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**CITY OF KANNAPOLIS, NC  
BOARD OF ADJUSTMENT**

**Minutes of Meeting  
Tuesday May 7, 2024**

The Board of Adjustment met on Tuesday May 7, 2024, at 6:00 PM at City Hall, 401 Laureate Way, Kannapolis, North Carolina. This meeting was held in accordance with required public notice as well as on the City's website.

**Board Members Present:** Emily Joshi, Chair  
Chris Duggins  
Holden Sides, Vice Chair  
Mike McClain, ETJ Representative  
Wilfred Bailey  
Danielle Martini, Alternate Member

**Board Members Absent:** Ryan French

**Staff Present:** Richard Smith, Planning Director  
Pam Scaggs, Recording Secretary

**City Attorney:** Wally Safrit

**Visitors Present:** Gray Fisher  
Laura Fisher  
Eric Powlas  
Joely Powlas

**CALL TO ORDER**

Chair Joshi called the meeting to order at 6:00pm.

**ROLL CALL AND RECOGNITION OF QUORUM**

Recording Secretary, Pam Scaggs, called the roll and presence of a quorum was recognized.

**APPROVAL OF AGENDA**

Chair Joshi asked for a motion to approve the agenda which was made by Vice-Chair Sides, second by Mr. McClain and the motion was unanimously approved.

**APPROVAL OF MINUTES**

Chair Joshi asked for approval of the April 2, 2024, minutes, which was made by Ms. Martini, second by Mr. McClain and the motion was unanimously approved.

**ORDER FOR DENIAL**

**BOA-2024-06 – Request for a Special Use Permit submitted by Southeastern Recovery Center LLC / H2-1 LLC for property located at 3148 Barr Road to allow for a Residential Care Facility in the Residential 1 (R1) zoning district.**

1 City Attorney Wally Safrit recognized the Board for working through what he called a “tough  
2 case.” Attorney Safrit stated that there was a lot of testimony regarding “reasonable  
3 accommodation” and while the Fair Housing Act does allow for reasonable accommodation for  
4 disabled persons, it does not give the Board authority to review a case beyond the policy issues  
5 for a Special Use Permit (SUP) as found in the Kannapolis Development Ordinance (KDO). He  
6 added that the Board, in his opinion, has no authority to award reasonable accommodation and  
7 suggested that an applicant could petition for an amendment to the City’s ordinance (KDO) or  
8 appeal to the Superior Court. Attorney Safrit stated that the applicant has thirty (30) days to appeal  
9 after the Board approves the Order and that they will be advised if there is an appeal but felt that  
10 the Board made sufficient finding to deny the request for the SUP.

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12 Chair Joshi asked for a motion regarding the Order. Ms. Martini made the motion to approve. Chair  
13 Joshi asked for clarification whether the Board was approving or denying the Special Use Permit.  
14 Attorney Safrit advised that the Board denied the Special Use Permit at the April 2, 2024, meeting  
15 and that the Order has been written as such. Vice-Chair Sides followed Ms. Martini’s motion with  
16 a second, and the motion was unanimously approved.

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18 **PLANNING DIRECTOR UPDATE**

19 Planning Director, Richard Smith, provided an update regarding the Cannon Boulevard Corridor  
20 Study stating that when Kannapolis was established, there was no zoning in place, so the corridor  
21 allowed for mixed-uses. Mr. Smith stated that staff will solicit feedback from stakeholders  
22 regarding sidewalks, landscaping, intersection improvements, and replacement of the bridge at  
23 Martin Luther King Jr. Avenue.

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25 **OTHER BUSINESS**

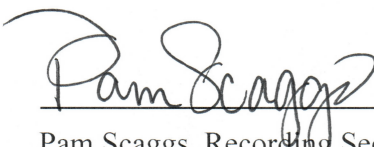
26 Mr. Smith provided an update regarding pending cases for June and July.

27  
28 Mr. Smith responded to questions regarding the Rogers Lake flyover and downtown development.


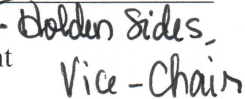
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30 **ADJOURN**

31 There being no further business, Vice-Chair Sides made the motion to adjourn, seconded by Mr.  
32 McClain, and the motion was unanimously approved.

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34 The meeting was adjourned at 6:20 PM on Tuesday, May 7, 2024.

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40 Pam Scaggs, Recording Secretary  
41 Board of Adjustment

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Emily Joshi, Chair  
Board of Adjustment  
  
Holden Sides,  
Vice-Chair

KANNAPOLIS BOARD OF ADJUSTMENT  
APPROVED AND FILED  
DATE: 5/7/2024  
SECRETARY: Pam Scagg

STATE OF NORTH CAROLINA  
CITY OF KANNAPOLIS

IN RE: Southeastern Recovery Center LLC :  
Property: 3148 Barr Road :  
Concord, NC 28027 :  
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APPLICATION # 2024-06-BOA :

**ORDER FOR A SPECIAL  
USE PERMIT**

THE BOARD OF ADJUSTMENT for the City of Kannapolis, North Carolina having held a public hearing on April 2, 2024, to consider a request for a Special Use Permit (SUP) to allow for a Residential Care Facility in the building (“Building”) and property (“Property”) located at 3148 Barr Rd. Pursuant to Table 4.2.B(5) of the Kannapolis Development Ordinance, a SUP is required for Residential Care Facility in the Residential 1 (R1) zoning district. The Property is 1.41 +/- acres and is more specifically identified as Cabarrus County Parcel Identification Number 46927680540000

The applicant, Southeastern Recovery Center LLC., is requesting a Special Use Permit (SUP) to allow for a “Recovery Residence” in the Residential 1 (R-1) zoning district on the Property and further identified as Cabarrus County Parcel Identification Number 46927680540000.

On the Special Use Permit application, the applicant specified that the proposed use will be a “Recovery Residence.” A “Recovery Residence” is not a use that is defined in the KDO. Based upon the applicant’s submitted description of the facility and its expected number of residents, seventeen (17), the use would be considered a “Residential Care Facility” under the KDO as defined below:

*“A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities (N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.”*

The following were accepted into evidence to constitute a part of the record in the matter:

1. Special Use Permit Application
2. Vicinity Map
3. Zoning Map
4. Future Land Use Map
5. Conceptual Site Plan
6. Elevation Rendering
7. List of Notified Properties
8. Notice to Adjacent Property Owners
9. Posted Public Notice
10. Photographs of 3148 Barr Road (Applicant)
11. Request for Reasonable Accommodation December 13, 2023, Letter (Applicant)
12. Response to Request for Reasonable Accommodation January 14, 2024, Letter (Applicant)
13. Supportive Housing Studies (Applicant)
14. Cabarrus Health Alliance Septic Permit (City)



The Board considered the approval criteria required by Section 2.5.A(5) of the Kannapolis Development Ordinance.

Having heard all the evidence and arguments presented at the hearing, the Board makes the following FINDINGS OF FACT:

1. The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Land Use Plan.

(a) The Building appears to be constructed as a single-family home.

(b) Testimony provided indicated a use of the Building which did not resemble a single-family home. It was characterized more as a business with short-term lodging for composition.

(c) The use is not consistent nor in harmony with existing and surrounding uses because of its intensity with as many as seventeen occupants in the Building.

(d) The Building is occupied overnight by no less than seventeen individuals.

2. Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.

(a) The proposed use is not anticipated to cause any traffic hazards or traffic congestion.

3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke, or gas.

(a) It is not anticipated that the use of a Residential Care Facility at this location would create vibration, noise, odor, dust, smoke, or gas that would be noxious or offensive to the surrounding area.

4. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

(a) The use of a Residential Care Facility as proposed in the application for this site would not impede orderly development or improvement of surrounding property as the majority of the properties in this area are fully developed with single-family residences.

5. The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger public health, safety, or general welfare.

(a) Credible testimony was offered that the Building has a Cabarrus County septic tank permit for a residential structure with three bedrooms. As proposed, and as currently being used, the Building has six bedrooms and no less than seventeen occupants.

6. The proposed use complies with applicable provisions of the KDO.

(a) The proposed use fails to comply with certain provisions of the KDO.

(1) The proposed use would be located in a single-family residential structure.




- (2) The proposed use is not consistent or in harmony with existing and surrounding uses.
- (3) Applicant applied for a non-existent classification as a “Recovery Residence” and does not otherwise meet alternate KDO facility definitions.
- (b) Residential Care Facility (KDO definition). A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities (N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.

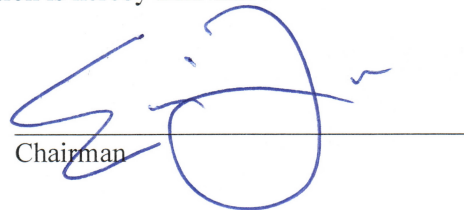
Based upon the above Findings of Fact, the Board makes the following Conclusions of Law:

- (a) That the use of the Building by the Applicant falls within the definition as a Residential Care Facility under the KDO;
- (b) That the Building located at 3148 Barr Road is a single-family dwelling;
- (c) That a Residential Care Facility is not permitted in a single-family dwelling.
- (d) That the Applicant’s request for a Special Use Permit was submitted for a “Recovery Residence” which is not a use defined in the KDO;
- (e) That the Applicant’s request during its public hearing presentation for a “reasonable accommodation” pursuant to the federal “Fair Housing Act” is not within the authority of the Board of Adjustment as the request for reasonable accommodation would require an amendment to an adopted ordinance;
- (f) The Board finds that occupation of the Building by seventeen individuals using six bedrooms is a material violation of the county septic tank permit and presents a significant public health risk and therefore is a danger to public welfare.

Based on the above FINDINGS OF FACT and CONCLUSIONS OF LAW, the Board finds that the requirements of the KDO have not been met and the application is hereby DENIED.

This the 7th day of May, 2024.

  
Secretary

  
Chairman