> day after the decision is made (Section 25-1-182). Applications which do not include all the required items listed above will not be accepted for filing.**

**If you have questions on this process contact Leane Heldenfels at**

**512-974-2202 or [leane.heldenfels@austintexas.gov](mailto:leane.heldenfels@austintexas.gov).**

**To access the Land Development Code, go to  
<http://www.austintexas.gov/departments/online-tools-resources>**

CC

CC

# NOTICE OF APPEAL INFORMATION

Austin City Code 25-1-461 (see page 2 of 2 for appeal process)



## Planning and Development Review Department

Address of Property in Question

N/A

Permit Number

Appellant Filing Appeal

Katie VanDyk

Relationship to Property

Agent for Mat Gorman

Appellant's status as Interested Party

Requestor of original Land use Determination App

Appellant Contact Information

Permit Holder Contact Information

Name

Katie VanDyk

Name

Street

901 S. Mopac, Bldg 11, Ste 225

Street

City

Austin

State

TX

Zip

78746

City

State

Zip

Telephone

512-328-2008

Telephone

E-Mail

[REDACTED]

E-Mail

[REDACTED]

Date of Decision Being Appealed:

9/8/14

Date Appeal is Filed:

9/22/14

Decision being appealed: (use additional paper as required)

See attached

Reason the appellant believes the decision does not comply with the requirements of the Land Development Code (Title 25)

See attached

### BELOW FOR CITY USE ONLY

Hearing Date:

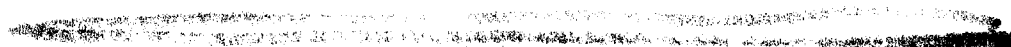
Board or Commission:

Action on Appeal:

Date of Action

Form Bldg 100 Page 1 of 2

The applicant must complete page 2 of 2 and sign before this application of appeal is complete. The application will not be processed unless the applicant reads and signs page 2 of 2.



Appeal Process

You may appeal this "STOP WORK ORDER", "REMOVE OR RESTORE", "REVOCATION" or "SUSPENSION OF PERMIT" in accordance with Land Development Code section 25-1-461 by following these requirements:

§ 25-1-461 APPEAL.

- (A) A person may appeal a stop work order, remove or restore order, revocation, or suspension issued under this division by giving written notice to the accountable official not later than the third day after:
  - (1) the stop work order or remove or restore order is posted; or
  - (2) the person receives notice of the revocation or suspension.
- (B) The notice of appeal must contain:
  - (1) the name and address of the appellant;
  - (2) a statement of facts;
  - (3) the decision being appealed; and
  - (4) the reasons the decision should be set aside.
- (C) The accountable official shall hear the appeal not later than the third working day after the appeal is filed. The appellant, the appellant's expert, and the department may offer testimony to the accountable official.
- (D) The accountable official shall affirm or reverse the department's decision not later than the second working day after the hearing. The official shall give written notice of the decision and a statement of the reasons for the decision to the appellant.
- (E) The appellant may appeal the accountable official's decision to the Land Use Commission or appropriate technical board by giving written notice to the accountable official and the presiding officer of the Land Use Commission or appropriate technical board not later than the third working day after receiving notice of the decision. The notice of appeal must contain the information described in Subsection (B).
- (F) The Land Use Commission or appropriate technical board shall hear the appeal at the next regularly scheduled meeting following receipt of the notice of appeal. An appeal is automatically granted if the Land Use Commission or appropriate technical board does not hear the appeal before the 21st day following receipt of the notice of appeal.
- (G) A stop work order, remove or restore order, suspension, or revocation remains in effect during the pendency of an appeal under this section.

Source: Section 13-1-69; Ord. 990225-70; Ord. 010607-8; Ord. 031211-11.

By signing this document, I attest to having read and understand my rights as granted by the Land Development Code for the process for appealing a stop work order, remove or restore order, revocation, or suspension.

Date: 9/22/14

Printed Name: Katie VanDyk

Signature: 

CC

CC





# City of Austin

Founded by Congress, Republic of Texas, 1839  
Planning and Development Review Department  
One Texas Center, 505 Barton Springs Road 5<sup>th</sup> Floor  
P.O. Box 1088, Austin, Texas 78767  
(512) 974-3207

September 8, 2014

Ms. Leslie Keyser  
McLean and Howard, LLP  
Barton Oaks Plaza Bldg II  
901 S. MoPac Expy #225  
Austin, TX 78746

Dear Ms. Keyser,

The City of Austin Planning and Development Review Department has reviewed the use determination your firm submitted regarding a sober living facility (City file # UD-2014-0001). Staff believes that the use as described would fall under the Group Home, Class I (General) land use classification if it had fewer than 15 residents. However, because the definition specifically states "not more than 15 residents" it cannot be classified as that use.

Further your firm argues that the use is not Congregate Living or Residential Treatment because the residents receive "care" rather than supervision. The Advanced English Dictionary defines supervision as "the management by overseeing the performance or operation of a group." Your letter spoke of personnel being on site 24 hours a day. It also outlines how residents must adhere to strict rules and a code of conduct or they are required to leave the program. In the opinion of the staff this is "supervision" and we believe supervision goes beyond restricting movement as outlined in your letter.

In your letter you also state that you believe it is not appropriate to apply the Residential Treatment classification to this facility. You argue that this classification is only appropriate for State licensed facilities, though this is not stated in the City's definition. You also state that the facility does not have "supervision, counseling or treatment." The staff position on "supervision" has already been outlined. And your letter does state that the residents "participate in coaching sessions, counseling sessions, accountability programs, acupuncture for addiction, yoga, etc." which the staff feels are in line with the definition.

The Congregate Living definition includes examples that do not seem to fit the use you have described. However, the Residential Treatment classification "includes alcohol and chemical dependency rehabilitation facilities, facilities to which persons convicted of alcohol or drug-related offenses are ordered to remain under custodial supervision as a condition of probation or parole, and residential care facilities and halfway houses for the

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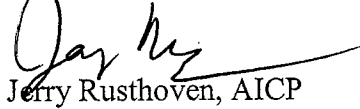
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emotionally ill." Given that this facility will serve more than 15 residents and that it is for those rehabilitating from alcohol or drug dependency, staff concurs that the appropriate land use is Residential Treatment.

I have included the definitions from the Code below for reference.

Sincerely,



Jerry Rusthoven, AICP

Manager

Current Planning Division

Cc: Gregory I. Guernsey, AICP, Director, PDRD

George Adams, Assistant Director, PDRD

Chris Johnson, Dev. Svcs. Mgr, DAC, PDRD

#### § 25-2-6 CIVIC USES DESCRIBED.

GROUP HOME, CLASS I (GENERAL) use is the use of a site for the provision of a family-based facility providing 24 hour care in a protected living arrangement for more than 6 but not more than 15 residents and not more than 3 supervisory personnel. This use includes foster homes, homes for the physically and mentally impaired, homes for the developmentally disabled, congregate living facilities for persons 60 years of age or older, maternity homes, emergency shelters for victims of crime, abuse, or neglect, and residential rehabilitation facilities for alcohol and chemical dependence.

CONGREGATE LIVING use is the use of a site for the provision of 24 hour supervision and assisted living for more than 15 residents not needing regular medical attention. This use includes personal care homes for the physically impaired, mentally retarded, developmentally disabled, or persons 60 years of age or older, basic child care homes, maternity homes, and emergency shelters for victims of crime, abuse, or neglect.

RESIDENTIAL TREATMENT use is 24 hour supervision, counseling, or treatment for more than 15 residents not needing regular medical attention. This use includes alcohol and chemical dependency rehabilitation facilities, facilities to which persons convicted of alcohol or drug-related offenses are ordered to remain under custodial supervision as a condition of probation or parole, and residential care facilities and halfway houses for the emotionally ill.

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**C. USE DETERMINATION APPLICATION**

**PROJECT INFORMATION: DEPARTMENTAL USE ONLY**

FILING DATE: _____	FILE NUMBER: _____
DUE DATE: _____	CASE MANAGER: _____
APPLICATION ACCEPTED BY: _____	

**APPLICANT INFORMATION**

Patrick Hudson, representative for	
Name: <u>Mathew Gorman</u>	Telephone: ( ) <u>(512) 328-2008</u>
Address: <u>901 S. Mopac Expressway, Bldg. II, Suite 225</u>	
City, State and Zip: <u>Austin, Texas 78746</u>	
Email: <u>[REDACTED]</u>	

Address (if applicable) N/A

Is this determination in connection with a specific project? Yes ☐ **No** ☒

Case number of all related cases (if applicable)

Description of proposed use (See attached)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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Land Use category sought (from LDC Chapter 25-2, Article 1. Zoning Uses):

Group Home, Class I (General)

Existing zoning N/A

Case Manager or DAC staff member N/A

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(See attached)

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