

**Minneapolis Board of Adjustment Meeting
June 28, 2012, Room 317 City Hall**

Date of Z&P Meeting: July 26, 2012

ITEM SUMMARY

Description: Item #5, BZZ #5588

Application by Cynthia Lee, on behalf of CommonBond Communities for an appeal of the Zoning Administrator's determination that the proposed development (West Broadway Curve) project at 1920-2022 West Broadway Avenue is classified as a supportive housing use.

Action: The Board of Adjustment adopted staff findings and **denied** the appeal of the Zoning Administrator's determination that the proposed development project at 1920-2022 West Broadway Avenue (West Broadway Curve) is a supportive housing use

TRANSCRIPTION

Steen: Chair Perry, members of the board, I will try to keep this to a brief presentation and before I open up to any questions I would like to turn it over to the zoning administrator for a few brief comments.

Chair Perry: Certainly.

Steen: This is an application by Cynthia Lee on behalf of CommonBond Communities for an appeal of the zoning administrator's determination that the proposed development, West Broadway Curve, located at 1920-22 West Broadway Avenue is classified as a supportive housing use. As with past appeals, I would like to reiterate that this is a narrow technical question, not whether supportive housing is an appropriate use at this site but rather did the zoning administrator make the appropriate call within the context of the zoning code.

In January 2012 CommonBond submitted a request for housing revenue bonds to CPED housing. That request included a description of 50 mixed income rental units and an Advantage Service center to provide on-site resident services. The application was forwarded to CPED planning staff, and at that time it was determined to be a supportive housing use. Now the subject properties are zoned R5 multiple family residences, which would typically allow a supportive housing use with a conditional use permit. However, supportive housing uses are subject to a quarter mile spacing requirement from a number of other uses including other supportive housing uses as well as community residential facilities. And there is the location of two community residential facilities as well as another supportive housing use within a quarter mile of this site, which does preclude the proposed development at this location. Here is a map to indicate that, it may be a little difficult to read.

Supportive housing is defined as a facility that provides housing for 24 hours per day and programs or services designed to assist residents with improving daily living skills, securing employment, or obtaining housing. And it goes on to exclude a number of specific uses. The zoning administrator's decision was based on the bond application, as I mentioned, that was submitted by CommonBond, as well as information provided by the appellant. The bond application states that the proposed project will include 50 units of mixed income housing with an Advantage Service center on the first floor which will provide on-site services including counseling and social and mental health support, resources to assist residents in stabilizing their housing, accessing community resources, and advancing towards self-sufficiency, as well as career services such as a professional career development program to develop work readiness skills and obtain permanent employment. It was based on this information that the zoning administrator made the determination that is being appealed.

Briefly I will discuss the appeal. The appellant does make a number of contentions within the appeal. The first is that the proposed development is distinguishable from an existing supportive housing development within the city of Minneapolis called Alliance Housing. This is a development in Elliott Park. However, because the proposed development is distinguishable from another supportive housing use does not mean that West Broadway Curve, the proposed project, is not a supportive use as well. Supportive housing is intended to be a use that permits broad flexibility in the delivery of programs or services to residences on-site and there is no single model of supportive housing. The appellant also asserts that because the services provided on-site do not assist residents with tasks such as feeding, bathing, and grooming that the use is not supportive housing. Even if, what they are getting at is they are not providing, they are claiming they are not providing daily living skills or services intended to improve those. And even if those services provided on-site were not intended to improve daily living skills, which the zoning administrator contends is not the case, the programs to improve daily living skills are not a requirement of supportive housing uses. Rather it is just a trait or one of many representative programs that we would see in supportive housing uses. And lastly the appellant contends that the proposed project is permanent housing and therefore not support housing. The definition of supportive housing requires that the facility provide housing for 24 hours per day does not get into any further details or requirements. This is intended to provide flexibility to supportive housing models to ensure that there is a minimum duration that precludes very temporary transient supportive housing facilities such as a homeless shelter. And the fact that this project is proposed to be a permanent housing facility does not exclude it from the definition of supportive housing. Certainly there are many other supportive housing projects in the city. And as I mentioned, there are many different models for that. And thus, for the aforementioned reasons, CPED Planning recommends that the Board of Adjustment adopt staff findings and deny the appeal of the zoning administrator's determination. And with that I will turn it over for brief comments from the zoning administrator.

Chair Perry: Mr. Poor.

Poor: Chair Perry, I don't have much to add at this time. We are here for questions and we will just leave it at that for now. So I guess we don't have anything further, unless you have questions that you specifically want addressed at this time.

Chair Perry: Alright. Before I take questions, I want to cover a couple process things, as I do with appeals of the zoning administrator. Appeals of the zoning administrator are not variances and they are not a rebuttal of a loss of non-conforming rights. The board's job is narrowly defined, as Mr. Steen said, to determine whether the zoning administrator correctly interpreted and administered the provisions of the zoning ordinances as adopted or as they are today, and the subject of the appeal. In this particular case, we are to address a narrowly defined technical issue: is the zoning administrator's classification of the proposed development project as applied for at 1920-22 West Broadway supportive housing as defined in the zoning code correct. We are not deciding on whether other nearby land uses are supportive housing or too close to this project. We are also not making a decision about the merit of the proposed services or the value or the benefits of the proposed project for the community. Those are things we are not doing. Our focus today is whether the zoning administrator's classification of the proposed development project as applied for, or supportive housing as defined in the zoning code, and whether or not it was correct or, as the appellant contends, incorrect. One last thing, as a matter of due process the appellant is afforded broad latitude in the testimony they provide to make their case. However, since written testimony has been provided for the record, this body will ask the appellant to be respectful of the amount of time they use in providing their testimony today. The same broad latitude in testimony provided applies only to the appellant, it is not afforded to others testifying who are not the appellant or member of the appellant's team. So, we don't have a lot of people here, but if I feel public testimony or board member questions or comments are straying from the aforementioned purpose, I will interrupt the speaker and ask them to address the decision before this body. It is not meant to be rude, but to be respectful of the purpose of these proceedings. So, with that, Mr. Ditzler.

Ditzler: Thank you, Chair Perry. I have a question of either Mr. Poor or Mr. Steen regarding the zoning administrator's interpretation of 520.160 and the definition of supportive housing. Two quick questions, I think one you answered in your testimony, Mr. Steen, but it appears that by design the definition of supportive housing was

constructed loosely. The clause that is in the definition that says “or obtaining permanent housing” so it is the zoning, it is your interpretation of, that supportive housing may or may not be permanent. Is that correct?

Steen: Chair Perry, members of the board, that is correct. Supportive housing by its nature allows for flexibility of, the only requirement is that it is more than 24 hours per day.

Ditzler: Ok, so even though a supportive housing may help residents obtain permanent housing, that is not a requirement. That’s just a feature that it may or may not have.

Steen: Correct.

Ditzler: The other question that I have in reading the applicant’s information that they have submitted, it says that participation in the Advantage Service programs are not tied to occupancy at this facility. So that would almost lend it a little bit that it is services to the community as a whole, and can you speak to how that may or may not have played into your decision or how that may or may not fall into the supportive housing definition.

Steen: Absolutely. It is my understanding, and staff’s understanding, that the services on site, that are provided on site, are not required to be used, there is certainly no requirement. However, it would be available only to on-site residents. What we have to do when we are looking at a project like this is if it is not supportive housing exactly, what else it would be. In a situation it would be considered substantially similar to a community center. It is operated by a non-profit, it is providing services; however, a community center would not be permitted in the R5 residential district. So, and it is my understanding that it is not available for the general public. That’s not something, and certainly the appellant can speak to that.

Ditzler: I’m sorry, so you are saying that the services are not ...

Steen: Are not available to the public.

Ditzler: That they are only, that the participant is tied to occupancy.

Steen: Well, yes, while it is not required, it is certainly tied to occupancy and it is available for the residents and it is on-site services for the residents.

Ditzler: So not required by the residents but only available for the residents.

Steen: Correct.

Ditzler: Ok, thank you.

Chair Perry: And I think, if I may jump in here, if that’s not the case, then it becomes substantially similar to a community center which then ...

Ditzler: I understand. Thank you, I don’t need anymore, I’m good. Thank you.

Chair Perry: Is there any other questions of staff? I see none. Is the applicant present, I’m sorry, the appellant? And again I want to thank you for the patience in being here so late this evening.

Ellen Higgins: It is our pleasure. Good evening, Mr. Chair and members of the board. My name is Ellen Higgins, I reside at 153 Montrose Place in the fair city of St. Paul. I am here as vice president of development for CommonBond communities, the appellant in this zoning matter. I thought I would just take a few moments to talk about what CommonBond does, but really briefly, because I think it impacts some of the confusion occurring around what is an Advantage Service center in CommonBond communities. And I’d like to say over the past 41 years CommonBond has developed about a hundred housing communities predominately in Minnesota but also in Wisconsin and Iowa providing 500 apartments and townhomes.

The mission of CommonBond is pretty straightforward. It is to provide stable homes, strong futures, and vibrant communities. And each piece of that is important to CommonBond's activities and what it thinks about when it is building new communities. To that end, we provide housing for a wide variety of people with a wide variety of capabilities and incomes. And they include working singles, working couples, families with kids, seniors, and people – to a lesser extent – people with special needs. We pride ourselves on developing housing that meets the needs of the community we are engaged in and we believe that is the way housing becomes an asset for the long term in the community. Based on two years of discussion and market research, discussion with city officials, city staff, business leaders, local business leaders, and a number of neighborhood community groups, we determined that the best way we could serve the community in north Minneapolis at that location on a major transit corridor was to build housing for working families. Couples with kids who have jobs and who are capable of affording rents, monthly rents, that will range from a low of \$800+ up to \$1,000+, so these people ... (gap in transcription due to tape switch) ... ask why, because we could do that as part of our mission, because our market research and our discussion with community leaders said there is a gap in the housing market in north Minneapolis. And that gap is for rental apartments, new quality rental apartments that are large enough for working families with spacious two and three bedroom amenities. The West Broadway location was specifically interesting to us because of all the development that is going on around that major transit corridor, like the new Minneapolis public school headquarters, from which we would like to derive some of the residents for our housing. The new Hennepin service facilities, the Y across the street, it is a location that makes sense for this kind of housing, not necessarily supportive housing. We will build an Advantage center in this housing community, as we do in all our housing communities across the three states. And I believe that is the crux of the confusion, because the reference by zoning staff to our housing bond application talks about Advantage Services in its generic sense. Yes, we provide a whole menu of services, but do we do that as a cookie cutter? Do we plug that center into every one of our housing communities? We don't. What we do, just like our housing communities, we tailor the Advantage center to attract and retain the residents that we are going to serve in that center. The residents in the Curve apartments on West Broadway are meant to be working families with jobs capable of paying fairly substantial rents in that market. The center, Advantage center, for the Curve will include a community space. That community space can be used by residents for parties, for large family gatherings, or for resident association meetings. There will be a computer center. There may or may not be a fitness facility, depending on what our negotiations with the Y, or how our negotiations with the Y across the street go, but that would be a typical, another amenity for this targeted group of individuals and families.

Based on our discussions with community leaders, and again market research, we plan to offer a variety of educational program and after school resources. These are working couples. They will not be home after school and we find that this is a well-used and appreciated service amenity for our working families. We also plan to offer career enhancement services, financial literacy planning services, and the like. Again, we are good business people, we recognize that the more stable our families are in our communities, the more we prevent turnover and the more we can collect the rents that we are actually charging for these facilities. So these help us as business people in addition to being very good for the residents themselves. Again, the point is, all is voluntary. Nobody is forced to use any of these services. We find that once people recognize they are there, they tend to use them. And it is there to attract the target population and retain the target population. If building this Advantage Service center at the Curve is deemed supportive housing under the city's definition, then we think the definition is being interpreted so broadly as to be meaningless. All the housing developers that I know in the metro area and in the other states, whether they be developing low income, middle income like us, or high market rate housing, provide amenity and resources to attract and retain their residents. Many have fitness facilities, many have financial planning programs, yoga for people in the morning before they go to work, a variety of services. We respectfully request that this board conclude that the Curve on West Broadway, unlike many of our other supportive housing developments across the Twin Cities, is not supportive housing, and allow this thing to be built. Thank you.

Chair Perry: Thank you for your testimony, Ms. Higgins. Are there any questions for Ms. Higgins? Ms. Meier.

Meier: Yes, I have a question. In the, you were talking about kind of the menu of services ... are they services or are they amenities of living there. I guess I am trying to kind of wrap my mind around an apartment complex that might have some of those similar types of things that you had mentioned ... fitness centers, not necessarily computer

centers but some different sort of amenities. In your mind, how does your menu of services differ or are similar to amenities that you would find in an apartment complex.

Ellen Higgins: With working families with kids, I'd say the services or the resources that we provide for the children are clearly pretty attractive to people because we don't charge for them. They are just in the building and it is part of our mission to help stabilize kids in education, it is a piece of our mission. The computer center availability, the community room availability, the fitness or whatever other space availability, that is an amenity. We have to have those in order to attract and retain residents these days and so we typically put those in every center. Where we do supportive housing, like we have Kingsley Commons in north Minneapolis off Shingle Creek Parkway, that is housing that is designed for people suffering with multiple sclerosis. So the units are universally designed. We have spaces in there for case management, healthcare workers. People who come in to Kingsley Commons need help with daily living skills. Not all the time, they still want to be independent. But when they have chronic episodes of the disease, they need help. So we do have daily living skills in that facility, and we would say that we were supporting them.

Meier: Ok, thank you.

Chair Perry: Are there other questions? Mr. Nutt.

Nutt: Thank you, Chair Perry. Did you say the Advantage Service center is not a part of the project yet?

Ellen Higgins: It is, and the Advantage Service center for the Curve, because of the population we are targeting and the fact that they are working families with kids, what we are doing is designing it to be more amenity-oriented, resource-oriented than supportive. They don't need daily living skills support. They don't need to secure employment because they are employed, otherwise they can't be financeable in that apartment. Career enhancement says if one of them loses a job, sure we will have services there to help write resumes on the computer so they can get that job, so they can make money and pay the rent.

Nutt: Thank you.

Chair Perry: Are there any other questions? Ms. Thompson.

Thompson: Yes, I'd like to ask you to clarify, is your disagreement with how the zoning administrator interpreted 520.160 or do you disagree with just the entire, is that called an article, or that section, because you said you feared that it was too broad in its classification of what supportive housing is. Do you disagree with how the zoning administrator interpreted it, or do you disagree with that section?

Ellen Higgins: I believe in the interpretation. If you look in, and there are industry standards for activities for daily living skills that are defined by the Department of Health, Education and Welfare, and they are very specific. I see people who are in our housing are not looking to secure permanent housing, they are in it. If they want to move away and go to home ownership, that's fine. That's moving up the scale. And, what was the other thing ... securing employment. Again, they can't be in our housing unless they are employed. We don't allow independently wealthy people in, they have to be able to make money so they are working.

Thompson: Thank you.

Chair Perry: Other questions? I have one. Seems like you have two goals here, one is to provide housing for, workforce housing, which is great, and the other is, because of the mission of your organization, have this Advantage Service center which may provide different types of services depending upon the people who are living in the housing.

Ellen Higgins: That's true.

Chair Perry: What if you didn't have an Advantage Service center in this housing? What would happen?

Ellen Higgins: I'd think we'd be at a competitive disadvantage. People who are making enough money, \$50,000 who can afford these rent levels, might not stay in north Minneapolis.

Chair Perry: Why?

Ellen Higgins: Why? They might find other options that provide the services that we would not. The community facilities.

Chair Perry: The financial literacy services, they would seek other housing that would provide that?

Ellen Higgins: Specifically no, but I think just looking at resource rich housing, the menu of resources that for-profit developers are offering at housing developments all over the Twin Cities are getting broader and more unique. Yoga in the morning, wellness classes

Chair Perry: Sure, and I'm going to follow this line of questioning: 520.160 talks about daily living skills, securing employment or obtaining permanent housing, any one of those three or all of them or some combination. If you put a yoga center in there, I don't think you are violating any one of those three. It's not supportive housing, but that's not where you stop. You say, and it seems, when I look at the Advantage Service center, that the computer center, the fitness center, those types of things may well be part of that but that's not what you guys are about. It's about providing these other services, depending on the housing, who is in the housing. Financial literacy services is one you mentioned that probably would be in this, and so I think that makes a substantial difference. What I'm saying is, if you want to provide yoga, or a fitness center, a computer center, would that be good enough for you? What if you didn't provide the financial literacy services or any of the other services that seem to be a contradiction to this supportive housing definition, would you still do that?

Ellen Higgins: I don't see the financial literacy as contradicting the definition. I thought the definition says daily living skills, which is a defined term in the industry, government, and specific to typical supportive housing whether the people have mental or physical disabilities that preclude them from doing bathing, eating, shopping, moving, versus adding little, I don't want to call them spits, but little resources that might intrigue people to come and stay in our housing. And then the other point is, as good business people, the more financially literate our residents are, the better off we are as landlords because we can be more assured of the stream of income from the rental payments.

Chair Perry: I'm not questioning the logic of the business model because that's not the question before us. I think though that we are honing in on what the difference between the city of Minneapolis and what you as the appellant are talking about in terms of what supportive housing is. And your description of financial literacy services, I think really captures that difference of opinion.

Ellen Higgins: So, financial literacy services are offered in market rate and the housing opposite the Guthrie. This is actually the push by the banks because they want to garner more resident checking accounts and the like. So that very often, we don't provide it, we bring in Wells Fargo, US Bank, to provide those services. So it's not that we have financial bankers on board trying to teach something. This again is a resource that is easily obtainable in the cities and it applies to market rate housing. I'm looking for securing employment, securing further permanent housing, or daily living skills, and we don't fit.

Chair Perry: Well I think the city has, at least planning has, a different definition of what those things are.

Ellen Higgins: Clearly.

Chair Perry: So I think we've gotten to a point where at least we know where the differences are. I do have one other question that maybe will help serve to tease out the set of differences. Hennepin County is building that service center, are they going to be providing similar services to what you guys would be providing at the Advantage Service center?

Ellen Higgins: I don't think so ... Cynthia, do you know? I actually don't know, I think it is actually an administrative office consolidation, so it's not like it is another big service center. Maybe planning knows more than I do about that but I think it is more administrative stuff, and again we would like to draw some of those people to live within walking distance.

Chair Perry: Sure, ok, great, thanks. Those are my questions, does anybody else have any questions? I see none, thanks again for your testimony and for the clarifications you provided us and me. Is there anyone else who would like to speak on behalf of this appeal? I see no one. Anybody to speak against? I also see no one. We'll close the public hearing ... board comments? Mr. Cahill.

Cahill: Thank you, Mr. Chair. First of all I'm struck by the fact that I think as a board we can agree that this kind of thing is a nice service to have. It is nice programming, and it is a nice thing to have in the community ... build strong communities, good things. Problem is I do think though that the statute is broad. The language is broad and the language that I'm seeing is, I'm looking at the bond application particularly, is within the definition where the only question is whether or not they provide certain services. That these services fall under daily living, securing employment, and finding permanent housing.

Chair Perry: I think I'd like to correct you, or ...

Cahill: Or, it could be any of them.

Chair Perry: Yes.

Cahill: To be honest, I think at least the securing employment and finding permanent housing is meant. Yes I agree that you have a home in this sense. I would agree that this is permanent, but that's not saying that at least with the bond application I see reference to we want to stabilize their housing. To me, that's permanent. You are looking for ways to find them a permanent community, a permanent home. That's exactly the hope. I can see the distinction, it is not a homeless shelter, it's not a treatment center, but the idea is simply we want to put somebody in a good community and help them find that spot. In addition I would also point out that there is a lot of work readiness skills that you are trying to provide - obtain and maintain employment, build careers through advancement, and achieve financial goals also goes towards securing employment. There is a frustration here, I can certainly understand that why do I have to be a quarter mile away from some other community center that is providing good things? That's a fair call, that's not the question before this board. Unfortunately, the call is does under the language of the statute, provide, this is the kind of services we have to look at. And I think under the bond application and even with the testimony, the services provided fit the definition of the statute. We don't get to consider the wisdom of it, we don't get to consider what it is. And the only distinguishing point I've seen between the supportive housing like treatment centers and homeless shelters is more the question of what's the population we are serving. And I realize the applicant is serving a more stable and more population that has a greater potential of succeeding based on maybe certain advantages in that there is an income, and that should be commended. Unfortunately that does mean that we can't put them within a quarter of a mile of other places. But that said, I would actually support the definition as supplied by the zoning administrator at this time.

Chair Perry: Thanks for those comments, Mr. Cahill. Mr. Ditzler.

Ditzler: I would agree with Mr. Cahill, unfortunately, because I drive by these vacant lots and blown up gas stations every day as I go to and from and I'm tired of looking at them and I would like to see something in there. I think this would be great, but as Mr. Finlayson normally says, who is not here, did the zoning administrator make the right call or did he misinterpret it? I think that Mr. Cahill is correct. I think that the language, unfortunately for the applicant, is very broad, intentionally written that way, and while I, I just don't, I just think that Mr. Poor's interpretation of it is within the guidelines whether it is an aggressive interpretation or not. I think that this particular provision of the code is very broad, which is kind of interesting to me because most of the code is not. But this definition seems to be, and I don't know if the result is a rezone or something else, or it just doesn't seem to, it seems to be a little bit of a square peg in a round hole. But at this point I would support Mr. Poor's interpretation of the zoning code, with regret, a little bit.

Chair Perry: I have a question for staff, probably Mr. Poor, but we'll see. Ms. Higgins, the appellant, has stated that advantage, I'm sorry, the service center has a portfolio of services. It is kind of not a cookie cutter but can provide services of different types depending on the type of residents who are in the housing. And so the project is not underway, it is a proposed project. If they were to only, for example, as I was saying, provide a yoga center and a fitness center and a computer center, I think that is a different type of ... then it becomes not supportive housing. So what is it that you guys used to determine that they were going to be providing the services that would fall under the definition of supportive housing?

Poor: When we looked at the basket of services that they had proposed to offer at the site ...

Chair Perry: Through what document, what, where is that? Maybe it is in our packet and I didn't see it? I do see the bond application, but Ms. Higgins contends that the bond application is a more generic statement of all the services they could provide. So I want to address that particular argument, I think there is merit to that argument.

Poor: It is ... part of that review included the bond application. I don't think it would be a surprise to you to let you know that because CPED is doing the bond, so, an arm of our organization such as the previous application where CPED is actually an applicant by half because they own the land. Similarly CPED has a role in this. So the long sum of what we will call miscommunication early on with the bond, we said it was supportive housing, there is certain things that came of that. The spacing came up. Once that was realized, we had conversations. So to get to your question, we had meetings. We had face-to-face meetings to see where these lines were and where they weren't. And we tried to find out, the determination only came as a result of discussions with the appellants, reviewing the documents, explaining what the programs were intended to do as they understood them to be intended. We tried to explain the city's position saying that, to Mr. Ditzler's point, this ordinance was drafted intentionally broad because of the laundry list of what it ain't, pardon my expression. It was designed back in the '90s. It came, actually there is a document that staff has from a previous planning staff that says they actually removed the permanent housing language out of it and the cultural specific programs. And that's because at one time these things were aimed at the American Indian community quite frankly. There were iterations of the supportive housing models, so the previous planning staff had drafted a very large bucket that was intended to hold everything that wasn't overnight shelters, emergency shelters, CRFs ... it was an intentional big broad definition to include everything else. And so, it served the city quite well for many years. The appellants I think justifiably suggest that it is very hard to tease out today what is a life skill and what is an amenity. I think that is true. For instance, was a financial class ... I mean, I think after the great recession of 2008, that looks like a little different lesson than it did in 2005. I would suggest to you computer classes that are teaching internet access wouldn't even have existed in 1995. Is that a life skill now, or an amenity? So this is a very difficult call that has been brought before you. If you were to ask us, and we, by the way, staff, acknowledges that this is not meant to be a transitory housing situation. Is permanency, as rental is, it is intended to be permanent, that is one prong of the test. However, we find that many of the services as they described in both our meetings and in documents, many of which are actually intended for the children of the residents, they are not actually intended for the household as I understand it. The appellant can correct me if I am wrong in that, but many of the services still seemed more akin to what we had been, what we had reviewed before and made similar determinations that they are life skills classes by another name. They are not about making sure you have good oral health, necessarily, or about making sure you show up to work on time, but maybe they are still aimed at improving the chances for success of the tenants if you will. We didn't go down an exhaustive list item by item. We had, we tried to have, meaningful discussions with the appellants to see where those lines drew, were. And they made a comment about the financial literacy and that there are market apartments that offer that. Again, I'm not sure if that was always the case. English as a second language, I don't know if market places offer that or if that is something that is more akin to this type of use. Citizenship classes ... these are some of the types of activities we were told may occur there. So, it was a close call, but it seemed to us and relative to other determinations and judgments we had made, granted they weren't appealed, but we thought this was in line and in keeping with past decisions. This was not an easy call, I guess I would answer it that way. And the appellants may have a different view, and you may want to ask them, but we tried to kind of go down the list of services and we thought that a substantial portion of them still seemed to be more akin to a more life-skills 2.0 if you will.

Chair Perry: So I think you have answered my question anyhow in the fact that the city has been working, CPED, the other part of CPED, has been working with the appellant. You have a sense of what those services are, or would be potentially out of the many different services they have, and from what I have heard it has boiled down to a difference of opinion of what are daily living skills.

Poor: And, Chair Perry, if I may, I don't want to belittle anything to say it is just nomenclature about how you are describing things. I thought it was interesting that one of the points that has come out is that one person's amenity may be another person's life skill service opportunity. I don't want to say it is semantics because the words do mean something. I do think the appellant raises a point ... well, what do they mean. But ...

Poor: Mr. Nutt has a question for you.

Nutt: Thank you. I am also trying to figure out how to break this out of semantics and find something definitive. One question I don't know if Mr. Poor or the appellant can answer, but one question for me that would differentiate this is if any funding for this housing was dependent on having these services, I think that that would separate it from a market rate. Is that a legitimate question, is that a question we can ask?

Chair Perry: It is a question you can ask, I don't know that it makes any difference given the definition that we have. There is no, how these things come about, how they are funded, is not in the definition.

Nutt: And I don't mean to dig where we are not supposed to dig, but I am desperately looking for some loophole or something that we can grab on to, to do this. But when I look into the definition, the appellant talked about this isn't quite the duration of other services. This isn't quite the same level of need. It doesn't have the extent or depth. But the definition doesn't address depth, need, duration, or any of that. So I am trying to find something to grab hold of and I'm having a hard time not agreeing with the definition as defined.

Chair Perry: Right, and I think as expressed by some of the other board members and even Mr. Poor, I think everybody is grappling with that in an equally difficult struggle, so that is understandable. It is why I was asking the questions that I was asking. I think the nub of this though is this definition is very broad and that is actually a benefit in most cases. In this case, it is not helpful to the appellant.

Poor: Chair Perry, if I may, to Mr. Nutt's question. Staff didn't really look at the funding. I mean we were trying to look at the activities. That was not a determinate factor, to be quite frank, about it. I would say though that Mr. Steen's presentation said, look, the definition says that if a facility provides housing for 24 hours per day and the programs and services ... as we suggest, it doesn't say whether it is a month, a year, 5 years or 10 years, it just says 24 as a day. That is really a floor not a ceiling. The floor was intended to separate out from other uses in the code. But again the language is broad, it doesn't give a strong direction but I think it is undeniable it is for 24 hours a day. In fact their argument is that we don't really have a good ceiling about well if it is 30 days does that mean it is something else ... it is an apartment with services or something like that.

Chair Perry: Other questions of staff or other comments by the board? Ms. Thompson.

Thompson: Yes, I am struggling with, I mean I think we can all agree the 24 hours a day thing is met, but I don't know, from the way I read this if broad is the right term or if it is more gray. Like it could be as exclusive as it is inclusive. What I am struggling with is daily living skills, securing employment, or obtaining permanent housing, and then I look on page, the second page of attachment 1, and number 2 the title is West Broadway Curve services are not focused on daily living skills and the second bullet it lists the services and programs for families. Youth Academic Success, I don't think Youth Academic Success meets any of those previous ... I don't think it is a daily living skill or securing employment or permanent housing. Homework and mentoring programs, again I don't think that meets. Computer classes, super gray area although I can think about people and what you would generally assume was non-supportive housing reasonably I can see people in non-supportive housing taking a computer class because that could mean a whole bunch of things. I could mean super advanced super computers, you know. Community building activities, I don't think that meets any of those listings. Citizenship classes, I don't think that is a daily living skill. It could potentially help the securing employment or obtaining permanent housing. Financial

literacy, I think it could also gray area fit, or not. Financial literacy again could mean super advanced financial literacy or it could be super basic. And professional development, again, it could mean how to get your PhD or how to get your GED. So it is less broad than it is gray to me. So that is really what I am struggling with.

Chair Perry: Alright, I'd like to converge somewhere. Mr. Sandberg, you were going to comment or make a motion?

Sandberg: I'll make a comment. As often happens, the decisions the zoning administrator points out frustrations with the way our statute or ordinances are written and they do the best job they can with what they have in front of them. I think that he has an argument to say that this could be defined as supportive housing. I think he could look at a market rate apartment building with a yoga center and education programs and also say that is supportive housing. So I think that maybe it is pointing out the fact that this needs to go to, you know, further consideration beyond us. But at this point I think we have pointed out a weakness and it is better to point it out and get it on the table now and agree with this decision and let the powers that be that write the ordinances understand that this frustration exists.

Chair Perry: Thanks for those comments, Mr. Sandberg, as always. Mr. Ditzler.

Ditzler: I am going to move staff recommendation and support the zoning administrator's decision.

Cahill: Second.

Chair Perry: There is a motion and a second, and that motion is to support staff recommendation that the Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and deny the appeal of the zoning administrator's determination that the proposed development project at 1920-22 West Broadway Avenue (West Broadway Curve) is a supportive housing use. Further discussion? Will the clerk please call the roll.

Ayes: Thompson, Sandberg, Ogiba, Nutt, Ditzler, Cahill

Nays: Meier

Absent: Finlayson

Motion Carried