



CONSTRUCTION BOARD OF APPEALS

November 8, 2017

CITY OF PORTAGE
CONSTRUCTION BOARD OF APPEALS

A G E N D A

November 8, 2017

The City of Portage Construction Board of Appeals will hold a meeting on November 8, 2017 at 5:00 PM in Conference Room 1, Portage City Hall, 7900 South Westnedge Avenue.

APPROVAL OF MINUTES:

*June 6, 2017

OLD BUSINESS:

None

NEW BUSINESS:

*2314 Helen Avenue – Requested Interpretation of Occupancy Classification for Lighthouse Autism Center

STATEMENT OF CITIZENS:

ADJOURNMENT:

Material Transmitted

Star (*) indicates printed material within the agenda packet.

CITY OF PORTAGE CONSTRUCTION BOARD OF APPEALS

Minutes of Meeting – June 6, 2017

The City of Portage Construction Board of Appeals meeting of June 6, 2017 was called to order at 5:00 PM in Conference Room #1 of Portage City Hall, 7900 South Westnedge Avenue, Portage, Michigan.

MEMBERS PRESENT:

Gary Gilchrist; William Leach; Barney Martlew; Lawrence Schmidt; Sheldon Smith and George Theodoru

MEMBERS ABSENT:

Peter Carlson

MEMBERS EXCUSED:

.None

IN ATTENDANCE:

Terry Novak, Deputy Director of Building and Housing Services and Mike Beery Senior Building Inspector

APPROVAL OF MINUTES:

The minutes of September 7, 2016 were approved.

BOARD ACTION:

1411 West Centre Avenue – Show Cause Hearing

Chairman Schmidt opened the hearing. Terry Derhammer, property owner was in attendance. Deputy Director Novak provided information to the Board regarding the matter including the staff recommendation that the property owner be required to raze and remove the house and accessory building within 30 days. Deputy Director Novak further advised that the house had been secured from causal entry as required at the Boards' September 7, 2016 meeting, however, the structure was still condemned by Kalamazoo County due to methamphetamine contamination and the previous fire damage to the house still had not been repaired. Chairman Schmidt questioned Mr. Derhammer as to why the house had not been decontaminated and cleared as required by the County. Mr. Derhammer responded that he did not believe the house to actually be contaminated as indicated. Mr. Derhammer requested additional time be provided as he was still trying to sell the property. Discussion ensued regarding the lack of progress since the September 7, 2016 meeting and the need for action.

A motion was made by Member Sheldon that the single-family house and accessory building located at 1411 West Centre Avenue be razed and removed from the site within 30-days. Failure to comply with

the order will require that the matter be referred to City Council with a recommendation that the city be authorized to raze and remove the house, accessory building and any junk and debris on the site. Any and all costs incurred for such action shall be due and payable as permitted in the City of Portage Unsafe Structure Ordinance. Member Theodoru seconded the motion and it passed unanimously.

ADJOURNMENT:

The Board meeting adjourned at 5:45 PM

Respectfully Submitted,



Terry A. Novak,
Deputy Director of Building and Housing Services



CONSTRUCTION BOARD OF APPEALS APPLICATION

I (name) Gregg Maggioli/Lighthouse Autism Center of (address) 2314 Helen Ave. Portage, MI hereby appeal to the Construction Board of Appeals for an interpretation from a decision of the Department of Community Development and/or Fire Department, classifying the Lighthouse ABA therapy facility as an I-4 occupancy when it is more properly classified as Group B occupancy. In addition, in the event that the Board of Appeals interprets the code as to classify this use as an I-4 occupancy as opposed to a Group B occupancy a variance is requested to allow the ABA Therapy facility use without the installation of a fire suppression system and other related requirements, which caused the Department of Community Development and/or Fire Department to deny an occupancy permit or other necessary approvals. Lighthouse operates an ABA therapy facility, a medical intervention, very similar to a speech therapy and occupational therapy. These therapies are considered "outpatient services" by federal government, IRS, Medicaid, Medicare, Anthem, Blue Cross Blue Shield, etc. Locally, Western Michigan University, which is world renown for its Masters and Ph.D. Applied Behavior Analysis (ABA) programs just opened the off-campus Kalamazoo Autism Center on Sept 17th, 2016. This is a standalone building located at 4200 S Westnedge Ave, Kalamazoo, MI 49008. This newly renovated center was not required to install a fire suppression system.

Lighthouse delivers therapy for autistic youth in a very similar format to that provided by speech or occupational therapists in their offices, in a one on one setting, meaning one therapist working with one child. Speech and "Outpatient services" provided by speech or occupational therapists are not required to have a fire suppression system or the other related items being required of the Lighthouse Autism Center. We are requesting a variance to the requirement of adding fire suppression system and the other facilities required of I-4 occupancies. As ABA therapy is a necessary medical intervention for those diagnosed with autism, and does not fit with the definition of "custodial care". It is more properly classified as an "outpatient medical clinic". This type of use has been determined to be a Group B occupancy in other jurisdictions.

ADDRESS OF PROPERTY:

Street Address: 2314 Helen Ave., Portage, MI

Lot _____ of _____ Plat

Legal Description (if unplatted land): _____

TYPE OF HEARING:

Code interpretation/variance

Interpretation relates to Article: Fire Code 308.5 Group, I-4 Dare Care Facilities: Group B, Outpatient Medical Care Facility.

Reason for request (Hardship): The Variance is necessary due to the extreme cost of installing a fire

suppression system and the other facilities required of I-4 occupancies which are not required of Group B occupancies and other similar uses and the applicants view is that safety of the patients receiving outpatient services is satisfied without said additional requirements based upon staffing and how the services are delivered.

_____ Alternate materials and methods of construction: _____

_____ Reason for request (Hardship): _____

_____ Show Cause Hearing for condemnation proceedings (Construction Board of Appeals only):

Has any previous application or appeal been filed in connection with this building/location? No _____ If yes, explain:

Applicant's interest in premises affected: Applicant is a lessee and intends to open an ABA therapy center to treat children and families impacted by Autism on an outpatient basis.

Signature of Applicant: 

Date: 11-2-2017

Phone Number: 317-753-5179

TO: Construction Board of Appeals **DATE:** November 3, 2017

FROM: Vicki Georgeau, Community Development Director
Nick Arnold, Public Safety Director

SUBJECT: Request for interpretation from 2015 Michigan Building Code (MBC) and 2015 International Fire Code (IFC) provisions

CODE SECTION: Chapter 3 of the MBC (308.6); Chapter 2 of the IFC (202)

APPEAL: The Building Official and Fire Marshal have classified the use of the building at 2314 Helen Avenue as an Institutional Group (I-4) facility. The applicant is requesting a) an interpretation from the Construction Board of Appeals that the use be classified as a Business (B) occupancy; or b) an appeal from the requirements to install a fire sprinkler system and related improvements associated with an Institutional (I-4) occupancy.

STAFF RECOMMENDATION:

City staff became aware of the proposed Lighthouse Autism facility at 2314 Helen Avenue when the Fire Marshal was contacted by Michigan Security and Lock to discuss locking arrangements for the ingress and egress functions of the exterior doors. The building at 2314 Helen is an existing Business (B) occupancy that is approximately 9,000 square feet. The applicant, Lighthouse Autism Center, is proposing to occupy a 3,000 square foot portion of the building to perform Applied Behavior Analyses (ABA) therapy for autistic children. The applicant will have approximately nine patients and 13 staff members at any one time in the facility.

According to Gregg Maggioli, Executive Director of the Lighthouse Autism Center, the patients in the facility are clinically diagnosed on the autism spectrum with varying levels of function. These patients are referred for treatment through their primary care provider. These patients receive between 10 and 40 hours of treatment a week on a one patient to one provider basis. Parents typically drop the patients off and pick them up at a scheduled time. In order to prevent elopement of the patients, the facility has proposed delayed egress locks, or card key access for all existing exterior doors.

The patients, according to Mr. Maggioli, are not capable of self-preservation. This was conveyed in a conversation on August 11, 2017 and again during a presentation at the facility on September 19, 2017. Each staff member is trained in the "transportation" of the patients. In an emergency situation, the staff is responsible for getting the patients out of the building, even if they have to lift

the patient and carry them out. As conveyed by Mr. Maggioli to city staff, the patients are treated using an intensive form of therapy called Applied Behavior Analysis. This form of therapy is used to develop new skills, shape and refine previously learned skills, and decrease socially significant problem behavior. The goal of this treatment style is to gradually increase appropriate behavior, while simultaneously decreasing problem behaviors.

TYPICAL LIGHTHOUSE STAFFING RATIO



- All Lighthouse staff are certified in Crises Intervention Training (CPI™)
- Nonviolent Crises Intervention
- Transportation
- All Lighthouse staff carry two way radios for center wide communication



According to posters found inside the proposed facility, skills that must be developed are independence with eating, cleaning up after oneself, dressing, brushing teeth, washing hands and face, toileting, and independent living skills. In addition to these skills, language skills, item recognition, and direction following are also developed (see attached pictures).

Code Interpretation: The 2015 MBC and IFC define an Institutional Group I and Custodial Care as follows:

"Institutional Group I occupancy includes, among others, the use of a building or structure, or a portion thereof, in which care or supervision is provided to persons who are or are not capable of self-preservation without physical assistance or in which persons are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. Institutional occupancies shall be classified as Group I-1, I-2, I-3 or I-4." (308 MBC and 202 IFC)

"Custodial Care. Assistance with day-to-day living tasks; such as assistance with cooking, taking medication, bathing, using toilet facilities and other tasks of daily living. Custodial care includes persons receiving care who have the

ability to respond to emergency situations and evacuate at a slower rate and/or who have mental and psychiatric complications.” (202 MBC and IFC)

The Building Official and the Fire Marshal have concluded that the nature of the patients, the inability of the patients to provide self-preservation, and the facility providing custodial care, make this occupancy an Institutional Use. The definition of an I-4 according to the 2015 MBC and IFC is below.

“Institutional Group I-4, day care facilities. Institutional Group I-4 shall include buildings and structures occupied by more than five persons of any age who receive custodial care for less than 24 hours by persons other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. This group shall include, but not be limited to, the following: Adult day care, Child day care” (308.6 MBC and 202 IFC)

The Building Official and Fire Marshal have concluded that I-4 is the correct classification for the facility. The patients are in the care of persons other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. There are expected to be more than 5 patients in the facility at any given time, these patients remain in the facility for less than 24 hours at a time, receive custodial care and are not capable of self-preservation. This fulfills all three elements of the I-4 Use Group.

For additional clarification, and because the applicant disagrees with the use classification of I-4 for the facility, a request was transmitted to the International Code Council (authority responsible for code development) seeking a technical opinion. In response, the technical opinion attached was received ICC Senior Technical Staff indicating that an I-4 occupancy classification for the use would be warranted on the need for custodial care. Mr. Holland indicated the opinion was based on the proposed use of the facility providing outpatient pediatric therapy services to produce improvements in communication, behaviors, social relationships and self-care for children diagnosed with autism by certified behavior and speech therapists.

It is the recommendation of the Department of Community Development and the Department of Public Safety that the proposed use be classified as an Institutional Group I-4. It is further recommended that all Building and Fire Code requirements associated with an I-4 occupancy be required for the facility for the life safety of the occupants. While Lighthouse Autism Center is seeking to improve the independence of its patients through ABA therapy, these patients still need assistance performing life tasks through custodial care. The patients are not capable of self-preservation, require continually monitoring by staff, and are not able to perform daily living tasks independently.

Attachments: Photographs of signage from the facility
Email correspondence from Chris Holland, ICC Senior Technical Staff Member

Bathroom

The bathroom is not just used for toileting, though we do work on that as well!



Lessons learned in the bathroom can be anything from toileting to independent living skills:

- Dressing
- Brushing teeth
- Washing hands or face

All of these skills are taught at an age and development level appropriate for each individual child.



Kitchen

More than a kitchen!
This area provides a great opportunity to learn.



The kitchen is used for:

- Teaching independence with feeding & food preparation
- Self Help skills (cleaning up after oneself)
- Learning conversation skills in a more natural setting
- Follow independent routines (get lunch from fridge...)

October 30, 2017

Code Section: Chapter 3 in the 2015 IBC

Terry,

This e-mail is in response to your e-mail of October 24, 2017.

When considering the use group classification for the autism center that you have described, I think I would consider either a Group E or I-4. Group E is for more than 5 children older than 2 1/2 years old who receive personal care services for fewer than 24 hours a day. Personal care services are defined as the care of persons who do not need medical care and involves the responsibility for the safety of the persons while inside the building. Group I-4 is for more than 5 children of any age who receive custodial care for fewer than 24 hours a day. Custodial care is defined as assistance with day-to-day living tasks for persons who have the ability to respond to an emergency situations and evacuate at a slower rate and/or who have mental and psychiatric complications.

The description you provided states that the facility will provide "pediatric care services to produce improvements in communication, behaviors, social relationships and self-care for children..." Based on your description, this would seem to fit into custodial care, and thus warrant, in my opinion, a Group I-4 occupancy classification. With that being said, the code does not specifically address the level of care anticipated or required for autistic children at an autism center.

Code opinions issued by ICC staff are based on ICC published codes and do not include local, state or federal codes, policies or amendments. This opinion is based on the information which you have provided. We have made no independent effort to verify the accuracy of this information nor have we conducted a review beyond the scope of your question. This opinion does not imply approval of an equivalency, specific product, specific design, or specific installation and cannot be published in any form implying such approval by the International Code Council. As this opinion is only advisory, the final decision is the responsibility of the designated authority charged with the administration and enforcement of this code.

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Sincerely,

Chris Holland
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From: Terry Novak [<mailto:novakt@portagemi.gov>]

Sent: Tuesday, October 24, 2017 9:54 AM

To: Renee Testroet
Subject: RE: Code opinion request

Reference Section:

Code: 2015 International Building Code
Section: Chapter 3, Use and

Occupancy Classifications

The proposed autism center

design/function are as

follows:

Building: 3,000 square foot tenant suite located within an existing single-story metal concrete commercial building.

Proposed Use: Provide outpatient pediatric therapy services to produce improvements in communication, behaviors, social relationships and self-care for children diagnosed with autism by certified behavior and speech therapists. The primary activity will occur in individual treatment rooms (see attached floor plan and information regarding staff/therapists, etc.). The children will be dropped off at the facility for sessions that may last several hours (10-40 hours/week). Resident or overnight stay will not occur. There is at least one certified therapist with the child from the time of arrival at the facility until time of departure. Typical staffing ratio is 9 full time certified therapists & behavior analysts assigned to every 6 children (1.5 staff for every child). What occupancy classification should be assigned to the autism center?

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