

Plank Law Firm
A Legal Professional Association

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June 21, 2016

Shane Ewald
City Attorney
City of Gahanna
200 S. Hamilton Rd.
Gahanna, OH 43230

Via E-mail Only

RE: Gahanna Code

Shane,

I wanted to follow up from our conversation Friday with an explanation of our reading of the Gahanna Code before I call you this afternoon. This analysis focuses only on the Code and its application to my client's use and not on the fact that similar type uses may be located in different zoning districts within Gahanna.

My client's property is zoned CC, Community Commercial District. Section 1153.03(a) of the Gahanna Code sets forth the uses permitted in the CC, District. Subsection 2 of Section 1153.03(a) lists "809 Health and allied services, not elsewhere classified." The reference to "809" is from Major Group 80 - Health Services, contained in the Standard Industrial Classification Manual. Number 809 has three (3) subgroups. Subgroup "8093 Specialty Outpatient Facilities, Not Elsewhere Classified" specifically lists: Alcohol treatment, outpatient clinics; Drug treatment, outpatient clinics; and Outpatient treatment clinics for alcoholism and drug addiction. Subgroup 8093 best describes my client's intended use of the property. Based on the above, I believe it's clear that my client's intended outpatient use is permitted in the CC, District.

My client also proposes to use the property, a former nursing home, for living quarters for inpatient treatment. As to that component of my client's use of the property, Code Section 1153.03(b) lists the conditional uses permitted (subject to Chapter 1169) in

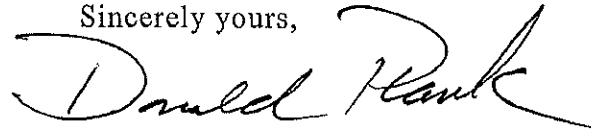
Shane Ewald
June 21, 2016
Page 2

the CC, District. Subsection (2) thereof lists: "Residential Living quarters as an integral part of a permitted use building." I am not sure how this subsection has been interpreted in the past, but a simple reading of the language supports our position that residential living quarters is permitted within a building used for a Section 1153.03(a) permitted use.

Shane, we fully understand that the residential component requires Planning Commission approval of a conditional use application. We make no claim that my client is entitled to the residential component of the permitted use for the property as a matter of right. We are prepared to file a conditional use application and present our request to the Planning Commission.

Thank you for your attention to this matter. We will talk this afternoon, if you are available.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Donald Plank". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Donald T. Plank

DTP/bp

372.00//Corres/LtrEwald Gahanna Code (6-21-16)

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December 5, 2016

Shane Ewald
City Attorney
City of Gahanna
200 S. Hamilton Rd.
Gahanna, OH 43230

Via E-mail Only

RE: Residential Rehabilitation Facility, 121 James Road

Shane:

This correspondence is intended to put the City of Gahanna on notice that all the residents at the proposed above-referenced facility (the "Facility") will be individuals recovering from drug and/or alcohol addiction. As such, all are considered by the Fair Housing Act (the "Act")¹ to be handicapped and thus, afforded the protection of the Act relative to their choice of housing.

As was explained when we met with the City, individuals will reside at the Facility for periods of time ranging from thirty (30) to ninety (90) days. During that time, the individuals will receive therapy necessary to assist them with major life activities, i.e., job retention, parenting, social interaction, etc. During that time, the Facility will be the residents' home for practical and, consequently, legal purposes.

In addition to prohibiting discrimination of the handicapped in their choice of housing, the Act requires "reasonable accommodation in rules, policies, practices or services when such accommodation may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling."² As you know, the Facility is intended to occupy the existing nursing home building at 121 James Road. The proposed use of the building by Access Energy is, in many respects, identical to that of a zoning-permissible

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601-19.

² See *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 (E.D.N.Y. 1993), citing 42 U.S.C. § 3604(f)(3)(B).

Shane Ewald, Esq.
December 5, 2016
Page 2


nursing home use, except for the nature of the handicap of the residents and the level of therapy provided.

It is not necessary at this time that the parties agree as to what would constitute a reasonable accommodation by the City in its interpretation of its zoning code relative to the Facility. I would opine, however, that the current interpretation by the City that the proposed use is not a permitted use in the City, is likely not an interpretation of a rule that provides the requisite reasonable accommodation under the Act.

As to the hearing before the Planning Commission this Wednesday, I intend to withdraw our request for a variance. I am of the opinion that the proposed use of the Facility is indeed a conditional use by the application of Gahanna Code Sections 1153.03(a)(2)809 and 1153.03(b)(2) and, therefore, no variance is necessary.

Nothing contained herein is intended to preclude our continued discussion of this matter. Please call with any questions or for general discussion.

Thank you,



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December 22, 2016

Shane Ewald
City Attorney
City of Gahanna
200 S. Hamilton Rd.
Gahanna, OH 43230

***Via E-mail followed by
Ordinary U.S. Mail***

RE: Residential Rehabilitation Facility, 121 James Road

Shane:

My office (I am out of town) received a call yesterday from Bonnie Gard requesting a meeting between the City of Gahanna administration and me and my client, Access Energy. I believe this request is a good sign and I am hopeful the parties will be able to reach a resolution that is acceptable to all concerned. In anticipation of the meeting, this letter shares with you some of my thoughts regarding the residential rehabilitation facility referenced above.

In my letter to you dated December 5, 2016, I stated it is not necessary that the parties agree at this time as to what would constitute a reasonable accommodation by the City in its interpretation of its zoning code relative to my client's use of its property as a residential facility for persons recovering from alcohol and drug addiction. However, based on my research of the Gahanna Zoning Code in preparation for the December 7, 2016 meeting of the Gahanna Planning Commission, I believe that the zoning code lends itself to an interpretation that accomplishes the reasonable accommodation requirement of the Fair Housing Act. It is for that reason I request, on behalf of my client, Access Energy, that the City make a reasonable accommodation by interpreting its zoning code in a manner that concludes that the residential facility use is a permitted use in the CC, Community Commercial District. The simple rationale follows.

Shane Ewald, Esq.
December 22, 2016
Page 2

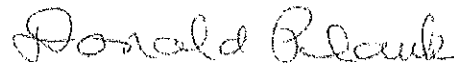
Section 1123.31 of the City of Gahanna Zoning Code defines the term "Home For Substance Abusers." Included in that Section 1123.31 definition are the terms "Hospital, Nursing, Rest and Convalescent Home."¹ Unfortunately, the term "Home for Substance Abusers" is not used elsewhere in the Gahanna Zoning Code. Significant, however, the Section 1123.31 companion terms: "Nursing Home", "Rest Home" and "Convalescent Home" are all permitted uses in the City's CC, Zoning District. It requires no abuse of interpretation of its zoning code for the City of Gahanna to conclude that like defined uses are permitted uses in the same CC, Zoning District.

An additional or alternative accommodation would be for the City, in its interpretation of its zoning code, to acknowledge that living quarters for a drug and alcohol rehabilitation center is a conditional use. In that regard, I have included with this letter the letter that we recently sent to the neighbors who spoke at the Planning Commission meeting. The enclosed letter should help clarify how the properties at 175 W. Johnstown Road and 121 James Road will be operated.

I look forward to our meeting in early January. Please feel free to contact me if you have any questions before then.

Have a Happy Holiday.

Thank you,



Donald T. Plank



DTP/bp

Encl.

372.00//Corres/LtrEwald Part II uses (12-22-16)

¹ The term "Hospital" is also singularly defined in Section 1123.30.



Jean Matthews-Mitchell,

In reviewing your job performance/attendance over the last 30 days, I am dis-satisfied with your performance and do not feel that you are a good fit for our organization.

It is with regret that I am terminating your employment, effective immediately.

John Johnson, CEO

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