



Memorandum

To: Planning Commission
From: Kristy Winser, Planning Staff
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Date: September 5, 2019
Subject: Consideration of Residential Treatment Standards; PL-19-141

This item is scheduled as a discussion item on whether to include a new line in the land use chart for a Residential Treatment Facility. The purpose is to get feedback to present to the Board of County Commissioners on September 24th at 1:30pm. The following dates have been scheduled for further discussion on the potential addition to the land use chart and associated regulations or as adoption hearings:

- Discussion/Adoption with Planning Commission on November 7th at 6pm
- Discussion/Adoption with BCC on November 19, 2019 at 2:30pm

History:

The County does not have a formalized process to review Residential Treatment Facilities. Therefore, applications for such facilities are processed as land uses that share similarities and impacts with the proposed use. Some examples of how this has been applied in the past are the Hughes Bed and Breakfast, which also has a Rec Facility component for the activities and rehabilitation services that are offered, and the Foundry, which was processed as a Guest Ranch but was denied. The Foundry applicant then amended their operation to meet the definition of Family. The facility is now operating as a use-by-right under the definition of Family.

The definition of Family under B. is:

A family shall be deemed to include five (5) or more persons (but not in excess of twelve (12) persons) that are not related by blood, marriage, adoption, or legal custody occupying a residential Dwelling Unit and living as a single housekeeping unit if the occupants are handicapped persons as defined in title III of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, or disabled persons as defined by § 24-34-301, C.R.S. A household that includes five (5) or more persons identified above shall not be excluded from the definition of "family" by the residence in

the household of additional necessary persons (and their families) employed in the care and supervision of such handicapped or disabled persons.

Issue:

Procedurally, an application for a Residential Treatment Facility permit cannot be scheduled because there is no line in the Use Chart that covers the requested use. However, persons recovering from drug and/or alcohol addiction are deemed disabled under the Fair Housing Act (FHA) and therefore are protected from housing discrimination. The FHA and American with Disabilities Act (ADA) require local governments to make 'reasonable accommodations' in rules and practices in order to allow housing for the disabled. Without a specific land use category, the County has remained in compliance by processing this type of facility as a Bed and Breakfast, a Guest Ranch, or as a use by right if it houses 12 or fewer persons.

Discussion:

The US Supreme Court has instructed that 'reasonable accommodations' should be interpreted liberally to favor those with disabilities. However, reasonable accommodation does not end with finding an avenue to process applications; it also extends to the project itself. Making reasonable accommodations does not mean that the County must approve applications that entirely undermine the legitimate purposes and effects of the Zoning Regulations and the Master Plan.

The following information is from the US Department of Justice's webpage. This information can be viewed at http://www.justice.gov/crt/about/hce/final8_1.php.

The Fair Housing Act makes it unlawful to refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

What constitutes a reasonable accommodation is a case-by-case determination and not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

Considering the above, staff supports the creation of a new land use category for a Residential Treatment Facility. Such a land use category would:

- be more transparent by processing a request for what it actually is,
- allow for a case-by case determination based on the regulations and policies of the Master Plan and its sub-area plans with standards that could be considered; and
- continue to allow a 12-person residential treatment facility for the disabled to be allowed as a use by right under the definition of family. However, this does not allow for accessory type uses outside of the home that wouldn't be considered normal and incidental to a dwelling. By creating a line for Residential Treatment Facility in the land use chart, institutional uses that support a treatment facility could be considered under the scope of the project and be addressed in an evaluation of intensity of use.

Recommendations to consider for Residential Treatment Facility definition and standards:

Residential Treatment Facility: is a live-in health care facility providing therapy for substance abuse, mental illness, or other behavioral problems.

Use Chart:

- Allowed after review and consideration of a Special Use Permit in all zone districts.

Standards to apply:

- Section 6: General Standards and Mitigation Techniques for Land use Approvals.

Issues for discussion:

- Should this land use be allowed in all zone districts?
- Are the impacts the same regardless of size or intensity of the use? If not, should there be a trigger for example a large and small residential treatment facility or group home?
- Are there other standards you feel are appropriate to consider? Such as capping the number of bedrooms, onsite/live in manager, the use shall not change the appearance or character of the dwelling unit or the neighborhood.
- Staff will provide examples from surrounding areas for the discussion.