

A RESOLUTION CALLING A PUBLIC HEARING ON LAND USE ORDINANCE
TEXT AMENDMENTS TO PROVISIONS RELATED TO GROUP HOMES
Resolution No. 79/2004-05

WHEREAS, the Carrboro Board of Aldermen seeks to provide ample opportunities for the public to consider modifications to existing policies and regulations; and

NOW, THEREFORE BE IT RESOLVED that the Board of Aldermen calls a public hearing on February 22, 2005 to consider adopting "An Ordinance Amending the Carrboro Land Use Ordinance Provisions Dealing with Group Homes."

BE IT FURTHER RESOLVED that the draft amendment is referred to Orange County for review per the Joint Planning Agreement and to the Town of Carrboro Planning Board for its recommendations.

This is the 18th day of January in the year 2005.

M E M O R A N D U M

TO: Carrboro Mayor and Board of Aldermen
FROM: Michael B. Brough *MBB*
RE: Group Homes
DATE: October 15, 2004

Several months ago, the Board considered amendments to the Land Use Ordinance dealing with group homes. The amendments as originally proposed were designed primarily to bring the ordinance into compliance with the provisions of the federal Fair Housing Act and its protections for persons with disabilities. The amendments as originally drafted provided that group homes for persons protected under the FHA, or a somewhat similar state law that covers "family care homes" for "not more than six resident handicapped persons," were permissible with just a zoning permit, but that other types of group homes that were not covered under these laws would continue to require a special use permit. The Board expressed concern that the proposed amendments did not go far enough in lifting restrictions (in terms of the type of permit required) on group homes not protected by federal or state law. Accordingly, the Board adopted an amendment that creates two classes of both group homes for adults and group homes for children (Class A and Class B, defined below), but no distinction was drawn between these two classes of group homes in the Table of Permissible Uses, i.e. the ordinance now provides that all types of group homes require only a zoning permit. This was done, however, with the reservation that the Board would revisit this issue and take another look at the question of whether certain types of group homes — either those currently defined as Class B homes, or others — should require a special or conditional use permit.

The ordinance now contains the following relevant definitions:

Group Home. A housing arrangement in which up to nine individuals, typically unrelated, live together as a single housekeeping unit in a single, detached dwelling unit, under circumstances where such residents are under the care, control, and supervision of one or more other persons who are trained to provide such care, control, and supervision.

Adult Care Home, Class A. All group homes for adults other than Class B group homes, maternity homes, or nursing care homes. This definition specifically includes but is not limited to group homes for adults who are in need of such a residential arrangement because they are aged or infirm, or have a "handicap" as defined in the Fair Housing Act (42 U.S.C. 3602), or are "handicapped" as that term is defined in N.C.G.S. 168-21.

Adult Care Home, Class B. A group home for adults that serves primarily the needs of those who (i) suffer from a "mental illness" and are "dangerous to themselves or others" as those terms are defined in N.C.G.S. 122C-3(11) and (21), or are "mentally retarded with accompanying behavior disorder[s]" as defined in N.C.G.S. 122C-3(23).

Child Care Home, Class A. All group homes for minor children other than Class B group homes. This definition specifically includes but is not limited to group homes for minor children

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who are in need of such a residential arrangement because they are orphaned, abused, neglected, or dependent, or have a "handicap" as defined in the Fair Housing Act (42 U.S.C. 3602), or are "handicapped" as that term is defined in N.C.G.S. 168-21.

Child Care Home, Class B. A group home for minor children that serves primarily the needs of those who (i) suffer from a "mental illness" and are "dangerous to themselves or others" as those terms are defined in N.C.G.S. 122C-3(11) and (21), or are "mentally retarded with accompanying behavior disorder[s]" as defined in N.C.G.S. 122C-3(23).

Maternity Home. A group home licensed as a maternity home by the N.C. Department of Health and Human Services pursuant to N.C.G.S. 131D-1.

Nursing Care Home. A group home licensed as a nursing home under the Nursing Home Licensure Act, N.C.G.S. 131E-100 et seq.

My office has attempted to identify all the possible types of group homes, most of which are licensed by the State. We have also consulted with a number of individuals who are familiar with various categories of group homes, including Dennis Bradshaw, the Executive Director of Residential Services, Inc., and several individuals involved with the criminal justice system. Based upon our review, I recommend that the Board consider the following possible amendments to the ordinance:

1. Change the definition of "group home" to eliminate the reference to a "detached" dwelling unit, thereby allowing other types of dwellings to be available for use as group homes in the same manner that they can be used for other residential purposes.
2. Amend the Class B definitions to eliminate the reference to persons who are "dangerous to *themselves*." The exemption under federal law is for "individuals whose tenancy would constitute a direct threat to the health or safety of *other individuals*...."
3. Consider adding to the Class B definitions group homes that house persons who are currently using or are addicted to controlled substances. Such persons are exempt from the provisions of either the FHA or the state law that covers family care homes. There are several categories of state licensed homes that would seem to fit within this designation, including:
 - a. Nonhospital Medical Detoxification Facility, which is a residential facility that provides medical treatment and support services "designed to withdraw an individual from alcohol or other drugs and to prepare [individuals] to enter a more extensive treatment and rehabilitation program."
 - b. Social Setting Detoxification Facility, which is a "24-hour residential facility that provides social support and other non-medical services to individuals who are experiencing physical withdrawal from alcohol and other drugs...[and] who need a structured residential setting but are not in need of immediate medical services...."

- c. Therapeutic Community, which is a “highly structured, supervised, 24-hour residential facility designed to treat the behavioral and emotional issues of individuals to promote self-sufficiency and a crime and drug-free lifestyle.”
 - d. Class “D” supervised living facilities, meaning a “facility which serves minors whose primary diagnosis is substance abuse dependency....”
 - e. Class “E” supervised living facilities, meaning a “facility which serves adults whose primary diagnosis is substance abuse dependency....”
- 4. Consider adding to the Class B definitions group homes that serve primarily persons who have been assigned to a group home as a condition of probation, parole, or “intermediate punishment” as defined in G.S. 15A-1340.11(6), but that do not regularly serve persons defined as “handicapped” under the FHA.
 - 5. Amend the Table of Permissible Uses to allow Nursing Care Homes with a zoning permit in all districts where maternity homes are now allowed. Apparently, the elimination of nursing care homes from the table was done inadvertently as part of the recent amendments.

An ordinance that makes each of the suggested changes is attached.

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE PROVISIONS DEALING WITH GROUP HOMES

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Section 15-15 of the Carrboro Land Use Ordinance is amended by changing the definition of the term “Group Home” to read as follows: “A housing arrangement in which up to nine individuals, typically unrelated, live together as a single housekeeping unit in a single dwelling unit, under circumstances where such residents are under the care, control, and supervision of one or more other persons who are trained to provide such care, control, and supervision.”

Section 2. Section 15-15 of the Carrboro Land Use Ordinance is amended by changing the definition of the following terms to read as follows:

Adult Care Home, Class B. A group home for adults that serves primarily the needs of those who :

- (i) suffer from a “mental illness” and are “dangerous to others” as those terms are defined in N.C.G.S. 122C-3(11) and (21); or
- (ii) are “mentally retarded with accompanying behavior disorder[s]” as defined in N.C.G.S. 122C-3(23), or
- (iii) are currently using or are addicted to controlled substances; or
- (iv) who have been assigned to a group home as a condition of probation, parole, or "intermediate punishment: as defined in G.S. 15A-1340.11(6).

Child Care Home, Class B. A group home for minor children that serves primarily the needs of those who:

- (i) suffer from a “mental illness” and are “dangerous to others” as those terms are defined in N.C.G.S. 122C-3(11) and (21); or
- (ii) are “mentally retarded with accompanying behavior disorder[s]” as defined in N.C.G.S. 122C-3(23), or
- (iii) are currently using or are addicted to controlled substances; or
- (iv) who have been assigned to a group home as a condition of probation, parole, or "intermediate punishment: as defined in G.S. 15A-1340.11(6).

Section 3. Section 15-146 (Table of permissible Uses) of the Carrboro Land Use Ordinance amended by adding a new use classification 1.480, Nursing Care Home, and by placing a "z" opposite this use classification in the columns for all districts other than the B-1(c), B-4, M-1, M-2, C, B-5, and WM-3 zoning districts and by changing the “z” to “s” for use classifications 1.440, Adult Care Home, Class B and 1.450, Child Care Home, Class B in the columns opposite these use classifications for R-2, R-3, R-7.5, R-SIR/R-10/R-SIR2, R-15, R-20, RR, and WR.

Section 4. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 5. This ordinance shall become effective upon adoption.