

## **DRAFT STAFF REPORT**

**DOCKET #** UDO-55

**STAFF:** Ronald B. Grubbs

### **CONTINUANCE HISTORY**

This text amendment was continued from the November 12, 1999, Planning Board meeting to the December 9, 1999, meeting and again from the December 9, 1999, meeting to the January 13, 2000, meeting. The first continuance was to allow staff time to meet with the petitioners to discuss the proposed amendment. Staff suggested that a new use may need to be created to establish a category for up to 75 residents. Such a new use would have reduced ancillary uses and could only be allowed in certain residential zoning districts and not all the zoning districts which now permit a "Group Care Facility A". Staff met with the petitioners and their attorney and agreed to several modifications to the original request as discussed below.

The second continuance was recommended by the Planning Board. The Board requested staff to provide further analysis on how this use compares to other institutional uses in the UDO, in regard to number of residents, allowable zoning districts, and other provisions. To address questions, a new table has been provided at the end of the report summarizing this information.

### **REQUEST**

This text amendment was submitted by Stephen C. Calaway, attorney for FIRST, Inc. to increase the number of residents permitted in a "Group Care Facility A" from 40 or fewer residents to 75 or fewer residents.

The letter submitted by Mr. Calaway for this text amendment reads as follows:

"On behalf of FIRST, Inc., I hereby request consideration of revision of the *Unified Development Ordinances* - specifically the definition of Group Care Facility A.

The current definition limits such facilities to "Forty (40) or fewer residents". FIRST, Inc. requests that the definition be revised to "Seventy-five (75) or fewer residents".

A draft of the proposed change would read as follows:

**GROUP CARE FACILITY A.** A transitional housing facility for 75 or fewer residents, licensed by the State of North Carolina or operated by a nonprofit corporation chartered pursuant to Chapter 55A, North Carolina General Statutes, which provides room and board, personal care and rehabilitation services while persons receive therapy and/or counseling for one or more of the following purposes:

- (A) To assist them to recuperate from the effects of or refrain from the use of drugs or alcohol;
- (B) To provide emergency and temporary shelter for persons in distress such as runaway children and battered individuals; and,
- (C) To provide shelter and support for older adults and persons who are handicapped. A Group Care Facility A shall not serve primarily as an alternative to incarceration. Such facilities may have accessory uses conducted on the premises, including but not limited to, schooling of residents, training programs in occupational fields, and production of goods and crafts to be sold off-premises.

**ANALYSIS**

FIRST stands for Forsyth Initiative for Residential Self-Help Treatment. For the most part, this organization accepts individuals who volunteer for treatment due to alcohol and drug related problems. These individuals live together in a residential environment, receive counseling, share in household duties, and make crafts and other items for sale to help support the facility.

The Inspections Division and the City Attorney's office have been involved in regulating this use for several years. Below is a chronology of events dealing with FIRST, Inc.:

- Late 1991 or - Zoning Officer classifies  
FIRST as a "Correctional  
Institution" in the City Zoning Ordinance.

Early 1992
- January 1992 - FIRST applies for text  
amendment (WT-200) to create a new use "Group Care  
Facility" to be allowed in R-1 and R-2 Zoning Districts.  
FIRST was occupying Dorminy Studio on West 4<sup>th</sup> Street  
which was already zoned R-2. West End Association  
protested and the text amendment was withdrawn by  
Planning Board in April 1992.
- November 1992 - City Zoning Board of  
Adjustment approves variances for parking, buffers, etc. at  
316 Spring Street for FIRST with a condition that only 20  
residents be allowed in the facility. That site was zoned B-  
2 and permitted as a "correctional institution".
- December 1994 - UDO adopted with two new  
uses "Group Care Facility A and B". Both uses only  
allowed forty (40) or fewer residences. The A facility was  
not primarily an alternative to incarceration and was  
allowed in some multifamily districts with a Special Use  
Permit from Board of Adjustment and allowed in several  
business districts with

Planning Board Review. The B facility was an alternative to incarceration and was only allowed in several business districts with Planning Board Review.

- March 1996 - Violation notice issued to FIRST for occupying buildings at 301, 308, 311, and 313 Spring Street. Those properties zoned LO and did not permit Group Care Facility B. Zoning Officer classified new FIRST buildings on Spring Street as a Group Care Facility B in new UDO. The original location at 316 Spring Street was still classified as a "Correctional Institution" since permits were issued under that use in the previous zoning ordinance.
- October 1996 - Planning Board approves a Planning Board Review petition for FIRST at the corner of 6<sup>th</sup> and Trade Streets as a Group Care Facility B in the CB Zoning District. In the next several months, time extensions to vacate the other Spring Street buildings were granted by City Zoning Board of Adjustment.
- 1997 - Merchants on Trade Street appeal Zoning Officer's determination to the City Zoning Board of Adjustment to allow another Group Care Facility B at 6<sup>th</sup> and Trade Streets. They contend that this location would violate the 2,500 foot spacing requirement from the other FIRST facility on Spring Street. Original location at 316 Spring Street was still classified and permitted as a "Correctional Institution" from old ordinance. Zoning Officer's interpretation that the 2,500 foot spacing didn't apply because the original facility was not classified as a Group Care Facility B was upheld by the City Zoning Board of Adjustment and ultimately by the North Carolina Court of Appeals.
- May 1998 - FIRST asks Zoning Officer for a reclassification for buildings at 301, 308, 311 and 313 Spring Street from "Group Care Facility B" to "Group Care Facility A". Zoning Officer approves reclassification and includes the building at 316 Spring Street in this new classification. Holly Avenue Association and an adjoining property owner appeal reclassification to City Zoning Board of Adjustment. City Zoning Board of Adjustment upholds Zoning Officer's reclassification. All buildings on Spring Street must come into compliance with the UDO for the reclassified use of "Group Care Facility A".

- May 1999 - All parties (FIRST, Holly Avenue Association, and adjoining property owner) agree to consent judgment to vacate buildings at 301, 308, 311, and 313 Spring Street and to make the building at 316 Spring Street offices only with no residents. 316 Spring Street must meet UDO requirements for an office building. Building permit issued. At this time, building has not come into compliance with office parking requirements, parking dimensions, and building code requirements for handicap retrofits such as ramp and rest room facilities.
- 1999 - Preliminary site plan submitted to Planning staff for a Planning Board Review and Special Use Permit from the City Zoning Board of Adjustment for a Group Care Facility A at an older apartment complex on Northwest Boulevard west of 1<sup>st</sup> Street. No formal submittal for approval made. Proposed text amendment to increase number of residents from 40 to 75 filed several months later with the Planning staff.

The UDO attempted to provide new classifications for larger group residential care uses, Group Care Facilities A and B. These uses are allowed in certain multifamily and business zoning districts with different types of permits and administrative approvals. None are allowed by right without any approvals. Group Care Facility A is allowed in residential zones (only certain multifamily zones) only with a special use permit from the Zoning Board of Adjustment. The approval requirements were based on the definition which limits the number of residents to forty (40) or fewer and the permitted zoning districts.

Other factors considered by staff and made as use conditions included written operating manuals, a structured system of management with a Board of Directors, on-site management, minimum lot area in multifamily districts based on four residents equal to one dwelling unit, heated building space requirements per resident, limitations on the amount of the principal building which could be used for the production of accessory goods, 2,500 foot spacing requirements from another similar facility, no outside display of goods, no on-site retail sale of goods, and a limit on signage.

All of these factors were instrumental in the staff's recommendation to allow up to forty (40) residents at one location. Resident and spacing requirement limitations would prevent a clustering of such uses in one part of the community.

Another similar use is Family Group Homes A, B and C. These uses also have resident limitations. The largest, Family Group Home C, allows up to twenty (20) residents in virtually the same zoning districts as a Group Care Facility A. The use conditions are not quite as restrictive and this use is allowed in the multifamily districts with only Planning Board Review.

Other uses such as adult day cares, child day cares, and habilitation facilities for the handicapped, all have various levels (A, B, C . . .) that permit different numbers of individuals. In all of these, the intensity of the use is evaluated and permitted in appropriate zoning districts with proper permit and administrative procedures.

Creation of the Group Care Facility A and B uses in the UDO was primarily in response to the difficulty under the old ordinance of classifying FIRST (considered a Correctional Institution). Staff crafted the definitions of these uses to accommodate FIRST. Staff also considered criteria for Group Care Facility uses proposed in the UDO. The existing limits on forty (40) or fewer residents for a Group Care Facilities A and B seemed appropriate based on where those facilities are allowed, the type and intensity of ancillary uses allowed, and the types of permits and administrative review anticipated.

Currently in the UDO, a use such as FIRST cannot have a facility in Winston-Salem or Forsyth County that has more than forty (40) residents. If this number was increased, the staff would need to consider a new classification, new use condition requirements, allowable zoning districts, the type and intensity of ancillary uses, and the types of permits or administrative reviews needed for approvals.

Staff does not recommend increasing the number of residents in the current definition of "Group Care Facility A" from forty (40) or fewer to seventy-five (75) or fewer without revisiting some of the restrictions or requirements.

Staff has met with representatives of the petitioner, including the attorney representing them, to discuss staff concerns. All parties have agreed to modifications. First, the maximum number of residents in a Group Care Facility A is recommended to be increased to 75 residents with revisions to the ancillary uses allowed on sites. In a Group Care Facility A with 40 to 75 residents, the petitioners have agreed not to allow any production activities on the property in residential or office zones. In addition, common kitchen areas, classrooms, clinics, offices, and indoor storage of service equipment shall be limited to no more than twenty-five percent (25 %) of the total square footage of all structures on the zoning lot.

The final item discussed in this meeting was a concern by the Inspections Division regarding the term "primarily as an alternative to incarceration". The Board of Adjustment and Superior Court recently had problems defining that term. The term "primarily as an alternative to incarceration" is recommended to be changed to "residents that have been sent to the facility as a result of a judgment rendered by a Court of Law as an alternative to imprisonment". To further define the word "primarily", Group Care Facility A would allow no more than ten percent (10 %) of the residents to have been sent to the facility as a result of a judgment rendered by a Court of Law as an alternative to imprisonment. Group Care Facility B would allow more than ten percent (10 %) of the residents to have been sent to the facility as a result of a judgment rendered by a Court of Law as an alternative to imprisonment.

With these changes, some limit is placed on the larger facilities on economic activity which could otherwise adversely impact surrounding residential uses; some limits are placed on common or "institutional" areas which could otherwise be out of character with surrounding residential uses; and the composition of the client base, particularly those residents at the facility as an alternative to imprisonment, is clarified. As a further safeguard, staff notes that Group Care Facility A must obtain a special use permit from the Board of Adjustment in any of the few residential zones permitted (RM-12, RM-18, RM-U).

The chart on the next page has been prepared in response to the Planning Board's request at its December 9, 1999, meeting to identify other similar uses in the UDO; where those uses are allowed; how many residents are allowed; types of residents allowed; and the types of ancillary uses permitted in those developments. The proposal for "Group Care Facility A" is shown at the bottom of the chart for comparison.

<b>INSTITUTIONAL USES</b>	<b>RESIDENTIAL ZONING DISTRICTS/ PERMITS</b>	<b>OTHER ZONING DISTRICTS/ PERMITS</b>	<b>NUMBER OF RESIDENTS</b>	<b>TYPE RESIDENTS/ ANCILLARY USES</b>
Congregate Care	RM-8; RM-12; RM-18; RM-U/ Planning Board Review	PB; GB; CB; MUS/ Planning Board Review	Unlimited	Elderly/ part-time medical; housekeeping; personal care; shared food preparation, dining, recreation and social facilities.
Family Group Home "C"	RM-12; RM-18; RM-U/ Planning Board Review	PB; GB; CB; IP; MUS/ Planning Board Review;  C/ by right	12 to 20	Handicapped person, older adults, foster children, abused individuals, homeless persons, and persons recovering from drugs and alcohol/ license by NC non-profit corp; personal care; rehabilitation services; supervisory personnel.
Fraternity or Sorority	RM-8; RM-12; RM-18; RM-U/ Planning Board Review	GO; PB; GB; CB; C; MUS/ by right	Unlimited/ 1/2 acre minimum	Fraternal, sororal, social, honorary, or professional organization persons/ structures or uses 40' from property line; no outside public address systems.
Life Care Community	RM-8; RM-12; RM-18; RM-U/ Planning Board Review	PB; GB; CB/ Planning Board Review  C; MUS/ by right	Unlimited	Elderly or handicapped/ full range of living and care arrangements including detached housing, assisted living and full time health care.
Child Care Institution	None	GO; PB; GB; CB; IP; C; MUS/ Planning Board Review	13 or more children under age of 21	Children without parents/ provided with basis physical, emotional, educational, spiritual, and /or other special needs.
Nursing Care Institution	AG; RS-40; RS-30; RS-40/ Special Use permit by Zoning Board of Adjustment.  RM-8; RM-12; RM-18; RM-U/ by right	GO; PB; GB; CB; IP; C; MUS/ by right	Unlimited	Aged, ill or handicapped persons/ provided with food, shelter, and nursing care.
<b>Group Care Facility A</b>	<b>RM-12; RM-18; RM-U/ Special Use Permit by Zoning Board of Adjustment</b>	<b>LO; PB; GB; CB;/ Planning Board Review</b>  <b>MUS/ by right</b>	<b>Proposed 75 resident maximum</b>	<b>Transitional housing for persons receiving therapy or counseling/ full range of living arrangements, personal care and rehabilitation services; inside space for ancillary uses limited to 25% in facilities from 40 to 75 residents.</b>

## **RECOMMENDATION**

Staff recommends **APPROVAL** of the text amendment as amended from the original submittal.

## **PUBLIC HEARING** - December 9, 1999

Ronnie Grubbs presented the staff report.

FOR:

Steve Calaway, 1330 Ashley Square, Winston-Salem, NC 27103

Here on behalf of FIRST. Mr. John Hanley is going to be the benefactor.

Regarding the phrase "alternative to incarceration": Typically 10% is the maximum number of court assigned tenants that FIRST has ever had. The others are referred by doctors, families, or the guests themselves who know they need help. Submitted letter from Mr. Richard Dean supporting FIRST and offering cooperation with Wake Forest University Medical School to help staff this facility in terms of treatment.

This would help a lot of people.

What we're talking about is an apartment complex. We aren't talking about typical neighborhood style units with a lack of parking. Apartment complexes are designed to handle larger numbers of tenants.

These people would live here and be treated here with verbal counseling. Other treatment would be elsewhere.

There is general support from neighborhood associations in the area.

Mary Hogden, 316 N. Spring Street, Winston-Salem, NC 27120

In response to a question by Steve Johnson, Ms. Hogden agreed that FIRST is intended as a stepping stone back into the community and stated that the treatment is as effective in a facility with 75 people as it is with 40 people. In addition, the larger numbers allow the provision of better services and better training for the tenants. She stated that FIRST absolutely just could not keep its head above water financially at 40. Therapeutically, it works considerably better at approximately 75 people than at 40. However, 75 is the maximum number of tenants for maximum efficiency.

We take tenants to different work locations and pick them up. Every minute of their day is scheduled for them. In evenings they go to Forsyth Tech for GED classes or advanced classes. In addition, there are therapeutic sessions for individuals and groups.

There is one staff person for every ten people.



Steve Young, 3382 Vienna-Dozier Road, Pfafftown, NC 27040

Back in April we canvassed the West Highland and other neighborhood associations near this site. We handed out information about FIRST and invited everyone to a meeting at the local church to discuss it. The meeting was very well attended with good discussions.

The density we are talking about here is probably at worst equal to what is allowed there and is really less than what is currently there.

**AGAINST:**

Harry Burnett, 1534 Overbrook Avenue, Winston-Salem, NC 27104

I am here with another person who is also opposed to this. I am the spokesperson. This is definitely a big deal. You are almost doubling the size of this development. This is an apartment facility, but is extremely close to a single family residential housing community. This community is cohesive. It is a group of friends, not strangers.

Having the home here in the first place is an issue in itself. Almost doubling the size is another. Very few people know about it. West Highland Neighborhood Association had not heard anything.

I think at the very least, seeing as this is a very big deal to our neighborhood and is a big change in the ordinance itself, we need to be able to let our people find out about this before we act. I therefore request continuance for six to eight weeks to enable us to do this.

**WORK SESSION**

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

1. Anything over 10% would throw this use into Group Care Facility B.
2. Kem Schroeder stated that her concern is very site unspecific. I am concerned about this wording. I am not sure what kind of population you are talking about.
3. Steve Johnson stated that it is an intrusion into a community to allow this use to continue to get larger. The whole deal about selling this to communities is that this will be a small group. Now it's up to 75? That sounds like a lot of people. This is essentially an institutional use.
4. Kem Schroeder stated this amendment will apply to other organizations as well as FIRST. Other organizations may not have as good reputations as FIRST does.
5. The use has to be approved through a special use permit issued by the Zoning Board of Adjustment with four findings of fact.
6. Would like to see FIRST be allowed to have larger facilities in the appropriate zoning districts.

7. People who speak at Zoning Board of Adjustment hearings and the board members themselves may refer to our decision as support for this use in this environment.

Paul Norby, Director of Planning, suggested that perhaps it would be helpful to the Board for it to get more information about the different range of uses and where they are allowed. That information would include the types of other institutional uses similar to the FIRST program, where they are allowed, and the density under which they are allowed to operate.

MOTION: John Bost moved continuance of the text amendment to January 13, 2000.

SECOND: James Rousseau

VOTE:

FOR: Avant, Bost, Johnson, Powell, Rousseau, Schroeder, Williams

AGAINST: None

EXCUSED: None

### **PUBLIC HEARING** - January 13, 2000

FOR: None

AGAINST: None

### **WORK SESSION**

MOTION: James Rousseau moved to withdraw the zoning text amendment.

SECOND: Steve Johnson

VOTE:

FOR: Bost, Johnson, Powell, Rousseau, Stewart

AGAINST: None

EXCUSED: None

---

A. Paul Norby, AICP  
Director of Planning

**UDO-55**  
**AN ORDINANCE**  
**AMENDING CHAPTER A - DEFINITIONS ORDINANCE:**  
**ARTICLE II DEFINITIONS OF THE**  
***UNIFIED DEVELOPMENT ORDINANCES***  
**REGARDING GROUP CARE FACILITY A**

Be it ordained by the @, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter A - Definitions Ordinance: Article II - Definitions is revised by replacing the words "forty (40) or fewer residents" with the words "seventy-five (75) or fewer residents" in the definition of "GROUP CARE FACILITY A."

This definition is further revised by replacing in subparagraph (C) the sentence "A Group Care Facility A shall not serve primarily as an alternative to incarceration." with the sentence "Less than ten percent (10 %) of the residents of a Group Care Facility A have been sent to the facility as a result of a judgment rendered by a Court of Law as an alternative to imprisonment."

Section 2. Chapter A - Definitions Ordinance: Article II - Definitions is revised by removing the words "(CORRECTIONAL GROUP CARE FACILITY)" from the title in the definition of GROUP CARE FACILITY B.

This definition is further revised by deleting the words "as an alternative to incarceration" and replacing with the following new sentence after those words: "Residents of a Group Care Facility B may have been sent to the facility as a result of a judgment rendered by a Court of Law as an alternative to imprisonment."

Section 3. Chapter B - Zoning Ordinance: Article II - Use Conditions is revised by adding the following new sentence to the end of the current wording in Section 2-5.30 GROUP CARE FACILITY A, GROUP CARE FACILITY B subsection (D) Limits on Accessory Production Activities:

"In a Group Care Facility A with more than 40 residents, there shall be no production activities in residential or office zoning districts. In a facility with more than 40 residents, common kitchen areas, classrooms, clinics, offices, and indoor storage of service equipment shall be limited to no more than twenty-five percent (25 %) of the total square footage of all structures on the zoning lot."

Section 2. This ordinance shall become effective upon adoption.