

**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) are "dangerous to others" as those terms are defined in N.C.G.S. 122C-3(11) and (21); or
- (ii) 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) are "dangerous to others" as those terms are defined in N.C.G.S. 122C-3(11) and (21); or
- (ii) 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 Homes, 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 All provisions of any town ordinance in conflict with this ordinance are repealed.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.

Excerpt of minutes from February 22, 2005 Public Hearing

**PUBLIC HEARING TO CONSIDER ADDITIONAL LAND USE ORDINANCE
TEXT AMENDMENTS RELATED TO GROUP HOMES**

The Board of Aldermen must receive public comment on the proposed amendments to the group home provisions in the Land Use Ordinance. The staff recommended adoption of the draft ordinance.

Trish McGuire made the staff presentation.

Alderman Chilton stated that the chief difference is that Class B has to go for special use permit. Will staff be in charge of determining compliance?

Trish McGuire said that there are no standards to differentiate between the two classes.

Judith Romanowski, a housing coordinator for the OPC Area Program, addressed the Board. She stated her concern about the ordinance defining Class B group homes and the way it is currently written. She asked for the town to convene a special task force to consider the matter more fully.

Mayor Pro Tem McDuffee asked her to give a copy of her comments to the clerk.

Shira, a member of Club Nova, stated that she is worried about a stigma against people with mental illness. She encouraged the Board to write in a way that is less stigmatizing.

Elizabeth Malfers, a staff person at club nova, addressed the Board. She agreed with what Judith and Shira said. They are concerned about how they are separated and urge the Board to reconsider.

John Santuci addressed the Board. He stated that his underlying concern is what communities would want a group home in their neighborhood when the definition is so alarming. Most mentally ill people are not a danger to others. From a providers point of view, it will make it more difficult to get group homes in the community. He asked if the Board could tone down the definition. He stated that the previous one was quite neutral and asked if they could be more sensitive about the language.

David Chapman, the President and CEO of Caramore, addressed the Board. He stated that Caramore does not and cannot provide services to those who are a danger to themselves or others. He stated that there is no home in Carrboro or anywhere else in North Carolina that meets the Group B definition. He said the wording "dangerous to others" is unnecessary, unfair, misleading and shamefully cruel and requested the dropping of group "B" and to use only class "A" language.

ATTACHMENT B-2

Ellen Perry stated that nothing came of this argument last year. She said that she is proud of having lived in a group home and that the residents want dignity. They do not want people out there who are going to hurt themselves. They want people who are going to live a self-determinant life

Mike Brough stated that his effort was to make certain that the ordinance complied with federal and state law. Changes were needed because the town's ordinance was not in compliance with those regulations. This ordinance would not restrict any home currently in existence or one that would come in. If those definitions were eliminated and all group A, it would be permissible with no review by neighbors or anyone else. The terms are state defined statutory terms, not something that the Board came up with and that is why they use them.

Alderman Gist said that she has a family member with mental illness and that sometimes there are times in people's lives where they are, for a short period of time, a danger to others and it is written in their medical records. It was 15 years ago and it does not mean that she is a danger now. She voiced concern about keeping records private. She wants to follow through with OPC and get together with people from provider organizations to re-write this. She said that she knows Mike Brough and the Board did not wish to further stigmatize the mentally ill.

Mayor Pro Tem McDuffee said she remembers when this first came up. The Board felt that certain types of group homes need more regulation than just a zoning permit. There are certain ones that are dangerous to their neighbors and would need a review. Don't we all think that some homes need a review or are we saying forget it and let them come in with a zoning permit?

Alderman Chilton said that when you deal with an institution that might be Class B, you would go through a special use process with the Board of Adjustment. It does not change anything except the length of time the review takes. It is better to say there is a security plan - a different level of screening - the class A and B level is only concerned with who reviews it. He suggested that dropping "mentally ill and dangerous to others" could resolve the problem.

Alderman Broun said that she has issues with number 4.

Alderman Zaffron stated that those are separate issues and 2 different subcategories - people with mental illness and people under custody in the criminal justice system.

Alderman Gist wants to pull together a group to get some advice on this.

Mayor Pro Tem McDuffee said she is not clear on what that would be. What about Mark's suggestion?

Alderman Jacquelyn Gist wants to take the comments from the providers and think through a way to make this say what it is we want it to say. She asked if people want to send us some suggestions. She doesn't want it to say that people with mental illness are dangerous.

Mayor Pro Tem McDuffee said that they will think about it for another week or 2 and recommended that they have comments about suggested word changes go to staff to mull over.

MOTION WAS MADE BY ALEX ZAFFRON AND SECONDED BY DIANA MCDUFFEE TO CLOSE THE PUBLIC HEARING. VOTE: AFFIRMATIVE FIVE, ABSENT TWO (HERREA, NELSON)

Administrative Offices
100 Europa Drive
Suite 490
Chapel Hill, NC 27517

March 22, 2005

Mayor Nelson and Board of Aldermen
Town of Carrboro
Town Hall
301 West Main Street
Carrboro, North Carolina 27510

Re: Group Home Ordinance

Dear Mayor Nelson and Board of Aldermen:

We thank you for giving service providers the opportunity to comment on Carrboro's proposed and existing group home ordinance. OPC clinical staff and quality management staff would like to offer the following recommendations and cautionary considerations.

First, the language we would suggest for the ordinance is as follows:

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

- (i) are "dangerous to others" as those terms are defined in N.C.G.S. 122C-3(11);
or
- (ii) are currently using and are addicted to controlled substances; or
- (iii) 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) are "dangerous to others" as those terms are defined in N.C.G.S. 122C-3(11);
or
- (ii) are currently using and are addicted to controlled substances; or
- (iii) 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).

We recommend these changes for the following reasons:

1. It seems that the real issue is whether a group home is primarily for people who are dangerous, not whether they are mentally ill, and that is what we believe the language should reflect;
2. It does not appear that people who are "mentally retarded with accompanying behavior disorders," as defined in N.C.G.S. 122C-3(23) is one of the categories exempted from the

handicapped protection under the Fair Housing Act, 42 U.S.C. 3602, or N.C.G.S. 168-21. We would therefore recommend that this group not be excluded from the Class A group home classification. Moreover, if the concern is that people in this population might pose a danger to the community, they would be covered by section (i) as we propose it to be re-drafted;

3. With regard to the use of controlled substances, people who are not actively using, who are sober and in recovery, can still be considered addicts. Therefore, we suggest a change in the wording so that a home for people with mental illness or developmental disabilities which may very well include people who have had a past addiction, but are not currently using, would not be included in this group. By changing "or" to "and," it seems this would be accomplished.

We would also like to bring to your attention our concerns regarding how the ordinance would be implemented and how determinations about whether a group home meets the Class B criteria would be made. We note that the ordinance states that Class B group homes are those which primarily serve people in the listed categories. We urge that this specification be adhered to carefully so that group homes that happen to serve a few people in such categories, or that serve such people only on occasion, are not required to change their classification.

We would also like to stress that in any analysis under this ordinance, the privacy rights of residents and applicants must be fully respected.

Finally, we would like to point out that it should be an assurance to the community that if a group home resident were to exhibit dangerous behavior, just as if any other neighbor were to exhibit such behavior, there are systems in place to address this. First, danger to others could be the basis for commitment to a hospital. Also, if a resident poses a danger and the group home staff fails to act appropriately, community members can turn to the appropriate government agencies to intervene, such as the Department of Social Services or the law enforcement system. It is also important to recognize that the Division of Facility Services is charged with licensing group homes, and the Division of Mental Health, Substance Abuse and Developmental Disabilities, and the Local Management Entities, are charged with monitoring group homes.

We thank you for considering our position on this matter. Should the Board of Aldermen have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Judy R. Truitt". The signature is written in a cursive, flowing style.

Judy R. Truitt, MSW

MEMORANDUM

TO: The Carrboro Board of Aldermen

FROM: Michael Brough

RE: Suggested Changes to the Town Group Home Ordinance

DATE: April 14, 2005

I have reviewed the letter to the Board dated March 22, 2005 from Ms. Judy Truitt with the OPC Area Program. In the letter, Ms. Truitt suggested several changes to the current draft of the Carrboro group homes ordinance. It should be noted that a Class B home can locate anywhere in Town that a Class A home can locate, so long as the applicant obtains a special use permit. Generally speaking, Ms. Truitt's proposed revisions would somewhat limit the scope of what constitutes a Class B home. My specific responses to Ms. Truitt's letter are as follows:

1. *Eliminate the term "mentally ill" from subsection (i) of the definitions of Adult Care Home, Class B and Child Care Home, Class B.*

Ms. Truitt correctly states that "the real issue is whether a group home is primarily for people who are dangerous, not whether they are mentally ill." Moreover, a person is determined to be "dangerous to others" through a court proceeding, irrespective of the kind or severity of mental illness that the person may have. Therefore, this change seems appropriate.

2. *Eliminate subsection (ii) from the definitions of Adult Care Home, Class B and Child Care Home, Class B.*

Subsection (ii) addresses those persons defined by the North Carolina General Statutes to be "mentally retarded with [an] accompanying behavior disorder." It is not entirely clear whether this category of person is protected under the North Carolina statutes and the federal Fair Housing Act. Further research, however, has shown that the term is a holdover from an earlier version of the North Carolina mental health statutes and that the current version of the state mental health statutes does not use this term. Therefore, this change appears to be appropriate as well.

3. *Change the word "or" to "and" in subsection (iii) of the definitions of Adult Care Home, Class B and Child Care Home, Class B.*

The federal Fair Housing Act specifically exempts a "current, illegal use of or addiction to a controlled substance," from the definition of handicapped. Accordingly, the proposed ordinance classifies as Class B homes those homes that primarily serve the needs of persons who "are currently using or are addicted to controlled substances." By changing the "or" to "and," the meaning of the definition changes such that homes

treating persons still addicted to but no longer using controlled substances would be considered Class A homes. It is not clear to me how the town would make a determination at the permit stage whether the residents of a group home of this type are merely addicted to or are actively using controlled substances. However, if the requested change is made, and the policy of the operator of the group home is that it does not allow persons who are actively using drugs to remain in the home, then such a home would fall within Class A and would be allowed as a matter of right, rather than upon the issuance of a special use permit. The way the ordinance is currently drafted is consistent with applicable law, but the Board is certainly free as a policy matter to make the requested change.

Attached is a revised version of the proposed ordinance amendment, which incorporates the first two changes discussed above. If the Board wishes to make the third change as well, the definitions regarding substance abuse can easily be amended by changing the word "or" to "and".