Driven by Circumstances

A residential community for men in recovery from addiction

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Appeal of Administrative Decision dated November 30, 2015
Re: 60 Depot Street; tax map/lot 099-050-00
Rooming House determination of October 1, 2015

Respectfully, the owner and residents of 60 Depot Street appeal the administrative determination classifying our use of structure as a rooming house rather than as a single family dwelling on the grounds that:

1. Collectively, the residents of Driven By Circumstances live together as a single nonprofit housekeeping unit in a single family dwelling as allowed by the City's zoning ordinances. The "single housekeeping unit" concept and daily practice of communal living in a group home is the entire purpose of residency at 60 Depot Street; such residency is a crucial support in the maintenance of sobriety and abstinence for every member of the household. Each member of our household has history or documentation of individual disability necessitating the support and structure of single household living focused on recovery.

2. Residents choose to live together at 60 Depot Street **specifically because** residency in a rooming house would likely destabilize successful management of a life-threatening disability by encouraging isolation and by provoking relapse, a result realized in each resident's personal history. Currently, as members of one household, we share use and enjoyment of the entire home. There are no locks on the doors of individual rooms. We collaboratively share in chores, meal preparation, lawn care and property maintenance. We each actively participate in the community of the home and its recovery-focused practices. We lean on each other and count on each other for emotional, social, and spiritual support as bonded members of a single household, much as a traditional family functions. We choose single household membership and living based on the recommendations of counselors and treatment professionals. While many of us have been unable to individually maintain stability while living alone or with our genetic families, as residents of 60 Depot Street, we are able to maintain individual stability because the household unit provides our stability. As active members of a single, recovery-focused household we avoid the loneliness, isolation, boredom and social exclusion that have destabilized us and led to relapse in the past when we have attempted too much independence too soon in our previous attempts at recovery.

3. Not every person in recovery is disabled by addiction. However, the residents of 60 Depot Street have been disabled by addiction to the extent that sober group living is essential to the management of a disease that threatens our very lives. For some of us, the experience of group living will help us eventually recover from the state of disability that requires group living; some of us might never successfully live alone, independent from mutual support. Each of us has found it difficult in the past to ask for or to seek out help and support. Our choice to live as members of a single household at 60 Depot Street – to admit the extent to which we have been disabled by addiction and the extent to which we need the support of others – represents a huge personal victory for each of us. We are participants in life – in our Driven By Circumstances household, in the larger Franklin recovery community, and in the community of Franklin itself. This sense of belonging is a critical component to our recovery, yet by classifying us as a prohibited rooming house, the City has determined on two separate occasions (October 1 and November 30) that we do not qualify for belonging at our current household level, and that for as long as we are disabled to the extent that we need supportive group living, we do not qualify for belonging within the Franklin community since our group living constitutes a prohibited use.

4. If we were to follow the City's suggestion and apply for a variance to operate as a rooming house we would effectively be seeking permission to live isolated and segregated and independent -- rather than as we live now, together, in mutual support. Applying for a variance to operate as a rooming house in a city that does not want and does not allow rooming houses would be seeking permission to live where we are not wanted at the very time in our lives that we are working so hard to reclaim membership within the larger community. The suggestion that we seek out a prohibited style of living is humiliating and threatens the sense of belonging so crucial to our recovery. The City is under no obligation to provide us with a sense of belonging, but we ask that it not pursue capricious action to compromise the belonging we have worked so hard to achieve on our own. Essentially, if we were to follow the City's suggestion and apply for a variance to operate as a rooming house, the action would utterly compromise our commitment to recovery. It would betray the individual efforts we have made to seek and rely upon structure, support, and mutual supervision. It would start us on the slippery slope of regressive, reckless, and selfdestructive action, which would threaten our hard-earned stability in recovery.

5. Currently, DBC group home members collectively agree to abide by certain recoverydirected expectations and requirements, because relying on such structure helps assure our continued recovery. Even with zoning permission, if DBC were to operate as a rooming house, the relationship between residents and the priorities of recovery would radically change; rooming house residents are not members of a single household, and an individual roomer could separate himself from the mutual aid and cooperative community we have built and refuse to abide by agreed upon expectations and requirements that help the majority maintain recovery. An individual could refuse drug testing, leave prescription narcotics unsecured,

and show up intoxicated with no consequence, creating and encouraging a detrimental and dangerous environment for others. In short, if DBC were to operate as a rooming house, rather than as a single household that exercises democratic, communal, cooperative, recovery-focused, structured living for those who need it, DBC would cease to exist. 6. In its zoning ordinances, the City of Franklin uses a progressive definition of family: "One or more persons occupying the premises and living as a single nonprofit housekeeping unit." That definition does not require that members of the family household be related by marriage, blood, or adoption. The definition does not specify age, gender, or household member limitations. It does not define nonprofit as a 501c3 organization. DBC established in Franklin in large part because a bonded, communal, supportive "family" model of recovery housing aligned with the City's own zoning definitions. The previous occupants of 60 Depot Street used the structure as a single family dwelling for 47 years. That very large family established the structure's practical occupancy capacity; DBC does not increase the number of previous occupants, and in our function as a single household we have not altered the structure's use. We are appealing the classification of rooming house for the reasons previously stated, but at the same time we contend that by living as a single household unit in a structure that has always been a single family dwelling, we are not in violation of Franklin's zoning ordinances.

Respectfully, prior to this appeal, we have had multiple interactions and communications with Mr. Lewis, two with Building Inspector Bodien, and by virtue of cc'd correspondence, several with Mayor Merrifield, City Manager Dragon, Fire Chief LaChapelle, and City Attorney Fitzgerald. These interactions included Mr. Lewis' preliminary investigation of the DBC web page and Facebook page – both of which are replete with reference to addiction and recovery, two site inspections during which we alerted Mr. Lewis and Inspector Bodien to protections afforded by the Americans with Disabilities Act of 1990, a hand-delivered Cease and Desist Order, and an emailed Administrative Determination. Our very detailed letter of October 8 outlined the federal statutes and case law pertaining to our protected status as persons with disability under the Fair Housing Amendments Act of 1988 and the ADA, as well as specific cases in which federal courts uphold the rights of group homes for persons disabled by addiction to function as family units in single-family dwellings and that such municipal accommodation of zoning ordinances is reasonable based on disability. Our October 8 correspondence includes a list of resources that clarify Fair Housing laws for municipalities. The letter was reviewed by the Planning and Zoning Department, the Office of the Building Inspector, and Attorney Fitzgerald, the City's Legal Counsel. They concluded that we had not presented "**any information**" that suggests the rooming house classification is misapplied. (We disagree but will concede that presenting reference to information is not the same as presenting information.) At no time throughout any of these interactions has any official from the City of Franklin even been willing to acknowledge disability, FHAA, ADA, or federal statutes affording certain protections to persons disabled by addiction. At no time have we been directed to the City's mechanism for request of reasonable accommodation based on disability. The only remedy offered to us has been the suggestion that we apply for a variance to operate as a prohibited and misrepresentative

use that would effectively deny us the benefit of substance-free, supportive, structured, communal living necessary for the management of our disabilities.
The burden of educating and enlightening Franklin officials about the City's responsibility to consider and comply with the ADA, the FHAA, and federal case law should not fall upon the very citizens in need of -- yet denied -- consideration of such protections.

Accordingly, and because the Application for Appeal states an application is incomplete unless all pertinent and supporting documentation is included, our supporting documentation includes:

A. Chronological history of Driven By Circumstances

B. Copies of all correspondence:

    1. October 1, 2015 Cease and Desist from City
    2. October 8, 2015 response from DBC
    3. November 30, 2015 Administrative Determination from City
    4. December 23, 2015 request for interpretation by DBC
    5. December 24, 2015 request for clarification of procedure by DBC

C. New Hampshire Municipal Association. "Fair Housing in New Hampshire," *New Hampshire Town and City*, November/December 2013. Christine Wellington, Esq. and Ben Frost, Esq., AICP

D. New Hampshire Housing Finance Authority. *Fair Housing for Regional and Municipal Plannning: A Guidebook for New Hampshire Planners*, April 2014.

E. American Planning Association. "Policy Guide on Community Residences," September 1997.

F. "Alcoholism, Drug Addiction, and the Right to Fair Housing: How the Fair Housing Act Applies to Sober Living Homes," Matthew M. Gorman, Anthony Marinaccio, Christopher Cardinale. *The Public Law Journal* Vol 33, No. 2, Spring 2010

G. Joint Statement of the Department of Justice and The Department of Housing and Urban Development "Group Homes, Local Land Use, and the Fair Housing Act."

H. Michael Mirra, "Group Homes and Zoning Under the Fair Housing Act," Columbia Legal Services. April 23, 1998. www.hudexchange.info/resources/documents/GroupHomesandZoning.pdf

I. Daniel Lauber, "A Real Lulu: Zoning for Group Homes and Halfway Houses under the Fair Housing Amendment Acts of 1988," 29 *The John Marshall Law Review* 369 (1996)

J. Douglas E. Miller, *The Fair Housing Act, Oxford House, and the Limits of Local Control Over the Regulation of Group Homes for Recovering Addicts,* 36 *William & Mary Law Review* 1467 (1995)

K. "Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction," Matthew M. Gorman, Anthony Marinaccio, Christopher Cardinale. American Bar Association, 2010.

L. *United States v. Borough of Audubon,* 1991. United States District Court affirms persons disabled by addiction as a protected class. Borough found in violation of FHAA by taking actions to make unavailable or deny use of single family home by group in recovery and by taking actions to "coerce, intimidate, threaten, or interfere with exercise or enjoyment of any right granted or protected under the Act." Audubon in violation of the act by discriminating against residents on the basis of handicap. Permanent injunction and civil penalty of $10,000 granted. The court refrained from awarding damages because relief was voluntarily settled by the parties.

M. *Oxford House v. Township of Cherry Hill,* 1992. United States District Court grants request for preliminary injunction enjoining the Township of Cherry Hill from interfering with the occupancy of the single family home by a group of persons disabled by addiction. Town found in violation of FHAA because application of "family" in zoning ordinance had a disparate impact upon persons disabled by addiction who need to live as a group in residential neighborhoods for mutual support. Town found in violation of FHAA for failing to provide reasonable accommodation via waiver of single family requirement. Town found to have caused irreparable injury by jeopardizing recovery process.

N. *Oxford House v. Town of Babylon 1993.* The Town takes action to evict the residents of a group home for persons in recovery, alleging a violation of Town Code in that the group home represents a "boarding house." The group home applies for an injunction in United States District Court, at which point the Town "contends that plaintiffs are in violation of the Town Code because they are not a "family" or the "functional and factual equivalent of a natural family." The court affirms that "Recovering alcoholics or drug addicts require a group living arrangement in a residential neighborhood for psychological and emotional support during the recovery process" and that "As a result, residents of a (recovering group home) are more likely than those without handicaps to live with unrelated individuals." The Town alleges that "any discriminatory effect (the eviction) may have on plaintiffs is due to plaintiffs' transiency and failure to live as a family, not because of their handicap." The court finds discriminatory intent as well as discriminatory effect, in violation of the FHAA. The court also finds that the group home requested an accommodation based on disability (classification as a single family) and that the accommodation was reasonable because it imposed no burden upon the Town. The court finds that in denying the reasonable accommodation, the Town is in violation

of the FHAA and guilty of discrimination via disparate impact. The injunction against the Town is granted.

O. *City of Edmonds v. Oxford House*, 1995. United States Supreme Court rules in groundbreaking, foundational case concerning group homes for persons disabled by addiction and the Fair Housing Act's relationship to zoning codes pertaining to definitions of family. The court held that "family-defining" in order to limit occupancy is not exempt from compliance with the Act.

P. *United States v. CA Mobile Home Park MGMT*, 1997. United States Court of Appeals, Ninth Circuit specifies requirements for request of reasonable accommodation based on disability in the context of the FHAA and ADA protections.

Q. *Henrietta D v. Michael Bloomberg, Mayor of the City of New York,* 2003. United States Court of Appeals, Second Circuit finds in favor of plaintiff in a decision that further specifies expectations and responsibilities for requesting and granting reasonable accommodation because of disability in the context of FHAA and ADA protections and compliance.

R. Tsombanidis v. City of West Haven, Connecticut

1. *Tsombanidis* I, 2001. The United States District Court ruled in favor of plaintiff, finding that the City violated the FHAA and ADA by classifying a group home of recovering persons as an illegal boarding house, by enforcing building and fire codes in a discriminatory manner and by refusing to treat the group home as it would a single family residence. Sample of relevant passages highlighted. In addition to the ruling that the City acted with discriminatory intent, the City was found to be in violation of the FHAA based on disparate impact; the disparate impact ruling was not appealed.

2. *Tsombanidis II*, 2002. The City's appeal was heard in United States District Court. "Connecticut City and Fire Department to Pay $271,000 in Judgments and Fees in Disability Case," *National Fair Housing Advocate*. August 2002. Notations at end of article.

3. *Tsombanidis III*, 2003. The City's appeal was heard in United States Court of Appeals, Second Circuit, which upheld the District Court's finding of discriminatory intent and its finding of discriminatory failure to grant reasonable accommodation based on disability. The $271,000 judgment was also upheld.

S. *Pacific Shore Properties v. City of Newport Beach,* 2011 and cover article from *The Orange County Register*. Before the United States District Court, a collection of group homes for persons in recovery from addiction alleged housing discrimination in violation

of the FHAA and ADA. The court ruled that the homes had no standing with which to sue the City. In 2013, the group homes appealed to the United States Court of Appeals, Ninth Circuit and the court found cause to move forward with claims of discrimination. The City asked the United States Supreme Court to hear an appeal, but the court declined. In 2015, the City reached an out-of-court settlement with the group homes for $5.25 million.