



# CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

## MEMORANDUM

TO: Valerie Means, City Administrator

FROM: Kathleen A. Maher, Director of Planning & Code Administration 

DATE: October 31, 2018

SUBJECT: LMC Text Amendments – Fair Housing Assessment and Amendment Recommendations

As part of the 2018 Land Management Code text review and amendment package, staff undertook a 'Fair Housing' assessment of the LMC to determine if there were provisions that needed to be adjusted to be better in alignment with Federal and State provisions regarding protected classes and local code regulations. Staff and the Planning Commission deliberated on the issues involved, sought public input and gained input from one area provider, and finalized the recommendations that follow in this memo.

### **Fair Housing Assessment**

Federal Fair Housing laws and a 2015 Supreme Court ruling prohibit practices in employment, housing, and other areas that adversely affect one group of people of a protected characteristic more than another. The Supreme Court referred to this as having a 'disparate impact.' The Federal Fair Housing Act of 1968, with 1988 amendment, identifies the following seven protected classes: race, color, religion, national origin, sex, disability (which includes mental, physical, recovering alcoholics, and recovering drug addicts), and familial status (families with children under 18). Maryland added three additional protected classes: marital status, gender identification, and sexual orientation, except in cases of rooms or units for rent in a dwelling where owner occupies a unit as their principal residence. It is prohibited to make housing or services unavailable or denied for protected classes, or to create special provisions only affecting protecting classes that might be considered as having a disparate impact. According to a law session speaker at the New Orleans American Planning Association conference this year, where most lawsuits arise today are in situations of discrimination against or disparate impact upon disabled populations.

The Health Article of the State Code includes specifications on how local zoning must treat group homes for disabled populations. For small group homes or halfway houses for up to 9 residents, the facility shall be treated as a single-family home and be allowed anywhere single-family homes are allowed. For large group homes or halfway houses for 10-16 residents, the facility shall be treated as a multi-family residence and be allowed where such densities are

allowed. Group homes and halfway homes shall not be subject to special exception approval processes if such processes are not required for single-family or multi-family homes in those districts.

### **Recommendations to Bring LMC more into Alignment with FHA Considerations and State Code Requirements**

1. **Delete** the following land use categories and associated definitions –
  - a. ‘Transitional residential facilities with in-house professional care for up to three transitional residents being treated for substance abuse issues’ (page 3-38 and 4-135)
  - b. ‘Residential facilities with in-house professional care for up to three residents with mental and/or physical disabilities’ (page 3-32 and 4-135)
  - c. ‘Social assistance – services for the elderly and persons with disabilities’ (page 4-133)
  
2. **Create new zoning district – Institutional (INST) zone.** This zone would be used to identify locations in the city where large-scale institutional uses are present and where additional institutional uses would be permissible. Examples of large-scale institutional uses include public school campuses, large hospital and nursing home properties, recreational facilities with fields, parks, professional ball stadiums, cemeteries. Most of these types of properties are currently zoned RMOD or RMED, which gives a false sense of the magnitude of the moderate-medium density residential zoning in the city. Allow following uses: hospitals, nursing homes, assisted living facilities, other medical uses, public administration uses, community centers and museums, schools, churches, cemeteries, parks, stadiums, recreational facilities, adult day care. Rezone appropriate properties in the comprehensive rezoning process.
  
3. **Modify where Hospitals and Nursing Homes are allowed** – remove RMOD and RMED (now use Institutional zone instead), add by right in CR, allow nursing homes by right (P) in RH, continue to allow hospitals as special exception (SE) in RH, continue to allow both by right (P) in CG, POM, and I-MU, and allow both by right (P) in new INST. (page 4-134) Require minimum of one acre lot size for nursing homes in RH. Minimum 5 acre lot already required for hospitals in residential zones. *Existing facilities that fall under this classification – Western Maryland Hospital, Julia Manor, Coffman, Hagerstown Healthcare, and Ravenwood Nursing Center.*
  
4. **Delete ‘Residential Care Facility for the Elderly’ and replace with ‘Assisted Living Facility.’** Modify definition of ‘Assisted Living Facility ~~for the Elderly and/or Disabled~~’ to be more neutral in content – ‘a residential care facility for 10 or more persons licensed by Maryland Department of Health that provides housing and supportive services, supervision, personalized assistance, and/or health-related services to meet the needs of residents who are unable to perform or need assistance in performing activities of daily living.’ (page 3-6) Allow where Nursing Homes are allowed with same minimum one acre lot requirement in RH. *Existing facilities that would fall under this classification*

- *Broadmore, Greenfield, Ravenwood Assisted Living, Holly Place, Turning Point Veterans Home, etc.*

5. **Add ‘Rehabilitation Center’** with definition of ‘an in-patient rehabilitation center with specialized therapeutic programs to assist patients achieve the necessary functional independence to return home, usually following an acute medical or surgical hospitalization, including detox for substance addiction.’ Allow where Nursing Homes and Assisted Living Facilities are allowed with same minimum one acre lot requirement in RH. Existing facilities that would fall under this classification – *Julia Manor, W House Treatment Facility, Wells House Treatment Facility, etc.*
  
6. **Add ‘Group Home, Halfway House, and Alternative Living Unit’** with definition of ‘a dwelling unit licensed by the State of Maryland in which individuals with disabilities may be provided care or treatment in a homelike environment. The Health Article of the Code of the State of Maryland provides specific parameters for these different types of congregate housing which may result in smaller numbers of residents for specific facilities and those requirements will supersede this ordinance. For the purposes of administering the Land Management Code and consistent with State Code provisions, the following maximums shall apply: 1) An alternative living unit accommodates up to 3 residents and is deemed a single-family residence and is allowed where single-family homes are allowed; 2) a small group home or halfway house accommodates up to 9 residents and is deemed to be a single-family residence and is allowed where single-family homes are allowed; and 3) a large group home or halfway house accommodates 10-16 residents and is deemed to be a multi-family residence and is allowed where multi-family residences are allowed.’ *Existing providers that would fall under this classification - ARC homes, Turning Point homes, Oxford House sober houses, W-House halfway homes, Wells House halfway homes, etc.*
  
7. **Add ‘Outpatient Substance Abuse Centers, including disbursement of addiction treatment drugs’** and define as ‘medical office for counselling and treatment of substance abuse, which may include disbursement of addiction treatment drugs.’ Allow where hospitals and nursing homes are allowed, and require location on a property that is large enough to accommodate clients on-site if the facility distributes daily dosages of addiction treatment drugs. *Existing facilities that would fall under this classification - Phoenix Health Center, Serenity Treatment Center, etc.*
  
8. **Add ‘Adult Day Care with Vocational Center’** and define as ‘a facility providing day care for functionally impaired adults in a protective setting for periods of less than 24 hours per day which includes a vocational center for its clients.’ Allow where light assembly is permitted: CC-MU (SE), POM (SE), I-MU (SE), IR (P), IG (P), and Conversion District (P). ‘Adult Day Care’ without vocational center would still be allowed by right in N-MU, CC-MU, CG, CR, POM, IR, and I-MU and as special exception in RMOD, RMED, RH, RO, CL, and Conversion district. *Existing facilities that would fall under this classification – ARC and Goodwill.*

9. **Add ‘Continuing Care Retirement Community, on minimum tract size of 20 acres’** with definition of ‘a retirement community with accommodations for independent living, assisted living and nursing home care, offering residents a continuum of care. All of the dwelling units and care facilities are typically owned by the provider. As a campus environment of varying levels of ‘step up’ care or living, dwelling units for independent living within the campus shall not be required to be on individual fee-simple lots.’ Allow by right in RH, INST, and PUD zones. *Existing facilities that would fall under this classification – Ravenwood Lutheran Village.*

**Proposed Use Chart Changes – Article 4, Section Z**

**Residential Zones and Residential Mixed-Use Zones**

Use	RMOD	RMED	RH	RO	CC-MU	N-MU	PUD
Hospitals, including psychiatric, substance abuse and specialty hospitals	SE	SE	SE	SE	P		
Nursing Homes, <del>residential care facility for the elderly</del> , Assisted Living Facility & Rehabilitation Center	SE	SE	SE P	P	P		
Alternative Living Unit, Small Group Homes, Small Halfway House	P	P	P	P	P	P	P
Large Group Home, Large Halfway House			P		P	P	
Large Group Home or Halfway House – only if PUD development contains multi-family dwellings							P
Large Group Home or Halfway House – only in pre-1956 apartment buildings	P	P					
Large Group Home or Halfway House – only in Mansion House Apartment buildings		P		P			
Outpatient Substance Abuse Centers, including disbursement of addiction treatment drugs			P				
Adult Day Care with Vocational Center					SE		
Continuing Care Retirement Community, on minimum tract size of 20 acres			P				P

**Commercial and Other Mixed-Use Zones**

Use	CL	CG	CR	POM	Instit (new)
Hospital, including psychiatric, substance abuse and specialty hospitals	SE	P	P (new)	P	P (new)
Nursing Home, <del>residential care facility for the elderly</del> ,	SE	P	P	P	P

<i>Assisted Living Facility &amp; Rehabilitation Center</i>			(new)		(new)
<i>Alternative Living Unit, Small Group Homes, Small Halfway House</i>	P				
<i>Large Group Home, Large Halfway House</i>	P				
<i>Outpatient Substance Abuse Centers, including disbursement of addiction treatment drugs</i>		P	P	P	P
<i>Adult Day Care with Vocational Center</i>				SE	
<i>Continuing Care Retirement Community, on minimum tract size of 20 acres</i>					P

**Industrial Zones and Conversion Districts**

<b>Use</b>	<b>I-MU</b>	<b>IR</b>	<b>IG</b>	<b>Conv. &amp; LC</b>
Hospital, including psychiatric, substance abuse and specialty hospitals	P			
Nursing Home, <del>residential care facility for the elderly,</del> <i>Assisted Living Facility &amp; Rehabilitation Center</i>	P			
<i>Outpatient Substance Abuse Centers, including disbursement of addiction treatment drugs</i>	P			
<i>Large Group Home, Large Halfway House</i>				P
<i>Adult Day Care with Vocational Center</i>	SE	P	P	P

**Proposed Parking Chart Changes – Article 4, Section O**

<b>Use</b>	<b>Required Spaces</b>
<i>Group quarters, including rooming/boarding houses, dormitories alternative living unit, group home, or halfway house</i>	<i>One space per employee on largest shift plus one space for each sleeping room or one space for each two beds, whichever is greater.</i>
Hospitals, including psychiatric, substance abuse and specialty hospitals	<del>One space per 1,000 gross square feet plus visitor parking as determined by the Planning Commission.</del> <i>4 spaces per bed.</i>
<i>Nursing Homes, Assisted Living Facility, and Rehabilitation Center</i>	<del>One space per 400 square feet of floor space.</del> <i>One space for every 4 beds plus one space per employee on largest shift</i>
<i>Outpatient Substance Abuse Centers, including disbursement of addiction treatment drugs</i>	<i>The greater of four spaces per practitioner or one space per 200 square feet of net floor area. For any use established after the adoption of this provision, when by the conduct of the use large numbers of clients will arrive on site at the same time for regular administration of addiction treatment medications, the provider shall demonstrate to the Zoning Administrator that there is adequate parking supply to serve their clients.</i>