

**Draft framework for proposed changes to zoning code addressing the definition of “family” and related terms, and special permit provisions for a “convalescent home.”**

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For discussion at Town Board work session ~~February 10, 2015~~, April 14, 2015

**Basic changes in definition section.**

- 1) Family – new text
- 2) Community Residential Facility - working title for possible new term; new text
- 3) Boarding house – new text
- 4) Rooming house – no change. This relates back to boarding house
- 5) Tourist house – New text
- 6) Bed and Breakfast Facility – needs new text referring back to Tourist Home (see below)
- 7) Convalescent home – delete existing definition altogether and do not have a new one
- 8) Nursing home – new definition that omits “see convalescent home”

**Family**

*Note: after researching several possible definitions, this one appeared the most reasonable and comprehensive – and is based on the City of Poughkeepsie code that has been upheld as constitutional. The key parts are Sections A-C. The examples of what constitutes the “functional equivalent of a family” are for illustrative purposes only; these can be revised/edited/deleted from the definition, but they serve the purpose of providing applicants or a ZBA with some general criteria of what the town considers a “functional equivalent of a family” in the event the issue is challenged.*

As used herein the term shall mean:

- A. Any number of persons occupying a one family dwelling unit related by blood, marriage or legal adoption, living and cooking together as a single housekeeping unit, or
  - B. No more than four unrelated adults occupying a one family dwelling unit and living and cooking together as a single housekeeping unit as the functional equivalent of a family.
  - C. It shall be presumptive evidence that more than four persons living in a one family dwelling unit who are not related by blood, marriage or legal adoption do not constitute the functional equivalent of a family and that any such living arrangement shall require special use permit for a “Community Residential Facility.”
1. In determining whether individuals not related by blood, marriage or legal adoption are living together as a Functional Family Unit, the following criteria must be present:
    - a. The occupants share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers and may or may not be required to pay security deposits may not be deemed to be occupied by a Functional Family Unit;
    - b. The group is permanent and stable. Evidence of such permanency and stability may include:
      - 1) Whether the occupants share the entire dwelling unit or act as separate boarders;
      - 1) Members of the household have the same address for purposes of voter registration, driver’s license, motor vehicle registration and filing of taxes;

- 2) The persons residing in the dwelling unit are not transient and their residence in the dwelling unit is not temporary in nature;
- 3) Whether the composition of the household changes from year to year or within the year;

2. Any other factor reasonably related to whether or not the group is the functional equivalent of a family.

### **Boarding House**

A dwelling owned and occupied by a family as defined above in which no more than four rooms are occupied by boarders, roomers or lodgers subject to individual rental or lease agreements or other payment arrangements with the family. The boarding house may or may not provide meals or access to other common areas. Boarding houses shall be considered the same as rooming houses but neither shall be considered a Community Residential Facility as defined elsewhere in this chapter.

### **Tourist Home or Bed and Breakfast Facility**

A dwelling, except a hotel, motel, boarding house, rooming house or Community Residential Facility as defined elsewhere in this chapter in which overnight accommodations are provided or offered for transient guests.

### **Nursing Home**

(Same definition as in 300-42)

A facility, institution or portion thereof subject to Article 28 of the New York State Public Health Law providing therein lodging for 24 or more consecutive hours to three or more nursing home residents who are not related to the operator by marriage or by blood within the third degree of consanguinity, who need regular nursing services or other professional services, but who shall not need the services of a general hospital.

### **Community Residential Facility (NEW SECTION)**

*(Note: this could include any type of unlicensed congregate living arrangements for four or more unrelated adults.*

A facility, located in a one-family dwelling unit, that is not licensed by the state or any other governmental entity at the time a request for a special use permit is submitted to the town, and which provides shared or individual bedrooms in a home-like surrounding with shared common areas and meals for five or more adults on a temporary basis. The facility is staffed seven days a week, 24 hours a day and does not provide any medical or health related services.

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*(note: changes need to be made to 300-21 (C) (1) (b) to delete convalescent home, leave in nursing home and add this new permit)*

## **New special permit section for Community Residential Facility**

The following sections are not in any particular order.

### **Legislative intent**

This section is intended to preserve the residential character of single family residential neighborhoods while at the same time making provision for the temporary housing needs of persons with special needs and disabilities and in accordance with the federal Americans with Disabilities Act and the Fair Housing Law.

## Approval authority

The approval authority for this special use permit shall be the Town Board.

## Application

1. The written approval of the property owner to operate a Community Residential Facility on the property if the operator of the facility is not the property owner.

## General standards

When considering an application for a special permit for a Community Residential Facility, the Town Board shall apply the following standards in addition to those general standards found in section 300-36 of this chapter

1. In order to retain the single family character of neighborhoods and to avoid an undo concentration of Community Residential Facilities, no more than **XXX** special use permits for Community Residential Facilities shall be granted over the same time period on any given street or neighborhood .
2. Shall not be located within **XXXX feet** of a public or private school.
3. Shall not be granted for any single family dwelling unit currently under construction or proposed to be constructed.
4. Maximum occupancy of the facility: Total occupancy at any given time shall not exceed **XXX** residents.
5. Maximum occupancy of a bedroom: There shall be no more than two residents per bedroom and each bedroom shall have a minimum of **XXX square** feet per resident.
6. In determining the maximum number of bedrooms on the property that can be used to house residents, in addition to the primary dwelling unit, bedrooms in any accessory structure on the property shall only be counted if the building inspector has determined, in writing, that the accessory structure constitutes a legal non conforming single family dwelling unit. In the event one or more legal non conforming single family dwelling units are included in the bedroom count, the side and rear yard setbacks for the primary dwelling unit shall also apply to the legal non conforming dwelling units.
7. No property where the primary residence does not meet the front, side and rear yard setback requirements of the district in which it is located shall be eligible for a SUP.
8. Optional: Allowed in what zones? Do we want to allow in "old" R-10 (10,000 SF) or would it be okay in R-10 if larger lot, e.g., >15,000, which could mean larger house? I don't know how large a house might be found on a 10,000 SF lot
9. The property must be in full compliance with all state building and fire codes and all town codes. If the property is serviced by an onsite wastewater sewage treatment system (septic system), the applicant shall comply with the requirements of Chapter 873.726 of the Laws of Westchester County.
10. At the time the application is made, and up till the time there is a final vote by the Town Board to grant or deny the application, no state licensing is required to operate the facility.
11. In the event the Town Board approves a special use permit under this section and subsequently the state or any other governmental entity enacts a licensing requirement for the type of facility covered by the permit, the facility shall be required to obtain the required license.
12. Signage. No signs announcing the name of the facility shall be permitted.
13. No changes to the exterior of the primary residence or other legal non conforming single family dwelling units that are designed to accommodate the proposed use of the shall be made.
14. No medical, health related services, or individual or group counseling conducted by a licensed professional shall take place on the premises

## **Parking**

1. One space for each employee, whether full time or part time, and one space per resident, although the latter requirement may be waived or modified if the residents are prohibited by the owner or operator of the facility from having their own vehicles.
2. Additional parking spaces may be required if the facility has passenger type vans designed to transport residents.
3. **XXX** visitor parking spaces per resident shall be required.
4. The site plan shall show an additional area reserved for future parking spaces as may be deemed appropriate by the Town Board.
5. The required parking area, other than the area reserved for possible future spaces, shall be permanently improved.
6. Parking shall be located at least **XXX** feet from the street and at least **XXXX** feet from all other property lines and shall be screened from neighboring properties and from the street by fencing and/or landscaping as deemed appropriate by the Town Board.
7. No vehicles larger than **XXXXXX** shall be parked on the premises on a regular basis.

## **Outdoor recreation areas**

Outdoor recreation areas for use by residents may be permitted provided that such recreation areas are located at least **XXXX** feet from all property lines and provided that the board shall find that such areas would not be a nuisance to surrounding properties. Fencing and landscaping of recreation areas shall be required where the Board deems appropriate.

## **Length of permit**

The permit shall be granted for a maximum of three years to the owner of the property whose name is on the application, or with the owner's written approval, the name on the application of the operator of the facility, and, shall be subject to renewal.

The provisions of section 300-30 notwithstanding, in the event there is a change in the ownership or the operator of the facility within the three year period of the permit, the new owner and/or operator shall apply not less than 90 days before assuming ownership and/or operation for a renewal of this special use permit. Any new owner and/or operator shall be bound by the conditions of the permit and any additional reasonable conditions that the Board deems appropriate after the holding of a public hearing. If the new owner or operator fails to obtain a renewal of the current special use permit, the special use permit shall be considered null and void and the use of the facility shall be discontinued within 30 days from the change or ownership or operation.

## **Site Plan**

1. The applicant shall provide a site plan in compliance with section 300-29 of this chapter.
2. The site plan shall be referred to the Planning Board and other appropriate town advisory boards, commissions and committees as deemed appropriate by the Town Board for their review and recommendations.

3. The Town Board may require additional screening, fencing and landscaping as it deems necessary to preserve the residential character of the neighborhood and to minimize any potential negative impact on adjacent land or buildings or which would impact the value thereof.

**Management and Operation.**

1. The owner/operator of the facility shall provide a Management and Operation Plan that shall include the following information
  - a. The population to be served by the facility and the maximum number of persons to be housed in the facility at any one time.
  - b. The anticipated length of stay of the residents
  - c. The number of full time and part time staff members.
  - d. Contact information (phone and email) for the operator the facility.
  - e. A copy of the facility's House Rules if the residents will be required to adhere to a series of house rules as a condition of their residence in the facility.
  - f. A list of the addresses of all similar facilities owned or operated by the owner or operator within the past five years
  - g. A written visitation policy

**Waiver**

The Town Board may, for good cause shown, and to provide reasonable accommodation where required by state or federal law, vary the requirements of this section.

**Revocation of special permit**

Pursuant to Section 300-33 of the Zoning Code, a special use permit granted by the Town Board pursuant to this section may be revoked by the Town Board if said Board finds and determines, after a public hearing held in the manner provided for by law for the Town Board, that there has been a failure of compliance with any one of the terms, conditions, limitations and requirements imposed by said permit.