

**PLANNING BOARD
NOVEMBER 18, 2021
5:30 PM**



**BRYANT H. WOMACK
BUILDING
40 COURTHOUSE ST.
COLUMBUS, NC 28756**

-
1. Call to Order
 - A. In order to maintain the safety of County residents, the Planning Board and Staff, the Planning Board Meeting scheduled for 5:30 p.m. Thursday, October 14, 2021 will be available for the public to call in and listen to the meeting. Call – 1-301-715-8592, Meeting ID – 856 2872 0091, Password – 847750. To ensure the public is able to safely participate in the Planning Board meeting and the Public Comments portion of the meeting, you may submit a public comment by email to hlynch@polknc.org, or by calling the Planning Department at 828-894-2732 by 4:30 p.m. on Wednesday, October 13, 2021. Please include the following information: First and Last Name, Address, and Comment. Comments will be read into record by the Clerk during the Planning Board meeting. There will also be a chance during the Public Comments portion of the meeting to present comments live via telephone. If you have any questions, please contact the Planning Department at 828-894-2732.
 2. Approval of Agenda
 3. Approval of Minutes
 - A. Approval of Minutes from September 9, 2021
 4. Zoning Ordinance Discussion
 5. Other Business
 6. Public Comments
 7. Adjournment

POLK COUNTY PLANNING BOARD

AGENDA ITEM

NOVEMBER 18, 2021 REGULAR MEETING

Agenda Item#: A.

ATTACHMENTS:

Description	Type	Upload Date
PB Minutes 9.9.2021 - DRAFT	Exhibit	9/27/2021

PLANNING BOARD
September 9, 2021 - 5:30 PM
Bryant H. Womack Building
40 Courthouse Street
Columbus, NC 28722
MINUTES

Members Present: Edward Daniel, Ray Gasperson (Chair), Alexander Hagerty, Don Hofmann, Libby Morris, John Rose
Members Present via Zoom: Chris Jones, Anwar Timol (Alternate),
Staff Present: Chelsea Allen (Secretary), Hannah Lynch (Zoning Administrator), Cathy Ruth (County Planner)

1. Call to Order

Ray Gasperson called the meeting to order at 5:30pm.

- A. In order to maintain the safety of County residents, the Planning Board and Staff, the Planning Board Meeting scheduled for 5:30 p.m. Thursday, September 9, 2021 was available for the public to call in and listen to the meeting.

2. Approval of Agenda

A motion to approve the agenda was made by Ray Gasperson, seconded by Libby Morris. A vote was taken and all present were in favor. Chris Jones and Anwar Timol (Alternate) were in favor, via Zoom. The motion carried unanimously.

3. Approval of Minutes

- A. Approval of Minutes - August 12, 2021

A motion to approve the minutes from the August 12, 2021 Planning Board meeting was made by Ray Gasperson, seconded by Alexander Hagerty. A vote was taken and all present were in favor. Chris Jones and Anwar Timol (Alternate) were in favor via Zoom. The motion carried unanimously.

4. Paron Estates - Minor Subdivision (4 lot); Grassy Knob Road; Tax Parcel P77-72; Township: Cooper Gap; Average Lot Size 11.63 acres

Cathy Ruth presented the plat and the application to the Board. The Board asked questions about the proposed subdivisions during their discussion. Libby Morris made a motion for preliminary approval of the minor subdivision, seconded by Ray Gasperson. A vote was taken and all were in favor. Chris Jones and Anwar Timol (Alternate) were in favor via Zoom. The motion carried unanimously.

5. Zoning Ordinance Overview and Discussion

Cathy Ruth presented proposed updates to the Zoning Ordinance. The Board discussed these modifications. Libby Morris made a motion to have staff work on suggested changes, seconded by Ed Daniel. A vote was taken and seven members were in favor, Chris Jones via Zoom. Anwar Timol (Alternate) via Zoom was in opposition. The motion passed.

6. Other Business

Cathy Ruth shared a presentation with the Board, an overview of current development projects taking place in the county, a MapBook 2021 of the State, and a Building Trends report of current residential and commercial building.

7. Public Comments

None.

8. Adjournment

Ray Gasperson made a motion to adjourn the meeting, seconded by John Rose. A vote was taken and all were in favor, Chris Jones and Anwar Timol (Alternate) via Zoom. The meeting adjourned at 6:36 PM.

POLK COUNTY PLANNING BOARD

AGENDA ITEM

NOVEMBER 18, 2021 REGULAR MEETING

Agenda Item#: 4.

ATTACHMENTS:

Description	Type	Upload Date
Zoning Ordinance - RV Renewals 9.24.2021	Exhibit	9/28/2021
Zoning Ordinance - Use Table.Guest Houses 9.24.2021	Exhibit	9/28/2021
Family Care Homes, Housing for Persons with Disabilities, and Zoning _ UNC School of Government	Exhibit	9/28/2021
GS_160D-907	Exhibit	9/28/2021
Zoning Ordinance - Current Parking Requirements 9.24.2021	Exhibit	9/28/2021
Zoning Ordinance - Parking Draft 9.24.2021.hl	Exhibit	9/28/2021

Background/Purpose of Request:

A discussion of modifications to the Polk County Zoning Ordinance regarding RV renewals, guest houses, family care homes, and parking requirements.

c) Lighting shall be designed by a lighting professional having experience with lighting installations.

d) There shall be no maximum or minimum height restrictions relating to lighting installations on towers as defined by the Zoning Ordinance.

e) Commercial lighting in any stadium will employ engineered lighting which will mitigate spillover and direct lighting into the stadium area.

6.2.13.2 Spectator Sports Facility shall not include motorized sports.

6.2.14 *Recreational Vehicle & Travel Trailer Parks, Service & Camp Areas.* Recreational vehicle & travel trailer parks, service & camp areas may be allowed pursuant to the use tables provided in this Article. Uses permitted with conditions shall be subject to the following restrictions:

6.2.14.1 Maximum of 15 units per acre

6.2.14.2 10% common space required

6.2.14.3 No site/space lease or continuous rental thereof shall exceed 6 months.

6.2.14.4 A 100 foot setback shall be required along property lines where the RV/Camp area meets or adjoins properties not owned by the Developer. The setback established pursuant to this section shall contain an earthen berm at least 2 feet high, with a minimum crown of 2 feet and a width to height ratio of no greater than 2:1, shrubs shall be planted on top of the berm that will attain a height of at least 72” within 4 years of installation and shall be planted 30” apart. In lieu of installing an earthen berm, Developer may utilize any natural berms, provided that any such natural berm meets or exceeds the criteria of this section.

6.2.14.5 Quiet hours shall be observed from 11 p.m. to 7 a.m.

6.2.14.6 All internal streets within RV/camp area shall be surfaced with a minimum of six inches of compacted stone and shall be maintained in a smooth, well-graded condition. All internal roads shall be capable of supporting the imposed load of fire apparatus in accordance with the Fire Apparatus Roads Standards in the North Carolina Fire Code.

6.2.14.7 Water – an accessible, adequate, safe and potable supply of water shall be required.

6.2.14.8 Sewer/Septic – approval by the Polk County Health Department shall be required for any installation, alteration or use of a sewage disposal system.

6.2.15 *Reserved for Future Purposes.*

6.2.16 *Recreational Vehicle.*^{xv}

6.2.16.1 *Recreational Vehicle in Zoning Districts - E, EV, AR, HC, MU and FF zoning districts.*

(1) One per parcel, provided:

- a. the recreational vehicle has a valid operational permit from the Health Department for water and a wastewater disposal system, and connected to the wastewater disposal system,
- b. the recreational vehicle is ready for highway use (defined as: fully licensed, own wheels or jacking system, attached to the site only by quick disconnect utilities, with no permanently attached additions, and has a current license plate, if applicable); ~~or;~~
- ~~c. apply for a zoning permit that is required to be renewed annually; or~~

(2) One per parcel during the construction of personal residence provided: ^{xxv}

- a. the recreational vehicle is ready for highway use as defined above and has a valid operational permit from the Health Department for water and a wastewater disposal system, and connected to the wastewater disposal system,
- b. the owner has a valid residential building permit for the parcel upon which the recreational vehicle is located; ~~or;~~
- ~~c. apply for a zoning permit that is required to be renewed annually; or~~

(3) One per parcel while stored upon the owner's property on which there is a residence built and is utilized for the owner's personal use; or

(4) In recreational vehicle and travel trailer parks or service and camp areas.

6.2.16.2 Recreational Vehicle in Zoning Districts RE1, RE2, RE5, R, MR, NC, I and AR5 zoning districts:

One per parcel while stored upon the owner's property on which there is a residence built and utilized for the owner's personal use.

Article VII. Dimensional Requirements

Section 7.1 General Provisions^{xxv}

- A. Along each property line which is adjacent to a residential district, the property owner or developer shall place and maintain a buffer strip fifteen (15) feet wide upon which shall be planted an evergreen screen hedge to provide appropriate screening against noise, glare, fumes, dust, and other harmful effects. The buffer strip may utilize existing evergreen vegetation.
- B. All lots identified in a watershed must also meet the requirements of the Polk County Watershed Ordinance.
- C. All new lots shall meet the requirements of *Subdivision Ordinance* except that the minimum lot sizes shall meet the dimensional requirements in the table below.
- D. It is not permitted to average the lot areas to meet the minimum lot areas established in this Article. However, Cluster Developments shall be allowed in accordance with the Subdivision Ordinance, so long as the maximum density shall be equal to one dwelling unit per the minimum lot size listed in the dimensional table below. For example, if the minimum lot size is 43,560 square feet (1 acre), then the maximum density is one unit per acre.

Article VI. Permitted Use Table.

P = Permitted

P* = Permitted with conditions

S = Allowed as a Special Use

Blank Space = Not Permitted

	EV	E	GPF	RE1	RE2	RE5	AR	R	MR	NC	HC	I	MU	FF	AR5
Accessory buildings	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Accessory dwelling unit ^{xiii}													P		
Agricultural building (10 acres or more) ^{xxi}	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Agricultural building (less than 10 acres) ^{xxi}	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
Automobile, truck, & farm Implement sales & service ^{xii}		P					S				P	P	P	P	S
Bed & Breakfast	P	P					P		P	P	P		P	P	P
Cemetery <i>*see 6.2.7 for restrictions</i>				P*	P*	P*	P*	P*	P*	P	P		P	P	P*
Church, synagoge, temple, or other religious Building <i>*see 6.2.1 for restrictions</i>	P	P		P*	P*	P*	P*	P*	P*	P	P		P	P	P*
Clubs, public or private <i>*see 6.2.1 for restrictions</i>	P	P		P*	P*	P*	P	P			P		P	P	P*
Community recreation centers	P	P	P	P	P	P	P	P	P	P			P	P	P
Courthouse ^{xvi}			P												
Convenience stores, including those that sell petroleum and petroleum products	P	P							S	S	P		P	P	
Customary home occupations, Class I ^{ix}	P	P		P	P	P	P	P	P	P	P	P	P	P	P
Customary home occupation, Class II ^{ix}		P											P		P
Day care facility ⁱⁱ <i>*see 6.2.8 for restrictions</i>				P*	P*	P*	P*	P*	P*	P	P*	P*	P*	P*	P*
Duplex ^{xii}		P					P	P	P	P	P	P	P	P	P
Equestrian centers & facilities, multi-discipline <i>*see 6.2.11 for restrictions</i>	P	P*													
Events, shows & festivals	P	P													
Golf courses & country clubs		P		P	P	P	P	P	P	P	P	P	P	P	
Guest House <i>*see 6.2.3 for restrictions</i>		P		P*	P*	P*	P*	P*	P*	P	P	P	P	P	P*

P = Permitted

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	EV	E	GPF	RE1	RE2	RE5	AR	R	MR	NC	HC	I	MU	FF	AR5
Heliport, public & private* <i>see 6.2.12 for restrictions</i>		P*													
Hospitals & clinics							P			P	P		P	P	S
Kennels ^{iv} * <i>see 6.2.9 for restrictions</i>					P*	P*	S			S	S		S	P	S
Laundry & dry cleaning services ^{xii}	P	P								S	P	P	P	P	
Law Enforcement Center ^{xvi}			P												
Libraries, public or private	P	P	P				P		P	P			P	P	P
Manufacturing, Light		P										P	P	P	S
Manufacturing												P	S	P	
Mobile or Manufactured Home, Individual							P						P	P	P
Mobile or Manufactured Home Parks							P		P				P	P	
Modular Home		P		P	P	P	P	P	P	P	P	P	P	P	P
Motels & hotels	P	P									P		S	P	
Museum	P	P													
Multifamily residences	P	P							P	P	P		P	P	
Nature-Oriented Non-Motorized Outdoor Recreation ^{vi}	P	P					S		S	S	P	P	P	P	
Nursery and/or landscape business, & greenhouse							P			P	P		P	P	P
Offices, business, medical, professional & public, including banks	P	P	P							P	P	P	P	P	
Offices pertaining to permitted use	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Printing, publishing, & engraving establishments	P	P								S	P	P	P	P	

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Blank Space = Not Permitted

	EV	E	GPF	RE1	RE2	RE5	AR	R	MR	NC	HC	I	MU	FF	AR5
Public safety facilities (fire, police, etc...)	P	P	P				P			P	P	P	P	P	S
Quarantine Facilities ^{xxii}	P	P													
Radio & TV stations & studios ^{xiii}	S	S									S	S	S	S	
Recreational facilities, for profit (bowling alleys, skating rinks, etc...)	P	P					S		S	S	P	P	S	P	
Recreational facilities, non-profit (parks, playgrounds, nature centers, equestrian courses, etc...)* <i>see 6.2.4 for restrictions</i>	P	P*	P	P*	P*	P*	S						S	P*	S
Recreational Vehicle (RV) ^{xv, xxii} * <i>see 6.2.16 for restrictions</i>	P*	P*		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
Recreational Vehicle (RV) & Park and/or Camp Areas ^{xv, xvii} * <i>see 6.2.14 for restrictions</i>	P*	P*					S				P		S	P	
Restaurants, excluding fast food & drive thru services	P	P								P	P		P	P	S
Restaurants, including fast food & drive thru services	P	P									P	P	P	P	
Rest & convalescent homes, sanitariums	P	P					P	P	P	P	P	P	P	P	S
Residential Vacation Rentals ^{ix, xix, xxv}	P	P								P			P		P
Retail trade, commercial services, sales and rental of merchandise & equipment	P	P								S	P	P	P	P	S
Retail business customarily serving residential neighborhoods & conducted within an enclosed building									S	P	P		P	P	
Roadside stands selling home grown products							P				P		P	P	P
Sawmill							P						P	P	S
Schools, public or private ^{xxii}	P	P	P	P	P	P	P	P	P	P			P	P	P
Schools; vocational schools, business schools, & special schools ^{xvii, xxii}	P	P	P	P								P	P	P	

P = Permitted

P* = Permitted with conditions

S = Allowed as a Special Use

Blank Space = Not Permitted

	EV	E	GPF	RE1	RE2	RE5	AR	R	MR	NC	HC	I	MU	FF	AR5
Service stations ^{xii}	P	P									P	P	P	P	
Single family residences		P		P	P	P	P	P	P	P	P	P	P	P	P
Solar Energy Generating Facility, Major ^{vii}												S	S		
Solar Energy Generating Facility, Minor ^{vii} <i>*see 6.2.10</i>												P*	P*		
Spectator sport facilities 500 or more spectators ^{xxii} <i>*see 6.2.13 for restrictions</i>	P*	P*										S	S	S	
Spectator sport facilities less than 500 spectators ^{xxii} <i>*see 6.2.13 for restrictions</i>	P*	P*					S	S	S	S	S	S	S	P	
Stables, private <i>*see 6.2.5 for restrictions</i>	P	P		P*	P*	P*	P						P	P	P
Storage & warehousing ^{xii}	S	S										P	S	P	
Theaters	P	P								S	P		P	P	
Towers <i>*see Polk County Wireless Telecommunication Ordinance</i> ^{xix, xxiv}	P*	P*	P	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
Towers (Non-Administrative Approval, Section 304 <i>*Polk County Wireless Telecommunication Ordinance</i>) ^{xix, xxiv}	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*	S*
Truck terminals											P	P	P	P	
Utility buildings and facilities, public <i>*see 6.2.6 for Restrictions</i>			P	P*	P*	P*	P*	P*	P*	P*	P	P	P	P	P*
Veterans' Affairs Office ⁱⁱⁱ			P	P						P	P	P	P		
Veterinarian clinics, animal shelters ^{xii, xxii} <i>*see 6.2.9 for Restrictions</i>	P	P			P*	P*	S			S	S		S	P	S
Vineyard/Winery	P	P													
Waste Handling, Treatment, Processing, Management or Disposal Facility														S	
Wholesale sales, retail sales & supply houses											P	P	P	P	

Section 6.1 Reserved for Future Purposes

Section 6.2 Other Restrictions

6.2.1 Churches and clubs (public or private) provided they are located not closer than fifty (50) feet from any property line with required off-street parking spaces and separated from side and rear property lines by a planted buffer strip at least ten (10) feet in width. The buffer strip shall be composed of two staggered rows of evergreen shrubs or sheared evergreen trees so that an effective screen year-round is present.

6.2.2 Clubs, public or private, provided they are located not closer than fifty (50) feet from any property line with required off-street parking spaces and separated from side and rear property lines by a planted buffer strip at least ten (10) feet in width. The buffer strip shall be composed of two staggered rows of evergreen shrubs or sheared evergreen trees so that an effective screen year-round is present.

6.2.3 Guest house, provided that it shall be placed according to applicable setbacks from any property line and provided that not more than one (1) such facility shall be permitted on any lot. A guest house meeting these requirements may be situated on the same lot as a single family residence.

6.2.4 Nonprofit private equestrian courses, nature centers and recreational facilities, provided that the parcel of land proposed for development shall contain no less than two hundred (200) acres; all structures shall be so placed as not to be closer than three hundred (300) feet from any property line; activities proposed shall in no way have deleterious affects (such as, but not necessarily limited to noise, excess traffic and other effects that go beyond the property line) on adjoining RE-2 and RE-5 developments; the parcel shall be so located as to provide for ingress and egress from the site directly onto a major thoroughfare having an existing or planned right-of-way at least sixty (60) feet in width and shall in no way traverse single-family subdivisions.

6.2.5 Private stable for not more than one (1) horse on a lot or parcel at least two (2) acres in area; and provided further, that for each additional horse stabled thereon, an additional contiguous two (2) acres of land shall be provided. In no instance shall a horse be stabled nearer than seventy-five (75) feet to any property line abutting an existing residence. ^{xxv}

The RE-5 districts also allow for horse farms, including the boarding of horses and the extension of on-site riding lessons, provided any stable, barn, or structure required be setback at least three hundred (300) feet from all abutting residentially zoned land.

6.2.6 Provided all structures shall be set back at least thirty (30) feet from the property line and all exposed apparatus shall be safely enclosed and landscaped.

6.2.7 Only when associated with a church.

6.2.8 Provided all state and/or county regulations are met.

6.2.9 Animal shelters and kennels owned by non-profit corporations that serve the needs of the county and its citizens.

6.2.10 *Solar Energy Generating Facilities.*^{vii} Solar energy generating facilities shall be subject to the following restrictions.

Family Care Homes, Housing for Persons with Disabilities, and Zoning

David W. Owens

April, 2020

Legislative summary(ies)

Family care homes are facilities that provide health, counseling, or related services to a small number of persons in a family type of environment. While social services licensing is an important factor, state law has special zoning provisions for some “family care homes” that is entirely independent of these licensing programs.

Summary:

Family Care Homes, Housing for Persons with Disabilities, and Zoning

David W. Owens

Gladys Hall Coates Professor of Public Law and Government

School of Government, The University of North Carolina at Chapel Hill

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April 2020

Family care homes are facilities that provide health, counseling, or related services to a small number of persons in a family type of environment. Both state and federal laws affect zoning regulation of these facilities. While social services licensing is an important factor, state law has special zoning provisions for some “family care homes” that is entirely independent of these licensing programs.^[1]

State Law

Family care homes are facilities that provide health, counseling, or related services to a small number of persons in a family type of environment. Both state and federal laws affect zoning regulation of these facilities.^[1]

G.S. 160D-907 provides that local ordinances must treat certain family care homes as if they were single-family homes. They cannot be prohibited in a district that allows single-family residences, nor can they be subject to any special review requirements, such as a special use requirement.

To qualify for this treatment, the facility must be designed to provide room, board, and care for six or fewer disabled persons in a family environment. Disabled persons include those with permanent or temporary physical, emotional, or mental disabilities^[2] but not those who have been deemed dangerous to themselves or to others.^[3] As with the protection for housing for persons with disabilities under the federal Fair Housing Act, these protections do not extend to homeless shelters, group homes providing services for those being released from imprisonment, and other residential facilities for those who are not disabled.

G.S. 160D-907(c) [168-22(a)] does allow zoning ordinances to require a half-mile separation between family care homes, but whether these minimum separations are valid under the federal Fair Housing Act is uncertain.^[4]

Federal Law

Fair Housing Act

The Fair Housing Act^[5] makes it unlawful to make a dwelling^[6] unavailable to a person because of race, color, national origin, religion,^[7] sex,^[8] familial status, or disability.^[9] Unlike with constitutional claims, a prima facie case for a statutory violation is established by showing that a policy or practice of a local government has a disparate impact on a protected class.^[10]

Such statutorily grounded discrimination includes failure to make reasonable accommodation in rules and policies when such is necessary to afford a protected person equal opportunity to use and enjoy a dwelling.^[11] However, when discrimination of this sort is alleged, a local government generally must be provided an opportunity to make a reasonable accommodation. In *United States v. Village of Palatine*, the zoning ordinance at issue required a special use permit if more than three unrelated individuals were to reside in a home. Oxford House, a facility for persons recovering from substance abuse, refused to apply for a permit, contending that the public notice and hearing associated with the permit would unfairly stigmatize the facility. The court held that a claim of failure to make a reasonable accommodation was not legitimate if a permit application was never submitted and that a blanket exemption from permit requirements is not reasonable.^[12] However, a special permit or variance application is not required if such would be “manifestly futile.”^[13]

The general rule for a zoning variance is that it must be related to conditions on the property, not the personal circumstances of the occupant of the property. G.S. 160D-705(c) creates an exception to this general rule by authorizing the issuance of a variance upon a finding that the variance is “necessary and appropriate” in order to make a reasonable accommodation under the Federal Fair Housing Act.^[14] Some local development regulations also include a specific provision setting a process for a person to request that a reasonable accommodation be made.

Accommodations held to be reasonable include conversion of a motel to a shelter^[15] and a variance from setback requirements.^[16] A total exclusion of all nursing-home facilities from a residential district has been held to be a failure to make reasonable accommodation.^[17] Reasonable accommodation has been

held *not* to include the following requirements: that part of a motel be allowed to be used as a residential treatment facility for teens with emotional or mental disabilities;^[18] that multifamily housing be allowed in a single-family zoning district;^[19] that “halfway houses” for recovering substance abusers be allowed in a single-family zoning district that does not allow “tourist dwellings” with frequent resident turnover;^[20] that a disabled individual be allowed to place a carport inside a setback area;^[21] that zoning density be increased to allow duplexes designed for wheelchair users;^[22] or that a large care facility for the elderly be allowed on a site deemed by the town to be too small and to have traffic problems.^[23] There is no requirement to make accommodations that would impose an undue financial or administrative burden on the local government or require a fundamental alteration of nondiscriminatory land use policies.^[24]

The impact of the federal fair-housing law on local regulation of group homes has been a heavily litigated issue. One key question is the validity of restrictions that limit the number of unrelated^[25] individuals who may reside in a single dwelling unit.^[26] The U.S. Supreme Court in *City of Edmonds v. Oxford House, Inc.*^[27] held that a zoning-ordinance limit on the number of unrelated individuals living together is not exempt from the requirements of the fair-housing law.^[28] However, the question of how many unrelated individuals should be allowed in a facility in order to constitute reasonable accommodation is unclear.^[29]

Many land use-regulatory ordinances impose a minimum-separation requirement between facilities serving the handicapped in order to maintain the single-family, noninstitutional character of a neighborhood.^[30] As with occupancy limits, the size of a separation requirement that will pass the reasonable-accommodation test is unclear. While some courts have upheld separation requirements,^[31] others have invalidated substantially similar requirements.^[32] The court in *Oxford House, Inc. v. City of Raleigh* upheld the city’s 375-yard minimum separation between “supportive housing residences,” which included facilities serving disabled persons.^[33] It may be useful if the ordinance provided an exception to minimum-separation requirements in situations where its purpose can be otherwise met.^[34]

Americans with Disabilities Act

The protections afforded persons with disabilities by the Americans with Disabilities Act (ADA) closely parallel those provided under the Fair Housing Act. Title II of the ADA provides that a person shall not be denied the benefits of services, programs, or activities of public entities or be subject to discrimination by public entities by reason of disability.^[35] Planning and development regulations are generally considered programs and activities that are covered by the ADA.^[36]

As with the Fair Housing Act, courts have interpreted ADA protections to prohibit intentional discrimination or disparate treatment, disparate impacts, or failure to make reasonable accommodations.^[37] If a local government acts in response to community views about whether persons have disabilities, those views may be attributed to the governmental unit. Therefore community opposition to the siting of a facility serving those regarded by the community to have disabilities can trigger the protections of the ADA.^[38] The denial of a permit or a variance to a disabled person or for a facility for disabled persons does not in itself trigger an ADA violation if there is a legitimate land use basis for the denial decision and there is no evidence of discrimination based on a disability on the face of the ordinance or in its application.^[39]

[1]. The tendency of local governments to use zoning to exclude treatment facilities is as old as the zoning concept. A number of ordinances in the 1920s and 1930s sought to exclude hospitals for those with infectious diseases. The drafter of the original New York City zoning ordinance noted that concerns about “the depressing effect” on the surrounding inhabitants had prompted about nineteen of the twenty municipalities in the New York area to exclude hospitals for mental illnesses.

In addition to development regulations, treatment facilities are also subject to substantial social-service licensing and permitting. These rules address the operation of facilities and do not preempt zoning and development regulations generally. See, for example, G.S. 131D-2.4 regarding licensing for adult care homes.

[2]. In *Taylor Home of Charlotte, Inc. v. City of Charlotte*, 116 N.C. App. 188, 447 S.E.2d 438 (1994), review denied, 338 N.C. 524, 453 S.E.2d 170 (1995), the court addressed the definition of handicapped. (The term disabled is now used by the statute.) The case involved a permit for the construction of a six-bed facility to serve AIDS patients. The court held that AIDS patients were not “handicapped persons” within G.S. 160D-907(b)(2) [168-21(2)] because they could not live within a normal residential environment. Subsequent treatment advances may well have rendered this opinion obsolete. A different case concluded that AIDS patients are clearly covered by the Federal Fair Housing Act. *Support Ministries v. Vill. of Waterford*, 808 F. Supp. 120 (N.D.N.Y. 1992). In *Town of Newton Grove v. Sutton*, 111 N.C. App. 376, 432 S.E.2d 441, review denied, 335 N.C. 181, 438 S.E.2d 208 (1993), the owners of a nonconforming residence in a business zoning district challenged the denial of a permit to locate a mobile home on their lot for the use of their mentally ill daughter. The town concluded that placement of the unit would have been an unlawful expansion of a nonconforming use and could not be considered a customary accessory use. The court affirmed the town’s decision and concluded that the state Fair Housing Act was not violated because the prohibition of mobile homes in the district applied to all property owners and was not in any way related to the defendant’s child’s condition. See also *Parkwood Ass’n v. Capital Health Care Inv’rs*, 133 N.C. App. 158, 514 S.E.2d 542, review denied, 350 N.C. 835, 539 S.E.2d 291 (1999) (holding that a temporary emergency shelter for undisciplined, delinquent, or at-risk youth is not a home serving disabled persons protected by state or federal fair-housing provisions).

[3]. This statute cross-references G.S. 122C-3(11)(b) for a definition of those persons with mental illnesses who are dangerous to themselves or others. This is the same definition used to qualify a person for involuntary commitment under G.S. 122C-261.

[4]. The court in *Oxford House, Inc. v. City of Raleigh*, No. 5:98-CV-113-BO(2), 1999 WL 1940013 (E.D.N.C. Jan. 26, 1999), upheld the city’s 375-yard minimum separation between “supportive housing residences,” which included facilities serving disabled persons. Wilmington’s half-mile separation was upheld in *Oxford House, Inc. v. City of Wilmington*, No. 7:07-CV-61-F, 2010 WL 4484523 (E.D.N.C. Oct. 28, 2010).

[5]. 42 U.S.C. §§ 3601–3631. As enacted in 1968, this act addressed discrimination on the basis of race, color, religion, and national origin. Sex discrimination was added in 1974. Family-status and disability discrimination were added in 1988. Also, 42 U.S.C. § 3610(g)(2)(c) provides for HUD referral to the Attorney General proceedings involving the legality of land use–regulatory ordinances. *Metropolitan Housing & Development Corp. v. Village of Arlington Heights* on remand set the factors used to determine if there is actionable racial discrimination. 558 F.2d 1283 (7th Cir. 1977). See also *Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581 (2nd Cir. 2016); *Ave. 6E Invs. v. City of Yuma*, 818 F.3d 493 (9th Cir. 2016); *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974). Also see *Parvati Corp. v. City of Oak Forest*, 709

F.3d 678 (7th Cir. 2013), where the plaintiff alleged that racial discrimination motivated a refusal to rezone property to allow conversion of a motel to a retirement facility that would largely serve African Americans. The court found no evidence of a racial basis for the decision.

[6]. Courts are divided as to whether a facility that only provides transient or short-term housing is a “dwelling” under this law. *Intermountain Fair Hous. Council v. Boise Rescue Mission Ministries*, 655 F. Supp. 2d 1150 (D. Idaho 2009) (homeless shelter not a dwelling); *Woods v. Foster*, 884 F. Supp. 1169, 1173–74 (N.D. Ill. 1995) (homeless shelter covered); *Johnson v. Dixon*, 785 F. Supp. 1, 4 (D.D.C. 1991) (doubtful that emergency overnight shelter qualifies). The term has been held not to include jails and facilities for transient guests, such as hotels, motels, or bed-and-breakfast facilities. Group homes offering treatment services are generally considered included. See, e.g., *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1214 (11th Cir. 2008); *Lakeside Resort Enters. v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154, 160 (3d Cir. 2006).

[7]. See, e.g., *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412 (2d Cir. 1995) (zoning limitation on use of home for religious services).

[8]. See, e.g., *Doe v. City of Butler*, 892 F.2d 3315 (3d Cir. 1989) (alleging discrimination involving group home for abused women).

[9]. In the Fair Housing Act, the term handicap is used (in contrast with many federal statutes, which favor *disability*) and is defined to include persons with physical or mental impairments that substantially limit one or more major life activities. 42 U.S.C. § 3602(h)(1). The definition does not cover persons with either current illegal use of or addiction to a controlled substance, persons convicted of crimes involving the manufacture or sale of illegal drugs, or those who constitute a direct threat to the health or safety of others. Recovering substance-abuse patients are covered. Persons associated or residing with individuals with defined disabilities are also covered. *Elliot v. City of Athens*, 960 F.2d 975 (11th Cir. 1992); *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 923 (4th Cir. 1992); *St. Paul Sober Living, LLC v. Bd. of Cty. Comm’rs*, 896 F. Supp. 2d 982 (D. Colo. 2012); *McKivitz v. Twp. of Stowe*, 769 F. Supp. 2d 803 (W.D. Pa. 2010); *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007). When reviewing a claim regarding a proposed facility, the court reviews the criteria for admission to the facility to determine whether there will be qualifying residents with disabilities. *McKivitz*, 769 F. Supp. 2d at 822. For example, a proposed multifamily facility for homeless veterans was held not to qualify because admission was not limited to those with post-traumatic stress disorder or some other disability. *Yates Real Estate, Inc. v. Plainfield Zoning Bd. of Adjustment*, 404 F. Supp. 3d 889, 924–25 (D.N.J. 2019). See also *Bragdon v. Abbott*, 524 U.S. 624 (1998) (HIV-positive person covered under comparable definition).

[10]. Proof of disparate impact is sufficient; there is no need to show a deliberate intent to discriminate. See, e.g., *Tex. Dep’t of Hous. and Cmty. Affairs v. The Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015); *Simms v. First Gibraltar Bank*, 83 F.3d 1546 (5th Cir. 1996); *Mountain Side Mobile Estates P’ship v. Secretary of Hous. & Urban Dev.*, 56 F.3d 1243 (10th Cir. 1995); *Jackson v. Okaloosa Cty.*, 21 F.3d 1531 (11th Cir. 1994); *Keith v. Volpe*, 858 F.2d 467 (9th Cir. 1988); *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988); *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983 (4th Cir. 1984); *Smith v. Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1972). Federal executive actions also address potential disparate impacts of federal decisions on low-income and minority neighborhoods. See, e.g., *Exec. Order No. 12,898*, 59 Fed. Reg. 7,629 (Feb. 11, 1994), addressing environmental-justice issues. See also *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985) (invalidating denial of special use permit for group home for the mentally disabled where ordinance did not require permit for similar group housing).

[11]. Fair Housing Act, 42 U.S.C. § 3604(f)(3). A reasonable-accommodation claim may be brought by the entity claiming discrimination or by the federal government. See, e.g., *United States v. Town of Garner*, 720 F. Supp. 2d 721 (E.D.N.C. 2010) (action brought by federal government alleging failure to make reasonable accommodation for group home operated by Oxford House, with the group subsequently intervening). The burden of establishing both the necessity and the reasonableness of the accommodation is on the plaintiff. *Bryant Woods Inn, Inc. v. Howard Cty.*, 124 F.3d 597, 603–4 (4th Cir. 1997). See also *Loren v. Sasser*, 309 F.3d 1296, 1302 (11th Cir. 2002); *Groner v. Golden Gate Gardens Apartments*, 250 F.3d 1039, 1045 (6th Cir. 2001); *Elderhaven, Inc. v. City of Lubbock*, 98 F.3d 175, 178 (5th Cir. 1996). But see *Lapid-Laurel, LLC v. Zoning Bd. of Adjustment*, 284 F.3d 442, 458 (3d Cir. 2002) (once plaintiff meets burden of establishing necessity, burden shifts to government to show proposed accommodation is not reasonable). In general, to be “reasonable” the accommodation must be both efficacious and proportional to its implementation cost. Often the determination of what is reasonable is sufficiently fact specific that summary judgment is inappropriate. See, e.g., *Anderson v. City of Blue Ash*, 798 F.3d 338 (6th Cir. 2015) (need detailed facts to determine whether allowing miniature horse as service animal for disabled minor child would be reasonable). Also, as a general rule the plaintiff must present the information supporting the need for and reasonableness of the accommodation to the local government, not on appeal to the courts. See, e.g., *Yates*, 404 F. Supp. 3d at 912–13.

[12]. 37 F.3d 1230 (7th Cir. 1994). “Public input is an important aspect of municipal decision-making; we cannot impose a blanket requirement that cities waive their public notice and hearing requirements in all cases involving the handicapped.” *Id.* at 1234. See also *Tsombanidis v. W. Haven Fire Dep’t*, 352 F.3d 565, 578–79 (2d Cir. 2003); *Oxford House, Inc. v. City of St. Louis*, 77 F.3d 249 (8th Cir. 1996); *Oxford House, Inc. v. City of Virginia Beach*, 825 F. Supp. 1251 (E.D. Va. 1993). But see *ARC of N.J., Inc. v. New Jersey*, 950 F. Supp. 637 (D.N.J. 1996) (invalidating conditional use permit, spacing, and maximum-occupancy requirements).

[13]. *Id.* at 1234.

[14]. This provision was added to the mandatory standards for variances by S.L. 2019-111.

[15]. *Judy B. v. Borough of Tioga*, 889 F. Supp. 792 (M.D. Pa. 1995).

[16]. *United States v. City of Phila.*, 838 F. Supp. 223 (E.D. Pa. 1993), *aff’d*, 30 F.3d 1488 (3d Cir. 1994).

[17]. *Hovsons, Inc. v. Twp. of Brick*, 89 F.3d 1096 (3d Cir. 1996).

[18]. *Cinnamon Hills Youth Crisis Ctr., Inc. v. Saint George City*, 685 F.3d 917 (10th Cir. 2012).

[19]. *Brandt v. Vill. of Chebanse*, 82 F.3d 172 (7th Cir. 1996). However, refusal to allow a variance for a group home based solely on the residents’ disabled status would be a failure to make a reasonable accommodation. *Tsombanidis v. W. Haven Fire Dep’t*, 352 F.3d 565, 580 (2d Cir. 2003).

[20]. *Schwarz v. City of Treasure Island*, 544 F.3d 1201 (11th Cir. 2008).

[21]. *Robinson v. City of Friendswood*, 890 F. Supp. 616 (S.D. Tex. 1995).

[22]. *Hemisphere Bldg. Co. v. Vill. of Richton Park*, 171 F.3d 437 (7th Cir. 1999).

[23]. *Lapid-Laurel, LLC v. Zoning Bd. of Adjustment*, 284 F.3d 442 (3d Cir. 2002).

[24]. *Erdman v. City of Fort Atkinson*, 84 F.3d 960 (7th Cir. 1996).

[25]. Regulation of the number of related individuals who live together was invalidated as an undue infringement of a fundamental right in *Moore v. City of East Cleveland*, 431 U.S. 494 (1977). The ordinance challenged in *Moore* used a complicated definition of “family” that largely limited residency in the single-family district to a nuclear family (parents and their children). The plaintiff was charged with a criminal offense because her son and two grandchildren (who were cousins rather than brothers) lived in her home. Since, under the ordinance, any number of unmarried children of whatever age would be allowed to live with parents but even a single brother and sister sharing a residence would be illegal, the Court held the regulation to be arbitrary. The Court also held this to be an unreasonable burden on familial association and, as such, a violation of substantive due process. It noted:

The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition. Over the years millions of our citizens have grown up in just such an environment, and most, surely, have profited from it. Even if conditions of modern society have brought about a decline in extended family households, they have not erased the accumulated wisdom of civilization, gained over the centuries and honored throughout our history, that supports a larger conception of the family.

Id. at 504–5 (citations omitted). *See also* 42 U.S.C. § 3607(b)(2)(c) (allowing housing to be restricted to persons fifty-five years of age or older).

[26]. Such limitations are common and generally are enforceable. *Vill. of Belle Terre v. Boraas*, 416 U.S. 1 (1974) (upholding regulation restricting number of unrelated individuals who may live together). Justice Douglas concluded:

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. . . . The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

Id. at 9. Some states have found restrictions on the number of unrelated individuals residing together to violate state constitutional provisions. *See City of Santa Barbara v. Adamson*, 610 P.2d 436, 442 (Cal. 1980) (limit of five unrelated people who may live in single-family zone violates fundamental right to privacy under the California Constitution); *Charter Twp. of Delta v. Dinolfo*, 419 Mich. 253, 351 N.W.2d 831 (1984) (limit of two unrelated persons violates the due-process clause of the Michigan Constitution); *State v. Baker*, 405 A.2d 368, 369–70 (N.J. 1979) (limit of no more than four unrelated persons violates right to privacy and due process under the New Jersey Constitution). Other state courts have approved limits on the number of unrelated individuals who may reside within an individual single-family housing unit. *See, e.g., Ames Rental Prop. Ass’n v. City of Ames*, 736 N.W.2d 255 (Iowa 2007) (upholding limit of no more than three unrelated individuals residing together in a single-family zoning district). G.S. 160D-907 limits state-law protection for family care homes to those serving six or fewer disabled individuals, but there is no explicit number in the federal legislation.

[27]. 514 U.S. 725 (1995).

[28]. Minimum-housing-code provisions setting minimum-square-footage requirements for each individual resident (whether or not they are related) are unaffected by this law. However, special safety requirements cannot be imposed on housing for the disabled that are not imposed on other group-living arrangements. *Marbrunak, Inc. v. City of Stow*, 974 F.2d 43 (6th Cir. 1992); *All. for the Mentally Ill v. City of Naperville*, 923 F. Supp. 1057 (N.D. Ill. 1996).

[29]. See *Bryant Woods Inn, Inc. v. Howard Cty.*, 124 F.3d 597 (4th Cir. 1997) (upholding occupancy limit of eight disabled persons); *Smith & Lee Assocs., Inc. v. City of Taylor*, 102 F.3d 781 (6th Cir. 1996) (requiring limit of no more than six disabled persons per home be raised to nine but rejecting request to raise the limit to twelve disabled persons); *Oxford House-C v. City of St. Louis*, 77 F.3d 249 (1996) (upholding a limit of eight unrelated individuals or three unrelated, nondisabled individuals in group homes); *Oxford House, Inc. v. City of Wilmington*, No. 7:07-CV-61-F, 2010 WL 4484523 (E.D.N.C. Oct. 28, 2010) (no showing that nine rather than eight residents was a necessity); *Human Res. Research & Mgmt. Grp., Inc. v. Cty. of Suffolk*, 687 F. Supp. 2d 237, 263–66, (E.D.N.Y. 2010) (holding a six-person limit for those receiving treatment for drug and alcohol problems in a group home facially invalid). See also *United States v. City of Balt.*, 845 F. Supp. 2d 640 (D. Md. 2012) (invalidating provision that applied standards to group homes with less than seventeen residents but not to those with more residents).

[30]. Several states establish separation requirements by statute to avoid what they deem to be undue concentration of family care homes. G.S. 168-22 allows a half-mile separation. A number of states have similar rules. See, e.g., *Ariz. Rev. Stat. § 36-582H* (1200-foot separation); *Colo. Rev. Stat. § 30-28-115(2)(b)* (750-foot separation); *Conn. Gen. Stat. § 8-3F* (1000-foot separation).

[31]. *Familystyle of St. Paul, Inc. v. City of St. Paul*, 923 F.2d 91 (8th Cir. 1991) (upholding quarter-mile separation requirement). See also *Twp. of Plymouth v. Dep't of Soc. Servs.*, 198 Mich. App. 385, 501 N.W.2d 186 (1993) (upholding 1500-foot-separation requirement).

[32]. See, e.g., *Valencia v. City of Springfield*, 883 F.3d 959 (7th Cir. 2018) (invalidating 600-foot separation); *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775 (7th Cir. 2002) (invalidating 2500-foot spacing requirement); *Larkin v. Mich. Dep't of Soc. Servs.*, 89 F.3d 285 (6th Cir. 1996) (invalidating 1500-foot separation requirement); *Ass'n for the Advancement of the Mentally Handicapped v. City of Elizabeth*, 876 F. Supp. 614 (D.N.J. 1994) (invalidating 1500-foot separation requirement); *Horizon House Dev. Servs., Inc. v. Twp. of Upper Southampton*, 804 F. Supp. 683 (E.D. Pa. 1992), *aff'd*, 995 F.2d 217 (3d Cir. 1993) (invalidating 1000-foot separation requirement).

[33]. No. 5:98-CV-113-BO(2), 1999 WL 1940013 (E.D.N.C. Jan. 26, 1999). *Wilmington's* half-mile separation was upheld in *Oxford House v. City of Wilmington*, 2010 WL 4484523.

[34]. For example, see the exception to the minimum-separation requirement between adult uses discussed in *Independence News, Inc. v. City of Charlotte*, 568 F.3d 148 (4th Cir. 2008). The ordinance allowed a variance to the separation requirement upon showing man-made or natural features provided sufficient separation to prevent harmful secondary impacts.

[35]. 42 U.S.C.A. §§ 12131–12165. Implementing regulations are at 28 C.F.R. pt. 35. The ADA also incorporates the rights, procedures, and remedies of the Rehabilitation Act of 1973. 29 U.S.C. § 794 (prohibiting exclusion of persons with disabilities from participation in or receipt of benefits from programs or activities with federal funding).

[36]. See, e.g., *A Helping Hand, LLC v. Baltimore County*, 515 F.3d 356, 361 (4th Cir. 2008) (ADA protections applicable to zoning dispute regarding siting of methadone-treatment clinic). In this case the court held that there was no showing that clinic clients were disabled under the Act as a matter of law. The ADA defines “qualified individual with a disability” as a person with a physical or mental impairment that substantially limits one or more “major life activities,” someone with a record of impairment, or someone who is “regarded as” having such an impairment. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking,

communicating, and working. 42 U.S.C.A. § 12102 (2011). Similarly, the court in *Regional Economic Community Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 47–48 (2d Cir. 2002), noted that while alcoholism and drug addiction are impairments, neither is a per se disability without a showing that the condition substantially limits at least one major life activity. The court concluded that residents of a proposed halfway house did in fact have addictions that substantially limited their ability to live independently with their families. See also *Bay Area Addiction Research v. City of Antioch*, 179 F.3d 725, 730–32 (9th Cir. 1999) (applying ADA to zoning requirements).

[37]. See, e.g., *Wis. Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 753 (7th Cir. 2006); *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37 (2d Cir. 1997), criticized by *Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163 (2d Cir. 2001) (invalidating denial of permit approvals for a drug-and-alcohol-rehabilitation treatment center). Many cases challenging land use restrictions on the basis of discrimination grounded in disability or a failure to make reasonable accommodation raise both Fair Housing Act and ADA claims. See, e.g., *Tsombanidis v. W. Haven Fire Dep’t*, 352 F.3d 565, 578–80 (2d Cir. 2003) (failure to treat group home as a single-family dwelling was a failure to make reasonable accommodation for group home and violated both laws).

[38]. *A Helping Hand*, 515 F.3d at 366.

[39]. An example would be denial of a permit for a nonprofit facility serving persons with disabilities in a zone reserved for commercial uses. See, e.g., *Wis. Cmty. Servs.*, 465 F.3d at 754–55 (to establish ADA violation, plaintiff must show that disability of clients was cause in fact of denial of special use permit for mental health clinic); *Forest City Daly Hous., Inc. v. Town of N. Hempstead*, 175 F.3d 144 (2d Cir. 1999) (no ADA violation where special use permit for assisted-living facility in commercial zone would not be issued for similar home for those without disabilities); *Woodward v. City of Paris*, 520 F. Supp. 2d 911 (W.D. Tenn. 2007) (denial of variance for carport in side yard proper where disabled plaintiff treated the same as any other resident in the same area with a lot of similar size and shape); *Robinson v. City of Friendswood*, 890 F. Supp. 616 (S.D. Tex. 1995) (denial of variance for carport in side yard not a violation). The court in *Woodward* held that a requested accommodation is not reasonable if it would fundamentally alter the nature of the zoning scheme. However, if the plaintiff presents evidence that animus against a protected group was a significant factor in the decision, that establishes a prima facie case of discrimination, and the burden then shifts to the defendant to provide a legitimate, nondiscriminatory reason for the decision. *Reg’l Econ. Cmty. Action Program*, 294 F.3d at 48–51.

Accessibility

Knapp-Sanders Building
Campus Box 3330, UNC Chapel Hill
Chapel Hill, NC 27599-3330
T: 919 966 5381 | F: 919 962 0654

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§ 160D-907. Family care homes.

(a) The General Assembly finds it is the public policy of this State to provide persons with disabilities with the opportunity to live in a normal residential environment.

(b) As used in this section, the following definitions apply:

- (1) Family care home. – A home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six resident persons with disabilities.
- (2) Person with disabilities. – A person with a temporary or permanent physical, emotional, or mental disability, including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b.

(c) A family care home shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts. No local government may require that a family care home, its owner, or operator obtain, because of the use, a special use permit or variance from any such zoning regulation; provided, however, that a local government may prohibit a family care home from being located within a one-half mile radius of an existing family care home.

(d) A family care home shall be deemed a residential use of property for the purposes of determining charges or assessments imposed by local governments or businesses for water, sewer, power, telephone service, cable television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and improvements. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

Section 4.2 Limitation on number of principal buildings on one lot.

Except as hereinafter provided in Section 6.2.3, 6.2.5, 7.3, and 7.4^{xiv}, only one principal building and its customary accessory buildings may hereafter be erected on any lot. Except as otherwise provided in this Ordinance, a mobile home shall in no event be considered a customary accessory building.

Section 4.3 Sharing of yard requirements.

No part of a yard, court, or other open space provided about any building or structure for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space required under this ordinance for another building or structure.

Section 4.4 Reduction of lot and yard areas prohibited.

No yard or lot existing at the time of passage of this ordinance shall be reduced in size of area below the minimum requirements set forth herein.

Section 4.5 Road access.

No building shall hereafter be erected on a lot unless there is legal access to such lot adequate to serve the purposes of the building.

Section 4.6 Off-street parking.^{xii}

Off-street automobile parking or automobile storage space shall be provided on every lot at the time any principal building is enlarged or increased in capacity, or at the time one (1) type of use is converted to another, or whenever any of the following uses listed in Section 4.7 are hereafter established. Such space shall be provided with vehicular access to a street or alley and shall not be provided in a setback area required by the provisions of Article 7. Each automobile space shall consist of an improved hard-surface or crushed stone, unless otherwise specified, not less than one hundred sixty two (162) square feet (18' by 9') in an area exclusive of adequate access drives and maneuvering space.

Parking Lot Landscaping Requirements

Trees and shrubs are required in and around parking lots with more than ten spaces to provide attractive views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, help absorb runoff, reduce glare from parking lots, and to help filter exhaust from vehicles.

1. Where parking areas with more than ten spaces adjoin a public right-of-way, a landscaped planting strip 10 feet wide shall be established and continuously maintained between the public right-of way and parking area(s). Parking areas within 50 feet of the right-of-way shall have a visually modifying screen or barrier that meets one of these standards:
 - a. evergreen shrubs shall be planted 30 inches apart as measured from the center, and attain a height of at least 48 inches within four years of installation;
 - b. the screen or barrier is of the same material as the principal building; or

c. there is an earthen berm at least two feet high, with a minimum crown width of two feet and a width to height ratio of no greater than 2:1; shrubs shall be planted on top of the berm that will attain a height of at least 36 inches within four years of installation and shall be planted 30 inches apart.

No screen is required at parking lot entrances or exits, and no screen shall obstruct vision within 50 feet of an entrance, exit or intersection. The landscaped planting strip shall be covered with living material, including groundcover and/or shrubs, except for mulched areas directly around the trees, so that no soil is exposed.

2. Parking areas with more than five spaces shall have at least one deciduous tree for every five (5) parking spaces, with some appropriate clustering of trees permitted, and 6-foot by 18-foot projecting landscaped islands generally every 10 parking spaces. Whenever possible, interior parking spaces should have a continuous planter strip six (6) feet wide between rows of parking. Where appropriate, provisions shall be made to ensure that adequate pedestrian paths are provided throughout the landscaped areas. In all cases, at least one deciduous tree shall be provided for a parking lot regardless of the number of spaces provided.

3. Areas in a parking lot not used for driveways, maneuvering areas, parking spaces, or walks shall be permanently landscaped with suitable materials and permanently maintained.

Law Enforcement Center – natural tree line buffers around the exterior of the parcel to be maintained, unless security issues will not allow.^{xvi}

Section 4.7 Minimum Parking Requirements.

The required number of off-street parking spaces shall be equal in number to at least the minimum requirements for the specific uses set forth below:‘

Residential Uses

Single-family residence

Multifamily residence

Guest house

Mobile home

Required Parking Spaces

2 spaces

1½ spaces per dwelling unit

2 spaces

2 spaces for each mobile home

Public and Semi-Public Uses

Bowling alleys

Churches

Elementary school and
junior high school

Required Parking Spaces

1 space for each employee, 2 spaces for each lane

1 space for each 4 seats in the main sanctuary

1 parking space for each classroom and
administrative office

Equestrian centers & facilities, multi-discipline ^{xii}	1 space per 5 fixed seats in the largest assembly room, provided that every one hundred sixty-two (162) square feet of fenced ground area (i.e. riding rings) shall count as 1 parking space without the necessity of an improved hard-surface or crushed stone.
Events, show & festivals ^{xii}	1 space per 5 fixed seats in the largest assembly room, provided that every one hundred sixty-two (162) square feet of fenced ground area (i.e. riding rings) shall count as 1 parking space without the necessity of an improved hard-surface or crushed stone
Hospitals and nursing homes	1 space for each 2 beds, exclusive of bassinets, and 1 space for bassinets, and 1 space for each physician and nurse, and 1 space for each 2 additional employees
Public or private libraries	1 space for each 150 square feet of gross floor area for public use, plus 1 space for each 2 employees on the shift of greatest employment
Public utility buildings	1 parking space for each 200 feet of gross floor area
Skating rinks (ice and roller skating)	1 space for each 100 square feet of floor (rink) areas used for amusement, plus 1 space for each 4 fixed seats in the principal building
Senior high school	1 parking space for each 20 students for which the building was designed plus 1 parking space for each classroom and administrative office
Sanitariums, rest and convalescent homes	1 space for each 6 beds plus 1 space for each staff or visiting doctor plus 1 space for each 4 employees
Spectator sports facilities, any size	1 space per 5 fixed seats in the largest assembly room, provided that every two (200) hundred square feet of fenced ground area (i.e. riding rings) shall count as 1 parking space without the necessity of an improved hard-surface or crushed stone
Theaters, community recreation centers	1 space per 4 fixed seats in the largest assembly room, or one space for each 40 square feet of floor area available for the accommodation of movable seats in the largest assembly room, or one space for each 150 square feet of gross floor area, whichever is needed by the facility

Business Uses**Required Parking Spaces**

Antique and gift shops	6 spaces per shop
Automobile sales and repair garages	1 space for each 2 employees at maximum employment on a single shift and 2 spaces for each 300 square feet of repair or maintenance space
Automobile washing establishments	1 space for each 2 employees at maximum employment on a single shift; 5 spaces shall also be located at the entrance and exit of the facility
Courthouse ^{xvi}	1 space per 4 fixed seats in the assembly room, or one space for each 40 square feet of floor area available for the accommodation of movable seats in the largest assembly room, or one space for each 150 square feet of gross floor area, whichever is needed by the facility. ^{xxv}
Customary home occupation I & II ^{xi}	Parking necessary to conduct business shall be provided. Parking must be off-street and on-site. Parking must be screened so as to obstruct views of the parking area from adjacent properties, streets or roadways, and to maintain the character of the neighborhood.
Doctor's or dentist's office	4 parking spaces per doctor in addition to 1 space for each employee
Drive-in restaurants	1 space per employee, plus parking space equivalent to 5 times the size of the main building
Drive in theaters	Reserved parking space off the street shall be provided for patrons awaiting admission in an amount not less than 30 percent of the vehicular capacity
Law Enforcement Center ^{xvi}	1 space per each 400 square feet of gross floor area for office areas plus 1 space for each 4 beds.
Motels, tourist homes, tourist courts	1 space for each sleeping room plus 1 additional space for each 3 employees
Offices, business	1 parking space for each 400 square feet of gross floor area
Public or private clubs, including golf courses (clubhouse)	1 parking space for each 200 square feet of gross floor space

Restaurants	1 space per employee, plus parking space equivalent to 1 space per 3 seats or stools
Roominghouses, boardinghouse, and hotels	1 space for each sleeping room plus 1 additional space for each 3 employees
Retail uses not otherwise indicated in this section	1 space for each 250 square feet indicated in this section of total floor area
Service stations	3 spaces for each grease rack plus 2 spaces for each gas pump
Roadside stands	6 off-street parking spaces

<u>Wholesale and Industrial Uses</u>	<u>Required Parking Spaces</u>
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Wholesaling, industrial plants and truck terminals	1 space per employee at peak shift
Vineyards/Winery	1 space per employee, plus 1 space for every 3 seats in any tasting room open to the public

4.7.1 Shared Parking^{xix}

Where multiple uses exist within a building or a development project, an applicant will:

- a. meet the required minimum parking requirements; or
- b. provide documentation by a registered engineer or qualified professional to evaluate and certify shared parking using ULI (Urban Land Institute) or ICSC (International Council of Shopping Centers) International Guidelines for shared parking.

Section 4.8 Combined parking space.

The required parking space for any number of separate uses may be combined in one (1) lot but the required space for one (1) use may not be assigned to another use, except that one-half of the parking space required for churches, theaters, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night or Sundays.

Section 4.9 Parking spaces provided within four hundred (400) feet of principal use.

If the off-street parking space required cannot be reasonably provided on the same lot on which the principal use is located, such space may be provided within four (400) hundred feet of the main entrance to such principal use, provided such land is in the same ownership or long-term lease as the principal use. Said land shall be used for no other purpose so long as no other adequate provisions of this ordinance have been made for the principal use. In such cases, the applicant for a zoning compliance or zoning permit for the principal use shall submit with his application an instrument duly executed and acknowledged, which subjects said land to parking use in connection with the principal use or for which it is made available. Upon the payment of the

necessary fee and the issuance of a zoning compliance or zoning permit, the Zoning Administrator shall cause said instrument to be registered in the office of the Register of Deeds of Polk County.

Section 4.10 Off-street loading and unloading spaces.

Every building or structure used for business, or wholesale or industry shall provide space as indicated below for the loading and unloading of vehicles. Such space shall have access to a public street or alley. For the purposes of this article, an off-street loading space shall consist of an improved hard-surface or crushed stone and have minimum dimensions of nine (9) feet wide, thirty (30) feet long, with fourteen (14) feet overhead clearance.

- a. Retail business: One (1) space for each three thousand (3,000) square feet of floor area or fraction thereof, unless differently required by Section 4.8.
- b. Wholesale or industry: One (1) space for each ten thousand (10,000) square feet of floor area or fraction thereof.

Section 4.11 Temporary use permits for manufactured/mobile homes.

In the event of a medical condition where a family member requires close supervision or constant care, the Board of Adjustment may issue a temporary use permit whereby a mobile home or a manufactured home may be placed in the rear yard of a residential dwelling as an accessory structure. Such temporary use permit shall be issued for a period of time not to exceed twelve months and may be renewed by the Zoning Administrator so long as the hardship continues to exist.

Article V. Establishment of Districts and Boundaries and Map.

Section 5.1 Establishment of districts.

For the purpose of the ordinance, the area designated on the zoning map is hereby divided into the following districts:

Residential (R)

Agricultural-residential (AR)

Residential estate/low density (RE-1)

Residential estate/low density (RE-2)

Residential estate/very low density (RE-5)

Multifamily residential (MR)

Neighborhood Commercial (NC)

Highway commercial (HC)

Industrial (I)

Current Use Table	Current Parking Requirement or Suggestion(s)
Accessory buildings	N/A
Accessory dwelling unit ^{xiii}	SFR – 2 spaces Mobile Home – 2 spaces for each mobile home
Agricultural building (10 acres or more) ^{xxi}	N/A
Agricultural building (less than 10 acres) ^{xxi}	N/A
Automobile, truck, & farm implement sales & service ^{xii}	“Automobile sales and repair garages” - 1 space for each 2 employees at maximum employment on a single shift and 2 spaces for each 300 square feet of repair or maintenance space
Bed & Breakfast	NOT LISTED Suggestion – 1 space for each sleeping room plus 1 additional space for each 3 employees
Cemetery <i>*see 6.2.7 for restrictions</i>	N/A
Church, synagoge, temple, or other religious building <i>*see 6.2.1 for restrictions</i>	“Churches” - 1 space for each 4 seats in the main sanctuary
Clubs, public or private <i>*see 6.2.1 for restrictions</i>	“Public or private clubs, including golf courses (clubhouse)” – 1 parking space for each 200 square feet of gross floor space
Community recreation centers	“Theaters, community recreation centers” - 1 space per 4 fixed seats in the largest assembly room, or one space for each 40 square feet of floor area available for the accommodation of movable seats in the largest assembly room, or one space for each 150 square feet of gross floor area, whichever is needed by the facility
Courthouse ^{xvi}	1 space per 4 fixed seats in the assembly room, or one space for each 40 square feet of floor area available for the accommodatoin of movable seats in the largest assembly room, or one space for each 150 square feet of gross floor area, whichever is needed by the facility
Convenience stores, including those that sell petroleum and petroleum products	NOT LISTED Suggestion – 1 space per 300 square feet of gross floor area
Customary home occupations, Class I ^{ix}	Parking necessary to conduct business shall be provided. Parking must be off-street and on-site. Parking must be screened so as to obstruct views of the parking area from adjacent properties, streets or roadways, and to maintain the character of the neighborhood.
Customary home occupation, Class II ^{ix}	Parking necessary to conduct business shall be provided. Parking must be off-street and on-site. Parking must be screened so as to obstruct views of the parking area from adjacent properties, streets or roadways, and to maintain the character of the neighborhood.
Day care facility <i>*see 6.2.8 for restrictions</i>	NOT LISTED Suggestion – 1 space per staff member, plus 1 space per 8 students
Duplex ^{xii}	“Multifamily residence” - 1.5 spaces per dwelling unit
Equestrian centers & facilities, multi-discipline <i>*see 6.2.11 for restrictions</i>	1 space per 5 fixed seats in the largest assembly room, provided that every one hundred sixty-two (162) square feet of fenced ground area (i.e. riding rings) shall county as 1 parking space without the necessity of an improved hard-surface or crushed stone
Events, shows & festivals	1 space per 5 fixed seats in the largest assembly room, provided that every one hundred sixty-two (162) square feet of fenced ground area (i.e. riding rings) shall county as 1 parking space without the necessity of an improved hard-surface or crushed stone
Golf courses & country clubs	“Public or private clubs, including golf courses (clubhouse)” – 1 parking space for each 200 square feet of gross floor space
Guest House <i>*see 6.2.3 for restrictions</i>	SFR – 2 spaces Mobile Home – 2 spaces for each mobile home

Heliport, public & private* <i>see 6.2.12 for restrictions</i>	N/A
Hospitals & clinics	“Hospitals and nursing homes” – 1 space for each 2 beds, exclusive of bassinets, and 1 space for bassinets, and 1 space for each physician and nurse, and 1 space for each 2 additional employees
Kennels ^{iv} * <i>see 6.2.9 for restrictions</i>	NOT LISTED Suggestion – 1 space per employee, plus 1 space per 1,000 square feet of gross floor area
Laundry & dry cleaning services ^{xii}	NOT LISTED Suggestion – 1 space for each 250 square feet of total floor area
Law Enforcement Center ^{xvi}	1 space per each 400 square feet of gross floor area for office areas plus 1 space for each 4 beds
Libraries, public or private	“Public or private libraries” – 1 space for each 150 square feet of gross floor area for public use, plus 1 space for each 2 employees on the shift of greatest employment
Manufacturing, Light	NOT LISTED Suggestion – 1 space per employee at peak shift
Manufacturing	NOT LISTED Suggestion – 1 space per employee at peak shift
Mobile or Manufactured Home, Individual	2 spaces for each mobile home
Mobile or Manufactured Home Parks	MOBILE HOME PARK ORDINANCE
Modular Home	2 spaces
Motels & hotels	“Roominghouses, boardinghouse, and hotels” or “motels, tourist homes, tourist courts” – 1 space for each sleeping room plus 1 additional space for each 3 employees
Museum	NOT LISTED Suggestion – 1 space per 300 square feet of gross floor area
Multifamily residences	1.5 spaces per dwelling unit
Nature-Oriented Non-Motorized Outdoor Recreation ^{vi}	NOT LISTED Suggestion – 1 space per employee at peak shift, plus 1 space per 3 customers at peak shift
Nursery and/or landscape business, & greenhouse	NOT LISTED Suggestion – 1 space per employee at peak shift, plus 1 space for each company vehicle which remains on property
Offices, business, medical, professional & public, including banks	“Offices, business” – 1 parking space for each 400 square feet of gross floor area
Offices pertaining to permitted use	“Offices, business” – 1 parking space for each 400 square feet of gross floor area
Printing, publishing, & engraving establishments	NOT LISTED Suggestion – 1 space for each 250 square feet of total floor area
Public safety facilities (fire, police, etc....)	NOT LISTED Suggestion – 1 space per each 400 square feet of gross floor area for office areas
Quarantine Facilities ^{xxii}	NOT LISTED Suggestion – 1 space per employee at peak shift
Radio & TV stations & studios ^{xii}	NOT LISTED Suggestion – 1 space per employee at peak shift
Recreational facilities, for profit (bowling alleys, skating rinks, etc....)	NOT LISTED – “Bowling alleys” are specifically listed, but not “recreational facilities” as a whole. “Bowling alleys” – 1 space for each employee, 2 spaces for each lane Suggestion – 1 space for each employee plus 1 space for each 250 square feet of total floor area

Recreational facilities, non-profit (parks, playgrounds, nature centers, equestrian courses, etc...) *see 6.2.4 for restrictions	NOT LISTED Suggestion – 1 space per employee at peak shift, plus 1 space 1000 square feet of total area
Recreational Vehicle (RV) ^{xv, xxii} *see 6.2.16 for restrictions	NOT LISTED Suggestion – One space per RV
Recreational Vehicle (RV) & Park and/or Camp Areas ^{xv, xvii} *see 6.2.14 for restrictions	NOT LISTED Suggestion – One space per RV
Restaurants, excluding fast food & drive thru services	1 space per employee, plus parking space equivalent to 1 space per 3 seats or stools
Restaurants, including fast food & drive thru services	1 space per employee, plus parking space equivalent to 1 space per 3 seats or stools
Rest & convalescent homes, sanitariums	1 space for each 6 beds plus 1 space for each staff or visiting doctor plus 1 space for each 4 employees
Residential Vacation Rentals ^{ix, xix, xxv}	SFR – 2 spaces Mobile Home – 2 spaces for each mobile home
Retail trade, commercial services, sales and rental of merchandise & equipment	NOT LISTED Suggestion – 1 space for each 250 square feet of total floor area
Retail business customarily serving residential neighborhoods & conducted within an enclosed building	NOT LISTED Suggestion – 1 space for each 250 square feet of total floor area
Roadside stands selling home grown products	6 off-street parking spaces
Sawmill	NOT LISTED Suggestion – 1 space per employee at peak shift
Schools, public or private ^{xxii}	“Elementary school and junior high school” – 1 parking space for each classroom [and] administrative office “Senior high school” – 1 parking space for each 20 students for which the building was designed plus 1 parking space for each classroom and administrative office
Schools; vocational schools, business schools, & special schools ^{xviii, xxii}	NOT LISTED Suggestion – 1 space for each 2 students for which the building was design plus 1 parking space for each classroom and administrative office
Service stations ^{xii}	3 spaces for each grease rack plus 2 spaces for each gas pump
Single family residences	2 spaces
Solar Energy Generating Facility, Major ^{vii}	NOT LISTED Suggestion – 1 space per employee at peak shift
Solar Energy Generating Facility, Minor ^{vii} *see 6.2.10	NOT LISTED Suggestion – 1 space per employee at peak shift
Spectator sport facilities 500 or more spectators ^{xxii} *see 6.2.13 for restrictions	“Spectator sports facilities, any size” – 1 space per 5 fixed seats in the largest assembly room, provided that every two (200) hundred square feet of fenced ground area (i.e. riding rings) shall count as 1 parking space without the necessity of an improved hard-surface or crushed stone.
Spectator sport facilities less than 500 spectators ^{xxii} *see 6.2.13 for restrictions	“Spectator sports facilities, any size” – 1 space per 5 fixed seats in the largest assembly room, provided that every two (200) hundred square feet of fenced ground area (i.e. riding rings) shall count as 1 parking space without the necessity of an improved hard-surface or crushed stone.
Stables, private *see 6.2.5 for restrictions	N/A
Storage & warehousing ^{xii}	NOT LISTED Suggestion – 1 space per employee at peak shift, plus 1 space per 100 units for self-storage facility

Theaters	“Theaters, community recreation centers” - 1 space per 4 fixed seats in the largest assembly room, or one space for each 40 square feet of floor area available for the accommodation of movable seats in the largest assembly room, or one space for each 150 square feet of gross floor area, whichever is needed by the facility
Towers *see Polk County Wireless Telecommunication Ordinance ^{xix, xxiv}	N/A
Towers (Non-Administrative Approval, Section 304 *Polk County Wireless Telecommunication Ordinance) ^{xix, xxiv}	N/A
Truck terminals	“Wholesaling, industrial plants and truck terminals” – 1 space per employee at peak shift
Utility buildings and facilities, public*see 6.2.6 for restrictions	“Public utility buildings” – 1 parking space for each 200 feet of gross floor area
Veterans’ Affairs Office ¹	NOT LISTED Suggestion – 1 space per each 400 square feet of gross floor area for office areas
Veterinarian clinics, animal shelters ^{xii, xxii} *see 6.2.9 for Restrictions	NOT LISTED Suggestion – 1 space for each 500 square feet of gross floor area
Vineyard/Winery	1 space per employee, plus 1 space for every 3 seats in any tasting room open to the public
Waste Handling, Treatment, Processing, Management or Disposal Facility	NOT LISTED Suggestion – 1 space per employee at peak shift
Wholesale sales, retail sales & supply houses	“Wholesaling, industrial plants and truck terminals” – 1 space per employee at peak shift