



**CITY OF NEWARK
DELAWARE**

September 4, 2020

TO: Tom Coleman, City Manager **TC** **MF**
VIA: Mary Ellen Gray, Director of Planning and Development. **MEG** **MF**
FROM: Michael Fortner, Planner II **MF**
RE: REVIEW AND CONSIDERATION SPECIAL USE PERMIT APPLICATION FROM UNLOCKE THE LIGHT FOUNDATION FOR A PROFESSIONAL OFFICE IN A RESIDENTIAL DWELLING AT 136 WEST MAIN STREET (#20-07-01)

On July 12, 2020, the Planning and Development Department received a special use permit application from **SL24: UnLocke the Light Foundation** for a “Professional office in a residential dwelling”. The property, located at 136 West Main Street, is zoned “RS” (one-family detached residential – 9000 sf minimum lot size). The applicant, with Council’s approval of a special use permit, proposes to create **Sean’s House**, a professional office for mental health services, available 24 hours a day, for students ages 14-24 to have access to free peer support specialists and professionals to get the assistance they need to promote mental health and address depression and anxiety. The use would also have a residential component as three (3) doctorate students from the Psychology Department of the University of Delaware would live on-site. Additional information regarding Sean’s House is in the attached Exhibit “A”.

The Planning and Development Department has provided the following report.

Zoning

Zoning code Section 32-78, Special Use Permits, stipulates that Council may issue a special use permit provided the applicants demonstrate that the proposed use will not:

- "a. Affect adversely the health or safety of person(s) residing or working within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware;*

- b. Be detrimental to the public welfare or injurious to property or improvements within the City of Newark boundaries or within one mile of the City of Newark boundaries and within the State of Delaware; and*

c. Be in conflict with the purposes of the comprehensive development plan of the city.”

A “Professional office in a residential dwelling” is permitted under Section 32-9(b)(3), for the RS zoning district, with a Council approved special use permit, with the following provisions:

“(3) Professional office in a residential dwelling permitted subject to the following special provisions:

- a. Professional office is permitted only for the resident-owner of a single-family dwelling.*
- b. Professional occupations shall be subject to the following standards:*
 - 1. Three off-street parking spaces in addition to those otherwise required in this chapter.*
 - 2. No more than one person shall be employed by the practitioner of the professional occupation to provide secretarial, clerical, technical, or similar assistance.*
 - 3. The area used for the practice of a professional shall occupy no more than 25% of the total floor area, including garages.*
 - 4. No storage of materials or products outside the single-family dwelling unit shall be permitted unless completely housed.*
 - 5. The profession shall be clearly incidental to the residential use of the dwelling unit and shall not change the essential residential character of the dwelling.*
 - 6. No external alterations inconsistent with the residential use of the dwelling unit shall be permitted.*
 - 7. No display of products or advertising shall be visible from outside the building.”*

Zoning Review

Upon the initial review, the Planning and Development Department and the City Solicitor determined that the proposed use, as described in the application Exhibit “A”, did not meet the provisions under Section 32-9(b)(3). The Planning Department letter to the applicant dated July 17, 2020, shown as Exhibit “B”, outlined the sections of the Code not in compliance. and recommended that the applicant apply to rezoning the property to BLR (Limited Business – Residential) or BL (Limited Business). The change in zoning would also require an amendment to the Comprehensive Development Plan V to change the future land use designation of the property from “Residential, Low Density” to “Mixed Urban.”

The applicant followed with a letter dated July 22, 2020 (shown as Exhibit “C”) providing additional information and clarifications. After further staff discussions, the Planning and

Development Department and City Solicitor agreed with the applicant's assessment that *Chapter 32 of the Americans with Disabilities Act (ADA)*, which states that local zoning is required to make "reasonable accommodations" for persons with disabilities, applies in this instance, and the proposal can proceed to Council as a special use permit application.

Department Comments

The department comments are as follows:

- As outlined in Exhibit "B" of this report, the Planning and Development Department reports that the proposed Sean's House requires some deviations from Code as written in Section 32-9(b)(3). However, given the proposed use's proximity to student housing and the University of Delaware Main Campus, and given that mental health services, as the applicant proposes, are appropriate and beneficial in a University community, the Planning and Development Department and City Solicitor believe that the accommodations requested under the American's with Disabilities Act are reasonable.
- The Planning and Development Department notes the previous recommendation by the Department to consider changing the zoning for the property from "BS" to "BLR", as stated in Exhibit "B", upon further review, also had compliance issues. Specifically, the property could not meet the *lot width* requirement of the zoning and would have required the building to be re-classified from a one-family dwelling to a mixed-use building (commercial/residential). The zoning change would have also required an amendment to the Comprehensive Development Plan V to change the future land use designation from "Residential, Low Density" to "Mixed Urban". The rezoning would also permit any future development allowed under BLR zoning, including higher density multi-family dwellings (16 units per acre). The Planning and Development Department believes that by allowing "reasonable accommodations" to Section 32-9(b)(3) as permitted in under the ADA, as stated in the application, Council can permit this important service to operate at this location while ensuring that the current and future use of the property will remain low density residential in character.
- The Planning and Development Department recommends that the special use permit be contingent to the uses described in the application in Exhibit "A" and Exhibit "C". Any changes in use, or if Sean's House vacates the premises at 136 West Main Street, the special use permit will expire.
- The Police Department and Public Works and Water Resources Department had no concerns and supported the proposal.

Recommendation

Because the proposed special use permit will not conflict with the purposes of the Comprehensive Development Plan V, because the proposed use will not be injurious to property or improvements in the surrounding area, and because the use can meet all zoning and special use permit requirements with reasonable accommodations under the Americans with Disabilities Act, the Planning and Development Department recommends that **City Council approve the special use permit for the UnLocke the Light Foundation to operate a professional office within a residential dwelling, as described in Exhibit "A" and Exhibit "C" of this report, at 136 West Main Street, with the conditions under Department Comments.**

The following Exhibits are included with this report:

- Exhibit "A" Application for a Special Use Permit by the UnLocke the Light Foundation.
- Exhibit "B" Planning and Development Department Letter dated July 17, 2020.
- Exhibit "C" Sean's House Special Use permit response to the Planning and Development Letter dated July 22, 2020.



SL24: UNLOCKE THE LIGHT

DEDICATED TO UNLOCKING STUDENTS' LIGHT BY
PROVIDING RESOURCES FOR THOSE STRUGGLING WITH
DEPRESSION, ANXIETY, SELF-INJURY AND SUICIDE

Mary Ellen Gray
Planning and Development Director
City of Newark
220 South Main Street
Newark, Delaware 19711

July 8, 2019

Re: 136 West Main Street

Dear Ms. Gray,

On July 18, 2018 my life changed forever when I received the phone call that my son, Sean at the age of 23, ended his life. My son and I were very close, we spoke everyday about business, sports, and his bright future. However, we did not speak about the most important issue facing Sean, his battle with depression and anxiety.

Sean suffered in silence with this disease for at least three years. Sean, like so many facing depression have to deal with the stigma of mental illness, so often they have no place to turn to talk to someone about their disease. They are paralyzed to seek the help they need and desire.

After we lost Sean to this insidious disease, my family and our friends decided to create a foundation to help those with depression and anxiety. As a result we created SL24 UnLocke the Light. It has three missions, educate assist and support. Our education mission is fulfilled by visiting high schools and colleges to speak about Sean's story and to help remove the stigma and to provide information from professionals about mental health. We assist parents and children who are dealing with this disease by helping them find professionals to provide the services they need. We provide support by creating a place available 24 hours a day where students from the age of 14 to 24 can come free of charge to speak to peer support specialist and professionals to get the assistance they need to find their voice to get the help they need. We call this place Sean's House.

SL24: UnLocke the Light Foundation

100 Dean Drive
Newark DE 19711
(302) 367-4359



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Sean's House will be located at 136 West Main Street. This was the house Sean lived in during his time at the University of Delaware. It is a place perfectly situated to help those students who we strive to support. Currently, the house has a three- person rental permit that we propose to allow on site residents who will be doctorate students from the Psychology Department of the University of Delaware. They will be supervised by a licensed clinician to provide support to those students who need it the most. In addition, we will have a robust peer support specialist group to support students in their journey with depression and anxiety. This is a revolutionary - way of handling the mental health crisis plaguing our young people.

To make this dream of Sean's House a reality, I respectfully request a conditional special use permit for a professional office in a residential dwelling. The special use Council approved condition is the services we will be provided free of charge to the community youth age 14 to 24 that it would only be effective so long as SL24 Foundation is using the premises as Sean's House and that three on site 24 hour live-in UnLocke the Light doctorate students will serve as resident-owners.

I have lived in this City for 45 years. I have raised all of my seven children in this community. Sean was a Newark boy, he was born here, he lived his entire life here. Sean was a talented athlete he had many colleges looking at him to play either baseball or basketball for them. He decided on the University of Delaware because he wanted to represent his hometown. He was honored to play in March Madness and when his name appeared on National television it said hometown; Newark, Delaware. He was a local boy that made good.

His death was a tragedy to all who knew him and loved him. However, his death will not define who he was because we hope with your approval his legacy will be that he helped countless other Sean's in our community to get the help they need in dealing with mental illness. He will be remembered as a local boy that made good.

If you have any questions, please do not hesitate to contact me.


Sincerely,

Christopher R. Locke



Exhibit "B"



PLANNING & DEVELOPMENT
CITY OF NEWARK

220 South Main Street · Newark, Delaware 19711
302.366.7000 · Fax 302.366.7160 · www.cityofnewarkde.us

July 17, 2020

Christopher R. Locke
SL24: UnLocke the Light Foundation
100 Dean Drive
Newark, DE 19711

RE: Special Use Permit Application for 136 West Main Street – Professional Office

Dear Mr. Locke

Please be advised that your request for a special use permit for a professional office at the property at 136 West Main Street has been denied for the following reason:

The proposed use does not meet requirements of a "Professional office" under section 32-9(b)(3) or as a "customary home occupation" under Section 32-9(b)(4):

For Professional Office:

- **Section 32-9(b)(3)a: Professional office is permitted only for the resident-owner of a single-family dwelling.** According to the application submitted, the residents of the property will not be the owners. Rather, the residents will be occupied by three (3) doctorate students that will not be the owners of the property.
- **Section 32-9(b)(3)b.2: No more than one person shall be employed by the practitioner of the professional occupation to provide secretarial, clerical, technical, or similar assistance.** According to the application submitted, the professional office will have one "licensed clinician", three student doctorate students, and an unspecified number of "peer support specialists".
- **Section 32-9(b)(3)b.3: The area used for the practice of a professional office shall occupy no more than 25% of the total floor area, including garages.** No specifications were included in the application; however, given the types of services provided, the number of councilors at the site, and the potential number of clients, it seems likely that more than 25% of the floor area will be used to provide counselling services.
- **Section 32-9(b)(3)b.5: The profession shall be clearly incidental to the residential use of the dwelling unit and shall not change the essential residential character of the dwelling.** Given that the site at 136 West Main Street is proposed to have four or more employees/volunteers on site, provide a place for students to come and seek counseling, and provide services 24 hours per day causes concern that the use will not be "clearly incidental to the residential use."

For a Customary home occupation

- **Section 32-9(b)(4)a:** *The practice of a home occupation shall be permitted in a dwelling provided the person so engaged is a resident thereof.* While the three doctoral students are proposed to be tenants of the building, the application also states a “licensed clinician” and an unspecified number of “peer support specialists” will also work at the residence. Furthermore, **Section 32-9(b)(4)b.7** states: *“No employees shall be permitted in the operation of the home occupation other than two resident occupants of the dwelling.”*
- **Section 32-9(b)(4)b.1:** *The area used for the practice of a home occupation shall occupy no more than 25% of the total floor area.* Same as noted above.
- **Section 32-9(b)(4)b.3:** *The home occupation shall be clearly incidental to the residential use of the dwelling unit and shall not change the essential residential character of the dwelling.* Same as noted above.
- **Section 32-9(b)(4)b.6:** *One display sign affixed to the building not exceeding a total area of two square feet nor projecting more than one foot beyond the building, and not illuminated, that will indicate from the exterior that the building is being utilized in part for purposes other than that of a dwelling shall be permitted.* While it is not requested in the application, it is likely a service like this would benefit from better signage than permitted by this Code.

In order to better accommodate the proposed use, the Planning and Development Department in consultation with the City Solicitor recommend considering requesting a change in zoning from “RS” (one family residential, 9000 sf minimum lot size) to “BL” (business limited) or “BLR” (business limited residential). Under these zoning categories, the use could qualify as a “social service”) or “Office for professional services” (Section 32-16(a)(9) or (13)). The uses would not require a special use permit.

If you have any questions or concerns, please feel free to contact me by email or on my cell phone at (302) 366-7000 ex 2041 or my email at mfortner@newark.de.us.

Sincerely,

Michael Fortner

Michael Fortner, AICP
City Planner



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DEDICATED TO UNLOCKING STUDENTS' LIGHT BY
PROVIDING RESOURCES FOR THOSE STRUGGLING WITH
DEPRESSION, ANXIETY, SELF-INJURY AND SUICIDE

Mary Ellen Gray
Planning and Development Director
City of Newark
220 South Main Street
Newark, Delaware 19711

July 22, 2019

Re: 136 West Main Street

Dear Ms. Gray,

Thank you for the opportunity to respond to Michael Fortner's Planning Department letter dated July 17, 2018. I believe it will be helpful if I respond to some of Mr. Fortner's comments since there seems to be some misunderstanding as to the nature of Sean's House and our request for a Council approved special use permit, with conditions.

Sean's House is a purely volunteer project similar to other uses on West Main Street like the private campus ministry organization, Lumos located at 157 West Main Street and the service fraternity of Lambda Chi Alpha located at 163 West Main Street. Sean's House is not a business and has no commercial aspect to its use.

Quite frankly, the proposed use of the house is really no different than how the house has been for almost the last 100 years. It is a place where people will live and speak to each other. Please note, Dr. Smith the original owner, had use his home as his medical offices until he moved the practice next door. His daughter and granddaughter have told me, how he would see patients at the house all the time.

As to the specific issues raised by Mr. Fortner under Section 32-9(b)(3), I respond as follow:

We are applying for a special use permit as specified in Section 32-9(b)(3)a for a professional office in a residential dwelling. The purpose of this requirement is to prevent residential owners from using homes in residential neighborhoods as purely commercial ventures and also retain the residential character of the use and structure.

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The purpose is clearly to protect the sanctity of the community and to ensure that residential values would not decrease due to commercial ventures. It should be noted that this statute was written long before the onset of the internet and the home-based business model. This statute does not address the reality of today of the perfectly legal method of an LLC owning residential homes.

In any case, I applied in good faith to have full transparency of the use of the house. The spirit and more importantly the intent of the statute is being met by having doctorate students act in a proxy role as the resident owner. That is, we are asking that Council be given an opportunity to review the condition we are requesting to require on site resident therapists in order to insure 24-hour residential occupancy. Alternatively, I could very easily change the ownership of the home to an LLC and have one of the doctorate student act as the managing member and meet the criteria so specified in this provision. I also think it is important to point out that West Main Street is not a typical residential neighborhood like Fairfield, Oaklands or Nottingham Greene. This is a high traffic road used by commercial vehicles. The entire block from the CSX railroad tracks to Hillside Avenue is either commercial ventures, nonprofits or licensed rental units. There is only one residential owner on the street and she supports our use of the home. Therefore, the purpose and the intent of this specific provision has been met.

Section 32-9(b)(3) b.2: No more than one person shall be employed by the practitioner of the professional occupation. It appears the City believes we will have an army of paid employees such as peer support specialist, doctorate students and a licensed clinician. As stated previously, this is an all-volunteer group. There are no paid employees at Sean's House. This is an all-volunteer community based collaborative project to assist young adults from 14 to 24 to receive assistance and support to address mental health issues and suicide prevention. It is free of charge to all who visit Sean's House.

SECTION 32-9(b)(3) b.3: The area used for the practice of a professional office shall occupy no more than 25% of the total floor area including garages. The house is 3,000 square feet (excluding attic and basement) with a 500 square foot garage. As stated previously, the use of the house and layout of the house is not changing. We do have a study in the house which will be used as a resource room and library on mental health well being and we have one room that will be used for private conversations between peer support specialist or the doctorate students. The total square footage of these rooms are 322 square feet or 9.2% of the total floor area. The rest of the house will be used as it always has been used.

SECTION 32-9(b)(3)b.5: The profession shall be clearly be incidental to the residential use of the dwelling and shall not change the essential character of the dwelling. There will not be 4 or more employees. The total square footage is less then 10% of the total house. The house function both interior and exterior has not been altered. I am surprised that Mr. Fortner believes students coming to a home to get information about mental health or talk to fellow students whether it is during the day or evening somehow is not "clearly incidental to residential use". Every rental house or owner house has this possibility in which its inhabitants or its guests can enter the premises at any time of the

day to have a conversation. It is not relevant as to what the purpose of the visit or the conversation is so long as that purpose or conversation does not interfere with the residential character of the dwelling.

Mr. Fortner's letter also includes the area criteria for a "home occupation." As noted above, I am applying for a special use permit for a professional office in a residential dwelling and not a "home occupation". It is my understanding that home occupations are traditionally considered uses like home hair care, sewing, or similar uses. In any case, it also should be noted that if this application is for some reason considered to be for two uses on one lot then the standard in section 32-56.3 must apply; that is one set of requirements are to be applied to the lot.

It has also been suggested that our proposal should be subjected to a two step sequential process, with review of the Section 32-9(b)(3) criteria first, and then secondarily, the special use permit conditions criteria in Section 32-78. We believe, however, that this approach, means that City Council would not be able to consider whether in this case one or more of the criteria in Section 32-9(b)(3) would be "detrimental to the public welfare" as stipulated in Section 32-78. In other words, we believe Council should have the opportunity to consider whether this very specific and limited proposed use would be a benefit to the neighborhood's and Newark's "public welfare". Finally, in this regard we see nothing in the Code that specifically mandates a two- step sequential review process, nor does it limit Council's ability to impose any conditions it so desires on a special use permit.

Also, Chapter 32 of the American with Disabilities Act and the Fair Housing Act, states a locality is required to reasonably accommodate disabled persons by modifying its zoning policies, practices and procedures and may not intentionally discriminate against disabled persons. Federal courts decisions have ruled that a public entity shall make reasonable modifications in policies, practices or procedures. This is what we are requesting, a reasonable modification to 32-9(b)(3) so we can help those with the disability of mental illness. The United States Department of Justice policy position is: "a reasonable modification can include modifications to local laws, ordinances and regulations that could adversely impact people with disabilities. In addition, localities may consider granting exemptions to the enforcement of certain laws as a form of reasonable modifications" Furthermore, under Section 32-220 states the anti-discrimination provision of the ADA applies to mental health facilities. 32-300 adds that refusing to make reasonable accommodations in land use and zoning policies and procedures can be inferred to be discriminatory.

Mr. Fortner suggested in his letter that we seek a rezoning, this appears to be more expansive than we are seeking. We are simply requesting a conditional special use permit which is in the purview of City Council to grant. If we were to propose a rezoning, this would allow possible expansion of the building as well as increase the total rental units allowed on the property; this was not my intent when I submitted the application nor is it the mission of SL24 Foundation. Moreover, and ironically, if a special use permit with the condition requiring 24 hour seven days per week live in residential occupancy for Sean's House is approved, this would mean that fulltime around the clock residential use

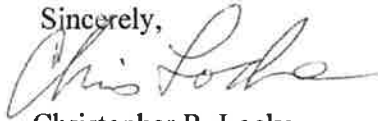
would be required. On the other hand, a rezoning to BLR or some similar office use category would not require full time live in occupancy.

I hope this response addresses your concerns and questions. Please know this application has been submitted to truly help our young adults in our community who many are suffering with mental health issues far greater than previous generations. There is no commercial aspect to this application. It is through the amazing contribution of so many in our community that this application was submitted to do something truly unique for our young adults. Is this not what we want as a society, coming together and helping each other.

The constant pressure of social media, COVID 19, school closings has tremendously increased the need for young adults to have a place to turn to get the assistance they need to be mentally healthy and mindful. Sean's House will be that beacon of light to give them a place to point them in the right direction and out of the darkness. It is like grandma's house, a place where someone can turn get a cookie and talk to someone if they want or just read a book or just sit quietly and collect their thoughts and move on with life.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Chris Locke". The signature is written in dark ink and is positioned above the printed name.

Christopher R. Locke