



December 4, 2023

City of Bloomington
 Planning and Transportation
 401 N. Morton St.
 Suite 130
 Bloomington, Indiana 47404

Sent via E-Mail: planning@bloomington.in.gov

RE: Petition for Rezone from R-2 to MH

Dear Planning Department,

This letter is written on behalf of Indiana Center for Recovery (“ICFR”), as the operator, and West 1st Street Assemblage, LLC, as the owner, of the real property located along the north and south sides of West First Street having the addresses described below. For the reasons described herein, we request a rezone of the property back to MH (as defined below). This use, which is a protected use under the Americans with Disabilities Act and the Fair Housing Act, would be consistent with surrounding uses, and ultimately would prove to be of substantial benefit to the area and to the community of Bloomington.

Summary

This Petition for Rezone is to request a rezone of certain properties that were spot-zoned from their original intended use, as Mixed-use Healthcare (“MH”), to Residential Medium Lot (“R-2”). This petition for rezone is to request a rezone back to the initial zone of MH, which would support ICFR’s investment-backed expectation of the right to use the New Properties (as defined below) as Group Care Home, FHAA (Large) (“Group Care Home”).

Factual Overview

ICFR is a fully licensed and credentialed mental and behavioral healthcare organization located principally at 1004 West 1st Street, Bloomington, Indiana. ICFR offers a full continuum of care at its existing first street locations at 909 and 1000 West First Street. ICFR is licensed under 440 I.A.C. 7.5, and treats patients suffering from a broad array of mental and behavioral health conditions, including co-occurring disorders that overlap with substance use disorder. Since opening in 2017, ICFR has provided substance use disorder and mental health treatment services to more than 6,000 patients, and has consistently generated more than 150 positions of employment with above-average pay for the residents of Bloomington and the surrounding area.

Since opening in 2017, ICFR and its affiliates have since acquired the properties along the remainder of the north side of First Street, which range from 1008 West First Street to 651 and 649 South Walker. On the south side of First Street, ICFR and its affiliates have expanded their reach from the western edge of their property at 909 West First Street all the way to 1009 West 1st Street (collectively, “the New Properties”).

At the time the New Properties were acquired, in 2020, they fell into the MH zoning district, which permits a Group Care Home as a matter of right. ICFR shortly after acquiring each of the New Properties, applied for an obtained demolition permits through applications to the Historic Commission, which were approved based on the lack of historic value of the properties thereon. It was explained during those hearings that the uses were for the expansion, in one form or another, of ICFR’s operations. No objections were made by anyone at the City of Bloomington at that time.

Since the acquisition of the New Properties, the City of Bloomington has selectively “carved out” the entire area comprising the New Properties, and has down-zoned them to R-2, in which Group Care Homes are not permitted. The City of Bloomington chose only the New Properties to down-zone, and left the remaining parcels as medical uses – specifically, those uses that were zoned for medical uses before were left as medical uses, leaving only ICFR’s properties as R-2. None of ICFR’s properties that were rezoned as R-2 were worthy of saving, and most had already been demolished as approved by the Historic Commission.

During the City Council meeting of May 13, 2021, ICFR objected to the modification of the zoning district in which the New Properties fell, arguing that it should remain the same as the surrounding properties: MH. However, members of the City Council explained that (1) if they did not approve the revised zoning map, they would be required to start the process again from scratch, and (2) that anyone dissatisfied with the zoning district in which they were placed could come back to the City Council and ask for a rezone. A link to the video of the May 13, 2021 City Council meeting can be found here (<https://www.youtube.com/watch?v=IaSGHv1lWvw>). The specific commentary by counsel for ICFR relating to the New Properties can be found at 1:34:35, which is followed shortly thereafter by commentary by Members of the City Council related directly to the New Properties at 1:48:00.

ICFR now takes the City of Bloomington up on its offer to return and request a rezone of the New Properties. In particular, ICFR asks that the City Council permit a rezone of the New Properties to MH to allow ICFR to operate a Group Care Home thereon.

A. ICFR’s Intended Use

If granted the requested rezone, to revert the New Properties back to their original zone, MH, ICFR will operate a Group Care Home on the north and south sides of West First Street. Consistent with its existing uses, ICFR will operate under a license from the Indiana Department of Mental Health and Addiction under 440 IAC 7.5, and will be accredited by the Joint Commission, the gold standard in healthcare accreditation.

ICFR's Patients

ICFR's patients are within a protected class of individuals with disabilities, as defined under the Americans with Disabilities Act, as amended ("ADAA"), and the Fair Housing Act, as amended ("FHAA"). Specifically, they are individuals who suffer from substance use disorder, and a myriad of mental and behavioral health conditions. *See, e.g., MX Group, Inc. v. City of Covington*, 293 F.3d 326 (6th Cir. 2002). By its association with its patients, ICFR is also protected under the ADA and the FHAA. ICFR's patients are not individuals who are in current use of illicit substances.

ICFR's New Construction

In 2020, ICFR began planning with a local architect and design firm to design and begin site studies to construct two (2) new, state-of-the-art facilities adjacent to its existing facilities along the north and south sides of West First Street. The additions to existing operations will effectively reduce the need for ICFR patients and personnel to cross the First Street, by ensuring services are available to its patients regardless of the side of the street on which they reside. This will reduce the risk to ICFR's patients and West First Street travelers.

On the north side of West First Street, ICFR will construct a three-story, inpatient residential building for treating patients suffering from substance use disorders and mental and behavioral health conditions. The north building ("the North Building") will be constructed to within all applicable development standards, and will contain three (3) stories. On the first floor, there will be 2 one-bedroom units, 7 two-bedroom units, along with 4 offices and 2 meeting/conference. On the second floor, occupants can expect to see 3 one-bedroom units and 8 two-bedroom units. On the third floor, occupants can expect 3 one-bedroom units, and 8 two-bedroom units. In total, there will be 31 units, 54 bedrooms, 4 offices, and 2 meeting/conference rooms.

On the south side of West First Street, ICFR will construct a two-story, inpatient residential building for treatment of patients suffering from substance use disorders and mental and behavioral health conditions. The south building ("the South Building"), on the other hand, will be only a two-story building. There, the first floor will contain 4 one-bedroom units, 2 two-bedroom units, 1 office, and 2 meeting/conference rooms. The second floor, however, will be purely residential, with 4 one-bedroom units and 3 two-bedroom units.

Upon completion of construction, the site will include all appropriate landscaping, and substantial beautification in a form similar to the existing site along West First Street. ICFR maintains all its properties to the highest aesthetic standards inside and out, and the North and South Buildings will be no different.

B. ICFR's Operations and Requests to the City are subject to the Dictates of the ADAA and the FHAA.

ICFR falls within a protected class by virtue of its association with the patients it treats. As such, any municipality within which ICFR operates is prohibited from treating ICFR differently than others based on the patients ICFR serves.

In *MX Group, Inc. v. City of Covington*, the Court of Appeals addressed a situation where neighbors of a property owner who wished to open a methadone clinic had complained that they were concerned about the effects of a nearby methadone clinic. 293 F.3d 326 (6th Cir. 2002). The court found that the zoning code at issue in that case was facially discriminatory against victims of addiction because it included any “place whose primary function is to care for the chemically dependent.”

Accordingly, ICFR’s proposal cannot be denied on the basis that ICFR is treating patients suffering from substance use or mental health disorders. Importantly, when the City rezoned the New Properties, it left other surrounding healthcare properties in their existing zones – that is, they did not change the zones of a neighboring eye clinic, or a neighboring former IU Health parking lot, which has since been modified to a hub for the use of ambulances. Rather, when the City rezoned the New Properties, along with ICFR’s existing properties, it specifically targeted only the substance use disorder treatment facility along north and south First Street.

C. ICFR was Unlawfully Spot-Zoned

“Spot-Zoning” is the “singling out of property for a different treatment from that accorded to similar surrounding land which is indistinguishable from it in character.” *L&W Outdoor Advertising Co. v. State*, 539 N.E.2d 497, 499 (Ind. Ct. App. 1989). Particularly, zoning a particular parcel of land in order to avoid the application of state or federal law is improper and an unlawful use of spot zoning. *Id.*

The courts have been unequivocal that where a municipality spot zones an area without a rational relation to the public health, safety, morals, convenience or general welfare, such actions are illegal. *See also Hundt v. Costello*, 480 N.E.2d 284 (Ind. Ct. App. 1985). In the case of ICFR’s existing properties and the New Properties, the City specifically targeted only ICFR’s properties and spot-zoned them to effectively prohibit ICFR from expanding within its then-existing MH zone.

Furthermore, ICFR appears to have been specifically targeted in violation of the ADA and the FHAA. Per the Department of Justice, the Fair Housing Act prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a protected characteristic (such as Title II of the ADA). Here, the only west first street zoning change from MH to R-2 was ICFR’s properties, despite the fact that it was already in use for medical purposes.

This Petition, however, is a follow-up to the City Council’s invitation to apply for a rezone of the New Properties. Granting the Petition would (1) render the New Properties more consistent with existing uses along West First Street, and (2) correct the spot-zoning that occurred in 2021 when the City rezoned the New Properties from MH to R-2.

D. The Rezoning of the Property Constitutes a Regulatory Taking and is Subject to a Claim of Inverse Condemnation.

Inverse condemnation arises when a condemning municipality, such as the City of Bloomington, effectively acquires property without the owner's consent. Typically, this is done through the eminent domain process, but when a municipality takes a zoning action that substantially reduces the value of the property, a claim for inverse condemnation arises.

In Indiana, inverse condemnation claims are codified under Indiana Code §32-24-1-16. The myriad cases that interpret the statute hold that even if there is no physical taking of the subject land, it is enough for a claim of inverse condemnation where there is "substantial interference with private property which destroys or impairs one's free use and enjoyment of the property or one's interest in the property." *Center Township Corp. v. City of Mishawaka*, 882 N.E.2d 762, 770 (Ind. Ct. App. 2008).

In the case of ICFR and the New Properties, the City Council was placed on notice by counsel for ICFR that ICFR's investment backed expectation was to be able to use the New Properties for a healthcare use. As was explained to the City Council on May 13, 2021, ICFR's investment-backed expectation when it acquired the New Properties was that it would be able to function within an MH zoning district. As referenced above, if the MH zoning district remained along West First Street, this petition would not have been necessary, and ICFR could begin operations without further requests from the City. By permitting the rezone back to MH, the issue can be remedied, and ICFR can continue with its plan to construct Group Care Homes on the north and south sides of West First Street.

Conclusion

ICFR's long-standing operation on Bloomington's West First Street has become a fixture, and its expansion would add additional life to an already thriving cluster of healthcare properties in the area. The stretch of West First Street subject to this petition should not have been rezoned, but granting this Petition would operate as a correction to the improper spot-zoning that occurred back in 2021.

Respectfully submitted,



Cheyenne N. Riker
Counsel for Indiana Center for Recovery, LLC
and West 1st Street Assemblage, LLC