



FREDERICK

PLANNING

March 24, 2023

10198 Briarstone Ct
Frederick, MD
21702

Re: 23-239ZD: 510 S. Market Street

Dear Mrs. Kephart,

In response to your letter dated March 13, Staff has prepared the following information:

1. The property located at 510 S. Market Street is currently zoned R4, which is low density residential. According to the Land Management Code (LMC), the purpose of this zone is to *“provide for residences in an urban residential environment with a maximum density of four dwellings per acre. In addition, this district is intended to accommodate a complement of residential support uses normally utilized during the daily activities of residents, to protect these areas from the encroachment of incompatible uses and to guide development within the district to occur in a manner that complies with the Comprehensive Plan.”* The current and proposed use as a single-family residence is a permitted use within this district.
2. Per the memorandum written by City Attorney Sandra Nickols to Mayor O’Conner dated June 5, 2019, disabled individuals residing together in a home are considered a “family” for use purposes.
3. The applicant has stated that the Property is being to individuals who are recovering alcoholics. The mission is to provide a drug and alcohol-free environment, wherein the individuals can act as a family unit, focus on their continued sobriety, and provide each other mutual encouragement and support. The residents act as a single housekeeping unit, sharing typical family duties such as cooking, cleaning, and laundry. No onsite professional services are provided to the residents. The applicant is indicating that the Property is being used by individuals living together as a single housekeeping unit and is therefore properly classified as a single-family dwelling within the meaning of the LMC. Based on

the information provided at this time we can state that the Property is appropriately considered a single-family dwelling as opposed to an alternative living arrangement akin to a "regulated group home". (See LMC § 827.) Single family dwelling is a use permitted by right in the R4 zoning district, and thus no further zoning approvals would be necessary for the operation of such use.

4. The applicant is advised that residents cannot have separate living units within the home, and must continue to operate as a family to keep this approved status. No interior renovation or construction is proposed with this application. Per the applicant's March 24th email, there will be a minimum of 2 residents and a maximum of 12 at this location.
5. This property is located just outside of the Historic Preservation Overlay and as such, is not subject to any of the requirements of Section 423 of the LMC. Applicant is advised, however, that this property is deemed historic and lies within the National Register of Historic Places. This designation does not affect the use of the property nor it's allowed appearance.

If you have any further questions please don't hesitate to contact me at (301) 600-1770 or mrobyns@cityoffrederickmd.gov.

The purpose of the service provided by the Zoning Administrator regarding determinations/interpretations is to identify the zoning of a particular property, to verify that a use is permitted or permissible in a specific Zoning District and to clarify and interpret the Land Management Code. Any questions regarding specific regulations and requirements for a site or sites' compliance with the Land Management Code not addressed in this letter shall not be the responsibility of the Zoning Administrator. It is the responsibility of the applicant, property owner and/or property purchaser to review the project site plan and the Land Management Code for compliance.

This determination applies solely to the referenced property and is not binding upon the City, the Zoning Administrator or any other official with respect to any other property. No person may rely upon this determination with respect to any property other than the referenced property. Please be advised that any person aggrieved, or any officer, department or agency of The City of Frederick affected by an order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of the provisions of the Land Management Code may appeal said decision within thirty days to the Zoning Board of Appeals.

Sincerely,



Monica Robyns
City Planner

In Concurrence,

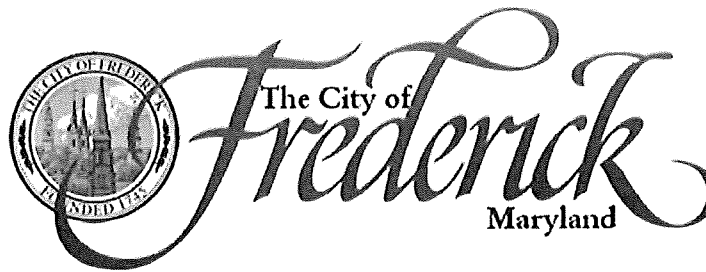


Joseph A. Adkins, AICP
Deputy Director for Planning

cc: Gabrielle Collard, Division Manager of Current Planning

Mayor

Michael C. O'Connor



Aldermen

*Kelly Russell
President Pro Tem
Derek T. Shackelford
Roger A. Wilson
Donna Kuzemchak
Ben MacShane*

MEMORANDUM

TO: Mayor O'Connor
FROM: Sandra Nickols, City Attorney
Joe Adkins, Deputy Director for Planning/Zoning Administrator
DATE: June 5, 2019
SUBJECT: 439 Delaware Road

This memorandum relates to a house that is being characterized as an “addiction recovery safe house”, located at 439 Delaware Road (the “Property”). The Property is located within the R6 zoning district and its approved use is that of a single family dwelling. The LMC defines “single family dwelling” as “a dwelling designed for and used exclusively by one family”. The LMC further defines “family” as “[t]wo or more persons living together as a single housekeeping unit, but not including a group of persons occupying a rooming house, tourist home, motel, hotel, group home, nursing home, fraternal or similar living arrangement.” LMC § 1002.

Peter Fitzpatrickⁱ has stated that the Property is being leased to an average of 12 individuals who are recovering alcoholics and/or drug addicts who have completed their treatment. The mission is to provide a drug and alcohol-free environment, wherein the individuals can act as a family unit, focus on their continued sobriety, and provide each other mutual encouragement and support. The residents act as a single housekeeping unit, sharing typical family duties such as cooking, cleaning, and laundry. No onsite professional services are provided to the residents, who rent individually on a week-to-week basis. In sum, on behalf of his clients, Mr. Fitzpatrick is taking the position that the Property is being used by individuals living together as a single housekeeping unit and is therefore properly classified as a single family dwelling within the meaning of the LMC.

Based on the facts as alleged, at this time we cannot state definitively that the Property is appropriately considered a single family dwelling as opposed to an alternative living arrangement akin to a “regulated group home”. (See LMC § 827.) If we deem the use to be that of a single family dwelling, the inquiry stops there; single family dwelling is a use permitted by right in the R6 zoning district, and thus no further zoning approvals would be necessary for the operation of such use. On the other hand, if we were



to conclude that we were not convinced that the residents were living as a single housekeeping unit, we would be obligated to consider the requirements of the federal Fair Housing Act (FHA).

It is well established that individuals recovering from drug or alcohol addiction are handicapped persons within the meaning of the FHA. A person can establish a violation under the FHA by showing the disparate impact of a policy on a particular group. It is likely that determining that the residents are not a family and requiring the residents and owners to cease the current use of the Property would actually or predictably result in discrimination, forming the basis for a disparate impact claim.

Even without a disparate impact claim, it is also a discriminatory practice under the FHA to fail to make reasonable accommodations in rules, policies, practices or services, when such accommodations may afford handicapped persons equal opportunity to use and enjoy a dwelling. Courts have widely applied the reasonable accommodations requirement to zoning ordinances and other land use regulations and practices. In situations substantially similar to ours, courts have held that reasonable accommodations such as modifying the definition of family are warranted in order to enable handicapped individuals the same opportunity to rent a house as persons without handicaps.

Based on the foregoing, we would not recommend attempting to impose any zoning-related enforcement actions at this time. This memorandum only addresses this matter from a zoning perspective. The Property remains subject to life/safety codes such as the building code, fire code, and property maintenance code.

¹ Peter Fitzpatrick is an attorney with Weaver & Fitzpatrick, P.A. He represents Solid Ground Recovery, LLC as well as its members, Bradley Meadors and Sean Nicholson, in their individual capacities. The LLC and Mr. Nicholson act as managers of the Property. Per SDAT, Mr. Meadors and Diane Schuster are the owners of the Property.

Monica Robyns

From: Austin Scates <austinscates@yahoo.com>
Sent: Thursday, March 23, 2023 4:56 PM
To: Monica Robyns
Subject: Re: Group home at 510 S. Market

Caution External Email: This email originated from outside of the City of Frederick. Do not respond, click links, or open attachments unless you recognize the sender and know the content is safe.

Hello Monica-

The home would have a minimum of 2 residents and a max of 12. This is the first home that the entity Pura Vida has purchased however the organization renting the property from us has several other sober livings in Frederick city. Let me know if you need anything else.

Thanks
Austin

Sent from my iPhone

On Mar 23, 2023, at 10:19 AM, Monica Robyns <mrobyns@cityoffrederickmd.gov> wrote:

One more question for you; is Pura Vida Ventures a larger organization with other homes in other locations, or is this the one and only home being used for this purpose by your organization?

Thank you kindly,
Monica

From: Monica Robyns
Sent: Wednesday, March 22, 2023 4:10 PM
To: austinscates@yahoo.com
Subject: Group home at 510 S. Market

Hello Kelsea,

I'm writing your zoning determination, and need a bit more information. Can you tell me how many individuals will be living in the home at any given time? A minimum and maximum number of residents would be great; I understand that the numbers may vary over time but I'm looking for a general range.

Thank you kindly,
Monica

Sent from Mail for Windows

To whom it may concern:

We are writing this letter as a formal request for a zoning determination for the property located at 510 South Market St Frederick MD. Pura Vida Ventures LLC intends to purchase this property, presently in R4 zoning, to be used as a single family home for those in recovery from substance use disorder. It is our understanding that The City of Frederick states that single family homes are a permitted use in R4 zoning districts.

The individuals who will live in this home act as a family unit, working together on household chores, cooking meals together and working to maintain sobriety. There will be no professional services conducted at this home. The Fair housing act (FHA) protects individuals who are considered to have a disability, those in recovery from drug and alcohol use are considered disabled and in turn are protected by FHA. With the residents acting as a family unit, and the requirements to make reasonable accommodations under FHA we are requesting that the City of Frederick not impose any possible zoning restrictions related to this property, as the present R4 zoning, allows for the use of a single family dwelling.

This home located at 510 South Market St. presently has two full kitchens, 6 bedrooms, 4.5 bathrooms and is a total of 4311 sqft. No construction or renovations are being proposed at this time.

Pura vida ventures, Kelsea Kephart is the name on the portal, email address austinscates@yahoo.com

Sincerely,
Kelsea Kephart
Owner- Pura Vida Ventures