



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 East Anapamu Street, Room 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning & Development
Department No.: 053
For Agenda Of: November 20, 2007
Placement: Set Hearing
Estimated Tme: 1 hour on December 4, 2007
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director: John Baker (805.568.2085)
Contact Information: Dianne Black, Development Services Director (805.568.2086)
SUBJECT: Permitting Special Care Homes in Residential Zones Based on the Number of Clients Served

County Counsel Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

On November 20, 2007 set a hearing on December 4, 2007 for the Board of Supervisors to:

- A. Receive this report on legal restrictions regarding the number of clients residing in special care homes located in residential areas; and
- B. Consider whether to direct the Planning and Development Department to return with ordinance amendments.

Summary Text: The discussion below reviews the County's current permit process for special care facilities and limits on local regulations resulting from state and federal protections for such facilities. This information is submitted in response to questions from the Board of Supervisors as to whether special care facilities with a maximum of 14 clients should be allowed with a ministerial Land Use Permit or a discretionary Conditional Use Permit, since State law only requires a ministerial permit for special care facilities having six or fewer clients.

After reviewing the existing state and federal regulations and court decisions on this matter, the conclusion is that the County may require a Conditional Use Permit for special care facilities where the number of clients exceeds six. However, the purpose of the requirement is limited to ensuring that the proposed facility conforms to the neighborhood in regards to size, lighting, design and other factors that are unrelated to the characteristics or illness of the occupants of the proposed facility, and it may not act to unduly prohibit the development of such facilities.

A. Background.

On September 1, 1999, the Planning and Development Department presented a general package of ordinance amendments to the Planning Commission for their consideration. Included in that package was a proposal to change the permit requirement for special care homes serving more than six clients from a discretionary minor Conditional Use Permit in all zones to:

1. A ministerial Land Use Permit for facilities located in the agricultural and residential zones that serve seven to 12 clients provided that there is only one kitchen and that certain development standards regarding parking and compatibility with the surrounding neighborhood are met; and
2. A minor Conditional Use Permit for facilities located:
 - a. In the agricultural and residential zone for facilities that serve 13 or more clients; and
 - b. All other zones regardless of the number of clients.

At this hearing the Planning Commission declined to recommend approval of the proposed revisions to the Board of Supervisors. However, on November 16, 1999, the Planning and Development Department presented these same proposed revisions to the Board of Supervisors along with the other amendments contained in the general package of amendments.

At this hearing, in response to testimony and materials presented by the Santa Barbara Mental Health Association regarding the need for such facilities in Santa Barbara County, the Board modified staff's proposal and adopted an ordinance that provided in part that:

1. A special care facility that serves seven to 14 clients may be allowed with a Land Use Permit in the agricultural and residential zones in compliance with development standards regarding the allowed number of kitchens, parking and neighborhood compatibility; and
2. A special care facility that is either (a) located in agricultural and residential zones and serves 15 or more clients or (b) is located in a zone other than agricultural or residential, may be allowed with a minor Conditional Use Permit.

B. Restrictions on local regulation.

The County may adopt zoning standards regulating special care facilities provided that they do not conflict with federal and state laws, including the prohibition against discriminating against persons with disabilities in violation of the Federal Fair Housing Amendments Act of 1988.

1. **State exemption for special care homes serving six or fewer people.** California Health and Safety Code Section 1566 provides special protections for special care homes serving six or fewer people including:
 - a. It cannot be subject to any business taxes, local registration fees, use permit fees, or other fees that are not required of other family dwellings of the same type in the same zone.
 - b. Such facilities are considered a residential, and not a commercial use of property and that

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.

- c. Restrictions on building heights, setback, lot dimensions, or placement of signs may be applied as long as such restrictions are identical to those applied to other family dwellings of the same type in the same zone.
- d. A conditional use permit, zoning variance, or other zoning clearance may not be required unless it is also required of a family dwelling of the same type in the same zone.

2. **Fair housing laws.** The ability of local government to regulate special care facilities is also limited by federal and state fair housing laws and court decisions that have interpreted those laws.

- a. **Non-discriminatory requirement.** The federal Fair Housing Amendments Act of 1988 extends fair housing protections to individuals with disabilities. California's Fair Housing and Employment Act specifically prohibits discriminatory restrictions against group housing for persons with disabilities. Therefore, zoning ordinances that act to unduly restrict congregate living arrangements for persons with disabilities can constitute discrimination under both federal and state fair housing laws.
- b. **Cannot be characterized as a commercial establishment for zoning purposes.** Special care facilities for individuals with disabilities function as a residential use and do not become a commercial use which may be excluded by zoning regulations simply because residents pay to live there and services are provided. Fair housing laws require that special care homes be treated the same as similarly sized and situated residences, and jurisdictions are prohibited from singling out congregate living arrangements for people with disabilities and imposing restrictions on them that are not also imposed on similar residences for non-disabled persons.
- c. **Occupancy standards in residential dwellings.** The Fair Housing Act does allow reasonable restrictions regarding the maximum number of occupants permitted to occupy a building. However, maximum occupancy limits are permissible only if applied equally to all residents and do not operate to discriminate on the basis of disability.
 - (1) **Minimum space requirements.** Zoning may impose occupancy restrictions such as a neutral standard based on the amount of living area per resident. In California such restriction is limited by Uniform Housing Code Section 503.2 that requires every dwelling unit to contain at least one room with at least 120 square feet, with other habitable rooms (except kitchens) containing at least 70 square feet and with sleeping rooms increased by 50 square feet for each occupant beyond the first two.
 - (2) **Family requirements.** Zoning may also impose occupancy restrictions based on familial status; however, an ordinance that limits the number of unrelated persons that may live together in a single-family residential zone through a restrictive definition of family has a discriminatory effect. The County cannot distinguish between families and unrelated individuals living together as a single housekeeping unit.

d. Conditional use permit requirement. Local jurisdictions may regulate facilities that provide care for more than six people, such that the County may adopt permit requirements that have the purpose of meeting a legitimate, neutral zoning standard. A conditional use permit (CUP) may be required to determine whether reasonable, non-discriminatory conditions, unrelated to the characteristics or illness of the occupants of the proposed facility, should be imposed to conform the proposed use to the neighborhood. A CUP may not be used as the mechanism to exclude the facility from the neighborhood. However, in establishing a threshold number of residents used to determine those facilities that require a CUP and those that do not, the regulation may not discriminate against a special care home based on the number of occupants or the size of the facility by requiring conditions or imposing limits which would not be required of a “traditional” single-family dwelling. The CUP may also impose conditions which affect a proposed facility in the same manner as other dwellings, for example, to limit the size of the facility in order to achieve neighborhood compatibility.

C. Inventory of existing residential special care facilities in unincorporated Santa Barbara County.

The following table provides an inventory of the existing residential special care facilities located in the unincorporated area of Santa Barbara County. The list does not contain the larger residential facilities (e.g., rest homes, assisted living facilities).

**RESIDENTIAL SPECIAL CARE FACILITIES LOCATED IN
 UNINCORPORATED SANTA BARBARA COUNTY**

Licensed Capacity of Facility	Number of Facilities at this Capacity	Permit Type/Year Approved (If Capacity Exceeds 6)
GOLETA - SANTA BARBARA		
6 or fewer	21	n/a
14	1	LUP/2004 (1)
LOMPOC		
6 or fewer	5	n/a
MONTECITO		
6 or fewer	1	n/a
8	1	CUP/1988 (2)
ORCUTT - SANTA MARIA		
6 or fewer	23	n/a
8	1	no data
10	1	no data
SANTA YNEZ VALLEY		
6 or fewer	2	n/a

Notes:

- (1) Permitted after the number allowed under a Land Use Permit was increased in December 1999.
- (2) Permitted before the number allowed under a Land Use Permit was increased in December 1999.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis: Funding for this ordinance amendment work effort is budgeted in the Planning Support program of the Administration Division on page D-280 of the adopted Planning and Development Department's budget for fiscal year 2007-08. There are no facilities impacts.

Staffing Impacts:

Legal Positions
0

FTEs:
0

Special Instructions:

None.

Attachments:

None.

Authored by:

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