PLANNING COMMISSION REPORT

Meeting Date: April 26, 2023
General Plan Element: *Land Use*
General Plan Goal: *Create a sense of community through land uses*

ACTION

Care Homes Text Amendment
1-TA-2022

Request to consider the following:

1. A recommendation to City Council regarding a request by the City of Scottsdale to amend the Zoning Ordinance (Ord. No. 455) Article I, Section 1.806 (Disability Accommodation), Article I, Section 1.920 (Request for Disability Accommodation), Article III, Section 3.100 (Definitions), Article V, Section 5.012 (Single-family Residential, R1-190 – Use Regulations) and Article V, Section 5.102 (Single-family Residential, R1-43 – Use Regulations) to clarify what constitutes a care home and modify the process and criteria for obtaining a Disability Accommodation.

Goal/Purpose of Request

The primary purpose of this amendment is to add the ability for a provider/applicant to request a "Minor Disability Accommodation" and establish the process and criteria for doing so. Additionally, the definition of "care home" is proposed to be amended to eliminate conflicts with the "family" definition and to align with State licensing requirements.

Key Items for Consideration

- Clarify/remedy inconsistent terms and provisions
- Clarify process for administrative/non-administrative applications
- Review language and terminology for consistency with applicable process, and operations related to Arizona Department of Health Services (ADHS) licensing
- Consistent with state and federal case law

APPLICANT CONTACT

Greg Bloemberg
City of Scottsdale
480-312-4306

Action Taken _____

LOCATION

Citywide

BACKGROUND

In 2017, city adopted a comprehensive text amendment to the Zoning Ordinance (2-TA-2017) to address care homes and group homes with the objective being to align the City's regulations and requirements with Federal and State law and respond to City Council direction resulting from a citizen petition. The 2017 amendment included the following:

- Increased oversight for all care homes
- Increased separation requirements between care homes
- Amendments to existing definitions and addition of new definitions related to care homes
- Amendments to existing land uses and addition of new land uses related to care homes
- Strengthened use criteria for care homes
- New sections to address disability accommodations

Since 2017, it has become evident that updates to the criteria and evidence evaluated for a disability accommodation, as well as the associated definitions, are necessary to be more consistent with regulations of the Americans with Disabilities Act (ADA), Fair Housing Act (FHA) and applicable licensing requirements of the ADHS. One objective of this amendment was to evaluate the existing definition and land use language and adjust as needed to realign it with direction from City Council during the previous text amendment process.

Other Related Policies, References:

- Zoning Ordinance
- 2-TA-2017: Approved comprehensive text amendment specific to care homes and group homes

STAFF PROPOSAL

In addition to some general clean-up and clarification, the primary goals of this amendment are to introduce criteria for requesting and processing a Minor Disability Accommodation, and to update the definition of "Care Home". The Zoning Ordinance already allows a person with a disability to request a Minor Disability Accommodation, subject to approval from the Zoning Administrator, for up to 10% of an existing development standard or separation requirement. Beyond 10%, the request is processed similar to a zoning variance, which must be approved by the Board of Adjustment. The following additional criteria is proposed to set parameters for requesting a Minor Disability Accommodation. This criteria is only for requesting a Minor Disability Accommodation. The criteria for obtaining a Disability Accommodation are spelled out in Sec. 1.806 (as proposed to be amended in Attachment #1).

- An applicant requesting a Minor Disability Accommodation to this Zoning Ordinance shall file an application with the Zoning Administrator, on a form provided by the Zoning Administrator. The form shall require a site plan of the property, highlighting the specific portion of the property affected by the request, and the reason(s) for the request.

- Within ten (10) days after the Zoning Administrator receives a complete application, the property owner shall send notice, by first-class mail, of the application to the property owners within three hundred (300) feet of any property line of the property on which the Minor Disability Accommodation is being requested.
- Public Comment made on the proposed Minor Disability Accommodation shall address the Disability Accommodation Set forth in Sec. 1.806 and be directed to the Zoning Administrator within thirty (30) days after the mailing date of the notice.
- In reviewing an application for a Minor Disability Accommodation, the Zoning Administrator shall determine whether the application meets the Disability Accommodation Criteria set forth in Sec. 1.806.
- The Zoning Administrator shall issue a written decision on the specific Minor Disability Accommodation requested no sooner than thirty (30) days and not later than forty-five (45) days after notice, referred to above, is mailed.
- Any aggrieved person may appeal the Zoning Administrator's decision to the Board of Adjustment as set forth in the Zoning Ordinance.
- An application for a Minor Disability Accommodation is unrelated to, and does not impact, a property owner's ability to apply for a variance.

The proposed amended definition for "Care Home" is as follows:

Care home shall mean ~~a dwelling~~ **any licensed home pursuant to Title 36 of the Arizona Revised Statutes,** shared as a primary residence by **more than six (6) but** no more than ten (10) ~~adults~~ **persons** ~~with a disability that is licensed as a health care institution under Arizona law~~, and in which on-site supervisory or other care services are provided to the disabled residents. For purposes of this definition, a person must live in the dwelling a minimum of thirty (30) consecutive days for this dwelling to be considered a primary residence. A care home is a principal, not an accessory, use.

This amendment will further align City ordinance requirements with Federal and State law, and also align the definition with the City's existing definition of "Family" which is six persons or fewer. In effect, the proposed definition will recognize any single-family residence occupied by six persons or fewer, licensed by the state as a care home or not, as a single-family residence. Care homes under this scenario will not be subject to separation requirements or mapped by staff, however there will be oversight by the city fire and building departments as required by state licensing requirements.

One of the proposed changes to Section 1.806 (Criteria for obtaining a Disability Accommodation) is to eliminate the requirement that "The requested accommodation must comply with all building and fire codes". There are two reasons this is recommended. First, the Board of Adjustments has no purview over building or fire codes, and therefore cannot determine compliance. Second, the Building Official has separate authority to waive provisions of building/fire codes if necessary to make a reasonable accommodation.

IMPACT ANALYSIS

Land Use

Though this amendment will no longer require zoning approval for licensed care homes with six residents or less, however there will still be oversight. All care homes, including "sober homes", are required to be licensed by the State. Arizona Department of Health Services (ADHS) conducts inspections of all care homes to ensure they are operating in accordance with State law.

Additionally, all care homes, including those with six residents or less, are subject to the City's Fire inspection process. Chapter 36-18, Ordinance 4283 of the Scottsdale Revised Code establishes occupancy classifications for single-family facilities that provide care and/or accommodations for other than immediate family occupants. Per the ordinance, a "Congregate Living Facility" or "Convalescent Facility" with five (5) or fewer persons residing in the residence is classified as an "R-3" occupancy, and is required to have an approved safety evacuation plan and smoke alarms. A facility with at least six (6) but not more than ten (10) persons residing in the residence is classified as an "R-4" occupancy and is required to have fire sprinklers and fire extinguishers, in addition to an approved safety evacuation plan and smoke alarms.

Community Involvement

Standard community involvement was undertaken during the initial phases of this process. Steps taken included the following:

- Notification of persons on the text amendment Interested Parties List
- 1/8-page ad in Arizona Republic
- Notification via the City's Facebook and Twitter pages, Scottsdale P&Z Link and the Nextdoor website

Additionally, staff attended the 2/23/22 Neighborhood Advisory Commission to provide information, gather feedback and answer questions. Subsequently, staff held two Open Houses, the first at Granite Reef Senior Center on 6/9/22 (three attendees) and the second at Via Linda Senior Center on 6/16/22 (five attendees). Comments received focused mainly on compatibility of uses (care homes in a single-family neighborhood) and related operational characteristics such as parking and deliveries. There was also a suggestion that care homes be treated as a "conditional use" and be subject to neighborhood input. Additionally, there were concerns expressed about the care homes ordinance in general, with one attendee contending that the current care homes ordinance is discriminatory, and any amendment should include a reduction in the separation requirements between care homes and the inclusion of care homes as a permitted use in multi-family zoning districts.

After the Open Houses, staff paused to allow time for additional public input, including a list of proposed edits, which staff never received. During this pause, staff received additional correspondence from one of the Open House attendees and some providers. No additional comments have been received from anyone other than the Open House attendees and the aforementioned providers. Refer to Attachment #3 for additional comments.

Policy Implications

- Amendment does not eliminate neighborhood protections (oversight) already in place from previous text amendment.
- Clarifies procedure for requesting a minor disability accommodation and provides criteria.
- Aligns definition of "Care Home" with the definition of "Family" when there are 6 or fewer residents.

OTHER BOARDS & COMMISSIONS

Neighborhood Advisory Commission

Staff presented this text amendment to the NAC on 2/23/2022 as in informational item. There were no concerns expressed by the Commission though there were questions:

- *Was outreach conducted the same as a new proposed development?* Answer: No, since the text amendment is citywide and is not related to any specific property or project, outreach was far more widespread.
- *What was the genesis for this amendment?* Answer: Twofold – first, the ordinance needed to align with recent State legislation that now requires all care homes, including so called "sober homes" to be licensed, second, the City received a legal challenge to the ordinance that contended the care home regulations were discriminatory.
- *What's the difference between a care home and a group home?* Answer: No care or supervision is being provided in a group home. A care home includes some form of medical or supervisory care.
- *Does the City know how many care homes there are?* Answer: The City tracks care homes by mapping them but does not keep a running total.
- *Have any problems surfaced as a result of care homes in a residential neighborhood?* Answer: No, based on feedback from the Police Department, Fire Department and Code Enforcement.

STAFF RECOMMENDATION

Recommended Approach:

Staff recommends that the Planning Commission determine that the proposed zoning text amendment is consistent with and conforms to the adopted General Plan, and make a recommendation to City Council for approval of a request by the City of Scottsdale to amend the Zoning Ordinance (Ord. No. 455) Article I, Section 1.806 (Disability Accommodation), Article I, Section 1.920 (Request for Disability Accommodation), Article III, Section 3.100 (Definitions), Article V, Section 5.012 (Single-family Residential, R1-190 – Use Regulations) and Article V, Section 5.102 (Single-family Residential, R1-43 – Use Regulations) to clarify what constitutes a care home and modify the process and criteria for obtaining a Disability Accommodation.

RESPONSIBLE DEPARTMENT

Planning and Development Services
Current Planning Services

STAFF CONTACT

Greg Bloemberg
Principal Planner
480-312-4306
E-mail: gbloemberg@ScottsdaleAZ.gov

APPROVED BY

3/29/2023
Greg Bloemberg, Report Author — Date

4/13/2023
Tim Curtis, AICP, Current Planning Director — Date
Planning Commission Liaison
Phone: 480-312-4210 Email: tcurtis@scottsdaleaz.gov

04/18/2023
Erin Perreault, AICP, Executive Director — Date
Planning, Economic Development, and Tourism
Phone: 480-312-7093 Email: eperreault@scottsdaleaz.gov

ATTACHMENTS

1. Ordinance No. 4590
   Exhibit 1: 1-TA-2022 – Care Homes Text Amendment
2. Community Involvement
3. Correspondence
4. 2/3/22 Neighborhood Advisory Commission Meeting Minutes

ORDINANCE NO. 4590

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, TO AMEND ORDINANCE NO. 455, THE ZONING ORDINANCE OF THE CITY OF SCOTTSDALE, FOR THE PURPOSE OF AMENDING ARTICLE I, SECTION 1.806 (DISABILITY ACCOMMODATION), ARTICLE I, SECTION 1.920 (REQUEST FOR DISABILITY ACCOMMODATION), ARTICLE III, SECTION 3.100 (DEFINITIONS), ARTICLE V, SECTION 5.012 (SINGLE-FAMILY RESIDENTIAL, R1-190 – USE REGULATIONS) AND ARTICLE V, SECTION 5.102 (SINGLE-FAMILY RESIDENTIAL, R1-43 – USE REGULATIONS) TO CLARIFY WHAT CONSTITUTES A CARE HOME AND MODIFY THE PROCESS AND CRITERIA FOR A DISABILITY ACCOMMODATION AS PROVIDED IN CASE NO. 1-TA-2022.

WHEREAS, the City of Scottsdale wishes to amend the Zoning Ordinance regarding Article I Section 1.806 (Disability Accommodation), Article I, Section 1.920 (Request for Disability Accommodation), Article III, Section 3.100 (Definitions), Article V, Section 5.012 (Single-family Residential, R1-190 – Use Regulations) and Article V, Section 5.102 (Single-family Residential, R1-43 – Use Regulations) to clarify what constitutes a care home and modify the process and criteria for a Disability Accommodation; and

WHEREAS, the Planning Commission held a public hearing on April 26, 2023; and considered a text amendment to the Zoning Ordinance of the City of Scottsdale, Case No. 1-TA-2022; and

WHEREAS, the City Council has considered the probable impact of Zoning Ordinance 4590 on the cost to construct housing for sale or rent; and

WHEREAS, the City Council has determined that the subject Zoning Ordinance amendment is in conformance with the General Plan.

BE IT ORDAINED by the Council of the City of Scottsdale as follows:

Section 1. That the Zoning Ordinance of the City of Scottsdale Section 1.806 (Disability Accommodation), Section 1.920 (Request for Disability Accommodation), Section 3.100 (Definitions), and any other applicable sections is hereby amended as specified in that certain document entitled “1-TA-2022 – Care Homes Text Amendment” in **Exhibit 1** to this Ordinance, and hereby referred to, adopted, and made a part hereof as if fully set out in this Ordinance. New text represented by bold type with grey shading in **Exhibit 1** is hereby referred to, adopted, and made a part hereof as if fully set out in this Ordinance.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

ATTACHMENT #1

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this _____ day of _____, 2023.

ATTEST:

By:_____
Ben Lane
City Clerk

CITY OF SCOTTSDALE, an Arizona municipal corporation

By:_____
David D. Ortega
Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By:_____
Sherry R. Scott, City Attorney
By: Joe Padilla, Deputy City Attorney

Sec. 1.806. - Disability Accommodation.

A. A disability accommodation from a development standard or separation requirement shall not be authorized unless the Board ~~shall~~ find**s,** upon sufficient evidence, all of the following:

1. The requested accommodation is requested by or on the behalf of one (1) or more individuals with a disability protected under federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.);

2. The requested accommodation is **reasonably** necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling;

~~3. The standard or requirement unduly restricts the opportunity for a person with a disability from finding adequate housing within the City of Scottsdale;~~

~~4~~. **3.** The requested accommodation does not fundamentally alter the nature and purpose of the Zoning Ordinance of the City of Scottsdale;

~~5~~. **4.** The requested accommodation will not impose an undue financial or administrative burden on the City, as "undue financial or administrative burden" is defined in federal and Arizona fair housing laws (42 U.S.C. § 3600 et seq. and A.R.S. § 41-1491 et seq.) and interpretive case law;

~~B. The profitability or financial hardship of the owner/service provider of a facility shall not be considered in determining whether to grant a disability accommodation.~~

~~C. The requested accommodation must comply with all applicable building and fire codes.~~

~~D.~~ **B.** The requested accommodation must not, under the specific facts of the application, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

(Ord. No. 4326, § 1(Res. No. 10963, § 1(Exh. A)), 12-5-17)

Sec. 1.920. - Request for Disability Accommodation.

A. An applicant may request a disability accommodation from a development standard or separation requirement if the standard or requirement unduly restricts the opportunity for a person with a disability from finding adequate housing within the City of Scottsdale**, or unduly restricts the applicant or a person with a disability from utilizing their existing property**. The ~~z~~**Z**oning ~~a~~**A**dministrator may administratively approve **a Minor Disability Accommodation of** up to a ten percent (10%) modification of a development standard or separation requirement upon finding that such a modification will further the policies contained in the Arizona and federal fair housing laws and the Americans with Disabilities Act. All other requests for disability accommodation shall be submitted to the Board of Adjustment as a request for disability accommodation.

B. An applicant requesting a Minor Disability Accommodation to this Zoning Ordinance shall file an application with the Zoning Administrator, on a form provided by the Zoning Administrator. The form shall require a site plan of the property, highlighting the specific portion of the property affected by the request, and the reason(s) for the request.

C. Within ten (10) days after the Zoning Administrator receives a complete application, the property owner shall send notice, by first class mail, of the application to the property owners within three hundred (300) feet of any property line of the property on which the Minor Disability Accommodation is being requested.

D. Public comment made on the proposed Minor Disability Accommodation shall address the Disability Accommodation Criteria set forth in Sec. 1.806 and be directed to the Zoning Administrator within thirty (30) days after the mailing date of the notice.

E. In reviewing an application for a Minor Disability Accommodation, the Zoning Administrator shall determine whether the application meets the Disability Accommodation Criteria set forth in Sec. 1.806.

F. The Zoning Administrator shall issue a written decision on the specific Minor Disability Accommodation requested no sooner than thirty (30) days and not later than forty-five (45) days after notice, referred to in C. above, is mailed.

G. Any aggrieved person may appeal the Zoning Administrator's decision to the Board of Adjustment as set forth in the Zoning Ordinance.

H. An application for a Minor Disability Accommodation is unrelated to, and does not impact, a property owner's ability to apply for a variance.

(Ord. No. 4326, § 1(Res. No. 10963, § 1(Exh. A)), 12-5-17)

Sec. 3.100 – General (Definitions)

Care home shall mean ~~a dwelling~~ **any licensed home pursuant to Title 36 of the Arizona Revised Statutes,** shared as a primary residence by **more than six (6) but** no more than ten (10) ~~adults~~ **persons** ~~with a disability that is licensed as a health care institution under Arizona law~~, and in which on-site supervisory or other care services are provided to the disabled residents. For purposes of this definition, a person must live in the dwelling a minimum of thirty (30) consecutive days for this dwelling to be considered a primary residence. A care home is a principal, not an accessory, use.

Sec. 5.012 – Use Regulations (Single-family Residential R1-190)

Sec. 5.102 – Use Regulations (Single-family Residential R1-43)

Care home is subject to the following criteria:

a. *Floor area ratio:* Is limited to thirty-five hundredths (0.35) of the net lot area.

b. *Capacity:* The maximum number of residents, including up to ten (10) disabled persons, the manager/supervisor, property owner, and residential staff at the home ~~is~~ **shall not exceed** twelve (12) **persons** per residential lot.
c. *Location:* A care home shall not be located within twelve hundred (1200) feet, measured from lot line to lot line, of another care home.
d. *Compatibility:* The home and its premises shall be maintained in a clean, well-kept condition that is consistent in materials and design style with homes in the surrounding or adjacent neighborhood.
e. *Criteria:* Care homes must be licensed by the State of Arizona and must provide proof of such licensing by the State of Arizona ~~as a health care institution~~ to the Director of Planning prior to the commencement of operations. All care homes must pass an initial and annual fire inspection administered by the Scottsdale Fire Department. Proof of such inspection and of correction of any noted deficiencies must be available at the care home at all times.
f. *Accommodation:* A disabled person may request a disability accommodation from the above criteria or a development standard pursuant to Section 1.806. of this Zoning Ordinance.

ATTACHMENT #2

OPEN HOUSE INVITATION

CITY OF SCOTTSDALE

SEEKING COMMUNITY INPUT

The City of Scottsdale is preparing a text amendment to the City of Scottsdale Zoning Ordinance (Ordinance No. 455) including Sections 1.806 (Disability Accommodation), Section 1.920 (Request for Disability Accommodation), Section 3.100 (Definitions), and any other applicable sections to clarify what constitutes a care home and modify the process and criteria for a Disability Accommodation.

The City of Scottsdale will host two separate Open House dates regarding this proposed text amendment.

internet at: http://eservices.scottsdaleaz.gov/bldgresources/Cases

Text Amendment City-Wide Text Amendment
Case Number: 1-TA-2022

June 9, 2022
From 5:30-6:30 pm
Granite Reef Senior Center
1700 N Granite Reef Rd

OR

June 16, 2022
From 5:30-6:30 pm
Via Linda Senior Center
10440 E Via Linda

Staff Contact: Greg Bloemberg- GBLO@scottsdaleaz.gov

1-TA-2022

Scan, snap, save, and share

CITY OF SCOTTSDALE

Open House Sign-In Sheet

Date: 6-9-22

Location: Granite Reef Senior Center

This Sign-In Sheet is a Public Record

Name Zachary Rhodes	**Business Name**	
Address & Zip 2141 E. Broadway Rd.	Phone 480-321-8749	E-mail Zapebble@aol.com
Name Tim Ginter	**Business Name**	
Address & Zip 8728 E. Lone Mountain 85266	Phone 602-708-2893	E-mail timginter@dbaconstruction.net
Name Barnen Gomersley	**Business Name**	
Address & Zip As noted	Phone	E-mail qabeeyns@gmail.com
Name	**Business Name**	
Address & Zip	Phone	E-mail
Name	**Business Name**	
Address & Zip	Phone	E-mail
Name	**Business Name**	
Address & Zip	Phone	E-mail
Name	**Business Name**	
Address & Zip	Phone	E-mail

CITY OF SCOTTSDALE

Open House Sign-In Sheet

Date: JUNE 16 2022

Location: VIA LINDA

This Sign-In Sheet is a Public Record

Name Judy Frieder	**Business Name**	
Address & Zip 9698 E. Windrose Dr.	Phone 602-799-8804	E-mail cpajudy@gmail.com
Name STUART TURGEL	**Business Name**	
Address & Zip 9698 E. WINDROSE DR	Phone 480-580-3685	E-mail sturgel@cox.net
Name Rolf & Lynn Ausen	**Business Name**	
Address & Zip 8083 E. Ranch Rd. 85266	Phone 425-891-6553	E-mail rolfausen@gmail.com
Name JOHN & LISA BETTS	**Business Name**	
Address & Zip 31202 N. GRANITE REEF RD	Phone 215-500-1519	E-mail bettsfamily4az@gmail.com
Name Heather Dukes	**Business Name**	
Address & Zip 5527 N. 25th Street	Phone 602-320-8864	E-mail hdukesesq@gmail.com
Name	**Business Name**	
Address & Zip	Phone	E-mail
Name	**Business Name**	
Address & Zip	Phone	E-mail

ATTACHMENT #3

From: Lisa Betts
To: Bloemberg, Greg
Subject: Care home update
Date: Friday, June 17, 2022 12:13:39 PM

External Email: Please use caution if opening links or attachments!

Greg:
Thank you for your time last night.
As we discussed, there seems to be quite a bit of disconnect between the existing and proposed zoning code versus the building code. Allowing R-4 type construction in R-3 type construction single family districts and treating larger care comes as single family residences really doesn't make any sense. In reviewing the zoning and building code, it would better, in my opinion, to differentiate between 6 or less occupants dwelling which falls under the single family building code, and the 10 unit plus support staff buildings which fall into R-4 residential building code, which are by the building code definition, not single family dwellings. As we discussed smaller care homes and the larger care homes are really "apples and oranges" with regard to parking, service access, and driveway access to streets. Currently, only two parking spaces would be required for a facility that may in fact have 12 cars for residents and staff , plus visitors, plus service and deliveries. One would think that such a divergence in use intensity should require different infrastructure and different approvals.
My suggestion would be to differentiate between the 6 and below occupancy structure and the 7 and up structures. This would include a proposed conditional use hearing for neighborhood input, and a much more rigorous semi-commercial design requirements for the larger care homes. This I believe would be in everyone's best interest, since ultimately parking and service access becomes the City of Scottsdale's problem if residents, staff and visitors park on the street taking up limited on street parking, or residents are complaining about lack of on-site parking.
Additionally, the city is really subsidising a commercial operation when it comes to residential trash collection when an onsite dumpster really may be required for sanitary reasons. I would think that twelve or more people would generate significantly more refuse than a typical single family house.
Also, any time of interaction with NAOS or ESLO areas should be more critically reviewed for 7 and above structures, since there is a much higher likelihood of problems related to a semi-commercial operation, which might include; noise, dark skies, native planting and wildlife issues because of the operational intensity.
Hopefully these thoughts are helpful.
Regards,
John Betts

Heather Dukes

5527 N. 25th Street
Phoenix, AZ 85016
602.320.8866

CITY OF SCOTTSDALE
Planning and Development Services Department
3939 N. Drinkwater Boulevard
Scottsdale, AZ 85251

June 16, 2022

RE: Comments Regarding Care Home Text Amendment Case No. 1-TA-2022

Dear City of Scottsdale Planning Staff:

On behalf of sober living operators, the following are comments and concerns regarding the proposed "care home" text amendment to the Zoning Ordinance, which has been scheduled for an open house meeting on June 16, 2022.

As we have disclosed to the City in the past, the care home limitations in the Zoning Ordinance and their application to sober living homes are discriminatory on their face and have a disparate impact on persons with disabilities by severely limiting housing options in Scottsdale. This proposed care home text amendment does very little to alleviate discriminatory treatment and impact to Scottsdale's disabled populations and, if adopted, will continue to violate the Fair Housing Act and the Americans with Disabilities Act. The following outlines our initial concerns:

1. The disability accommodation criteria in Section 1.806 of the Zoning Ordinance violates the Fair Housing Act by:
    a. Limiting accommodation requests to a "development standard or separation requirement," and
    b. Requiring that the requested accommodation "comply with all applicable building and fire codes", when certain provisions in the building and fire codes may require modification through a reasonable accommodation process as well.

2. The ability of an applicant to request a disability accommodation is unlawfully restricted in Section 1.920 of the Zoning Ordinance in violation of the Fair Housing Act by:
    a. Limiting accommodation requests to a "development standard or separation requirement," and

b. Limiting accommodation requests to only those applicants who can demonstrate that such standards or requirements unduly restrict their opportunity to find adequate housing within the City of Scottsdale or from utilizing their existing property.

Both Sections 1.806 and 1.920 should be revised to allow a disability accommodation request to be filed with regard to any provision in the Zoning Ordinance. These Sections should also be revised by deleting the additional restrictions noted above.

For a more detailed analysis providing the reasons that an applicant should not be restricted to filing a reasonable accommodation request for only certain Zoning Ordinance standards or requirements, see email from Heather Dukes to Planning Director Tim Curtis dated September 16, 2021.

,

3. The minor disability accommodation process requires notification to property owners within 300 feet of the property, despite this being an administrative process with no hearing requirement.

Such notification requirements often result in neighborhood opposition and discriminatory treatment of disabled applicants and should be deleted.

4. The definition of "care home" in the Zoning Ordinance has been expanded to apply to disabled, sober adults living in a dwelling unit in which no care is provided. The broadening of the care home definition to include sober living homes is discriminatory and a violation of the Fair Housing Act. Sober, disabled adults will not be permitted to find housing in the community of their choice as a result of the unjustifiable 1200-foot spacing requirement and the fact that the Zoning Ordinance does not allow care homes in any multifamily residential zoning district.

The regulation of care homes, sober living homes and group homes throughout the entire Scottsdale Zoning Ordinance should be reevaluated and significantly modified in order to meet Fair Housing Act requirements. A public comment from Rose Daly-Rooney, the Legal Director of the Arizona Center for Disability Law, dated December 5, 2017 is attached hereto providing a thorough analysis of the City's current care home ordinance and how it violates the Fair Housing Act and the Americans with Disabilities Act

We recommend that the City conduct a thorough review of the ordinance and consider the disparate impact of not only the 2017 text amendment but also this most recent text amendment, both of which unlawfully limit housing for disabled populations. Additionally, we recommend that the City publish notice of additional open houses in a newspaper of general circulation and to contact care home and sober living home operators who are registered with the City of Scottsdale and Arizona Department of Health Services. It is our understanding that, to date, these notifications have not occurred.

Sincerely,

Heather N. Dukes, Esq.

on behalf of Scottsdale Recovery
Sanctuary Sober Living
Safe and Sound Sober Living
Stepping Stones Recovery
Pinnacle Peak Recovery

602.320.8866 | hdukesesq@gmail.com

Enclosures

Gmail

Heather Dukes <hdukesesq@gmail.com>

Reasonable Accommodation Application for 7910 and 7920 E. Wilshire Drive

Heather Dukes <hdukesesq@gmail.com> Thu, Sep 16, 2021 at 3:21 PM
To: "Curtis, Tim" <tcurtis@scottsdaleaz.gov>
Cc: "Cluff, Bryan" <BCluff@scottsdaleaz.gov>, "Barnes, Jeff" <JBarnes@scottsdaleaz.gov>

Dear Tim:

As we discussed, I am sending this email to further explain our FHA reasonable accommodation application to be submitted for the Scottsdale Recovery sober living property at 7910 and 7920 E. Wilshire Drive. I am also sending this email to confirm a few dates and procedural items.

Overview of Reasonable Accommodation Application

Currently, we have a pending interpretation appeal before the Board of Adjustment scheduled to be heard on November 3rd (Case No. 6-BA-2021 – requesting an interpretation that 2 to 4 sober, disabled individuals living in each dwelling unit would constitute a "family" and be permitted in the R-3 zoning district as a matter of right).

In addition to the pending interpretation appeal, my client will be filing an application requesting that the Board of Adjustment issue a reasonable accommodation to allow the proposed sober living use in the R-3 zoning district at this particular location pursuant to the federal Fair Housing Act [42 U.S.C. § 3604(f)(3)(B)] and the nearly identical protections set forth in Arizona's Fair Housing Act [Ariz.Rev.Stat. § 41-1491]. The reasonable accommodation application should be scheduled at the same BOA hearing as the interpretation Case No. 6-BA-2021 (currently set for Nov 3, 2021).

The reasonable accommodation application will address both: (i) the disability accommodation tests set forth in Section 1.806 of the Zoning Ordinance and (ii) the reasonable accommodation tests identified in the 9th Circuit and Arizona case law.

The reasonable accommodation application will be supported by additional evidence that we are currently compiling. We will also be submitting information and evidence showing that the reasonable accommodation must be granted to Scottsdale Recovery and its disabled residents as result of the following:

1. The City's Zoning Ordinance is facially discriminatory. The Ordinance prohibits care homes for the disabled in multifamily zoning districts but allows group homes and vacation rentals for non-disabled residents in multifamily zoning districts.
2. Scottsdale Recovery and its disabled residents have been subjected to disability-based disparate treatment as a result of the City's implementation of the Zoning Ordinance and the interpretation issued in 6-BA-2021.
3. The Zoning Ordinance and the City's implementation of the Ordinance have a discriminatory impact on persons with disabilities.

The Fair Housing Act Affords the Right to Request a Reasonable Accommodation in this Case

To assist the City in reviewing our reasonable accommodation application and scheduling the Board of Adjustment hearing for November 3rd, I am provided this summary of our rights to request a reasonable accommodation in this matter.

You have mentioned that the Zoning Ordinance limits the scope of disability accommodations that may be granted by the City. In particular, you have noted that disability accommodations to the Zoning Ordinance are applicable to development standards and separation requirements, not land uses allowed by zone.

You are correct in that Section 1.806 provides a list of criteria that must be satisfied in order for the Board of Adjustment to authorize "a disability accommodation from a development standard or separation requirement." In addition, Section 1.920 of the Zoning Ordinance provides guidance as to when the Zoning Administrator may grant an administrative accommodation and requires that "all other requests for disability accommodation shall be submitted to the Board of Adjustment as a request for disability accommodation." But, neither Section 1.806 nor Section 1.920 specifically prohibit a reasonable accommodation request pertaining to land uses allowed in certain zoning districts. Any attempt to do so would be contrary to the reasonable accommodation rights we are afforded under the federal and Arizona Fair Housing Acts. It would also violate the Supremacy Clause.

The Fair Housing Act is a "broad mandate to eliminate discrimination against and equalize housing opportunities for disabled individuals." *Canady v. Prescott Canyon Estates Homeowners Ass'n,* 204 Ariz. 91, 93 (App.2002). "Because it is a broad remedial statute, its provisions are to be generously construed and its exemptions must be read narrowly." *Id.*

The 1988 amendments to the federal Fair Housing Act (the "**FHAA**") require cities and towns to accept and "make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such persons [with disabilities] equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Across the country, the "reasonable accommodation requirement has been applied to zoning ordinances and other land use regulations and practices." *Canady,* 204 Ariz. at 94. The City's disability accommodation procedure and its regulation of care homes are not exempt from Fair Housing Act mandates and the requirement to make reasonable accommodations of certain zoning ordinance provisions on a case-by-case basis. In fact, I have found no caselaw which has upheld a City's right to preclude or reject a FHA reasonable accommodation request by disabled residents as a result of a local zoning ordinance limiting reasonable accommodation applications to only certain claims.

The application of the Supremacy Clause in this instance was also addressed in the 2016 Joint Statement issued by the Department of Housing and Urban Development and the Department of Justice titled "State and Local Land Use Laws and Practices and the Application of the Fair Housing Act" (the "**2016 Joint Statement**"). The 2016 Joint Statement advises cities and towns that the FHA makes it unlawful to refuse to accept and make reasonable accommodations to zoning ordinance provisions when such accommodations may be necessary to afford disabled persons an equal opportunity to use and enjoy a dwelling. The 2016 Joint Statement references the Supremacy Clause of the U.S. Constitution as the basis for enforcing federal laws such as the FHA regardless of scenarios when a city's zoning ordinance has conflicting rules and requirements.

> *As established by the Supremacy Clause of the U.S. Constitution, federal laws such as the Fair Housing Act take precedence over conflicting state and local laws. The Fair Housing Act thus prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a characteristic protected under the Act. Prohibited practices as defined in the Act include making unavailable or denying housing because of a protected characteristic.*

Emphasis added. *See* 2016 Joint Statement, pg. 2. As a result of the Supremacy Clause, the City of Scottsdale may not limit the scope of a reasonable accommodation under the Fair Housing Act. Scottsdale Recovery is entitled to request a reasonable accommodation to allow a sober living use in the R-3 multifamily zoning district because such prohibition is discriminatory against disabled individuals and denies housing because of a protected characteristic.

Furthermore, the House Committee Report on the FHAA indicates that Congress intended the FHAA to apply to "local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps." 1988 U.S.C.C.A.N. at 2185. In fact, the House Committee Report made it abundantly clear that any discriminatory rule or policy is not defensible simply because of the manner in which such rule or practice has traditionally been constituted or carried out. Instead, such rules, policies and practices must be modified in some instances to accommodate the needs of the disabled.

> *New [FHAA] subsection 804(f)(3)(B) makes it illegal to refuse to make reasonable accommodation in rules, policies, practices, or services if necessary to permit a person with handicaps equal opportunity to use and enjoy a dwelling. The concept of "reasonable accommodation" has a long history in regulations and case law dealing with discrimination on the basis of handicap . . . A discriminatory rule, policy, practice, or service is not defensible simply because that is the manner in which such rule or practice has traditionally been constituted. This section would require that changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling.*

Giebeler v. M&B Associates, 343 F.3d 1143, 1148-49 (9th Cir.2003), citing H.R. REP. NO. 100–711, at 25 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2186 (internal citations omitted). With this legislative history in mind, courts have interpreted "the FHAA's accommodation provisions with the specific goals of the FHAA in mind: 'to protect the right of handicapped persons to live in the residence of their choice in the community,' and 'to end the unnecessary exclusion of persons with handicaps from the American mainstream.'" *Giebeler,* 343 F.3d at 1149, internal citations omitted.

In this case, the City of Scottsdale must accept Scottsdale Recovery's request for a reasonable accommodation of the City's Zoning Ordinance provision which prevents care homes from operating within the R-3 multi-family zoning district. The City of Scottsdale has adopted discriminatory rules and policies that are not defensible simply because the City has precluded all care homes in multi-family residential districts since its 2017 text amendment. Furthermore, there are no limitations in the FHAA which prevent Scottsdale Recovery from making this reasonable accommodation request. As set forth in the House Committee Report referenced above, the City of Scottsdale is required to consider and make changes to traditional rules or practices when it is necessary to permit a person with disabilities an equal opportunity to use and enjoy a dwelling, such as a condominium dwelling unit with several amenities and benefits that are instrumental in assisting disabled individuals who are choosing sobriety.

Caselaw Supports the Right to Request a Reasonable Accommodation in this Case

The following two cases support our request for a reasonable accommodation to allow the proposed sober living use at 7910/7920 E Wiltshire Drive in the R-3 zoning district:

In *Judy B. v. Borough of Tioga*, 889 F. Supp. 792 (M.D. Pa. 1995), the court held that requiring a local jurisdiction to either grant a use variance or waive requirements under the Zoning Ordinance, so that an entity could convert a former motel into residences for individuals with disabilities, constituted a reasonable accommodation under the FHA. In *Judy B. v. Burough of Tioga*, the motel property was located in a restricted commercial/industrial (CI) zone, that was surrounded on three sides by a medium-density residential district. The court emphasized that such relief would require an extremely modest accommodation in the borough's zoning rules, since the CI district where the property was located permitted uses such as professional and business offices, personal convenience services, and "other uses which shall be similar in character" as the proposed use. The court noted that the proposed use was consistent with the character of the surrounding neighborhood and would not adversely impact neighboring property owners, but rather would, if anything, subject the neighborhood to less traffic and fewer parking problems and disruptions than the former motel use or any/all of the uses expressly permitted in the CI zoning district.

In *Corporation of Episcopal Church in Utah v. West Valley City,* 119 F. Supp. 2d 1215 (D. Utah 2000), a church and association sought approval to build a residential treatment facility for recovery drug addicts and alcoholics in a residentially zoned area of the city. The Court granted summary judgment to the applicants because the city had refused to make a reasonable accommodation under the FHA after it denied a permit to build the facility because the zoning ordinance did not allow halfway houses and similar uses in the residential zoning district applicable to the property. The

city argued that the accommodation requested by the applicants was unreasonable in that it would require a drastic change in policy, but the court responded that no evidence whatsoever had been established other than complaints of neighbors.

The facts in Scottsdale Recovery's case are very similar to the cases cited above, in which a local jurisdiction fails to make a reasonable accommodation for disabled individuals because a group living environment for disabled individuals is prohibited in a certain zoning district. The cases cited above confirm that a municipality's zoning ordinance is subject to the FHAA standards and is a proper subject matter for a reasonable accommodation request when such ordinances prevents disabled individuals from living in certain zoning districts.

The 2016 Joint Statement by HUD and Department of Justice Supports a Reasonable Accommodation in this Case

The court decisions referenced above are reinforced by the 2016 Joint Statement, which provides several examples of local land use and zoning laws that may violate the Fair Housing Act, many of which are at issue in the case at hand:

- *"Prohibiting . . . housing based on the belief that the residents will be members of a particular protected class, such as race, disability, or familial status. . . ." See* 2016 Joint Statement, pg. 3.
    - In this case, the City of Scottsdale has interpreted 2 to 4 disabled individuals living in a sober living environment to be a "care home." Care homes are prohibited in all multi-family residential dwelling units throughout the City with the knowledge that such residents are members of a disabled class.

- *"Imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals . . . ." Id.*
    - In this case, the City of Scottsdale has imposed a zoning ordinance restriction on group housing for persons with disabilities by prohibiting all care homes in multifamily residential zoning districts. Meanwhile, this restriction is not imposed on group housing for persons without disabilities. Group homes are permitted in multifamily residential districts.

- *"Refusing to provide reasonable accommodations to land use or zoning policies when such accommodations may be necessary to allow persons with disabilities to have an equal opportunity to use and enjoy housing." Id.*
    - In this case, the City of Scottsdale cannot refuse to accept or provide a reasonable accommodation of the zoning ordinance policy preventing care homes in all multifamily residential districts because such accommodation is necessary to allow persons with disabilities to have an equal opportunity to use and enjoy multifamily housing.

- *"Prohibiting . . . multi-family housing may have a discriminatory effect on persons because of their membership in a protected class and, if so, would violate the Act absent a legally sufficient justification." Id.* At 5.
    - In this case, the City of Scottsdale is prohibiting all multi-family housing for persons with disabilities wanting to live in a group living situation that the City's defines as a "care home". Persons with disabilities, including those in alcohol and substance use recovery, are members of a protected class that are being negatively impacted by the discriminatory effects of the Zoning Ordinance. The City has presented no legally sufficient justification for making care homes or sober living uses a prohibited use in multifamily residential districts.

- *"Prohibiting group homes in single-family neighborhoods or prohibiting group homes for persons with certain disabilities."* Id. at pg. 8.
    - In this case, the City of Scottsdale Zoning Ordinance prohibits certain group homes for persons with disabilities in multi-family neighborhoods, which is discriminatory as well.

- "*Enacting an ordinance that has an unjustified discriminatory effect on persons with disabilities who seek to live in a group home in the community.*" Id. at pg 8.
    - In this case, the City of Scottsdale has enacted a Zoning Ordinance with an unjustified discriminatory effect on persons with disabilities who seek to live in a care home or a sober living environment in a multifamily residential district.

- "*Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to a certain number of unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission from the city. If that ordinance also prohibits a group home having the same number of persons with disabilities in a certain district or requires it to seek a use permit, the ordinance would violate the Fair Housing Act. The ordinance violates the Act because it treats people with disabilities less favorably than families and unrelated persons without disabilities.*"
    - In this case, the City's interpretation of its Zoning Ordinance violates the FHAA in exactly this manner. A family of 2-4 unrelated adults living together as a household unit are allowed to live in any zoning district without special permission from the City of Scottsdale. On the other hand, the same Zoning Ordinance prohibits 2 to 4 unrelated, disabled adults living together as a household unit in all multifamily residential districts. The Zoning Ordinance violates the FHAA because it treats people with disabilities less favorably than families and unrelated persons without disabilities. Therefore, a reasonable accommodation request is justified and proper.

Scottsdale Recovery will be submitting a formal reasonable accommodation application under the FHAA to allow a sober living use at 7910 and 7920 E. Wilshire Drive, within the R-3 zoning district.

-

Please confirm the deadline for submitting this reasonable accommodation application in order for it to be heard and decided by the Board of Adjustment at the November 3rd hearing. Thank you.

Sincerely,

Heather Dukes

602.320.8866

Sent from Mail for Windows

Smith, Erica

From: Webmaster
Sent: Tuesday, December 05, 2017 3:46 PM
To: Smith, Erica
Subject: Comment on 12-05-2017 Agenda Item (response #2)

Comment on 12-05-2017 Agenda Item (response #2)

Survey Information

Site:	ScottsdaleAZ.gov
Page Title:	Comment on 12-05-2017 Agenda Item
URL:	http://www.scottsdaleaz.gov/council/meeting-information/agenda-comments/12-05-2017
Submission Time/Date:	12/5/2017 3:45:48 PM

Survey Response

AGENDA ITEM	
Which agenda item are you commenting on?	Proposed Care HOmes Ordinance 2-TA-2017
COMMENT	
Comment:	Arizona Center for Disability Law is a non-profit law firm that assists Arizonans with disabilities to promote and protect their legal rights to independence, justice, and equality. ACDL offers the following comments about the City of Scottsdale's proposed Care Home Ordinance. The FHA makes it unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap[.]" 42 U.S.C. § 3604(f)(1) (2017). Group homes are "dwellings." 42 U.S.C. § 3602(b) (2017). Zoning ordinances, practices and decisions that discriminate against individuals with disabilities violate 42 U.S.C. § 3604 if they contribute to making housing unavailable or denying housing to them. H.R. Rep. No. 100–711, at 24 (1988), 1988 U.S.C.C.A.N. 2173, 2185. The FHA expressly preempts local laws requiring or permitting violations of § 3604 or § 3617. 42

U.S.C. § 3615 (2017); see also Nevada Fair Hous. Ctr., Inc., 565 F. Supp. 2d at 1183 (concluding that the FHAA preempted Nevada's facially discriminatory group home statute). A zoning ordinance or decision that "facially single[s] out the handicapped and appl[ies] different rules to them" violates the FHA under a disparate treatment theory. Bangerter v. Orem City Corp., 46 F.3d 1491, 1500 (10th Cir. 1995). A determination of facial discrimination does not depend upon "a showing of malice or discriminatory animus of a defendant." Id. at 1501 Although a benign legislative intent does not convert a facially discriminatory law into a neutral law, zoning officials may justify a facially discriminatory law by showing "(1) that the restriction benefits the protected class or (2) that [the restriction] responds to legitimate safety concerns raised by the individuals affected, rather than being based on stereotypes." Cmty. House, Inc. v. City of Boise, 490 F.3d 1041, 1049–50 (9th Cir. 2007); see also Mont. Fair Hous., Inc. v. City of Bozeman, 854 F. Supp. 2d 832, 839 (D. Mont. 2012) (City failed to show that its discriminatory policy was objectively legitimate because the preservation of a neighborhood's residential character neither benefits the disabled nor responds to a legitimate, non-stereotypical safety concern); Nev. Fair Hous. Ctr., Inc., 565 F. Supp. 2d at 1186 (FHA preempted Nevada's facially discriminatory zoning policy because it did not address "handicap-specific benefits or handicap-specific safety concerns"). Many of the City's Ordinance Provisions are facially discriminatory or will have a discriminatory effect based on disability or a consequence of disability. Here is a brief summary of concerns: • Vague and Confusing Definitions. The Ordinance's definitions of critical terms, such as Care Home, Group Home, Minimal Residential Health Care Facility, Residential Health Care Facility, and Specialized Health Care Facility are vague and confusing. The City of Scottsdale (City) has not defined key terms, such as health care institution, that appear in the text of definitions. While state laws include definitions of terms, such as health care institution, the City did not incorporate the statutory definitions. The City included several terms, such as Minimal Residential Health Care Facility and Specialized Residential Health Care Facility in the definitions, but those types of facilities do not otherwise appear in the ordinance text as a permitted or conditional land use. Vague and confusing definitions in zoning ordinances make it impossible for citizens to comply with the zoning

requirements. Equally important, vague and confusing definitions lead to inconsistent and discriminatory code enforcement, which can make state, county and city governments subject to liability for discrimination claim under the Fair Housing Act and Title II of the Americans with Disabilities Act as well as other civil rights violations. • Discriminatory Impact on Specific Disabilities. The City's zoning ordinance will likely have a discriminatory impact upon specific disabilities, such as alcoholism, where individuals would otherwise satisfy the Care Home definition, except for the absence of a license. The State of Arizona Department of Health Services licenses many residential facilities, such as group homes for people living with developmental disabilities, behavioral health residential homes, therapeutic care homes, assisted living facilities, and nursing homes, but they do not currently license sober homes. If a dwelling does not fit into the Care Home definition, the only other option is to seek a conditional use permit in one zoning district while other groups of unrelated persons do not face the same restrictions. The FHA recognizes disparate impact claims. • Limited Permitted Uses of Care Homes. The City provides for Care Homes—residences for people with disabilities—to be a permitted land use only in the City's two single-family residential zoning districts, in contrast to Group Homes—residences of any group of unrelated persons—to be a permitted land use in other zoning districts. Nor does the City does list Care Homes as a conditional use in any other zoning district. Zoning regulations that deny people with disabilities in group living arrangements an equal opportunity to live in the housing of their choice when compared to their non-disabled citizens violates the ADA and Title II of the Americans with Disabilities Act. • Discriminatory Treatment . The City subjects Care Homes to additional criteria that do not apply to other groups of unrelated persons. The City imposes criteria related to (1) the Floor area ratio, 2) maximum number of residents, including supervisors and staff, 3) location and density requirements, and 5) compatibility that families and other groups of unrelated persons are not subject to. Zoning regulations that subject groups of people with disabilities less favorably than families or other groups of unrelated persons are discriminatory. This zoning ordinance facially singles out people with disabilities and applies different rules to them and is not objectively legitimate to serve the stated purposes of the statute. In particular, spacing requirements have

	been struck down by numerous courts as facially discriminatory treatment. • Reasonable Accommodation Standards. The City takes the position that to grant a reasonable accommodation from a development standard or a separation requirement, the Board of Supervisors must find sufficient evidence of eight criteria. First, only one of the criteria addressing the necessity of the reasonable accommodation is lawful. The FHA does require an individual seeking a reasonable accommodation to show that they need the accommodation for an equal opportunity to use and enjoy the housing of their choice. However, the FHA does not impose a requirement that the individual show that they cannot find or would be unduly restricted from finding other housing in the City without the accommodation. These "unduly restricts housing" standard does not comport with the "equal opportunity for choice" standard and is impractical to prove. Second, under the FHA, the City must consider whether its actions generally make housing unavailable to people with disabilities who require group living arrangements to the extent that it becomes financially infeasible for service providers to locate in Scottsdale. Third, the City states that the reasonable accommodation must comply with all applicable building and fire codes. Numerous across-the-board rules applying to fire safety, rather than individualized determinations about fire safety based on the residents abilities and needs and state licensing requirements, have been stuck down as unlawful where they make housing unavailable due to the expense. Thank you for the opportunity to comment. ACDL is willing to meet with the City and disability community stakeholders to discuss non-discriminatory zoning provisions.

Comments are limited to 8,000 characters and may be cut and pasted from another source.

NAME

Name:	Rose Daly-Rooney, ACDL Legal Director

CONTACT INFORMATION

Please provide the following information so someone may follow up with you if they have questions about your comment (optional).

Email:	rdalyrooney@azdisabilitylaw.org
Phone:	(520) 327-9547

Address:	177 N. Church, Ste 800, Tucson 85701
Example: 3939 N. Drinkwater Blvd, Scottsdale 85251	

From:	Heather Dukes
To:	Bloemberg, Greg
Subject:	Opposition Letter to Care Home Text Amendment 1-TA-2022
Date:	Wednesday, April 12, 2023 12:54:16 PM
Attachments:	B Capizzi Letter in Opposition to 1-TA-2022.pdf

Greg:

Please include the attached letter from Brenda Capizzi in your care home text amendment reports to the Planning Commission and City Council. Thank you.

Sincerely,

Heather Dukes
602.320.8866

From:	Michelle Siwek
To:	City Council; Bloemberg, Greg
Cc:	hdukesesq@gmail.com; Steven Polin
Subject:	Scottsdale Text Amendment – Case No. 1-TA-2022
Date:	Sunday, April 9, 2023 10:37:00 AM
Attachments:	Opposition Letter re Care Home Text Amendment 1-TA-2022 2023.04.07 7838 E. Shea.pdf

External Email: Please use caution if opening links or attachments!

Please accept this letter of opposition to the proposed Text Amendment = Case No 1-TA-2022.

Michelle Siwek
Scottsdale Recovery Center

O: 480.699.9044
C. 480.414.2596
F: 480.739.6116
Admissions: 1.888.NODRUGS
www.scottsdalerecovery.com

From: Estil Wallace
To: City Council; Bloemberg, Greg; hdukesesq@gmail.com; Michelle Goodwin-Siwek
Subject: Scottsdale Text Amendment – Case No. 1-TA-2022
Date: Wednesday, April 12, 2023 9:33:54 AM
Attachments: Opposition Letter re Care Home Text Amendment 1-TA-2022 2023.04.07.pdf

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All,

Attached is a letter opposing the proposed text amendment to Scottsdale City ordinance. Case No. 1-TA-2022.

Respectfully,
Estil

Estil Wallace
Founder/CEO
CornerstoneHealingCenter.com
602-544-6832

Gulsvig, Caitlyn

From: Bloemberg, Greg
Sent: Thursday, April 13, 2023 5:24 PM
To: Gulsvig, Caitlyn
Cc: Curtis, Tim
Subject: FW: Grace Sober Living - RE: Opposition to Care Homes Text Amendment – Case No. 1-TA-2022
Attachments: Opposition Letter re Care Home Text Amendment 1-TA-2022 2023.04.07.docx

Caitlyn,

Can you please add this email to the PC attachments?? All other public comment received (so far) is in the attachments. If correspondence keeps coming in, we may need to create a supplemental packet.

Thanks!

Greg Bloemberg
Principal Planner
Current Planning
City of Scottsdale
e-mail: gbloemberg@scottsdaleaz.gov
phone: 480-312-4306

From: Jennifer Evans <jennifer@gracesoberliving.org>
Sent: Thursday, April 13, 2023 12:44 PM
To: Bloemberg, Greg <GBLO@Scottsdaleaz.gov>
Subject: Grace Sober Living - RE: Opposition to Care Homes Text Amendment – Case No. 1-TA-2022

Dear Mr. Bloemberg,

My name is Jennifer Evans and I am the Executive Director of Grace Sober Living. We are a non-profit organization that provides high-quality and affordable sober living homes to people overcoming drug and alcohol addiction.

Attached please find my letter in Opposition to Care Homes Text Amendment – Case No. 1-TA-2022.

We currently have one sober living home for men in “Scottsdale” but in the Phoenix zip code of 85254, as Scottsdale is not accommodating to people with the disability of addiction, which is discriminatory.

We would love to have additional sober living homes in Scottsdale that are not limited to Phoenix addresses. All of our sober living homes are in compliance and licensed by Arizona Recovery Housing Association and the Arizona State Department of Health. Our homes have fulltime House Managers on-site that provide safety, support and accountability to our residents, and ensure we are good neighbors and blessing to the communities we operate in.

Please feel free to contact me if you are open for a conversation.

Thank you :)

Jennifer Evans
Executive Director
Grace Sober Living
Mobile: 480.495.1122
Jennifer@gracesoberliving.org
https://gracesoberliving.org/

Approved March 24, 2022

CITY OF SCOTTSDALE
NEIGHBORHOOD ADVISORY COMMISSION
REGULAR MEETING
MINUTES

WEDNESDAY, FEBRUARY 23, 2022

MEETING HELD ELECTRONICALLY

PRESENT:	William James, Chair Rachel Putman, Commissioner Larry Hewitt, Commissioner Louise Lamb, Commissioner Carol Miraldi, Commissioner Bridget Schwartz-Manock, Commissioner
ABSENT:	Jonathan Budwig, Vice Chair
STAFF:	Adam Yaron, Commission Liaison Brandon McMahon, Associate Planner Alyssa Yanez, Code Enforcement Manager Rick Valenzuela, Code Enforcement Supervisor Greg Bloomberg, Project Coordination Liaison

Call to Order/Roll Call

The meeting of the Neighborhood Advisory Commission was called to order at 5:03 p.m. A formal roll call was conducted, confirming members present as stated above.

Public Comment

No comments were submitted.

1. Approve Draft Summary Meeting Minutes January 26, 2022

Chair James called for comments/corrections. There were no corrections.

COMMISSIONER LAMB MOVED TO APPROVE THE MINUTES OF THE JANUARY 26, 2022, MEETING AS PRESENTED. COMMISSIONER HEWITT SECONDED THE MOTION, WHICH CARRIED SEVEN (6) TO ZERO (0) WITH CHAIR JAMES AND COMMISSIONERS PUTMAN, HEWITT, LAMB, MIRALDI, AND SCHWARTZ-MANOCK VOTING IN THE AFFIRMATIVE WITH NO DISSENTING VOTES.

2. Code Enforcement program

Alyssa Yanez, Code Enforcement Manager, provided an overview of the Code Enforcement Program and organization chart. The purpose is to keep neighborhoods and commercial properties free of unsightly hazards and blight and to prevent deterioration within the community. Examples of code enforcement conditions and topics were reviewed, including: Property maintenance; deterioration; public nuisance; enforcement of the Uniform Housing Code; construction activity regulation. Common code violations include: Uncultivated growth in desert landscaping; prohibited sign placement; right-of-way obstructions; tall grass, weeds and overgrown vegetation; graffiti, maintenance of adjacent right-of-way, short term vacation rental. Staffing details for the Code Enforcement Department and officer locations were discussed.

Chair James asked about a typical timeline for the enforcement process. Ms. Yanez stated that every case is unique and there is flexibility regarding timing and extensions. Typically a resident makes a complaint or an inspector identifies an issue. Complaints are logged, opened cases are given a case number and cases are associated by property address. Cases are assigned to a code inspector, with inspections typically performed same-day. Violations result in a notice of violation with a typical compliance time frame of seven to ten days. Abatement notices are provided in cases where violations are corrected with the use of a contractor. There are subsequent re-inspections. If violations remain, the City may proceed with progressive enforcement. Citations and fine structures were reviewed. There are avenues for providing assistance to residents experiencing financial hardship or physical limitations.

Ms. Yanez provided an overview of case statistics, including over 12,000 cases and approximately 20,000 inspections and over 6,000 notices. Less than one percent result in civil citations. Other performance metrics were discussed.

In response to a question from Chair James, Ms. Yanez confirmed that the Code Enforcement Department is the repository of contact information provided by homeowners for code enforcement issues. Methods for contacting the department and staff roles were discussed.

Commissioner Lamb noted the change from residents moving trash to the front of their homes and away from the allies and asked whether the transition has gone smoothly. Ms. Yanez stated responsibility for maintenance of the allies is shared between the two adjacent property owners. Maintenance continues to be required in the allies. Mr. Yaron added that day-to-day trash pick-ups are in the front of the homes and bulk pick-up is in the allies.

Commissioner Lamb inquired about habitual offenders. Ms. Yanez stated that the goal is voluntary compliance. Conversations with owners including stressing the responsibilities of the homeowners. Repeat violations are subject to civil citations.

In response to a question from Commissioner Putman, Ms. Yanez clarified that inoperable vehicles are handled by the police department.

In response to a question from Commissioner Lamb. Ms. Yanez stated that staff welcomes the opportunity to attend community meetings.

3. 1-TA-2022: Care Homes Text Amendment

Mr. Yaron noted that no public comments had been received for this item.

Greg Bloomberg, Project Coordination Liaison, stated that this item is a request to initiate a text amendment to the City of Scottsdale Zoning Ordinance (Ordinance No. 455) for the purpose of amending Article I. Section 1.806 (Disability Accommodations), Section 1.920 (Request for Disability Accommodation), Section 3.100 (Definitions), Sections 5.012 and 5.102 (Use Regulations/Use Table) and any other applicable sections, to modify the provisions specifying consideration of a disability accommodation request clarifying the care home definition and updating other related definitions and procedural information. The proposed change includes amendment of the definition of a care home.

The current definition a care home is a single family residence used for the care of individuals with greater than six but less than ten residents. Up to six individuals housed in a home are considered a family unit. Single family housing regulations limit regulation for what occurs in a single family residence. The proposed change to the definition will state that if there are six or fewer people living in the residence, it will be treated as a single family residence and not be subject to any separation criteria or zoning regulations, even if it is licensed for care.

An applicant may request a disability accommodation from a development standard or separation requirement if the standard or requirement unduly restricts the opportunity for a person with a disability from finding adequate housing within the City of Scottsdale. The zoning administrator may administratively approve up to a ten percent modification of a development standard or separation requirement upon finding that such a modification will further the policies contained in the Arizona and Federal Fair Housing laws and the Americans with Disabilities Act. All other requests for disability accommodation shall be submitted to the Board of Adjustment as a request for disability accommodation. Accommodations must go to the Board of Adjustments for approval and this requirement is being amended slightly for the disability accommodation.

A criteria is being added, the minor disability accommodation, which will be a ten percent or less change to any of the zoning criteria for care homes. This can be approved administratively through the zoning administrator without the need to go to the Board of Adjustments. This will reduce the number of applicants who go through the 45- to 60-day process for approval. The criteria for this amendment are still being vetted by the City’s legal department.

Mr. Bloomberg provided a brief summary of the upcoming steps in the public outreach and approval process.

Commissioner Lamb requested clarification on the notification process, specifically whether notification is provided to those in the vicinity or in the entire City. Mr. Bloomberg clarified that this a City-wide change. Outreach will include open houses, advertising and a number of other methods.

Commissioner Schwartz-Manock asked about the impetus behind the changes. Mr. Bloomberg noted that addiction is treated as a disability by disability legislation as well as the Federal Fair Housing Act. When the care homes text amendment was originally created, Silver Homes were not being licensed. This has since changed. The City seeks to address this change in its ordinance. The City was also legally challenged by a citizen who was concerned about discrimination for care homes with less than six residents.

In response to a question from Commissioner Lamb, Mr. Bloomberg stated that a care home is not the same as a group home. A group home is simply a group living condition for individuals either related or unrelated with no caregiving aspect. These are not permitted in single family zoning (when in a group of ten or more), per Scottsdale ordinance.

In response to a question from Commissioner Schwartz-Manock, Mr. Bloomberg stated that he could provide statistics as to the number of care homes in the City subsequent to the meeting. Historically, there have been concerns expressed by residents, particular regarding the stigma surrounding Silver Homes. However, the fire department indicates that they have had no significant calls for service for any of the care home types.

4. IDENTIFICATION OF FUTURE AGENDA ITEMS

Commissioner Putman requested a discussion regarding having another event with Operation Fix-It. Commissioner Schwartz-Manock added that it would be interesting to receive updates and photographs of past projects. Mr. Yaron stated that grant proposals will be coming before the Commission for consideration at next month's meeting. Staff would be happy to provide before and after information on past projects.

5. Staff Updates

Mr. Yaron stated that the presentation to City Council for the recognition of Spirit of Scottsdale awards will take place on March 1st. The next Commission meeting is March 23, 2022.

6. Adjournment

With no further business to discuss, being duly moved by Commissioner Hewitt and seconded by Commissioner Miraldi, the meeting adjourned at 6:11 p.m.

: Chair James, Commissioners Lamb, Hewitt, Miralda, Putman and Schwartz-Manock.
NAYS: None

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