


**Item 9., A.-Draft Zoning Ordinance
Amendment Pertaining to Adult Foster Care**

Williams & Works

MEMORANDUM

TO: Leslie Couturier, Zoning Administrator
East Bay Charter Township

FROM: Jay Kilpatrick, AICP 

DATE: November 21, 2008

RE: Zoning Ordinance Text Amendment Pertaining to Adult Foster Care

Draft

Christwood Hills Assisted Living Center LLC at 3735 Yorkshire Drive, requests consideration of an amendment to the Township's Zoning Ordinance to include Adult Foster Care (AFC) facilities as a special land use in the LDR district. This matter is scheduled for initial consideration at the December 9th meeting and may be scheduled for hearing in January.

Currently, the applicant is operating an AFC at the Yorkshire address under the terms of Section 622, 2, a, which provides that an AFC with less than seven residents is considered a single family dwelling and not subject to additional regulation. This is also consistent with Section 206 of the Michigan Zoning Enabling Act. However, both the Zoning Ordinance and state law permit a higher degree of regulation for larger facilities. Under the Zoning Ordinance an Adult Foster Care facility is treated as a special land use if more than six, but not more than twelve residents are accommodated in the MDR, RR and AG districts. In addition, AFCs of seven or more residents are treated as special land uses in the HDR and MHC districts. The applicant proposes that Section 401 Low Density Residential, be amended to include AFCs with more than six but not more than twelve residents in the LDR district, subject to the same standards applied in the MDR, RR and AG districts as set forth in Section 622.

Current Standards. In addition to the general review and approval standards for special land uses found at Section 602, Section 622 provides the following standards for AFCs:

"2. REGULATIONS AND CONDITIONS.

- a. Adult Foster Care homes serving less than seven (7) residents shall be considered a single family dwelling and shall not be subject to the requirements of this Section 622.
- b. Adult Foster Care homes shall, as a condition of special land use approval, at all times maintain all valid state and local licenses.
- c. An adult foster care home serving seven (7) or more residents shall not be located within fifteen hundred (1,500) feet of any other adult foster care home.

- d. All exterior lighting shall be equipped with cut-off fixtures to prevent light from casting off the site. Exterior light standards shall be no higher than twenty (20) feet.
- e. All signs shall be in compliance with the provisions of Section 215 of this Ordinance.
- f. All off-street parking shall be in compliance with Article VII of this Ordinance.
- g. Landscaping and Buffering shall be provided in accordance with Section 229 of this Zoning Ordinance.”

By simply amending Section 401 to include Adult Foster Care Homes (7 - 12 residents) to the list of special land uses, the above standards would be applied and the applicant would be able to apply to the Planning Commission for approval to expand their existing facility.

This will slightly expand the range of uses permitted in the LDR district. However, approval would not be automatic. It must be understood that a special land use application requires a complete site plan and the Planning Commission is able to apply the specific standards above and the general special use standards along with the standards for site plan review to any such application. There may well be circumstances when one or more of those standards cannot be met and the Planning Commission would be required to deny the application.

Comparison to the Master Plan. In my opinion, this change is not explicitly compatible with the Master Plan, but with careful planning, it may be possible to incorporate this use without conflicting with the Plan. The future land use plan describes the Low to Medium Density Residential future land use designation as including “suburban-style single family neighborhoods ... relatively homogenous in form and land uses, scaled for passenger car travel and developed primarily for families with small and school-age children.” It goes on to indicate that small commercial nodes may be encouraged, if restricted to uses that serve the immediate neighborhood. Finally, it calls for residential densities of up to three dwellings per acre.

In East Bay Township, the standard household includes 2.15 persons, but it would be erroneous to equate a 12-resident AFC facility to 5.6 dwellings ($12 \div 2.15 = 5.6$) as the density impact of the proposed use is not analogous to individual dwellings. Adult foster care residents typically would not have their own cars, so the traffic impact of a larger facility would not be significantly different than that of a single family home. Such a facility would not have any impact on schools, but it may require some greater level of emergency services than would a single family home. Finally, the 1,500 foot isolation distance between such larger facilities will limit their community-wide impact as the Township would not see more than about three of them per square mile.

At the neighborhood level, however, a larger facility may have some impact. The building itself could be significantly larger than nearby homes and on a smaller lot could be out of character in that neighborhood. Therefore, it may be appropriate to consider minimum parcel area standards and/or buffer or screening standards. Such standards have not been employed to date in the more

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intensely developed zoning districts, but there is nothing to prevent the Township from considering them in the case of the LDR district. With a minimum lot area in LDR of 12,000 square feet where public water and sewer are provided, and 40,000 square feet where those services are not offered, the Township could require some additional lot area or setback to prevent a larger AFC from dominating a neighborhood.

In the current case, the applicant's facility occupies two lots in the Holiday Forest site condo with a total combined parcel area of about 28,000 square feet. This is more than twice the minimum parcel area in the LDR district. In addition, since the existing building straddles the intervening lot line, the site offers significantly greater side yards than the LDR minimum 10-foot. This suggests a useful precedent the Planning Commission may consider. While I would not suggest that a rigid standard for larger lots or setbacks is always needed, the provisions of Section 622 could be revised to provide explicit authority to require additional separation where needed. The following provision could be added to Section 622:

"h. Where the Planning Commission finds that a proposed Adult Foster Care facility would be inordinately out of scale or character with buildings in the surrounding neighborhood, it may require additional side or rear yard setback, additional land area and/or additional landscaping and buffering to mitigate the imposing character of such use."

With these adjustments, I believe the adjusted text would be sufficiently compatible with the Master Plan and could be supported. If the Planning Commission agrees, we will develop a proposed amendment to be considered at a public hearing at the January meeting.

MCLS § 125.3206

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*** THIS DOCUMENT IS CURRENT THROUGH P.A. 302, 11/21/08 ***
 *** AND PROPOSALS 08-1 & 08-2 ***

CHAPTER 125 PLANNING, HOUSING, AND ZONING
 MICHIGAN ZONING ENABLING ACT
 ARTICLE II. ZONING AUTHORIZATION AND INITIATION

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MCLS § 125.3206 (2008)

MCL § 125.3206

§ 125.3206. Residential use of property; adult foster care facilities; family or group child care homes.

Sec. 206. (1) Except as otherwise provided in subsection (2), a state licensed residential facility shall be considered a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone.

(2) Subsection (1) does not apply to adult foster care facilities licensed by a state agency for care and treatment of persons released from or assigned to adult correctional institutions.

(3) For a county or township, a family child care home is considered a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone.

(4) For a county or township, a group child care home shall be issued a special use permit, conditional use permit, or other similar permit if the group child care home meets all of the following standards:

(a) Is located not closer than 1,500 feet to any of the following:

(i) Another licensed group child care home.

(ii) An adult foster care small group home or large group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

(iii) A facility offering substance abuse treatment and rehabilitation service to 7 or more people licensed under article 6 of the public health code, 1978 PA 368, MCL 333.6101 to 333.6523.

(iv) A community correction center, resident home, halfway house, or other similar facility which houses an inmate population under the jurisdiction of the department of corrections.

(b) Has appropriate fencing for the safety of the children in the group child care home as determined by the local unit of government.

(c) Maintains the property consistent with the visible characteristics of the neighborhood.

(d) Does not exceed 16 hours of operation during a 24-hour period. The local unit of government may limit but not prohibit the operation of a group child care home between the hours of 10 p.m. and 6 a.m.

(e) Meets regulations, if any, governing signs used by a group child care home to identify itself.

(f) Meets regulations, if any, requiring a group child care home operator to provide off-street parking accommodations for his or her employees.

(5) For a city or village, a group child care home may be issued a special use permit, conditional use permit, or other similar permit.

(6) A licensed or registered family or group child care home that operated before March 30, 1989 is not required to comply with the requirements of this section.

MCLS § 125.3206

(7) The requirements of this section shall not prevent a local unit of government from inspecting and enforcing a family or group child care home for the home's compliance with the local unit of government's zoning ordinance. For a county or township, an ordinance shall not be more restrictive for a family or group child care home than as provided under 1973 PA 116, MCL 722.111 to 722.128.

(8) The subsequent establishment of any of the facilities listed under subsection (4)(a) will not affect any subsequent special use permit renewal, conditional use permit renewal, or other similar permit renewal pertaining to the group child care home.

(9) The requirements of this section shall not prevent a local unit of government from issuing a special use permit, conditional use permit, or other similar permit to a licensed or registered group child care home that does not meet the standards listed under subsection (4).

(10) The distances required under subsection (4)(a) shall be measured along a road, street, or place maintained by this state or a local unit of government and generally open to the public as a matter of right for the purpose of vehicular traffic, not including an alley.

HISTORY: Act 110, 2006, p --; imd eff April 10, 2006, by enacting § 1 eff July 1, 2006.

Pub Acts 2006, No. 110, Art. II, § 206, imd eff April 10, 2006, by enacting § 1 eff July 1, 2006.

Amended by Pub Acts 2007, No. 219, imd eff December 28, 2007 (see 2007 note below).

NOTES:

Editor's notes:

Pub Acts 2007, No. 219, enacting § 1, imd eff December 28, 2007, provides:

"Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 241 of the 94th Legislature [Pub Acts 2007, No. 217] is enacted into law."

Effect of amendment notes:

The 2007 amendment substituted "child care" for "day-care" throughout; and in subsection (4), paragraph (a), subparagraph (ii), substituted "An" for "Another".