

Fair Housing Act Compliance Concerns Arising from Zoning Laws of Jurisdictions within Montgomery County, Ohio and the Impact Upon People with Disabilities

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About the Miami Valley Fair Housing Center

The Miami Valley Fair Housing (MVFHC) is a 501(c)(3) non-profit organization whose mission is to eliminate housing discrimination and ensure equal housing opportunity for all people in the region.

Specifically, MVFHC seeks to eliminate housing discrimination against all persons because of race, color, religion, national origin, sex, disability, familial status, or any other characteristic protected under state or local laws. In furthering this goal, MVFHC engages in activities designed to encourage fair housing practices through educational efforts; assists person who believe they have been victims of housing discrimination; identifies barriers to fair housing in order to help counteract and eliminate discriminatory housing practices; works with elected and government representatives to protect and improve fair housing laws; and takes all appropriate and necessary action to ensure that fair housing laws are properly and fairly enforced throughout the Miami Valley.

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Executive Summary

This report examines the zoning laws of municipal jurisdictions within Montgomery County, Ohio to determine whether the municipal zoning laws of jurisdictions within Montgomery County pose obstacles to the establishment of Supported Living Homes. A separate review of each jurisdiction is attached to the report.

The Miami Valley Fair Housing Center (MVFHC), Miami Valley In-Ovations (MVIO), and the Montgomery County Board of Developmental Disability Services (MCDDS) collaborated over a period of approximately 20 months, and diverted resources from other programming to complete the study because of difficulties that MVIO encountered as it tried to establish Supported Living arrangements for people with disabilities throughout Montgomery County.

Miami Valley In-Ovations' mission is to provide lifetime affordable housing to people with disabilities in Montgomery and surrounding counties, with an emphasis on serving residents with developmental disabilities.

The Supported Living Concept and Home

At the outset it is important to understand the Supported Living model and how it differs from other types of living arrangements for individuals with disabilities. The basic Supported Living definition is: *up to four people sharing a house or apartment, each choosing where and with whom they want to live, and who cares for them.* At the core of the Supported Living concept is the notion of choice. To best facilitate this notion of choice, Supported Living separates the functions of housing and support services. In fact, the fundamental principles of the Supported Living concept are codified into the Ohio Revised Code. The quality of a Supported Living arrangement is determined by review of certain criteria including: Choices and Options, Personal Income, Housing, Community Membership, Personal Satisfaction, Health, and Safety.¹ Both the statutory language and the Supported Living concept itself convey the inherent differences between Supported Living Homes and institutional settings.

The differences between Supported Living Homes and other types of group living arrangements for individuals with disabilities cannot be overly stressed. ***Supported Living Homes are not group homes.*** Where a group home must obtain a license to operate, and typically provides housing for five or more individuals, Supported Living Homes house up to four and are not required to obtain licensing. Within the residence, the tenants of a Supported Living Home function in a family-like setting. They share living, dining, cooking, and common space; and each tenant has his or her own bedroom.

The MVIO Supported Living Model

The relationship between MVIO and the residents of a Supported Living Home is that of landlord and tenant, respectively. Individuals are referred to MVIO as potential residents, MVIO assesses their needs and desires by matching them with others who wish to live in a certain area

¹ See e.g. <http://codes.ohio.gov/oac/5123:2-12-01>

and who have common interests and levels of care. MVIO then works to locate a property, uses professional contractors to remodel the house when necessary and rent to the individuals.

Properties sought by MVIO are typically four-bedroom homes, duplexes with two-bedrooms per side, or apartment buildings. Properties are ideally located near transit stations and within convenient driving distance to shops and other community services. By capping the number of residents at four, and operating without the requirement of government licensing, Supported Living Homes may fall beneath the maximum occupancy limits for a single-family home in some municipalities; however, this is not always the case. In some instances, a Supported Living Home may be subject to public hearings and/or the process to obtain a conditional use permit. If a municipal jurisdiction does require public hearings, conditional use permits, or imposes other similar restrictions on the establishment of a Supported Living Home, issues of discrimination may arise.

The Fair Housing Amendments Act of 1988

The Fair Housing Amendments Act of 1988 (FHAA) expanded federal Fair Housing law to include individuals with disabilities as a protected class. As such, individuals with disabilities are protected from discrimination in housing based on their disabilities. This principle is far from exclusive to the FHAA. The policy of prohibiting discrimination against individuals with disabilities has been adopted and enforced throughout the body of federal law.²

A “dwelling” is defined under the FHAA as: *Any building, structure, or portion thereof which is occupied as, designed or intended for occupancy as, a residence...*³ Supported Living Homes are typically single-family houses or duplexes converted for use as a single-family home, and thus meet the requirements of a “dwelling” under the FHAA.

As municipal zoning laws are subject to the provisions of the FHAA, municipalities are barred from engaging in certain acts of discrimination. The FHAA makes it unlawful *to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of that buyer or renter, a person residing or intending to reside in that dwelling after it is sold, rented, or made available; or any person associated with that buyer or renter.*⁴

The FHAA also prohibits discrimination against *any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of that person, a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or any person associated with that person.*⁵

² See generally, Rehabilitation Act of 1973, and Americans with Disabilities Act.

³ 42 U.S.C. § 3602 (b).

⁴ 42 U.S.C. § 3604(f)(1).

⁵ 42 U.S.C. § 3604 (f)(2).

The definition of “handicap” set forth in the FHAA is identical to the definition of “disability” used in the Americans with Disabilities Act (ADA). Therefore, the two terms, “handicap” and “disability” are appropriately used interchangeably. For the sake of consistency, this report and its attached jurisdiction reviews employ the term “disability.” Individuals residing in a MVIO Supported Living Home are individuals with disabilities and are members of a protected class under the FHAA.

Moreover, and perhaps most pertinent to this particular issue, is the FHAA’s prohibition on refusing “reasonable accommodations.” The FHAA states: *Discrimination includes... a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.*⁶

Although the FHAA itself is silent with respect to defining a “reasonable accommodation”, courts have interpreted this provision as such that is binding upon municipal governments.⁷ “This creates an affirmative duty on municipalities...to afford its disabled residents reasonable accommodations in its municipal zoning practices, if necessary to afford such persons equal opportunity in the use and enjoyment of their property.”⁸ Therefore, failure to amend a municipal zoning definition, provision, or section that creates or enforces more stringent or exclusionary requirements upon individuals because of their disabilities constitutes an actionable prohibited act under the FHAA.

Review of the municipal zoning laws within Montgomery County presents four primary obstacles to establishing Supported Living Homes. The first obstacle is a narrowly written definition of “Family.” Second, a jurisdiction’s chosen terminology for defining group living arrangements for individuals with disabilities may be inaccurate or otherwise lacking. The third obstacle is a jurisdiction’s residential district regulations. Fourth is adoption of provisions specifically governing the group living arrangements of individuals with disabilities. A matrix summarizing the issues present in municipal jurisdictions within Montgomery County, Ohio that pose obstacles to the establishment of Supported Living Homes is included as an attachment to the report.

In general, the relationship between municipal zoning laws and the establishment of Supported Living Homes can be addressed from three (3) broad perspectives: legal, social, and political. The focal point of this study addresses the legal facet of the relationship between municipal zoning laws and Supported Living. While identifying and suggesting policy for amending municipal zoning laws that may present obstacles to Supported Living is helpful, black letter law is not the sole means to making Supported Living a reality in Montgomery County. To achieve the goal of removing barriers to Supported Living, both the social and political perspectives must

⁶ 42 U.S.C. § 3604 (f)(3)(b).

⁷ See *Howard v. City of Beavercreek*, 276 F.3d 802 (6th Cir.2002)

⁸ *Id.*806.

also be considered. The discussion of these perspectives included in this report does not extend to each jurisdiction's individual review, but the overarching concepts are applicable across municipal boundaries. Moreover, this discussion does not address every issue that may arise from the different perspectives. Rather, it provides a brief preface to some of the non-legal challenges that may stand in the way of Supported Living.

Although statutory law can present numerous obstacles to Supported Living, community and neighborhood resistance can add to the already difficult endeavor. Attitudes toward group living arrangements for individuals with disabilities often take the form of "NIMBY-ism." NIMBY-ism, derived from the acronym for Not in My Back Yard, refers, in this instance, to acceptance of group living arrangements for individuals with disabilities, but a desire to locate them elsewhere.

The legislative history of the FHAA states that the law "is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of individuals to live in the residence of their choice in the community."⁹ It is clear that Congress intended to codify a strong policy against discrimination, the effects of which would be felt at the community level. The principles embodied by this policy can be extrapolated to address the opposition and concerns held by individuals in a particular neighborhood or community.

Decision makers charged with the task of amending municipal zoning laws, those who actually cast votes for or against a change, are the elected, appointed, and volunteer members of a jurisdiction's government. In some instances, officials may be amenable to adopting change and will do so when asked. Other times, government officials may be staunchly opposed to change, independent of their constituents' concerns. More often though, officials are willing to enact change unless they face an unwilling constituency. It is at this juncture that educating the public and the political perspective converge. Real change in municipal zoning laws may take root by educating constituencies on Supported Living and, in turn, providing common understanding for community members and government officials alike.

Regardless, this report details a body of work to be undertaken by most of the municipal jurisdictions within Montgomery County, in order to ensure that their municipal zoning laws are in compliance with the FHAA, so that the disabled residents of each jurisdiction may be afforded equal opportunity to use and enjoy the housing of their choice.

MVFHC, MVIO, AND MCDDES have diverted their agency resources to this project for the purpose of raising each jurisdiction's awareness of these issues, and to offer support for jurisdictions to achieve the voluntary changes to their local codes to be in compliance with fair housing laws. To that end, the services of MVFHC are available to provide advice on changes that would meet both the spirit and the letter of the law.

⁹ H. R. Rep. No.100-711, at 24 (1988).

INTRODUCTION

This report details a study of the municipal zoning laws of a majority of the 30 municipal jurisdictions within Montgomery County, Ohio. Two jurisdictions, the Village of Germantown and the Village of Phillipsburg, were non-responsive to multiple requests for copies of their zoning laws so that the jurisdiction could be included in this study. Three of the jurisdictions reviewed (Butler Township, Jefferson Township, and the City of Kettering) amended their zoning laws to bring them into compliance with the Fair Housing Amendments Act after this study was initiated.

The issue presented for review is whether the municipal zoning laws of jurisdictions within Montgomery County pose obstacles to the establishment of Supported Living Homes. The jurisdictions reviewed include: Townships – Butler, Clay, German, Harrison, Jackson, Jefferson, Miami, Perry, Washington, and; Cities and Villages – Brookville, Carlisle, Centerville, Clayton, Dayton, Englewood, Farmersville, Huber Heights, Kettering, Miamisburg, Moraine, New Lebanon, Oakwood, Riverside, Springboro, Trotwood, Union, Vandalia, and West Carrollton. A separate review of each responsive jurisdiction is included in this report.

The purpose of this study is two-fold. First, to facilitate Miami Valley In-ovations (MVIO) in their efforts to secure Supported Living arrangements, it is imperative that each individual jurisdiction be evaluated for potential obstacles. Second, it is integral to the mission of the Miami Valley Fair Housing Center (MVFHC) to ensure that municipalities within Montgomery County are in compliance with Fair Housing laws.

This report sets forth a general overview of the present issue, analysis of relevant Fair Housing laws, and suggested policy to remedy obstacles to Supported Living. The individual jurisdiction reviews that follow this report may contain three or four core components:

Introduction, Points of Contact and Officeholders, Analysis, and Suggested Amendments.

A jurisdiction review's Introduction sets forth the main issues presented by the statutory language of the municipality's zoning laws. It also addresses the municipality's geographic orientation, as partnerships and willingness to adopt changes may take root when neighboring jurisdictions opt for the same.

The Points of Contact and Officeholder section of each jurisdiction's review identify municipal key personnel and relevant contact information. Where available, the names of members and meeting times for a jurisdiction's planning commission or board of zoning appeals are included. The Points of Contact and Officeholders sections are current as of March 2010, and may need to be updated over time.

The analysis section of each jurisdiction's review addresses issues of legal interpretation and possible classifications of Supported Living Homes under the applicable zoning laws. At times, certain canons of construction, legal rules of thumb used to interpret statutory language, are applied in the analysis section. When a jurisdiction's zoning laws leave open the possibility of one or more classification(s), the analysis section addresses the classifications and their possible impact on Supported Living Homes.

If a jurisdiction's zoning laws dedicate specific terminology or provisions that are non-compliant with Fair Housing law, or may prove to be more restrictive upon Supported Living Homes, the jurisdiction's review will include a Suggested Amendments section.

THE SUPPORTED LIVING CONCEPT AND HOME

This study's primary purpose is to identify municipal zoning laws that present obstacles to establishing Supported Living Homes. Therefore, it is important to understand the Supported Living model and how it differs from other types of living arrangements for individuals with disabilities.

The basic Supported Living definition is: *up to four people sharing a house or apartment, each choosing where and with whom they want to live, and who cares for them.*

At the core of the Supported Living concept is the notion of choice. To best facilitate this notion of choice, Supported Living separates the functions of housing and support services.

In fact, the fundamental principles of the Supported Living concept are codified into the Ohio Revised Code. The quality of a Supported Living arrangement is determined by review of certain criteria including: Choices and Options, Personal Income, Housing, Community Membership, Personal Satisfaction, Health, and Safety. O.R.C. § 5123: 2-12-01. Both the statutory language and the Supported Living concept itself convey the inherent differences between Supported Living Homes and institutional settings.

The differences between Supported Living Homes and other types of group living arrangements for individuals with disabilities cannot be overly stressed. ***Supported Living Homes are not group homes.*** Where a group home must obtain a license to operate, and typically provides housing to five or more individuals, Supported Living Homes house up to four and are not required to obtain licensing. Within the residence, the tenants of a Supported Living

Home function in a family-like setting. They share living, dining, cooking, and common space; and each tenant has his or her own bedroom.

The relationship between MVIO and the residents of a Supported Living Home is that of landlord and tenant, respectively. When individuals are referred to MVIO as potential residents, MVIO seeks to assess their needs and desires by matching them with others who wish to live in a certain area and who have common interests and levels of care. MVIO then works with realtors to locate property, and with contractors to remodel the home for the specific individuals. Properties sought by MVIO are typically four-bedroom homes, duplexes with two-bedrooms per side, or apartment buildings. Properties are ideally located near transit stations and within convenient driving distance to shops and other community services. MVIO may instead seek a four-bedroom home that can be made accessible for disabled residents. A one-level home with no step to the front, a large central bath, and a second bathroom that can be made accessible with remodeling is another viable option. If a duplex is available, MVIO may install a wide fire door, allowing staff easy access between the two units to assist tenants.

By capping the number of residents at four, and operating without the requirement of government licensing, Supported Living Homes may fall beneath the maximum occupancy limits for a single-family home in some municipalities; however, this is not always the case. In some instances, a Supported Living Home may be subject to public hearings and/or the process to obtain a conditional use permit. If a municipal jurisdiction does require public hearings, conditional use permits, or imposes other similar restrictions on the establishment of a Supported Living Home, issues of discrimination may arise.

LEGAL CLAIMS UNDER THE FAIR HOUSING AMENDMENTS ACT OF 1988

The Fair Housing Amendments Act of 1988 (FHAA) expanded federal Fair Housing law to include individuals with disabilities as a protected class. As such, individuals with disabilities are protected from discrimination in housing based on their disabilities. This principle is far from exclusive to the FHAA. The policy of prohibiting discrimination against individuals with disabilities has been adopted and enforced throughout the body of federal law. See generally, Rehabilitation Act of 1973, Americans with Disabilities Act. A legal claim under the FHAA must state three general elements: a covered dwelling, a protected class, and a prohibited act.

COVERED DWELLING

A “dwelling” is defined under the FHAA as:

Any building, structure, or portion thereof which is occupied as, designed or intended for occupancy as, a residence...

42 U. S. C. § 3602 (b).

Supported Living Homes are typically single-family homes or duplexes converted for use as a single-family home. Thus, the home itself is “designed or intended for occupancy as a residence.” When individuals, whether or not they are disabled, live within the home, the home is “occupied” as a residence. Clearly, properties and the homes upon them constitute “dwellings” under the FHAA. However, properties yet to be identified for suggested establishment of a Supported Living Home may require a review of the “dwelling” element. As it currently operates though, the typical Supported Living Home clearly meets the requirements of a “dwelling” under the FHAA.

PROTECTED CLASS

The FHAA renders unlawful the discrimination of individuals with “handicaps.” 42 U. S.

C. § 3601. The FHAA defines “handicap” as:

With respect to a person –

A physical or mental impairment which substantially limits one or more of such person’s major life activities,

A record of having such an impairment, or

Being regarded as having such an impairment.

42 U. S. C. § 3602(h).

Mobility impairments, visual impairments, mental illness, HIV/AIDS, and former drug abuse are examples of “handicaps” under the FHAA. Dillman, Jeffery D. , *Fair Housing Laws: An Overview*. September 2005. The definition of “handicap” set forth in the FHAA is identical to the definition of “disability” used in the Americans with Disabilities Act (ADA). Therefore, the two terms, “handicap” and “disability” are appropriately used interchangeably. For the sake of consistency, this report and its attached jurisdiction reviews employ the term “disability.”

Individuals residing in a Supported Living Home are either mentally retarded or developmentally disabled. Therefore, a Supported Living Home’s residents are individuals with disabilities and are members of a protected class under the FHAA.

PROHIBITED ACTS

As municipal zoning laws are subject to the provisions of the FHAA, municipalities are barred from engaging in certain acts of discrimination. The FHAA makes it unlawful to:

Discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of

That buyer or renter,

A person residing or intending to reside in that dwelling after it is sold, rented, or made available; or

Any person associated with that buyer or renter.

42 U. S. C. § 3604(f)(1).

The FHAA also prohibits discrimination against –

Any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of –

That person,

A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

Any person associated with that person.

42 U. S. C. § 3604 (f)(2).

Moreover, and perhaps most pertinent to this particular issue, is the FHAA's prohibition on refusing "reasonable accommodations." The FHAA states:

Discrimination includes... a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

42 U. S. C. § 3604 (f)(3)(b).

Although the FHAA itself is silent with respect to defining a "reasonable accommodation", courts have interpreted this provision as such that is binding upon municipal governments. *Howard v. City of Beavercreek*, 276 F.3d 802 (6th Cir.2002). "This creates an

affirmative duty on municipalities...to afford its disabled citizens reasonable accommodations in its municipal zoning practices if necessary to afford such persons equal opportunity in the use and enjoyment of their property.” *Id.*806. Therefore, failure to amend a municipal zoning definition, provision, or section that creates or enforces more stringent or exclusionary requirements upon individuals because of their disabilities constitutes an actionable prohibited act under the FHAA.

OBSTACLES TO SUPPORTED LIVING

Although the municipal zoning laws of the jurisdictions within Montgomery County are markedly unique, some obstacles to Supported Living can be seen as themes among municipalities. These obstacles are neither uniform nor universal, but the recurrence of certain restrictive definitions and provisions merits attention. Review of the municipal zoning laws presents four primary obstacles to establishing Supported Living Homes. The first obstacle is a narrowly written definition of “Family.” Second, a jurisdiction’s chosen terminology for defining group living arrangements for individuals with disabilities may be inaccurate or otherwise lacking. The third obstacle is a jurisdiction’s residential district regulations. Fourth is adoption of provisions specifically governing the group living arrangements of individuals with disabilities.

DEFINING A FAMILY

Because a Supported Living Home’s residents live and function in a family-like setting and a jurisdiction’s maximum occupancy standards may serve to exclude the establishment of such a home, it is critical to identify the effect of the definition of “Family.”

The FHAA defines “Family” merely as:

“Including “a single individual.”

42 U. S. C. § 3602(c).

Despite the apparent void in the legislatively proscribed definition, many courts have discussed, at some length, what constitutes a “Family.” A family is typically defined as a relationship existing among or between individuals related through blood, marriage, or adoption however, relationships existing or established through blood, marriage, or adoption are not the exclusive means by which a group of individuals may constitute a “Family.” See *Beres v. Hope Homes, Inc.*, 6 Ohio App.3d 71, 74 (1983); *Carroll v. Miami Beach*, Fla. App.198 So.2d 643 (1967); *Moore v. East Cleveland*, 431 U. S.494, 499 (1977). With respect to this study, it is critical to locate those municipal jurisdictions which define “Family”, either in the black letter of statutory language or in application thereof, in a manner more restrictive to individuals with disabilities.

The importance of a particular jurisdiction’s definition of “Family” often lies with maximum occupancy standards. A jurisdiction’s definition of “Family” may allow for an unlimited number of related individuals, and limit unrelated individuals to a particular number. For example, a definition of “Family” may state:

A family means a group of persons related by blood, marriage or adoption, and/or not more than three unrelated persons who are living together in a single dwelling unit.

Under this definition, several different living arrangements could comprise a “Family.” It may prove helpful to apply a few paradigm scenarios so that the issues arising from this seemingly simple definition may be understood. Each of the following living arrangements

provides an example of a “Family” under the above definition. For the purposes of this example, no roommate is related to any other roommate or otherwise noted related individual.

- Related Individuals

- 4 Individuals – Parent 1, Parent 2, Child 1, Child 2

- 5 Individuals – Parent 1, Parent 2, Child 1, Child 2, Grandparent 1

- 6 Individuals – Parent 1, Parent 2, Child 1, Child 2, Grandparent 1, Grandparent 2

- 7 Individuals – Parent 1, Parent 2, Child 1, Child 2, Grandparent 1, Grandparent 2, Uncle

- 8 Individuals – Parent 1, Parent 2, Child 1, Child 2, Grandparents 1 & 2, Uncle, Aunt

- Unrelated Individuals

- 2 Individuals – Roommate 1, Roommate 2

- 3 Individuals – Roommate 1, Roommate 2, Roommate 3

- Related and Unrelated Individuals

- 4 Individuals – Parent 1, Parent 2, Roommate 1

- 5 individuals – Parent 1, Parent 2, Roommate 1, Roommate 2, Roommate 3

- 6 Individuals – Parent 1, Parent 2, Child 1, Roommate 1, Roommate 2, Roommate 3

- 7 Individuals – Parent 1, Parent 2, Child 1, Child 2, Roommate 1, Roommate 2, Roommate 3

As shown above, the sample definition affords status as a “Family” to any number of related individuals. Additionally, a living arrangement consisting of any number of related individuals and up to three unrelated individuals is also afforded status as a “Family.” However, groups comprised exclusively of unrelated individuals are limited to not more than three individuals. As the typical Supported Living Home provides residence to four unrelated individuals, its tenants would not constitute a “Family” under the sample definition. In turn, the

jurisdiction may prohibit establishment of a Supported Living Home on grounds that it is not a single-family dwelling.

DEFINITION OF FAMILY BEST PRACTICES MODEL

To address issues that may stem from a jurisdiction's definition of "Family", a Definition of "Family Best Practices Model" is included. For those jurisdictions which define "Family" more narrowly, this best practices model can be used a guide for amending the existing definition; however, this model shall not be construed as a tool for narrowing existing definitions of "Family" which are written more broadly than the model itself.

This best practices model is comprised of two parts. The first part is a sample definition of "Family", and the second part is a sample definition of "Functional Family."

Family

A family is one or more persons related by blood, adoption or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants, or a number of persons, not exceeding four (4) living and cooking together as a single housekeeping unit though not related by blood, adoption or marriage.

Functional Family

A functional family consists of two or more persons who are not related by blood, marriage or adoption living together as a single housekeeping unit.

DEFINING GROUP LIVING ARRANGEMENTS OF INDIVIDUALS WITH DISABILITIES

While the Supported Living concept has been adopted into State law in Ohio, many jurisdictions do not incorporate the same terminology or principles in their municipal zoning laws. Over time, the practices and policies used in housing and caring for individuals with disabilities have undergone tremendous change. With many steps along the way, early forms of rigid institutionalization evolved to bring the onset of group homes. Yet, as techniques and technologies progress, the need for change reemerges. Supported Living Homes are a tangible indicator of these changes. For many individuals with disabilities, the group home today is what the sanitarium was years ago. The necessity of updating and amending municipal zoning laws to accurately reflect housing for individuals with disabilities is made apparent upon reviewing the jurisdictions within Montgomery County.

It is often the case that a Supported Living Home does not accurately constitute a particular use under a jurisdiction's zoning laws. The terms used to define group living arrangements of individuals with disabilities vary from jurisdiction to jurisdiction, and may include anywhere between one and twenty-six different terms in a single municipality. With such a great deal of inconsistency among jurisdictions and the lack of accurate Supported Living terminology, the number of possible classifications can be vast. Hence, it is important to identify alternate classifications which, although not wholly accurate, may be applied to a Supported Living Home.

A commonly used term among jurisdictions is "Community Oriented Residential Social Service Facility" (CORSSF). Although definitions of this term are not uniform among the jurisdictions in which it is used, it is prototypically defined as:

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include "halfway houses", "nursing homes", "rest homes", and "convalescent homes."

A Supported Living Home does not meet this definition because it is not subject to the licensing, supervision, or contract of a government body. Moreover, the specific reference to individuals with “some condition which requires assisted living” is potentially problematic. Determination as to whether such a phrase does not comply with Fair Housing law depends on other provisions within the same jurisdiction’s zoning laws. Each jurisdiction’s review contains a separate analysis section addressing this issue.

COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICES FACILITY BEST PRACTICES MODEL

A best practices model for amending definitions of a CORSSF is included because the term is so commonly found among the jurisdictions within Montgomery County. If a jurisdiction’s zoning laws include the term “Community Oriented Residential Social Service Facility”, or a term similarly defined, proposed changes to the statutory language are included in the suggested amendments section of that jurisdiction’s review. However, this model may serve to facilitate amending existing CORSSF definitions portions for deletions and to recommend additional language.

The Best Practices model for defining a “Community Oriented Residential Social Service Facility” amends the term to, simply, “Care Facility” and reads:

A care facility is a residential facility which provides room, board, and personal care and supervision for six (6) or more residents on a transient, semi-transient, or permanent

basis. Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications; the preparation of special diets as may be prescribed by a physician or licensed dietician; and/or the assurance of the physical safety of the residents. This category does not include nursing homes or hospitals, or homes for foster children or facilities that administer treatment as their primary function to inpatients, outpatients or on a day care basis.

RESIDENTIAL DISTRICT REGULATIONS

The sought after areas to establish Supported Living Homes are areas zoned for residential use. Within these residential districts, the use of property for certain purposes may constitute a permitted use or a conditional use. Permitted property uses may be undertaken without prior approval from a municipality's planning commission or board of zoning appeals. Conversely, conditional property uses must ordinarily obtain prior approval from local boards, as well as meet other development and operation standards. In many jurisdictions, group homes, CORSSFs and other similar uses are conditional.

Supported Living Homes, which are not CORSSFs or group homes, provide a home to a group of individuals that function like any other family. However, the family-like setting of a Supported Living Home is often required to meet heightened and more restrictive standards than the typical single-family home. When residential district regulations impose these standards on a group of four individuals with disabilities and not on a group of four individuals related by blood, the issue of amending the zoning laws must be addressed.

In jurisdictions that heighten the standards and restrict the establishment of Supported Living Homes through denoting them conditional uses, the policy of this study recommends a common sense approach to enacting change. This policy recommends amending residential district regulations that may render a supported living home a conditional use. The policy can be

enacted with little disruption to municipal Zoning Codes. By amending definitions of CORSSF and other similar terminology, the residents of a Supported Living Home would fall clearly beneath the maximum occupancy limitations and therefore could not constitute such uses. Additionally, this policy can be enacted by simply deleting CORSSF and similar terminology from lists of conditional uses. The policy could also be adopted by adding CORSSFs care facilities, group homes, and similar terminology to lists of permitted uses.

PROVISIONS GOVERNING CONDITIONAL USE OF PROPERTY

Beyond residential district regulations that relegate group living arrangements for individuals with disabilities to lists of conditional uses, many jurisdictions impose additional provisions that govern their establishment. These conditional use provisions specific to group living arrangements for individuals with disabilities may be imposed on top of general conditional use provisions that apply to all conditional uses. As is true with the terminology commonly found in municipal zoning laws' definitions sections, the CORSSF is often subject to heightened and restrictive conditional use provisions. Although each jurisdiction is unique, and the conditional use provisions vary in number, type, and extent of specific regulations, some general topics are common among the jurisdictions.

CONDITIONAL USE PROVISIONS BEST PRACTICES MODEL

The best practices model for Conditional Use Provisions may serve as a guide for jurisdictions in amending provisions specifically governing CORSSFs and other similar uses. The provisions suggested for amendment are among those found generally among municipal zoning laws, but are in no way exhaustive. This model shall not be construed as a tool for adopting additional provisions in jurisdictions where none are currently in place. Rather, this best practices model broadly addresses conditional use provisions suggested for amendment or deletion.

Generally, conditional use provisions governing the establishment of a CORSSF and/or similar uses contain three (3) primary sections: Application or Submission Requirements, Facility Requirements, and Findings by the Board of Zoning Appeals. This best practices model addresses generally the provisions that are suggested for amendment within each section. However, in those municipalities in which conditional use provisions are included, a separate suggested amendments section is included in that jurisdiction's review.

APPLICATION REQUIREMENTS OR SUBMISSION REQUIREMENTS

Conditional use provisions requiring an application to be submitted to the planning commission or board of zoning appeals may ask for certain information. The provisions listed below are suggested for deletion from the conditional use provisions. This list is broad, though not all-encompassing. Thus, other provisions and those similar to the ones included here may also merit suggestion for amendment or deletion.

- Information explaining:

Need for the facility

Clientele served

Financial resources that will be used to operate the facility

- Identification of:

Similar facilities presently located in the area

Names of individuals who may be contacted in regard to the operation of such facilities

Community facilities, public parks, open spaces, and the like which the clientele may use

Submission of documents, including:

All required licenses or evidence to obtain such licenses (If a license is not required, or if unobtainable, written affidavits so swearing)

Operational and occupancy standards that will be used in the facility

Site plans, drawings or illustrations of all structures

Floor plans, elevations, ingress and egress, landscaping, plans for off-street parking

Plans for Services and Programs Offered to Clientele, including:

Nature of care to be provided

Types of services to be offered

Individuals or agencies responsible for administering care and services

Evidence of accountability, and/or government or agency oversight, legal responsibility, control

Facility Requirements

Conditional use provisions that set forth requirements for the facility itself often impose development standards that are more rigid and restrictive than development standards for permitted or other conditional uses. Like the provisions in Application or Submission

Requirements sections, the list suggested for amendment or deletion here are broad, but not exhaustive. The following provisions are suggested for deletion.

- Requiring a facility to:

- Meet minimum lot area, width, and yard requirements for use other than single-family dwelling

- Contain specific minimum square footage of habitable floor area per occupant

- Provide specific minimum indoor and outdoor recreation space

- Shade all exterior lighting fixtures from casting light upon any adjoining property line

- Provide off-street parking pursuant to a specific ratio of residents, staff, or automobiles

- Be located beyond a specific distance from other facilities

Findings by the Board of Zoning Appeals

Conditional use provisions may also require a proposed facility to meet additional criteria to the satisfaction of a board of zoning appeals or planning commission. Because denotation as a conditional use is suggested for amendment, all provisions requiring a facility to satisfy certain findings of a planning commission or board of zoning appeals are suggested for deletion as well. The list below is a broad example of criteria that a jurisdiction may require a facility to meet, in accord with the views and positions of a planning commission or board of zoning appeals. As is true with other sections of conditional use provisions, this list is not exhaustive; it is merely a sample of certain requirements imposed upon CORSSFs group homes, and other similar uses. The following is a list of provisions suggested for deletion from municipal zoning laws.

- In review of each proposed facility, the Planning Commission or Board of Zoning Appeals shall make findings as to whether the home:

- Is in fact licensed by or has accountability to a governmental agency

- Is in fact a needed facility

Will be designed, operated, and maintained to be harmonious with existing or planned uses

Will not change the essential character of the neighborhood

Will not reduce real estate values in its vicinity

Will not be hazardous or disturbing to existing or planned neighborhood uses

Will not be hazardous or disturbing from the standpoint of noise, lights, congestion, or traffic generation

Will be served adequately by essential public facilities and services

Will have vehicular approaches designed so as not to create interference with traffic

Will promote the public health, safety, or general welfare of the community

Other Conditional Use Provisions

Beyond the three primary sections of conditional use provisions mentioned above, a jurisdiction may also require an applicant to submit a written report detailing each item of the Application or Submission Requirements, Facility Requirements, of Findings by the Board of Zoning Appeals. If a jurisdiction does include an additional section requiring an applicant to submit a report of this nature, this best practices model suggests its deletion.

Moreover, a jurisdiction may also include conditional use provisions governing the duration or nature of a conditional use permit. In these instances, a planning commission, board of zoning appeals, or other similar department or agent of a municipal jurisdiction may be authorized to issue a temporary conditional use permit, or revoke an already issued conditional use permit after a specified period of time. Should a jurisdiction include such a provision, this best practices model suggests its deletion.

PERSPECTIVES ON HOUSING FOR PEOPLE WITH DISABILITIES

In general, the relationship between municipal zoning laws and the establishment of Supported Living Homes can be addressed from three (3) broad perspectives: legal, social, and political. The focal point of this study addresses the legal facet of the relationship between municipal zoning laws and Supported Living. While identifying and suggesting policy for amending municipal zoning laws that may present obstacles to Supported Living is helpful, black letter law is not the sole means to making Supported Living a reality in Montgomery County. To achieve the goal of removing barriers to Supported Living, both the social and political perspectives must also be considered. The discussion of these perspectives included in this report does not extend to each jurisdiction review individually, but the overarching concepts are applicable across municipal boundaries. Moreover, this discussion does not address every issue that may arise from the different perspectives. Rather, it provides a brief preface to some of the non-legal challenges that may stand in the way of Supported Living.

THE SOCIAL PERSPECTIVE: COMMUNITY AND NEIGHBORHOOD RESPONSE

Although statutory law can present numerous obstacles to Supported Living, community and neighborhood resistance can add to the already difficult endeavor. Attitudes toward group living arrangements for individuals with disabilities often take the form of “NIMBY-ism.” NIMBY-ism, derived from the acronym for Not in My Back Yard, refers, in this instance, to acceptance of group living arrangements for individuals with disabilities, but a desire to locate them elsewhere. The attitudes may come from a single individual, a neighborhood association, or an entire community. Regardless of the source or amount of NIMBY-ism faced in a

municipality, Supported Living has the potential to overcome it. That potential lies in making effective social policy arguments.

The legislative history of the FHAA states that the law “is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of individuals to live in the residence of their choice in the community.” H. R. Rep. No.100-711, at 24 (1988). It is clear that Congress intended to codify a strong policy against discrimination, the effects of which would be felt at the community level. The principles embodied by this policy can be extrapolated to address the opposition and concerns held by individuals in a particular neighborhood or community.

Concerns and opposition to the establishment of Supported Living Homes within a jurisdiction may take any number of different forms. In some instances, residents may write letters, attend public meetings, and organize as groups to oppose housing for individuals with disabilities in their neighborhoods. Some residents may claim that housing for individuals with disabilities poses a threat to the property values, character, and safety of the neighborhood. While such claims are often unfounded or wholly inaccurate, simply refuting or denying them does not make them go away.

One means of combating NIMBY-ism with respect to housing for individuals with disabilities is through education. Educating the community on issues of housing for individuals with disabilities not only furthers the goal of establishing Supported Living Homes, but also reinforces the policy behind the FHAA itself. Moreover, by dispelling myths about individuals with disabilities and informing residents of the inherent similarities between their own homes

and Supported Living Homes, a greater understanding of the concept may be facilitated.

Educating residents may take place in group seminars, meetings, or one-on-one discussions.

Irrespective of its setting, education will serve to better accomplish the goal of making Supported Living a reality in Montgomery County.

THE POLITICAL PERSPECTIVE: GOVERNMENT OFFICIALS AND UNWILLING CONSTITUENTS

The decision makers charged with the task of amending municipal zoning laws, those who actually cast votes for or against a change, are the elected, appointed, and volunteer members of a jurisdiction's government. The process may include varying degrees of involvement from administrators, law directors, planning and zoning commissions, and boards of zoning appeals. Enacting change in municipal zoning law through political means may take many forms. Government officials may respond to the pure political influence of an individual or organization, opportunities to form inter-jurisdictional partnerships, or simply well articulated arguments for change.

When faced with the proposition of amending municipal zoning law, government officials may turn to any number of resources for guidance. Among those resources are neighboring jurisdictions, county government officials, and non-governmental organizations. Successfully amending one jurisdiction's zoning laws to afford Supported Living the opportunity to which it is entitled can serve as an example for all other jurisdictions to follow. As the numbers of jurisdictions amending zoning laws grows, increased communication and partnerships crossing municipal boundaries can emerge. The support of a county administrator or law director may give municipal government officials the reassurance needed to go forth and

amend their zoning laws. Additionally, non-governmental organizations can use expertise and knowledge in the field to provide that same sort of reassurance. Still, the most powerful catalyst may be the views and voices of the constituency.

In some instances, officials may be amenable to adopting change and will do so when asked. Other times, government officials may be staunchly opposed to change, independent of their constituents' concerns. However, it may more often be the case that officials are willing to enact change, but will not when faced with an unwilling constituency. It is at this juncture that educating the public and the political perspective converge. Real change in municipal zoning laws may take root by educating constituencies on Supported Living and, in turn, providing common understanding for community members and government officials alike.

Brookville

INTRODUCTION

The issues addressed in this Review of the City of Brookville Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by review of the City of Brookville Zoning Code relates to the requirement of conditional use permits prior to the establishment of “Community Oriented Residential Social Services Facilities” (CORSSF) in districts zoned for residential use.

The City of Brookville is located in Northwest Montgomery County. Portions of the city lie within both Clay and Perry Township. It borders Clay Township to the North, East, and West; and borders Perry Township to the South. Currently, MVIO does not own or operate any property in the City of Brookville. This Review of the City of Brookville Zoning Code includes points of contact and officeholders, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and suggested amendments to the Zoning Code as currently written.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

301 Sycamore St. P.O. Box 10
Brookville, OH 45309
Phone: (937) 833-2135
Fax: (937) 833-3347
Home Page: www.brookvilleohio.com

Zoning Contact Information

Jim Snedeker
Phone: (937) 833-2135
Fax: (937) 833-3347
*Note: Mr. Snedeker is in the office 8:00 AM – 4:30 PM

Planning Commission

Meets: the third Thursday of each month at 7:30 PM

Richard L. Swabb, Chairperson
Brent Boose, Vice Chairperson
David E. Seagraves, Mayor
Margo Cantrell
Leon Williamson
Kenneth Claggett
Joseph Tobias

Board of Zoning Appeals

Meets: as needed

Carole Imler
Kelly Kopf
Dorothy Watkins
Kathleen Dafler
Darrell Reel

*Note: Board of Zoning Appeals has not met this year and therefore no Chairperson has been named.

ANALYSIS

The City of Brookville Zoning Code sets forth two distinctly separate classifications that may be applied to a Supported Living Home. The first is a “Community Oriented Residential Social Service Facility”, and the second is “Housing for the Elderly or Handicapped.” These two classifications merit discussion for two primary reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the City of Brookville Zoning Code does not comply with other sources of law. Furthermore, due to the manner in which certain uses are permitted in Brookville’s residential districts, it is important to ensure Supported Living Homes receive proper classification. This analysis addresses the denotation of a Supported Living Home under these two classifications and what bearing the classification may have on the establishment of such a home. Also included in this analysis is a comparison of the City of Brookville Zoning Code definition of “Elderly and Handicapped Persons” with that of similar state and federal definitions.

- **Community Oriented Residential Social Services Facilities**

A Supported Living Home does not meet the express criteria set forth in the definition of a “Community Oriented Residential Social Services Facility”, defined as:

A facility which provides resident services to a group of individuals of whom one or more are unrelated. These individuals are mentally and/or physically handicapped, aged, or disabled; are undergoing rehabilitation; and are provided services to meet their needs. This category includes uses licensed, supervised or under contract by any Federal, State, County or other political subdivision. Such facilities shall have 24-hour supervision.

Supported Living Homes are not “licensed, supervised, or under contract by any Federal, State, County or other political subdivision,” nor do these homes provide “24-hour supervision” to their residents. However, “Family Care Homes” are listed as uses that fall within the definition of a CORSSF. If a Supported Living Home were to be classified as a CORSSF, albeit incorrectly, it would most likely be deemed a “Family Care Home.” A “Family Care Home” is defined as:

Residential facilities that provide room and board, personal care, rehabilitation services, and supervision in a family setting for from three to five persons (adults or children) who are mentally ill, mentally retarded, have any form of developmental disability or cannot reside with their natural family.

If classified as a “Family Care Home”, and thus a Community Oriented Residential Social Services Facility, certain restrictions governing the establishment of Supported Living Home would be in place. A “Family Care Home” constitutes a special use in each of the six (6) districts zoned for residential use included in the Summary of this Review. Such a use is subject to the provisions of § 1163.03(15) for the special use of property as a CORSSF. Proposed changes to the special use provisions for a CORSSF are included in the Suggested Amendments section of this Review.

▪ **Housing for the Elderly or Handicapped**

If not deemed a CORSSF, a Supported Living Home may constitute “Housing for the Elderly or Handicapped”, as defined in the City of Brookville Zoning Code as:

A building or buildings containing dwellings and related facilities, such as dining, recreational services or therapy areas, where the occupancy of the dwellings is restricted to elderly or handicapped persons as defined herein. Such use may include facilities for independent or semi-independent living, day care, personal

care nursing facilities or services to the elderly of the community when it is an ancillary part of one of the above operations. Any combination of the foregoing uses may be allowed and still be considered as qualifying under this definition. (See COMMUNITY RESIDENTIAL SOCIAL SERVICE FACILITIES.)

Residency in a Supported Living Home is provided exclusively to individuals with mental retardation and/or developmental disabilities, and allows for certain facets of independent and semi-independent living. However, it is not the definition of “Housing for the Elderly or Handicapped” alone that gives rise to possible issues of interpretation. If deemed “Housing for the Elderly or Handicapped”, certain restrictions would be imposed on the establishment of a Supported living home that differ from those restrictions imposed upon a CORSSF. The special use provisions governing “Housing for the Elderly or Handicapped” are fewer in number and of a lesser degree in detail than those provisions governing a CORSSF. The use of property as “Housing for the Elderly or Handicapped” is subject to the special use provisions of § 1163.03(20). As a template for proposing changes to such provisions is not available at this time, the text of § 1163.03(20), as written, is attached to this Review without suggested amendments.

SUGGESTED AMENDMENTS

Included in this Suggested Amendments section is the original text of provisions governing the establishment of a CORSSF and “Housing for Elderly or Handicapped” as special uses. The provisions governing a CORSSF with suggested amendments follow. Additions to statutory language are in bold, and statutory language suggested for deletion is noted with strike-through text. No suggested amendments accompany the original text of the provisions governing “Housing for the Elderly or Handicapped”, as no template for proposing such changes is available at this time.

Community Oriented Residential Social Services Facilities

A facility which provides resident services to a group of individuals of whom one or more are unrelated. These individuals are mentally and/or physically handicapped, aged, or disabled; are undergoing rehabilitation; and are provided services to meet their needs. This category includes uses licensed, supervised or under contract by any Federal, State, County or other political subdivision. Such facilities shall have 24-hour supervision.

~~Care Community Oriented Residential Social Services Facilities~~

*A residential facility which provides **room and board, personal care, and supervision** ~~resident services to~~ **for six (6) or more residents on a transient, semi-transient, or permanent basis** ~~a group of individuals of whom one or more are unrelated.~~ **Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of the physical safety of the***

~~residents. These individuals are mentally and/or physically handicapped, aged, or disabled; are undergoing rehabilitation; and are provided services to meet their needs. This category includes uses licensed, supervised or under contract by any Federal, State, County or other political subdivision. Such facilities shall have 24 hour supervision.~~

(15) Community Based Residential Social Service Facilities

A. Submission requirements. The operator or agency applying for special use permit to operate a community based residential social service facility shall submit the following information to aid the Planning Commission in their review of the requested facility:

1. Information sufficient to establish the need for the facility in the proposed location, in relationship to the specific clientele served
2. Identification of similar facilities presently existing within the County and its municipalities.
3. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed special use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.
4. A copy of the sponsoring agency's operational and occupancy standards
5. A detailed plan for services and programs

B. Facility requirements

1. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.
2. Suitable space shall be provided for indoor and/or outdoor recreational activities for the clientele served, based upon generally accepted recreational standards or those specified by the licensing authority
3. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures prepared shall be of compatible residential design with the surrounding neighborhood, to the degree possible
4. Off-street parking requirements: One (1) space per every three (3) persons residing in a family or community based residential social service facility except for facilities prohibiting

ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may substitute for a proportion of the required off-street spaces if approved by the Planning Commission

5. Resident density shall not exceed that density permitted within the respective zoning district in which the facility is proposed

(15) ~~Care Community Based Residential Social Service Facilities~~

~~A. Submission requirements. The operator or agency applying for special use permit to operate a community based residential social service facility shall submit the following information to aid the Planning Commission in their review of the requested facility:~~

- ~~1. Information sufficient to establish the need for the facility in the proposed location, in relationship to the specific clientele served.~~
- ~~2. Identification of similar facilities presently existing within the County and its municipalities.~~
- ~~3. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed special use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.~~
- ~~4. A copy of the sponsoring agency's operational and occupancy standards.~~
- ~~5. A detailed plan for services and programs.~~

~~B. A. Care Facility requirements~~

- ~~1. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.~~
- ~~2. 1. Suitable space shall be provided for indoor and/or outdoor recreational activities for the clientele served, based upon the number of residents for the care facility generally accepted recreational standards or those specified by the licensing authority.~~
- ~~3. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures prepared shall be of compatible residential design with the surrounding neighborhood, to the degree possible.~~
- ~~4. 2. Off-street parking requirements: Pursuant to § 1159.03 of the Zoning Code One (1) space per every three (3) persons residing in a family or community based residential social~~

~~service facility except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one to one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may substitute for a proportion of the required off-street spaces if approved by the Planning Commission.~~

5.3. Resident density shall not exceed that density permitted within the respective zoning district in which the facility is proposed.

C. Findings by the Planning Commission

In its review of each proposed facility, the Planning Commission shall make specific findings of fact relative to the following criteria. The proposed facility:

1. Is in fact a community based residential social service facility licensed by the appropriate authority to provide such service within the State of Ohio (and the Municipality of Brookville, Montgomery County). If such licensing is not available, a certified affidavit so stating has been presented to document this statement
2. Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Planning Commission
3. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing officially planned uses in the general vicinity and that such use will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.
4. Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment
5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services
6. Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare
7. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares

~~C. Findings by the Planning Commission~~

~~—————In its review of each proposed facility, the Planning Commission shall make specific findings of fact relative to the following criteria. The proposed facility:~~

- ~~1. Is in fact a community based residential social service facility licensed by the appropriate authority to provide such service within the State of Ohio (and the Municipality of Brookville, Montgomery County). If such licensing is not available, a certified affidavit so stating has been presented to document this statement~~
- ~~2. Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Planning Commission~~
- ~~3. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing officially planned uses in the general vicinity and that such use will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.~~
- ~~4. Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment~~
- ~~5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services~~
- ~~6. Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare~~
- ~~7. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares~~

(20) Elderly Housing

A. In any zone where authorized, housing and related facilities for elderly or handicapped persons may be permitted upon a finding by the Planning Commission that

1. The proposed use will not produce adverse effects on the use or development of the surrounding area because of noise, traffic, type of physical activity, or any other reason.
2. The site has adequate accessibility to transportation, medical service, shopping areas, recreational and other community services frequently desired by elderly and handicapped persons.
3. The site is reasonably well protected from excessive noise, air pollution, and other harmful physical influences

B. The following development standards shall apply

1. Minimum area of lot shall be one and one-half acres, except in areas in close proximity to the Community Center and provided that in no case shall the minimum lot area be less than that specified in the zone in which the land is classified
2. Minimum setbacks and lot coverage shall be as specified for the zone
3. The Planning Commission may permit a greater height than specified in the zone provided that the height in a single family zone shall not exceed 50 feet, unless an additional setback of one foot is provided for each additional foot of height above 50 feet
4. Maximum density shall be as follows
 - a. One residential unit per three thousand (3,000) square feet of net lot area in the R-2 District
 - b. One residential unit per one thousand five hundred (1,500) square feet of net lot area in the R-3 District
5. Ancillary facilities, such as dining rooms, workshops, and retail stores serving exclusively the occupants of the building may be included if loading areas serving these facilities are not visible from any property line and if there is no exterior announcement or other evidence of retail facilities.

Butler Township

INTRODUCTION

The issues addressed in this review of the Butler Township Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review of the Butler Township Zoning Code is the potential classification of a Supported Living Home by the jurisdiction's planning commission and/or board of zoning appeals.

Butler Township is located in North Montgomery County, bordered by the Cities of Englewood, Clayton, Vandalia, and Union, as well as Harrison Township. Currently, MVIO does operate property within Butler Township. This review of the Butler Township Zoning Code includes points of contact and officeholders within the Township, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and a suggested amendments section.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

8524 N. Dixie Dr.
Dayton, OH 45414
Phone: (937) 898-6735 x 13
Fax: (937) 898-5308
Home Page: www.butlertownship.com

Zoning Contact Information

Jeff Bothwell
Phone: (937) 898-6735
Fax: (937) 898-5308

ANALYSIS

This analysis of the Butler Township Zoning Code addresses issues of interpretation that may affect the establishment of Supported Living Homes within the municipality. The primary issues raised by review of the Code relate to inherent vagueness and ambiguity, as well as potential classifications of Supported Living Homes. These issues merit discussion for two reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the Butler Township Zoning Code does not comply with sources of Fair Housing law. Furthermore, it is important to ensure that Supported Living Homes receive proper classification under the Butler Township Zoning Code. This analysis addresses the vague exclusion of “Community Oriented Residential Social Services Facilities” from the Butler Township Zoning Code’s definition of “Family”, and the potential impact on Supported Living Homes if they are classified as a CORSSF.

- **Family**

The Butler Township Zoning Code defines a “Family” as:

One or more persons occupying a single family dwelling unit, provided that unless all members are related by blood, adoption or marriage, no such family shall contain over three (3) persons. This does not include Community Oriented Residential Social Service Facilities.

Butler Township Zoning Code § 206.01.

While the residents of a Supported Living Home typically number four (4), the maximum occupancy limitations for unrelated individuals establish three (3) as the uppermost limit. The most striking portion of this definition is its exclusion of CORSSFs. The inherent vagueness of this exclusion leaves open the possibility of the jurisdiction’s planning commission and/or board of zoning appeals reaching two distinctly different

conclusions. The first of these possible conclusions is that the residents of a CORSSF cannot constitute a “Family.” The second possible conclusion is that the residents of a CORSSF are not bound by (i.e. wholly excluded from) the maximum occupancy limits for unrelated individuals found in the Butler Township Zoning Code’s definition of “Family.” Under the latter conclusion, the residents of a CORSSF and perhaps a Supported Living Home could constitute a “Family.”

▪ **Community Oriented Residential Social Services Facilities**

The Butler Township Zoning Code defines a “Community Oriented Residential Social Service Facility” as:

A facility which provides resident services to a group of individuals of whom one or more are unrelated. These individuals are mentally retarded, handicapped, aged, or disable, are undergoing rehabilitation, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision.

Butler Township Zoning Code § 203.04.

Although Supported Living Homes are not subject to licensing requirements, it is possible that MVIO’s involvement in Supported Living Homes could construe the home as a use “under contract” by Montgomery County government. If classified as a CORSSF, Supported Living Homes would be rendered conditional uses in each of the districts zoned for residential use, and subject to the conditional use provisions of Butler Township Zoning Code Article 47.

SUGGESTED AMENDMENTS

All proposed changes to the Butler Township Zoning Code are included in this Suggested Amendments section. The original text of both the definitions of and provisions governing the conditional use of property as a CORSSF is followed by proposed changes. All additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through.

§ 203.04 Community Oriented Residential Social Service Facility

A facility which provides resident services to a group of individuals of whom one or more are unrelated. These individuals are mentally retarded, handicapped, aged, or disable, are undergoing rehabilitation, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision.”Community Oriented Residential Social Services Facilities (residential homes) includes, but is not limited to, the following listed categories:

Foster Care Homes for Children

Residential homes for mentally retarded or mentally ill children or adolescents under the age of 18 requiring protective supervision in a home setting and for children or adolescents who for various reasons cannot reside with natural family.

Foster Care Homes for Adults

Residential homes for mentally retarded or mentally ill adults over the age of 18 requiring protective supervision in a home setting. Residential homes for the aged would also be included under this category.

Social Care Homes

Residential homes for children or adolescents who lack social maturity or have emotional problems but who have not been judged delinquent. Residency may be permanent or transient.

Intermediate Care Homes

Residential homes for children or adolescents who have been so judged delinquent and have been assigned by a court to a residential home in lieu of placement in a correctional institution.

Halfway Houses

Residential homes for adolescents or adults who have been institutionalized and released or who have had alcohol or drug problems which make operation in society difficult and who require the protection of a group setting

§ 203.04 ~~Care Community Oriented Residential Social Service Facility~~

A **residential facility which provides room and board, personal care, and supervision for six (6) or more residents on a transient, semi-transient, or permanent basis.** ~~resident services to a group of individuals of whom one or more are unrelated.~~ **Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of physical safety of the residents.** ~~These individuals are mentally retarded, handicapped, aged, or disable, are undergoing rehabilitation, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision.~~ **Community Oriented Residential Social Services Facilities (residential homes) includes, but is not limited to, the following listed categories:**

~~Foster Care Homes for Children~~

~~Residential homes for mentally retarded or mentally ill children or adolescents under the age of 18 requiring protective supervision in a home setting and for children or adolescents who for various reasons cannot reside with natural family.~~

~~Foster Care Homes for Adults~~

~~Residential homes for mentally retarded or mentally ill adults over the age of 18 requiring protective supervision in a home setting. Residential homes for the aged would also be included under this category.~~

~~Social Care Homes~~

~~Residential homes for children or adolescents who lack social maturity or have emotional problems but who have not been judged delinquent. Residency may be permanent or transient.~~

~~Intermediate Care Homes~~

~~Residential homes for children or adolescents who have been so judged delinquent and have been assigned by a court to a residential home in lieu of placement in a correctional institution.~~

~~Halfway Houses~~

~~Residential homes for adolescents or adults who have been institutionalized and released or who have had alcohol or drug problems which make operation in society difficult and who require the protection of a group setting~~

ARTICLE 47
COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES

§ 4701 SUBMISSION REQUIREMENTS

The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility shall submit the following information to aid the Board of Zoning Appeals in their review of the requested facility:

- A. Information sufficient to establish the need for the facility in the proposed locations, in relationship to the specific clientele served.
- B. Identification of similar facilities presently existing within the county and its municipalities.
- C. Location of community facilities and/or services pertinent to the proposed site, i.e. nearest fire station, park, library, shopping complex, major thoroughfare, etc.
- D. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.
- E. A copy of the sponsoring agency's operational and occupancy standards.
- F. A site plan for the proposed home indicating home structure outline and floor area, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include evidence that the proposed use of the site will be compatible with the present character of the neighborhood, in consideration of such factors as congestion, noise, traffic or lights.
- G. A detailed plan for services and programs.

ARTICLE 47
~~Care COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES~~

~~§ 4701 SUBMISSION REQUIREMENTS~~

~~The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility shall submit the following information to aid the Board of Zoning Appeals in their review of the requested facility:~~

- ~~A. Information sufficient to establish the need for the facility in the proposed locations, in relationship to the specific clientele served.~~
- ~~B. Identification of similar facilities presently existing within the county and its municipalities.~~

- ~~C. Location of community facilities and/or services pertinent to the proposed site, i.e., nearest fire station, park, library, shopping complex, major thoroughfare, etc.~~
- ~~D. A licensed or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.~~
- ~~E. A copy of the sponsoring agency's operational and occupancy standards.~~
- ~~F. A site plan for the proposed home indicating home structure outline and floor area, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include evidence that the proposed use of the site will be compatible with the present character of the neighborhood, in consideration of such factors as congestion, noise, traffic or lights.~~
- ~~G. A detailed plan for services and programs.~~

§ 4702 FACILITY REQUIREMENTS

- A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.
- B. Suitable space shall be provided for indoor and/or outdoor recreational activities for the clientele served, based upon generally accepted recreational standards or those specified by the licensing authority.
- C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be of compatible residential design with the surrounding neighborhood, to the degree possible.
- D. All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.
- E. Off-street parking requirements: one space per every three (3) persons resident in a Community Oriented Residential Social Service Facility except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one to one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may substitute for a proportion of the required off-street spaces if approved by the Board of Zoning Appeals.

- F. No facility shall be permitted within five thousand (5,000) feet of another Community Oriented Residential Social Service Facility. The Board of Zoning Appeals may consider a variance from this standard of not more than ten (10) percent.

§ 4702 CARE FACILITY REQUIREMENTS

- ~~A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.~~
- ~~B. A. Suitable space shall be provided for indoor and/or outdoor recreational activities for the number of residents for the care facility. clientele served, based upon generally accepted recreational standards or those specified by the licensing authority.~~
- ~~C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be of compatible residential design with the surrounding neighborhood, to the degree possible.~~
- ~~D. B. All exterior lighting shall be suitably directed and shaded to prevent any glare at four (4) feet in height upon adjoining residential properties.~~
- ~~E. C. Off-street parking requirements: Pursuant to requirements for single-family dwellings. one space per every three (3) persons resident in a Community Oriented Residential Social Service Facility except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off street parking shall be provided on a one to one ratio to the number of autos operated out of the facility. Within neighborhoods in which on street parking is accepted practice, on street space directly abutting the subject lot may substitute for a proportion of the required off street spaces if approved by the Board of Zoning Appeals.~~
- ~~F. No facility shall be permitted within five thousand (5,000) feet of another Community Oriented Residential Social Service Facility. The Board of Zoning Appeals may consider a variance from this standard of not more than ten (10) percent.~~

§ 4703 FINDINGS BY THE BOARD OF ZONING APPEALS

In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. The proposed facility:

- A. Is in fact a Community Oriented Residential Social Service Facility licensed by the appropriate authority to provide such service within the State of Ohio (and the respective jurisdiction). If such licensing is not available, a verified affidavit so stating has been presented to document this statement.

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- B. Is approved by the local agency responsible for providing support services and/or programs to the facility.
- C. Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Board of Zoning Appeals.
- D. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or officially planned uses of the general vicinity and that such use will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.
- E. Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment.
- F. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- G. Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare.
- H. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.
- I. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.
- J. The Board of Zoning Appeals may issue a temporary conditional use permit for a period of one (1) year. At the completion of the one (1) time period, the residential home operation shall be reviewed by the Board of Zoning Appeals. The Board of Zoning Appeals may extend the temporary conditional use, grant a permanent conditional use or deny the conditional use. The Board of Zoning Appeals in considering the conditional use application shall take into consideration the extent to which the sponsoring agencies have dispersed these facilities within the County and its municipalities.

§ 4703 FINDINGS BY THE BOARD OF ZONING APPEALS

~~In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. The proposed facility:~~

- ~~A. Is in fact a Community Oriented Residential Social Service Facility licensed by the appropriate authority to provide such service within the State of Ohio (and the respective~~

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and the Impact Upon People with Disabilities

jurisdiction). If such licensing is not available, a verified affidavit so stating has been presented to document this statement.

- B. ~~Is approved by the local agency responsible for providing support services and/or programs to the facility.~~
- C. ~~Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Board of Zoning Appeals.~~
- D. ~~Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or officially planned uses of the general vicinity and that such use will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.~~
- E. ~~Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment.~~
- F. ~~Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.~~
- G. ~~Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare.~~
- H. ~~Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.~~
- I. ~~Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.~~
- J. ~~The Board of Zoning Appeals may issue a temporary conditional use permit for a period of one (1) year. At the completion of the one (1) time period, the residential home operation shall be review by the Board of Zoning Appeals. The Board of Zoning Appeals may extend the temporary conditional use, grant a permanent conditional use or deny the conditional use. The Board of Zoning Appeals in considering the conditional use application shall take into consideration the extent to which the sponsoring agencies have dispersed these facilities within the County and its municipalities.~~

Carlisle

INTRODUCTION

The issues addressed in this Review of the City of Carlisle Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The City of Carlisle is facially in compliance with the Fair Housing laws. There are some foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by review of the City of Carlisle's Zoning Plan is its vagueness as it relates to facilities like Supported Living Homes and actual Supported Living Homes.

The City of Carlisle is located in the Dayton-Cincinnati Metro region of Ohio. Also, the City of Carlisle sits in Northwestern Warren County and Southern Montgomery County. Currently, MVIO does not operate property within the City of Carlisle. This review of the City of Carlisle Zoning Plan includes points of contact and office holders, and an analysis of possible issues.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

760 W. Central Ave.
Carlisle, Ohio 45005
Phone: 937-746-0555
Fax: 937-743-8178
Homepage: www.carlisleoh.org

Zoning Contact Information

Greg Wallace, Zoning Officer
760 W. Central Ave.
Carlisle, Ohio 45005
Phone: 937-746-0555 ext. 7
Fax: 937-743-8178

ANALYSIS

This analysis of the City of Carlisle Zoning Code addresses issues of interpretation that may affect the establishment of Supported Living Homes within the municipality. The City of Carlisle Zoning Code is seemingly in compliance with federal Fair Housing regulations, in relation to Supported Living Homes.

There are no restrictions or regulations on homes and/or facilities like Supported Living Homes. Without regulations, the City of Carlisle can adopt amendments to this Zoning Plan or use its discretion to impede the creation of Supported Living Homes as it deems necessary. This impediment can be halted by ensuring that the individuals in Supported Living Homes are considered a family unit as defined by the statute. The statute should explicitly state that the individuals in Supported Living Homes are considered a family unit and should be governed as such under the Zoning Plan. Under the Plan, individuals who reside in Supported Living Homes can be classified as a family because they house four or less individuals, whereas the Zoning Code allows for a maximum of five unrelated members.

- **Family**

The City of Carlisle Zoning Code defines “Family as:

“...one or more persons occupying a single dwelling unit. Unless all members are related by blood, adoption or marriage, no such family shall contain over five person.”

- **Comment**

City of Carlisle Zoning Code Chapter 1260.04(43). Supported Living Homes have a maximum of four individuals that occupy a single dwelling. The City of Carlisle allows up to five individuals who are not related by blood, adoption, or

marriage, to live together as a family. Therefore, the individuals in Supported Living Homes constitute a family and can occupy a single family dwelling. By allowing the individuals housed in Supported Living Homes to constitute a “family”, they do not have to obtain special permission in order to occupy single family dwellings.

Centerville

INTRODUCTION

The issues addressed in this review of the City of Centerville Zoning Ordinance encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality.

The City of Centerville is located in Southeast Montgomery County, within Washington Township. Centerville borders Kettering to the North, Greene County to the East, and Washington Township to both the South and West. Currently, MVIO owns no property in the City of Centerville. This review of the Centerville Zoning Ordinance entails points of contact and officeholders within the City of Centerville, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and suggested amendments.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

100 W. Spring Valley Rd.
Centerville, OH 45458
Phone: (937) 433-7151
Fax: (937) 433-0286
Home Page: www.ci.centerville.oh.us

Zoning Contact Information

Steve Feverston
Phone: (937) 433-7151

City Planning Commission

Meets: The last Tuesday of each month at 7:30 PM

Paul Clark, Chairman
James G. Durham
James S. Briggs, Jr.
James E. Brunner
Jeffery Gammell, Vice-Chairman
Mark Leonard
John Palcher
Douglas C. Cline, Council Liaison

ANALYSIS

This analysis of the City of Centerville Zoning Ordinance addresses issues of interpretation that may affect the establishment of Supported Living Homes within the municipality. The primary issue raised relates to the manner in which a Supported Living Home may be classified by the jurisdiction's planning commission and/or board of zoning appeals. This issue merits discussion for two reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the C. Z. O is not in compliance with sources of Fair Housing law. Furthermore, it is important to address, or at least ascertain, which classification a Supported Living Home may receive under the Ordinance itself. This analysis addresses the classification of a Supported Living Home as a residence housing a "Family", as well as a "Residence Family Home."

- **Family**

The Centerville Zoning Ordinance defines a "Family" as:

One (1) or more persons living together as a single housekeeping unit

Centerville Zoning Ordinance § 37.

A Supported Living Home typically houses four (4) unrelated individuals who live together as a single housekeeping unit. As such, the home's living arrangement is most accurately and appropriately defined as a "Family" under the Centerville Zoning Ordinance. If classified as a residence housing a "Family", a Supported Living Home could be established, free from conditional use provisions, in any district zoned for residential use. However, the fact that the residents of a Supported Living Home are disabled may affect the home's classification. Alternatively, it may be the case that a Supported Living Home receives classification as a "Residence Family Home."

- **Residence Family Home**

The Centerville Zoning Ordinance defines a “Residence Family Home” as:

A home licensed by the State of Ohio or Montgomery County, if required by law, which provides residential services and supervision for six (6) or fewer individuals who need not be related to the resident houseparent(s) or non-resident supervisor(s) and who are foster children, developmentally disabled persons or aged persons (60 years or older). The number six (6) shall not include houseparent(s) or non-resident supervisor(s).

Centerville Zoning Ordinance § 37.

This definition is written to include housing for individuals which is not required to obtain licensing, as is the case for Supported Living Homes. Because a Supported Living Home typically houses four (4) unrelated individuals, its living arrangement falls beneath the maximum occupancy limit of six (6) set forth in the Centerville Zoning Ordinance definition of “Residence Family Home.” Moreover, because the residents are disabled, the jurisdiction’s planning commission or board of zoning appeals may construe a Supported Living Home as that which constitutes a “residence Family Home.” However, classification as a “Family” remains most apt among the terms defined in the Centerville Zoning Ordinance. If classified as a “Residence Family Home”, a Supported Living Home would be required to meet the conditional use provisions of § 6(D)(3)(f).

SUGGESTED AMENDMENTS

All proposed changes to the Centerville Zoning Ordinance are included in this Suggested Amendments section. The original text of definitions is followed by proposed changes. The original text of provisions governing the conditional use of property as a “Residence Family Home” is followed by proposed changes. All additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through.

§ 37 Residence Family Home

A home licensed by the State of Ohio or Montgomery County, if required by law, which provides residential services and supervision for six (6) or fewer individuals who need not be related to the resident houseparent(s) or non-resident supervisor(s) and who are foster children, developmentally disabled persons or aged persons (60 years or older). The number six (6) shall not include houseparent(s) or non-resident supervisor(s).

§ 37 Care Facility Residence Family Home

~~A home licensed by the State of Ohio or Montgomery County, if required by law, which provides room, and board, and personal care residential services and supervision for six (6) or more fewer individuals on a transient, semi-transient, or permanent basis. who need not be related to the resident houseparent(s) or non-resident supervisor(s) and who are foster children, developmentally disabled persons or aged persons (60 years or older).~~ **Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of the physical safety of the residents. This category does not include nursing homes, hospitals, or homes for foster children or facilities that administer treatment as their primary function to inpatients, outpatients or on a day care basis.** The number six (6) shall not include houseparent(s) or non-resident supervisor(s).

§ 6(D)(3)(f) Residence Family Home

- 1) The application shall include a statement of the necessity or desirability of the proposed use to the neighborhood or community.
- 2) The application shall include a statement of the compatibility of the proposed use to adjacent property and land use.
- 3) All necessary permits and license for the use and operation of a Residence Group Home shall have been obtained, or evidence shall have been submitted that such permits are obtainable for the subject property.
- 4) The location and size of the use, nature and intensity of the operation involved or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets having access to it, shall be such that it will be in harmony with the appropriate and orderly development of the district in which it is located.
- 5) The location, nature and height of buildings, structures, walls, and fences on the site and the nature and extent of landscaping and screening on the site shall be such that the use will not unreasonably hinder or discourage the appropriate development, use and enjoyment of adjacent land, buildings and structures.
- 6) The location of the use must be such that a spacing radius of not less than one-half (0.5) mile be maintained between or among Residence Family Homes and Residence Group Homes.
- 7) A Residence Family Home for developmentally disabled persons shall be approved by the Montgomery County Board of Mental Retardation and Developmental Disabilities.

~~§ 6(D)(3)(f) Residence Family Home~~

- ~~1) The application shall include a statement of the necessity or desirability of the proposed use to the neighborhood or community.~~
- ~~2) The application shall include a statement of the compatibility of the proposed use to adjacent property and land use.~~
- ~~3) All necessary permits and license for the use and operation of a Residence Group Home shall have been obtained, or evidence shall have been submitted that such permits are obtainable for the subject property.~~
- ~~4) The location and size of the use, nature and intensity of the operation involved or conducted in connection with it, the size of the site in relation to it, and the location of the~~

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~~site with respect to streets having access to it, shall be such that it will be in harmony with the appropriate and orderly development of the district in which it is located.~~

- ~~5) The location, nature and height of buildings, structures, walls, and fences on the site and the nature and extent of landscaping and screening on the site shall be such that the use will not unreasonably hinder or discourage the appropriate development, use and enjoyment of adjacent land, buildings and structures.~~
- ~~6) The location of the use must be such that a spacing radius of not less than one-half (0.5) mile be maintained between or among Residence Family Homes and Residence Group Homes.~~
- ~~7) A Residence Family Home for developmentally disabled persons shall be approved by the Montgomery County Board of Mental Retardation and Developmental Disabilities.~~

Clayton

INTRODUCTION

The issues addressed in this review of the City of Clayton Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review of the City of Clayton Zoning Code relates to the manner in which a Supported Living Home is classified by the jurisdiction's planning commission and/or board of zoning appeals. It is important to ascertain, or at least address, which classification a Supported Living Home may receive, in light of interpretive issues and obstacles that may stem from the Code itself.

The City of Clayton is located in North-Central Montgomery County, within Butler Township. Clayton borders Clay Township to the West, and Trotwood to the South. Portions of the City of Englewood and the City of Union also border the City of Clayton. Currently, MVIO operates no property in the City of Clayton. This review of the City of Clayton Zoning Code includes points of contacts and officeholders, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and suggested amendments to the Code.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

6996 Taywood Rd.
Englewood, OH 45322
Phone: 836-3500
Fax: 836-6773
Home Page: www.clayton.oh.us

Zoning Contact Information

Brian Elkins
Phone: 836-3500, x115
Email: belkins@clayton.oh.us

Planning Commission

Charles Helldoerfer
Ricky Robinson
Michael Downing
Duncan Powell
Vince Corrado

Board of Zoning Appeals

Ronald Toke
Bradley Smith, President
Joel Shapiro
Robert McGuinness
John Clayburn

ANALYSIS

The City of Clayton Zoning Code sets forth three possible classifications for a Supported Living Home – “Family”, “Adult Family Home”, and “Community Social Services Facility.” These issues of interpretation merit discussion for two primary reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the City of Clayton Zoning Code imposes more restrictive provisions on housing for individuals with disabilities. Second, it is important to address, or at least ascertain, potential classifications of Supported Living Homes under the City of Clayton Zoning Code to ensure Supported Living receives an appropriate denotation. This analysis addresses the potential classification of a Supported Living Home as a “Family”, “Adult Family Home”, and “Community Social Services Facility”, and what impact those classifications may have upon the establishment of a Supported Living home.

- **Family**

The City of Clayton Zoning Code defines a “Family” as:

One or more individuals related by blood, marriage, or adoption, or not more than five individuals who are not so related, living together as a single housekeeping unit in a dwelling, and maintaining and using the same and certain other housekeeping facilities in common

City of Clayton Zoning Code § 1124.41.

Classification as a “Family” is the most appropriate and accurate denotation for the living arrangement of a Supported Living home. The tenants of a Supported Living Home, typically four (4) unrelated individuals with disabilities, fall beneath the maximum occupancy limitations of the City of Clayton Zoning Code’s definition of “Family.” Moreover, the tenants of a Supported Living Home reside and function as a

single housekeeping unit. If deemed a “Family”, the residents of a Supported Living Home would constitute a principally permitted use in each of the City of Clayton’s residential districts. Although classification as a “Family” best suits and describes the living arrangement of a Supported Living Home, alternate classifications may be rendered as a result of the tenants’ status as disabled.

▪ **Adult Family Home**

The City of Clayton Zoning Code defines an “Adult Family Home” as:

A residence that provides accommodation to 3-5 unrelated adults and supervision and personal care service to at least three of those adults

City of Clayton Zoning Code § 1124.02.

If not classified as a “Family”, a Supported Living Home may receive classification as an “Adult Family Home.” Although status as a “Family” remains most appropriate. “Adult Family Homes” are not expressly included as either principally permitted or conditional uses in any of the districts zoned for residential use within the City of Clayton.

▪ **Community Social Services Facility**

The City of Clayton Zoning Code defines a “Community Social Services Facility” as:

A community social service facility is a facility which provides resident services to a group of individuals of whom one or more are unrelated. These individuals may be mentally retarded, handicapped, aged or disabled, are undergoing rehabilitation, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision.

City of Clayton Zoning Code § 1124.24.”

Community Social Services Facilities” present another possible classification for Supported Living Homes under the City of Clayton Zoning Code. Although not subject to licensing requirements, a Supported Living Home may still receive classification as a “Community Social Services Facility” if MVIO’s involvement in Supported Living is construed as rendering the home a “use[]...supervised, or under contract...” by Montgomery County government. If classified as a “Community Social Services Facility”, a Supported Living Home would constitute a conditionally permitted use in each of the districts zoned for residential use within the City of Clayton. “Community Social Services facilities” are subject to the conditional use provisions set forth in § 1187 of the City of Clayton Zoning Code.

SUGGESTED AMENDMENTS

All proposed changes to the City of Clayton Zoning Code are included in this Suggested Amendments section. The original text of both definitions and provisions is followed by proposed changes. All additions to statutory language are noted in bold, and language suggested for deletion is marked with a strike-through. The sections of City of Clayton Zoning Code for which changes are proposed include the definition of “Community Social Services Facility” and provisions governing the conditional use of property as a “Community Social Services Facility.”

§ 1124.24 Community Social Services Facilities

A community social service facility is a facility, which provides resident services to a group of individuals of whom one or more are unrelated. These individuals may be mentally retarded, handicapped, aged or disabled, are undergoing rehabilitation, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision.”Community Social Services Facilities" (residential homes) includes, but is not limited to, the following listed categories:

- (a) Foster Homes for Children. Residential home for mentally retarded or mentally ill children or adolescents under the age of 18 requiring protective supervision in a home setting and for children or adolescents who for various reasons cannot reside with natural family.
- (b) Foster Homes for Adults. Residential homes for mentally retarded or mentally ill adults over the age of 18 requiring protective supervision in a home setting. Residential homes for the aged would also be included under this category.
- (c) Social Care Homes. Residential homes for children or adolescents who lack social maturity or have emotional problems but who have not been judged delinquent. Residency may be permanent or transient.
- (d) Intermediate Care Homes. Residential homes for children or adolescents who have been so judged delinquent and have been assigned by a court to a residential home in lieu of placement in a correctional institution.
- (e) Halfway Houses. Residential homes for adolescents or adults who have been institutionalized and released or who have had alcohol or drug problems which make operation in society difficult and who require the protection of a group setting.

§ 1124.24 Care Community Social Services Facility

A ~~care community social service~~ facility is a **residential** facility which provides **room and board, personal care, and supervision for six (6) or more residents on a transient, semi-transient, or permanent basis.** ~~resident services to a group of individuals of whom one or more are unrelated.~~ **Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of physical safety of the residents.** ~~These individuals may be mentally retarded, handicapped, aged or disabled, are undergoing rehabilitation, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision.~~ **"Care Facilities" (residential homes) do not include nursing homes or hospitals, homes for foster children, or facilities that administer treatment as their primary function to inpatients, outpatients or on a day care basis. "Care Facilities" "Community Social Services Facilities" (residential homes) includes, but is not limited to, the following listed categories:**

~~(a) Foster Homes for Children. Residential home for mentally retarded or mentally ill children or adolescents under the age of 18 requiring protective supervision in a home setting and for children or adolescents who for various reasons cannot reside with natural family.~~

~~(b) Foster Homes for Adults. Residential homes for mentally retarded or mentally ill adults over the age of 18 requiring protective supervision in a home setting. Residential homes for the aged would also be included under this category.~~

~~(c) Social Care Homes. Residential homes for children or adolescents who lack social maturity or have emotional problems but who have not been judged delinquent. Residency may be permanent or transient.~~

~~(d) Intermediate Care Homes. Residential homes for children or adolescents who have been so judged delinquent and have been assigned by a court to a residential home in lieu of placement in a correctional institution.~~

~~(e) Halfway Houses. Residential homes for adolescents or adults who have been institutionalized and released or who have had alcohol or drug problems which make operation in society difficult and who require the protection of a group setting.~~

§ 1187.09 COMMUNITY SOCIAL SERVICE FACILITIES

(a) Submission Requirements. The operator or agency applying for a conditional use permit to operate a Community Social Service Facility shall submit the following information to aid the Board of Zoning Appeals in their review of the requested facility:

- (1) Information sufficient to establish the need for the facility in the proposed location, in relationship to the specific clientele served.
- (2) Identification of similar facilities presently existing within the County and its municipalities.
- (3) Location of community facilities and/or services pertinent to the proposed site, i.e. nearest fire station, park, library, shopping complex, major thoroughfare, etc.
- (4) A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not available a verified affidavit so stating shall be presented.
- (5) A copy of the sponsoring agency's operational and occupancy standards.
- (6) A site plan for the proposed home indicating home structure outline and floor area, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include evidence that the proposed use of the site will be compatible with the present character of the neighborhood, in consideration of such factors as congestion, noise, traffic or lights.
- (7) A detailed plan for services and programs.

(b) Facility Requirements.

- (1) Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.
- (2) Suitable space shall be provided for indoor and/or outdoor recreational activities for the clientele served, based upon generally accepted recreational standards or those specified by the licensing authority.

(3) No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be of compatible residential design with the surrounding neighborhood, to the degree possible.

(4) All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.

(c) Findings by the Board of Zoning Appeals. In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria.

The proposed facility:

(1) Is in fact a Community Social Service Facility licensed by the appropriate authority to provide such service within the State of Ohio (and the respective jurisdiction). If such licensing is not available, a verified affidavit so stating has been presented to document this statement.

(2) Is approved by the local agency responsible for providing support services and/or programs to the facility.

(3) Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Board of Zoning Appeals.

(4) Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or officially planned uses of the general vicinity and that such use will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.²¹⁷ Supplemental District Regulations 1187.10

(5) Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment.

(6) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

(7) Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare.

(8) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.

(9) Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

(10) The Board of Zoning Appeals may issue a temporary conditional use permit for a period of one (1) year. At the completion of the one (1) year time period, the operation shall be reviewed by the Board of Zoning Appeals. The Board of Zoning Appeals may extend the temporary conditional use, grant a permanent conditional use or deny the conditional use. The Board of Zoning Appeals in considering the conditional use application shall take into consideration the extent to which the sponsoring agencies have dispersed these facilities within the County and its municipalities.

§ 1187.09 COMMUNITY SOCIAL SERVICE CARE FACILITIES

~~(a) Submission Requirements. The operator or agency applying for a conditional use permit to operate a Community Social Service Facility shall submit the following information to aid the Board of Zoning Appeals in their review of the requested facility:~~

~~(1) Information sufficient to establish the need for the facility in the proposed location, in relationship to the specific clientele served.~~

~~(2) Identification of similar facilities presently existing within the County and its municipalities.~~

~~(3) Location of community facilities and/or services pertinent to the proposed site, i.e., nearest fire station, park, library, shopping complex, major thoroughfare, etc.~~

~~(4) A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not available a verified affidavit so stating shall be presented.~~

~~(5) A copy of the sponsoring agency's operational and occupancy standards.~~

~~(6) A site plan for the proposed home indicating home structure outline and floor area, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include evidence that the proposed use of the site will be compatible with the present~~

~~character of the neighborhood, in consideration of such factors as congestion,
noise, traffic or lights.~~

~~(7) A detailed plan for services and programs.~~

(b) (a) Care Facility Requirements.

~~(1) Every room occupied for sleeping purposes within the home shall contain a
minimum of eighty (80) square feet of habitable room area for one occupant,
and when occupied by more than one shall contain at least sixty (60) square
feet of habitable room area for each occupant.~~

~~(2) (1) Suitable space shall be provided for indoor and/or outdoor recreational
activities for the **number of residents for the care facility.** clientele served, based upon
generally accepted recreational standards or those specified by the licensing authority.~~

~~(3) (2) No exterior alterations of the structure shall be made which depart from the
residential character of the building.—All new structures proposed shall be of
compatible residential design with the surrounding neighborhood, to the
degree possible.~~

~~(4) (3) All exterior lighting shall be **shielded to prevent glare at four (4) feet in height
at any property line.** suitably directed and shaded to prevent any glare upon adjoining
residential properties.~~

~~(c) Findings by the Board of Zoning Appeals. In its review of each proposed facility,
the Board of Zoning Appeals shall make specific findings of fact relative to the following
criteria:~~

~~The proposed facility:~~

~~(1) Is in fact a Community Social Service Facility licensed by the appropriate
authority to provide such service within the State of Ohio (and the respective
jurisdiction). If such licensing is not available, a verified affidavit so stating
has been presented to document this statement.~~

~~(2) Is approved by the local agency responsible for providing support services
and/or programs to the facility.~~

~~(3) Is in fact a needed facility in the location proposed, based upon evidence
acceptable to the Board of Zoning Appeals.~~

~~(4) Will be designed, constructed, operated and maintained to be
harmonious and appropriate in appearance with the existing or officially
planned uses of the general vicinity and that such use will not change the
essential character of the same area. In this regard, it does not contribute to a~~

concentration of such facilities in the respective area. 217 Supplemental District Regulations 1187.10

~~(5) Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment.~~

~~(6) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.~~

~~(7) Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare.~~

~~(8) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.~~

~~(9) Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.~~

~~(10) The Board of Zoning Appeals may issue a temporary conditional use permit for a period of one (1) year. At the completion of the one (1) year time period, the operation shall be reviewed by the Board of Zoning Appeals. The Board of Zoning Appeals may extend the temporary conditional use, grant a permanent conditional use or deny the conditional use. The Board of Zoning Appeals in considering the conditional use application shall take into consideration the extent to which the sponsoring agencies have dispersed these facilities within the County and its municipalities.~~

Clay Township

INTRODUCTION

The issues addressed in this review of the Clay Township Zoning Resolution encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review of the Clay Township Zoning Resolution relates to the manner in which a Supported Living Home is classified by the jurisdiction's Planning Commission and/or Board of Zoning Appeals. It is important to ascertain, or at least address, which classification a Supported Living Home may receive, in light of interpretive issues that stem from the resolution itself.

Clay Township is located in Northwest Montgomery County, with portions of Verona and Brookville, and the entirety of Phillipsburg located within its borders. Clay Township is bordered to the East by the City of Clayton and to the South by Perry Township. Currently, MVIO owns no property in Clay Township. This review of the Clay Township Zoning Resolution includes points of contact and officeholders within the jurisdiction, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and suggested amendments to the resolution.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

8207 Arlington Rd.
Brookville, OH 45409
Phone: (937) 833-4015
Fax: (937) 833-6211
Home Page: www.claytownshipoffices.com

Zoning Contact Information

Bill Watt
Phone: (937) 833-6435
Email: WmWatt40@aol.com

Zoning Commission

Meets: Fourth Monday of each month

Sheila Bushong
Greg Buthker
Tom Walker Jr.
Rob Hill
Gary Horstman
Brad Limbert
Larry Sack

Board of Zoning Appeals

Meets: Second Thursday of each month

Stefan Bridenbaugh
Cliff Deitering
Eric Dolan
Gloria Ramsey
Steve Richardson
Lori Tahmassebi

ANALYSIS

The Clay Township Zoning Resolution is organized in a manner that presents possible issues of interpretation that may hinder the establishment of a Supported Living home. These issues merit discussion for two primary reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the Clay Township Zoning Resolution does not comply with other sources of law. Furthermore, due to the manner in which certain uses are permitted in the Township's residential districts, it is important to ensure Supported Living Homes receive proper classification. Also included in this analysis is a comparison of the Clay Township Zoning Resolution definition of "Elderly and Handicapped Persons" with that of similar state and federal definitions.

- **Family**

The Clay Township Zoning Resolution defines a "Family" as:

A group of persons related by blood marriage or adoption, and/or no more than three unrelated persons who are living together in a single dwelling unit and maintain a common household. Family as defined within the provisions for Community Residential Social Services Facilities as well as those defined under Shared and Congregate Housing are exempt from the definition.

Clay Township Zoning Resolution § 203.06."

Community Oriented Residential Social Service Facilities" (CORSSF) are expressly "exempt" from this definition. The Zoning Code's definition of "Family" may give rise to issues of interpretation which, if decided in a manner unfavorable to Supported Living Homes, could act to bar the residents from consideration as a "Family." Certain canons of statutory construction help to provide guidance in interpreting the resolution's definition of "Family." The canon for applying ordinary meaning is of particular importance with respect to this definition.

Applying Ordinary Meaning:

Because the term “exempt” is not explicitly defined within the Clay Township Zoning Resolution, one must look beyond the text itself to discern its meaning. One maxim of statutory interpretation is to assign a word its ordinary meaning when the law is silent with respect to the same.

A word’s ordinary meaning is that which is conveyed to an ordinary or reasonable reader. It is appropriate to consult sources such as dictionaries to arrive at a word’s ordinary meaning. “Exempt” is defined as “free or released from some liability or requirement to which others are subject.” Merriam Webster Dictionary.

Applying this definition of “exempt”, it can be reasonably concluded that the drafters of the Clay Township Zoning Resolution did not intend for a CORSSF to fall within its numerical restrictions. Under this interpretation, the residents of a CORSSF may exceed three individuals and still fall accurately within the Clay Township definition of “Family.” Conversely, if “exempt” is construed to mean “excluded from”, the residents of a CORSSF may be wholly prohibited from constituting a “Family.”

▪ **Community Oriented Residential Social Service Facilities**

The Clay Township Zoning Resolution defines a “Community Oriented Residential Social Service Facility” as:

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals are either mentally or physically impaired and are provided services to meet their needs. This category includes licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses or Nursing Homes.

Clay Township Zoning Resolution § 203.03.

A CORSSF does not constitute a principally permitted or conditional use in any of the districts zoned for residential use within Clay Township. However, “Foster Homes for Adults” are expressly noted as conditional uses, subject to the provisions governing the establishment of a CORSSF. While “Foster Homes” and CORSSF are separately defined, the core difference between the two uses is that of a home setting and owner occupation of the residence. Supported Living Homes are not owner-occupied residences, but their living arrangement is akin to that of a home setting. The two terms are also defined differently in terms of maximum occupancy. Where the CORSSF houses four (4) or more individuals, the “Foster Home for Adults” is limited to “not more than three.”

As its living arrangement may not meet the definition of “Family”, a Supported Living Home may be classified as a CORSSF under the Clay Township Zoning Resolution. If deemed a CORSSF, the establishment of a Supported Living Home would not be an expressly conditional use. Because “Foster Homes for Adults” and CORSSF are governed by the same provisions, it is possible that a Supported Living Home may be deemed a conditional use as well.

▪ **Elderly and/or Handicapped Persons**

The Clay Township Zoning Resolution defines “Elderly and/or Handicapped Persons”, in relevant part, as:

*Handicapped persons under 62 if determined to have physical impairments which
Are expected to be of long, continued, and indefinite duration;
Substantially impede the ability to live independently; and
Are of such a nature that the ability to live independently could be improved by
more suitable housing conditions.*

Clay Township Zoning Resolution § 203.05.

The Township definition differs from the definition of similar terms found in both federal and state law. Definitions from the three sources of law are below.

Clay Township Zoning Resolution § 203.05 “Elderly and/or Handicapped Persons”

Persons who are 62 years of age and over;

Families where either husband or wife is 62 years of age or older; and

Handicapped persons under 62 if determined to have physical impairments which

Are expected to be of long, continued, and indefinite duration;

Substantially impede the ability to live independently; and

Are of such a nature that the ability to live independently could be improved by more suitable housing conditions.

O.R.C. § 4112.01(13) “Disability”

A physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment

FHAA 42 U. S. C. § 3602(h) “Handicap”

With respect to a person -

- (1) A physical or mental impairment which substantially limits one or more of such person’s major life activities,
- (2) A record of having such impairment, or
- (3) Being regarded as having such impairment

SUGGESTED AMENDMENTS

All proposed changes to the Clay Township Zoning Resolution are included in this Suggested Amendments section. The original text of definitions is followed by proposed changes. Original text of provisions governing the conditional use of property as a CORSSF is followed by proposed changes. All additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through.

Community Oriented Residential Social Service Facilities

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals are either mentally or physically impaired and are provided services to meet their needs. This category includes licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses or Nursing Homes.

~~Care Community Oriented Residential Social Service Facilities~~

*A dwelling unit in which personal care, supervision and accommodations are provided to a group of **six (6)** individuals ~~of whom four~~ or more **on a transient, semi-transient, or permanent basis. Personal care is the necessary assistance to the residents with the activities of daily living including self-administration of medications; the preparation of special diets as may prescribed by a physician or licensed dietician; and/or the assurance of physical safety of the residents.** ~~are unrelated to the provider. These individuals are either mentally or physically impaired and are provided services to meet their needs. This category includes licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses or Nursing Homes.~~*

Article 49 – Community Oriented Social Service Facilities

§ 4801 Submission Requirements

- A. The operator or agency applying for a conditional use permit to operate a Community Oriented Social Service Facility shall submit the following information to aid the Board of Zoning Appeals in their review of the requested facility:
- B. Information sufficient to establish the need for the facility in the proposed location, in relationship to the specific clientele served.

- C. Identification of similar facilities presently existing within the County and its municipalities.
- D. Location of community facilities and/or services pertinent to the proposed site; i.e., nearest fire station, park, library, shopping complex, major thoroughfare, etc.
- E. A license or evidence of ability to obtain a license, if such is required, from pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.
- F. A copy of the sponsoring agency's operational and occupancy standards.
- G. A site plan for the proposed home indicating home structure outline and floor area, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include evidence that the proposed use of the site will be compatible with the present character of the neighborhood, in consideration of such factors as congestion, noise, traffic or lights.
- H. A detailed plan for services and programs.

Article 49 – ~~Community Oriented Social Service Care~~ Facilities

§ 4801 Submission Requirements

- ~~A. The operator or agency applying for a conditional use permit to operate a Community Oriented Social Service Facility shall submit the following information to aid the Board of Zoning Appeals in their review of the requested facility:~~
- ~~B. Information sufficient to establish the need for the facility in the proposed location, in relationship to the specific clientele served.~~
- ~~C. Identification of similar facilities presently existing within the County and its municipalities.~~
- ~~D. Location of community facilities and/or services pertinent to the proposed site; i.e., nearest fire station, park, library, shopping complex, major thoroughfare, etc.~~
- ~~E. A license or evidence of ability to obtain a license, if such is required, from pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been~~

~~issued or is obtainable for the proposed conditional use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.~~

~~F. A copy of the sponsoring agency's operational and occupancy standards.~~

~~G. A site plan for the proposed home indicating home structure outline and floor area, off street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include evidence that the proposed use of the site will be compatible with the present character of the neighborhood, in consideration of such factors as congestion, noise, traffic or lights.~~

~~H. A detailed plan for services and programs.~~

§ 4802 Facility Requirements

A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.

B. Suitable space shall be provided for indoor and/or outdoor recreational activities for the clientele served, based upon generally accepted recreational standards or those specified by the licensing authority.

C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be of compatible residential design with the surrounding neighborhood to the degree possible.

D. All exterior lighting shall be suitable directed and shaded to prevent any glare upon adjoining residential properties.

E. Off-street parking requirements: one space per every three (3) persons residing in a Community oriented Social Service Facility except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may substitute for a portion of the required off-street spaces if approved by the Board of Zoning Appeals.

F. No facility shall be permitted within fifteen hundred (1500) feet of another Community Oriented Residential Social Service Facility. The Board of Zoning Appeals may consider a variance from this standard of not more than ten (10) percent.

G. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.

§ 4802 Care Facility Requirements

~~A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.~~

~~B. A. Suitable space shall be provided for indoor and/or outdoor recreational activities for the **number of residents for the care facility** clientele served, based upon generally accepted recreational standards or those specified by the licensing authority.~~

~~C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be of compatible residential design with the surrounding neighborhood to the degree possible.~~

~~D. B. All exterior lighting shall be **shielded to prevent glare at four (4) feet in height at any property line.** suitable directed and shaded to prevent any glare upon adjoining residential properties.~~

~~E. C. Off-street parking requirements: **pursuant to Article 43, § 4302 for one and two family dwellings.** one space per every three (3) persons residing in a Community oriented Social Service Facility except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one to one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may substitute for a portion of the required off-street spaces if approved by the Board of Zoning Appeals.~~

~~F. No facility shall be permitted within fifteen hundred (1500) feet of another Community Oriented Residential Social Service Facility. The Board of Zoning Appeals may consider a variance from this standard of not more than ten (10) percent.~~

~~G. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.~~

§ 4803 Findings by the Board of Zoning Appeals

In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. The proposed facility:

- A. Is in fact a Community Oriented Residential Social Service Facility licensed by the appropriate authority to provide such service within the State of Ohio (and the respective jurisdiction). If such licensing is not available, a verified affidavit so stating has been presented to document this statement.
- B. Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Board of Zoning Appeals.
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or officially planned uses of the general vicinity and that such use will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.
- D. Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment.
- E. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- F. Will not involve uses, activities, and conditions of operation that will be detrimental to any persons, property, or the general welfare.
- G. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.
- H. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.
- I. The Board of Zoning Appeals may issue a temporary conditional use permit for a period of one (1) year. At the completion of one (1) year time period, the residential home operation shall be reviewed by the Board of Zoning Appeals. The Board of Zoning Appeals may extend the temporary conditional or deny the conditional use. The Board of Zoning Appeals in considering the conditional use application shall take into consideration the extent to which the sponsoring agencies have dispersed these facilities within the County and its municipalities.

§ 4803 Findings by the Board of Zoning Appeals

In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. The proposed facility:

A. Is in fact a Community Oriented Residential Social Service Facility licensed by the appropriate authority to provide such service within the State of Ohio (and the respective jurisdiction). If such licensing is not available, a verified affidavit so stating has been presented to document this statement.

B. Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Board of Zoning Appeals.

C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or officially planned uses of the general vicinity and that such use will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.

D. Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment.

E. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

F. Will not involve uses, activities, and conditions of operation that will be detrimental to any persons, property, or the general welfare.

G. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.

H. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

I. The Board of Zoning Appeals may issue a temporary conditional use permit for a period of one (1) year. At the completion of one (1) year time period, the residential home operation shall be reviewed by the Board of Zoning Appeals. The Board of Zoning Appeals may extend the temporary conditional or deny the conditional use. The Board of Zoning Appeals in considering the conditional use application shall take into consideration the extent to which the sponsoring agencies have dispersed these facilities within the County and its municipalities.

Dayton

INTRODUCTION

The issues addressed in this review of the City of Dayton Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The City of Dayton is, seemingly, facially in compliance with the federal Fair Housing regulations. The primary issue raised by this review of the City of Dayton is the potential classification of a Supported Living Home by the jurisdiction's planning commission and/or board of zoning appeals. The Zoning Code allows for housing similar to Supported Living Homes, but not quite Supported Living Homes. In this Zoning Code, Supported Living Homes could be classified as "Adult Living Facilities" or the individuals could be categorized as a "Family." The category the Zoning Board chooses will determine whether Supported Living Homes will be permitted or conditional.

The City of Dayton is located North of Cincinnati, South of Toledo, Southwest of Columbus, and East of Richmond, Indiana. Currently, MVIO operates two (2) properties within the City of Dayton. This review of the City of Dayton includes points of contact and officeholders within the City, a summary of relevant terminology and provisions, an analysis of possible issues, and suggested amendment section.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

101 W. Third St.
Dayton, OH 45401
Phone: (937) 333-3670
Fax: (937) 333-4284
Home Page: www.cityofdayton.org

Zoning Contact Information

Michael Cromartie

Phone: (937) 333-3960
Fax: (937) 333-4284

ANALYSIS

This analysis of the City of Dayton indicates there are two classifications that could encompass Supported Living Homes. These classifications include Adult Care Facilities and the designation of the individuals living in the Supported Living Home as “Family.” Both of these classifications could encompass Supported Living Homes. The Zoning Resolution does not define or reference Supported Living Homes directly or indirectly. The main issue is the classification under which Supported Living Homes should be defined or whether the Zoning Resolution should be modified to include Supported Living Home.

- **Adult Care Facility**

The City of Dayton Zoning Code defines “Adult Care Facility” as:

“A facility providing personal care services to adults (typically elderly). Such services may include assistance in daily living activities and self-administration of medicine, and preparation of special diets. There are two categories of adult care facilities licensed by the Ohio Department of Health:

(a). An adult family home (providing accommodations for 3 to 5 unrelated adults);

(b). An adult group home (providing accommodations for 6 to 16 unrelated adults).

- **Comment**

City of Dayton Zoning Code section 150.200.2(B)(5). Supported Living Homes could fit into this category because some assistance is provided to the residents. The issue would be whether the assistant care provided to residents of Supported Living Homes reach the minimum level required by this definition. Minimal care is provided to individuals housed in Supported Living Homes, so the amount of care would need to be defined. Also, Supported

Living Homes house four individuals and therefore could fit into the “Adult Family Home” category, as defined by the Ohio Department of Health. Under the City of Dayton’s Zoning Code, “Adult Care Facilities” are permitted uses and therefore no special permit is needed to establish a facility that falls under this category.

- **Family**

The City of Dayton Zoning Code defines a “Family” as:

“Family means an individual or two or more persons, each related to the other by blood, marriage, or adoption, or foster children as defined in sub-section 150.200.2 (B) (85) and not more than two additional persons not related as set forth above, all together as a single housekeeping unit and using common kitchen facilities.”

- **Comment**

City of Dayton Zoning Code section 150.200.2(71). Individuals who reside in Supported Living Homes do not meet the elements of a “Family” as defined by the Zoning Code. In a Supported Living Home there are four residents who live and make up a single house-keeping unit, whereas the statute allows for no more than two (2) unrelated persons to make up a “Family”; therefore, it is highly likely that these residents will not be able to occupy housing for families without an exception.

SUGGESTED AMENDMENTS

All proposed changes to the City of Dayton Zoning Code are included in this Suggested Amendments section. The original text of the definition of “Family” is accompanied on by proposed changes. All editions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through.

§ 150.200.2(71) Family

Family means an individual or two or more persons, each related to the other by blood, marriage, or adoption, or foster children as defined in sub-section 150.200.2 (B) (85) and not more than two additional persons not related as set forth above, all living together as a single housekeeping unit and using common kitchen facilities.

§ 150.200.2(71) Family

Family means **one or more** ~~an~~ individuals ~~or two or more persons~~, each related to the other by blood, marriage, or adoption, or foster children as defined in sub-section 150.200.2 (B) (85) and ~~not more than two additional persons not related as set forth above~~, all living together as a single housekeeping unit and using common kitchen facilities.

Englewood

INTRODUCTION

The issues addressed in this review of the City of Englewood Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality.

The City of Englewood is located in Northwest Montgomery County, within Butler Township. It borders the City of Clayton to the North, West and South, and Butler Township to the East. This review of the Englewood Zoning Code includes points of contact and officeholders within the City, a summary of relevant terminology and provisions, and an analysis of possible interpretive issues.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

333 W. National Rd.
Englewood, Oh 45322
Phone: 836-5106
Fax: 836-7426
Home Page: www.inglewood.oh.us

Zoning Contact Information

Director William (Bill) Singer
Phone: (937) 771-2880
Email: singer@inglewood.oh.us

Planning Commission

Meets: First Thursday of each month at 5:00 p. m. at the Englewood Government Center

Robert McClintock (President)
Judy Gerhard (Council Representative)
Thomas Sorna (Vice President)
Karen Strider-Iiames
Karen Soddors, Clerk
Teresa Guerra

ANALYSIS

The primary issue raised by this review of the City of Englewood Zoning Code pertains to the classification of a Supported Living home. The question presented is whether the residents of a Supported Living Home constitute a “Family” or an “Adult Group Home” and, if classified as an “Adult Group Home”, what bearing such classification may have on its establishment. This analysis addresses the issues of interpretation surrounding these potential classifications.

- **Family**

The City of Englewood Zoning Code defines a “Family” as:

One person, two or more related persons, or up to four unrelated persons, occupying a dwelling unit.

City of Englewood Zoning Code § 1270.01(26).

A Supported Living Home is a dwelling unit typically occupied by four unrelated individuals. Therefore, as its residents meet the standards and occupancy limitations of the definition, a Supported Living Home is accurately defined as a dwelling in which a “Family” resides. However, it is possible that a Supported Living Home may receive classification as an “Adult Group Home” under the Code.

- **Adult Group Home**

The City of Englewood Zoning Code defines an “Adult Group Home” as:

Any residential facility designed to allow not more than eight persons, all such persons being eighteen years of age or older, needing specialized care, counseling, ongoing medical treatment or supervision, to live in the same building or complex of buildings and engage in some congregate activity in a non-institutional environment.

City of Englewood Zoning Code § 1270.01(36).

While denoting the residents of a Supported Living Home as a “Family” is most accurate, classification as an “Adult Group Home” remains possible. Because the definition applies to “any residential facility”, a Supported Living Home could be construed as a use constituting an “Adult Group Home.” However, the City of Englewood definition of an “Adult Group Home” is markedly different from that used in the Ohio Revised Code. Below is a comparison of the definitions codified in the two sources of law.

City of Englewood Zoning Code § 1270.01(36)

Any residential facility designed to allow not more than eight persons, all such persons being eighteen years of age or older, needing specialized care, counseling, ongoing medical treatment or supervision, to live in the same building or complex of buildings and engage in some congregate activity in a non-institutional environment.

O.R.C. § 3722.01(A)(8)

A residence or facility that provides accommodations to six to sixteen unrelated adults and provides supervision and personal care services to at least three of the unrelated adults.

A Supported Living Home does not meet the Ohio Revised Code occupancy standard of “six to sixteen unrelated adults” and is therefore readily identifiable as a use not constituting an “Adult Group Home” under State law. However, because the Englewood definition sets a maximum occupancy of eight unrelated individuals, and establishes no minimum occupancy, a Supported Living Home may fall within the City of Englewood Zoning Code definition of “Adult Group Home.”

“Adult Group Homes” are not permitted uses within any residential district. If deemed an “Adult Group Home”, a Supported Living Home would be rendered a conditional use in Englewood’s R-4 and R-5 residential districts.

SUGGESTED AMENDMENTS

While classification as a “Family” is most appropriate for the residents of a Supported Living Home, the possibility of classification as an “Adult Group Home” remains possible. Included in this Suggested Amendments section is original text and proposed changes to both the definition and provisions governing the establishment of an “Adult Group Home.” Additions to statutory language are in bold, and statutory language suggested for deletion is noted with a strike-through. The original text of the provisions governing the establishment of an “Adult Group Home” is followed by proposed changes.

§ 1270.01(36) Adult Group Home

Any residential facility designed to allow not more than eight persons, all such persons being eighteen years of age or older, needing specialized care, counseling, ongoing medical treatment or supervision, to live in the same building or complex of buildings and engage in some congregate activity in a non-institutional environment.

§ 1270.01(36) Care Facility ~~Adult Group Home~~

Any residential facility designed to ~~allow~~ **provide room, and board and personal care and supervision for six (6) or more residents on a transient, semi-transient, or permanent basis. Personal care is the necessary assistance with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of physical safety of the residents.** ~~not more than eight persons, all such persons being eighteen years of age or older, needing specialized care, counseling, ongoing medical treatment or supervision, to live in the same~~

~~building or complex of buildings and engage in some congregate activity in a non-institutional environment.~~

(j) Juvenile and Adult Group Homes.

(1) Group homes may be conditionally permitted in specified zones. An application for either a juvenile or an adult group home will be accepted upon submission of the following materials to the Administrative Board for Planning and Zoning Appeals:

- A. A plot plan, drawn to a scale not smaller than one inch equals fifty feet, showing all existing and proposed structures;
- B. A parking and access plan;
- C. Floor plans, to scale, of all existing and proposed structures;
- D. Elevations of proposed structures, and elevations of existing structures, if any interior alterations are planned;
- E. A written statement establishing the type of facility, juvenile or adult, and the type of care, counseling or medical treatment needed for residents of the facility;
- F. An appropriate operator's license from the applicable governmental oversight unit, or a description of what licensing is required. Prior to issuance of a certificate of occupancy, the operator or agency shall provide evidence that a valid license has been, or will be, issued.
- G. A detailed plan for services and programs, approved in writing by all appropriate social service planning or review bodies, and a list of such bodies;
- H. A vicinity map showing the location of similar type homes existing in, and within a mile of, the City;
- I. A license or statement of need for a license from the applicable governmental unit, which may include the County, the State, the Federal government or other political subdivisions. Prior to issuance of a certificate of occupancy, the operator or agency shall provide evidence that a valid license has been, or will be, issued.
- J. Documentation indicating the supervisory responsibility of the sponsoring agency and the residential home operator(s).

(2) The Administrative Board for Planning and Zoning Appeals may grant a conditional use permit for a group home when the following criteria are met

- A. Structures and property are developed in accordance with applicable zoning standards.
- B. No exterior alterations of an existing structure will be made which depart from the residential character of the building, and no new structure will be constructed which is incompatible with the residential character of the surrounding neighborhood.
- C. On-site parking will meet the minimum standard of one space for every three persons, including staff, residing or working in the facility during the largest work shift, or one space for every vehicle operated out of the facility, whichever is greater.
- D. No on-site parking is located in a required front or side yard.
- E. All exterior lighting will be suitably directed and shaded to prevent glare upon adjoining residential properties, and all outdoor recreation and parking areas shall be suitably screened from adjoining residential uses.
- F. The Board is able to reasonably conclude from the evidence presented that a group home will be compatible with the present physical character of the neighborhood and will not adversely disrupt the neighborhood by reason of noise, lights, congestion or traffic generation.
- G. No on-site parking is located in a required front or side yard.
- H. All exterior lighting will be suitably directed and shaded to prevent glare upon adjoining residential properties, and all outdoor recreation and parking areas shall be suitably screened from adjoining residential uses.
- I. All structures used for group home purposes meet or will meet all applicable local, State and Federal building codes and fire safety standards.
- J. The agency operating a group home will meet the staffing requirements of the County Board of Mental Retardation and Developmental Disabilities and will have at least one qualified house parent or supervisor on duty whenever the home is occupied by the developmentally disabled.
- K. The Board is able to reasonably conclude from the evidence presented that a group home will be compatible with the present physical character of the neighborhood and will not adversely disrupt the neighborhood by reason of noise, lights, congestion or traffic generation.

(3) The Administrative Board for Planning and Zoning Appeals may issue a temporary conditional use permit for a group home for a period of one year. At the completion of one year

of operation, the group home operation shall be reviewed by the Board. The Board may, based upon evidence of operational problems or successes, extend the temporary conditional use, grant a permanent conditional use or deny the continued conditional use.

(j) **Care Facilities** ~~Juvenile and Adult Group Homes.~~

~~(1) Group homes may be conditionally permitted in specified zones. An application for either a juvenile or an adult group home will be accepted upon submission of the following materials to the Administrative Board for Planning and Zoning Appeals:~~

~~A. A plot plan, drawn to a scale not smaller than one inch equals fifty feet, showing all existing and proposed structures;~~

~~B. A parking and access plan;~~

~~C. Floor plans, to scale, of all existing and proposed structures;~~

~~D. Elevations of proposed structures, and elevations of existing structures, if any interior alterations are planned;~~

~~E. A written statement establishing the type of facility, juvenile or adult, and the type of care, counseling or medical treatment needed for residents of the facility;~~

~~F. An appropriate operator's license from the applicable governmental oversight unit, or a description of what licensing is required. Prior to issuance of a certificate of occupancy, the operator or agency shall provide evidence that a valid license has been, or will be, issued.~~

~~G. A detailed plan for services and programs, approved in writing by all appropriate social service planning or review bodies, and a list of such bodies;~~

~~H. A vicinity map showing the location of similar type homes existing in, and within a mile of, the City;~~

~~I. A license or statement of need for a license from the applicable governmental unit, which may include the County, the State, the Federal government or other political subdivisions. Prior to issuance of a certificate of occupancy, the operator or agency shall provide evidence that a valid license has been, or will be, issued.~~

~~J. Documentation indicating the supervisory responsibility of the sponsoring agency and the residential home operator(s).~~

~~(2) The Administrative Board for Planning and Zoning Appeals may grant a conditional use permit for a group home when the following criteria are met~~

~~A. Structures and property are developed in accordance with applicable zoning standards.~~

~~B. No exterior alterations of an existing structure will be made which depart from the residential character of the building, and no new structure will be constructed which is incompatible with the residential character of the surrounding neighborhood.~~

~~C. (1) On-site parking will meet the minimum standard **pursuant to Section 1266.05(c)(1) of the Zoning Code.** of one space for every three persons, including staff, residing or working in the facility during the largest work shift, or one space for every vehicle operated out of the facility, whichever is greater.~~

~~D. No on-site parking is located in a required front or side yard.~~

~~E. (2) All exterior lighting will be **shielded** suitably directed and shaded to prevent glare **at four (4) feet in height at any property line.** upon adjoining residential properties, and all outdoor recreation and parking areas shall be suitably screened from adjoining residential uses.~~

~~F. The Board is able to reasonably conclude from the evidence presented that a group home will be compatible with the present physical character of the neighborhood and will not adversely disrupt the neighborhood by reason of noise, lights, congestion or traffic generation.~~

~~G. No on-site parking is located in a required front or side yard.~~

~~H. All exterior lighting will be suitably directed and shaded to prevent glare upon adjoining residential properties, and all outdoor recreation and parking areas shall be suitably screened from adjoining residential uses.~~

~~I. All structures used for group home purposes meet or will meet all applicable local, State and Federal building codes and fire safety standards.~~

~~J. The agency operating a group home will meet the staffing requirements of the County Board of Mental Retardation and Developmental Disabilities and will have at least one qualified house parent or supervisor on duty whenever the home is occupied by the developmentally disabled.~~

~~K. The Board is able to reasonably conclude from the evidence presented that a group home will be compatible with the present physical character of the neighborhood and will not adversely disrupt the neighborhood by reason of noise, lights, congestion or traffic generation.~~

~~(3) The Administrative Board for Planning and Zoning Appeals may issue a temporary conditional use permit for a group home for a period of one year. At the completion of one year of operation, the group home operation shall be reviewed by the Board. The Board may, based~~

**Fair Housing Act Compliance Concerns Arising from Zoning Laws of Jurisdictions within Montgomery County, OH
and the Impact Upon People with Disabilities**

~~upon evidence of operational problems or successes, extend the temporary conditional use, grant a permanent conditional use or deny the continued conditional use.~~

Farmersville

INTRODUCTION

The issues addressed in this review of the Village of Farmersville Zoning Ordinance encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality.

The Village of Farmersville is located in Southwest Montgomery County, within Jackson Township. It is bordered in all directions by Jackson Township. This review of the Farmersville Zoning Ordinance includes points of contact and officeholders within the village, a summary of relevant terminology, and an analysis of possible interpretive issues.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

117 East Walnut St.
Farmersville, OH 45325
Phone: (937) 696-2020
Fax: (937) 696-2996
<http://www.vvoline.com>

Zoning Contact Information

Tom Sears
Phone: (937) 696-2020
Fax: (937) 696-2996

ANALYSIS

The primary issue raised by this review of the Village of Farmersville Zoning Ordinance is one of vagueness and ambiguity. The Ordinance does not define a “Family” in such a way that bars the residents of a Supported Living Home from consideration. No express definition or provisions are in place to denote or otherwise regulate the conditional use of property as a residence for individuals with disabilities. The only references made to housing for individuals with disabilities are found in Article VIII § 8.2 and Article XIV § 14.4 of the Code. Rather than an issue of restrictive definitions and burdensome provisions, the present issue is the manner in which the Board of Zoning Appeals will use its authority, if at all, to potentially prohibit the establishment of a Supported Living home.

- **Family**

The Village of Farmersville Zoning Ordinance defines a “Family” as:

One or more persons occupying premises and living as a single housekeeping unit

Village of Farmersville Zoning Ordinance § 22.2(L).

The residents of a Supported Living Home fall squarely within this definition.

- **Uses Determined by the Board**

Within the residential district regulations, conditional uses are expressly stated and vary from district to district. However, the lists of enumerated conditional uses are not exhaustive. Each residential district’s conditional uses include a provision affording the Board of Zoning Appeals the authority to deem as conditional “any other use as determined by the Board to be of the same general character” as those enumerated conditional uses.

The R-3 Residential District regulations include “convalescent or nursing homes” as a conditional use. Village of Farmersville Zoning Ordinance, Article VIII, § 8.4. However, “convalescent or nursing homes” are not defined within the Ordinance. If the Board of Zoning Appeals were to conclude that a Supported Living Home represents a use that is “of the same general character” as that of a “convalescent or nursing home”, the Supported Living Home’s establishment would be subject to the provisions governing conditional use. The Village of Farmersville Zoning Ordinance does not dedicate specific provisions to regulate different conditional uses of property. The procedures for all conditional uses are outlined in Article XIX of the Ordinance.

German Township

INTRODUCTION

The issues addressed in this review of the German Township's Zoning Resolution encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by review of the German Township Zoning Resolution, is the potential classification of a Supported Living Home by the jurisdiction's planning commission and/or board of zoning appeals.

German Township is located in the Southwestern corner of Montgomery County. It is bordered by Jackson Township on the North, Miami Township to the East, Madison Township and Butler county to the South, and Gratis Township and Preble county to the West. Two municipalities are located in German Township: the Village of Germantown and part of the City of Carlisle. Currently, MVIO does not operate property within German Township. This review of the City of Carlisle Zoning Plan includes points of contact and office holders, an analysis of possible issues, and proposed amendments.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

12102 West SR 725
Germantown, OH 45327
Phone: (937) 855-2007
Fax: (937) 855-7882
Home Page: <http://www.mcoho.org/services/building/german.html>
E-Mail: gtwpzoning@woh.rr.com

Zoning Contact Information

Laurie Rohrbach
Phone: (937) 855-2007
Fax: (937) 855-7882

ANALYSIS

A review of the German Township Zoning Resolution defines two ways that Supported Living Homes can be classified for zoning purposes. These classifications include Community Oriented Residential Social Services Facilities (CORSSF) and “Family.” Classifying Supported Living Homes as a CORSSF would require a conditional use permit. Designating the residents of a Supported Living Home as a “Family” would allow the individuals to occupy a single family home as a permitted use. The Zoning Resolution does not define or reference Supported Living Homes directly or indirectly. The main issue is the classification under which Supported Living Homes should be defined or whether the Zoning Resolution should be modified to include Supported Living Homes.

- **Community Oriented Residential Social Service Facilities**

Under the German Township Zoning Resolution a Community Oriented Residential Social Service Facility is defined as:

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes, and Convalescent Homes.

German Township Zoning Resolution § 203.04.

A Supported Living Home, in many aspects, resembles a Community Oriented Residential Social Service Facility (CORSSF) but there are some differences between the two. One of the major differences between the Supported Living Home and the CORSSF is that the CORSSF requires some form of supervision where the Supported Living Home

does not. Both Supported Living Homes and CORSSFs allow for at least four residents to share one home. However, CORSSFs differ slightly because they allow for more than four residents where a Supported Living Home allows no more than four residents to live in one house. This difference leads to the conclusion that a Supported Living Home is designed for more of a family-like setting rather than that of a facility.

CORSSFs require conditional use permits and have several requirements that must be met in order to obtain a permit. For example when modifying a home, under the requirements for a CORSSF, the exterior modification cannot “depart from the residential character of the building.” German Township Zoning Resolution § 4902 (C). Supported Living Homes, if categorized here, could meet opposition because the house would need to be modified to accommodate the residents. CORSSF modification requirements would make it difficult for Supported Living Homes to reasonably accommodate its residents. If the residents cannot be reasonably accommodated, then the Zoning Resolution could be interpreted as violating the Fair Housing Act’s reasonable accommodation requirements.

- **Family**

The German Township Zoning Resolution defines “Family as:

Two (2) or more persons living in the same household who are related to each other by blood, marriage, or adoption, but not including a group occupying a boarding house, lodging house or motel, fraternity or sorority house.

- **Comment**

German Township Zoning Resolution § 206.01. German Township’s definition of “Family” is written more narrowly than that of the Best Practices Model incorporated in this report. The Jefferson Township limits a “Family” of unrelated

individuals to two (2) persons, where the Best Practices Model definition limits a “Family” of unrelated individuals to four (4) persons. By limiting a family to two (2) unrelated persons, the residents in Supported Living Homes will not be able to occupy a single family dwelling without a conditional use permit.

SUGGESTED AMENDMENTS

All proposed changes to the German Township Zoning Resolution are included in this Suggested Amendments section. The original text of definitions is followed immediately below by proposed changes. All additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through.

203.06 COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes, and Convalescent Homes.

203.06 ~~Care~~ COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES

A **residential facility** ~~dwelling unit~~ in which personal care, supervision, **and room and board accommodations** are provided to a group of **six (6) or more** individuals **on a transient, semi-transient or permanent basis. Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications; the preparation of special diets as may be prescribed by a physician or licensed dietician; and/or the assurances of the physical safety of the residents.** ~~of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision.~~ This definition shall not include Halfway Houses, Nursing Homes, Rest Homes, and Convalescent Homes.

§ 206.001 Family

Two (2) or more persons living in the same household who are related to each other by blood, marriage, or adoption, but not including a group occupying a boarding house, lodging house or motel, fraternity or sorority house.

§ 206.001 Family

~~One Two (2) or more persons living in the same household who are related to each other by blood, marriage, or adoption, but not including a group occupying a boarding house, lodging house or motel, fraternity or sorority house.~~ **living together as a single housekeeping unit.**

ARTICLE 49
COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES

Section 4701 Submission Requirements

The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility or Halfway House shall submit the following information to aid the Board of Zoning in its review of the requested facility

- A. Information sufficient to establish the need for the facility in the proposed location, in relationship to the specific clientele served
- B. Identification of similar facilities presently existing within the County and its municipalities
- C. Location of community facilities and/or services pertinent to the proposed site, i.e., nearest fire station, park, library, shopping complex, major thoroughfare, etc.
- D. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.
- E. A copy of the sponsoring agency's operational and occupancy standards.
- F. A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include evidence that the proposed use of the site will

be compatible with the present character of the neighborhood, in consideration of such factors as congestion, noise, traffic or lights.

G. A detailed plan for services and programs

ARTICLE 49

Care ~~COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES~~

Section 4701 Submission Requirements

The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility or Halfway House shall submit the following information to aid the Board of Zoning in its review of the requested facility

- A. Information sufficient to establish the need for the facility in the proposed location, in relationship to the specific clientele served
- ~~B. Identification of similar facilities presently existing within the County and its municipalities~~
- ~~C. Location of community facilities and/or services pertinent to the proposed site, i.e., nearest fire station, park, library, shopping complex, major thoroughfare, etc.~~
- ~~D. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.~~
- ~~E. A copy of the sponsoring agency's operational and occupancy standards.~~
- ~~F. A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include evidence that the proposed use of the site will be compatible with the present character of the neighborhood, in consideration of such factors as congestion, noise, traffic or lights.~~
- G. A detailed plan for services and programs

Section 4902 Facility Requirements

- A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by

more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.

- B. Suitable space shall be provided for indoor and/or outdoor recreational activities for the clientele served, based upon generally accepted recreational standards or those specified by the licensing authority
- C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be of compatible residential design with the surrounding neighborhood, to the degree possible.
- D. All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.
- E. Off-street parking requirements: one space per ever three (3) persons residing in a Community Oriented Residential Social Service Facility except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may be substituted for a proportion of the required off-street spaces if approved by the Board of Zoning Appeals.
- F. No facility shall be permitted within three thousand (3000) feet of another Community Oriented Residential Social Service Facility. The Board of Zoning Appeals may consider a variance from this standard of not more than ten (10) percent.

Section 4902 Facility Requirements

- ~~A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.~~
- ~~B. Suitable space shall be provided for indoor and/or outdoor recreational activities for the clientele served, based upon generally accepted recreational standards or those specified by the licensing authority~~
- ~~C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be of compatible residential design with the surrounding neighborhood, to the degree possible.~~
- ~~D. All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.~~
- ~~E. Off street parking requirements: one space per ever three (3) persons residing in a Community Oriented Residential Social Service Facility except for facilities prohibiting~~

~~ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may be substituted for a proportion of the required off-street spaces if approved by the Board of Zoning Appeals.~~

~~F. No facility shall be permitted within three thousand (3000) feet of another Community Oriented Residential Social Service Facility. The Board of Zoning Appeals may consider a variance from this standard of not more than ten (10) percent.~~

Section 4903 Findings by the Board of Zoning Appeals

In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. The proposed facility:

- A. Is in fact a Community Oriented Residential Social Service Facility licensed by the appropriate authority to provide such service within the State of Ohio (and the respective jurisdiction). If such licensing is not available, a verified affidavit so stating has been presented to document this statement
- B. Is approved by the local agency responsible for providing support services and/or programs to the facility
- C. Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Board of Zoning Appeals.
- D. Will be designed, constructed, and maintained so as to be harmonious and appropriate in appearance with the existing or officially planned uses of the general vicinity and that such use will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.
- E. Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment.
- F. Will be served adequate by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- G. Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare.
- H. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.

- I. Will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance.
- J. The Board of Zoning Appeals may issue a temporary conditional use permit for a period of one (1) year. At the completion of the one (1) year time period, the residential home operation shall be reviewed by the Board of Zoning Appeals. The Board of Zoning Appeals may extend the temporary conditional use, grant a permanent conditional use or deny the conditional use application. The Board of Zoning Appeals in considering the conditional use application shall take into consideration the extent to which the sponsoring agencies have dispersed these facilities within the County and its municipalities.

~~Section 4903 Findings by the Board of Zoning Appeals~~

~~In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. The proposed facility:~~

- ~~A. Is in fact a Community Oriented Residential Social Service Facility licensed by the appropriate authority to provide such service within the State of Ohio (and the respective jurisdiction). If such licensing is not available, a verified affidavit so stating has been presented to document this statement~~
- ~~B. Is approved by the local agency responsible for providing support services and/or programs to the facility~~
- ~~C. Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Board of Zoning Appeals.~~
- ~~D. Will be designed, constructed, and maintained so as to be harmonious and appropriate in appearance with the existing or officially planned uses of the general vicinity and that such use will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.~~
- ~~E. Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment.~~
- ~~F. Will be served adequate by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.~~
- ~~G. Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare.~~
- ~~H. Will have vehicular approaches to the property which shall be so designed as not to~~

~~create an interference with traffic on surrounding public thoroughfares.~~

~~I. Will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance.~~

~~J. The Board of Zoning Appeals may issue a temporary conditional use permit for a period of one (1) year. At the completion of the one (1) year time period, the residential home operation shall be reviewed by the Board of Zoning Appeals. The Board of Zoning Appeals may extend the temporary conditional use, grant a permanent conditional use or deny the conditional use application. The Board of Zoning Appeals in considering the conditional use application shall take into consideration the extent to which the sponsoring agencies have dispersed these facilities within the County and its municipalities.~~

Harrison Township

INTRODUCTION

The issues addressed in this review of Harrison Township's Zoning Plan encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by review of the Harrison Township Zoning Plan, is the potential classification of a Supported Living Home by the jurisdiction's planning commission and/or board of zoning appeals.

Harrison Township is located in the central part of Montgomery County, bordered by Butler Township to the North, Vandalia to the Northeast, and Huber Heights on the Northeast corner. Harrison Township also borders Dayton on the East and South of the township, Trotwood on the West, and Clayton on the Northwest. Currently, MVIO owns seven (7) properties in Harrison Township. This review of the Harrison Township Zoning Plan includes points of contact and office holders, a summary of relevant terminology and provisions, an analysis of possible issues, and suggested amendments to the Zoning Plan as currently written.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

5945 N. Dixie Dr.
Dayton, OH 45414
Phone: (937) 890-5611
Fax: (937) 454-4831
Home Page: www.harrisontownship.org

Zoning Contact Information

Kris McClintick
Phone: (937) 890-5611
Fax: (937) 438-2742

Board of Zoning Appeals

Meets: The Second Monday of each month at 7 p.m.

Steven Russell
Charles Waldron
Penelope Few
Charles Krausche

Zoning Commission

Meets: The third Thursday of each month at 7 p.m.

Kaye Cooper
Clark Beck
Georgeann Godsey
Dennis Bensman
Vary Welch

ANALYSIS

The issues addressed in this review of the Harrison Township Zoning Plan, encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The Harrison Township Zoning Plan appears to be facially in compliance with federal Fair Housing laws. A closer look at the Zoning Plan reveals that there are several issues with the Zoning Plan that create issues with the federal Fair Housing laws. First, the statute is written in such a way that homes and/or facilities that accommodate the disabled with four (4) or more residents require conditional use permits when other individuals without disabilities do not need a conditional use permit. Second the Zoning Plan does not explicitly speak to Supported Living Homes but rather indirectly creates a situation where these types of homes would require a conditional use permit in all types of zoning areas. Supported Living Homes are in this situation because the Zoning Plan caters to the disabled and houses four (4) residents. Therefore, although the Zoning Plan is not per se in violation of the federal Fair Housing guidelines, it still implicitly violates the federal laws.

- **Community Oriented Residential Social Service Facilities**

The Harrison Township defines “Community Oriented Residential Social Service Facilities” as:

“A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes, and Convalescent Homes.”

Harrison Township Zoning Plan § 203.06.

Supported Living Homes would most likely fall under this category. The main issue with Supported Living Homes falling into this category is that this category requires a conditional use permit. Harrison Township has placed an extra burden on the disabled and the aged when four (4) or more desire to live in the same house. This burden is not placed on persons who do not have these limitations. Harrison Township's guidelines are seemingly discriminatory, in practice, on the listed groups and hinder the development of Supported Living Homes while violating the federal Fair Housing laws.

SUGGESTED AMENDMENTS

All proposed changes to the Harrison Township Zoning Plan are included in this Suggested Amendments section. The original text of definitions is followed immediately below by proposed changes. The original text of the provisions governing the conditional use of property as a "CORSSF" is accompanied immediately below by proposed changes. All additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through.

203.06 COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes, and Convalescent Homes.

203.06 ~~Care~~ COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES

A ~~residential facility dwelling unit~~ in which personal care, supervision, **and room and board accommodations** are provided to a group of **six (6) or more** individuals **on a transient, semi-transient or permanent basis. Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications; the preparation of special diets as may be prescribed by a physician or licensed dietician; and/or the assurances of the physical safety of the residents.** ~~of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes, and Convalescent Homes.~~

ARTICLE 47
COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES AND
HALFWAY HOUSES

Section 5101 Submission Requirements

The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility or Halfway House shall submit the following information to aid the Board of Zoning Appeals in its review of the requested facility

- H. Identification of similar facilities presently existing within (local jurisdiction) and contiguous jurisdiction and confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.
- I. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.
- J. A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs
- K. A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicate that the proposed use of the site will be compatible with the present character of the neighborhood.

ARTICLE 51
~~Care COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES AND~~
HALFWAY HOUSES

Section 5101 Submission Requirements

The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility or Halfway House shall submit the following information to aid the Board of Zoning Appeals in its review of the requested facility

- ~~A. Identification of similar facilities presently existing within (local jurisdiction) and contiguous jurisdiction and confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.~~
- ~~B. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.~~
- C. A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs
- ~~D. A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicate that the proposed use of the site will be compatible with the present character of the neighborhood.~~

Section 5102 Facility Requirements

- G. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room are for each occupant.
 - H. Indoor and outdoor recreational space shall be provided for the clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency
- If no such standards exist, then the following minimum area shall apply:
- 1. Common indoor area shall consist of at least 25 square feet per individual

2. Common outdoor area shall consist of at least 60 square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirement.
- I. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.
- J. All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.
- K. Off-street parking requirements: one space per every 3 persons residing in a community based residential social service facility or halfway house except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may be substituted for a proportion of the required off-street spaces if approved by the Board of Zoning Appeals.
- L. No facility shall be permitted within fifteen hundred (1500) feet of another Community Oriented Residential Social Service Facility or Halfway House and the siting of the facility complies with the Residential Care Opportunities Guide for Montgomery County. The Board of Zoning Appeals may consider a variance from this standard of not more than ten (10) percent.

The BZA may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement or deviation from the Residential Care Opportunities Guide will not contribute to the concentration of such facilities (e.g. the proposed site is located in a distinctly different neighborhood interstate highway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses).
- M. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.

Section 5102 Facility Requirements

- ~~A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.~~
- ~~B. Indoor and outdoor recreational space shall be provided for the **number of residents for the care facility** clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency~~

If no such standards exist, then the following minimum area shall apply:

3. Common indoor area shall consist of at least 25 square feet per individual
4. Common outdoor area shall consist of at least 60 square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirement.

~~C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.~~

D. All exterior lighting shall be **shielded to prevent glare at four (4) feet in height at any property line.** ~~suitably directed and shaded to prevent any glare upon adjoining residential properties.~~

~~E. Off street parking requirements: one space per ever 3 persons residing in a community based residential social service facility or halfway house except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off street parking shall be provided on a one to one ratio to the number of autos operated out of the facility. Within neighborhoods in which on street parking is accepted practice, on street space directly abutting the subject lot may be substituted for a proportion of the required off street spaces if approved by the Board of Zoning Appeals.~~

~~F. No facility shall be permitted within fifteen hundred (1500) feet of another Community Oriented Residential Social Service Facility or Halfway House and the siting of the facility complies with the Residential Care Opportunities Guide for Montgomery County. The Board of Zoning Appeals may consider a variance from this standard of not more than ten (10) percent.~~

~~The BZA may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement or deviation from the Residential Care Opportunities Guide will not contribute to the concentration of such facilities (e.g. the proposed site is located in a distinctly different neighborhood interstate highway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses).~~

~~G. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.~~

Section 5103 Findings by the Board of Zoning Appeals

In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true the Board shall grant the Conditional Use. The proposed facility:

- K. Complies with all the applicable facilities requirements
- L. Is in fact a community based residential social service facility or halfway house licensed by an agency of the State of Ohio (and respective jurisdiction). If such licensing is not required, an affidavit so stating has been presented to document this statement.
- M. Is approved by the local agency responsible for providing support services and/or programs to the facility
- N. Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards
- O. Will not be within two-thousand (2,500) feet of another CORSSF or Halfway House, unless this standard is varied by the Board of Zoning Appeals to a lesser distance
- P. Will be served adequate by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- Q. Will have vehicular approaches to the property which shall be designed to prevent any undo interference with traffic on surrounding public streets

~~Section 5103 Findings by the Board of Zoning Appeals~~

~~In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true the Board shall grant the Conditional Use. The proposed facility:~~

- ~~A. Complies with all the applicable facilities requirements~~
- ~~B. Is in fact a community based residential social service facility or halfway house licensed by an agency of the State of Ohio (and respective jurisdiction). If such licensing is not required, an affidavit so stating has been presented to document this statement.~~
- ~~C. Is approved by the local agency responsible for providing support services and/or programs to the facility~~
- ~~D. Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards~~
- ~~E. Will not be within two thousand (2,500) feet of another CORSSF or Halfway House, unless this standard is varied by the Board of Zoning Appeals to a lesser distance~~

**Fair Housing Act Compliance Concerns Arising from Zoning Laws of Jurisdictions within Montgomery County, OH
and the Impact Upon People with Disabilities**

~~F. Will be served adequate by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.~~

~~G. Will have vehicular approaches to the property which shall be designed to prevent any undo interference with traffic on surrounding public streets~~

Huber Heights

INTRODUCTION

The issues addressed in this review of the Huber Heights Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review relates to the manner in which Supported Living Homes may be classified by the jurisdiction's planning commission and/or board of zoning appeals. It is important to ascertain, or at least address, which classification a Supported Living Home may receive, in light of interpretive issues that may stem from the Code itself.

Huber Heights is located in Northeast Montgomery County, and borders Riverside and the City of Dayton to the South, Vandalia to the West, and Greene County to the East. Currently, MVIO operates no property in Huber Heights. This review entails points of contact and officeholders within the City of Huber Heights, a summary of relevant terminology and provisions, and analysis of possible interpretive issues, and suggested amendments to the Code.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

6131 Taylorsville Rd.
Huber Heights, OH 45424
Phone: (937) 233-1423
Fax: (937) 233-1272
Home Page: www.ci.huber-heights.oh.us

Zoning Contact Information

Chris Lohr
Phone: (937) 237-5819
Chris Lohr – Code Enforcement Officer
Phone: (937) 233-1423

Planning Commission

Meets: on the 2nd and 4th Tuesday of each month at 7:00 PM

Jeff Hallett (Chair)
Terry Walton (Vice Chair)
Ellen LaGrone
Rudolph Rodriguez
Dan Ryan

ANALYSIS

This review of the Huber Heights Zoning Code raises the issue of which classification a Supported Living Home may receive from the jurisdiction's planning commission and/or board of zoning appeals. This issue merits discussion for two reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the Huber Heights Zoning Code does not comply with sources of Fair Housing law. Furthermore, it is important to ascertain, or at least address, which classification a Supported Living Home may receive, because that classification may present obstacles to the establishment of the home itself. Because of the varying manner in which certain uses are permitted among Huber Heights' residential districts, this analysis considers the effect of classifying the residents of a Supported Living Home as a "Family" and alternatively as a "Residential Care and Social Service Facility."

- **Family**

The Huber Heights Zoning Code defines a "Family" as:

A number of individuals living together on the premises as single nonprofit housekeeping unit, including domestic servants

Huber Heights Zoning Code § 1123.42.

This definition imposes neither consanguinity nor maximum occupancy limitations that narrow the parameters of a "Family." A Supported Living Home typically provides residence to four (4) unrelated individuals who live together in a single nonprofit housekeeping unit. The term "domestic servants" is undefined in the Huber Heights Zoning Code, yet the individuals who provide personal care to the residents of a Supported Living Home can be construed as such. In many senses, the nature of the

services provided by the caregivers of a Supported Living Home are not strikingly different than those provided in traditional single-family homes. Both groups of providers may help in preparing meals and with house cleaning and upkeep. However, the individuals who provide personal care in a Supported Living Home are distinguished from “House Parents” in that the former do not reside in the home, whereas the latter do. If the residents of a Supported Living Home are classified as a “Family”, the home’s establishment would constitute a principally permitted use in each of the districts zoned for residential use within the City of Huber Heights.

▪ **Residential Care and Social Services Facilities**

The Huber Heights Zoning Code defines “Residential Care and Social Services Facilities” as:

Facilities for individuals who are unable to live in their own home or with their family and who are not in need of institutional care of treatment.

Huber Heights Zoning Code § 1123.90.

This general definition of “Residential Care and Social Services Facilities” could potentially be applied to Supported Living Homes. However, the specific categories expressly included as uses that constitute “Residential Care and Social Services Facilities” cannot be accurately applied to Supported Living Homes. Although it cannot be accurately or appropriately applied, the “Residential Care and Social Services Facility” use most closely akin to Supported Living Homes is the “Family Care Home.”

The Huber Heights Zoning Code defines a “Family Care Home” as:

A residential care and social service facility for individuals eighteen (18) years of age and older, which provides room, board, personal care and supervision by house parents for eight (8) or fewer resident mentally retarded, developmentally

disabled, physically handicapped or convalescing mentally ill, any of whom have not been previously convicted of a felony involving violence. This type residential care and social service facility is licensed by and/or has accountability to a government agency for the clientele served and does not include nursing homes, hospitals or rest homes.

Huber Heights Zoning Code § 1123.90(a).

Based upon occupancy limitations, the services provided, and the nature of the residents' disabilities, Supported Living Homes could fall under this definition of "Family Care Home." Moreover, Supported Living Homes are not subject to licensing requirements, but through the involvement of MVIO, could possibly be construed as having "accountability" to a government agency. While classifications generally as "Residential Care and Social Service Facilities" or specifically as a "Family Care Home" are possibilities, denotation as a residence housing a "Family" remains the most apt classification for Supported Living Homes. Should Supported Living Homes receive classification as "Residential Care and Social Service Facilities", their establishment would be subject to the special use provisions set forth in Chapter 1135B of the Huber Heights Zoning Code.

SUGGESTED AMENDMENTS

All proposed changes to the Huber Heights Zoning Code are included in this Suggested Amendments section. The original text of both definitions and provisions is followed by suggested amendments. All proposed additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through. Amendments are recommended for both the definition of and the provisions governing the special use of property as a “Residential Care and Social Services Facility.”

§ 1123.90 Residential Care and Social Service Facilities

Facilities for individuals who are unable to live in their own home or with their family and who are not in need of institutional care of treatment.

"Family care home" means a residential care and social service facility for individuals eighteen (18) years of age and older, which provides room, board, personal care and supervision by house parents for eight (8) or fewer resident mentally retarded, developmentally disabled, physically handicapped or convalescing mentally ill, any of whom have not been previously convicted of a felony involving violence. This type residential care and social service facility is licensed by and/or has accountability to a government agency for the clientele served and does not include nursing homes, hospitals or rest homes.

"Group care home" means a family care home which provides services to at least eight (8) but no more than twelve (12) individuals at one time.

"Foster home for adults" means residential care and social services facilities for eight (8) or fewer persons sixty (60) years of age or older.

"Foster home for children" means residential care and social service facilities for mentally retarded or mentally ill children or adolescents requiring protective supervision in a home setting and for children who for various reasons cannot reside with their natural family. These facilities shall provide service for four (4) or fewer residents who are less than eighteen (18) years of age.

"Halfway house" means residential care and social service facilities for adolescents who have been institutionalized and released or who have had alcohol or drug problems which make functioning in society difficult and who require the protection of a group setting. These facilities shall provide service for four (4) or fewer residents who are less than eighteen (18) years of age.

"Intermediate care home" means residential care and social service facilities for children or adolescents who have been so judged delinquent and have been assigned by a court to a residential care or social service facility in lieu of placement in a correctional institution. These facilities shall provide service for four (4) or fewer residents who are less than eighteen (18) years of age.

"Social care home" means residential care and social service facilities for children or adolescents who lack social maturity and who have emotional problems but who have not been judged delinquent. Residency may be permanent or transient. These facilities shall provide service for four (4) or fewer residents who are less than eighteen (18) years of age.

§ 1123.90 Residential Care and Social Service Facilities

Facilities which provide room and board, personal care, and supervision for six (6) or more individuals on a transient, semi-transient, or permanent basis. who are unable to live in their own home or with their family and who are not in need of institutional care or treatment. Personal care is the necessary assistance to residents with the activities of daily living including the self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of physical safety of the residents. This category does not include nursing homes, hospitals, and homes for foster children, or facilities that administer treatment as their primary function to inpatients, outpatients or on a day care basis.

~~"Family care home" means a residential care and social service facility for individuals eighteen (18) years of age and older, which provides room, board, personal care and supervision by house parents for eight (8) or fewer resident mentally retarded, developmentally disabled, physically handicapped or convalescing mentally ill, any of whom have not been previously convicted of a felony involving violence. This type residential care and social service facility is licensed by and/or has accountability to a government agency for the clientele served and does not include nursing homes, hospitals or rest homes.~~

~~"Group care home" means a family care home which provides services to at least eight (8) but no more than twelve (12) individuals at one time.~~

~~"Foster home for adults" means residential care and social services facilities for eight (8) or fewer persons sixty (60) years of age or older.~~

~~"Foster home for children" means residential care and social service facilities for mentally retarded or mentally ill children or adolescents requiring protective supervision in a home setting and for children who for various reasons cannot reside with their natural family. These facilities shall provide service for four (4) or fewer residents who are less than eighteen (18) years of age.~~

~~"Halfway house" means residential care and social service facilities for adolescents who have been institutionalized and released or who have had alcohol or drug problems which make~~

~~functioning in society difficult and who require the protection of a group setting. These facilities shall provide service for four (4) or fewer residents who are less than eighteen (18) years of age.~~

~~"Intermediate care home" means residential care and social service facilities for children or adolescents who have been so judged delinquent and have been assigned by a court to a residential care or social service facility in lieu of placement in a correctional institution. These facilities shall provide service for four (4) or fewer residents who are less than eighteen (18) years of age.~~

~~"Social care home" means residential care and social service facilities for children or adolescents who lack social maturity and who have emotional problems but who have not been judged delinquent. Residency may be permanent or transient. These facilities shall provide service for four (4) or fewer residents who are less than eighteen (18) years of age.~~

Chapter 1135B Residential Care and Social Service Facilities

§ 1135B.01 GOVERNMENT AGENCY RESPONSIBLE; APPROVED DISTRICTS.

(a) The Planning Commission, prior to granting a special use, shall determine that an appropriate governmental agency is legally responsible for the welfare of the clientele of a residential care and social service facility and as such can exercise control over the operator and operation of the facility in order to insure that the provisions of this chapter are being met and adequate operational and occupancy standards are being maintained.

(b) The special use shall be considered for approval only in R-1, R-2 and R-3 Residence Districts and an Agriculture District.

~~1135B.01 GOVERNMENT AGENCY RESPONSIBLE; APPROVED DISTRICTS.~~

~~(a) The Planning Commission, prior to granting a special use, shall determine that an appropriate governmental agency is legally responsible for the welfare of the clientele of a residential care and social service facility and as such can exercise control over the operator and operation of the facility in order to insure that the provisions of this chapter are being met and adequate operational and occupancy standards are being maintained.~~

~~(b) The special use shall be considered for approval only in R-1, R-2 and R-3 Residence Districts and an Agriculture District.~~

§ 1135B.02 SUBMISSION REQUIREMENTS FOR SPECIAL USE PERMIT APPLICATION.

The applicant for a special use permit to operate a residential care and social service facility shall submit the following information in written form to aid the Planning Commission in its review of the requested special use.

- (a) Information explaining the need for the facility, the clientele to be served and the financial resources that shall be used to operate the facility;
- (b) Identification of similar facilities presently located in the Montgomery, Greene, Miami and Clark Counties area, including the names of individuals who may be contacted concerning the operation of such facilities;
- (c) Identification and location of community facilities and social services that shall be used by the clientele of the residential care and social service facilities such as the nearest park, library, shopping center and the like, addressing any predictable problems or concerns relative to the use of those facilities;
- (d) A license or evidence of ability to obtain a license from the appropriate governmental agency, if such is required. Prior to the issuance of a final certificate of occupancy, the applicant shall provide evidence that a valid license has been issued or is obtainable for the proposed special use on the subject property. When a license is not required of the applicant by a governmental agency, a written affidavit shall be presented as part of the application by the governmental agency to which that applicant has accountability stating that a license is not required. The affidavit shall further state and describe procedures that have been established in lieu of licensing to insure that the governmental agency can exercise in this regard;
- (e) A copy of the operational and occupancy standards that shall be used in establishing the facility; and
- (f) Site plans showing the location of all structures, floor plan, exterior elevations including driveway access, landscaping, off-street parking, recreational and open space facilities, as well as other pertinent information the Commission may require. Such plans shall include evidence that the proposed use of the site shall be compatible with the present physical character of the neighborhood from the standpoint of noise, lights, congestion or traffic generation.

~~§ 1135B.02 SUBMISSION REQUIREMENTS FOR SPECIAL USE PERMIT APPLICATION.~~

~~The applicant for a special use permit to operate a residential care and social service facility shall submit the following information in written form to aid the Planning Commission in its review of the requested special use.~~

- ~~(a) Information explaining the need for the facility, the clientele to be served and the financial resources that shall be used to operate the facility;~~
- ~~(b) Identification of similar facilities presently located in the Montgomery, Greene, Miami and Clark Counties area, including the names of individuals who may be contacted concerning the operation of such facilities;~~
- ~~(c) Identification and location of community facilities and social services that shall be used by the clientele of the residential care and social service facilities such as the nearest park, library, shopping center and the like, addressing any predictable problems or concerns relative to the use of those facilities;~~
- ~~(d) A license or evidence of ability to obtain a license from the appropriate governmental agency, if such is required. Prior to the issuance of a final certificate of occupancy, the applicant shall provide evidence that a valid license has been issued or is obtainable for the proposed special use on the subject property. When a license is not required of the applicant by a governmental agency, a written affidavit shall be presented as part of the application by the governmental agency to which that applicant has accountability stating that a license is not required. The affidavit shall further state and describe procedures that have been established in lieu of licensing to insure that the governmental agency can exercise in this regard;~~
- ~~(e) A copy of the operational and occupancy standards that shall be used in establishing the facility; and~~
- ~~(f) Site plans showing the location of all structures, floor plan, exterior elevations including driveway access, landscaping, off street parking, recreational and open space facilities, as well as other pertinent information the Commission may require. Such plans shall include evidence that the proposed use of the site shall be compatible with the present physical character of the neighborhood from the standpoint of noise, lights, congestion or traffic generation.~~

§ 1135B.03 FACILITY REQUIREMENTS.

- (a) Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one (1) occupant, and when occupied by more than one (1) individual shall contain at least sixty (60) square feet of habitable room area for each occupant. No facility shall use living rooms, dining rooms, entry ways, closets, corridors, outside porches, unfinished basements or unfinished attics as sleeping rooms.
- (b) The residential care and social service facility shall provide not less than twenty-five (25) square feet per person of suitable indoor recreational area and not less than seventy-five (75) square feet of outdoor recreational open space per person, consolidated in a useful configuration and location on the side exclusive of required front and side yard and parking areas.

(c) No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures shall be compatible in residential design with the surrounding neighborhood.

(d) All exterior lighting fixtures shall be suitably directed and shaded wherever necessary to prevent any undesired lighting of adjoining residential properties.

(e) Off-street parking requirements: One (1) space per every three (3) persons residing in a residential care and social service facility except for such facility prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of automobiles operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may substitute for a portion of the required off-street spaces if approved by the Planning Commission.

§ 1135B.03 CARE FACILITY REQUIREMENTS.

~~(a) Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one (1) occupant, and when occupied by more than one (1) individual shall contain at least sixty (60) square feet of habitable room area for each occupant. No facility shall use living rooms, dining rooms, entry ways, closets, corridors, outside porches, unfinished basements or unfinished attics as sleeping rooms.~~

~~(b) (a) The residential care and social service facility shall provide not less than twenty five (25) square feet per person of suitable indoor recreational area and not less than seventy five (75) square feet of outdoor recreational open space for the number of residents of the care facility. per person, consolidated in a useful configuration and location on the side exclusive of required front and side yard and parking areas.~~

~~(c) No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures shall be compatible in residential design with the surrounding neighborhood.~~

~~(d) (b) All exterior lighting fixtures shall be suitably directed and shaded to prevent glare at four (4) feet in height at any property line. wherever necessary to prevent any undesired lighting of adjoining residential properties.~~

~~(e) (c) Off-street parking requirements: Pursuant to § 1185.03(b)(3) of the Zoning Code. One (1) space per every three (3) persons residing in a residential care and social service facility except for such facility prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off street parking shall be provided on a one to one ratio to the number of automobiles operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may substitute for a portion of the required off-street spaces if approved by the Planning Commission.~~

§ 1135B.04 DENSITY REQUIREMENTS.

No residential care and social service facility shall be located within 5,000 feet of any other such facility nor within 500 feet of any R-4, R-5, R-6, R-7 and R-PD Residential Districts.

~~§ 1135B.04 DENSITY REQUIREMENTS.~~

~~No residential care and social service facility shall be located within 5,000 feet of any other such facility nor within 500 feet of any R-4, R-5, R-6, R-7 and R-PD Residential Districts.~~

§ 1135B.05 PERMIT TERM AND REVIEW; NONTRANSFERABLE.

The Planning Commission shall approve the issuance of all permits for the operation of residential care and social service facilities for a period not to exceed one (1) year for each application approved. These permits may be reviewed annually by the Zoning Officer after proper inspection. The permits are granted to the operator and are nontransferable.

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~~The Planning Commission shall approve the issuance of all permits for the operation of residential care and social service facilities for a period not to exceed one (1) year for each application approved. These permits may be reviewed annually by the Zoning Officer after proper inspection. The permits are granted to the operator and are nontransferable.~~

Jackson Township

INTRODUCTION

The issues addressed in this review of the Jackson Township Zoning Resolution encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review of the Jackson Township Zoning Resolution relates to the manner in which a Supported Living Home may be classified by the jurisdiction's planning commission and/or board of zoning appeals. It is important to ascertain, or at least address, which classification a Supported Living Home may receive, in light of interpretive issues and obstacles that stem from the resolution itself.

Jackson Township is located in West-Central Montgomery County, with portions of New Lebanon and the entirety of Farmersville within its boundaries. Jackson Township is bordered to the East by Jefferson Township, the North by Perry Township, the South by German Township, and the West by Preble County. Currently, MVIO operates no property within Jackson Township. This review of the Jackson Township Zoning Resolution includes points of contact and officeholders within the jurisdiction, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and suggested amendments to the resolution.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

49 E. Walnut St
Farmersville, OH 45325
Phone: (937) 696-3010
Fax: (937) 696-4402
Home Page: www.jtwpmc.com

Zoning Contact Information

Melanny Michael

Phone: (937) 696-3010
Fax: (937) 696-4402
Email: mmzoning@jtwpmc.com

ANALYSIS

This analysis of the Jackson Township Zoning Resolution addresses issues of interpretation that may affect the establishment of Supported Living Homes within the municipality. The primary issue raised by this review relates to the manner in which a Supported Living Home may be classified by the jurisdiction's planning commission and/or board of zoning appeals. This issue merits discussion for two reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the Jackson Township Zoning Resolution is not in compliance with sources of Fair Housing law. Furthermore, to identify potential obstacles to the establishment of Supported Living Homes, it is important to address which classification a home may receive under the resolution itself. This analysis considers the classification of a Supported Living Home as a residence that houses a "Family", as well as its classification as a CORSSF.

- **Family**

The Jackson Township Zoning Resolution defines a "Family" as:

A group of persons related by blood, marriage or adoption, and/or no more than three (3) unrelated persons who are living together in a single dwelling unit and maintain a common household

Jackson Township Zoning Resolution § 206.01.

While the resolution's definition is written more narrowly than the best practices model incorporated in this report, and facially excludes the residents of a Supported Living Home from classification as a "Family", the Supported Living concept itself fulfills the other criteria found in the resolution's definition. The four (4) unrelated individuals typically residing in a Supported Living Home live together in a single

dwelling unit and maintain a common household. However, based upon the resolution's maximum occupancy limitation of three (3) unrelated individuals, it is likely that the residents of a Supported Living Home will be excluded from classification as a "Family."

▪ **Community Oriented Residential Social Services Facilities**

The Jackson Township Zoning Resolution defines a "Community Oriented Residential Social Service Facility" (CORSSF) as:

A dwelling unit in which personal care, supervision and accommodations are provide to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses, licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes and Convalescent Homes.

Jackson Township Zoning Resolution § 203.04.

This classification, if applied to Supported Living Homes, has the potential to have a broad impact on the operation of both Supported Living Homes and the resolution itself. Based upon occupancy standards, a Supported Living Home falls within the parameters of the Jackson Township Zoning Resolution definition of a CORSSF. However, Supported living homes are not subject to government licensing requirements. If MVIO's involvement in a Supported Living Home is construed as constituting a use "under contract" by Montgomery County government, the home may be classified as a CORSSF.

The Jackson Township Zoning Resolution definition of CORSSF expressly states that, "this definition shall not include Halfway Houses, Nursing Homes, Rest Homes and

Convalescent Homes.” In fact, two separate portions of the definitions section are dedicated to the terms “Halfway Houses” and CORSSF. Jackson Township Zoning Resolution §§ 208.01, 203.04. Moreover, the municipality’s residential district regulations include the terms “CORSSF” and “Halfway Houses” in only one list of conditional uses. Jackson Township Zoning Resolution § 1003. In the two other residential districts, CORSSFs are listed as conditional uses without being paired with “Halfway Houses.” Id. at §§ 803, 903. However, the same provisions govern the conditional use of property as both a CORSSF and a “Halfway House.” A “Halfway House” is defined in Jackson Township Zoning Resolution as:

A facility owned and/or operated by an agency or an individual authorized to provide housing, food, treatment or supportive services for individuals on supervised release from the criminal justice system and who have been assigned by a court to a residential home in lieu of placement in a correctional institution; or for individuals who have been institutionalized and released from the criminal justice system or who have had alcohol or drug problems which make operation in society difficult and who require the protection of a supervised group setting.

Jackson Township Zoning Resolution § 208.01.

In no instance should a Supported Living Home be construed as a “Halfway House.” This classification is wholly inappropriate, yet raises an issue because of the pairing of CORSSFs and “Halfway Houses” in the resolution’s provisions governing the conditional use of property. While it possible that applying the Jackson Township Zoning Resolution’s conditional use provisions to a “Halfway House” presents issues, the scope of this review is limited to addressing the resolution as it pertains to Supported Living.

SUGGESTED AMENDMENTS

All proposed changes to the Jackson Township Zoning Resolution are included in this Suggested Amendments section. The original text of definitions is followed immediately below by proposed changes. The original text of provisions governing the conditional use of property as a CORSSF is followed by proposed changes. All additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through.

§ 203.04 Community Oriented Residential Social Services Facility

A dwelling unit in which personal care, supervision and accommodations are provide to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses, licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes and Convalescent Homes.

§ 203.04 ~~Care~~ Community Oriented Residential Social Services Facility

A **residential facility** ~~dwelling unit in~~ which **provides room and board, personal care, and supervision and accommodations are provide to** **for six (6) or more residents on a transient, semi-transient, or permanent basis.** ~~a group of individuals of whom four or more are unrelated to the provider.~~ **Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of the physical safety of the residents.** ~~These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses, licensed, supervised, or under contract by any federal, state, county, or other political subdivision.~~ **hospitals, foster homes, Halfway Houses, Nursing Homes, Rest Homes and Convalescent Homes, or facilities that administer treatment as their primary function to inpatients, outpatients or on a day care basis.**

ARTICLE 37
COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES AND
HALFWAY HOUSES

§ 3701 SUBMISSION REQUIREMENTS

The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility or Halfway House shall submit the following information to aid the Board of Zoning Appeals in their review of the requested facility:

- A. Identification of similar facilities presently existing within (local jurisdiction) and contiguous jurisdiction and confirmation the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.
- B. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.
- C. A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs.
- D. A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicate that the proposed use of the site will be compatible with the present character of the neighborhood.

ARTICLE 37
~~Care~~ COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES AND
HALFWAY HOUSES

~~§ 3701 SUBMISSION REQUIREMENTS~~

~~The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility or Halfway House shall submit the following information to aid the Board of Zoning Appeals in their review of the requested facility:~~

- ~~A. Identification of similar facilities presently existing within (local jurisdiction) and contiguous jurisdiction and confirmation the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.~~

**Fair Housing Act Compliance Concerns Arising from Zoning Laws of Jurisdictions within Montgomery County, OH
and the Impact Upon People with Disabilities**

- ~~B. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.~~
- ~~C. A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs.~~
- ~~D. A site plan for the proposed home indicating home structure outline and floor plan, off street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicate that the proposed use of the site will be compatible with the present character of the neighborhood.~~

§ 3702 FACILITY REQUIREMENTS

A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.

B. Indoor and outdoor recreational space shall be provided for the clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency.
If not such standards exist, then the following minimum area shall apply:

1. Common indoor area shall consist of at least 25 square feet per individuals.
2. Common outdoor area shall consist of at least 60 square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirements.

C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.

D. All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.

E. Off-street parking requirements: one space for each 3 persons residing in a community based residential social service facility or halfway house except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may substituted for a portion of the required off-street spaces if approved by the Board of Zoning Appeals.

F. No facility shall be permitted within 1,500 feet of another Community Oriented Residential Social Service Facility or Halfway House and the siting of the facility complies with the Residential Care Opportunities Guide for Montgomery County.

The Board of Zoning Appeals may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement or deviation from the Residential Care Opportunities Guide will not contribute to the concentration of such facilities (e. g. , the proposed site is located in a distinctly different neighborhood which is separated from an existing site by an interstate highway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses).

G. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.

SECTION 3702 CARE FACILITY REQUIREMENTS

- ~~A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.~~
- B. Suitable** Indoor and outdoor recreational space shall be provided for **the number of residents for the care facility**. ~~the clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency. If not such standards exist, then the following minimum area shall apply:~~
- ~~1. Common indoor area shall consist of at least 25 square feet per individuals.~~
 - ~~2. Common outdoor area shall consist of at least 60 square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirements.~~
- ~~C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.~~
- ~~D. All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.~~
- E. Off-street parking requirements: Pursuant to § 3203; Group No.1, One and Two family dwellings.** ~~one space for each 3 persons residing in a community based residential social service facility or halfway house except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off street parking shall be provided on a one to one ratio to the number of autos operated out of the facility.~~

~~Within neighborhoods in which on street parking is accepted practice, on street space directly abutting the subject lot may substituted for a portion of the required off street spaces if approved by the Board of Zoning Appeals.~~

- ~~F. No facility shall be permitted within 1,500 feet of another Community Oriented Residential Social Service Facility or Halfway House and the siting of the facility complies with the Residential Care Opportunities Guide for Montgomery County. The Board of Zoning Appeals may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement or deviation from the Residential Care Opportunities Guide will not contribute to the concentration of such facilities (e. g. , the proposed site is located in a distinctly different neighborhood which is separated from an existing site by an interstate highway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses).~~
- ~~G. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.~~

§ 3703 FINDING BY THE BOARD OF ZONING APPEALS

In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the relative to the following criteria. Upon findings all such facts to be true the Board shall grant the Conditional Use. The proposed facility:

- A. Complies with all the applicable facilities requirements.
- B. Is in fact a community based residential social service facility or halfway house licensed by an agency of the State of Ohio (and respective jurisdiction). If such licensing is not required, an affidavit so stating has been presented to document this statement.
- C. Is approved by the local agency responsible for providing support services and/or programs to the facility.
- D. Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards.
- E. Will not be within 500 feet of another CORSSF or Halfway House, unless this standard is varied by the Board of Zoning Appeals to a lesser distance.
- F. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

G. Will have vehicular approaches to the property which shall be designed to prevent any undo interference with traffic on surrounding public streets.

§ 3703 FINDING BY THE BOARD OF ZONING APPEALS

~~In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the relative to the following criteria. Upon findings all such facts to be true the Board shall grant the Conditional Use. The proposed facility:~~

- ~~A. Complies with all the applicable facilities requirements.~~
- ~~B. Is in fact a community based residential social service facility or halfway house licensed by an agency of the State of Ohio (and respective jurisdiction). If such licensing is not required, an affidavit so stating has been presented to document this statement.~~
- ~~C. Is approved by the local agency responsible for providing support services and/or programs to the facility.~~
- ~~D. Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards.~~
- ~~E. Will not be within 500 feet of another CORSSF or Halfway House, unless this standard is varied by the Board of Zoning Appeals to a lesser distance.~~
- ~~F. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.~~
- ~~G. Will have vehicular approaches to the property which shall be designed to prevent any undo interference with traffic on surrounding public streets.~~

Jefferson Township

INTRODUCTION

The issues addressed in this review of the Jefferson Township Zoning Resolution encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. Jefferson Township is, seemingly, facially in compliance with the federal Fair Housing regulations. There are several underlying issues that indirectly may cause Jefferson Township to be in violation of the Fair Housing regulations. The first is the issue of how Jefferson Township defines “Family.” Next, is the issue of requiring a Community Oriented Residential Social Service Facility (CORSSF) to obtain a conditional permit. Lastly, are the submission requirements needed to obtain the status of a CORSSF.

Jefferson Township is located in the central portion of Montgomery County. Jefferson Township is bordered by the City of Trotwood to the North, the City of Dayton to the Northeast, and the City of Moraine to the East. Also bordering Jefferson Township is Miami Township on the Southeast, German Township on the Southwest, Jackson Township to the West, and Perry Township on the Northwest corner. Currently, MVIO does not operate property within Jefferson Township. This review of the Jefferson Township Zoning Resolution includes points of contact and office holders, a summary of relevant terminology and provisions, an analysis of possible issues, and suggested amendments to the Zoning Resolution as currently written.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

One Business Park Drive
Dayton, OH 45427
Phone: (937) 262-3591
Fax: (937) 262-3599
Home Page: www.jeffersontwp.org

Zoning Contact Information

Kevin Ney

Phone: (937) 262-3591 ext. 208
Fax: (937) 262-3599

ANALYSIS

In review of the Jefferson Township Zoning Resolution, there are several classifications which could encompass Supported Living Homes. These classifications include Community Oriented Residential Social Services Facilities, Halfway Houses, Independent Housing for the Elderly, and Rooming Housing. All four of these classifications have some but not all of the elements of a Supported Living Home. The Zoning Resolution does not define or reference Supported Living Homes directly or indirectly. The main issues are the classification under which Supported Living Homes should be classified or whether the Zoning Resolution should be modified to include Supported Living Homes.

- **Community Oriented Residential Social Service Facilities**

Under the Jefferson Township Zoning Resolution a Community Oriented Residential Social Service Facility is defined as:

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes, and Convalescent Homes.

Jefferson Township Zoning Resolution § 203.04.

A Supported Living Home in many aspects resembles a Community Oriented Residential Social Service Facility (CORSSF) but there are differences between the two. One of the major differences between the Supported Living Home and a CORSSF is that a CORSSF requires some form of supervision where the Supported Living Home does not. Both Supported Living Homes and CORSSFs allow for at least four (4) individuals to share one home; however, CORSSFs differ slightly because they allow for more than

four (4) residents where a Supported Living Home allows no more than four (4) residents to live in one house. This difference leads to the conclusion that a Supported Living Home is designed for more of a family-like setting rather than that of a facility.

CORSSFs require conditional use permits and have several requirements that must be met in order to obtain a permit. For example, when modifying a home, under the requirements for a CORSSF, the exterior modification cannot “depart from the residential character of the building.” Jefferson Township Zoning Resolution § 4802 (c).

Supported Living Homes, if categorized here, could meet opposition because the house would need to be modified to accommodate the residents. CORSSF modification requirements would make it difficult for Supported Living Homes to reasonably accommodate its residents. If the residents cannot be reasonably accommodated, the Zoning Resolution could be interpreted as violating the Fair Housing Act’s reasonable accommodation requirements.

- **Halfway House**

The Jefferson Township Zoning Resolution defines “halfway house” as:

“A facility owned and/or operated by an agency or an individual authorized to provide housing, food, treatment or supportive services for individuals on supervised release, and who have been assigned by a court to a residential home lieu of placement in a correctional institution; or for individuals who have been institutionalized and released from the criminal justice system or who have had a alcohol or drug problems which make operation in society difficult and who require the protection of a supervised group setting.”

Jefferson Township Zoning Resolution § 208.01.

Supported Living Homes are not owned or operated by an agency that seeks housing for individuals on supervised release or for individuals released from the

criminal justice system who have had alcohol or drug problems. It is unlikely, due to the nature of a halfway house, that a Supported Living Home would fall into this category.

▪ **Independent Housing Alternatives for the Elderly**

The Jefferson Township Zoning Resolution defines “Independent Housing alternatives for the Elderly” as:

Housing arrangements for elderly persons completely capable of independent living, who do not require protective supervision and are not mentally retarded, mentally ill or disabled, or require rehabilitation

A. *Shared Housing*

A housing arrangement for more than three independent elderly persons who pool their resources to maintain a single housekeeping unit.

B. *Congregate Housing*

A housing arrangement for more than three elderly persons who are independent adults here at least meal services are provided. Other services provided to the residents from within the home may include transportation and housekeeping. Personal assistance or care is not provided. This definition includes homes licensed by the Ohio Department of Human Services under the category of Family Group Homes.

Jefferson Township Zoning Resolution § 209.01.

A supported living home could easily be placed in this category with a few modifications. First, the age restriction would have to be changed so that any age group could be classified in this category. Second, the ban on the mentally disabled would have to be lifted. Third, there should be an allowance for personal assistance or care for the individuals in the housing. Once these modifications are made, Supported Living Homes would fall into this category.

▪ **Rooming House**

Under the Jefferson Township Zoning Resolution a “rooming house” is defined as:

“A building or part thereof, other than a hotel, motel, or restaurant where meals and/or lodging are provided for compensation, for three (3) or more unrelated persons where no cooking or dining facilities are provided in individual rooms.”

Jefferson Township Zoning Resolution § 218.07.

A Supported Living Home could possibly be interpreted as a “Rooming House.”

It could be interpreted in this manner because it houses more than three (3) individuals for compensation. On the other hand the “Rooming House” and the Supported Living Home function with different goals. A “Rooming House” seeks to house individuals for compensation similar to that of a motel, but not going as far as a motel; a Supported Living Home seeks to house individuals in a family-like setting – the only difference (all other things being equal) is that the individuals are not related.

Classifying Supported Living Homes in this category would severely restrict where Supported Living Homes could be located. Rooming houses are explicitly permitted only in “office residential districts,” and they are not explicitly listed in any category as conditional uses. This could be interpreted that if the drafters wanted to allow for rooming houses in other zoning areas, they would have explicitly included them in the different zoning districts and, therefore, rooming houses are restricted to “office residential areas.” Therefore, if Supported Living Homes were placed into this category, Jefferson Township could be viewed as not providing reasonable accommodations because of the location in which the houses would have to be located in order to be compliant with the Zoning Resolution.

SUGGESTED AMENDMENTS

All proposed changes to the Jefferson Township Resolution are included in this Suggested Amendments section. The original text of definitions is followed immediately below by proposed changes. The original text of provisions governing the conditional use of property as a “CORSSF” is accompanied on below by proposed changes. All additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through.

§ 204.03 Community Oriented Residential Social Service Facility

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes, and Convalescent Homes.

§ 204.03 ~~Care~~ Community Oriented Residential Social Service Facility

A **residential facility** ~~dwelling unit in~~ which personal care, supervision, **and room and board accommodations** are provided to a group of six **(6) or more** individuals **on a transient, semi-transient or permanent basis. Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications; the preparation of special diets as may be prescribed by a physician or licensed dietician; and/or the assurances of the physical safety of the residents.** ~~of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision.~~ This definition shall not include Halfway Houses, Nursing Homes, Rest Homes, and Convalescent Homes.

§ 209.01 Independent Housing Alternatives for the Elderly

Housing arrangements for elderly persons completely capable of independent living, who do not require protective supervision and are not mentally retarded, mentally ill or disabled, or require rehabilitation:

(A) *Shared Housing*- A housing arrangement for more than three independent elderly persons who pool their resources to maintain a single housekeeping unit.

(B) *Congregate Housing*- A housing arrangement for more than three elderly persons who are independent adults here at least meal services are provided. Other services provided to the residents from within the home may include transportation and housekeeping. Personal assistance or care is not provided. This definition includes homes licensed by the Ohio Department of Human Services under the category of Family Group Homes.

§ 209.01 Independent Housing Alternatives ~~for the Elderly~~

Housing arrangements for ~~elderly~~ persons completely capable of independent living, who ~~do not~~ require ~~protective~~ supervision and are ~~not~~ mentally retarded, mentally ill or disabled, or require rehabilitation:

(A) *Shared Housing*- A housing arrangement for more than three independent ~~elderly~~ persons who pool their resources to maintain a single housekeeping unit.

(B) *Congregate Housing*- A housing arrangement for more than three ~~elderly~~ persons who are independent adults ~~here at least meal services are provided~~. Other services provided to the residents from within the home may include transportation and **help with** housekeeping. Personal assistance or care is ~~not~~ provided. This definition includes homes licensed by the Ohio Department of Human Services under the category of Family Group Homes.

ARTICLE 47
COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES AND
HALFWAY HOUSES

Section 4701 Submission Requirements

The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility or Halfway House shall submit the following information to aid the Board of Zoning in its review of the requested facility

- L. Identification of similar facilities presently existing within (local jurisdiction) and contiguous jurisdiction and confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.
- M. A license or evidence of ability to obtain a license, if such is required, from the pertinent

governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.

- N. A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs
- O. A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicated that the proposed use of the site will be compatible with the present character of the neighborhood.

ARTICLE 47

Care ~~COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES AND~~ HALFWAY HOUSES

Section 4701 Submission Requirements

The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility or Halfway House shall submit the following information to aid the Board of Zoning in its review of the requested facility

- ~~A. Identification of similar facilities presently existing within (local jurisdiction) and contiguous jurisdiction and confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.~~
- ~~B. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.~~
- C. A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs
- ~~D. A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicated that the proposed use of the site will be compatible with the present character of the neighborhood.~~

Section 4702 Facility Requirements

N. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.

O. Indoor and outdoor recreational space shall be provided for the clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency

If no such standards exist, then the following minimum area shall apply:

5. Common indoor area shall consist of at least 25 square feet per individual

6. Common outdoor area shall consist of at least 60 square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirement.

P. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.

Q. All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.

R. Off-street parking requirements: one space per every 3 persons residing in a community based residential social service facility or halfway house except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may be substituted for a proportion of the required off-street spaces if approved by the Board of Zoning Appeals.

S. No facility shall be permitted within fifteen hundred (1500) feet of another Community Oriented Residential Social Service Facility or Halfway House and the siting of the facility complies with the Residential Care Opportunities Guide for Montgomery County. The Board of Zoning Appeals may consider a variance from this standard of not more than ten (10) percent.

The BZA may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement or deviation from the Residential Care Opportunities Guide will not contribute to the concentration of such facilities (e.g. the proposed site is located in a distinctly different neighborhood interstate highway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses).

T. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.

Section 4702 Facility Requirements

~~H. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.~~

I. Indoor and outdoor recreational space shall be provided for the **number of residents for the care facility** ~~elientele served, based upon standards specified by the licensing authority and/or the sponsoring agency~~

If no such standards exist, then the following minimum area shall apply:

7. Common indoor area shall consist of at least 25 square feet per individual
8. Common outdoor area shall consist of at least 60 square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirement.

~~J. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.~~

K. All exterior lighting shall be **shielded to prevent glare at four (4) feet in height at any property line.** ~~suitably directed and shaded to prevent any glare upon adjoining residential properties.~~

~~L. Off-street parking requirements: one space per ever 3 persons residing in a community based residential social service facility or halfway house except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one to one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may be substituted for a proportion of the required off-street spaces if approved by the Board of Zoning Appeals.~~

~~M. No facility shall be permitted within fifteen hundred (1500) feet of another Community Oriented Residential Social Service Facility or Halfway House and the siting of the facility complies with the Residential Care Opportunities Guide for Montgomery County. The Board of Zoning Appeals may consider a variance from this standard of not more than ten (10) percent.~~

~~The BZA may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement or deviation from the Residential Care Opportunities Guide will not contribute to the concentration of such facilities (e.g. the proposed site is located in a distinctly different neighborhood interstate highway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses).~~

~~N. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.~~

Section 4803 Findings by the Board of Zoning Appeals

In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true the Board shall grant the Conditional Use. The proposed facility:

- R. Complies with all the applicable facilities requirements
- S. Is in fact a community based residential social service facility or halfway house licensed by an agency of the State of Ohio (and respective jurisdiction). If such licensing is not required, an affidavit so stating has been presented to document this statement.
- T. Is approved by the local agency responsible for providing support services and/or programs to the facility
- U. Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards
- V. Will not be within 1500 feet of another CORSSF or Halfway House, unless this standard is varied by the Board of Zoning Appeals to a lesser distance
- W. Will be served adequate by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- X. Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare.
- Y. Will have vehicular approaches to the property which shall be designed to prevent any undo interference with traffic on surrounding public streets

~~Section 4803 Findings by the Board of Zoning Appeals~~

~~In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true the Board shall grant the Conditional Use. The proposed facility:~~

- ~~A. Complies with all the applicable facilities requirements~~
- ~~B. Is in fact a community based residential social service facility or halfway house licensed by an agency of the State of Ohio (and respective jurisdiction). If such licensing is not required, an affidavit so stating has been presented to document this statement.~~
- ~~C. Is approved by the local agency responsible for providing support services and/or programs to the facility~~
- ~~D. Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards~~
- ~~E. Will not be within 1500 feet of another CORSSF or Halfway House, unless this standard is varied by the Board of Zoning Appeals to a lesser distance~~
- ~~F. Will be served adequate by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.~~
- ~~G. Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare.~~
- ~~H. Will have vehicular approaches to the property which shall be designed to prevent any undo interference with traffic on surrounding public streets~~

Kettering

INTRODUCTION

The City of Kettering Zoning Code is facially in compliance with the Fair Housing laws. The primary issue raised by review of the City of Kettering's Zoning Plan is the vagueness of the Zoning Plan as it relates to facilities like Supported Living Homes and actual Supported Living Homes.

The City of Kettering is located in Greene and Montgomery Counties. Also, the City of Kettering is bordered by the cities of Dayton, Riverside, and Oakwood to the North; West Carrollton and Moraine to the West; Centerville and Washington Township to the South; and Beaver creek and Sugarcreek Township to the East. Currently, MVIO operates six (6) properties within the City of Kettering. This review of the City of Kettering Zoning Plan includes points of contact and office holders, and an analysis of possible issues.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

3600 Shroyer Rd.
Kettering, Ohio 45429
Phone: 937-296-2400
Fax: 937-296-3242
Homepage: www.ketteringoh.org

Zoning Contact Information

Jeffrey S. Tyler

3600 Shroyer Rd.
Kettering, Ohio 45429
Phone: 937-296-2441
Fax: 937-296-3242

Board of Zoning Appeals

Meets: Second and fourth Mondays at 7:30 p.m.

Carl A. Evers, Chairperson
Hubert I. Webster, Vice Chairperson
Rob Pretzinger, Secretary
Ronald Hershey
Albert L. Sessler, Jr.

Zoning District Information

District classification and regulations can be found in Chapter 1133 of the City of Kettering Zoning Code.

ANALYSIS

In review of the City of Kettering Zoning Code, the Zoning Code is seemingly in compliance with federal Fair Housing regulations, in relation to Supported Living Homes. There are no restrictions or regulations on homes and/or facilities like Supported Living Homes. Without regulations, the City of Kettering can adopt amendments to this Zoning Plan or use its discretion to impede the creation of Supported Living Homes as it deems necessary. This impediment can be halted by ensuring that the individuals in Supported Living Homes are considered a family unit as defined by the statute. The statute should explicitly state that the individuals in Supported Living Homes are considered a family unit and should be governed as such under the Zoning Plan. It should be noted that there has not been any such impediment imposed on the creation of Supported Living Homes in the City of Kettering, as there are six (6) homes already located in the City.

- **Family**

The City of Kettering Zoning Code defines “Family as:

“...one or more persons living and cooking together as a single housekeeping unit...”

City of Kettering Zoning Code Chapter 1133.

Supported Living Homes have a maximum of four (4) individuals that occupy a single dwelling. The City of Kettering allows one (1) or more individuals to live together. Therefore the individuals in Supported Living Homes constitute a family and can occupy a single family dwelling. By allowing the individuals, housed in Supported Living Homes, to constitute a “family” they do not have to obtain special permission in order to occupy single family dwellings.

Miamisburg

INTRODUCTION

The issues addressed in this review of the City of Miamisburg Planning and Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review of the City of Miamisburg Planning and Zoning Code relates to the manner in which a Supported Living Home is classified by the Board of Zoning Appeals, and the potential effects that classification may have upon the home's establishment. It is important to ascertain, or at least address, which classification a Supported Living Home may receive, because provisions regulating the use of property are not uniform among Miamisburg's residential districts.

The City of Miamisburg is located in South-Central Montgomery County, within Miami Township. Miamisburg borders West Carrollton to the North and Miami Township in all other directions. Currently, MVIO does not operate any property within the City of Miamisburg. This review of the City of Miamisburg Planning and Zoning Code includes points of contact and office holders within the City of Miamisburg, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and a suggested amendments section.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

20 E. Central Ave
Miamisburg, OH 45342
Phone: (937) 847-6532
Fax: (937) 847-6662
Home Page: www.ci.miamisburg.oh.us

Zoning Contact Information

Chris Fine

Phone: (937) 847-6535
Fax: (937) 847-6662

Planning Commission

James DeYoung, Chair
Bob Faulkner
Angie Hulsman
McDonald Watson
Mike McCabe
Tim Finney
Leslie Karacia, Secretary

Board of Zoning, Building and Housing Appeals

Steve Allaire
Mark Kassman
Bob Mitman
John EbersoleFrank Fritsch
Leslie Karacia, Secretary

ANALYSIS

This review of the City of Miamisburg Zoning Code presents one primary issue of interpretation. While the residents of a Supported Living Home fall beneath the maximum occupancy limit set forth in the Code's definition of "Family", the home itself may also receive classification as a "Community Oriented Residential Social Service Facility" (CORSSF). This issue merits discussion for two reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the City of Miamisburg Planning and Zoning Code may not comply with other sources of law. Moreover, because certain uses are both generally and specially permitted in Miamisburg's districts zoned for residential use, it is important to ensure Supported Living Homes receive proper classification. This analysis addresses possible classifications of a Supported Living Home and what bearing those classifications may have on the home's establishment.

- **Family**

The City of Miamisburg Planning and Zoning Code defines a "Family" as:

A group of persons related by blood, marriage or adoption living together on the premises in a single dwelling unit, or a group of not more than five individuals living in a single dwelling unit not related by blood, marriage or adoption

City of Miamisburg Planning and Zoning Code § 1230.08 (77).

Because a Supported Living Home is typically occupied by four (4) unrelated individuals, its residents fall beneath the maximum occupancy limitation set forth in the Zoning Code. Therefore, the living arrangement of a Supported Living Home is accurately and appropriately classified as a "Family" within the City of Miamisburg.

However, it is possible that a Supported Living Home may receive an alternate classification under the Code.

▪ **Community Oriented Residential Social Service Facility**

The City of Miamisburg Planning and Zoning Code defines a “Community Oriented Residential Social Service Facility” as:

A facility which provides resident services to a group of individuals of whom one or more are unrelated. These individuals are mentally retarded, handicapped, aged, or disabled; are undergoing rehabilitation; and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any Federal, State, County, or other political subdivision.

City of Miamisburg Planning and Zoning Code § 1230.08(52).

Because a Supported Living Home typically houses four (4) unrelated individuals, the home may be classified as a CORSSF. Although Supported Living Homes are not subject to federal, state, county, or other political subdivision licensing requirements, it could be construed as use “under contract” by Montgomery County. Of the enumerated uses that constitute a CORSSF, it is possible that a Supported Living Home may be classified as a “Family Home.” The City of Miamisburg Planning and Zoning Code defines a “Family Home” as:

Family homes are residential facilities that provide room and board, personal care, rehabilitation services, and supervision in a family setting for not more than eight persons with developmental disabilities.

City of Miamisburg Planning and Zoning Code § 1230.08(52) (A).

If classified as a CORSSF, a Supported Living Home would constitute a special use in the R-4 residential district. In all other residential districts, a CORSSF is neither a permitted nor special use. While denotation as a CORSSF generally, or a “Family Home”

specifically is possible, classification as a use housing a “Family” remains most appropriate for a Supported Living Home.

SUGGESTED AMENDMENTS

This Suggested Amendments section includes proposed changes to the current City of Miamisburg Planning and Zoning Code. The section suggests amendments to the City of Miamisburg Planning and Zoning Code definition of “Community Oriented Residential Social Service Facility” (CORSSF) and the conditional use provisions governing the establishment of a CORSSF. The original text of statutory language for both the definition and conditional use provisions is followed by proposed changes. Additions to statutory language are noted in bold, and deletions are marked with a strike-through.

§ 1230.08 (52) Community Oriented Residential Social Service Facility:

A facility which provides resident services to a group of individuals of whom one or more are unrelated. These individuals are mentally retarded, handicapped, aged, or disabled; are undergoing rehabilitation; and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any Federal, State, County, or other political subdivision. Community oriented residential social service facilities (residential homes) include the categories set forth in paragraphs (52) A. to E. hereof.

Residential facilities are homes or facilities in which a person with a developmental disability resides, except a home subject to Ohio R. C. Chapter 3721 or the home of relative or legal guardian in which a person with a developmental disability resides. (Developmental Disability means a disability that originated before the attainment of eighteen years of age and can be expected to continue indefinitely, constitutes a substantial handicap to the person’s ability to function normally in society and is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other condition found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior or requires similar treatment and services.)

- A. Family homes are residential facilities that provide room and board, personal care, rehabilitation services, and supervision in a family setting for not more than eight persons with developmental disabilities.

- B. Group homes are residential facilities that provide the services of family homes for at least nine but not more than sixteen persons with developmental disabilities.
- C. Social care homes are residential homes for children or adolescents who lack social maturity or have emotional problems but who have not been judged delinquent. Residency may be permanent or delinquent.
- D. Intermediate care homes are residential homes for children or adolescents who have been assigned by a court to a residential home in lieu of placement in a correctional institution.
- E. Halfway houses are residential homes for adolescents or adults who have been institutionalized and released or who have had alcohol or drug problems which make operation in society difficult and who require the protection of a group setting.

§ 1230.08 (52) ~~Care Community Oriented Residential Social Service Facility~~

A **residential** facility which provides **room and board, personal care, and supervision for six (6) or more residents on a transient, semi-transient, or permanent basis. Personal care is the necessary assistance to residents with the activities of daily living including the self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of physical safety of the residents.** ~~resident services to a group of individuals of whom one or more are unrelated. These individuals are mentally retarded, handicapped, aged, or disabled; are undergoing rehabilitation; and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any Federal, State, County, or other political subdivision. Care Community oriented residential social service facilities (residential homes) include the categories set forth in paragraphs (52) A. to E. hereof.~~

Residential facilities are homes or facilities in which a person with a developmental disability resides, except a home subject to Ohio R. C. Chapter 3721 or the home of relative or legal guardian in which a person with a developmental disability resides. (Developmental Disability means a disability that originated before the attainment of eighteen years of age and can be expected to continue indefinitely, constitutes a substantial handicap to the person's ability to function normally in society and is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other condition found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior or requires similar treatment and services.)

~~A. Family homes are residential facilities that provide room and board, personal care, rehabilitation services, and supervision in a family setting for not more than eight persons with developmental disabilities.~~

~~B.~~**A.** Group homes are residential facilities that provide the services of family homes for at least nine but not more than sixteen persons with developmental disabilities.

~~C. Social care homes are residential homes for children or adolescents who lack social maturity or have emotional problems but who have not been judged delinquent. Residency may be permanent or delinquent.~~

~~D. Intermediate care homes are residential homes for children or adolescents who have been assigned by a court to a residential home in lieu of placement in a correctional institution.~~

~~E. Halfway houses are residential homes for adolescents or adults who have been institutionalized and released or who have had alcohol or drug problems which make operation in society difficult and who require the protection of a group setting.~~

1296.20 Community-Based Residential Social Service Facilities

(a) Submittal Requirements The operator or agency applying for a special use permit to operate a community-based residential social service facility shall submit the following information to aid the Planning Commission in its review of the requested facility:

- (1) Information sufficient to establish the need for the facility in the proposed location in relation to the specific clientele served.
- (2) Identification of similar facilities presently existing within the County and its municipalities.
- (3) A license or ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed special use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.
- (4) A copy of the sponsoring agency's operational and occupancy standards.
- (5) A detailed plan for services and programs.
- (6) A review and written approval of any community-based residential social service facility – group and family homes – by any board having jurisdiction over such program.

(b) Facility Requirements

- (1) Every room occupied for sleeping purposes within the home shall contain a minimum of eighty square feet of habitable room area for one occupant, and when occupied by more than one, shall contain at least sixty square feet of habitable room area for each occupant.

(2) Suitable space shall be provided for indoor and/or outdoor recreational activities for the clientele served, based upon generally accepted recreational standards or those specified by the licensing authority.

(3) No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be of compatible residential design with the surrounding neighborhood, to the degree possible.

(4) Off-street parking requirements shall be as follows: one space per every three persons residing in a family or community-based residential social service facility, except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of automobiles operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may substitute for a proportion of the required off-street spaces if approved by the Planning Commission.

(5) Resident density shall not exceed that density permitted within the respective zoning districts in which the facility is proposed.

(c) Findings by the Planning Commission In its review of each proposed facility, the Planning Commission shall make specific finding of fact relative to the following criteria, namely that the proposed facility:

(1) Is in fact a community-based residential social service facility licensed by the appropriate authority to provide such service within the State and the City. If such licensing is not available, a verified affidavit so stating has been presented to document this statement.

(2) Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Planning Commission.

(3) Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or officially planned uses in the general vicinity and will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.

(4) Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment.

(5) Will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewers, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to adequately provide for any such services.

- (6) Will not involve uses, activities, and conditions of operation that will be detrimental to any persons, property, or the general welfare.
- (7) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.

1296.20 Community-Based Residential Social Service Facilities

~~(a) Submittal Requirements The operator or agency applying for a special use permit to operate a community based residential social service facility shall submit the following information to aid the Planning Commission in its review of the requested facility:~~

- ~~(1) Information sufficient to establish the need for the facility in the proposed location in relation to the specific clientele served.~~
- ~~(2) Identification of similar facilities presently existing within the County and its municipalities.~~
- ~~(3) A license or ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed special use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.~~
- ~~(4) A copy of the sponsoring agency's operational and occupancy standards.~~
- ~~(5) A detailed plan for services and programs.~~
- ~~(6) A review and written approval of any community based residential social service facility —group and family homes— by any board having jurisdiction over such program.~~

~~(b) (a) Care Facility Requirements~~

- ~~(1) Every room occupied for sleeping purposes within the home shall contain a minimum of eighty square feet of habitable room area for one occupant, and when occupied by more than one, shall contain at least sixty square feet of habitable room area for each occupant.~~
- ~~(2) (1) Suitable space shall be provided for indoor and/or outdoor recreational activities for the clientele served, based upon **the number of residents for the care facility.** generally accepted recreational standards or those specified by the licensing authority.~~
- ~~(3) No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be of compatible residential design with the surrounding neighborhood, to the degree possible.~~

~~(4) (2) Off-street parking requirements shall be as follows: Pursuant to § 1292.03(b)(1), one space per every three persons residing in a family or community-based residential social service facility, except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of automobiles operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may substitute for a proportion of the required off-street spaces if approved by the Planning Commission.~~

~~(5) (3) Resident density shall not exceed that density permitted within the respective zoning districts in which the facility is proposed.~~

~~(e) Findings by the Planning Commission In its review of each proposed facility, the Planning Commission shall make specific finding of fact relative to the following criteria, namely that the proposed facility:~~

~~(1) Is in fact a community-based residential social service facility licensed by the appropriate authority to provide such service within the State and the City. If such licensing is not available, a verified affidavit so stating has been presented to document this statement.~~

~~(2) Is in fact a needed facility in the location proposed, based upon evidence acceptable to the Planning Commission.~~

~~(3) Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or officially planned uses in the general vicinity and will not change the essential character of the same area. In this regard, it does not contribute to a concentration of such facilities in the respective area.~~

~~(4) Will not be hazardous or disturbing to existing or officially planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment.~~

~~(5) Will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewers, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to adequately provide for any such services.~~

~~(6) Will not involve uses, activities, and conditions of operation that will be detrimental to any persons, property, or the general welfare.~~

~~(7) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.~~

Miami Township

INTRODUCTION

The issues addressed in this review of the Miami Township Zoning Resolution encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review relates to the manner in which Supported Living Homes may be classified by the jurisdiction's planning commission and/or board of zoning appeals. It is important to ascertain, or at least address, which classification a Supported Living Home may receive, in light of interpretive issues that stem from the resolution itself.

Miami Township is located in South Montgomery County, with portions of Carlisle, Springboro, West Carrollton, and the entirety of Miamisburg within its borders. Miami Township is bordered to the East by Washington Township, the West by German Township, and the North by Moraine and Jefferson Township. Currently, MVIO operates no property in Miami Township. This review of the Miami Township Zoning Resolution includes points of contact and officeholders within the jurisdiction, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and suggested amendments to the resolution.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

2700 Lyons Rd.
Miamisburg, OH 45342
Phone: 433-9969
Fax: 433-8709
Home Page: www.miamitownship.com

Zoning Contact Information

Chris Snyder

Phone: 433-3426

Zoning Commission

Meets: The third Tuesday of each month at 7:00 P.M. at the Miami Township Meeting Hall.

Cynthia Griffith
Karen Kreusch
Kathleen Rosenberg
Katrina Miller
Dennis Smith
Eric Halter (Alternate)

Board of Zoning Appeals

Meets: The first Monday of every month at 7:00 P.M. at the Miami Township Meeting Hall.

Brent Anslinger, Chairman
Ann-Lisa Rucker, Vice-Chairman
Michael Logan
Mitch McElroy
Michael Pothast
(Alternate)
Jeffrey Ross

ANALYSIS

This analysis of the Miami Township Zoning Resolution considers the possible classification of Supported Living Homes as “Community Oriented Residential Social Service Facilities” (CORSSF), and what impact that classification may have upon the establishment of the homes. This issue merits discussion for two primary reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the Miami Township Zoning Resolution does not comply with sources of Fair Housing law. Furthermore, it is important to ensure that Supported Living Homes receive proper classification to avoid undue obstacles to their establishment.

- **Community Oriented Residential Social Service Facility**

The Miami Township Zoning Resolution defines a “Community Oriented Residential Social Service Facility” as:

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definitions shall not include...(halfway houses), nursing homes, or convalescent homes.

Miami Township Zoning Resolution § 203.04.

As mentioned in the above Summary, Supported Living Homes do not meet the necessary criteria for classification as a CORSSF. While Supported Living Homes do provide residence to four (4) unrelated individuals with disabilities, the homes are not subject to licensing requirements. Thus, classification as a CORSSF under the Miami

Township Zoning Resolution is neither accurate nor appropriate. However, if Supported Living Homes are classified as CORSSFs they would constitute conditional uses of property in each of the districts zoned for residential use within the Township. Pursuant to classification as a conditional use, Supported Living Homes and the establishment thereof would be subject to the conditional use provisions of Article 4 § 406 and Article 48. Article 4 § 406 of the resolution sets forth general conditional use provisions, whereas the provisions of Article 48 are specific to CORSSFs.

SUGGESTED AMENDMENTS

All proposed changes to the Miami Township Zoning Resolution are included in this Suggested Amendments section. The original text of definitions is followed by proposed changes. Original text of provisions specifically dedicated to the conditional use of property as a CORSSF is followed by proposed changes. All additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through.

§ 203.04 Community Oriented Residential Social Service Facility

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include facilities described in Subsection 208.01 (halfway houses), nursing homes, or convalescent homes.

§ 203.04 Care Community Oriented Residential Social Service Facility

A dwelling unit in which **room and board, personal care, supervision and accommodations are provided to a group of six (6) or more individuals on a transient, semi-transient, or permanent basis. of whom four or more are unrelated to the provider. Personal care is the necessary assistance to residents with the activities of daily living including the self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of physical safety of the residents.** ~~These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include facilities described in Subsection 208.01 (halfway houses), nursing homes, or convalescent homes.~~

Article 48 Community Oriented Residential Social Service Facilities

§ 4801 SUBMISSION REQUIREMENTS.

The operator or agency applying for a Conditional Use Certificate to operate a Community Oriented Residential Social Service Facility or Halfway House shall submit the following information to aid the Board of Zoning Appeals in its review of the requested facility:

- A. Identification of similar facilities presently existing within Miami Township and contiguous jurisdictions and confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.
- B. A license or evidence of ability to obtain a license, if such is requested, from the pertinent governmental unit prior to operation. Prior to the issuance of a Conditional Use Certificate, and/or a final certificate of occupancy, the occupant, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed Conditional Use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.
- C. A copy of the sponsoring agency's operational and occupancy standards and detailed plan for services and program.
- D. A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicate that the proposed use of the site will be compatible with the present character of the neighborhood.

Article 48 ~~Community Oriented Residential Social Service Care~~ Facilities

~~§ 4801 SUBMISSION REQUIREMENTS.~~

~~The operator or agency applying for a Conditional Use Certificate to operate a Community Oriented Residential Social Service Facility or Halfway House shall submit the following information to aid the Board of Zoning Appeals in its review of the requested facility:~~

- ~~A. Identification of similar facilities presently existing within Miami Township and contiguous jurisdictions and confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.~~
- ~~B. B. A license or evidence of ability to obtain a license, if such is requested, from the pertinent governmental unit prior to operation. Prior to the issuance of a Conditional Use Certificate, and/or a final certificate of occupancy, the occupant, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed Conditional Use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.~~
- ~~C. C. A copy of the sponsoring agency's operational and occupancy standards and detailed plan for services and program.~~
- ~~D. D. A site plan for the proposed home indicating home structure outline and floor plan, off street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicate that the proposed use of the site will be compatible with the present character of the neighborhood.~~

§ 4802 FACILITY REQUIREMENTS.

- A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least (60) square feet of habitable room area for each occupant.
- B. Indoor and outdoor recreational space shall be provided for the clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency. If no standards exist, then the following minimum areas shall apply:
 - 1. Common indoor area shall consist of at least 25 square feet per individual.
 - 2. Common outdoor area shall consist of at least 60 square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirement.

- C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.
- D. All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.
- E. Off-street parking requirements: One space for each three (3) persons residing in a Community Oriented Residential Social Service Facility or Halfway House except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may be substituted for a portion of the required off-street spaces if approved by the Board of Zoning Appeals.
- F. No facility shall be permitted within 1500 feet of another Community Oriented Residential Social Service Facility or Halfway House, and the siting of the facility shall comply with the Residential Care Opportunities Guide for Montgomery County. The Board of Zoning Appeals may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement or deviation from the Residential Care Opportunities Guide will not contribute to the concentration of such facilities (e. g. , the proposed site is located in a distinctly different neighborhood which is separated from an existing site by an interstate highway, or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses).
- G. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.

§ 4802 CARE FACILITY REQUIREMENTS.

- ~~A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least (60) square feet of habitable room area for each occupant.~~
- A. B.—The care facility indoor and outdoor recreational space shall be provided suitable outdoor recreation open space for the number of residents for the care facility. clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency. If no standards exist, then the following minimum areas shall apply:**
 - ~~1. Common indoor area shall consist of at least 25 square feet per individual.~~
 - ~~2. Common outdoor area shall consist of at least 60 square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirement.~~

- ~~C. No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.~~
- ~~B. D. All exterior lighting shall be shielded to prevent glare at four (4) feet in height at any property line suitably directed and shaded to prevent any glare upon adjoining residential properties.~~
- E. **C. Off-street parking requirements: Pursuant to § 4302 for one and two-family dwellings.** ~~One space for each three (3) persons residing in a Community Oriented Residential Social Service Facility or Halfway House except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may be substituted for a portion of the required off-street spaces if approved by the Board of Zoning Appeals.~~
- ~~F. No facility shall be permitted within 1500 feet of another Community Oriented Residential Social Service Facility or Halfway House, and the siting of the facility shall comply with the Residential Care Opportunities Guide for Montgomery County.~~
- ~~The Board of Zoning Appeals may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement or deviation from the Residential Care Opportunities Guide will not contribute to the concentration of such facilities (e. g. , the proposed site is located in a distinctly different neighborhood which is separated from an existing site by an interstate highway, or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses).~~
- ~~G. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.~~

§ 4803 FINDINGS BY THE BOARD OF ZONING APPEALS.

In its review of each proposed facility, the Board of Zoning appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true, the Board shall grant the Conditional Use. The proposed facility:

- A. Complies with all the applicable facilities requirements.
- B. It is in fact a Community Oriented Residential Social Service Facility or Halfway House licensed by an agency of the State of Ohio and Montgomery County. If such licensing is not required, an affidavit so stating has been presented to document this statement.
- C. Is approved by the local agency responsible for supportive services and/or programs to the facility.

- D. Will be designed, constructed, and maintained so that such use will not change the general character of the area and be operated in compliance with relevant licensing or certification standards.
- E. Will not be within 1500 feet of another Community Oriented Residential Social Service Facility or Halfway House, unless this standard is varied by the Board of Zoning Appeals to a lesser distance.
- F. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- G. Will have vehicular approaches to the property which shall be designed to prevent any undue interference with traffic on surrounding public streets.

~~§ 4803 FINDINGS BY THE BOARD OF ZONING APPEALS.~~

~~In its review of each proposed facility, the Board of Zoning appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true, the Board shall grant the Conditional Use. The proposed facility:~~

- ~~A. Complies with all the applicable facilities requirements.~~
- ~~B. It is in fact a Community Oriented Residential Social Service Facility or Halfway House licensed by an agency of the State of Ohio and Montgomery County. If such licensing is not required, an affidavit so stating has been presented to document this statement.~~
- ~~C. Is approved by the local agency responsible for supportive services and/or programs to the facility.~~
- ~~H. Will be designed, constructed, and maintained so that such use will not change the general character of the area and be operated in compliance with relevant licensing or certification standards.~~
- ~~I. Will not be within 1500 feet of another Community Oriented Residential Social Service Facility or Halfway House, unless this standard is varied by the Board of Zoning Appeals to a lesser distance.~~
- ~~J. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and~~

**Fair Housing Act Compliance Concerns Arising from Zoning Laws of Jurisdictions within Montgomery County, OH
and the Impact Upon People with Disabilities**

~~sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.~~

~~G. Will have vehicular approaches to the property which shall be designed to prevent any undue interference with traffic on surrounding public streets.~~

Moraine

INTRODUCTION

The issues addressed in this review of the City of Moraine Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review of the City of Moraine Zoning Code relates to the manner in which a Supported Living Home is classified by the jurisdiction's planning commission and/or board of zoning appeals. It is important to address, or at least ascertain, which classification a Supported Living Home may receive, in light of interpretive issues that may stem from the Code itself.

The City of Moraine is located in Central Montgomery County, bordered to the North by the City of Dayton, the East by the City of Kettering, to the South by the City of West Carrollton, and the West by Jefferson Township. Currently, MVIO operates no property in the City of Moraine. This review of the City of Moraine Zoning Code includes points of contact and officeholders within the jurisdiction, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and suggested amendments to the Code.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

4200 Dryden Rd
Moraine, OH 45439 -1495
Phone: (937) 535-1000
Fax: (937) 535-1274
<http://www.ci.moraine.oh.us>

Zoning Contact Information

Michael Hammes

Phone: (937) 535-1037
Fax: (937) 535-1274

Planning Commission

Meets: third Tuesday of each month at 7:00 PM in Council Chambers

Mary Stringer
Linda Sexton
Janielle Gabbard
Ora Allen
(1 vacancy)

Board of Zoning Appeals

Meets: first Tuesday of each month at 7:00 PM in Council Chambers

Sarilynne Shady
George O'Neill
Shirley Whitt
Sharon Duff
(2 vacancies)

ANALYSIS

The City of Moraine Zoning Code sets forth several classifications and terms that may affect the establishment of Supported Living Homes. Some of these terms, while included in residential district regulations, are not expressly defined in the Code's definitions section. The terms used in residential district regulations, but not defined in the definitions section of the Code include:

“Sanitarium”

“Institutions for the insane, liquor or drug addicts”

“Clinics for human care”

However, because these terms are likely to be inapplicable to Supported Living, their potential impact is not addressed here. Although Supported Living Homes are not subject to licensing requirements, it is possible that such a home would be classified generally as a “Community Oriented Residential Social Service Facility” (CORSSF). Among the categories listed as such that constitute a CORSSF is a “Family Care Home.” Exclusive of other provisions defining both a CORSSF and a “Family Care Home”, occupancy limits may bear on the classification of a Supported Home as either use. This analysis considers the impact that classification as a “Community Oriented Residential Social Service Facility” (CORSSF) may have upon the establishment of a Supported Living home.

■

▪ **Community Oriented Residential Social Services Facility**

The City of Moraine Zoning Code defines a “Community Oriented Residential Social Service Facility” as:

A facility which provides resident services to a group of individuals of whom one (1) or more are unrelated. These individuals are mentally ill, mentally retarded, handicapped, aged or disabled; and/or are undergoing rehabilitation; and are provided services to meet their needs. This category includes uses licensed, supervised or under contract by any Federal, State, County or other political subdivision.

City of Moraine Zoning Code § 1115.03(71).

As a Supported Living Home typically provides a residence to four (4) unrelated individuals with disabilities, the occupancy of the home’s living arrangement would render it a CORSSF under the City of Moraine Zoning Code. However, a Supported Living Home’s exemption from licensing requirements would exclude it from classification as a CORSSF. If MVIO’s presence and activity in the Supported Living concept is deemed as such that renders a Supported Living Home “supervised or under contract by” Montgomery County government, it is possible that the home would be classified as a CORSSF. A “Family Care Home” is among the list of uses in the definition that constitutes a CORSSF. The City of Moraine Zoning Code defines a “Family Care Home” as:

Residential facilities that provide room and board, personal care, rehabilitation services and supervision in a family setting for from three (3) to five (5) persons, adults or children, who are mentally ill, mentally retarded, have any form of developmental disability or cannot reside with their natural family.

City of Moraine Zoning Code § 1115.03(71)(A)(1).

Because a Supported Living Home does not meet the criteria necessary to constitute a CORSSF generally, a Supported Living Home cannot meet the criteria necessary to constitute a “Family Care Home” specifically. Yet, if inaccurately and inappropriately classified as a CORSSF, obstacles to the establishment of a Supported Living Home may still persist.

None of the available provisions of the City of Moraine Zoning Code sections specifically govern the use of a property as a CORSSF. A CORSSF is not stated as a permitted or special use in any districts zoned for residential use within the City of Moraine. The above definitions do not state that a CORSSF is subject to any special or conditional use provisions; and no special or conditional use provisions are dedicated specifically to the use of property as a CORSSF. The inherent vagueness and ambiguity of the structure of the City of Moraine Zoning Code, in light of the use of property as a CORSSF, could lead to classifications of Supported Living Homes that are equally problematic and inaccurate.

▪ **Housing for the Elderly and Handicapped**

The City of Moraine Zoning Code defines “Housing for the Elderly or Handicapped” as:

A building or buildings containing dwellings and related facilities, such as dining, recreational services or therapy uses, where the occupying of the dwellings is restricted to elderly or handicapped persons as defined herein. Such use may include facilities for independent or semi-independent living, day care, personal care nursing facilities or services to the elderly of the community when it is an ancillary part of one of the above.

City of Moraine Zoning Code § 1115.03 (185).

Because tenancy in a Supported Living Home is made available exclusively to individuals with disabilities, it is possible that such a home would be classified as “Housing for the Elderly and Handicapped.” The City of Moraine Zoning Code defines “Elderly and/or Handicapped Persons” as:

Persons who are sixty-two (62) years of age or over;

*Families where either the husband or wife is sixty-two (62) years of age or older;
and*

Handicapped persons under sixty-two (62) if determined to have physical impairments which:

*Are expected to be of long continued and indefinite duration;
Substantially impede the ability to live independently; and
Are of such a nature that the ability to live independently could be improved
by more suitable housing conditions.*

City of Moraine Zoning Code § 1115.03(130).

The City of Moraine Zoning Code terminology and definition differ from similar provisions found in relevant state and federal Fair Housing law. Below is a comparison of the City of Moraine Zoning Code definition of “Elderly and/or Handicapped Persons” with the Ohio Revised Code definition of “Disability” and the FHAA definition of “Handicap.”

C.M.Z.C. § 1115.03(130) “Elderly or Handicapped Persons”

Persons who are sixty-two (62) years of age or over;

Families where either the husband or wife is sixty-two (62) years of age or older; and

Handicapped persons under sixty-two (62) if determined to have physical impairments which:

Are expected to be of long continued and indefinite duration;

Substantially impede the ability to live independently; and

Are of such a nature that the ability to live independently could be improved by more suitable housing conditions.

O.R.C. § 4112.01(13) “Disability”

A physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment

FHAA 42 U. S. C. § 3602(h) “Handicap”

With respect to a person -

A physical or mental impairment which substantially limits one or more of such person’s major life activities,

A record of having such impairment, or

Being regarded as having such impairment

SUGGESTED AMENDMENTS

All proposed changes to the City of Moraine Zoning Code are included in this Suggested Amendments section. The original text of definitions is followed by proposed changes. All additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through. As the City of Moraine Zoning Code does not include provisions specifically governing the special or conditional use of property as a CORSSF, suggested changes to the definition of a CORSSF is the only Code section included herein.

§ 1115.03 (71) Community Oriented Residential Social Service Facility

A facility which provides resident services to a group of individuals of whom one (1) or more are unrelated. These individuals are mentally ill, mentally retarded, handicapped, aged or disabled; and/or are undergoing rehabilitation; and are provided services to meet their needs. This category includes uses licensed, supervised or under contract by any Federal, State, County or other political subdivision."Community oriented residential social service facilities" include the following listed categories:

"Foster care residential facilities" means homes or facilities in which some level of care and/or support is provided to the person residing in the facility who suffers from a mental or physical impairment, is undergoing transition from an institution to the community or for whom other forms of care and support are inappropriate or unavailable. The facility is licensed by an appropriate local and/or State agency which is charged with program development for a specific population. This definition excludes all forms of independent living as well as rest homes, nursing homes, facilities housing more than sixteen (16) persons, residences housing one (1) or two (2) persons and institutions.

"Family care homes" means residential facilities that provide room and board, personal care, rehabilitation services and supervision in a family setting for from three (3) to five (5) persons, adults or children, who are mentally ill, mentally retarded, have any form of developmental disability or cannot reside with their natural family.

"Group care homes" means residential facilities that provide the services of family homes for at least six (6) but not more than sixteen (16) persons, adults or children, who are mentally ill, mentally retarded, have any form of developmental disability or cannot reside with their natural family.

"Social care homes" means residential homes for children or adolescents who lack social maturity or have emotional problems but who have not been judged delinquent by the criminal justice system. Residency may be permanent or transient.

"Intermediate care homes" means residential homes for children or adolescents who have been judged delinquent and have been assigned by a court to a residential home in lieu of placement in a correctional institution.

"Halfway houses" means residential homes for adolescents or adults who have been institutionalized through the criminal justice system and released or who have had alcohol or drug problems which make operation in society difficult and who require the protection of a group setting.

§ 1115.03(71) Care Community Oriented Residential Social Service Facility

A residential facility which provides **room and board, personal care, and supervision for six (6) or more residents on a transient, semi-transient, or permanent basis.** ~~resident services to a group of individuals of whom one (1) or more are unrelated.~~ **Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of physical safety of the residents.** ~~These individuals are mentally ill, mentally retarded, handicapped, aged or disabled; and/or are undergoing rehabilitation; and are provided services to meet their needs. This category includes uses licensed, supervised or under contract by any Federal, State, County or other political subdivision.~~ **Community oriented residential social service facilities" include the following listed categories:**

~~"Foster care residential facilities" means homes or facilities in which some level of care and/or support is provided to the person residing in the facility who suffers from a mental or physical impairment, is undergoing transition from an institution to the community or for whom other forms of care and support are inappropriate or unavailable. The facility is licensed by an appropriate local and/or State agency which is charged with program development for a specific population.—This definition excludes all forms of independent living as well as rest homes, nursing homes, halfway houses, homes for foster children, or facilities that administer treatment as their primary function to inpatients, outpatients or on a day care basis. facilities housing more than sixteen (16) persons, residences housing one (1) or two (2) persons and institutions.~~

~~"Family care homes" means residential facilities that provide room and board, personal care, rehabilitation services and supervision in a family setting for from three (3) to five (5) persons,~~

~~adults or children, who are mentally ill, mentally retarded, have any form of developmental disability or cannot reside with their natural family.~~

~~"Group care homes" means residential facilities that provide the services of family homes for at least six (6) but not more than sixteen (16) persons, adults or children, who are mentally ill, mentally retarded, have any form of developmental disability or cannot reside with their natural family.~~

~~"Social care homes" means residential homes for children or adolescents who lack social maturity or have emotional problems but who have not been judged delinquent by the criminal justice system. Residency may be permanent or transient.~~

~~"Intermediate care homes" means residential homes for children or adolescents who have been judged delinquent and have been assigned by a court to a residential home in lieu of placement in a correctional institution.~~

~~"Halfway houses" means residential homes for adolescents or adults who have been institutionalized through the criminal justice system and released or who have had alcohol or drug problems which make operation in society difficult and who require the protection of a group setting.~~

New Lebanon

INTRODUCTION

This issues addressed in this review of the Village of New Lebanon Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality.

The Village of New Lebanon is located in West Central Montgomery County. Portions of new Lebanon are located within Perry Township and Jackson Township. In all directions, New Lebanon borders these two townships. This review of the New Lebanon Zoning Code includes points of contact and officeholders within the Village, a summary of relevant terminology and provisions, and an analysis of possible interpretive issues.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

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New Lebanon, OH 45345
Phone: (937) 687-1341
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Home Page: www.newlebanonoh.com

Zoning Contact Information

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ANALYSIS

The primary issue raised by this Review of the Village of New Lebanon Zoning Code pertains to the classification of a Supported Living home. The question presented is whether the residents of a Supported Living Home constitute a “Family”, and if they do not, what classification a Supported Living Home may be given. These different classifications merit discussion because the categorization of a Supported Living Home may have bearing on its establishment as a use that is either principally permitted or is conditional. This analysis addresses the classification of a Supported Living Home under the New Lebanon Zoning Code and what effect such a classification may have on the establishment of such a home.

- **Family**

The most appropriate classification for the residents of a Supported Living Home under the New Lebanon Zoning Code is that of a “Family.” A “Family”, as defined in the Code, is:

An individual or two or more persons living together as a household unit who are related to each other by blood, marriage, or adoption, or two or more individuals who need not be related living together as a single housekeeping unit, provided that a ratio of two persons or less per bedroom within the dwelling unit, mobile home, or house trailer is maintained for unrelated arrangements. A group occupying a nursing home, rest home, convalescent home, halfway house, rooming house, hotel, motel, or fraternity or sorority house is not considered a family with this chapter.

New Lebanon Zoning Code § 152.005.

The residents of a Supported Living Home fit squarely within this definition of “Family.” A Supported Living Home’s residents maintain a single housekeeping unit, and the home typically provides a residence for four (4) unrelated individuals, each with

his or her own bedroom. Therefore, as its residents meet the standards and necessary ratios set forth in the Code, a Supported Living Home is accurately defined as a dwelling in which a “Family” resides.

However, the definition expressly denies consideration as a “Family” to individuals “occupying a nursing home, rest home, convalescent home, halfway house, rooming house, hotel, motel, or fraternity or sorority house.” *Id.* If a Supported Living Home is construed as a residence that constitutes any of these enumerated uses, its residents will not merit consideration as a “Family” under the Code.

The Zoning Code’s definition of “Family” may give rise to issues of interpretation which, if decided in a manner unfavorable to Supported Living Homes, could act to bar the residents from consideration as a “Family.” Certain canons of statutory construction help to provide guidance in interpreting the Code’s definition of “Family.” Two canons of construction are of particular importance with respect to this definition: “*expressio unius est exclusio alterius*”, and the canon for narrowly construing provisos.

➤ Expressio unius est exclusio alterius

This canon translates to “the expression of one thing indicates exclusion of the other.” When applied to statutory text, the implication is that the lawmaking body did not intend to include what they chose to omit. The New Lebanon Zoning Code’s definition expressly bars individuals “occupying a nursing home, rest home, convalescent home, halfway house, rooming house, hotel, motel, or fraternity or sorority house” from consideration as a “Family.” *Id.* Aptly applying this canon to

the definition of “Family” affords consideration as a “Family” to groups occupying dwellings other than those expressly barred. By adhering to the principle embodied in this canon of construction, the residents of a Supported Living Home merit consideration as a “Family”, so long as the living arrangement is not deemed one expressly prohibited in the definition itself.

➤ Narrowly Construe Provisos

Provisos are those portions of statutory text that create exceptions or exemptions to a general rule or provision. Narrowly construing provisos affords a statute an interpretation that is as true to the legislative purview as possible. Broadly interpreting a proviso has the effect of adding topics and actions to those expressly freed from a statute’s operation. The New Lebanon Zoning Code’s definition clearly sets forth an exception to the general rule governing the composition of a “Family.” Excluded from consideration as a “Family” are groups of individuals that occupy “a nursing home, rest home, convalescent home, halfway house, rooming house, hotel, motel, or fraternity or sorority house.” This exemption is to be read narrowly, excluding only those groups occupying the stated dwellings from consideration as a “Family.”

▪ **Community Oriented Residential Social Service Facility**

A group occupying a Community Oriented Residential Social Service Facility is not expressly excluded from consideration as a “Family” under the New Lebanon Zoning Code. Although the residents of a Supported Living Home are most appropriately classified as a “Family” under the Code, a Supported Living Home may nevertheless be deemed a “Community Oriented Residential Social Service Facility” (CORSSF). The New Lebanon Zoning Code defines a CORSSF as:

A dwelling unit in which personal care, supervision, and accommodations are provided to a group of individuals, of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as persons with mental, physical, or developmental disabilities and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include halfway houses, nursing homes, rest homes, and convalescent homes.

New Lebanon Zoning Code § 152.005.

A Supported Living Home is not “licensed, supervised, or under contract by any federal, state, county, or other political subdivision.” *Id.* However, it is possible that MVIO could be construed as an operator that meets these criteria. A Supported Living Home is a dwelling for four (4) unrelated individuals with mental retardation and/or developmental disabilities who receive personal care within the home.

As is true with the Code’s definition of “Family”, the definition of a CORSSF presents issues of interpretation that provide further support to the classification of a Supported Living Home’s residents as a “Family.” “The presumption of consistent usage and meaningful variation,” as well as the “rule against operational conflict” are canons of

construction, which aid in interpreting the definition of a CORSSF under the New Lebanon Zoning Code.

➤ Presumption of Consistent Usage and Meaningful Variation

This canon of construction relies on the principle that lawmakers will use the same word to mean the same thing throughout a single body of law. Quite simply, it is presumed that a term bears the same meaning in one section as it does another section. Conversely, when a term is included in one section of a statute and excluded in another section, it is presumed that the lawmakers purposely made this meaningful variation. Under the New Lebanon Zoning Code, the terms “Rest Home”, “Nursing Home”, “Halfway House”, and “Convalescent Home” are used consistently in both the definition of “Family”, and the definition of CORSSF. In both instances, these enumerated uses are excluded from constituting either a “Family” or a CORSSF.

Through this consistent use of terminology, the New Lebanon Zoning Code makes clear that the residents of a CORSSF were not intended to be exempt from consideration as a “Family.” It necessarily follows that a group of four unrelated individuals residing in a Supported Living Home also cannot be barred from consideration as a “Family.”

➤ Rule Against Operational Conflict

The rule against operational conflict functions to ensure that one provision of a statute is not interpreted in a manner that leads to the derogation of another provision. To the extent possible, statutory provisions should be construed in a way that is harmonious with other provisions. The New Lebanon Zoning Code provisions defining a “Family” and a CORSSF must be construed so that both definitions retain their operative effect. To interpret the residents of a CORSSF as individuals barred from consideration as a “Family”, would fundamentally alter the operation of the definition of “Family” itself. Such a construction would have the effect of capping the number of individuals who can constitute a single housekeeping unit, irrespective of the other requirements set forth in the definition of a “Family.” Moreover, construing a CORSSF as use that prohibits its residents from being considered a “Family” would effect a change in the plain text of the Zoning Code, nullifying the delineation between a “Nursing home, rest home, halfway house, or convalescent home” and a CORSSF.

The provisions of the New Lebanon Zoning Code must be interpreted in a way that affords the residents of a Supported Living Home the classification of a “Family.” By applying these canons of statutory construction to the definitions of “Family” and CORSSF, and noting the conflicts that arise in the absence of apt interpretation, no other reasonable conclusion can be reached. Evaluating the living arrangement of a Supported Living Home in conjunction with these interpretive measures leads to the residents of a Supported Living Home meriting classification as a “Family.”

SUGGESTED AMENDMENTS

While classification as a “Family” is most appropriate for the residents of a Supported Living Home, it is possible that the living arrangement receive classification as a CORSSF. Included in this Suggested Amendments section is original text and proposed changes to both the definition and provisions governing establishment of a CORSSF. Additions to statutory language are in bold, and statutory language suggested for deletion is noted with a strike-through. The original text of the provisions governing the establishment of a CORSSF is followed by proposed changes.

Community Oriented Residential Social Service Facility

A dwelling unit in which personal care, supervision, and accommodations are provided to a group of individuals, of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as persons with mental, physical, or developmental disabilities and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include halfway houses, nursing homes, rest homes, and convalescent homes.

~~Care Community Oriented Residential Social Service Facility~~

*A dwelling unit in which **room and board**, personal care, supervision, and accommodations are provided to a group of **six (6) or more residents on a transient, semi-transient, or permanent basis.** ~~individuals, of whom four or more are unrelated to the provider. Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of the safety of the residents. These individuals have some condition which requires assisted living, such as persons with mental, physical, or developmental disabilities and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include halfway houses, nursing homes, rest homes, and convalescent homes.~~*

§ 152.200 Community Oriented Social Service Facilities

A) *Submission requirements.* The operator or agency applying for a conditional use permit to operate a community-oriented residential social service facility or halfway house shall submit the following information to aid the Board of Zoning Appeals in its review of the requested facility:

(1) Identification of similar facilities presently existing within the village and contiguous jurisdictions and confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County;

(2) A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented;

(3) A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs; and

(4) A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board of Zoning Appeals may require. Such plan shall include sufficient information to indicate that the proposed site will be compatible with the character of the neighborhood.

(B) *Facility requirements.*

(1) Every room occupied for sleeping purposes within the home shall contain a minimum of 80 square feet of habitable room area for one occupant, and when occupied by more than one person, shall contain at least 60 square feet of habitable room area for each occupant.

(2) Indoor and outdoor recreational space shall be provided for the clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency. If no such standards exist, then the following minimum area shall apply:

(a) Common indoor area shall consist of at least 25 square feet per individual.

(b) Common outdoor area shall consist of at least 60 square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board of Zoning Appeals may waive the outdoor space requirement.

(c) No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.

(d) All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.

(e) *Off-street parking requirements.* One space for each three persons residing in a community-based residential social service facility or halfway house except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may be substituted for a portion of the required off-street spaces if approved by the Board of Zoning Appeals.

(f) No facility shall be permitted within 1,500 feet of another community-oriented residential social service facility or halfway house. The Board of Zoning Appeals may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement will not contribute to the concentration of such facilities. (For example, the proposed site is located in a distinctly different neighborhood which is separated from an existing site by a freeway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses.)

(g) The facility must be reviewed by the Fire Chief or a certified fire safety inspector.

(C) *Findings by the Board of Zoning Appeals.* In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true, the Board of Zoning Appeals shall grant the conditional use. The Board shall find that the proposed facility:

(1) Complies with all the applicable facilities requirements;

(2) Is in fact a community-based residential social service facility or halfway house licensed by an agency of the state (and respective jurisdiction). If such licensing is not required, an affidavit so stating has been presented to document this statement;

(3) Is approved by the local agency responsible for providing support services and/or programs to the facility;

(4) Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards;

(5) Will not be within 1,500 feet of another community-oriented residential social service facility or halfway house, unless this standard is varied by the Board of Zoning Appeals to a lesser distance based upon stated findings of fact;

(6) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or

that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services; and

(7) Will have vehicular approaches to the property which shall be designed to prevent any undo interference with traffic on surrounding public streets.

§ 152.200 Care Community Oriented Residential Social Service Facilities

~~(A) Submission requirements.~~ The operator or agency applying for a conditional use permit to operate a community-oriented residential social service facility or halfway house shall submit the following information to aid the Board of Zoning Appeals in its review of the requested facility:

~~(1) Identification of similar facilities presently existing within the village and contiguous jurisdictions and confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County;~~

~~(2) A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented;~~

~~(3) A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs; and~~

~~(4) A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board of Zoning Appeals may require. Such plan shall include sufficient information to indicate that the proposed site will be compatible with the character of the neighborhood.~~

~~(B) (A) Care Facility requirements.~~

~~(1) Every room occupied for sleeping purposes within the home shall contain a minimum of 80 square feet of habitable room area for one occupant, and when occupied by more than one person, shall contain at least 60 square feet of habitable room area for each occupant.~~

~~(2) (1) Indoor and outdoor recreational space shall be provided for the **number of residents of the care facility.** clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency. If no such standards exist, then the following minimum area shall apply:~~

~~(a) Common indoor area shall consist of at least 25 square feet per individual.~~

~~(b) Common outdoor area shall consist of at least 60 square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board of Zoning Appeals may waive the outdoor space requirement.~~

~~(c) No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.~~

~~(d) (a) All exterior lighting shall be suitably directed and shaded to prevent any glare at four (4) feet in height at any property line. upon adjoining residential properties.~~

~~(e) (b) *Off-street parking requirements.* Off-street parking shall be provided pursuant to § 152.232 of the Zoning Code. One space for each three persons residing in a community based residential social service facility or halfway house except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off street parking shall be provided on one to one ratio to the number of autos operated out of the facility. Within neighborhoods in which on street parking is accepted practice, on street space directly abutting the subject lot may be substituted for a portion of the required off street spaces if approved by the Board of Zoning Appeals.~~

~~(f) No facility shall be permitted within 1,500 feet of another community oriented residential social service facility or halfway house. The Board of Zoning Appeals may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement will not contribute to the concentration of such facilities. (For example, the proposed site is located in a distinctly different neighborhood which is separated from an existing site by a freeway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses.)~~

~~(g) The facility must be reviewed by the Fire Chief or a certified fire safety inspector.~~

~~(C) *Findings by the Board of Zoning Appeals.* In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true, the Board of Zoning Appeals shall grant the conditional use. The Board shall find that the proposed facility:~~

~~(1) Complies with all the applicable facilities requirements;~~

~~(2) Is in fact a community based residential social service facility or halfway house licensed by an agency of the state (and respective jurisdiction). If such licensing is not required, an affidavit so stating has been presented to document this statement;~~

~~(3) Is approved by the local agency responsible for providing support services and/or programs to the facility;~~

**Fair Housing Act Compliance Concerns Arising from Zoning Laws of Jurisdictions within Montgomery County, OH
and the Impact Upon People with Disabilities**

- ~~(4) Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards;~~
- ~~(5) Will not be within 1,500 feet of another community oriented residential social service facility or halfway house, unless this standard is varied by the Board of Zoning Appeals to a lesser distance based upon stated findings of fact;~~
- ~~(6) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services; and~~
- ~~(7) Will have vehicular approaches to the property which shall be designed to prevent any undue interference with traffic on surrounding public streets.~~

Oakwood

INTRODUCTION

The City of Oakwood's Zoning Code allows for the establishment of Supported Living Homes. Although the Zoning Code can be interpreted to allow for Supported Living Homes, without a special permit the Zoning Code might not be in compliance with federal Fair Housing regulations (which will not be discussed in this analysis). The Oakwood Zoning Code can be interpreted as allowing Supported Living Homes because it has a broad definition of Family. There is facially no restriction on having someone help a family with care and therefore no special or conditional permit should be needed to develop Supported Living Homes in Oakwood.

The City of Oakwood is located within the Miami Valley region of Southwestern Ohio. It is bordered by Dayton, OH on the North and East, and Kettering, OH to the South and West. Currently, MVIO does not own or operate any property in Oakwood. This review of the Oakwood Zoning Code includes points of contact and officeholders, a summary of relevant terminology and provisions, and an analysis of possible interpretive issues.

Points of Contact and Officeholders

General Contact Information

30 Park Ave.
Dayton, OH 45419
Phone: (937) 297- 2920
Fax: (937) 297-2940
Home Page: www.ci.oakwood.oh.us

Zoning Contact Information

Dave Bunting

Phone: (937) 297- 2920
Fax: (937) 297-2940

Board of Zoning Appeals

Kip Bohachek, Chair
Sharon Killworth
Dan Deitz
Jane G. Voisard
Cathy Gibson, Clerk
Greg Lauterbach

ANALYSIS

A review of the City of Oakwood Zoning Code indicates the Code is seemingly in compliance with federal Fair Housing regulations in relation to Supported Living Homes. The primary issue is the category under which Supported Living Homes should be classified. Under the Code, individuals who reside in Supported Living Homes and can be classified as a family; and therefore a special use permit would not be needed to establish Supported Living Homes. The Code could also be interpreted in a way that would allow for Supported Living Homes to be classified as Assisted Living Facilities. Classifying Supported Living Homes as Assisted Living Facilities would cause them to need a special use permit. In interpreting the statute, Supported Living Homes parallel the definition of Family; therefore, the Supported Living Homes should be classified as “single family” homes and not as facilities.

- **Assisted Living Facility**

The City of Oakwood Zoning Code defines “Assisted Living Facility” as:

“Housing which provides a living arrangement of self contained units that integrate shelter, food service and other service for adults who require some level of care possibly including twenty-four (24) hour oversight. Services may include meals, laundry, transportation, housekeeping and organized activities which create opportunities for socialization.”

City of Oakwood Zoning Code § 301.

To be classified as an “Assisted Living Facility,” a Supported Living Home would have to contain units that provide such services as meals, laundry, housekeeping, etc.. Supported Living Homes do not provide the intensive care that Assisted Living Facilities provide. Supported Living Homes are homes where individuals live as a family unit and the care provided by those outside the home is minimal. Therefore, Supported

Living Homes do not reach the level of care that is given to individuals who reside in Assisted Living Facilities and Supported Living Homes should not be classified as such.

▪ **Family**

The City of Oakwood Zoning Code defines “Family” as:

- A. *“A “family consists of one or more persons, each related to the other by blood, marriage or adoption, who are living together in single family dwelling unit and are maintaining a common household, but excluding the following groupings:
 - 1. Two or more married couples;
 - 2. Two or more parents (not married to each other and not themselves parents and child) who have their children or stepchildren living with them; and
 - 3. Any such group of persons related to each other if the sole relationships are as first cousins or any more distant degrees of consanguinity”*
- B. *A “family” also includes any domestic servants and any workers on the property to the extent such servants and workers live on the property and meet the definition of “persons employed on the premises” as set forth under this Title.*
- C. *Persons who are living together in a single family dwelling unit and maintaining a common household shall be deemed to constitute a “family,” even though not related by blood, marriage or adoption in the manner described above. Provided, such arrangement shall be limited to two unrelated persons. However, the limitation to two such persons shall not apply to those deemed to have disabilities under the Americans With Disabilities Act.”*

City of Oakwood Zoning Code § 301.

The individuals who reside in Supported Living Homes function as a family and therefore should be classified as such. For example, they share cooking, cleaning, and care of each other just as a traditional family. Under the City of Oakwood’s Zoning Code, classifying the individuals in this manner is proper. Section C of the Zoning Code provides that there is no limitation on the number of disabled persons living together that can constitute a Family. The only limitation on this interpretation is that the residents must be disabled as defined by the Americans with Disabilities Act (ADA or Act). The

ADA defines disability, in part, as "...A physical or mental impairment that substantially limits one or more major life activities of such individual..." Americans with Disabilities Act Section 12102.

The residents in Supported Living Homes have physical and/or mental impairments that substantially limit a major life activity; therefore, they are disabled as defined by the ADA. Supported Living Home residents therefore, constitute a Family. Since the individuals constitute a family, MVIO should not need a special use permit to establish Supported Living Homes in the City of Oakwood.

Perry Township

INTRODUCTION

The issues addressed in this review of the Perry Township Zoning Resolution encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality.

Perry Township is located in West-Central Montgomery County. It is bordered to the North by Clay Township, the East by Trotwood, the South by Jackson Township, and the West by Preble County. Portions of New Lebanon and Brookville lie within Perry Township. Currently, MVIO owns no property located in Perry Township. This review of the Perry Township Zoning Resolution entails points of contact and officeholders within Perry Township, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and proposed changes to the current Zoning Resolution.

POINTS OF CONTACT AND OFFICEHOLDERS

General Contact Information

3025 Johnsville Brookville Rd
Brookville, Oh 45309
Phone: (937) 833-3045
Fax: (937) 833-5219

Zoning Contact Information

Tara Rinehart

Phone: (937) 833-3045

ANALYSIS

This analysis of the Perry Township Zoning Resolution addresses the issue of defining “Handicapped Persons.” The zoning resolution All proposed changes to the Perry Township Zoning Resolution definition are included in the Suggested Amendments section of this review.

- **Handicapped Persons**

The Perry Township Zoning Resolution defines “Handicapped Persons” more narrowly than both the FHAA and the Ohio Revised Code. Unlike the federal and state statutes, the Perry Township Zoning Resolution does not include mental impairments in its definition of “Handicapped Persons.”

Perry Township Zoning Resolution § 203.05 “Handicapped Persons”

... Handicapped persons under sixty-two (62) if determined to have physical impairments which (a) are expected to be of long continued and indefinite duration; (b) substantially impede the ability to live independently, and (c) are of such a nature that the ability to live independently could be improved by more suitable housing conditions.

FHAA 42 U. S. C. § 3602(h) “Handicap”

With respect to a person –

- (4) A physical or mental impairment which substantially limits one or more of such person’s major life activities,*
- (5) A record of having such impairment, or*
- (6) Being regarded as having such impairment*

O.R.C. § 4112.01(13) “Disability”

A physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment

The regulations adopted under the FHAA define a “Mental Impairment” as including:

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities

- **Family**

Because the Perry Township Zoning Code definition of “Family” establishes an occupancy limit of three (3) unrelated individuals, and wholly exempts “Community Oriented Residential Social Service Facilities” (CORSSF) from the definition, the residents of a Supported Living Home may constitute a “Family.” However, if the word “exempt” is interpreted as prohibiting the residents of a CORSSF from constituting a “Family”, the individuals residing in a Supported Living Home would likely be prohibited as well.

- **Community Oriented Residential Social Services Facilities**

The Perry Township Zoning Code defines a “Community Oriented Social Services Facility” as:

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the

provider. These individuals have some condition, which requires assisted living such as being mentally ill, mentally retarded, handicapped, aged or disabled, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes and Convalescent Homes.

Perry Township Zoning Code § 203.03.

A Supported Living Home is not subject to the licensing standards set forth by “any federal, state, county, or other political subdivision.” However, if a Supported Living Home is construed as a CORSSF, it would constitute a conditional use in each of the districts zoned for residential use.

SUGGESTED AMENDMENTS

All proposed changes to the Perry Township Zoning Resolution are included in this Suggested Amendments section. The original text of the definitions included herein is followed by suggested amendments. Proposed changes to residential district regulations are noted under the appropriate Perry Township Zoning Resolution section number. Finally, the text of special district provisions is followed by suggested amendments. All proposed additional language is noted in bold, capital letters. Language suggested for repeal is marked with a strike-through.

Chapter I, Article 2 Definitions

§ 203.03 Community Oriented Social Service Facilities

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These

individuals have some condition, which requires assisted living such as being mentally ill, mentally retarded, handicapped, aged or disabled, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal state, county, or other political subdivision. This definition shall not include Halfway Houses, Nursing Homes, Rest Homes and Convalescent Homes.

§ 203.03 ~~Care Community Oriented Social Service Facilities~~

A residential facility which provides room and board, dwelling unit in which personal care, supervision and accommodations for six (6) or more residents on a transient, semi-transient, or permanent basis. ~~are provided to a group of individuals of whom four or more are unrelated to the provider.~~ Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of physical safety of the residents. ~~These individuals have some condition, which requires assisted living such as being mentally ill, mentally retarded, handicapped, aged or disabled, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal state, county, or other political subdivision.~~ This definition shall not include Halfway Houses, Nursing Homes, Rest Homes and Convalescent Homes or facilities that administer treatment as their primary function to inpatients, outpatients, or on a day care basis.

§ 203.05 Elderly and/or Handicapped Persons

...Handicapped persons under sixty-two (62) if determined to have physical impairments which (a) are expected to be of long continued and indefinite duration; (b) substantially impede the ability to live independently, and (c) are of such a nature that the ability to live independently could be improved by more suitable housing conditions.

§ 203.05 Elderly and/or **Disabled Handicapped** Persons

*...**Disabled Handicapped** persons under sixty-two (62) if determined to have a physical or mental impairments which (a) are expected to be of long continued and indefinite duration; (b) substantially impede the ability to live independently, and (c) are of such a nature that the ability to live independently could be improved by more suitable housing conditions.*

§ 203.04 Developmentally Disabled

Having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or dyslexia resulting from these, or any other condition closely related to mental retardation in terms of intellectual and adaptive problems.

~~§ 203.04 Developmentally Disabled~~

~~*Having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or dyslexia resulting from these, or any other condition closely related to mental retardation in terms of intellectual and adaptive problems.*~~

COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES

PREAMBLE:

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom for or more are unrelated to the provider. These individuals have some condition, which required assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county or other political subdivision. Such facilities are designated as Conditional Uses within the R-1 through R-3 Residential Zoning District and as such are required to comply with the following provisions:

§ 2701 SUBMISSION REQUIREMENTS.

The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility shall submit the following information to aid the Board of Zoning Appeals on its review of the requested facility.

A. Identification of similar facilities presently existing within Perry Township and contiguous jurisdictions, as well as confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.

B. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate

of occupancy, the operator or agency shall provide evidence that a valid license has been issued, or is obtainable for the proposed conditional use on subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.

C. A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs.

D. A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities, as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicate that the proposed site will be compatible with the character of the neighborhood.

Care ~~COMMUNITY ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES~~

PREAMBLE:

A dwelling unit in which **room and board**, personal care, supervision and accommodations are provided to a group of individuals of whom **six (6) or more** are unrelated to the provider, **on a transient, semi-transient, or permanent basis. Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of the physical safety of the residents.** ~~These individuals have some condition, which required assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county or other political subdivision. Such facilities are designated as Conditional Uses within the R-1 through R-3 Residential Zoning District and as such are required to comply with the following provisions:~~

§ 2701 SUBMISSION REQUIREMENTS.

~~The operator or agency applying for a conditional use permit to operate a Community Oriented Residential Social Service Facility shall submit the following information to aid the Board of Zoning Appeals on its review of the requested facility.~~

~~A. Identification of similar facilities presently existing within Perry Township and contiguous jurisdictions, as well as confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.~~

~~B. A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate~~

~~of occupancy, the operator or agency shall provide evidence that a valid license has been issued, or is obtainable for the proposed conditional use on subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.~~

~~C. A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs.~~

~~D. A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities, as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicate that the proposed site will be compatible with the character of the neighborhood.~~

§ 2702 FACILITY REQUIREMENTS

A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.

B. Indoor and outdoor recreational space shall be provided for the clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency.

If no such standards exists, then the following minimum area shall apply:

1. Common indoor area shall consist of at least twenty-five (25) square feet per individual.

2. Common outdoor area shall consist of at least sixty (60) square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirement.

C. No exterior alternations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.

D. All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.

E. Off-street parking requirements: One space for each three (3) persons residing in a community based residential social facility except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on a one-to-one ratio based upon the numbers of autos operated out of the facility.

F. No facility shall be permitted within fifteen hundred (1,500) feet of another Community Oriented Residential Social Service Facility, and the siting of the facility complies with the Residential Care Opportunities Guide for Montgomery County.

The BZA may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement or deviation from the Residential Care Opportunities Guide will not contribute to the concentration of such facilities (e. g. , the proposed site is located in a distinctly different neighborhood which is separated from an existing site by an interstate highway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses).

G. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.

§ 2702 Care FACILITY REQUIREMENTS

~~A. Every room occupied for sleeping purposes within the home shall contain a minimum of eighty (80) square feet of habitable room area for one occupant, and when occupied by more than one shall contain at least sixty (60) square feet of habitable room area for each occupant.~~

~~B. A. Indoor and outdoor recreational space shall be provided for the clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency.~~

~~If no such standards exists, then the following minimum area shall apply:~~

~~1. Common indoor area shall consist of at least twenty-five (25) square feet per individual.~~

~~2. Common outdoor area shall consist of at least sixty (60) square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirement.~~

~~C. No exterior alternations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.~~

~~D. B. All exterior lighting shall be suitably directed and shaded to prevent any glare at four (4) feet in height upon adjoining residential properties.~~

~~E. C. Off-street parking requirements: Pursuant to Article 43 of the zoning resolution. One space for each three (3) persons residing in a community based residential social facility except for facilities prohibiting ownership or operation of~~

~~automobiles by occupants of such facilities. In any case, suitably screened off street parking shall be provided on a one to one ratio based upon the numbers of autos operated out of the facility. Within neighborhoods in which on parking is accepted practice, on-street space directly abutting the subject lot may be substituted for a portion of the required off street spaces if approved by the Board of Appeals.~~

~~F. No facility shall be permitted within fifteen hundred (1,500) feet of another Community Oriented Residential Social Service Facility, and the siting of the facility complies with the Residential Care Opportunities Guide for Montgomery County.~~

~~The BZA may reduce this standard if the applicant can show that, due to unique conditions, a reduction of the separation requirement or deviation from the Residential Care Opportunities Guide will not contribute to the concentration of such facilities (e. g. , the proposed site is located in a distinctly different neighborhood which is separated from an existing site by an interstate highway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses).~~

~~G. The facility must be reviewed by the Fire Department or a certified Fire Safety Inspector.~~

§ 2703 FINDINGS BY THE BOARD OF ZONING APPEALS

In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true, the Board shall grant the Conditional Use. The proposed facility:

- A. Complies with all the applicable facilities requirements.
- B. Is in fact a community based residential social service facility licensed by an agency of the State of Ohio (and Perry Township). If such licensing is not required, an affidavit so stating has been presented to document this statement.
- C. Is approved by the local agency responsible for providing support services and/or programs to the facility.
- D. Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards.
- E. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage facilities, refuse disposal, water and sewer, and schools; or that persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

F. Will have vehicular approaches to the property, which shall be designed to prevent any undo interference with traffic on surrounding public street.

G. Due to the narrow roads and lack of sidewalks, the owner of the facility will make sure that the residents will not leave the boundaries of the property. This requirement is in the best interest of the residents since it is extremely dangerous to walk along the side of rural roadways lacking sidewalks

§ 2703 FINDINGS BY THE BOARD OF ZONING APPEALS

~~In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true, the Board shall grant the Conditional Use. The proposed facility:~~

~~A. Complies with all the applicable facilities requirements.~~

~~B. Is in fact a community based residential social service facility licensed by an agency of the State of Ohio (and Perry Township). If such licensing is not required, an affidavit so stating has been presented to document this statement.~~

~~C. Is approved by the local agency responsible for providing support services and/or programs to the facility.~~

~~D. Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards.~~

~~E. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage facilities, refuse disposal, water and sewer, and schools; or that persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.~~

~~F. Will have vehicular approaches to the property, which shall be designed to prevent any undo interference with traffic on surrounding public street.~~

~~G. Due to the narrow roads and lack of sidewalks, the owner of the facility will make sure that the residents will not leave the boundaries of the property. This requirement is in the best interest of the residents since it is extremely dangerous to walk along the side of rural roadways lacking sidewalks~~

Riverside

INTRODUCTION

The issues addressed in this review of the City of Riverside Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review of the City of Riverside Zoning Code relates to the manner in which a Supported Living Home may be classified, and the effects that classification may have upon the establishment of such a home. It is important to ascertain, or at least address, which classification a Supported Living Home may receive, because certain classifications may render the home a conditional use in Riverside's residential districts.

The City of Riverside is located in East Montgomery County. To the North, South, and West, it borders the City of Dayton. To the East, it borders Greene County. Currently, MVIO neither owns nor operates any property within the City of Riverside. This review of the City of Riverside Zoning Code includes points of contact and officeholders, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and a suggested amendments section.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

1791 Harshman Rd.
Dayton, OH 45431
Phone: (937) 233-1801
Fax: (937) 237-5965
Home Page: www.riverside.oh.us

Zoning Contact Information

Peter Williams

Phone: (937) 233-1801
Fax: (937) 237-5965

ANALYSIS

The primary issue raised by this review of the City of Riverside Zoning Code relates to the manner in which a Supported Living Home may be classified. This issue merits discussion for two reasons. First, from the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the Riverside Zoning Code may not comply with other binding sources of law. Second, it is important to ensure that Supported Living Homes receive proper classification under the Code. The City of Riverside Zoning Code definition of “Family” precludes a Supported Living Home’s residents from classification as a “Family.” Therefore, this analysis considers the classification of a Supported Living Home as a CORSSF, and the impact that classification may have upon the home’s establishment.

- **Community Oriented Residential Social Service Facility**

The City of Riverside Zoning Code defines a CORSSF as:

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include "halfway houses", "nursing homes", "rest homes" and "convalescent homes."

City of Riverside Zoning Code § 1133.04(j).

Although Supported Living Homes are not subject to licensing requirements, it is possible that they may receive classification as a CORSSF. In each of the nine (9) districts zoned for residential use in Riverside, a CORSSF is a conditional use. Pursuant to the City of Riverside Zoning Code, a CORSSF is subject to the conditional use

provisions set forth in §§ 1135.06 and 1173.15. The provisions governing the conditional use of property as a CORSSF impose certain restrictions on the establishment of such a facility. Included in the Suggested Amendments section of this review are proposed changes to these provisions.

SUGGESTED AMENDMENTS

This Suggested Amendments section of the City of Riverside Zoning Code review includes proposed changes to pertinent definitions and provisions. The sections of the Code suggested for amendment include the original text of the definition or provision and are accompanied by the proposed changes. Additions to statutory language are noted in bold, and deletions are noted with a strike-through. The original text of provisions governing the conditional use of property as a CORSSF is followed by proposed changes.

§ 1133.04(j) Community Oriented Residential Social Service Facility

A dwelling unit in which personal care, supervision and accommodations are provided to a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include "halfway houses", "nursing homes", "rest homes" and "convalescent homes."

§ 1133.04(j) ~~Care~~ Community Oriented Residential Social Service Facility

A dwelling unit in which **room and board**, personal care, **and** supervision ~~and accommodations~~ **are provided to six (6) or more residents on a transient, semi-transient, or permanent basis. Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be**

prescribed by a physician or licensed dietician, and/or the assurance of physical safety of the residents. ~~a group of individuals of whom four or more are unrelated to the provider. These individuals have some condition which requires assisted living, such as being mentally ill, mentally retarded, handicapped, aged or disabled and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. This definition shall not include "halfway houses", "nursing homes", "rest homes" and "convalescent homes."~~

1173.15 COMMUNITY-ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES AND HALFWAY HOUSES.

(a) Submission Requirements. The operator or agency applying for a conditional use permit to operate a community-oriented residential social service facility or halfway house shall submit the following information to aid the Board of Zoning Appeals in its review of the requested facility.

(1) Identification of similar facilities presently existing within Riverside, and contiguous jurisdictions and confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.

(2) A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.

(3) A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs.

(4) A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicate that the proposed site will be compatible with the character of the neighborhood.

(b) Facility Requirements.

(1) Every room occupied for sleeping purposes within the home shall contain a minimum of eighty square feet of habitable room area for one occupant, and when occupied by more than one, shall contain at least sixty square feet of habitable room area for each occupant.

(2) Indoor and outdoor recreational space shall be provided for the clientele served, based upon standards specified by the licensing authority and/or the sponsoring agency.

If no such standards exist, then the following minimum area shall apply:

- A. Common indoor area shall consist of at least twenty-five square feet per individual.
- B. Common outdoor area shall consist of at least sixty square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirement.

(3) No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.

(4) All exterior lighting shall be suitably directed and shaded to prevent any glare upon adjoining residential properties.

(5) Off-street parking requirements. One space for each three persons residing in a community based residential social service facility or halfway house except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off-street parking shall be provided on one-to-one ratio to the number of autos operated out of the facility. Within neighborhoods in which on-street parking is accepted practice, on-street space directly abutting the subject lot may be substituted for a portion of the required off-street spaces if approved by the Board.

(6) No facility shall be permitted within 1,500 feet of another community-oriented residential social service facility or halfway house. No halfway house shall be located within 500 feet of any residential zoning district.

The Board may reduce the spacing standard between facilities if the applicant can show that, due to unique conditions, a reduction of the separation requirement will not contribute to the concentration of such facilities (e. g. , the proposed site is located in a distinctly different neighborhood which is separated from an existing site by a freeway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses). No reduction of the spacing standard between a halfway house and a residential zoning district shall be permitted.

(7) The facility shall be reviewed by the Fire Department or a certified Fire Safety Inspector.

(c) Findings by the Board of Zoning Appeals. In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true, the Board shall grant the conditional use. The proposed facility:

- (1) Complies with all the applicable facilities requirements.
- (2) Is in fact a community based residential social service facility or halfway house licensed by an agency of the State of Ohio (and respective jurisdiction). If such licensing is not required, an affidavit so stating has been presented to document this statement.
- (3) Is approved by the local agency responsible for providing support services and/or programs to the facility.

- (4) Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards.
- (5) Will not be within 1,500 feet of another community-oriented residential social service facility or halfway house, unless this standard is varied by the Board to a lesser distance.
- (6) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- (7) Will have vehicular approaches to the property which shall be designed to prevent any undo interference with traffic on surrounding public streets.

1173.15 CARE COMMUNITY-ORIENTED RESIDENTIAL SOCIAL SERVICE FACILITIES AND HALFWAY HOUSES.

~~(a) Submission Requirements. The operator or agency applying for a conditional use permit to operate a community-oriented residential social service facility or halfway house shall submit the following information to aid the Board of Zoning Appeals in its review of the requested facility.~~

- ~~(1) Identification of similar facilities presently existing within Riverside, and contiguous jurisdictions and confirmation that the siting of the facility is compatible with the Residential Care Opportunities Guide for Montgomery County.~~
- ~~(2) A license or evidence of ability to obtain a license, if such is required, from the pertinent governmental unit prior to operation. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for the proposed conditional use on the subject property. If licensing is not required, an affidavit from the applicant so stating shall be presented.~~
- ~~(3) A copy of the sponsoring agency's operational and occupancy standards and a detailed plan for services and programs.~~
- ~~(4) A site plan for the proposed home indicating home structure outline and floor plan, off-street parking provisions, driveway access, landscaping and screening provisions, recreational and open space facilities as well as other pertinent information which the Board may require. Such plan shall include sufficient information to indicate that the proposed site will be compatible with the character of the neighborhood.~~

(b) (a) Care Facility Requirements.

~~(1) Every room occupied for sleeping purposes within the home shall contain a minimum of eighty square feet of habitable room area for one occupant, and when occupied by more than one, shall contain at least sixty square feet of habitable room area for each occupant.~~

~~(2) (1) Indoor and outdoor recreational space shall be provided for the clientele served. ; based upon standards specified by the licensing authority and/or the sponsoring agency.~~

~~If no such standards exist, then the following minimum area shall apply:~~

~~A. Common indoor area shall consist of at least twenty five square feet per individual.~~

~~B.—A. Common outdoor area shall consist of **suitable recreation open space for the number of facility residents.** at least sixty square feet per individual. If a public park or other common open space is available in the immediate vicinity of the facility, the Board may waive the outdoor space requirement.~~

~~(3) No exterior alterations of the structure shall be made which depart from the residential character of the building. All new structures proposed shall be compatible with the surrounding neighborhood.~~

~~(4) (2) All exterior lighting shall be suitably directed and shaded to prevent any glare at **four (4) feet in height** upon adjoining residential properties.~~

~~(5) Off-street parking requirements. Pursuant to § 1177.02(a) for **One and Two family dwellings.** One space for each three persons residing in a community-based residential social service facility or halfway house except for facilities prohibiting ownership or operation of automobiles by occupants of such facilities. In any case, suitably screened off street parking shall be provided on one to one ratio to the number of autos operated out of the facility. Within neighborhoods in which on street parking is accepted practice, on street space directly abutting the subject lot may be substituted for a portion of the required off street spaces if approved by the Board.~~

~~(6) No facility shall be permitted within 1,500 feet of another community oriented residential social service facility or halfway house. No halfway house shall be located within 500 feet of any residential zoning district.~~

~~The Board may reduce the spacing standard between facilities if the applicant can show that, due to unique conditions, a reduction of the separation requirement will not contribute to the concentration of such facilities (e. g. , the proposed site is located in a distinctly different~~

Fair Housing Act Compliance Concerns Arising from Zoning Laws of Jurisdictions within Montgomery County, OH
and the Impact Upon People with Disabilities

~~neighborhood which is separated from an existing site by a freeway or the site is in an area that does not constitute a typical residential neighborhood due to a diversity of land uses). No reduction of the spacing standard between a halfway house and a residential zoning district shall be permitted.~~

~~(7) The facility shall be reviewed by the Fire Department or a certified Fire Safety Inspector.~~

~~(c) Findings by the Board of Zoning Appeals. In its review of each proposed facility, the Board of Zoning Appeals shall make specific findings of fact relative to the following criteria. Upon finding all such facts to be true, the Board shall grant the conditional use. The proposed facility:~~

~~(1) Complies with all the applicable facilities requirements.~~

~~(2) Is in fact a community based residential social service facility or halfway house licensed by an agency of the State of Ohio (and respective jurisdiction). If such licensing is not required, an affidavit so stating has been presented to document this statement.~~

~~(3) Is approved by the local agency responsible for providing support services and/or programs to the facility.~~

~~(4) Will be designed, constructed, and maintained so that such use will not change the general character of the area and operated in compliance with relevant licensing or certification standards.~~

~~(5) Will not be within 1,500 feet of another community oriented residential social service facility or halfway house, unless this standard is varied by the Board to a lesser distance.~~

~~(6) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.~~

~~(7) Will have vehicular approaches to the property which shall be designed to prevent any undo interference with traffic on surrounding public streets.~~

Springboro

INTRODUCTION

The issues addressed in this review of the The City of Springboro's Zoning Plan encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by the review of the City of Springboro's Zoning Plan is the vagueness of the Zoning Plan as it relates to facilities like Supported Living Homes and actual Supported Living Homes.

The City of Springboro is located in both Warren and Montgomery Counties. The City of Springboro is between the City of Dayton and the City of Cincinnati. Currently, MVIO does not operate property within the City of Springboro. This review of the City of Springboro Zoning Plan includes points of contact and office holders, and an analysis of possible issues.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

320 West Central.
Springboro, Ohio 45066
Phone: 937-748-4343 Fax: 937-748-0815
Homepage: www.ci.springboro.oh.us

Zoning Contact Information

Dan Fitzpatrick, Zoning Inspector

320 West Central
Springboro, Ohio 45066
Phone: 937-748-9791
Fax: 937-748-8680

Zoning District Information

District classification and regulations can be found in Chapter 1264.01 of the City of Springboro Zoning Plan.

ANALYSIS

A review of the City of Springboro Zoning Plan, the Plan indicates the Zoning Plan is seemingly in compliance with federal Fair Housing regulations as it relates to Supported Living Homes. There are no restrictions or regulations on homes and/or facilities like Supported Living Homes. Without regulations, the City of Springboro can adopt amendments to this Zoning Plan or use its discretion to impede the creation of Supported Living Homes, as it deems necessary. This impediment can be halted by ensuring that the individuals in Supported Living Homes are considered a Family unit as defined by the statute. The statute should explicitly state that the residents in Supported Living Homes are considered a Family unit and should be governed as such under the Zoning Plan. Under the City of Springboro Zoning Plan, individuals who reside in Supported Living Homes can be classified as a Family, because they house four (4) or less individuals.

- **Family**

The City of Springboro Zoning Plan defines “Family as:

“...one or more persons occupying a single dwelling unit, provided that unless all members are related by blood, adoption or marriage, no such family shall contain over five person.”

City of Springboro Zoning Plan Chapter 1260.05.

Supported Living Homes have a maximum of five (5) individuals that occupy a single dwelling. The City of Springboro allows up to five individuals to live together, who are not related by blood, adoption, or marriage, to live together as Family.

Therefore, the residents in Supported Living Homes constitute a Family and can occupy a single family dwelling. By allowing residents housed in Supported Living Homes to

constitute a “Family”, the residents do not have to obtain special permission in order to occupy single family dwellings.

Trotwood

INTRODUCTION

The issues raised in this review of the City of Trotwood Zoning Ordinance encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review relates to the manner in which a Supported Living Home may be classified by the jurisdiction's planning commission and/or board of zoning appeals. It is important to ascertain, or at least address, which classification Supported Living may receive, in light of interpretive issues that may stem from the Ordinance itself.

The City of Trotwood is located in Central Montgomery County, having portions of the City of Dayton within its boundaries. Trotwood is bordered to the North by the City of Clayton and Butler Township, the South by Jefferson Township, the West by Perry Township, and the East by Harrison Township and the City of Dayton. Currently, MVIO does operate property in the City of Trotwood. This review of the City of Trotwood Zoning Ordinance includes points of contact and officeholders within the jurisdiction, a summary of relevant terminology and provisions, an analysis of possible interpretive issues, and suggested amendments to the statutory language of the Ordinance.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

3035 N. Olive Rd.
Trotwood, OH 45426
Phone: (937) 837-7771
Fax: (937) 854-0574
Home Page: <http://www.trotwood.org>

Zoning Contact Information

Carl Daugherty

Phone: (937) 854-7218
Fax: (937) 854-0574

ANALYSIS

The City of Trotwood Zoning Ordinance is structured in a manner that presents possible issues of interpretation that may present obstacles to the establishment of Supported Living Homes within the municipality. These issues merit discussion for two primary reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the City of Trotwood Zoning Ordinance does not comply with other sources of Fair Housing law. Furthermore, due to the manner in which certain uses are permitted or conditionally permitted among Trotwood's districts zoned for residential use, it is important to ensure Supported Living Homes receive proper classification. This analysis considers the classification of a Supported Living Home's residents as a "Family", "Family Care Home", and "Community Residence", as well as the potential impact these classifications may have upon establishing the home.

- **Family**

The City of Trotwood Zoning Ordinance defines a "Family" as:

A group of individuals, not necessarily related by blood, marriage, adoption or guardianship living together in a dwelling unit as a single housekeeping unit under a common housekeeping management plan based on an intentionally structured relationship providing organization and stability.

City of Trotwood Zoning Ordinance § 1123.40.

This definition imposes no maximum occupancy limitations upon unrelated individuals, and does not proscribe a particular relation that individuals must share in order to constitute a "Family." The City of Trotwood Zoning Ordinance definition of "Family" clearly encompasses the living arrangement of a Supported Living home. If

deemed as a use providing residence to a “Family”, Supported Living Homes could be established in each the districts zoned for residential use in the City of Trotwood.

- **Family Care Home**

The City of Trotwood Zoning Ordinance defines a “Family Care Home” as:

A home which provides residential services and supervision for eight or fewer individuals who need not be related to the resident house parents or supervisors, and who are developmentally disabled, mentally retarded, mentally ill, aged or handicapped

City of Trotwood Zoning Ordinance § 1123.41.

Based upon maximum occupancy limitations and the nature of the residents’ disabilities, this classification could possibly be applied to define Supported Living Homes.” Family Care Homes” are not included among lists of principally permitted or conditional uses in Trotwood’s residential district regulations. Moreover, “Family Care Homes” are not included in the City of Trotwood Zoning Ordinance’s additional provisions governing conditional or similar uses. Thus, a determination as to the impact of classifying Supported Living Homes as “Family Care Homes” cannot be made.

- **Community Residence**

The City of Trotwood Zoning Ordinance defines a “Community Residence” as:

A family-like living arrangement for no more than sixteen (16) unrelated persons with disabilities in need of the mutual support furnished by other residents of the community residence as well as the support services provided by the operator, if any, of the community residence. Types of community residences include group houses and halfway houses.

City of Trotwood Zoning Ordinance § 1133.04(c)(1)(A).

The distinction between “Community Residences” and “Family Care Homes” is difficult to identify. An obvious difference between the two terms is the maximum occupancy limitation of eight (8) individuals for “Family Care Homes” and sixteen (16) for “Community Residences.” Expressly stated as uses that constitute “Community Residences” are “Group Homes”, “Halfway Houses”, and “Out of Home Respite Care Centers.” The City of Trotwood Zoning Ordinance defines these uses as:

“Group Home” means a dwelling unit occupied as a single housekeeping unit in a family-like environment by persons with disabilities (the residents) plus support staff, if any. Residents are supervised by a sponsoring entity or its staff which furnishes habilitative services to the group home residents as an alternative to institutional care. Inter-relationships between residents are an essential component of a group home. A group home imposes no time limit on how long an individual can reside in the group home. A group home is a relatively permanent living arrangement where tenancy is measured in years. A group home shall be considered a residential use of property for purposes of all zoning and building codes.

“Halfway House” means a temporary residential living arrangement for persons leaving an institutional setting and in need of a supportive living arrangement so they can readjust to living outside an institution. These are persons who are receiving therapy and counseling from support staff, if any, who are present when residents are present. Inter-relationships between residents is an essential component of a halfway house. Residency is limited to a specified number of weeks or months. A halfway house shall be considered a residential use of property for purposes of all zoning and building codes.

“Out of Home Respite Care Center” means a residential home where out of home respite care services are provided on a short-term basis to consumers enrolled in an ODHS administered HCBS waiver. These services are provided due to the absence, or need for relief, of persons normally providing care for the consumer.

City of Trotwood Zoning Ordinance § 1133.04(c)(1)(C. – E.).

However, if classified as a “Community Residence”, Supported Living Homes would be subject to the general conditional use provisions set forth in § 1133.03 and the conditional use provisions specific to “Community Residences” found in § 1133.04(c)(2).

SUGGESTED AMENDMENTS

All proposed changes to the City of Trotwood Zoning Ordinance are included in this Suggested Amendments section. The original text of definitions and provisions is followed by proposed changes. All additions to statutory language are noted in bold, and all language suggested for deletion is marked with a strike-through. Amendments are suggested for the definition of and provisions governing the use of property as a “Community Residence” and those uses which fall under that category.

§ 1133.04(c)(1)(A) Community Residence

A family-like living arrangement for no more than sixteen (16) unrelated persons with disabilities in need of the mutual support furnished by other residents of the community residence as well as the support services provided by the operator, if any, of the community residence. Types of community residences include group houses and halfway houses.

“Group Home” means a dwelling unit occupied as a single housekeeping unit in a family-like environment by persons with disabilities (the residents) plus support staff, if any. Residents are supervised by a sponsoring entity or its staff which furnishes habilitative services to the group home residents as an alternative to institutional care. Inter-relationships between residents are an essential component of a group home. A group home imposes no time limit on how long an individual can reside in the group home. A group home is a relatively permanent living arrangement where tenancy is measured in years. A group home shall be considered a residential use of property for purposes of all zoning and building codes.

“Halfway House” means a temporary residential living arrangement for persons leaving an institutional setting and in need of a supportive living arrangement so they can readjust to living outside an institution. These are persons who are receiving therapy and counseling from support staff, if any, who are present when residents are present. Inter-relationships between residents is an essential component of a halfway house. Residency is limited to a specified number of weeks or months. A halfway house shall be considered a residential use of property for purposes of all zoning and building codes.

“Out of Home Respite Care Center” means a residential home where out of home respite care services are provided on a short-term basis to consumers enrolled in an ODHS administered HCBS waiver. These services are provided due to the absence, or need for relief, of persons normally providing care for the consumer.

§ 1133.04(c)(1)(A) Community Residence Care Facility

A family-like living arrangement **which provides room and board, personal care, and supervision for six (6) or more residents on a transient, semi-transient, or permanent basis. Personal care is the necessary assistance to residents with the activities of daily living including self-administration of medications, preparation of special diets as may be prescribed by a physician or licensed dietician, and/or the assurance of physical safety of the residents.** ~~no more than sixteen (16) unrelated persons with disabilities in need of the mutual support furnished by other residents of the community residence as well as the support services provided by the operator, if any, of the community residence.~~ Types of community residences **do not** include group houses and halfway houses.

~~“Group Home” means a dwelling unit occupied as a single housekeeping unit in a family-like environment by persons with disabilities (the residents) plus support staff, if any. Residents are supervised by a sponsoring entity or its staff which furnishes habilitative services to the group home residents as an alternative to institutional care. Inter relationships between residents are an essential component of a group home. A group home imposes no time limit on how long an individual can reside in the group home. A group home is a relatively permanent living arrangement where tenancy is measured in years. A group home shall be considered a residential use of property for purposes of all zoning and building codes.~~

~~“Halfway House” means a temporary residential living arrangement for persons leaving an institutional setting and in need of a supportive living arrangement so they can readjust to living outside an institution. These are persons who are receiving therapy and counseling from support staff, if any, who are present when residents are present. Inter relationships between residents is an essential component of a halfway house. Residency is limited to a specified number of weeks or months. A halfway house shall be considered a residential use of property for purposes of all zoning and building codes.~~

~~“Out of Home Respite Care Center” means a residential home where out of home respite care services are provided on a short term basis to consumers enrolled in an ODHS administered HCBS waiver. These services are provided due to the absence, or need for relief, of persons normally providing care for the consumer.~~

§ 1133.04(c)(2)

In addition to the requirements set forth in Section 1133.03 of this Ordinance, the following requirements and limitations shall apply to the uses or structures that follow in districts where such uses and structures require a conditional use permit:

A. Community residences to be located within the specified spacing distance of any community residence:

1. Whether the cumulative effect of the proposed use will hinder the normalization process for residents of any existing community residence located within the district's spacing distance around the existing community residence; and
2. Whether the cumulative effect of the proposed use will create a concentration of community residences in the immediate vicinity or zoning district that would change the character of the area from residential to that of a *de facto* social service district.

B. When the State of Ohio, City of Trotwood, or any recognized national or regional licensing or certification agency does not require a license, certification or equivalent approval for the proposed community residence:

1. The community residence shall be found to be in substantial compliance with state licensing standards or certification standards of the appropriate national accreditation agency for a comparable type of community residence.

§ 1133.04(e)(2)

~~In addition to the requirements set forth in Section 1133.03 of this Ordinance, the following requirements and limitations shall apply to the uses or structures that follow in districts where such uses and structures require a conditional use permit:~~

~~A. Community residences to be located within the specified spacing distance of any community residence:~~

- ~~1. Whether the cumulative effect of the proposed use will hinder the normalization process for residents of any existing community residence located within the district's spacing distance around the existing community residence; and~~
- ~~2. Whether the cumulative effect of the proposed use will create a concentration of community residences in the immediate vicinity or zoning district that would change the character of the area from residential to that of a *de facto* social service district.~~

~~B. When the State of Ohio, City of Trotwood, or any recognized national or regional licensing or certification agency does not require a license, certification or equivalent approval for the proposed community residence:~~

- ~~1. The community residence shall be found to be in substantial compliance with state licensing standards or certification standards of the appropriate national accreditation agency for a comparable type of community residence.~~

Union

INTRODUCTION

A review of the City of Union's Zoning Code indicates it is facially in compliance with the federal Fair Housing regulations. The Zoning Code does not define any specific type of housing under which a Supported Living Home could be categorized. The only relevant definition to this analysis would be the definition of Family. "Family," as defined in the Zoning Code, allows for the residents in a Supported Living Home to be classified as such and therefore bypass any type of conditional use permit.

The City of Union is located, in Montgomery and Miami Counties. The Stillwater River runs to the East of the city. Currently, MVIO operates one (1) property within the City of Union. This review of the City of Union Zoning Code includes points of contact and office holders, a summary of relevant terminology and provisions, and an analysis of possible issues.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

118 North Main St.
Union, OH 45322
Phone: (937) 836-8624
Fax: (937) 836-1240
Home Page: www.ci.union.oh.us

Zoning Contact Information

John P. Applegate

Phone: (937) 836-8624
Fax: (937) 262-3599

ANALYSIS

A review of the City of Union Zoning Code indicates the definition of Family is broad enough to encompass the residents living in Supported Living Homes. The Zoning Code does not define or reference any type of home or facility that could be categorized as a Supported Living Home. In this respect, the City of Union's Zoning Code is seemingly vague. Interpreting the statute to allow individuals living in Supported Homes as a Family unit is possible and is the only choice, due to the vagueness of the statute in this area.

- **Family**

The City of Union Zoning Code defines "Family as:

"one or more persons living as a single housekeeping unit, as distinguished from a group occupying a hotel, club, fraternity or sorority house."

The City of Union Zoning Code § 1165.02.

Supported Living Homes consist of a maximum of four (4) individuals living together as a single housekeeping unit. Residents in Supported Living Homes have some type of outside help provided to them but, other than that, they function as a Family unit.

Since Supported Living Homes, house one or more persons that form a single housekeeping unit they constitute a Family. By constituting a Family, residents in a Supported Living Home can occupy a single family home in all of the different zoning types as a permitted use and not a conditional use; therefore they do not require a conditional use permit.

Vandalia

INTRODUCTION

The City of Vandalia Zoning Code is facially in compliance with the federal Fair Housing regulations, in regard to Supported Living Homes. The major issue raised in this review is whether the individuals who live in Supported Living Homes constitute a Family. If they constitute as a Family, then they will not need special permits to live together in Supported Living Homes. The secondary issue is, if the individuals meet the qualifications as a family, then into what category of housing should Supported Living Homes belong? The category determines whether the use is permitted or conditional.

The City of Vandalia is a suburb of Dayton, OH and is located about ten (10) miles North of Dayton, OH. Also, the City of Vandalia is located between the Great Miami River and the Stillwater River. Currently, MVIO does not operate property within The City of Vandalia. This review of the City of Vandalia includes points of contact and officeholders within the City, a summary of relevant terminology and provisions, an analysis of possible issues, and a suggested amendments section.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

333 James E. Bohanon Mem. Drive
Vandalia, OH 45377
Phone: (937) 898-3750
Fax: (937) 415-2319
Home Page: www.ci.vandalia.oh.us

Zoning Contact Information

Erika Vogel

Phone: (937) 415-2301
Fax: (937) 415-2319

ANALYSIS

In review of the City of Vandalia Zoning Code, Supported Living Homes can be classified as a residential facility or the residents can be viewed as a Family. The Zoning Code is unclear as to whether all residential facilities need conditional permits or just the two stated. In the residential zoning districts, residential facilities are permitted uses except for group homes and adult homes. Supported Living Homes do not fall into any of the three adult homes outlined in the Zoning Code, because they do not meet all of the requirements needed to be an adult home. Supported Living Homes more closely parallel “Semi-Independent Living Homes” which do not need a conditional use permit, depending on the Zoning Code interpretation. In the Conditional Use Permit Section, the Zoning Code identifies residential facilities as needing a conditional use permit and explicitly includes group homes and adult homes. This could be read to include all residential facilities and therefore, require all residential facilities to obtain a conditional use permit, or it could be read to only require a conditional use permit for the two types of facilities listed. If the Zoning Board wanted to include all residential facilities, they would have done so and not singled out some from the rest. The classification of the residents and the classification of the home itself will determine if a permit is required for Supported Living Homes.

- **Residential Facility**

The City of Vandalia Zoning Code defines a “Residential Facility” as:

“A facility which provides resident services to a group of individuals of whom one or more are unrelated. These individuals may be mentally retarded, handicapped, aged or disabled, are undergoing rehabilitation, and are provided services to meet their needs. This category includes uses licensed, supervised, or under contract by any federal, state, county, or other political subdivision. “Residential facility” includes, but is not limited to, the following listed categories:

- A. *“Adult family home.” A residential facility that provides accommodations to three to five unrelated adults and supervision and personal care services to at least three of these adults pursuant to Ohio R.C. Chapter 3722.*
- B. *“Adult group home.” A residential facility that provides accommodations to six to sixteen unrelated adults and provides supervision and personal care services to at least three of the unrelated adults pursuant to Ohio R.C. Chapter 3722.*
- C. *“Family home.” A residential facility that provides room and board, personal care, habilitation services and supervision in a family for at least six but not more than eight mentally retarded or developmentally disabled persons pursuant to Ohio R.C. 5123.19*
- D. *“Family foster home.” A private residence in which children are received apart from their parents, guardian, or legal custodian by an individual for hire, gain or reward for nonsecure care, supervision, or training twenty-four hours a day pursuant to Ohio R.C. Chapter 5153. “Family foster home” does not include babysitting care provided for a child in the home of a person other than the parents, guardian or legal custodian of the child.*
- E. *“Foster family home.” A residential facility that provides room and board, personal care, habilitation services and supervision in a family setting for not more than five mentally retarded or developmentally disabled persons pursuant to Ohio R.C. 5123.19.*
- F. *“Foster home.” A family home in which any child is received apart from the child’s parents for care, supervision or training pursuant to Ohio R.C. 5153.*
- G. *“Group home.” A residential facility that provides room and board, personal care, habilitation services, and supervision in a family setting for at least nine but not more than sixteen mentally retarded or developmentally disabled persons pursuant to Ohio R.C.*
- H. *“Semi-independent living home.” A residential facility for a mentally retarded or developmentally disabled person where, according to the person’s individual habilitation plan, the person demonstrates skills that would enable the person to function for specified periods of time without supervision. Such skills include, but are not limited to, home management, community mobility, personal hygiene, interpersonal relationship skills, and self-preservation pursuant to Ohio R.C. 5123.19*

The City of Vandalia Zoning Code Chapter 1231.

Among other things, to be classified as a residential facility, “resident service” must be provided. “Resident Service” is not defined in the Zoning Code. Supported Living Homes provide assistance with care which could be viewed as “resident care.” Making the assumption that this care rises to the level of “resident service”, we can analyse whether a Supported Living Home falls into the Residential Facility category. It is possible that Supported Living Homes could be seen as an “Adult Family Home” because it houses between three (3) to five (5) adults. The only issue is that no supervision is provided. Without supervision, Supported Living Homes do not fit this category. Supported Living Homes cannot be classified as a “Adult Group Homes” because they only house four (4) adults; with this an “Adult Group Home” category, you need at least six (6). Supported Living Homes therefore, do not meet the requirements of an “Adult Family Home” or “Adult Group Home.” Supported Living Homes could be classified as a “Semi-Independent Living Home” under the Residential Facility category because they meet the criteria. Being classified as a “Semi-Independent Living Home” is a permitted use according to the Zoning Code. This is contingent upon the interpretation of the above stated statute.

Washington Township

INTRODUCTION

The issues addressed in this review of the Washington Township Zoning Resolution encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review of the Washington Township Zoning Resolution relates to the manner in which a Supported Living Home may be classified by the jurisdiction's planning commission and/or board of zoning appeals. With no expressed terminology or provision dedicated to living arrangements for individuals with disabilities, the text of the Washington Township Zoning Resolution creates the possibility of an overly broad set of classifications. It is important to ascertain, or at least address, which classification a Supported Living Home may receive in light of interpretive issues that may stem from the resolution itself.

Washington Township is located in Southeast Montgomery County, bordered by Greene County to the East, Miami Township to the West, and the City of Kettering to the North. The City of Centerville is located within the borders of Washington Township. Currently, MVIO does operate property in the Township. This review of the Washington Township Zoning Resolution includes points of contact and officeholders within the jurisdiction, a summary of relevant terminology and provisions, and an analysis of possible interpretive issues.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

8200 McEwen Rd.
Dayton, Oh 45458
Phone: (937) 433-0152
Fax: (937) 438-2752
Home Page: www.washingtontwp.org

Zoning Contact Information

Jim Wahl

Phone: (937) 433-0796
Fax: (937) 438-2742

Zoning Commission

Meets: Third Tuesday of the month at 7:00 P.M. in the Meeting Room of the Government Center

Larry Anderson

Harry Drain (Chairperson)
Veronica Winwood
Patty Zobrist

Board of Zoning Appeals

Meets: Twice a month at 7:00 P.M. in the Meeting Room of the Government Center

Dan Horine, Chairman
Marguerite Mulligan

Amy Fish

Rick Schwartz
Larry Roberts

ANALYSIS

This analysis of the Washington Township Zoning Resolution addresses issues of interpretation that may affect the establishment of Supported Living Homes within the municipality. These issues merit discussion for two primary reasons. From the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the Washington Township Zoning may not comply with sources of state or federal Fair Housing law. Furthermore, it is important to ascertain, or at least address, how the jurisdiction's planning commission and/or board of zoning appeals may classify Supported Living Homes under the resolution itself.

Unlike many other jurisdictions within Montgomery County, Washington Township does not expressly reference housing for individuals with disabilities. In many ways, the Washington Township Zoning Resolution's silence on living arrangements for individuals with disabilities works to the benefit of both Fair Housing efforts and the goal of establishing Supported Living. However, with respect to this review of the resolution, this silence leaves open the possibility of classifying a Supported Living Home under an overly broad list of terminology. This analysis addresses the effect of classifying a Supported Living Home and its tenants as a "Family", "Convalescent or Rest Home" and a "Health Care Facility."

- **Family**

The Washington Township Zoning Resolution defines a "Family" as:

One or more persons occupying a dwelling unit and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, motel, hotel, fraternity or sorority house. However, if the persons are not related by blood, marriage or adoption no such family shall contain over three (3) persons.

Washington Township Zoning Resolution Article 15 § 6.

This definition of “Family” imposes a maximum occupancy limit of three (3) persons if those individuals are unrelated. Because a Supported Living Home typically provides residence to four (4) unrelated individuals, the home’s living arrangement exceeds the maximum occupancy set forth in the Township’s definition of “Family.” Thus, the residents of a Supported Living Home do not constitute a “Family” under the resolution. Despite exclusion from the statutorily provided definition of “Family” in Washington Township, the residents of a Supported Living Home function and maintain the residence as a single housekeeping unit.

The Washington Township Zoning Resolution’s definition of “Family” expressly distinguishes “persons occupying a dwelling unit” from those “occupying a boarding house, motel, hotel, and fraternity or sorority house.” Supported Living Homes clearly do not qualify as any of these forms of occupancy. A “boarding house” and “fraternity or sorority house” is not elsewhere defined in the Washington Township Zoning Resolution. However, the resolution defines a “Hotel” as:

An establishment in which lodging is provided and offered to the public for compensation, and which is open to transient guests typically for brief periods of time.

A building other than an apartment house, boarding house, lodging house or motel providing sleeping accommodations for 20 or more transients or permanent guests and in which access to rooms is only through an inside lobby supervised by a person in charge at all hours, and which may or may not contain a restaurant.

Washington Township Zoning Resolution Article 15 § 8.

Additionally, the resolution defines a “Motel” as:

A building or group of buildings on the same lot, other than an apartment house, boarding house, lodging house or hotel, providing lodging only for paying transient motorists and containing rooms accessible from the parking area

Washington Township Zoning Resolution Article 15 § 13.

As can be seen from the Washington Township Zoning Resolution’s definitions, the differences between Supported Living Homes and “Hotels” and “Motels” are readily apparent.” Hotels” and “Motels” offer lodging primarily to transient motorists, whereas Supported Living Homes serve as permanent residences to individuals with disabilities. Moreover, Supported Living Homes do not have lobbies or rooms accessible from the parking area; Supported Living Homes are single-family dwellings or duplexes located in districts zoned for residential use.

▪ **Convalescent or Rest Home**

The Washington Township Zoning Resolution defines a “Convalescent or Rest Home” as:

An establishment which provides full-time convalescent or chronic care or both, for three or more individuals who are not related by blood or marriage to the operator and who, by reason of chronic illness or infirmity are unable to care for themselves. No care for the acutely ill, or surgical or obstetrical services shall be provided in such a home.

Washington Township Zoning Resolution Article 15 § 3.

The nature of the care provided in Supported Living Homes is not full-time, and the residents of the home are neither chronically ill nor infirm. However, because the resolution does not dedicate a specific definition or provision to group living

arrangements for individuals with disabilities, classification as a “Convalescent or Rest Home” remains possible. Should Supported Living Homes receive classification as “Convalescent or Rest Homes”, they would be neither principally permitted nor conditional uses in any of the districts zoned for residential use in Washington Township.

▪ **Health Care Facility**

The Washington Township Zoning Resolution defines a “Health Care Facility” as including:

All medical facilities for humans, including outpatient facilities, rehabilitation facilities, and facilities for long term care, including nursing homes

Washington Township Zoning Resolution Article 15 § 8.

As a Supported Living Home can serve as a permanent residence, and its tenants’ will continue to need care through their time in the home, it is possible that the home could be construed as a “Health Care Facility.” However, classification as a “Health Care Facility” is not an accurate denotation of Supported Living Homes.

After analyzing the codified language of the Washington Township Zoning Resolution to address possible classifications of Supported Living Homes, the issue of accurately and appropriately classifying Supported Living persists. Should the jurisdiction’s planning commission and/or board of zoning appeals opt for the addition of language to the Washington Township Zoning Resolution which will serve to eliminate the overly broad list of possible classifications, the best practices models incorporated in this report. In any event, however, the best practices models shall not be construed as

means of prohibiting, restricting, or otherwise limiting the establishment of Supported
Living Homes.

West Carrollton

INTRODUCTION

The issues addressed in this review of the City of West Carrollton Zoning Code encompass potential Fair Housing law compliance, as well as foreseeable obstacles to the establishment of Supported Living Homes within the municipality. The primary issue raised by this review of West Carrollton Zoning Code relates to the manner in which a Supported Living Home is classified by the West Carrollton Board of Zoning Appeals. Due to West Carrollton's inconsistent residential regulations, it is important to ascertain, or at least address, which classification a Supported Living Home may receive. For example, one classification may constitute a conditionally permitted use in one district, whereas it may be a principally permitted use in another district.

The City of West Carrollton is located in South-Central Montgomery County, and is bordered to the South by Miamisburg, to the North and West by Moraine, and to the East by Miami Township. Currently, MVIO owns only two vacant lots in the City of West Carrollton. This review of the West Carrollton Zoning Code entails points of contact and officeholders within the City of West Carrollton, a summary of relevant terminology and provisions, and an analysis of possible interpretive issues.

POINTS OF CONTACT & OFFICEHOLDERS

General Contact Information

300 E. Central Ave.
West Carrollton, Oh 45449
Phone: (937) 859-5183
Fax: (937) 859-3366
Home Page: www.westcarrollton.org

Zoning Contact Information

Linda Cole
Greg Gaines

Phone: (937) 859-5783

Board Of Zoning Appeals

Meets: The Second Thursday Of Each Month At 7:00 P.M.

Nancy Wagner
Janet Myers
Tammy Russell
Sandy Sanner
Mel Hutchinson

ANALYSIS

The City of West Carrollton Zoning Code sets forth thirteen (13) separate classifications under the catchall term “Group Home.” The living arrangement of a Supported Living Home could possibly be construed as an “Adult Care Facility”, “MRDD Family Care Facility”, or a “Rest Home.” These different classifications merit discussion for two primary reasons. First, from the vantage point of Fair Housing advocacy, it may prove necessary to address instances in which the West Carrollton Zoning Code may not comply with other binding sources of law. Second, due to the manner in which certain uses are permitted in West Carrollton’s residential districts, it is incredibly important to ensure Supported Living Homes receive a proper classification. This analysis addresses the denotation of a Supported Living Home under these three terms and what bearing that denotation may have on the establishment of such a home.

- **Adult Care Facility**

An “Adult Care Facility” is defined as:

An Adult Care Facility can be either an Adult Family Home or an Adult Group Home as separately defined. An Adult Care Facility is a residence, facility, institution, hotel, or congregate housing project, providing accommodations and supervision to three to sixteen unrelated adults, at least three of whom are provided personal care services, regardless of how the facility holds itself out to the public.

This portion of the Code’s definition of “Adult Care Facility” is virtually identical to that of O.R.C. § 3722.01(9). However, the explicitly stated uses exempt from West Carrollton’s “Adult Care Facility” definition deviate slightly from those set forth under the State statute. Where O.R.C. § 3722.01(9) provides exemption from the definition to twelve (12) uses, the West Carrollton Zoning Code provides for thirteen (13). Below is a

comparison of the three relevant differences between the West Carrollton Zoning Code's exemptions, and those of the Ohio state statute. Deviations are noted in bold.

➤ “Adult care facility does not include:”

O.R.C. § 3722.01 (9)(b) – *A nursing home, **residential care facility**, or home for the aging...*

W.C.Z.C. § 154.02.01(2) – *A nursing home, **rest home**, or home for the aging.*

Although the terms “Residential Care Facility” and “Rest Home” are different, they share a similar denotation in both statutes. However, the relevant prong of the West Carrollton Zoning Code definition retains a distinct deviation.

➤ “A [residential care facility/rest home] means a home that provides...”

O.R.C. § 3722.01 (7)(b)

*Accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, **to at least one of those individuals, any of the skilled nursing care authorized by section 3721.011 of the Revised Code.***

W.C.Z.C. § 154.10.02

*Accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and **supervision of special diets and of the administration of medication to at least one of those individuals.***

The West Carrollton Zoning Code exemptions include two terms not found in the O.R.C. exemptions. Neither term is defined elsewhere within the West Carrollton Zoning Code.

(5) *A **habilitation center***

(13) *An **assisted living facility***

A living arrangement deemed an “Adult Care Facility” pursuant to the broad concluding phrase of West Carrollton Zoning Code’s definition is not an explicit principally permitted use in any of the districts zoned for residential use. Individually, “Adult Group Homes” and “Adult Family Homes” are principally permitted or conditionally permitted in several of these districts. Because Supported Living Homes are not subject to state licensing, they cannot constitute either of these uses. It is unlikely that a Supported Living Home would be classified as an “Adult Care Facility”, as it does not meet the criteria necessary to render it either an “Adult Group Home” or an “Adult Family Home”, and “Adult Care Facilities” are not expressly permitted in any residential district.

▪ **MRDD Family Care Facility**

The City of West Carrollton defines an “MRDD Family Care Facility” as:

A facility which provides residential service in a residence for three to eight individuals, exclusive of staff, who are not related to the resident householder. These individuals are physically or mentally handicapped, disabled, or in need of adult supervision, and are provided 24-hour services and supervision in accordance with their needs, under the guidance of an individual or individuals approved by the appropriate public or private health/welfare agency.

This definition does not include nursing homes, rest homes, or hospitals. However, an “MRDD Family Care Facility” does include:

*Rehabilitation centers for...adults...who have or have had mental, physical, or social disabilities which **require** a group setting to facilitate the transition to a functional member of society.*

AND

Resident facilities for mentally retarded, mentally ill, or physically handicapped children or adults.

West Carrollton Zoning Code § 154.02.01 (emphasis added). Should West Carrollton find that the living arrangement of a Supported Living Home is provided for individuals that *require* a group setting, the home would fall clearly within the definition of an “MRDD Family Care Facility.” Moreover, a Supported Living Home would merit the same classification if deemed to fall under the latter provision for inclusion. If a Supported Living Home is categorized as an “MRDD Family Care Facility”, it would constitute a principal permitted use in each of the six districts zoned for residential use.

- **Rest Home**

In relevant part, the City of West Carrollton defines a “Rest Home” as a home that provides:

Accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and supervision of special diets and of the administration of medication to at least one of those individuals.

West Carrollton Zoning Code § 154.02.01.

If West Carrollton were to interpret a Supported Living Home as falling within their definition of “Rest Home”, the Supported Living Home would not constitute a principal permitted use in any of the six districts zoned for residential use. A Supported Living Home however, would constitute a conditionally permitted use in three districts zoned for residential use – both multiple-family districts, and the residential planned development district.

The more likely and reasonable conclusion to reach is that a Supported Living Home’s residential arrangement renders it an “MRDD Family Care Facility” under the

West Carrollton Zoning Code, therefore allowing its establishment as a principal permitted use in each of the six districts zoned for residential use. However, should a Supported Living Home be deemed a “Rest Home” under the West Carrollton Zoning Code, its establishment would be rendered a conditionally permitted use in three of the six residential districts. The West Carrollton Zoning Code does not impose specific provisions governing the conditional use of land for the purposes of a “group home.” The regulations set forth in the Zoning Code apply to all submissions made for the conditional use of property in the City, and do not establish additional or more narrowly written criteria that would apply to a Supported Living home. West Carrollton Zoning Code § 154.07.01.

MATRIX

Zoning issues present in municipal jurisdictions within Montgomery County, Ohio that pose obstacles to the establishment of Supported Living Homes.

Jurisdiction	Issue One	Issue Two	Issue Three	Issue Four	Issue Five
Brookville	Definition of family is narrowly defined, because it allows for no more than 3 unrelated persons to live together	Whether Supported Living Homes will be misclassified as a “CORSSF” or “Housing for the Elderly”	Supported Living Homes, if misclassified will be required to obtain a special use permit	Supported Living Homes are not defined in the statute nor do they meet all the elements of any of the types of dwelling units defined	
Butler Township	Definition of family is narrowly defined, because it allows for no more than 3 unrelated persons to live together	Whether Supported Living Homes will be classified as CORSSF	Supported Living Homes if classified as a CORSSF will have to have a special use permit	Supported Living Homes are not defined in the statute nor do they meet all the elements of any of the types of dwelling units defined	
Carlisle	How the zoning board will use its discretion in determining whether they will allow Supported Living Homes	Supported Living Homes are not defined in the statute			
Centerville	Whether the individuals in a Supported Living Home should be classified as a family or should the home be classified as “Residence Family Home”	If classified as a “Residence Family Home” Supported Living Homes will require special permission	Supported Living Homes are not defined in the statute		

AMENDED

COMPLIANT

AMENDED

Jurisdiction	Issue One	Issue Two	Issue Three	Issue Four	Issue Five
City of Clayton	Whether the individuals in a Supported Living Home should be classified as a family or should the home be classified as a “Adult Family Home” or a “Community Social Service Facility”	If classified as a “Community Social Service Facility” than a special use permit is required	If classified as an “Adult Family Home” will a special permit be required, the	Supported Living Homes are not defined in the statute	
		AMENDED			
Clay Township	Definition of family is narrowly defined, because it allows for no more than 3 unrelated persons to live together	Whether Supported Living Homes will be classified as CORSSF or a “Foster Homes for Adults”	Whether classified as a CORSSF or “Foster Home for Adults” Supported Living Homes will be required to obtain a special permit	Supported Living Homes are not defined in the statute	
Dayton	Definition of family is narrowly defined, because it allows for no more than 2 unrelated persons to live together	Whether Supported Living Homes will be classified as a “Adult Family Home”	Supported Living Homes are not defined in the statute		
		AMENDED			
Englewood	Whether Supported Living Homes will be classified as a “Adult Group Home”	Classifying Supported Living Homes as an “Adult Group Home” is in conflict with state law	Classifying Supported Living Homes as “Adult Group Homes would cause them to be a conditional use in at least two districts	Supported Living Homes are not defined in the statute	

Jurisdiction	Issue One	Issue Two	Issue Three	Issue Four	Issue Five
Farmersville	How the zoning board will use its discretion, as granted by the board, to determine whether Supported Living Homes are permitted or deem them a conditional use	Supported Living Homes are not defined in the statute	The statute is very vague and gives no guidance as to how Supported Living Homes will be classified		
German Township	Whether Supported Living Homs will be classified as a CORSSF	Definition of family is narrowly defined because it allows more than 2 unrelated persons to live together	Supported Living Homes are not defined in the statute		
Harrison Township	Whether Supported Living Homes will be classified as a CORSSF	Definition of family is narrowly defined because it allows more than 3 unrelated persons to live together	Supported Living Homes are not defined in the statute		
Huber Heights	Whether Supported Living Homes will be classified as a "Residential Care and Social Service Facility"	If classified as a "Residential Care and Social Service Facility," Supported Living Homes with require a special use permit	Supported Living Homes are not defined in the statute		
Jackson Township	Definition of family is narrowly defined because allows for no more than 3 unrelated persons to live together	Whether Supported Living Homes will be classified as CORSSF	If classified as a CORSSF Supported Living Homes will be a conditional use	Supported Living Homes are not defined in the statute	

Jurisdiction	Issue One	Issue Two	Issue Three	Issue Four	Issue Five
Jefferson Township	Definition of family is narrowly defined because it allows for no more than 3 unrelated persons to live together	Whether Supported Living Homes will be classified as a CORSSF, Halfway House, Independent Housing, Alternative for Adults, or Rooming House	If classified as a CORSSF, Halfway House, Independent Housing, Rooming House, Supported Living Homes will need a conditional use permit	Supported Living Homes are not defined in the statute	
Kettering	Supported Living Homes are not defined in the statute	Whether Supported Living Homes will be permitted or conditional use			
Miamisburg	Whether Supported Living Homes will be classified as CORSSF	Whether CORSSF's are a permitted or special use as explicit in the statute	Supported Living Homes are not defined in the statute		
Miami Township	Definition of family is narrowly defined because it allows for no more than 3 unrelated persons to live together	Whether Supported Living Homes will be classified as a CORSSF	If classified as a CORSSF Supported Living Homes will be a conditional use	Supported Living Homes are not defined in the statute	
City of Moraine	Definition of family is narrowly defined because it allows for no more than 3 unrelated persons to live together	Whether Supported Living Homes will be classified as a CORSSF and/or "Housing for the Elderly and Handicapped"	Whether CORSSF's are a permitted or special use is not explicit in the statute	Moranine's terminology and definitions differ from similar state and federal terminology and definitions	Supported Living Homes are not defined in the statute

Jurisdiction	Issue One	Issue Two	Issue Three	Issue Four	Issue Five
New Lebanon	Whether Supported Living Homes will be classified as a CORSSF, nursing home, rest home, convalescent home, halfway house, rooming house	If classified as a CORSSF Supported Living Homes will be a conditional use	If classified as a nursing home, rest home, convalescent home, halfway house, or rooming house, Supported Living Homes will explicitly be excluded from being classified as a family	Supported Living Homes are not defined in the statute	
Oakwood	How Supported Living Homes will be classified since they do not fall within one of the categories listed in the statute	Supported Living Homes are not defined in the statute			
Perry Township	Perry Township defines "Handicapped Persons" more narrowly than state and federal statutes	Definition of family is narrowly defined because it allows for no more than 3 unrelated persons to live together	Whether Supported Living Homes will be classified as a CORSSF	If classified as a CORSSF Supported Living Homes will be a conditional use	Supported Living Homes are not defined in the statute
Riverside	Definition of family is narrowly defined because it allows for no more than 3 unrelated persons to live together	Whether Supported Living Homes will be classified as a CORSSF	Supported Living Homes are not defined in the statute		
Springboro	How the zoning board will use its discretion in determining whether they will allow Supported Living Homes	Supported Living Homes are not defined in the statute			

COMPLIANT

AMENDED

AMENDED

Jurisdiction	Issue One	Issue Two	Issue Three	Issue Four	Issue Five
Trotwood	Whether Supported Living Homes will be classified as a “Family Care Home” or “Community Residence”	Whether “Family Care Home” are a permitted or special use is not explicit in the statute	If classified as a “Community Residence” Supported Living Homes will be subject to general conditional use provisions	Supported Living Homes are not defined in the statute	
Union	Supported Living Homes are not defined in the statute	The statute is vague as to whether a Supported Living Home will be a permitted or conditional use			
Vandalia	Whether Supported Living Homes will be classified as “Residential Facility”	If classified as a “Residential Facility,” Supported Living Homes could be considered a conditional use	Supported Living Homes are not defined in the statute		
Washington Township	Definition of family is narrowly defined because it allows for no more than 3 unrelated persons to live together	Whether a Supported Living Home can be classified as a “Convalescent or Rest Home” or “Health Care Facilities”	Whether “Convalescent or Rest Home” are a permitted or conditional use is not explicit in the statute	Supported Living Homes are not defined in the statute	
West Carrollton	Whether Supported Living Homes will be classified as a “Adult Care Facility,” “MRDD Family Care Facility” or “Rest Home”	West Carrollton definition of “Adult Care Facility” may not be in compliance with state law	If the individuals in Supported Living Homes family, will their use be permitted or conditional		