

MEMO

To: Planning & Zoning Division
From: Terri Hogan, AICP, Planning Manager/Zoning Administrator
Date: May 18, 2015
Re: Interpretation 15-02: Residential Facilities & other group care facilities

Purpose: To clarify zoning requirements for a “residential facility” and other types of group care

Interpretation:

Per ARS 36-582, a residence which qualifies as a “residential facility” serving 6 or fewer persons with developmental disability is permitted by right in any zoning district that permits a single family residence without regard to zoning regulations.

- 2005 Development Code – RR, PR, MR, PC, & CC
- 2010 Development Code –
 - SF Detached - AG, SF 43, SF-18, SF 10, SF 6, SF 3 & SF 1
 - SF Attached - SF 10, SF 6, SF 3, SF 1, NMU, CMU, RMU, & DC

Residential Facility in the 2005 Code can be considered the same as the ARS definition of residential facility and are permissible in in all zoning districts that permit single family residences (see above).

Group Homes in the 2005 Code are a type of Residential Facility which should be considered for 7 (not 6 as listed in the code) or more residents only within MR & CC zoning.

Residential Assisted Living Facilities is not defined in the 2005 Code so it can be considered either a Residential Facility for 6 or less or a Group Home for 7 or more in the districts shown above.

Background:

ARS 36-581.2 – “Residential facility means a home in which persons with *developmental disabilities* live and that is licensed, operated, supported or supervised by the department”.

ARS 36-581.1 – “Developmental disability means autism, cerebral palsy, epilepsy or cognitive disability.”

ARS 36-582 – Residential facilities; zoning; notice; appeal

- A. Unrelated persons living together notwithstanding, a residential facility which serves six or fewer persons shall be considered a residential use of property for the purposes of all local zoning ordinances if such facility provides care on a twenty-four hour per day basis. The residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property. The limitation of six or fewer persons does not include the operator of a residential facility, members of the operator's family or persons employed as staff, except that the total number of all persons living at the residential facility shall not exceed eight.
- B. For the purpose of all local ordinances, a residential facility which serves six or fewer persons shall not be included within the definition of any term which implies that the residential facility differs in any way from a single family residence.
- C. The provisions of this section shall not be construed to forbid any city, county or other local public entity from placing restrictions on building heights, setback, lot dimensions and placements of signs of a residential facility which serves six or fewer persons as long as such restrictions are identical to those applied to other single family residences.
- D. The provisions of this section shall not be construed to forbid the application to a residential facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity provided that such ordinance does not distinguish residential facilities which serve six or fewer persons from other single family dwellings and provided further that such ordinance does not distinguish residents of such residential facilities from persons who reside in other single family dwellings.

- E. A local ordinance which distinguishes, tends to distinguish, or has the effect of distinguishing residential facilities which serve six or fewer persons from single family dwellings shall be void and of no effect as applied to such facilities.
- F. No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves six or fewer persons which is not required of a single family residence in the same zone.
- G. For the purposes of any contract, deed, or covenant for the transfer of real property executed subsequent to the effective date of this section, a residential facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.
- H. No residential facility shall be established within a twelve hundred foot radius of an existing residential facility in a residential area.
- I. Prior to the establishment of a residential facility in a residential area, the department shall give at least sixty days written notice to the local government unit affected. The government unit shall have the right to contest the establishment of a residential facility in a residential area by written objection filed with the department within thirty days after receiving notice and may request an administrative hearing pursuant to title 41, chapter 14, article 3.
- J. Other residential facilities which serve seven or more persons shall be a permitted use in any zone in which residential buildings of similar size, containing rooms or apartments which are provided on a continuing basis for compensation, are a permitted use. Nothing in this section shall be construed to prohibit any city or county from requiring a conditional use permit in order to maintain a residential facility serving seven or more persons, provided that no conditions shall be imposed on such a facility which are more restrictive than those imposed on other similar dwellings in the same zones.
- K. The provisions of this article shall apply only to residential facilities licensed, operated, supported or supervised by the department and the establishment of a particular facility shall not create any zoning rights with respect to any subsequent use of the property involved.
- L. This article shall apply only as to those government units which have adopted zoning ordinances which place more restrictions on the establishment of residential facilities than those pertaining to facilities authorized under this article, except that the local government unit to which this article does not otherwise apply may require

the same notice and hearing procedures applicable to other zoning matters notwithstanding the provisions of subsection I of this section.

2005 Development Code Residential Facility – permitted in RR, PR, MR, PC & CC
A single family dwelling in which persons with developmental disabilities live and which is licensed, operator, supported or supervised by the State of Arizona Department of Economic Security.

2005 Development Code Group Home – permitted in MR & CC
A residential facility for six (6) or more unrelated persons providing living facilities, sleeping rooms, and meals and which is licensed for such by the State of Arizona or the Maricopa County Department of Health Services.

2010 Development Code Assisted Living, Residential – permitted in AG, SF 43, SF 18, SF 10, SF 6, SF 3, SF 1, MF 1, MF 2
Premises used for the housing of and caring for the ambulatory, aged or infirm, other than a hospital, licensed by the Arizona State Department of Health Services for not more than ten persons in a residential setting.

2010 Development Code Assisted Living, Commercial - permitted in MF 1, MF 2, CMU, RMU, C-1, C-2 & C-3
Premises used for the housing of and caring for the ambulatory, aged or infirm, other than a hospital, licensed by the Arizona State Department of Health services for more than ten persons.

2010 Development Code Boarding House/Guest Room – permitted in AG & DC
A building arranged or used for lodging with no more than five bedrooms, with or without meals, for compensation and not occupied as a single-family unit. The occupancy of one or two bedrooms for compensation shall not be considered a boarding, dormitory, or rooming house, provided not more than two guests occupy each bedroom.

2010 Development Code Group Home – permitted in SF-43
A residential facility licensed by the Arizona State Department of Health Services that provides residence and treatment for no more than 10 persons who are mentally and/or physically handicapped.

2010 Development Code Group Recovery Home – not permitted by right, only CUPs
A residential facility licensed by the Arizona State Department of Health Services which provides residence and treatment for no more than ten persons who are in the process of recovery and/or adjustment from alcoholism, drug abuse, or mental health afflictions.

2010 Development Code Nursing Home – permitted in C-1, C-2, & C-3

A health care facility, other than a hospital, licensed by the Arizona State Department of Health Services, designed to provide housing, meals, and treatment, and skilled nursing care on a long-term basis to individuals who, because of age, illness or infirmity, are unable to care for themselves.

2010 Development Code Shelter Care Facility permitted in AG, SF 43, SF 18, Sf 10, C-1, C-2, & C-3

A residential care facility for no more than ten persons which provides temporary lodging, meals, counseling, and full time supervision to individuals and groups such as pregnant teenagers, victims of domestic violence, neglected children, and runaways for periods of less than 30 consecutive days.

2010 Development Code Shelter Care Facility, Homeless – permitted in I 1

A facility which provides temporary lodging, meals, and sanitary facilities for no more than ten persons without permanent housing.