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**SPECIAL PERMIT NO. SP-02-15
SCOTT BARR/THE SAFE PLACE**

CLERK OF THE COURT
MANATEE CO. FLORIDA

**AMENDED FINAL ORDER OF MANATEE COUNTY
HEARING OFFICER , MARK D. SINGER, ON BEHALF OF
MANATEE COUNTY GRANTING SPECIAL PERMIT NO. SP-
02-15, FOR A SMALL RECOVERY HOME AS A
CONDITIONAL USE IN THE RSF-6 (RESIDENTIAL SINGLE
FAMILY, SIX DWELLING UNITS PER ACRE) ZONING
DISTRICT; PROVIDING FOR SEVERABILITY; AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Board of County Commissioners of Manatee County adopted the Manatee County Land Development Code, Manatee County Ordinance 90-01, as amended; and

WHEREAS, pursuant to the Land Development Code, Manatee County Ordinance 90-01, as amended, the Hearing Officer has the authority to grant Special Permits; and

WHEREAS, Scott Barr/The Safe Place has requested a Special Permit for a small recovery home as a conditional use in the RSF-6 (Residential Single Family, six dwelling units per acre) zoning district; and

WHEREAS, on April 1, 2004 the aforementioned Hearing Officer held a public hearing to receive the staff, applicant and public comment and argument regarding the proposed Special Permit for Scott Barr/The Safe Place; and

WHEREAS, on May 28, 2004, the aforementioned Hearing Officer issued a Final Order denying the requested Special Permit; and

WHEREAS, after appeal to the Circuit Court in and for Manatee County, Florida by Petition for Writ of Certiorari filed by Scott Barr/The Safe Place, the Honorable Paul E. Logan, Circuit Judge on November 2, 2004, granted the Petition for Writ of Certiorari, quashed the decision of the aforementioned Hearing Officer and remanded the matter for further proceedings that are consistent with his opinion; and

WHEREAS, on January 5, 2005, a hearing was held by the aforementioned Hearing Officer to consider the Order of the Honorable Paul E. Logan; and

WHEREAS, after hearing argument from legal counsel for Scott Barr/The Safe Place and from Manatee County, Florida, the aforementioned hearing Officer determined that the public hearing previously held would not be reopened and no further evidence would be admitted; and

WHEREAS, the Circuit Court's ruling on questions of law actually presented and considered in the appeal are the law of the case, foreclosing any subsequent consideration by the aforementioned Hearing Officer of any issues implicitly addressed or necessarily considered by the Circuit Court decision. Florida Department of Transportation v. Juliano, 801 So. 2d 101 (Fla. 2001); and

WHEREAS, the Circuit Court found that the Manatee County Planning Department's evidence at the April 1, 2004, public hearing demonstrated Scott Barr/The Safe Place' application for Special



Scott Barr/The Safe Place fully meets the criteria stated in the Manatee County Comprehensive Plan and the Land Development Code.

- D. Since the applicant has met its burden or proof entitlement to the Special Permit it seeks, the burden of proof to demonstrate by competent substantial evidence that the application does not meet the criteria stated in the Manatee County Comprehensive Plan and the Land Development Code or that it was adverse to the public interest falls upon Manatee County or a third party.
- E. Third party testimony and evidence was insufficient to demonstrate by competent substantial evidence that the application for Special Permit did not meet the applicable criteria.
- F. The proposed use meets all applicable standards and requirements set forth in the Land Development Code.
- G. The applicant is entitled to issuance of the Special Permit as a matter of law.

Section 3. Order. Based upon the foregoing, a Special Permit is hereby approved and issued to Scott Barr/The Safe Place for the property located at 2302 48th Avenue West, and more particularly described in Exhibit "A" attached hereto and incorporated herein, for Scott Barr/The Safe Place, subject to the following conditions:

- A. This Special Permit shall not be effective until it has been recorded in the Public Records of Manatee County, Florida by the applicant and a copy of the recorded Order is received by the Planning Department.
- B. The site plan submitted with this application shall be a part of this approval but only at the Preliminary Site Plan level. Administrative approval by Manatee County of a Final Site Plan shall be required subsequent to the approval of this Special Permit.
- C. No signs (including mail box signs) shall be erected for this recovery home.
- D. The recovery home shall have no more than 6 residents at one time, including staff.
- E. A curfew time shall be observed as follows: Residents shall be in the facility by 10:00 pm on weekdays and 1:00 am on weekends.
- F. The back yard of the site shall remain fenced with a 6' high opaque fence at all times during the operation of the residence as a recovery home.
- G. The proposed 5' x 8' can enclosure, opaque fence, and gate shall be 3' high, not 6'.
- H. The easterly access shall be a minimum of 12' wide, not 10' as shown.
- I. The residents of this facility shall comply with the "residency rules" submitted by the applicant, while residing at this location.
- J. The total number of vehicles allowed to be parked on the premises at one time shall

Permit fully met the criteria stated in the Manatee County Comprehensive Plan and the Land Development Code and that therefore the burden of establishing by substantial competence evidence that the application for Special Permit did not meet the criteria or that it was adverse to the public interest fell upon the zoning authority or some third party; and

WHEREAS, the Circuit Court ruled that, "...in the absence of any showing that this particular use failed to meet the LDC criteria or, in fact, was adverse to the public interest, the Hearing Officer departed from the essential requirements of the law in denying the special use application." (Order on Petition for Writ of Certiorari by the Honorable Paul E. Logan, November 2, 2004 at p. 9)

NOW THEREFORE, after consideration of the application for Special Permit No. SP-02-15 requested by Scott Barr/The Safe Place, and the Order on Petition for Writ of Certiorari by the Honorable Paul E. Logan, November 2, 2004, the Hearing Officer makes the following Finding of Fact and Conclusions of Law and issues this Amended Final Order, as follows:

Section 1. Findings of Fact. The aforementioned Hearing Officer, after considering comment, argument, evidence, documentation, and staff report presented, as well as all other matters presented at the Public Hearing above referenced, hereby makes the following Findings of Fact:

- A. The site is zoned RSF-6 and located in the RES-6 Future Land Use Category.
- B. The property is occupied with an approximately 1,675 square foot single-family residence which will serve as the small recovery home.
- C. The site is completely surrounded by property zoned RSF-6. Residential single-family detached homes are on all sides as well.
- D. The site is currently accessed by two driveways off 46th Avenue W. Parking will be provided within these two driveways.
- E. The applicant is not proposing any changes to the residence or landscaping.

Section 2. Conclusions of Law. Based upon the prior Findings of Fact and considering the testimony, evidence, documentation, and the staff report presented and reviewing the applicable provisions of the Manatee County Comprehensive Plan and the Manatee County Land Development Code and the Order on Petition for Writ of Certiorari by the Honorable Paul E. Logan, November 2, 2004, the above referenced Hearing Officer hereby makes the following Conclusions of Law:

- A. This Hearing Officer has jurisdiction over the parties and subject matter in this proceeding pursuant to the Land Development Code.
- B. The applicant has the burden of proving by substantial competent evidence entitlement to the Special Permit it seeks. Irvine v. Duval County Planning Commission, 495 So.2d 167 (Fla. 1986); Florida Department of Transportation v. J.W.C. Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981).
- C. The evidence received from the applicant and the Manatee County Planning Department demonstrates by competent substantial evidence that the application of

be limited to four (4) vehicles, to correspond to the four numbered parking spaces on the site plan.

Section 4. Severability. In the event that any portion or section of this Order is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decisions shall in no manner affect the remaining portions or sections of the Special Permit which shall remain in full force and effect.

Section 5. Effective Date. The effective date of this Special Permit shall be upon the recordation of an executed copy of this Order with the Clerk of the Circuit Court in and for Manatee County and receipt of a copy of the recorded Order by the Planning Department.

ORDERED ON BEHALF OF MANATEE COUNTY this 7th day of March, 2005.

MANATEE COUNTY, FLORIDA

BY: 

MARK D. SINGER, as
Hearing Officer for Manatee County

ATTEST: R.B. SHORE
Clerk of the Circuit Court

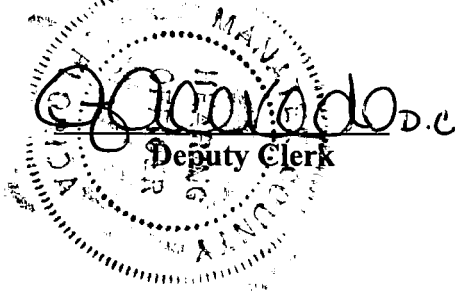


EXHIBIT "A"

LEGAL DESCRIPTION:

Lot 11, Blk 24, Holiday Heights Second Add

EXHIBIT "B"

SITE PLAN SUBMITTED WITH APPLICATION