



Report to the Planning and Zoning Commission

Prepared by the Maricopa County Planning and Development Department

Case: TA2018002 – Group Homes

Meeting Date: January 30, 2020 (revisited from July 25, 2019)

Supervisor District: All

Applicant: Earl, Curley & Lagarde / Rod Jarvis & Greg Loper

Requests: Text Amendment to amend Chapter 2, Definitions; Section 501, Article 501.2.4; Section 601, Article 601.2.3; and Section 702, Article 702.2.5 of the Maricopa County Zoning Ordinance (MCZO) relating to Group Homes

Municipal Comments: One comment from the City of El Mirage regarding the separation requirement

Support/Opposition: Seven letters of opposition/suggested changes to the proposed text. (No new public comment since the May 30, 2019 ZIPPOR meeting.)

Recommendation: Denial

Project Summary:

1. This item is applicant driven and is being processed through the County's Enhanced Regulatory Outreach Program (EROP). This matter was discussed at the November 21, 2019 ZIPPOR meeting where the applicant modified his proposal. The applicant's current proposal is shown below. The language proposed to be added to the ordinance is underscored, and deleted language is struck-through:

SECTION 201. DEFINITIONS

Group Home

A dwelling unit shared as their a primary residence, by no more than ten minors, ~~handicapped~~ ~~or~~ elderly persons, or persons with a disability, who live together ~~living together~~ as a single housekeeping unit, in a ~~long term,~~ family-like environment in which staff ~~persons~~ provide on-site the unique care, training, and/or support for the needed by each individual residents. ~~Such homes or services provided therein shall be licensed by, certified by, approved by, registered with, funded by or through, or under contract with the State. (Group homes shall not include homes for the developmentally disabled, defined as persons afflicted with autism, cerebral palsy, epilepsy or mental retardation, as regulated by Arizona Revised Statutes, §36-582.)~~

Handicapped:

~~A person who: 1) Has a physical or mental impairment which substantially limits one or more of such person's major life activities. 2) Has a record of having impairment. However,~~

~~"Handicapped" shall not include current illegal use of or addiction to a controlled substance (as defined in § 102 of the Controlled Substance Act [21 United States Code 802]).~~

Person with a Disability (Disabled Person):

A person who: 1) Has a physical or mental impairment which substantially limits one or more of such person's major life activities; 2) Has a record of having such impairment; or 3) is regarded as having such an impairment. (Any one of 1-3 is hereinafter referred to as a "Disability"). Without limitation, a person with addiction to alcohol and/or illegal drugs, who is seeking to recover from such addiction and is not using alcohol or illegal drugs, shall be considered to be a Person with a Disability.

ARTICLE 501.2. USE REGULATIONS: A building or premises shall be used only for the following purposes:

4. Group homes for not more than **ten persons**, subject to the following performance criteria:
 - a. Dispersal: No such home shall be located on a lot with a property line within **1,320 feet**, measured in a straight line in any direction, of the lot line of another such group home. Notwithstanding the foregoing, no dispersal/separation shall be required where group homes are separated by a utility right-of-way at least 300 feet in width, or by a freeway, or canal.
 - b. If licensing is required by the State of Arizona, for the use, proof of such licensure shall be provided available to the Department of Planning and Development prior to the use being established. Group Homes for addiction recovery shall comply with all standards set forth in ARS Section 36-2061, et seq.
 - c. Residents shall not be Adjudicated Persons.
 - d. Resident staff, if any, are not included with the ten-resident limitation.
 - e. If staff are not in residence, at least one staff member shall be on duty at the group home at all times.
 - f. There shall be no sign or other exterior indication of a group home visible from any public street.
 - g. All parking for the Group Home shall be on site.
 - h. Prior to occupancy of a Group Home, the owner, or owner's representative, shall submit an application for zoning certification, on a form provided by Maricopa County, accompanied by: a floor plan, a notarized statement detailing qualifications, copies of any required state of Arizona licenses, and an affidavit of compliance indicating use of the subject site as Group Home. The Zoning Administrator shall have 30 days from the date of submission of such application to conduct a review of the application. Any Zoning Certification not specifically denied, citing specific reasons for such

denial, in written notice to the applicant, shall be deemed granted. If such application is timely denied, the applicant may correct any deficiencies and resubmit same, subject to the review period set forth above.

ARTICLE 601.2. USE REGULATIONS: A building or premises shall be used only for the following purposes:

3. Group homes for not more than ten persons, subject to the following ~~performance~~ criteria:
 - a. Dispersal: No such home shall be located on a lot with a property line within **1,320 feet**, measured in a straight line in any direction, of the lot line of another such group home. Notwithstanding the foregoing, no dispersal/separation shall be required where group homes are separated by a utility right-of-way at least 300 feet in width, or by a freeway, or canal.
 - b. If licensing is required by the State of Arizona, for the use, proof of such licensure shall be provided available to the Department of Planning and Development prior to the use being established. Group Homes for addiction recovery shall comply with all standards set forth in ARS Section 36-2061, et seq.
 - c. Residents shall not be Adjudicated Persons.
 - d. Resident staff, if any, are not included with the ten-resident limitation.
 - e. If staff are not in residence, at least one staff member shall be on duty at the group home at all times.
 - f. There shall be no sign or other exterior indication of a group home visible from any public street.
 - g. All parking for the Group Home shall be on site.
 - h. Prior to occupancy of a Group Home, the owner, or owner's representative, shall submit an application for zoning certification, on a form provided by Maricopa County, accompanied by: a floor plan, a notarized statement detailing qualifications, copies of any required state of Arizona licenses, and an affidavit of compliance indicating use of the subject site as Group Home. The Zoning Administrator shall have 30 days from the date of submission of such application to conduct a review of the application. Any Zoning Certification not specifically denied, citing specific reasons for such denial, in written notice to the applicant, shall be deemed granted. If such application is timely denied, the applicant may correct any deficiencies and resubmit same, subject to the review period set forth above.

ARTICLE 702.2. Use Regulations: A building or premises shall be used only for the following purposes:

5. Group homes for not more than ten persons subject to the following performance criteria:
- a. Dispersal: No such home shall be located on a lot with a property line within 1,320 feet, measured in a straight line in any direction, of the lot line of another such group home. Notwithstanding the foregoing, no dispersal/separation shall be required where group homes are separated by a utility right-of-way at least 300 feet in width, or by a freeway, or canal.
 - ~~a.b.~~ If licensing is required by the State of Arizona, for the use, proof of such licensure shall be provided available to the Department of Planning and Development prior to the use being established. Group Homes for addiction recovery shall comply with all standards set forth in ARS Section 36-2061, et seq.
 - ~~b.c.~~ Residents shall not be Adjudicated Persons.
 - d. Resident staff, if any, are not included with the ten-resident limitation.
 - e. If staff are not in residence, at least one staff member shall be on duty at the group home at all times.
 - f. There shall be no sign or other exterior indication of a group home visible from any public street.
 - g. All parking for the Group Home shall be on site.
 - h. Prior to occupancy of a Group Home, the owner, or owner's representative, shall submit an application for zoning certification, on a form provided by Maricopa County, accompanied by: a floor plan, a notarized statement detailing qualifications, copies of any required state of Arizona licenses, and an affidavit of compliance indicating use of the subject site as Group Home. The Zoning Administrator shall have 30 days from the date of submission of such application to conduct a review of the application. Any Zoning Certification not specifically denied, citing specific reasons for such denial, in written notice to the applicant, shall be deemed granted. If such application is timely denied, the applicant may correct any deficiencies and resubmit same, subject to the review period set forth above.

Discussion:

2. Major Ordinance changes proposed include:
 - Changing the requirement in the "Group Home" Definition for length of required stay to delete the term "long-term" (interpreted as a period of 12 months or longer) so that there is no specified duration.
 - The revised definition also speaks to caring for the unique needs of each individual resident.
 - Removing the definition of "Handicapped" and adding a definition of "Person with a Disability (Disabled Person)".
 - Separates out addiction recovery from the general category of group homes for disabled persons and adds reference for same to ARS Section §36-2061, et. Seq.

- Changing the dispersal requirement to exclude a minimum separation distance requirement when the proposed Group Home separated from an existing Group Home by a utility right-of-way of at least 300' or by a canal or a freeway.
 - Creating a new application process for zoning certification of a Group Home.
 - Adds clarification statements that staff must always be present on site at a group home but are not counted in the maximum of ten number of residents.
 - Adds clarification statement that all parking must be on site inferring parking will not be on street or satellite.
 - The latest proposal of the amendment also requests to treat Multi-Family Residential zoning districts the same as Single-Family Residential and Rural zoning districts with regard to Group Homes.
3. Changes made in the applicant's proposal at the November 21, 2019 ZIPPOR meeting:
- Changed request for a minimum length of stay at a Group Home from "a minimum of 30 days" to an unspecified duration by deleting ordinance reference to residency being "long term".
 - Deleted request to allow adjudicated residents to reside in a Group Home.
 - Deleted request to add language specific to group homes used for addiction recovery that they must comply with the standards of the national Association of Addiction Recovery (NAAR) as administered by the Arizona Recovery Housing Association (AZRHA).

Public Participation:

4. As part of the EROP process a stakeholder workshop was held on January 25, 2019, however only one stakeholder attended the meeting. Therefore, the applicant requested a second workshop which was held on April 12, 2019. The proposed text amendment was discussed at the May 30, 2019 ZIPPOR Meeting before proceeding to a July 25, 2019 Planning & Zoning Commission hearing where it was remanded back for discussion at an August 22, 2018 ZIPPOR meeting. The August meeting was cancelled so the matter rolled over to the next ZIPPOR meeting on November 21, 2019. The matter was discussed at the ZIPPOR meeting, and the following day the applicant submitted the Revision #3 document dated November 22, 2019, attached. Staff's analysis is based upon the revised submittal. There has been no additional information and no public comment since the ZIPPOR meeting.
5. In addition to the two stakeholder workshops and two ZIPPOR meetings, to date staff has received seven letters concerning the proposed text amendment language (attached). The majority of comments to date address some the following:
- Concern of adjudicated residents permitted by right in a group home. This request has since been deleted.
 - Definition of disability should include reference to Americans with Disabilities Act (ADA) and the Federal Fair Housing Act (FFHA).
 - Spacing requirements, both in support of the change to the spacing requirement and concerns it may be too excessive. Originally the proposal included adding the allowance for "treatment" at a Group Home but that request has since been deleted.

Staff Analysis:

6. The Maricopa County Zoning Ordinance defines “family” to include a household of five or fewer unrelated persons. Therefore, there are no requirements associated with a home of five or fewer residents in any zoning district; including length of stay requirement. In addition, treatment can be provided to residents at a home including those with five or fewer unrelated people, and in fact such a facility is not considered a group home but rather a single-family residence because the definition of Family includes five or fewer unrelated persons living together as a single housekeeping unit. Today, group homes of 10 or fewer people are a permitted by-right use in any zoning district provided there is no treatment on-site and residents are living in a long-term, family-like environment, and meet the dispersal requirement.
7. The Department has determined that “long term” as used in the MCZO means a period of 12 months or longer and is specified in the Department Directive DD-2017-03 (attached). A family-like environment cannot be transitory or short duration. Transient residential uses are not harmonious with a single-family residential neighborhood and is counter to a chief purpose of the Maricopa County Zoning Ordinance; to protect the character and the stability of residential areas and to promote the public health, peace, safety, comfort, convenience and general welfare of the same. An example would be when you live in a single-family neighborhood and your child makes a friend next door at the age of 3, the expectation is they will still be friends at the age of 8. That is one of the characteristics of a single-family residential neighborhood and why families tend to choose to live there as opposed to a multi-family residential zoning district.
8. The Social Security Administration defines a disability as a condition that prevents a person from engaging in any substantial gainful activity (work of a nature generally performed for pay or profit whether or not profit is realized) because of a medically-determinable physical or mental impairment that is expected to result in death, or that has lasted or is expected to last for a continuous period of at least 12 months. A determination of 12 months as long term is reasonable and consistent with federal rules.
9. If a residential facility for group care does not qualify as a Group Home it is, by definition, considered a Group Care Facility. A Group Care Facility is not permitted by right in the Rural and Single-Family Residential zoning districts. However, It is permitted as of right in the C-2 and C-3 commercial zoning districts (under the umbrella of hospital) or with legislative approval of a Special Use Permit in any zoning district.
10. The following items proposed in the text amendment cause the staff concern:
 - Staff has concerns with removing “long-term” from the definition of Group Home as creating a transient residential facility would not be harmonious with a single-family residential neighborhood. Staff does not have this same concern with multi-family residential neighborhood which are a more mobile environment.
 - Staff has concern with changing the definition of Group Home to read, “A residence shared as a primary dwelling” as opposed to “their” primary dwelling. A group of persons cannot be living together as a single housekeeping unit in a family-like environment if the dwelling is not the primary dwelling for each resident.

- With regard to zoning, staff of a group home are currently not counted in the number of residents for a group home, but they are counted for purposes of building occupancy.
- The applicant is directing the Department to create a new process for group home applications that do not fit within the current land use application under which group homes are currently processed.
- Staff does not believe it appropriate to treat different classes of Group Home residents differently based upon classification, and has heard concerns of the County Attorney's Office with respect to this issue.
- Staff is uncertain of the meaning and has concern with the term "unique care, training and/or support needed by each individual" in the proposed definition of Group Home.
- Staff is concerned with the sentence "Without limitation, a person with addiction to alcohol and/or illegal drugs, who is seeking to recover from such addiction and is not using alcohol or illegal drugs, shall be considered to be a Person with a Disability." included in the proposed definition of Person with a Disability / Disabled Person. It seems unnecessary verbiage. It may be more appropriate in a Departmental Directive clarifying disability as per the federal Fair Housing Act.
- Staff is concerned with the proposed language to be added to the dispersal / separation distance, "Notwithstanding the foregoing, no dispersal/separation shall be required where group homes are separated by a utility right-of-way at least 300 feet in width, or by a freeway, or canal." It does not apply a minimum width to freeway or canal. The latter can be smaller landmarks with minimal impact on vehicular or pedestrian circulation and presenting no boundary or obstacle. The language would need to be more specific to ensure desired dispersal/separation. For instance, if a group home is located north of I-10 from another group home south of I-10, the proposed verbiage eliminates any separation requirement even east or west on the north side of I-10.
- Staff does not believe it necessary to have the same conditions apply to group homes in Multi-Family Residential zoning districts that are applied in Rural and Single-Family Residential zoning districts.

Recommendation:

11. Staff agrees that revisions, such as updating the definition of "handicapped", may be needed to the MCZO. Due to the complex legal issues associated with the American with Disabilities Act and the Federal Fair Housing Act, these revisions should be made through a staff-driven text amendment process, after consultation with qualified experts and county legal counsel. For that reason and for the reasons outlined in this report, staff recommends the Commission motion for **Denial** of TA2018002.

Prepared by: Darren V. Gerard, AICP, Planning Manager
 Reviewed by: Matthew Holm, AICP, Planning Supervisor

Attachments: Applicant revisions dated 11/22/2019 (6 pages)
 11/21/2019 ZIPPOR Packet, including Department Directive DD-2017003 (41 pages)