



LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)
MEDICAL USES SUB-COMMITTEE

APRIL 20TH, 2018

AGENDA

2300 NORTH JOG ROAD, CONFERENCE ROOM VC-1W-47 – 1ST FLOOR

11:00 – 12:00 PM

A. CALL TO ORDER

1. Review Meeting Minutes from March 29, 2018 (*Attachment 1*)
2. Additions, Substitutions and Deletions to Agenda
3. Motion to Adopt Agenda

B. REVIEW DRAFT 2 ON PROPOSED DRAFT ULDC CODE AMENDMENT FOR CONGREGATE LIVING FACILITIES (CLF) TYPE I / TYPE II – BOB BANKS, COUNTY ATTORNEY (*ATTACHMENT 2*)

C. SUMMARY OF TODAY'S DISCUSSION-CHAIR

D. FUTURE MEETING TOPICS - CHAIR

E. ADJOURN



LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)
MEDICAL SUB-COMMITTEE

MARCH 29, 2018, 9:00 AM – 11:30 AM
2300 NORTH JOG ROAD, ROOM VC-1W-47

MEETING SUMMARY

A. CALL TO ORDER

COMMENCED AT 9:00 AM

1. Select Chair and Vice Chair from LDRAB Members

Mr. Gulisano nominated Dr. Lori Vinikoor as the Chair and Dr. Vinikoor nominated Mr. Jim Knight as Vice Chair (passed 7 – 0)

2. Interested Parties and Staff Introductions:

LDRAB Subcommittee Members: Lori Vinikoor, Jim Knight, Frank Gulisano, Michael Peragine, Philip Barlage, Anna Yeskey

Interested Parties: Jeffrey Lynne; Alan S. Johnson (Chief Assistant State Attorney), Dr. Robert Moran (Family Center for Recovery)

County Staff: Jon MacGillis, Maryann Kwok, Zubida Persaud, Yvonne Wamsley, Zona Case, Lisa Amara (Planning)

3. Additions, Substitutions and Deletions to Agenda – none.

4. Motion to Adopt the Agenda – Motion to adopt the agenda by Mr. Gulisano and seconded by Mr. Peragine. (Motion passed 7 - 0)

B. Subcommittee Mission and Goals – Staff

• **Focus on Medical Uses in ULDC and Ongoing Changes at State Level**

Mr. MacGillis stated that the overall Mission is to focus on medical uses in the ULDC, namely nursing homes, convalescent facilities, congregate living facilities, reasonable accommodation and sober houses. The Exhibit submitted by Mr. Banks on Sober Houses and Reasonable Accommodation will be reviewed at today's meeting so that it can move forward in this round of amendments. He expressed the hope that with the experts present there would be opportunity for open dialogue.

• **Recommend Amendment Necessary to Ensure Regulation Reflect Consistency with State Regulations**

Mr. MacGillis anticipated that the subcommittee will convene a second meeting to review medical uses, determine the deficiencies in the current code and provide regulations that are consistent with the Florida Statutes and Department of Health regulations.

C. Overview of Medical Use – Staff

• **Nursing Home – PBC Use Classification and Zoning Districts (Attachment 1)**

To make attendees conversant with current code language, Mr. MacGillis referred to Attachment 1 which showed all relevant details of the approval processes for Nursing Homes and Convalescent Facilities in the Use Matrix and he clarified that dashes indicate the use is prohibited in those districts unless allowed in the supplementary standards.

• **CLF Types 1, 2, 3 - Use Classification and Zoning Districts (Attachment 2)**

The approval process for Congregate Living Facilities, Types 1, 2 and 3 are shown on Attachment 2, as are the amount of persons allowed for each type, the zoning districts in which the use is permitted and the applicable process.

Mr. Barlage questioned what the criteria would be for this use in the CLR. Mr. MacGillis said CLR is a land use designation, and he asked Ms. Lisa Amara of the Planning Division to explain. She clarified that over the last twenty years, density was increased when CLF applications were made, and approvals were tied to Conditions. It was recently decided to establish land use designation, CLR Residential, typically for Type 3 CLFs, to correspond with the PUD Zoning district or multi-family residential, the zoning being the same as if it were HR-12 land use. With regards to CLFs in the Agricultural Reserve, the BCC decided on March 22, to hold off on a decision.

Miss Yeskey joined the meeting at 9:10

• **Residential Houses, Types I thru IV – State Approval (Attachment 3)**

Mr. Jeffrey Lynne, lawyer, presented the following points:

- Over the years some clients have desired to live together on large lots with open space and most of these lands are in the Agricultural Tier where the use is not permitted. They have been forced into the Urban/Suburban tier where the residents do not want them.
- Today's code does not address today's sober living, which has to be regulated relative to the housing and location of the treatment facility. It is part of that medical modality, much like a boarding house with people living together and it has been scientifically proven that living in a collaborative environment helps facilitates recovery.
- Residents see it is a commercial use, while the Federal Government and the law sees it is a residential use. It is somewhere in the middle, and very difficult to regulate as one size does not fit all.
- Delray refined the distinction and tried to match the nature of the use with the nature of the neighborhood, without being discriminatory and the County would be well served to look at that model again. This is where FARR comes in. FARR has different levels of living and when you get to 4, those persons are in treatment.

Mr. Alan Johnson, Chief Assistant State Attorney, spoke of the need for government to hone in on certain disabilities that may cause danger to the residents. Sober homes are completely unregulated, and substance abuse disorder is very unique. He recommended a task force in favor of what Delray Beach did as he felt strongly that protection has to be in place for the people in the house.

Mr. Bob Banks, County Attorney, indicated that Sober homes are considered residential use, they are not licensed and not considered to be CLF's. Originally facilities were larger and treatment ranged from detox to outpatient follow-up. Current practices are classified as nursing homes, a grey area is facilities for residential treatment. He referred to the excerpts from Chapter 397 of the Florida Statutes, Substance Abuse Services, in the attachment and noted that Residential 5 is "no therapy on site", it is housing, and therapy is off site, so this has been treated as residential issues. We do not know how to treat 1 through 4, as therapy is on site, which is considered a nursing home. Working with industry— there are a lot of small facilities coming in asking for residential treatment 2, with sizes of between 6 and 10. TU:\Zoning\CODEREV\Research - Central\Medical Uses\2018\1- Subcommittee\Agenda\Medical Uses Kick Off zcase draft 3-29-18.docx here are still larger facilities as usually there are 20 to 50 beds grandfathered in.

Dr. Vinikoor requested that a representative from FARR be invited to the next meeting to explain 1 through 4 on the attachment.

- **Reasonable Accommodation – Process (Attachment 4)**

- Mr. Banks explained that Under ADA and Fair Housing Act, Reasonable Accommodation was addressed in the code approximately ten years ago and language was added later which makes it mandatory to obtain zoning approval before going for Reasonable Accommodation.
- Smaller facilities, 10 or less, would be allowed without going through the zoning process. Staff would analyze it for the process which would not trigger the Public Hearing process. Persons would be counted, as the State does, and not beds.
- Mr. Knight made the observation that Delray Beach has a separation distance of 700 ft. and Mr. Banks responded that Delray has data to justify more restrictive distance. The County has 1000 ft., using guidance from Justice Department.

Mr. Johnson recommended:

- Streamlining Reasonable Accommodation to make it less cumbersome. He cited circumstances where kids in other cities go through a detox program there and come to Palm Beach County to recover. It's not like assisted living as the residents are from out of state, without local support if they are in treatment.
- Zoning is required to come up with regulations to protect these people and still meet the requirements of Department of Justice, Fire Rescue, hospital and medical by-products. As of July 1, house owners are exempt from that rule and patients can be referred for treatment.

Dr. Vinikoor requested information on the Oxford House model. Mr. Johnson described it as a truly democratic household of people who choose to live together with no need for third-party oversight. They go back about 40 years, have nationally recognized standards, not FARR, discharge protocols, etc. Oxford is a level one, a more benign house with good neighbor practices and are recognized by Congress. FARR is considered a business whereas Oxford is not. He added that he has it on good authority that there is a move afoot to bring 6 Oxford Houses to Florida.

In response to Dr. Vinikoor's question on the need for code change, Mr. Lynne responded that changes would have to do with the number of people, and that would fall under Reasonable Accommodation. It is similar to a family of eight living together because they cannot afford to rent separately, so square footage, the amount of bathrooms, the structure, parking accommodation, etc., - those would apply to an Oxford House as it would to any other residence. If it is not functioning as a good neighbor, then they can be cited by Code Enforcement just as they would a residence.

Mr. Banks informed the group that in Delray Beach a residence has to be certified or be an Oxford House. If an HOA disapproves, the owner can go through the Reasonable Accommodation process, but generally not many have gone into communities with HOAs, and in some cases lawyers have threatened refusal with prosecution under the Fair Housing law

Mr. Johnson cited a Fire Rescue estimate of \$1500 per call, and a big increase in the cost of drugs to reverse overdose. There are a lot of drop-offs at hospitals and the economic impact on the County and the Municipality is huge. He also recommended that a representative of FARR attend the next meeting.

Mr. Johnson left the meeting

D. Input From Participants on Various Medical Use and changes in State Requirements

Dr. Moran from the Family Center for Recovery, presented the following information:

- ✓ The major fundamental problem is absence of medical supervision. The State allows addiction treatment without medical supervision. Addiction is the worst psychiatric illness and patients are not being properly treated as they need housing while receiving treatment. This problem needs to be addressed, everything else is superficial and will not solve any problems.
- ✓ Recovery residences must be integrated into the overall continuum of care, providing for patients at each level, from day/night community housing to recovery residence, medical supervision while being treated, either at the IOP or outpatient level of care. When this is done the likelihood of relapse or regression is markedly decreased.

Mr. Peragine inquired how the Oxford House fits in. Dr. Moran expressed concern about Oxford Houses moving into communities because the likelihood of someone leaving an in-patient detox facility, moving into an Oxford House and succeeding is next to none as that patient is too sick to go into a medically unsupervised residence. Oxford House is for those who are healthy (from a psychiatric perspective), and wish to live together in a sober environment. It takes a long time for most addicts to get to the point where they can live in that type of unsupervised environment.

Mr. Barlage suggested that zoning regulations be applied to restrict up to a point, but in doing so, the level of professional management has to be defined. He opined that addiction will likely last for their lifetime, and this is where the Oxford House comes in. If it is decided that the situation is not treatable in this neighborhood, this is an unhealthy situation. Those persons should always have access to professional treatment.

Mr. Knight expressed surprise at the low representation by industry at the meeting and Mr. Lynne assured him that this was not apathy or a lack of care. Mr. MacGillis said that every effort is made to invite as many as possible but from his experience there is usually more interest at the time of public hearing. Ms. Yeskey posed the question on how decisions are taken as to which persons can live in the same environment and be able to get along and help each other. Mr. Lynne referred to a Dr. Moran's comment earlier that this cannot be legislated as it is more of a clinical decision to be made by a professional in charge.

E.. Discussion on County Attorney Proposed Draft ULDC Code Amendment for Congregate Living Facilities (CLF) Type 1 and 2 – Bob Banks, County Attorney, (Attachment 5

Mr. Banks expressed that the Delray approach can be re-visited but cannot be borrowed. The physical layout of roads, cul-de-sacs, etc. in Palm Beach is different to Delray Beach so the separation facilities cannot be the same. Besides, Delray Beach has data which we do not have. In response to Mr. Banks inquiry as to where his patients live, treatment, etc., Dr. Moran broke down the arrangements as follows: –

- At the residential level of care, (in patient) - living at the facility;
- one step down, at the day/night treatment level - living in the community in apartments supervised by staff;

- at the outpatient level of care, living in a transitional living program, (they are not called Recovery Residences), which are also apartments supervised 24 hours per day by staff. Patients in treatment are at that facility and when in their homes, there is staff observing and, reporting to him around the clock, so he always knows what is going on;
- at the IOP level of care, patients are exposed to the outside community because they are mandated to get part time jobs, pay rent, do grocery shopping, attend meetings, meet with their sponsors, build up their sober support, as they transition to complete independence where they can live out in the community and remain healthy. Most patients must maintain contact with a psychiatrist for the rest of their lives, not necessarily on a weekly basis, but at least once yearly, provided they are healthy enough for that level of frequency.

Mr. Lynne mentioned that another problem is that although mandated by law since 2008, insurance has not caught up with this. Dr. Moran added that in addition to FARR certification, a joint commission accredits transitional living programs and their criteria is much stricter than FARR's. Mr. Lynne clarified that a new State law requires that all treatment providers also need 3rd party accreditation in addition to the DCF license, after first renewal.

Dr. Moran also pointed out that a major problem in the industry is independent detox centers where patients go, are detoxed, think they are fine, then have to go back into the community, so they move into some kind of recovery residences and set themselves up for failure. Relapse rates are extremely high as there is no medical supervision, nobody monitors individuals in those recovery residences, so there is no opportunity for early intervention.

Mr. Banks indicated that he would like to push Reasonable Accommodation forward even if it takes longer to address the other medical uses. He explained the difference between CLFs and Recovery Residences and recommended that the code be written for a maximum number of 10 persons. Delray Beach, even after study, kept it at 10. For disabled persons seeking Reasonable Accommodation, ("Recovery Residence"), there is provision in the ULDC for requesting accommodation based on the ADA and the Fair Housing law.

Dr. Vinikoor, referred to text in line 28, page 10, "a residential facility" which does not sound like a home and she suggested a change in text. After discussion it was decided that the text should read "increase in the number of a residential use serving the public". Mr. Banks also referred to page 14, line 15, and explained that this change is to put back text which was erroneously removed during the Use Regulations Project.

F. Summary of Today's Discussion - Chair

Mr. Banks summarized that Reasonable Accommodation will move forward, the work of this group will continue, looking at recovery residences to make sure they are safe, and cause minimal impact on the community. He will also be looking at the Delray Beach regulations to see what can be used to address the other medical uses in the next round.

G. Future Meeting Topics - Chair

Dr. Vinikoor inquired about the follow-up meeting and after discussion, it was agreed that the next meeting of the subcommittee members and staff, will be held on Friday, April 20, from 11:00 to 12:00 noon, to address this first round. A representative of FARR will be invited to the meeting in May for the other medical uses to be addressed in the second round.

A member of the public, Ms. Lois McEwan, said she attended the meeting to be more informed about the potential for these facilities on pre-existing commercial sites in the Agricultural Reserve to serve the western communities.

H. Adjourn

Meeting adjourned at 11:30.

EXHIBIT A

ART. 2.C.5.F - REASONABLE ACCOMMODATION SUMMARY OF AMENDMENTS

(Updated 04/06/18)

1
2 Part 1. ULDC Art. 2.C.5.F.2, Applicability [Related to Reasonable Accommodation] (page 52-54
3 of 105), is hereby amended as follows:
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Reason for amendments: [Zoning]
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1. In order to expedite the reasonable accommodation process required pursuant to the Fair Housing Amendments Act and Americans with Disabilities Act, applications for reasonable accommodation of facilities of 10 or less residents shall not be required to apply for the applicable development review process.
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5 **CHAPTER C ADMINISTRATIVE PROCESSES**

6 **Section 5. Types of Application**

7 **F. Reasonable Accommodation**

8 **1. Purpose**

9 The purpose of this section is to establish procedures for processing requests for Reasonable
10 Accommodation from the County's Unified Land Development Code and related rules, policies,
11 practices and procedures, for persons with disabilities as provided by the Federal Fair Housing
12 Amendments Act (42 U.S.C. 3601, et. seq.) (FHA), or Title II of the Americans with Disabilities
13 Act (42 U.S.C. Section 12131, et. seq.) (ADA). Any person who is disabled, or qualifying
14 entities, may request a Reasonable Accommodation, pursuant to the procedures set out in this
15 section. [Ord. 2011-016] [Ord. 2018-002]

16 **2. Applicability**

17 An applicant shall be required to apply for all applicable Development Review processes
18 available in the ULDC prior to filing a request for Reasonable Accommodation, unless
19 compliance with available Development Review processes would deprive the Applicant, or
20 persons with disabilities served by the Applicant, of an equal opportunity to use and enjoy
21 housing. A recovery residence, as defined in 397.311(37) Fla. Stat. (2017) that is not licensed
22 by one of the licensing entities referenced in Chapter 419, Fla. Stat. (2017) may request a
23 Reasonable Accommodation from the definition of Family contained in Article 1 of the ULDC,
24 from not more than 4 unrelated persons occupying a dwelling unit to not more than 10 unrelated
25 persons occupying a dwelling unit, without being required to apply for all applicable
26 Development Review processes available in the ULDC prior to filing the request. [Ord. 2015-
27 006] [Ord. 2018-002]

28 **3. Notice to the Public of Availability of Accommodation**

29 The County shall endeavor to provide notice to the public, advising that disabled individuals or
30 qualifying entities may request a Reasonable Accommodation. [Ord. 2011-016] [Ord. 2018-
31 002]

32 **4. Application Procedures**

33 The application forms and requirements for submitting a request for Reasonable
34 Accommodation shall be on forms specified by the County Administrator or designee. [Ord.
35 2011-016] [Ord. 2018-002]

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Notes:

Underlined indicates **new** text.

~~Stricken~~ indicates text to be **deleted**. ~~Stricken and italicized~~ means text to be totally or partially relocated.
If being relocated destination is noted in bolded brackets [**Relocated to:**].

Italicized indicates text to be relocated. Source is noted in bolded brackets [**Relocated from:**].

.... A series of four bolded ellipses indicates language omitted to save space.