

**FORSYTH COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** \_\_\_\_\_ **AGENDA ITEM NUMBER:** \_\_\_\_\_

**SUBJECT:-**

Request for Public Hearing on zoning text amendment proposed by the City-County Planning Board

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:-**

**SUMMARY OF INFORMATION:-**

Zoning text amendment proposed by the City-County Planning Board to amend Chapter B Section 2-5.24 regarding spacing requirements and management procedures for Family Group Home A and Family Group Home B; and to amend Chapter B Section 6-1.4 regarding reasonable accommodations under the Fair Housing Act (UDO 79).

After consideration, the Planning Board motion resulted in a tied vote. Therefore, the request is forwarded with no recommendation.

**ATTACHMENTS:-**     YES         NO

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**ACTION REQUEST FORM**

**DATE:** October 24, 2001  
**TO:** The Honorable Mayor and Board of Aldermen  
**FROM:** A. Paul Norby, AICP, Director of Planning

**BOARD ACTION REQUEST:**

Request for Public Hearing on zoning text amendment proposed by the City-County Planning Board

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**PLANNING BOARD ACTION:**

**MOTION ON PETITION:** TIE VOTE - NO RECOMMENDATION  
**FOR:** CLARK, DOYLE, KING, SNELGROVE  
**AGAINST:** AVANT, BOST, NORWOOD, SCHROEDER  
**SITE PLAN ACTION:** NOT REQUIRED

## ZONING STAFF REPORT

**DOCKET #** UDO-79  
**STAFF:** David Reed

### REQUEST

Zoning Text Amendment proposed by the City-County Planning Board to amend Chapter B Section 2-5.24 regarding spacing requirements and management procedures for Family Group Home A and Family Group Home B; and to amend Chapter B Section 6-1.4 regarding reasonable accommodations under the Fair Housing Act.

### BACKGROUND

The subject text amendment was forwarded to the Planning Board for review and recommendation by the Winston-Salem Board of Aldermen. At the request of the Community Development/Housing/General Government Committee (CD/H/GG), the City Attorney prepared a memorandum addressing the proposed changes as well as three ordinances which would implement the changes. A copy of the memorandum is attached to this report. The CD/H/GG committee also requested the Planning Board consider Boarding Houses and Assisted Living Facilities, however, due to the complexity of the issues they will be presented in a separate text amendment.

### ANALYSIS

Staff began its analysis by reviewing relevant *Legacy* recommendations as follows:

Objective (Page 147 of *Legacy*):

Create communities that are friendly and accessible places to older adults and disabled people.

Text (Page 147 and 148 of *Legacy*):

Our community has a responsibility to provide reasonable housing opportunities for all citizens, including disabled persons.

Policies:

- Provide incentives for rehabilitation or adaptation of existing structures, including large single family homes, multifamily buildings, churches and schools, to provide housing for older adults and disabled persons.
- Encourage innovative means of providing housing for older adults and disabled persons and provide incentives to developers for providing housing for older adults and disabled persons within market rate developments.

Action Agenda:

- Develop housing policies and programs that enable older adults and disabled people to remain in their own homes or to live in neighborhood settings whenever possible.

- Work with disabled citizens, service providers, and neighborhoods to assure that regulations in the UDO provide reasonable opportunities for housing for disabled people and amend regulations as necessary.

Because the text amendment is comprised of three potential changes, the staff report will discuss each item individually.

#### Proposed Change to Add One-Half Mile Spacing Requirement

The legal issues related to spacing requirements are explained in the memorandum from the City Attorney's Office. Although the issue has not clearly been decided, there is a preponderance of evidence that spacing requirements are not legal. Staff has not seen any evidence demonstrating the negative effects of the removal of the spacing requirement in 1989. If it can be demonstrated that the removal of the spacing requirement has had a negative effect on our community, such as a heavy concentration of uses or handicapped populations in specific neighborhoods, then revisiting the regulations may be warranted. If not, then the intent of the text amendment could be seen as discriminatory.

If spacing requirements for Family Group Homes are put in place, there will be very serious administrative difficulties created in locating, mapping and maintaining an accurate tracking system for all such homes, since they are funded and sanctioned by a wide variety of organizations. Also, establishing a spacing requirement would effectively put a cap on the total number of group homes that can be established within the City, regardless of the future need for such facilities.

#### Proposed Change to Supervision Requirement

The memo from the City Attorney's Office points out that "There have been several lower federal court decisions which have concluded that requirements in a zoning ordinance similar to the supervision requirement proposed must be waived as a reasonable accommodation." This would indicate to staff that such a provision is not recognized by the courts as a valid regulation.

Planning staff is of the opinion that it would be very difficult to make a judgement regarding the appropriateness of the use of resident clients as on-premises management/supervisory personnel without input from service providers. There may be potential benefits from having resident clients serve in supervisory roles.

Because of the lower federal court decisions as well as the potential benefits resulting from client management, staff does not recommend eliminating such a system.

#### Procedure for a Reasonable Accommodation

The Federal Fair Housing Act requires that development ordinances make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford handicapped persons equal opportunities.

The City Attorney's Office has informed staff that the courts have found ordinances are challengeable 1) when they are overtly discriminatory towards opportunities for handicapped persons and 2) when there are no provisions made for reasonable accommodation.

With regard to the first test, Planning staff and the City Attorney are of the opinion that the UDO currently is not discriminatory on its face, as evidenced by the following:

1. The definition of "Family" in the UDO includes four unrelated individuals. Those four persons could be persons with disabilities, or persons without disabilities. There is no discriminatory clause excluding persons with disabilities from the definition.
2. The UDO allows *by right* a Family Group Home in RS zoning districts. This facility allows up to six persons with disabilities to occupy a single dwelling unit. Six unrelated persons without disabilities could not under any circumstances legally occupy a dwelling unit. Provision is made in the zoning ordinance for Family Group Homes with larger numbers of people *in appropriate zoning districts*.
3. While not providing boarding or sleeping facilities, the Habilitation Facility A provides rehabilitation services for up to eight persons with disabilities in RS zones, with a special use permit from the Board of Adjustment. No similar vocational or other training facility for persons without disabilities is allowed in residential districts in the UDO.
4. Attached accessory dwellings are permitted with a zoning permit in all single family districts where occupancy of the accessory unit is by either a blood relative or a *person with a disability*. An unrelated person without a disability does not have this housing option available to them.

With regard to the second test (provision of a "reasonable accommodation" process), the UDO contains no such feature. Even though the UDO is not discriminatory on its face, the courts have interpreted the Fair Housing Act of 1988 such that if someone wanted to process a request for a reasonable accommodation (e.g., request relief from provisions of ordinance), it is appropriate for the ordinance to contain a procedure to do so. Planning staff recommends that the function be handled by the Zoning Board of Adjustment as proposed by the City Attorney. Regardless of whether or not the other two changes discussed in this text amendment are approved, a procedure for reasonable accommodation should be in place in the UDO.

Staff notes that the reasonable accommodation feature would apply not just to Family Group Homes A and B, but to the segment of the population meeting the definition of "handicapped". This could, in turn, affect a number of uses identified in the UDO.

In addition, the criteria for the Board of Adjustment to evaluate requests for reasonable accommodation [1) reasonable and 2) necessary 3) to afford handicapped persons equal opportunity to use and enjoy housing] is taken from case law and is intended to encourage consistency in evaluating specific cases.

Finally, staff notes that the ordinance permits requests for reasonable accommodation to be made of all portions of the zoning ordinance.

## **STAFF RECOMMENDATION**

Staff recommends the following:

**DENIAL of the Proposed Change to Add One-Half Mile Spacing Requirement;**

**DENIAL of the Proposed Change to Supervision Requirement;** and

**APPROVAL of the Proposed Procedure for a Reasonable Accommodation**

David Reed presented the staff report.

## **PUBLIC HEARING**

FOR:

Phil Denton, 1910 Elizabeth Avenue, Winston-Salem, NC 27103

President of Ardmore Neighborhood Association. Our issue is spacing requirement not supervision.

Read statement about the Association's vote concerning their support for this amendment.

We support group homes and think there is a need for them. Our concern is if there are two or three group homes within a block or two. That can significantly change the character of the neighborhood.

It takes a great deal of effort to integrate group homes into neighborhoods.

We need to look at this before there is a problem, not after there is a problem.

AGAINST:

Jeff Coppage, 3419 S. Main Street, Winston-Salem, NC 27127

I don't see the problem. Group homes are working in this community. They are providing a service. They are not creating problems.

If the Planning Board goes after spacing restrictions, they will be looking for a lawsuit at some point from some group.

My passion is that we come to treat people based on behavior, not on identity. Someone's past is irrelevant if they are a safe neighbor.

There are sufficient restrictions. Why discriminate against people who are trying to get their life together?

If we close down the opportunities for recovery, we can't go around pointing fingers at them.

Submitted comments.

## **WORK SESSION**

During discussion by the Planning Board, the following points were made:

1. Philip Doyle - The City Attorney's point was well placed. Some kind of spacing distance is another term for redlining which is discriminatory. I'm not sure the UDO should have any place with who the supervisors are.

2. John Bost - Sometimes when the need is so great, the tendency may be to purchase a next-door house. If we use several right next to each other, we may create a hardship for the neighborhood.
3. Kem Schroeder - What about the gentlemen's comment that if you get too many group homes, it defeats the purpose of a group home? John Bost - I don't see that as being a problem.
4. To overcome a reasonable accommodation charge, the City Attorney feels we would have to show a specific problem. It isn't a situation that we can plan ahead for. In other words, according to the legal interpretation, the hardship has to arise before it can be addressed.
5. Kem Schroeder questioned the interpretation of the legal precedent.
6. There was discussion about the variety of spacing limits (330 feet to one-half mile).

MOTION: Phil Doyle moved approval of staff's recommendation.

SECOND: Jerry Clark

VOTE:

FOR: Clark, Doyle, King, Snelgrove

AGAINST: Avant, Bost, Norwood, Schroeder

EXCUSED: None

Motion failed.

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A. Paul Norby, AICP  
Director of Planning

**UDO-79**  
**AN ORDINANCE**  
**AMENDING CHAPTER B "ZONING ORDINANCE"**  
**OF THE *UNIFIED DEVELOPMENT ORDINANCES***  
**REGARDING FAMILY GROUP HOMES**

Be it ordained by the Board of Commissioners of Forsyth County, North Carolina, that Chapter B "Zoning Ordinance" of the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Section 2-5.24 "Family Group Home A, Family Group Home B" of Chapter B "Zoning" Article II, "Zoning District, Official Zoning Maps, and Uses" is hereby revised by adding a new subsection "(C)" to read as follows:

"(C) Spacing Requirement

A Family Group Home A or B may not be located within a distance of one-half mile from another Family Group Home A or B or a Family Group Home C. All measurements shall be made by drawing a straight line from the nearest point of the lot line where the proposed Family Group Home is located to the nearest point of the lot line of another Family Group Home."

Section 2. Section 2-5.24 "Family Group Home A, Family Group Home B" of Chapter B "Zoning" Article II, "Zoning District, Official Zoning Maps, and Uses" is hereby revised by adding a new subsection "(A)" to read as follows:

"(A) Management

If not State licensed, the Family Group Home A or B shall have written operating procedures or manuals, established goals and objectives for person receiving therapy or treatment, a structured system of management with a Board of Directors, and on-premises management/supervisory personnel who are not resident clients of the family group home."

Section 3. Section 6-1.4 "Board of Adjustment" of Chapter B "Zoning" Article II "Administration and Amendments" is hereby revised by adding a new subsection (D) to read as follows:

"(D) Request for Reasonable Accommodation

Any person eligible under the Federal Fair Housing Act, as amended, may request relief from the requirements of this Ordinance by applying to the Board of Adjustment for reasonable accommodation.

The Board of Adjustment shall grant the accommodation requested if it finds that the accommodation is (1) reasonable and (2) necessary (3) to afford handicapped persons equal opportunity to use and enjoy housing.

This section shall not apply when the reasonable accommodation requested is a change in the zoning district classification of property. Such a request shall be considered by the Elected Body."

Section 4. This Ordinance shall be effective upon adoption.

**UDO-79**  
**AN ORDINANCE**  
**AMENDING CHAPTER B "ZONING ORDINANCE"**  
**OF THE *UNIFIED DEVELOPMENT ORDINANCES***  
**REGARDING FAMILY GROUP HOMES**

Be it ordained by the Board of Aldermen of the City of Winston-Salem, North Carolina, that Chapter B "Zoning Ordinance" of the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Section 2-5.24 "Family Group Home A, Family Group Home B" of Chapter B "Zoning" Article II, "Zoning District, Official Zoning Maps, and Uses" is hereby revised by adding a new subsection "(C)" to read as follows:

"(C) Spacing Requirement

A Family Group Home A or B may not be located within a distance of one-half mile from another Family Group Home A or B or a Family Group Home C. All measurements shall be made by drawing a straight line from the nearest point of the lot line where the proposed Family Group Home is located to the nearest point of the lot line of another Family Group Home."

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