

ORDINANCE NO. 2005 - 7

AN ORDINANCE AMENDING SECTION 2-2-B-33, DEFINITION OF RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY; DELETING SECTION 2-2-B-113; AMENDING SECTION 3-42, RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY; AND AMENDING SECTION 3-14-B-4, PARKING SPACES; OF THE UTAH COUNTY ZONING ORDINANCE

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF UTAH ORDAINS AS FOLLOWS:

ENT 31565:2005 PG 1 of 7
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2005 Mar 28 11:32 am FEE 0.00 BY SFS
RECORDED FOR UTAH COUNTY COMMISSIONERS

Part I: Findings

1. The Board of County Commissioners finds that Utah State law (Sec. 17-27-605 *Utah Code Annotated* 1953, as amended) provides that, to the extent required by federal law, a residential facility for persons with a disability (hereinafter RFPD) shall be a permitted use in any zoning area where similar residential dwellings that are not residential facilities for persons with a disability are allowed.
2. Also according to Utah State law (Sec. 57-21-2(9) *Utah Code Annotated* 1953, as amended), a disability means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment, provided however, that the term disability does not include current illegal use of, or addition to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.
3. To make the RFPDs equivalent in nature to other dwellings in zones comprised of one-family dwellings, the Board of County Commissioners finds that RFPDs should be required to comply with all standards such as minimum lot area, lot width, building setback, frontage, driveway access, dwelling size, roof pitch, eave length, building height, re-vegetation of cuts and fills, water supply, sewage disposal, and all other requirements applicable to similar dwellings in zones comprised of one-family dwellings.
4. The Board of County Commissioners finds that off-street parking for an RFPD must comply with requirements for off street parking as described in section 3-14 of the Utah County Zoning Ordinance.
5. The Board of County Commissioners finds that the most equitable and practical limit on the number of occupants allowed in an RFPD is a number no greater than two-and-one-half (2.5) times the average household size in the Utah County (Provo-Orem) Standard

Metropolitan Statistical Area in the most recent United States Decennial Census. Ninety-seven percent of all households in Utah County have fewer than 2.5 times the average household size ($3.59 \times 2.5 = 9.0$ persons per household). The Board of County Commissioners finds it in the best interest of Utah County to limit the number of residents in a RFPD to 2.5 times said average household size.

6. The Board of County Commissioners finds that RFPDs serve to deinstitutionalize persons with a disability by allowing persons with a disability to be integrated in to residential neighborhoods. The Board of County Commissioners finds further that an adequate separation between RFPDs and like land uses is necessary in order to further the goal of Utah County to deinstitutionalize persons with a disability. Based upon the large amount of acreage, the prevailing lot sizes, and the "satellite-greenbelt" settlement pattern in the unincorporated area of Utah County, the Board of County Commissioners finds that a separation of 2500 feet will both provide an ample number of places where RFPDs can be placed, and will serve to accomplish the goal of the County to deinstitutionalize persons with a disability into residential neighborhoods.

Part II:

Section 2-2-B-33 of the *Utah County Zoning Ordinance* is hereby amended to add a new subsection j; the balance of section 2-2-B-33 shall be unchanged from the present wording. Said subsection j of section 2-2-B-33 shall read as follows:

j. Residential Facility for Persons with a Disability.

A type of dwelling defined by section 17-27-605(1)(b) *Utah Code Annotated* 1953, as amended, or its successor statute, to mean: "a residence in which more than one person with a disability resides and is licensed or certified by the [Utah] Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities [*Utah Code Annotated* 1953, as amended]; or is licensed or certified by the [Utah] Department of Health under Title 26, Chapter 21 [*Utah Code Annotated* 1953, as amended], Health Care Facility Licensing and Inspection Act." As used herein, "disability" is mandated to have the meaning found in section 57-21-3 *Utah Code Annotated* 1953, as amended, which is "a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having an impairment[;] 'disability' does not include current illegal use of, or addiction to, any federally controlled substance as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802."

Part III:

Section 2-2-B-113 of the *Utah County Zoning Ordinance* is hereby repealed; Section 2-2-B-113.5 of the *Utah County Zoning Ordinance* is hereby renumbered as Section 2-2-B-113.

Part IV:

Section 3-42 of the *Utah County Zoning Ordinance* is hereby amended to read as follows:

3-42: Residential Facilities for Persons with a Disability**A. Purpose:**

The Purpose of this section is to comply with Utah State law (Sec. 17-27-605 *Utah Code Annotated* 1953 as amended), and to avoid discrimination in housing against persons with a disability pursuant to the Utah Fair Housing Act and the federal Fair Housing Act as interpreted by courts whose decisions are binding in Utah.

B. Permitted Uses:

1. Permitted Uses. A residential facility for persons with a disability shall be issued a permit by the Zoning Administrator as a permitted use in the residential zones identified by this ordinance (RE: section 2-2-B-149) if all of the standards of this section are met. For treatment centers or facilities which have functions other than those strictly residential in nature; or which otherwise do not meet the standards below, applicants are referred to the conditional uses approvable in the various zoning districts in the county.
2. Termination. A use permitted by this section is nontransferable and shall terminate if:
 - a. the facility is devoted to a use other than a residential facility for persons with a disability, or
 - b. any license or certification issued by the Utah Department of Health or the Department of Human Services for such facility terminates or is revoked, or
 - c. the facility fails to comply with the requirements set forth in this section.

C. Development Standards.

The development standards set forth in this section shall apply to any residential facility for persons with a disability.

1. Building, Safety and Health Regulations. The residential facility for persons with a disability shall comply with building, safety, and health regulations applicable to similar structures.
 - a. All requirements for minimum lot area, lot width, building setback, frontage, driveway access, dwelling size, roof pitch, eave length, building height, re-vegetation of cuts and fills, water supply, sewage disposal, and all other requirements applicable to one-family dwellings shall be met by a residential facility for persons with a disability, unless a greater or more strict standard is required by health codes, state building codes, state fire codes, or applicable county ordinances.
 - b. The facility shall comply with off-street parking requirements as set forth in section 3-14 of the *Utah County Zoning Ordinance*.
 - c. Any sign identifying the residential facility for persons with a disability shall meet the size, lighting, location, setback, and other standards for a name plate.
2. Separation Required. No residential facility for persons with a disability shall be established or maintained within two thousand five hundred (2,500) feet, measured in a straight line between the closest lot or parcel line of the subject facility, and the closest lot or parcel line of any of the following facilities:
 - a. a residential facility for persons with a disability; or
 - b. a residential treatment center; or
 - c. a youth group home.
3. No Dangerous Persons Permitted. No residential facility for persons with a disability shall be made available to an individual whose occupancy would:
 - a. constitute a direct threat to the health or safety of other individuals, or
 - b. result in substantial physical damage to the property of others.
4. Controlled Substance Conviction. Pursuant to 42 U.S.C. §3607(b)(4), no residential facility for persons with a disability shall be made available to a person who has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 802 of Title 21 of the United States Code.

5. License and Certification. Prior to occupancy of any residential facility for persons with a disability, the person or entity operating the facility shall:
- a. provide to Utah County a copy of the licenses or certifications as issued by the Utah Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities, *Utah Code Annotated* 1953, as amended; or by the Utah Department of Health under Title 26, Chapter 21 *Utah Code Annotated* 1953, as amended, Health Care Facility Licensing and Inspection Act, or their successor statutes, as a residential facility for persons with a disability; and
 - b. certify in a sworn statement that no person will reside or remain in the facility whose occupancy would:
 - (i) constitute a direct threat to the health or safety of other individuals, or
 - (ii) result in substantial physical damage to the property of others.
6. Occupancy. The number of clients or residents in a residential facility for persons with a disability, excluding the non-residing staff members, shall be no greater than two-and-one-half times the median household size for the Utah County (Provo-Orem) Standard Metropolitan statistical area of the most recently published United States Decennial Census.

D. Reasonable Accommodation:

1. Reasonable Accommodation Required. None of the requirements of this section shall be interpreted to limit any reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for persons with a disability.
2. Application. Any person or entity wanting a reasonable accommodation shall make application therefore to the Utah County Zoning Administrator and shall articulate in writing the nature of the requested accommodation and the basis for the request.
3. Decision. The Utah County Zoning Administrator shall render a decision on each application for a reasonable accommodation. The decision shall be based on evidence of record. The Zoning Administrator may approve a reasonable accommodation request, in whole or in part, if the Zoning Administrator finds all of the following:
 - a. that the requested accommodation will not undermine the legitimate purposes of existing zoning regulations notwithstanding the benefit that

the accommodation would provide to a person with a disability; and

- b. that, but for the accommodation, one or more persons with a disability likely will be denied an equal opportunity to enjoy housing of their choice; and
- c. that the accommodation is the minimum amount necessary to provide one or more persons with a disability an equal opportunity to enjoy housing of their choice.

- 4. Appeal. The decision of the Zoning Administrator on the request for reasonable accommodation may be appealed to the Board of Adjustment in the manner provided for appeals of decisions of the Zoning Administrator in applying the *Zoning Ordinance*, as set forth in Section 7-13-A and Section 7-19 of the *Utah County Zoning Ordinance*.

Part V:

Section 3-14-B-4 of the *Utah County Zoning Ordinance* is hereby amended to read as follows:

Nursing homes, residential treatment centers, residential facilities for persons with a disability, and residential facilities for elderly persons shall have one (1) visitor parking space per four (4) patron beds, two (2) parking spaces for any resident family, and one (1) parking space for each employee coming to work during daylight hours.

Part VI:

Insert pages reflecting the above amendments, including a title page which bears the enactment date of this ordinance, are hereby ordered to be filed in the three copies of the Utah County Zoning Ordinance which are on file with the Utah County Clerk/Auditor.

Part VII:

If any of the sections, sentences, clauses or provisions of this ordinance shall for any reason be adjudged inapplicable or invalid by a court of competent jurisdiction, such shall not affect or invalidate the remaining portion contained herein.

Part VIII:

This ordinance shall take effect: 1) ninety (90) days. after it is passed; or 2) after it has been published; whichever date is later.

PASSED and ordered published this 22nd day of March, 2005.

UTAH COUNTY COMMISSION

VOTE

Jerry D. Grover
Jerry D. Grover, Chairman

Aye

Larry A. Ellertson
Larry A. Ellertson, Commissioner

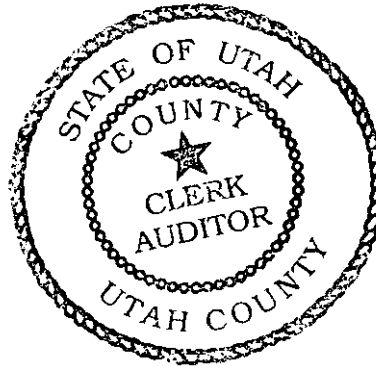
Aye

Steve White
Steve White, Commissioner

Aye

ATTEST:
Kim T. Jackson
Utah County Clerk/Auditor

By: Linda Stebbins
Deputy



APPROVED AS TO FORM:
C. Kay Bryson
Utah County Attorney

By: [Signature]
Deputy

Date of Publication: _____ [once only, as soon as possible]

PROOF OF PUBLICATION

from

The Daily Herald

STATE OF UTAH }
Utah County } SS.

NOTICE
ORDINANCE NO. 2005-7, ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF UTAH COUNTY, UTAH ON MARCH 22, 2005, AMENDING SECTION 2-2B-33, DEFINITION OF RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY; DELETING SECTION 2-2-B-113; AMENDING SECTION 3-42, RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY; AND AMENDING SECTION 3-14-B-4, PARKING SPACES, OF THE UTAH COUNTY ZONING ORDINANCE.
A COMPLETE COPY OF THE ORDINANCE IS AVAILABLE AT THE COUNTY CLERK/AUDITOR'S OFFICE. COMMISSIONER JERRY D. GROVER, COMMISSIONER STEVE WHITE, AND COMMISSIONER LARRY A. ELLERTSON VOTED IN FAVOR OF THE ORDINANCE.
Legal Notice 159564 Published in The Daily Herald March 27, 2005

I, Gayleen Wilson, being first duly sworn depose and say that I am the Legal Billing Clerk of the Daily Herald, a newspaper of general circulation, published seven times each week at Provo, Utah, County of Utah; that the notice attached hereto, 159564-NOTICE ORDINANCE N, and which is a copy, was published in said newspaper the first publication having been made on the 27th day of March, 2005, and the last on the 27th day of March, 2005; that said notice was published in the regular and entire issue of every number of the paper during the period and times of publication, and the same was published in the newspaper proper and not in the supplement.

Gayleen Wilson

Subscribed and sworn before me
this 27th day of March, 2005.

Denise K. White Notary Public

Residence: Orem
My commission expires 2/20/2007

