

**MINUTES OF THE ZONING, IMPLEMENTATION, POLICY, PROCEDURE
AND ORDINANCE REVIEW (ZIPPOR) COMMITTEE OF THE
PLANNING AND ZONING COMMISSION**

February 27, 2020
9:30 a.m.

Planning and Development
501 N. 44th Street
Gold and Platinum Conference Room
Phoenix, Arizona

MEMBERS PRESENT:

Mr. Lucas Schlosser, Chairman
Mr. Nathan Andersen
Mr. Greg Arnett
Mr. Bruce Burrows
Mr. Broc C. Hiatt
Mr. Jimmy Lindblom
Ms. Francisca Montoya
Ms. Jennifer Ruby

MEMBERS NOT PRESENT:

Mr. Michael Cowley, Vice Chairman
Mr. Robert Zamora

STAFF PRESENT:

Ms. Jen Pokorski, Planning & Development Director
Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Wayne Peck, County Counsel

Chairman Schlosser called the meeting to order at 9:33 a.m. and made the standard announcements.

Text Amendment TA2018002 (revisited from 11/21/19)

All Districts

Applicant: Earl, Curley & Lagarde / Rod Jarvis & Greg Loper
Location: Countywide
Request: Text Amendment to amend Chapter 2, Definitions; Section 501, Article 501.2.4; and Section 601, Article 601.2.3 of the Maricopa County Zoning Ordinance (MCZO) relating to Group Homes

Mr. Gerard presented TA2018002 and noted the changes in the applicant's proposal which include changing the minimum length of stay in a Group Home from "a minimum stay of 30 days" to an unspecified duration. To delete the previously proposed to multi-family residential zoning and sought to clarify caveat to not require separation from group homes located across a freeway, canal or large public utility easement from an another. Staff still has concerns with the

proposed text amendment in general including removing the verbiage "long term" from the definition of Group Home. Staff believes transient residential would not be harmonious with a single-family residential neighborhood. The applicant's directive of the department creating a new process for group home applications. Staff believes it is not appropriate to create different classes of Group Home residents differently based upon classification, it may be more appropriate to create brand new land use categories rather than simply revising the Group Home definitions and requirements. Staff is concerned with the proposed language to be added to the dispersal/separation distance, "Notwithstanding the foregoing, no dispersal/separation shall be required where a Group Home is separated from another Group Home by a utility right-of-way at least 300 feet in width, or by a freeway or canal." We believe the language needs to be further clarified so it is clear that group homes across the freeway from one another need not be 1,500 feet apart, but those group homes would otherwise meet the separation distance from other group homes on the same side of the freeway would still be met. When this moves forward to the Commission hearing in March, staff will continue to recommend denial. We believe this should be a more comprehensive text amendment and not applicant driven.

Mr. Rod Jarvis, the applicant said we are meeting every concern staff has voiced except the period of time which has really been an issue the whole way. Based upon the two ZIPPOR meetings we had, and the comments from the Commission we took out the 30-day minimum stay. It didn't make sense, and we would gladly put that back in if the Commission wishes. There have been group homes existing in Maricopa County for a long time, and the department directive does not pre-date all of those group homes regarding the one-year minimum stay. He agrees that most residents in a Group Home once they check in, they are going to be in group homes the remainder of their natural lives by many of causes that people go into group homes. Even in group homes that are not addiction recovery there have been and will continue to be people who go in and out much more quickly than one year, and even more quickly than 30 days. The period of time issue is unworkable and it's difficult to enforce because we also have federal rules about privacy and how is anybody going to know how long they've been there because the providers are not allowed to reveal any information about their patients. We are happy to live with 30 days with the understanding they have to be there to qualify as disabled under federal law. Federal law defines disabled people who are addicts seeking recovery from addiction who are not using. If that addict relapses within that 30-day timeframe they are no longer disabled and must be removed for the safety of the residents and for the welfare of the neighborhood. There are specific rules on how that removal happens, and they are removed safely out of that environment entirely. With the distancing, you have a quarter-mile distance before you can have another Group Home. The City of Phoenix allows five within that quarter-mile radius, but Maricopa County is a quarter-mile distance from any other Group Home of any other type at all. We are not changing the character of the neighborhood. Statistics say roughly a third of all households have addiction issues whether it is alcohol or illegal substance and the impacts it brings along with it. A Group Home because it is monitored presents

none of that. It is statistically the safest place in the neighborhood. The federal government took a look at disability and they want people integrated. The one-year period is not workable for many other types and it's certainly not workable for addicts seeking recovery. If you make them stay there a year you've affectively closed the Group Home doors to them. Staff says they can be in a five-bed facility by right, or you can get a Special Use Permit which is a much more difficult zoning process. In order to give them the same access to Group Homes as any other disability you go by federal law and have to recognize what that disability needs, and that disability needs treatment and then released into their lives. Then they may go into another facility where they go to work all day and come back to sleep, instead of going to treatment during the day. Well over 90 percent of addicts in recovery are going to be back home, and out of sober living, and going about their daily lives. It is an essential part to return to their lives and complete recovery. If you mandate, they stay there for a year, you are reversing the recovery process. There are some rare circumstances someone might stay there for a year. Five beds are an economical issue it makes it difficult to provide that service, and the need for this type of treatment is growing. Going over the changes to the text amendment, we changed back the word "their", it was an unintended change. With regard to zoning, the staff of a Group Home are currently not counted in the number of residents. We changed it so they would count. We are directing the department to create a new process for Group Home applications that do not fit within the current land use application under which Group Homes are currently processed. We had originally proposed a separate set of rules, and during the process the state changed its position and they regulate Group Homes such as ours. The state handles the licensing and enforcement and it is not a burden to create for the County, so we took that reference out. Staff does not believe it's appropriate to treat different classes of Group Home residents differently based upon classification. In the application we are affirming to comply and state licensing will handle that so this can be removed. Staff is uncertain of the meaning and has concern with the term "unique" care, training and/or support needed by each individual in the proposed definition of Group Home. We have removed the work "unique". Staff is concerned with the sentence "Without limitation, a person with addiction to alcohol and/or illegal drugs, who is seeking to recover from such addiction and is not using alcohol or illegal drugs, shall be considered to be a Person with a Disability." We took that language out it is federal law. It is the reason we had to start this process. Staff is concerned with the proposed language to be added to the dispersal/separation distance. We changed the language as staff asked us to. Staff does not believe it necessary to have the same conditions apply to Group Homes in multi-family residential zoning districts. He believes this issue has gone away. Staff asked us to change the reference 28 C.F.R. § 36.105(B)(2) should be to 28 C.F.R. § 36.105 to incorporate the entire rule, and we accept this change. The County Attorney's office disagrees with our read of what the American with Disability Act (ADA) requires, and we're not to come to an agreement on that. We believe it is required by the ADA and they don't, but we don't have to discuss that here since you are not the court deciding what the law means and what it doesn't. The Commission is here making a recommendation on what makes sense for Group Homes in Maricopa County.

Mr. Jeff Taylor, a board member with the Salvation Army said what is important in making a decision, there are new guidelines from the State of Arizona and those new guidelines came into effect September 30, 2019. In the guidelines there are pages of requirements the Department of Health Services (DHS) require of Group Homes to operate. This is a population that really needs monitoring, and that's what those standards are for. To verify sobriety, and to make sure when somebody relapses, they are transported out of the neighborhood and into an appropriate facility. The demand for sober living homes is at its highest right now, and there are two major bills working through the legislature right now. All the county attorney's in this state want to increase diversion programs rather than having the revolving doors in the county jails, to offer a diversion program as part of treatment. This class will need housing, and the demand will only increase. The homeless population is growing and most of homeless we deal with are those suffering from addiction and need treatment.

Commissioner Arnett asked where today do these individuals live, if not in a Group Home then where? Mr. Taylor said you learn in a recovery program to receive the tools you need to react to the world differently other than using substances, and you practice that. Practicing that is the most important part of living and being normalized back into the community. You learn and practice that in a Group Home. In some group homes they have already graduated from treatment, and are practicing living in the neighborhood, going to work and coming back home and going to a 12-step meeting daily.

Commissioner Arnett asked are there larger facilities with 20 or 30 beds and do they do the same thing, and what other options are there. Mr. Taylor said there are some apartment complexes with certain requirements. The City of Phoenix has a requirement where in an apartment complex only 20 percent of those rooms can be for sober living housing. If the family is ready for them to come back home then they can move back with the family. A lot of times it's with the family where it all started, and it's not a safe environment. Each situation is different, some go back to their families and jobs or get their own apartment. The data dictates overwhelming those that go into a facility to practice their recovery, their chance of long-term recovery skyrockets. At the Salvation Army we have a six-month inpatient program and then we have up to a year transitional component. You do not show up at the Salvation Army when you are on a winning streak, usually they've been to other treatment facilities.

Mr. Peck asked is the apartment complex a city owned building. Mr. Taylor said no. Mr. Peck said so it is privately owned and the city restricts the number of people. Mr. Taylor said yes, that is under the City of Phoenix new guidelines for commercial property, but it is being challenged.

Mr. Taylor said all the municipalities in Maricopa County have taken on crime free housing and apartment complexes. He personally graduated from the Salvation Army and stayed in a transitional component. He then he got an apartment where he was working and living there like everybody else. Then the lease went under

crime free housing, and he had a felony drug possession charge, so that means he couldn't live in that apartment complex anymore. There were 50,000 apartment units he couldn't lease in the City of Phoenix, and then the slumlord comes in and says he'll house him and the dump is \$1,500 a month. They take advantage of individuals and it restricts housing throughout the valley. If you are living with your family then you get a DUI charge you can't go back and live with your family if you lived in crime free housing.

Commissioner Ruby asked what does adjudicated mean in the context. Mr. Peck said it is someone who is placed in a facility through court order or they are on probation, and still under the supervision of the court.

Ms. Pokorski said we do not have crime free housing in Maricopa County.

Mr. Jarvis said addiction is a family disease, and he was contributing to his son's addiction; he made his sons feel like they had to do certain things in order to be loved. His wife, an adult child of addicts had deep seeded fears. His loving family environment was very dangerous and unsafe home for his two boys seeking recovery. They are both years past recovery and well into their lives, and they know they are still addicts. They can come home and visit, but when they see certain triggers happening, they leave. They have their own homes and a safe place to go. When his boys were out of treatment they went to sober living and transferred out of sober living into their own lives and homes. Larger facilities are expensive to build and maintain, and they are difficult to zone. The Group Home environment can be operated at a much more economical efficient level, and these are all reasons we so desperately need these Group Homes.

Commissioner Lindblom said he agrees that staff is in a position to come up with a good long-term plan and to get input from the stakeholders, and to tackle this huge issue. He asked where are we at in the process and what would the timeline be? Ms. Pokorski said the process would involve getting a consultant on board. She already spoke to the City of Phoenix and they used Mr. Taylor as a consultant. The process could take through the end of this year and into early next year. It is a lengthy process, and we would go through EROP.

Ms. Pokorski said she agrees with Mr. Jarvis, the Commission is here to determine what makes sense for our community related to Group Homes. We understand we need to make sure we are considering the recovery community, and our community as a whole. Staff continues to recommend denial on this because we are just addressing this timeframe as a way to get 10 residents into a Group Home. We allow five by right or they can get a SUP, and there is an avenue for his client to pursue right now to get to 10 or more through a Special Use Permit. This would allow time to look at a comprehensive process from staff as a neutral provider as opposed to a stakeholder that has a certain financial interest. It will have a more level playing field for the community. The other issue is complex. For example, it is something staff would have to look into, and does his client treat offsite. If that is considered a boarding house or is it considered a true Group Home. Boarding

houses are treated differently in our zoning ordinance. This text amendment doesn't address multi-family, and it is different than rural residential zoning and how do we look at that. It doesn't include reasonable accommodation which is something important to look at. There's a lot of outstanding questions that have to be looked at; we are not the experts on that, that's why we want to bring somebody in similar to what the City of Phoenix did. Unfortunately, it is a lengthy process. We haven't been engaged in that process yet because the County had legal challenges from two different groups with the courts. We entered into a tolling agreement with Mr. Jarvis' client that permits us to go forward.

Commissioner Ruby asked what gives you the direction to do that, does the Board of Supervisors direct you or can we as a Commission ask staff to go forward with a text amendment. Ms. Pokorski said yes. You can direct us to look at a text amendment and give us guidance.

Mr. Peck said if these changes are made, they just don't apply to sober living they would apply to every Group Home. This would have a county-wide impact on everything that is otherwise a Group Home. That is also one of staff's big concerns. When the director said we need to know if there are different requirements based on the type of group home. This change wouldn't allow you to do that.

Ms. Pokorski said it would be the same across all zoning districts, except multi-family isn't included.

Chairman Schlosser said he appreciates Mr. Jarvis' compassion, dedication and concern on this issue. He has read through this proposed text amendment several times and he keeps coming back to one paragraph under staff recommendations. Due to the complex legal issues associated with the American with Disabilities Act (ADA) and the Federal Fair Housing Act (FFHA), these revisions should be made through a staff-driven text amendment process, after consultation with qualified experts and county legal counsel.

Commissioner Andersen asked is it possible to narrow this text amendment down so it is not overly broad, then can move forward with a more comprehensive approach. Ms. Pokorski said if we narrow it to just people that are in recovery, it would create an ADA and FFHA concern. That would be the only way to narrow it to achieve what Mr. Jarvis is trying to do.

Mr. Peck said it would solve this issue but it would open the ordinance up for an attack. If I'm a different group of disabled, they would ask how come my group of disabled has to stay a year but sober living doesn't. Plus, we wouldn't have the cases where ordinances are thrown out, and that's usually why they are thrown out because they discriminate against persons with disabilities. He had concerns with staff when he first saw this. By fixing this we would open this up to liability from other persons with disabilities. We can't justify the difference, and that is one of the things staff wants to look at. We need backup from experts on how we can do

that in a way to insulate us from an attack, that just looks arbitrarily trying to solve a problem for people who are in sober living.

Commissioner Lindblom said with these types of homes who wants these in their neighborhood. It is a "not in my backyard" mentality. A SUP would bring continual fighting and fear, and it is a perceived fear on how that would change the neighborhood. The distancing requirements satisfies his concern and the ten people in a home, he has seven in his home. The time has never really been an issue for him because of his compassion for addicts, and his desire to get them back into their community. We have to make an investment in this group that are struggling, and the benefits to the neighborhood outweigh the negatives. He has a neighbor down the street that's an addict and he steal from his mom regularly and the police are in the front yard quite often, and it tears the family apart. What he likes about this amendment there must be a staff member present at all times. He does believe at the staff level this has to be dealt with at a much larger comprehensive scale. There has to be more control to control bad players and good players, but he is very concerned with the time that will take.

Commissioner Arnett asked when this went to the Board of Adjustment was that for the text or a variance. Ms. Pokorski said it was for an interpretation of long term.

Commissioner Arnett asked has there been any discussion for a Special Use Permit for this particular property. Ms. Pokorski said we recommended a Special Use Permit as an option back when the violation case came forward, and they have not applied.

Commissioner Arnett said from a land use perspective what changes the neighborhood is the kind of use that is there. For him it all comes down to the timing issue, and if you take the recovery side out of the equation and people don't look at this as a home where they live, then it's a treatment facility. What staff is suggesting is there's places for short term treatment that are probably more appropriate. Is it a place where they live or is it a place where they get treatment? This is a tough question, if not here then where? As long as you meet the distancing requirements and the licensing you could have more of a business than a home, but it feels like a home. He's not looking at this as a drug recovery text amendment, he is looking at it as a Group Home amendment which has some challenges to it. We have a gap in our zoning that doesn't allow these people, and there's a shortage. He would love to see more group homes, and to see the addiction recovery population have more options other than an apartment or back with their families that might not be a good environment. Staff is recommending denial because we need to get it right.

Commissioner Lindblom said this is a Group Home with individuals who just want to live there. They are not trying to do treatment because they are regulated by the state. Can they live there and sleep, and interact as people. Does that interaction change the nature of the community as a land use?

Commissioner Burrows asked are we trying to solve a problem that is too large and do we need to break it down into different kinds of group homes.

Commissioner Arnett said that is a good point, but he thinks staff is saying they want them to live there and to make it their home, and if anything, make it longer. The shorter it is, the more it feels it is not their home. What goes there is based on the zoning they have, and if it's a hotel you'll be there short term or you move in a neighborhood you'll be there longer. He would like to see more group homes for any class, and do it in a way it doesn't change the use and zoning perspective. If we do it the right way it doesn't change the neighborhood and he's a 100 percent behind you, but what does concern him if it feels like a business.

Chairman Schlosser said he doesn't disagree with anything the Commission said, and Mr. Jarvis made a very good case. He knows they are frustrated with the timing and it continuing on, but it needs to be done right.

No action by the Commission. TA2018002 was a discussion item only regarding the proposed text amendment. Next step includes text amendment for the March 12th public hearing with the Planning and Zoning Commission.

Chairman Schlosser adjourned the meeting at 10:35 a.m.

Prepared by Rosalie Pinney
Recording Secretary
February 27, 2020