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Vote on a request to approve the Governor's Club Property Owner's Association, Inc. for a text amendment to the Chatham County Zoning Ordinance, Section 7.2 Definitions and Section 10.13 Table of Permitted Uses to change the definition and allowances for Family Care Homes within the R1, R2, R5, and O & I zoning districts.

..ABSTRACT

Action Requested:

Request by the Governor's Club Property Owner's Association, Inc. for a text amendment to the Chatham County Zoning Ordinance, Section 7.2 Definitions and Section 10.13 Table of Permitted Uses to change the definition and allowances for Family Care Homes within the R1, R2, R5, and O & I zoning districts.

Introduction & Background:

A legislative public hearing was held on August 17, 2015. Planning staff presented the request to the Board of Commissioners. There were two citizens that spoke on the request: Marla Benton, who lives within the Governor's Club PUD of Governor's Lake, spoke during the public input session and Joe Glasson, who lives within the Governor's Club PUD original community, spoke during the agenda item.

Ms. Benton stated she is a nurse and is opposed to the text amendment request. She stated she has an aging parent and would prefer to have an opportunity to have her close to her in this type of setting. Her comments are provided (Attachment 2).

Mr. Glasson spoke in favor of an amendment that would require a distance separation between such uses citing General Statute 168-22 and the Town of Pittsboro's zoning regulations. His comments are provided (Attachment 3). Draft minutes from the public hearing are also provided as an attachment.

Also attached is the report from the UNC School of Government on family care homes in particular that includes the various General Statutes that govern the use and what precautions should be taken in considering regulations on family care homes (Attachment 1). The family care home must be allowed without special review in any single family zoning district. The underlying zoning classification for Governor's Club is R-1 Residential even though the project was approved under a Planned Unit Development in order to have smaller lots and more homes with associated commercial and office areas. It goes on to say when the home serves six or fewer residents who have a physical, mental, or other emotional disability, those are not treated any differently than any other single family home. Provided however that NCGS 168-22 provides that a local government may impose up to a ½ mile separation between family care homes.

The Fair Housing Act makes it unlawful to make a dwelling unavailable to a person because of race, color, national origin, religion, sex, familial status, or disability. These are all considerations that must carefully be examined before any such restrictions such as distance requirements are put into place in connection to family care homes. The homes must still meet building code, follow any required setbacks, etc. before being occupied as with any other single family dwelling.

Discussion & Analysis:

During the October 6, 2015 Planning Board meeting this item was tabled to allow staff time to contact adjoining jurisdictions regarding their separation requirements. Staff contacted the Lee, Wake, Harnett, and Durham County Planning Departments and a general account of their comments follows.

- **Lee County/City of Sanford (combined planning) – ½ mile separation requirement and was implemented due to the increasing number of family care homes locating within the municipal limits and municipal fringe areas in the county. The city was experiencing an increase in the number of family care homes locating within close proximity to each other and there was a community desire to implement a separation requirement.**
- **Wake County – ½ mile separation requirement, the statute was followed, and there were no specific issues involved.**
- **Harnett County – ½ mile separation and no particular reason was noted for the provision and the statute was followed. It was noted that the separation requirement can protect areas from having a concentration of family care homes in neighborhoods where foreclosures are occurring and providers can purchase the homes at a lower cost.**
- **Durham County/Durham City (combined planning) – 1,125' separation requirement. Both county and city attorneys were requested to review the separation requirement and thought this distance was legally defensible. It was also noted that a majority of family care homes are located within the municipal limits with few instances in the county's jurisdictions.**

Currently the Chatham County Zoning Ordinance defines a Family Care Home as “a home meeting the NC Residential Building Code with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment.” These homes are currently permitted by right in residentially zoned districts for up to six residents and Office and Institutionally zoned areas. Until now, there have been no issues with family care homes or an influx of such a type of housing within the county's jurisdiction.

Chatham County has several institutional facilities for those who have disabilities and can no longer manage their activities of daily living. In a family care home setting, most

are still able to drive, manage the majority of their ADLs, and still interact with their communities as would anyone else.

Some jurisdictions do have separation regulations within their zoning ordinances for family care homes. Within Chatham County, the Town of Pittsboro's zoning ordinance states "Family Care Homes are private residences for aged and disabled adults who may require supervision and assistance with personal care needs. Family Care Homes are owned by providers who live with the residents they serve. They must maintain a license with the State of North Carolina, are limited to six residents and may not be closer than a 2640 foot radius to another Family Care Home." The Town of Siler City is said to have a ½ mile separation as well but I was not able to locate that in their UDO.

Per the NC Building Code, Section 425, define family care homes as residential care facilities. Section 425.3 Small Residential Care Facilities keeping no more than six (6) residents shall be classified as single family residential and therefore would not be regulated as a commercial property (Attachment 4).

One question posed during the public hearing was whether a homeowners association could enforce a separation requirement for family care homes. Staff received an interpretation from the County Attorney, Jep Rose, concluding that homeowners associations are prevented from enforcing family care home separation requirements and that it is left to local government if they choose to adopt a standard.

Based on the information provided, it is planning staff recommendation to deny this request and not recommend any text amendments that would further attempt to regulate family care homes for up to six persons.

The Planning Board met on October 6, 2015 and discussion included that without a separation requirement a family care home provider could purchase multiple dwellings within the same neighborhood. This would allow the provider to operate as a facility providing care for more than 6 residents within a neighborhood and avoid the regulations associated for larger facilities, such as zoning requirements. The board also discussed the effect of different separation distances such as 1,125 and 500 feet. There was also discussion about the applicability of a separation requirement in a small lot community versus lots in rural areas that are typically much larger. A minority report has been provided by the Planning Board members voting against the recommendation and is provided as an attachment.

Staff was also requested to further explain their recommendation for denial. It was explained that this is a difficult issue because the general statute clearly defines family care homes as a residential use, which cannot be prohibited in residential zoning districts; that a one size fits all approach is difficult when there are urban/suburban and rural areas within the zoned areas of the county that would be impacted by these regulations; and that there are currently no family care homes in the zoned areas of the county. There was also discussion that there are other non-residential uses in the

residential zoning categories such as schools, in-home daycares serving up to 15 children, and fire stations that only require double the minimum building setback. It was also discussed that a heavy industrial zoning district could adjoin residential zoning and the building setback requirement would be 100'. Another item for consideration are the outcomes of the recent affordable housing retreat. There were three priorities identified by the Board including transitional and supportive housing programs.

If the Board is in favor of the text amendment, additional information may need to be included in the consistency statement resolution. Additional consideration from the Land Conservation and Development Plan could include that "Land development and conservation is welcomed, but in ways that ensure that: benefits and burdens of growth are shared, growth consists of a mix of different types of development, and development is guided to suitable locations and is designed appropriately."

Recommendation:

If the Board thinks the text amendment should be approved the Planning Board recommends by a vote of 7-0 with 3 abstentions that a Resolution adopting the following Consistency Statement be approved: The proposed text amendment is consistent with the adopted plans of the county.

The Planning Board by vote of 7-3 recommends approval of the proposed text amendment to Sections 7.2 and 10.13, as provided in the application, with an exception that the separation requirement be reduced from ½ mile to 1,125 feet, adoption of an Ordinance Amending the Zoning Ordinance. The Planning Department recommends denial of the request.