



**ZONING BOARD OF APPEALS MEETING**  
7386 S. GALE ROAD GRAND BLANC, MI 48439  
WEDNESDAY, JANUARY 24, 2024 AT 6:00 PM

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**AGENDA**

*IN PERSON MEETING*

To Participate: Join Zoom Meeting by Videoconference or Telephone:  
LOGIN OR DIAL: 1 312 626 6799 US  
MEETING ID: 747 569 7662  
PASSCODE: 007386

CALL TO ORDER

ROLL CALL

STAFF PRESENT

APPROVAL OF AGENDA

APPROVAL OF MINUTES

1. Approve December 20, 2023 Zoning Board of Appeals Meeting Minutes.

PUBLIC COMMENTS

UNFINISHED BUSINESS

NEW BUSINESS

2. Appoint officers as Chairman, Vice Chair, and Secretary for 2024 Zoning Board of Appeals.
3. ZBA #24-01, 11280 Hegel Rd. (02-23-200-018) My Brother's Keeper of Genesee County Appeal Building Inspectors Letters.

REPORTS

4. Township Report
5. Planning Commission Report

PUBLIC COMMENT

BOARD COMMENTS

ADJOURNMENT

PHYSICALLY CHALLENGED PERSONS NEEDING ASSISTANCE OR AID AT ANY PUBLIC MEETING OR PUBLIC HEARING SHOULD CONTACT THE ATLAS TOWNSHIP CLERK AT 810-636-2548 DURING REGULAR OFFICE HOURS, NOT LESS THAN SEVENTY-TWO (72) HOURS PRIOR TO THE PUBLIC MEETING OR PUBLIC

**HEARING.**



**ZONING BOARD OF APPEALS MEETING**  
 7386 S. GALE ROAD GRAND BLANC, MI 48439  
 WEDNESDAY, DECEMBER 20, 2023 AT 6:00 PM

***DRAFT* MINUTES**

***IN PERSON MEETING***

**To Participate: Join Zoom Meeting by Videoconference or Telephone:**  
**LOGIN OR DIAL: 1 312 626 6799 US**  
**MEETING ID: 747 569 7662**  
**PASSCODE: 007386**

**CALL TO ORDER**

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

**ROLL CALL**

PRESENT  
 Craig Berry  
 J. Michael Rembor  
 Ann Marie Moore  
 Jim Sweet  
 Andrew Holmes (1st Alternate)

ABSENT  
 Joel Mallery

**STAFF PRESENT**

Lexi Christner, Recording Secretary  
 Jim Busch, Deputy Supervisor  
 Traci Sasser, ZBA 2nd Alternate

**APPROVAL OF AGENDA**

**Motion to approve the agenda as presented.**  
**Motion made by Moore, Seconded by Sweet.**  
**Voting Yea: Berry, Rembor, Moore, Sweet, Holmes**  
**Motion carries 5-0**

## APPROVAL OF MINUTES

### 1. Approve March 22, 2023 ZBA Meeting Minutes

**Motion to approve March 22, 2023 ZBA Meeting Minutes as presented.**

**Motion made by Rembor, Seconded by Sweet.**

**Voting Yea: Berry, Rembor, Sweet, Holmes**

**Abstain: Moore**

**Motion carries 4-0**

## PUBLIC COMMENTS

None.

## NEW BUSINESS

### 2. Building Inspector request to clarify the Non-Conforming Uses Ordinance 300.310 (B&C).

Rembor opened with a short summary of why the ZBA is looking at the Ordinance. The question is, if a nonconforming building is adding an addition without exceeding the existing non-conformity, does the Building Official have the authority to approve the addition, or does the home owner need to apply for a variance with the ZBA.

A lively discussion took place with the commissioners.

Berry noted that the building official contacted him and explained that, in the past, if the non-conformity did not increase, he would have approved the permit. He now wants better clarification on what his authority is to do so. The Ordinance is written with terms "use" and "structure" and therefore hard to determine a straight answer.

Sweet noted, if the building is not increasing the existing non-conformity, then the building inspector should have authority to grant the addition permit.

Holmes added if the structure is grandfathered in within the non-conformity, but not increasing with addition, it should be granted.

Rembor noted an increased non-conformity could occur anywhere on the property, not just a front yard set back. If this occurred, would we want a building official to grant an addition to a side yard or rear yard with housing or businesses near, without proper notice to the surrounding community and opportunity to hear feedback through the ZBA process.

Moore agreed that if the addition to the existing structure does not exceed the current non-conformity, the building official should have authority. She also cautioned that every case is different and that is why the Zoning Board of Appeals is here. There needs to be more clarification on what can be approved by the Building Official.

**Motion to grant the Building Official the authority to approve additions to nonconforming structures based on the current ordinance as written. Motion continued to request the Planning Commission to review this ordinance "300.310 Non-Conforming Uses, Structures, and lots" and amend to clarify what situations the building official may be authorized to review and what situations require review and approval of the Zoning Board of Appeals.**

**Motion made by Rembor, Seconded by Sweet.  
Roll Call Voting Yea: Berry, Rembor, Moore, Sweet, Holmes**

**Motion carries 5-0**

## REPORTS

### 3. Township Report

Moore reported the Township Board had a meeting this past Monday, a couple resolutions passed and welcomed Traci Sasser to the Zoning Board of Appeals as 2nd alternate.

### 4. Planning Commission Report

See attached from Planning Commission Chair Rembor.

## BOARD COMMENTS

Rembor - Confirmed the request will be on the next Planning Commission agenda. The Planning Commission will draft a revised ordinance, send it back to the ZBA for review and comments and then hold a public hearing and finalize and send to the Township Board with recommendation for adoption. Rembor also shared a copy of the Atlas Township Board of Trustees Public Comment and Conduct Policy for the ZBA to discuss at their next meeting for possible inclusion in their bylaws.

## ADJOURNMENT

**Motion to adjourn Zoning Board of Appeals meeting at 6:56pm.**

**Motion made by Moore, Seconded by Rembor.**

**Voting Yea: Berry, Rembor, Moore, Sweet, Holmes**

**Motion carries 5-0**

**PHYSICALLY CHALLENGED PERSONS NEEDING ASSISTANCE OR AID AT ANY PUBLIC MEETING OR PUBLIC HEARING SHOULD CONTACT THE ATLAS TOWNSHIP CLERK AT 810-636-2548 DURING REGULAR OFFICE HOURS, NOT LESS THAN SEVENTY-TWO (72) HOURS PRIOR TO THE PUBLIC MEETING OR PUBLIC HEARING.**

### CLERK'S CERTIFICATION

I, Katherine Vick, the duly elected, qualified and acting clerk of the Township of Atlas, Genesee County, Michigan do hereby certify that the foregoing Minutes are a true and accurate accounting of the actions of the Atlas Township Zoning Board of Appeals during the regular meeting held on December 20, 2023 I further certify that the meeting was duly called and held, and that a quorum was present.

\_\_\_\_\_  
Katherine Vick, MiPMC,  
Atlas Township Clerk

\_\_\_\_\_  
Date

**ATLAS TOWNSHIP ZONING BOARD OF APPEALS**

**REQUEST FOR  
INTERPRETATION OF ZONING ORDINANCE, AND  
DECLARATION OF COMPLIANCE**

NOW COMES, My Brother's Keeper of Genesee County, Inc., by and through the law office of CF Legal, PC., by Craig R. Fiederlein (P55842), and for its appeal to the Zoning Board of Appeals to review the recommendation of the Atlas Township Building Inspector, Matt Hart's decision to deny the proposed use of the building that a Veterans' Group Home is not a "foster care" group home as defined by the Atlas Township ordinances, state, and federal law.

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Owner/Appealing Party:	<u>My Brother's Keeper of Genesee County, Inc.</u>
Property:	<u>11280 Hegel Road, Atlas Township, MI 48438</u>
Zoning of Property:	<u>Residential Agricultural</u>
Tax Id No.	02-23-200-018
Current Zoning:	RA
Legal Description:	See Exhibit A

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**I. JURISDICTION AND STANDING**

Under MCL 125.3604(1), "an appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government." My Brother's Keeper of Genesee County Inc. requests a review of this Zoning Board of the Atlas Township building department official's decision to deny the future proposed use of the building as a Veteran's Group Home. The group home qualifies under the Residential Agricultural Ordinance as an Adult Foster Care small group home as the property will house less than 12 adult residents that will have supervision as required by the VA, located at 11280 Hegel Road, Atlas Township, MI 48438. This appealing party requests an interpretation of the Atlas Township's zoning ordinance, specifically §§ 300.400 and 300.201, as is their right by law under

MCL 125.3604(5), in addition to a determination of whether My Brother's Keeper of Genesee County Inc.'s proposed use does not comport with the purpose and intent of the RA district zoning which allows adult group residential homes.

**II. INTRODUCTION**

My Brothers Keeper Of Genesee County, Inc., is a domestic nonprofit corporation committed to assisting veterans find housing in Genesee County. On July 28, 2023, My Brother's Keeper bought a parcel of property at 11280 Hegel Road, Atlas Township, MI 48438. The intended use for this property is to house no more than ten (10) veterans in need of housing for up to 180 days. My Brother's Keeper provides a multitude of services, including food services, activities, laundry, etc. The unique location of the property outside of the city supports residents' mental health. The property will have 24/7 surveillance and on-site security in place for the safety of the residents in addition to full-time staffing. My Brother's Keeper is funded by federal grants through the Veterans Administration Homeless Providers Grant and Per Diem program. (**Exhibit B**, Grant Requirements). This Veteran's Home would qualify as a small group foster care facility in Michigan but as a Veteran's Home it is not required to have State licensing as the federal approval is more stringent and provides oversight of the home and its operation. The home has the necessary federal approval in the form of a signed contract with the Veteran's Administration. Most, if not all the veterans intended for this home have a variety of disabilities, PTSD, and other mental health issues.

My Brother's Keeper as the recipient of the grant has a multitude of stringent requirements from the VA; these include physical and mental health services, three meals a day made for each resident, 24/7 surveillance and on-site security, transportation for the residents, case management, occupational therapy, and a learning environment to allow Veterans to transition from the group

home, etc. Staffing includes full-time (8:00 AM to 4:00 PM) administrative assistants to answer phones and monitor the residents, four rotating part-time shelter security administrators who are always on-site, in addition to at least one executive director who will have an office at the facility. The Veteran's administration provides clinical case managers for the veterans.

The building on the property has been the subject of considerable litigation and dispute. It has ten-bedrooms, seven bathrooms, and is a 3,724 square feet house. The building was constructed and/or modified to hold a software company, with ten (10) offices and two bedrooms above the garage. Minor interior renovations were completed to grant extra protection from Covid-19 and preserve resident privacy. The past uses of the property include not only the software corporation, where a large number of employees worked on the property, but also a bed and breakfast, and a marijuana business. It is unclear if these previous uses, approved by the Township, complied with the zoning code. Regardless, in the history of the property at issue, the facility was permitted to house as least ten (10) individuals and is certified to occupy in excess of 20 people.

Atlas Township has zoned the property as "Residential Agricultural" as defined by section 300.400 of the Atlas Township Municipal Code. Under this type of District, the Code allows for several different purposes without any conditional use approval, including for farm use, detached one-family dwellings, and *adult foster care small group homes*. Atlas Township Code § 300.401. Atlas's ordinance defines an adult foster care small group home as "an adult foster care facility with the approved capacity of not more than 12 adults who shall be provided foster care." Atlas Township Code 300.201 § 2.02a(C). My Brother's Keeper's proposed use is virtually identical to the adult foster care small group home allowed under the Residential Agricultural zoning.

However, Atlas has claimed that the intended use of the property by My Brother's Keeper does not match any of the permitted uses for Residential Agricultural zones. (**Exhibit C**, 11/9/23



Building Inspector Ltr). The Township has also stated that under section 300.201 of the Atlas Township Municipal Code, the intended use does not fit any definition of permitted use, suggesting that there is no appropriate zone for the transitional housing that My Brother's Keeper provides. Thus, since there is no more appropriate zone for the proposed use than Residential Agriculture, and no variance application is being requested.

My Brother's Keeper's proposed use should be approved because (1) it is an adult foster care small group home as defined by the state, (2) any defects in state licensure are immaterial and preempted by federal law, (3) there is no reasonable governmental interest advanced by denying the proposed use of the property, and (4) Atlas Township has totally excluded My Brother's Keeper from the Township.

### **III. DISCUSSION**

#### **A. My Brother's Keeper is an Adult Foster Care Small Group Home**

My Brother's Keeper provides care for its adult residents, many of which have service-related disabilities. An "adult foster care small group home" is defined by the Atlas Township Zoning Ordinance as follows: "An adult foster care facility with the approved capacity of not more than 12 adults who shall be provided foster care." Atlas Township Code 300.201 § 2.02a(C). This definition is clearly met by My Brother's Keeper.

The term "foster care" in this context can reasonably be defined as care for those "who are aged, mentally ill, developmentally disabled, or physically handicapped and require supervision on an on-going basis but who do not require continuous nursing care." MCL 400.703(4). Further, "physical disability" means a determinable physical characteristic of an individual that may result from disease, injury, congenital condition of birth, or functional disorder. MCL 400.706(2). It is undisputed that PTSD is a recognized disability. *Noe v Dept of Treasury*, 2019 WL 452164,

*Cramer v Transitional Health Servs. of Wayne*, 338 Mich App 603 (2021) (reversed on other grounds). Putting these definitions together, there is little doubt that My Brother's Keeper is an adult foster care facility. Additionally, the local unit of government is not allowed to individually assess the qualifications of each resident of the group home which would violate several state and federal laws including HIPPA confidentiality.

**B. The State Licensure Requirement is Immaterial and Preempted by Federal Law**

Atlas Township has suggested that My Brother's Keeper is not an adult foster care home because the organization lacks "state licensure" as an adult foster care home. However, any supposed difference in a "state licensure" requirement is immaterial. In order to receive a federal grant through the Veterans Administration Bridge Housing program, programs must meet federally adopted grant standards *which are more stringent than any state licensure requirements*. 38 USC § 2002 (note) requires specific training and education for grant recipients under this program from the Secretary of the Veterans Administration. See PUBLIC LAW 114-315—DEC. 16, 2016, § 704. Further, under 38 U.S. Code § 2011, the Secretary of the Veterans Administration may only give this type of grant funding to an organization which meet a number of requirements, including for example, numerous fire and safety requirements, staffing requirements, health care requirements, transportation assistance, and levels of sanitariness, etc. These requirements and regulations are specifically stated in 38 C.F.R. part 61.

These federal regulations clearly are intended to occupy the field of governance as it relates to adult foster care group homes for veterans. Any definition by a State or local body that alters these federal regulations is pre-empted by Federal law. The Supremacy Clause of the United States Constitution, U.S. Const., art. VI, cl 2, gives Congress the authority to preempt state laws that

interfere with, or are contrary to, federal law. See *Ter Beek v. City of Wyoming*, 495 Mich. 1, 10, 846 N.W.2d 531 (2014).

“Under conflict preemption, a federal law preempts state law to the extent that the state law directly conflicts with federal law or with the purposes and objectives of Congress.” *Packowski v. United Food & Commercial Workers Local 951*, 289 Mich.App. 132, 140, 796 N.W.2d 94 (2010). Federal preemption is either express or implied. If express, the intent of Congress to preempt state law must be clearly stated in the statute's language or impliedly contained in the statute's structure and purpose. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992). In the absence of express preemption, implied preemption may exist in the form of conflict or field preemption. Conflict preemption acts to preempt state law to the extent that it is in direct conflict with federal law or with the purposes and objectives of Congress. Field preemption acts to preempt state law where federal law so thoroughly occupies a legislative field that it is reasonable to infer that Congress did not intend for states to supplement it. *Cipollone*, supra at 516, 112 S.Ct. 2608.

Thus, here the federal government has set in place numerous regulations to regulate the field of adult foster care group homes for veterans, especially when the program falls under a federal grant program. If the adult foster care definition by Michigan, repeated by Atlas, alters these federal requirements or regulations in any way, that alteration is invalid.

**C. There is no Reasonable Governmental Interest Advanced by Denying My Brother's Keeper's Proposed Use**

The right to full and free use and enjoyment of one's property in a manner and for such purpose as the owner may choose, so long as it be not for the maintenance of a nuisance injurious to others, is one of which he may not be deprived by government without due process of law nor

may his property be taken by government without just compensation. U.S. Const. Amends. 5 and 14; Mich.Const. 1908, art. 2, § 16, and art. 13, § 1.

Under *Euclid v. Ambler Realty Co.* 272 US 365; 47 S Ct 114; 71 L ED 303 (1926), the US Supreme Court first declared municipal zoning constitutional as an exercise of the police power of the states – the power to regulate human activity to promote public health, safety, morals and general welfare. However, as a foundational principle of zoning law, the court stated that a zoning ordinance must find justification in some aspect of the police power asserted for the public welfare. *Id.* at 387.

It is well established that a zoning ordinance must be reasonable. *City of N. Muskegon v. Miller*, 249 Mich. 52, 227 N.W. 743 (1929). The question of reasonableness should be applied to the property at issue. *Hitchman v. Oakland Twp.*, 329 Mich. 331, 336, 45 N.W.2d 306, 309 (1951). In *Alderton v. Saginaw*, the Michigan Supreme court held that:

a zoning ordinance to be valid must bear a direct and substantial relation to the objectives of police power (the preservation of the public health, safety, morals and general welfare of the community as a whole); *Alderton v. City of Saginaw*, 367 Mich. 28, 33, 116 N.W.2d 53, 55–56 (1962)

Michigan courts have held that zoning is unreasonable when there is no governmental interest being advanced. *Kropf v. City of Sterling Heights*, 391 Mich. 139, 215 N.W.2d 179 (1974). Michigan courts have also specifically found that a zoning restriction that causes idle or wasted land is unreasonable. *Plum Hollow Golf & Country Club v. Southfield Twp.*, 341 Mich. 84, 67 N.W.2d 122 (1954).

As stated above, My Brother's Keeper is, for all practical purposes, an adult foster care small group home. The basic purpose of the home is for the supervision of adults who do not require continuous nursing care. In addition to meals being totally covered for the residents, the veterans in the home are supervised continuously and the home is provided with 24-hour security.

The home will house less than the 12 residents allowed in the RA zoning and the home is a 10-bedroom, 7-bathroom home, and with a common area for food and recreation. Additionally, the Veterans' home intends to use the Agricultural use of the property to assist their Veterans in learning to properly garden and potentially care for animals on the farm property which is subject to the Right to Farm Act.

In fact, there is only one material difference between an adult foster care group home as defined by statute and the home that My Brother's Keeper has proposed; My Brother's Keeper is to house *Veterans* and any rejection of this use is discriminatory and violates Federal law. It is unreasonable for Atlas Township to assert that one type of home, an adult foster care small group home, is allowed, but a home for qualified veterans that is otherwise identical to an adult foster care small group home is not allowed. There is no reasonable government interest being advanced by specifically excluding veterans. *Kropf v. City of Sterling Heights*, 391 Mich. 139, 215 N.W.2d 179 (1974).

**D. Atlas Township's Residential Agricultural Zoning of the Property is Unreasonable Because My Brother's Keeper is Totally Excluded From Atlas Zoning**

Michigan caselaw states that "an ordinance which totally excludes from a municipality a use recognized by the Constitution or other laws of this State as legitimate also carries with it a strong taint of unlawful discrimination and a denial of equal protection of the law as to the excluded use." *Kropf v. City of Sterling Heights*, 391 Mich. 139, 155-56, 215 N.W.2d 179, 185 (1974).

Since Atlas Township has stated that My Brother's Keeper proposed use of the property does not fit under the "adult foster care small group home" definition, and thus is outside of the Residential Agricultural zoning, My Brother's Keeper cannot qualify under *any zoning district* of Atlas Township.

For example, My Brother's Keeper does not qualify as a single-family household, because the Zoning Ordinance defines "family" to exclude "organizations" and any other potentially transient residents. My Brother's Keeper does not qualify as a motel, allowed in other zoning districts, because the residents are not "transient tourists." If, as Atlas asserts, My Brother's Keeper does not qualify as an adult foster care small group home, it cannot fall under the "special housing" district, § 300.12B00, which also allows for state licensed adult foster care facilities. Since, under Atlas's definitions, My Brother's Keeper does not qualify as an adult foster care small group home, Atlas Township's exclusionary zoning is unreasonable under Michigan caselaw.

**CONCLUSION:**

Thus, My Brother's Keeper comes before the Zoning Board of Appeals to appeal the zoning board administrator's decision to deny My Brother's Keeper's proposed use of the property and requesting an interpretation of Atlas Township's zoning ordinance. For the reasons stated above, My Brother's Keeper's proposed use should be approved.

Respectfully submitted:

*x Debra Hayes*  
Debra Hayes, Executive Director  
My Brother's Keeper

CF Legal PC

Dated: December 19, 2023 *(CW)*  
*21*

*[Signature]*  
Craig R. Fiederlein (P55842)  
Attorney for My Brother's Keeper  
302 East Court Street  
Flint, Michigan 48502  
(810) 232-1112

# EXHIBIT

# A

## LEGAL DESCRIPTION

Part of the Northeast Quarter of Section 23, Town North, Range 8 East, described as: Beginning at a point on the North line of said Section 23 that is East 100.00 feet from the North Quarter corner of said Section 23; thence East 100.00 feet along said North Section line; thence South 342.30 feet; thence East 225.00 feet; thence South 1,237.70 feet; thence West 325.00 feet; thence North 1,580.00 feet to the point of beginning

Commonly known as: 11280 Hegel, Goodrich, MI 48438  
Tax ID: 25-02-23-200-018



# EXHIBIT

# B

[78 FR 12604, Feb. 25, 2013, as amended at 80 FR 43323, July 22, 2015]

### § 61.80 General operation requirements for supportive housing and service centers.

- (a) Supportive housing and service centers for which assistance is provided under this part must comply with the requirements of the current edition of the Life Safety Code of the National Fire Protection Association and all applicable state and local housing codes, licensing requirements, fire and safety requirements, and any other requirements in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the supportive housing or service centers. Note: All facilities are to be protected throughout by an approved automatic sprinkler system unless a facility is specifically exempted under the Life Safety Code.
- (b) Except for such variations as are proposed by the recipient that would not affect compliance with paragraph (a) of this section and are approved by VA, supportive housing must meet the following requirements:
- (1) The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements;
  - (2) Entry and exit locations to the structure must be capable of being utilized without unauthorized use of other private properties, and must provide alternate means of egress in case of fire;
  - (3) Buildings constructed or altered with Federal assistance must also be accessible to the disabled, as required by § 502 of the Americans with Disabilities Act, referred to as the Architectural Barriers Act;
  - (4) Each resident must be afforded appropriate space and security for themselves and their belongings, including an acceptable place to sleep that is in compliance with all applicable local, state, and federal requirements;
  - (5) Every room or space must be provided with natural or mechanical ventilation and the structures must be free of pollutants in the air at levels that threaten the health of residents;
  - (6) The water supply must be free from contamination;
  - (7) Residents must have access to sufficient sanitary facilities that are in proper operating condition, that may be used in privacy, and that are adequate for personal cleanliness and the disposal of human waste;
  - (8) The housing must have adequate heating and/or cooling facilities in proper operating condition;
  - (9) The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents and sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire;
  - (10) All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner;
  - (11) The housing and any equipment must be maintained in a sanitary manner;
  - (12) The residents with disabilities must be provided meals or meal preparation facilities must be available;

(13) Residential supervision from a paid staff member, volunteer, or senior resident participant must be provided 24 hours per day, 7 days per week and for those times that a volunteer or senior resident participant is providing residential supervision a paid staff member must be on call for emergencies 24 hours a day 7 days a week (all supervision must be provided by individuals with sufficient knowledge for the position); and

(14) Residents must be provided a clean and sober environment that is free from illicit drug use or from alcohol use that: could threaten the health and/or safety of the residents or staff; hinders the peaceful enjoyment of the premises; or jeopardizes completion of the grantee's project goals and objectives. Those supportive housing or service centers that provide medical or social detox at the same site as the supportive housing or service must ensure that those residents in detox are clearly separated from the general residential population.

(c) VA will provide performance goals to recipients in its initial federal award and update annually thereafter:

(1) Each recipient must conduct an ongoing assessment of the supportive housing and services needed by their residents and the availability of housing and services to meet this need. Recipients are expected to make adjustments to meet resident needs.

(2) The recipient will provide to the VA GPD Liaison evidence of its ongoing assessment of the plan described in the grant application. The assessment must show how it is using the plan to meet the GPD performance goals.

(3) The VA GPD Liaison will provide the GPD performance information to recipients. VA will incorporate this assessment information into the annual inspection report.

(i) The VA GPD Liaison will review the quarterly assessment with the recipient no later than (30) days after the end of each of the following quarters:

(A) Quarter 1 (October–December) assessment completed not later than January 30;

(B) Quarter 2 (January–March) assessment completed not later than April 30;

(C) Quarter 3 (April–June) assessment completed not later than July 30; and,

(D) Quarter 4 (July–September) assessment completed not later than October 30.

(ii) A valid assessment must include the following:

(A) A comparison of actual accomplishments to established GPD performance goals for the reporting period addressing quantifiable as well as non-quantifiable goals. Examples include, but are not limited to, a description of grant agreement-related activities, such as: Hiring and training personnel, community orientation/awareness activities, programmatic activities, or job development; and

(B) Identification of administrative and programmatic problems, which may affect performance and proposed solutions.

(iii) Recipients and VA GPD Liaisons must include a summary of the quarterly assessment in their administrative records. These quarterly assessments will be used to provide a cumulative assessment for the entire calendar year.

(iv) The recipient must immediately inform the VA GPD Liaison of any significant developments affecting its ability to accomplish the work. VA GPD Liaisons will provide necessary technical assistance.

- (v) If, after reviewing a recipient's assessment, VA determines that it falls more than five percent below any performance goal, then VA may require the recipient to create and follow a performance improvement plan (PIP) as outlined in 38 CFR 61.80(c)(vi).
- (vi) Performance Improvement Plan (PIP): If VA determines that a recipient deviates more than five percent from established GPD performance goals for any two (2) consecutive quarters as defined in 38 CFR 61.80(c)(3)(A)(i) through (iv), the recipient will submit a PIP to the VA GPD Liaison sixty (60) calendar days after VA makes its determination.
  - (A) The PIP must identify the activity which falls below the measure. The PIP must describe the reason(s) why the recipient did not meet the performance measure(s) and provide specific proposed corrective action(s) and a timetable for accomplishment of the corrective action. The plan may include the recipient's intent to propose modifying the grant agreement. The recipient will submit the PIP to the VA GPD Liaison.
  - (B) The VA GPD Liaison will forward the PIP to the VA National GPD Program Office. The VA National GPD Program Office will review the PIP and notify the recipient in writing whether the PIP is approved or disapproved. If disapproved, the VA GPD Liaison will make suggestions for improving the proposed PIP, and the recipient may resubmit the PIP to the VA National GPD Program Office.
- (vii) If the recipient is not compliant after the PIP, then VA may impose any combination of the following enforcement actions by award revision:
  - (A) Withhold placements;
  - (B) Withhold payment;
  - (C) Suspend payment; and
  - (D) Terminate the grant agreement, as outlined in this part or other applicable federal statutes and regulations.
- (d) A homeless veteran may remain in supportive housing for which assistance is provided under this part for a period no longer than 24 months, except that a veteran may stay longer, if permanent housing for the veteran has not been located or if the veteran requires additional time to prepare for independent living. However, at any given time, no more than one-half of the veterans at such supportive housing facility may have resided at the facility for periods longer than 24 months.
- (e) Each recipient of assistance under this part must provide for the consultation and participation of not less than one homeless veteran or formerly homeless veteran on the board of directors or an equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project provided under this part. This requirement may be waived if an applicant, despite a good faith effort to comply, is unable to meet it and presents a plan, subject to VA approval, to otherwise consult with homeless or formerly homeless veterans in considering and making such policies and decisions.
- (f) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless veterans and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services for the project.
- (g) Each recipient of assistance under this part shall establish procedures for fiscal control and fund accounting to ensure proper disbursement and accounting of assistance received under this part.

- (h) The recipient of assistance under this part that provides family violence prevention or treatment services must establish and implement procedures to ensure:
- (1) The confidentiality of records pertaining to any individual provided services, and
  - (2) The confidentiality of the address or location where the services are provided.
- (i) Each recipient of assistance under this part must maintain the confidentiality of records kept on homeless veterans receiving services.
- (j) VA may disapprove use of outpatient health services provided through the recipient if VA determines that such services are of unacceptable quality. Further, VA will not pay per diem where the Department concludes that services furnished by the recipient are unacceptable.
- (k) A service center for homeless veterans shall provide services to homeless veterans for a minimum of 40 hours per week over a minimum of 5 days per week, as well as provide services on an as-needed, unscheduled basis. The calculation of average hours shall include travel time for mobile service centers. In addition:
- (1) Space in a service center shall be made available as mutually agreeable for use by VA staff and other appropriate agencies and organizations to assist homeless veterans;
  - (2) A service center shall be equipped to provide, or assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, and transportation assistance;
  - (3) A service center shall provide other services as VA determines necessary based on the need for services otherwise not available in the geographic area; and
  - (4) A service center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to meet the requirements of this paragraph.
- (l) Fixed site service centers will prominently post at or near the entrance to the service center their hours of operation and contacts in case of emergencies. Mobile service centers must take some action reasonably calculated to provide in advance a tentative schedule of visits (e.g., newspapers, fliers, public service announcements on television or radio). The schedule should include but is not limited to:
- (1) The region of operation;
  - (2) Times of operation;
  - (3) Expected services to be provided; and
  - (4) Contacts for specific information and changes.
- (m) Each recipient that provides housing and services must have a written disaster plan that has been coordinated with the emergency management entity responsible for the locality in which the project exists. The plan must encompass natural and man-made disasters.
- (n) The recipient will inform within 24 hours its VA liaison of any sentinel events occurring within the program (i.e., drug overdose, death, injury).

- (o) The grantee, or sub-grantee, will provide appropriate orientation and training to staff to enable them to provide quality services that are appropriate to homeless veteran or homeless special need veteran population.
- (p) The grantee will maintain systematic participant enrollment information and participant tracking records designed to facilitate the uniform compilation and analysis of programmatic data necessary for verification of veteran status and case management, reporting, monitoring, and evaluation purposes.
- (q) The grantee will also document in each participant record at a minimum:
  - (1) Family status.
  - (2) Verification of veteran status (DD214; Department of Veterans Affairs confirmation report and/or identification card).
  - (3) Education, employment history, and marketable skills/licenses/credentials.
  - (4) An Individual Service Plan (ISP) for each individual participant will be maintained in the participant case management record which contains the following:
    - (i) An assessment of barriers, service needs, as well as strengths; and
    - (ii) Specific services and referrals planned and benefits to be achieved as a result of program participation.
  - (5) Duration and outcome of supportive service.
  - (6) The grantee must verify service outcomes each calendar year quarter through the participant and provide documentation of this verification in the participant case management files.
- (r) The grantee will ensure that no more than 25 percent of the grant awarded beds are occupied by non-veterans, or VA may take actions as appropriate to decrease the beds, grant amounts, or terminate the grant and seek recapture in the case of capital funding. To calculate the occupancy rate, divide the actual number of bed days of care for veterans eligible to reside in the project, by the total number of possible bed days of care (the previous 180 days from the most current 6 month period).

*(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554)*

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)

[78 FR 12604, Feb. 25, 2013, as amended at 86 FR 33524, June 25, 2021]

### **§ 61.81 Outreach activities.**

Recipients of capital grants and per diem relating to supportive housing or service centers must use their best efforts to ensure that eligible hard-to-reach veterans are found, engaged, and provided assistance. To achieve this goal, recipients may search for homeless veterans at places such as shelters, soup kitchens, parks, bus or train stations, and the streets. Outreach particularly should be directed toward veterans who have a nighttime residence that is an emergency shelter or a public or private place not ordinarily used as a regular sleeping accommodation for human beings (e.g., cars, streets, or parks).

(Authority: 38 U.S.C. 501, 2011, 2012, 2061)



U.S. Department  
of Veterans Affairs

810 Vermont Avenue NW (003C)  
Washington DC 20420

Item 3.

**Date:** 6/14/2023  
**From:** Jason Sturm, Office of Construction & Facilities Management  
**To:** **VHA Grant and Per Diem Program National Program Office/VA Homeless Providers Grant and Per Diem (GPD) Capital Grants**  
**Subject:** MBKG247-2567-506-CG-22  
My Brother's Keeper  
Atlas Township, MI

### NEPA Compliance

We have reviewed the submission identified above.

The project scope consists of acquisition of approximately 10 acres of land at 11280 Hegel Rd, Atlas Township, which includes a 6868 square foot residence. Minor interior renovations of the building will also occur. The project will reduce shared bedrooms and bathrooms for Veterans to reduce the risk of COVID-19 exposure.

The Phase I environmental site assessment is acceptable. No recognized environmental conditions or vapor encroachment conditions were identified.

The scope of the proposed project falls within the bounds addressed in the Capital Grants Under the Grant and Per Diem Program Final Programmatic Environmental Assessment, and no potential environmental impacts due to this project are expected to be significant.

**Approval** is recommended for NEPA Compliance.

**JASON STURM** Digitally signed by JASON STURM  
Date: 2023.06.14 10:43:18 -05'00'

Jason Sturm  
U.S. Department of Veterans Affairs  
Office of Construction and Facilities Management  
U.S. Department of Veterans Affairs  
[VACOCFMGPDCapitalGra@va.gov](mailto:VACOCFMGPDCapitalGra@va.gov) | [www.cfm.va.gov](http://www.cfm.va.gov)

# EXHIBIT C



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7386 S. Gale Road

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www.atlastownship.org

**Shirley Kautman-Jones**, *Supervisor*  
**Katie Vick**, *Clerk*  
**Ann Marie Moore**, *Treasurer*  
**Barry June**, *Trustee*  
**Patrick Major**, *Trustee*



# Township OF ATLAS

November 9, 2023

Craig Fiederline  
 Attorney at Law  
 302 E. Court Street  
 Flint, MI 48502

Re: 11280 Hegel Road  
 Via email [cfiederline@cflegal.net](mailto:cfiederline@cflegal.net)

Dear Mr. Fiederline

I have had the opportunity to review Township Attorney David Lattie's correspondence, as well as your response dated November 8, 2023. I am writing in my capacity as the Atlas Township Building Inspector and the administrative official of the Atlas Township Zoning Ordinance as defined in Sec 13.06(A) to inform you that in my opinion the proposed use of the property is not a permitted use in the RA zoning district. Specifically, it appears the proposed use is to house up to ten unrelated adults on a temporary basis, not to exceed 180 days, and does not require an individual to be disabled.

Because the proposed is not permitted in the RA District, please consider this notice pursuant to Sec 13.06 (A)(1) that the proposed use is a violation of the Zoning Ordinance and is prohibited. As a result, a Certificate of Occupancy will not be issued, and a zoning permit as required in Sec 13.06(D) will not be issued.

Please advise if a statement of use will be submitted that complies with the uses permitted in the RA District, or whether your clients will be applying for a zoning ordinance amendment or seeking any other administrative remedies in the zoning ordinance.

Sincerely,

Matt Hart  
 Atlas Township Building Inspector



## Township OF ATLAS

**MATT HART**  
 Building Official Code Enforcement

**Mailing Address:**  
 P.O. Box 277  
 Goodrich, MI 48438  
**Physical Location:**  
 7386 S. Gale Road  
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Phone: 810-636-6809, ext. 306  
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ZONING BOARD OF APPEALS  
11280 HEGEL ROAD APPEAL OF BUILDING INSPECTOR/ADMINISTRATIVE OFFICIAL  
DATED NOVEMBER 9, 2023

INTRODUCTION

On about April, 19, 2023 Debra Hayes, on behalf of the charitable non-profit corporation My Brothers Keeper, submitted a purchase agreement to buy 11280 Hegel Road with the intention to qualify the property for a Veterans Administration grant that will pay them a daily amount (approximately \$70.00/day/vet) to house homeless veterans. After being notified that there were outstanding building permit issues created by the previous owner, the Atlas Township Building Inspector Matt Hart learned that the intended use was to house up to 10 homeless veterans for up to 180 days. Mr. Hart reviewed the Zoning Ordinance, particularly section 300.401 which describes the permitted uses in the Residential Agricultural Zoning District.

Finding that only single-family residential homes are allowed in the district, he sent correspondence November 9, 2023 that the proposed use is not allowed, and they would need to seek a rezoning to use the property for anything other than single family residential.

Pursuant to MCL 125.3604(1) and Section 300.1304 of the Zoning Ordinance, they are allowed to appeal Mr. Hart's determination that the proposed use is not allowed in the RA zoning district to the ZBA. The ZBA may affirm, reverse, or modify Mr. Hart's decision. A majority of the ZBA (3 of 5) is required to reverse the decision and must be in writing.

SCOPE OF APPEAL

The property is zoned Residential Agricultural. Below is the intent of the district, as well as a partial list of permitted uses.

*Sec. 400. The Residential Agricultural (RA) District is intended to preserve, enhance and stabilize areas within the Township presently used for single-family homes and farming. It is the further intent of this district to protect the essential characteristics, agricultural uses, while promoting low-density residential uses.*

*Permitted Uses*

*C. Detached one-family dwelling.*

*D. Home occupations.*

*E. Accessory structures.*

*F. Adult foster care family home or adult foster care small group home.*

*G. Family Day care home.*

The applicants proposed use is to house up to ten unrelated adults on a temporary basis, not to exceed 180 days, and does not require an individual to be disabled.” Mr. Hart also refers to my letter dated October 31, 2023 (attached).

In their appeal, the applicants argue that they qualify as an Adult foster care family home or adult foster care small group home. In support of their position, they refer to the definitions found in our zoning ordinance, the relevant portions state:

*Sec. 2.02a. Adult foster care facilities:*

*Adult foster care facility: A governmental or non-governmental establishment having as its principal function the receiving of adults for foster care. It includes facilities and foster care family homes for adults who are aged, emotionally disturbed, developmentally disabled or physically handicapped who require supervision on an ongoing basis but who do not require continuous nursing care. Adult foster care facility does not include a nursing home, a home for the aged, an alcohol or a substance abuse rehabilitation center, a hospital for the mentally ill or similar facilities. (emphasis added)*

*Adult foster care small group home: An adult foster care facility with the approved capacity of not more than 12 adults who shall be provided foster care.*

The term Adult Foster Care Facility is taken nearly verbatim from the MCL 400.703(4) definition which states:

**4) “Adult foster care facility” means a home or facility that provides foster care to adults. Subject to section 26a(1),<sup>1</sup> adult foster care facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care...”**

As you can see both definitions require care provided to aged, mentally ill, developmentally disabled, or physically disabled individual. The proposed use of the property is strictly for temporarily homeless veterans.

The fact that we adopted the same language used by the State in our zoning ordinance is not a coincidence. All municipalities are required to. MCL 125.3206 is a list of proposed uses that are preempted, or off-limits to township review (similar to cell towers, right of way fees, and just recently, certain solar panel facilities). Specifically, MCL 125.3206(1)(B)b states in part:

“Sec. 206. (1) Except as provided in subsection (2), each of the following is a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone:

**(b) A facility in use as described in section 3(4)(k) of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.**

Most importantly, a Foster Care Facility must be licensed by the State pursuant to MCL 400.713, which state in part:

**Sec. 13. (1) A person, partnership, corporation, association, or a department or agency of the state, county, city, or other political subdivision shall not establish or maintain an adult foster care facility unless licensed by the department.**

Adult foster care facilities all must be licensed by the State, that is how they qualify for special zoning preemption from local zoning ordinances. The applicants have stated very clearly, they will not be a state licensed foster care facility, therefore they are not entitled to be a permitted use in the RA zoning district.

### DISCUSSION

The applicants state that providing a facility to help homeless veterans is a beneficial endeavor, and they have pointed out that the property and structure are a good fit for the requirements of the grant. They have explained that there will be staff, including security present, and occupancy will be limited to 10 veterans at a time, so the potential impact on surrounding properties will be minimal.

That has not always been the case at this site. In 2001 the township had to seek an injunction to prevent the owners of the property from operating a computer software business. More recently, the previous owner, in addition to living in the home with his family, applied for a medical marijuana permit and had grown marijuana outside in violation of the medical marijuana statute. Although the applicants have alleged a bed and breakfast was operated there, the township has never rezoned the property for RA, and has consistently identified it as RA on assessing documents. The property was listed for sale as residential property, and the purchasers lack of understanding the township and state definition of foster care group home is what's causing this problem.

The applicant's argument that federal law preempts the zoning ordinance is misplaced. Whether or not there should be preemption at the federal level for homeless veteran housing is certainly worthy of discussion at the federal and state level by the appropriate legislative body, but it has not occurred yet. In fact, one of the requirements to qualify for the grant was a statement by the VA grant review staff that states "In addition to meeting your local authority having jurisdiction's codes and standards (sic)..." 4-11-23 email to Debra Hayes) This includes zoning and building codes.

As to the allegation of discrimination, exactly the opposite is occurring here. The zoning ordinance does not discriminate between worthy causes or owners. It merely seeks to separate disparate uses of land to promote harmony. Traditionally zoning ordinances zone single family housing separate from multi family uses (apartments), commercial from industrial, etc. The motivation, race, sex, religion, of an owner is irrelevant.

Finally, if the determination by Mr. Hart is upheld, the applicants can avail themselves to other administrative options in the zoning ordinance, including rezoning the parcel, proposing an amendment to the text of the ordinance, or consider a conditional rezoning.

Respectfully Submitted,

David Lattie  
January 17, 2024

**DAVID L. LATTIE**  
**Attorney at Law**  
**8332 Office Park Drive, Suite B**  
**Grand Blanc, MI 48439**  
**Telephone: (810) 603-1000**      **Email [Dlattie@lattielaw.com](mailto:Dlattie@lattielaw.com)**

October 31, 2023

Debra Hayes  
Executive Director  
My Brothers Keeper of Genesee County Inc.  
[Debrahayes1.mbk@gmail.com](mailto:Debrahayes1.mbk@gmail.com)

Re:11280 Hegel Road

Ms. Hayes,

By way of introduction, my name is David Lattie, and I am the Atlas Township attorney. I am writing regarding the proposed use of 11280 Hegel Road. I understand that My Brothers Keeper of Genesee County has purchased the above property and may be intending to use the property in a manner inconsistent with the permitted uses in the Residential Agricultural zoning district in Atlas Township. Specifically, I understand the proposed use is a “veterans group home”, which provides housing for an unspecified number of unrelated veterans.

As I mentioned, the property is in the Residential Agricultural zoning district, which allows a detached one-family detached dwelling, adult foster care family homes and adult foster care small group home. The Atlas Township Zoning Ordinance can be viewed at :  
[https://library.municode.com/mi/atlas\\_township\\_\(genesee\\_co\)/codes/zoning?nodeId=PT300](https://library.municode.com/mi/atlas_township_(genesee_co)/codes/zoning?nodeId=PT300).  
If you refer to section 300.201 of the ordinance, you will see that your proposed use does not meet the definition of any of the permitted uses. (As an aside, foster care homes are specifically defined by state statute, and licensed by the State of Michigan)

If I have misstated the proposed use, or there is some legal basis preempting compliance with our zoning ordinance, please advise me immediately. Alternatively, if you intend to request a re-zoning of the property, or seek conditional land use, please advise.

I have copied the Building Code official and Township Supervisor on this correspondence, and the verification of a use consistent with the zoning ordinance will be required before a certificate of occupancy may be issued.

Sincerely,

David Lattie