



USE-BY-RIGHT PERMIT TO SERVE THE PROTECTIVE CLASSES DESIGNATED BY THE AMERICAN DISABILITIES ACT

Purpose of Use-By-Right Permit - Several Colorado cities and counties have adopted a “use by right” zoning permit to allow licensed and accredited programs, serving the protective classes designated by the American Disabilities Act the opportunity to establish adequate housing to serve the disabled. The use-by-right permit is issued to service programs (for protected classes) that are in compliance with state regulations and licensure. The advantage is that these programs are not required to go through an extensive-intensive, time and financially costly variance procedure that includes a hearing based on NIMBYISM complaints. While a public hearing for a use-by-right permit is often held, the hearing is designed to inform the public about the purpose of the program and how it will safely operate to serve the disabled protective class. Generally, the city or county planning department is fully in charge of issuing such permits and if the applicant meets requirements the permit is granted without the need to go before a County Commissioner’s adversarial public hearing.

Positive Use-By-Right Experiences – As the founder of a science-based addiction recovery model, licensed by the Colorado State Office of Behavioral Health and accredited by the Joint Commission, I can relate two positive experiences in applying for and receiving a use-by-right permit.

Larimer County – My application to the Larimer County Planning Department for a use-by-right permit to operate our addiction recovery program was well received. Our program met the criteria for the permit and a public hearing was held to inform the neighborhood about our program and how we would safely operate. The use-by-right permit was granted within one month of application with no fees. Our only expense was to prepare the required documents and to advertise and host a public hearing. We could not utilize this permit as the home we had selected did not meet the requirements of the USDA loan that we were seeking, and we searched for another property in Larimer County.

Town of Estes Park – We obtained a second property in Larimer County and in applying for another use-by-right permit we learned that the property, even though in Larimer County was under the jurisdiction of the Estes Park. We were

denied a special use permit by the Town of Estes Park as a use-by-right permit was not even in the city's zoning code.

Town of Woodland Park – We began the application for a city permit to operate our addiction program within the city limits. We completed the application process by producing the required documents to the city and held several public hearings. The hearings were predominated by NIMBYISM comments from complaining neighbors and by far outweighed the positive supporting testimonies. We were sure to be denied our permit when the City Attorney requested a 2-week delay in the City Council's vote to investigate the American Disabilities Act. When we returned for the voting hearing, the City Attorney announced that based on her research, the Town of Woodland Park has no choice but to grant the permit.

Negative Permit Application Experiences – The past 14-years of operating our addiction recovery program have been plagued with time-consuming, costly and adversarial attempts to obtain required permits to house our program in 4 Colorado Counties and 4 Colorado Cities. We have paid over \$100,000.00 in fees and application expenses to no avail.

Elbert County – We had obtained a beautiful, remote 400-acre ranch for our program. Had spent a year providing documents and paying a large fee to the Elbert County Development Department. Our first hearing was with the Planning Commission of about 15 representatives and we passed with a unanimous vote. However, the County Commissioners denied our permit.

We then obtained another suitable property and provided the required documents and paid another large fee. After a year's time of hearings and meeting requirements the Planning Commission approved our plan and we were again denied by the County Commissioners. Both attempts to obtain our special use permit were thwarted by "NIMBYISM".

El Paso County – In our first attempt to obtain a special use permit, we were well on our way when some investors purchased our designated property right out from under us and even used our licensing policies and procedures to obtain their State License. Our attorney wanted to file suit against El Paso County for accepting our initial work but we didn't wish to have a negative relationship with anyone.

We continued to search for property for our program and were denied 3 separate locations in the early stages of application for county permits. Basically, the purchase contract with the 3 homeowners was retracted following a public hearing and adverse reactions from the neighborhood. We were plagued with comments such as: "This program would be dangerous to our neighborhood as the clients will rape our children, steal our cars, get in our house and drink our

liquor.” We actually had obtained a USDA loan to purchase any of these 3 properties. We lost the funding as the USDA fiscal year ended in October and we would need to re-apply. However, we could not locate a suitable property to begin the process again. Thus, we were stuck with having the clients live with us in our personal residence.

Douglas County – A couple in Douglas County offered their lovely home on several acres for our program and we attempted to receive a special use permit from the Douglas County Planning Department. We provided the required documents, paid the large fee and again were denied a permit. The NBYSIM lies were atrocious. One neighbor reported that the landowner had been patrolling the property lines with a rifle. The landowner did not ever own a gun.

Lincoln County – Same process different story but laces with adversarial neighborhood testimony and again denied with another serious attempt and another large fee lost.

Back in El Paso County - Our attempt to obtain a special use permit required a variance in zoning as the designated property (my personal residence) had not been zoned for a rehab. That process involved an entire year and the County Commissioners barely passed the variance. At that point, we were required to begin the application process for the special use permit. We were approved by the Planning Commission and were about to be set for a County Commissioner hearing when an opportunity to lease a Colorado Springs property came up and we abandoned our attempt to receive the special use permit for my residence. We were provided documentation by the leasing company that the Colorado Springs property had been designated for mental health programs so it was simple to have our state license transferred to the new location.

After about a year operating under the assumption that we were in compliance with our residency, we received a letter from El Paso County Development Department attorney stating that we actually required a special use permit from the county and they threatened to jail me for every day we had been operational without the permit. Again, we made application for the special use permit by providing the required documents and paying another large fee. Again, the County Commissioners denied our permit. During my presentation, I was asked not to refer to mental health as they believed there is no relationship between addiction and mental health, and not to mention the war on drugs as it had nothing to do with addiction. The denial was based on their assumption that we were dangerous to the neighborhood even though we had safely operated for over a year. They stated that we had guns in the house, that our staff was smoking marijuana in the driveway, one lady said we had dug holes in our yard and her dog fell into a hole. With this denial, our attorney urged me to file a complaint with the Fair Housing Department and the American Disabilities Act office. Our complaint was sent to the U.S. Department of Justice who filed suit

against El Paso County Commissioners, provided a special attorney for us, and stated that we could remain on our property and that if anyone bothered us, they would be held liable.

El Paso County Commissioners responded to the lawsuit by hiring a special attorney for advice and proceeded to make arrangements for Group Home permits – not even mentioning Residential Intensive Care for Addiction Recovery. We continued to operate for another year at the Colorado Springs location and we offered an opportunity to move our program to Monument. The next episode with El Paso County Commissioners resulted in designating our program as a Group Home and we were ordered to take our therapy sessions to a separate office and allowed only four cars parked in our driveway at one time. We cannot continue to operate under these conditions as we and our landlord are continually harassed by the neighborhood HOA and an antagonistic neighbor who was even caught in our trash bin and photographs our driveway should a 5th car drive through.

City of Colorado Springs – We recently began the application process for a permit for a home within the City of Colorado Springs, to learn that a use-by-right permit is available for the protective classes except for those with substance abuse or addiction.

City of Palmer Lake – We recently begun the application process for a permit for a home within the City of Palmer Lake, to learn that residentially zoned areas would not allow our program, and the areas that would permit our program had no available housing.

Today, we continue to seek an adequate property to provide Intensive Residential Care in a home-like setting that our model proposes. Again, we are faced with having to obtain a variance and then a special permit. These processes require about 2 years of preparation, adversarial hearings, and payment of additional large fees.

National Adherence to ADA – A solution to the nationwide problem of lack of adequate residential addiction treatment facilities could be having all states, all cities and all counties adopt a Use-By-Right permit that would assure the safety of neighborhoods where such a facility would be housed. This would allow licensed and accredited programs to establish adequate housing for addiction treatment without the negative and costly experiences of zoning variances and adversarial hearings.