



VANDEWALLE & ASSOCIATES INC.

To: City of Fort Atkinson

From: Mike Slavney, FAICP; Dan Johns, AICP; and Ben Rohr

Date: July 18, 2019

Re: Community Living Arrangements and Similar Facilities

This memorandum is a summary of the existing Zoning Ordinance's approach to Community Living Arrangements and similar facilities in comparison to our recommended approach for the new Zoning Ordinance.

EXISTING ZONING ORDINANCE

ADULT AND JUVENILE COMMUNITY LIVING ARRANGEMENT (CLA) FACILITIES ORDINANCE:

All of the following land uses are combined into one land use category called Community Living Arrangement Facilities:

- Assisted Living Facility
- Boarding House
- Community Living Arrangement
- Foster Family Home
- Group Foster Home

There is also a detailed Conditional Use Permit Criteria/Process that applies to Community Living Arrangement Facilities. This process was mutually agreed upon by many local groups and organizations working together.

NEW ZONING ORDINANCE

CONSULTANT RECOMMENDATIONS:

After reviewing the City's recently adopted Adult and Juvenile Community Living Arrangement (CLA) Facilities Ordinance and comparing it to zoning ordinance rewrites we have completed in other similar communities, we are recommending a hybrid approach. This approach separates the various land uses within the existing ordinance into five new land uses, permits those land uses individually by zoning district as permitted by-right or as Conditional Uses, and mirrors the Conditional Use Criteria/Process from the existing Zoning Ordinance.

1. Boarding House (Living Arrangement)

We recommend that Boarding Houses become a separate land use in the new ordinance because it is a completely different type of use than the other CLA Facilities, in that residents tend to be more transitory and are always adults. Additionally, it is recommended in the new code, that the definition of family include 3 unrelated individuals living together and a separate land use be used to regulate 4-12 unrelated individuals (existing ordinance is 3-12 unrelated individuals). Boarding House Living Arrangements are a distinctly different land use from a Single-Family Living Arrangement in the new code. In total, the recommended approach is to create a Boarding House Living Arrangement Land Use that allows occupancy of a dwelling unit shared by 4-12 unrelated individuals permitted as a Conditional Use in the new Multi-Family and Mixed-Use Zoning Districts (MRL-8, MRM-12, MRH-30, NMU, UMU, DPMU, and DHMU). The project working group agreed with this change.

2. Community Living Arrangement (1-8 residents, 9-15 residents, and 16+ residents)

We recommend a 3-tiered approach to Community Living Arrangements, which would separate it from the other CLA Facilities and also break up the overarching Community Living Arrangement use into three different sized facilities. This is recommended because it reflects the categorization of CLAs in Wisconsin State Statutes, it is legally defensible via our municipal lawyer's review, and it provides the City with greater control than the existing ordinance. Additionally, we recommend using a slightly different definition for Community Living Arrangement. The new definition encompasses all the references listed in the City's definition, but leaves out foster homes with less than 4 children (See 4. Below).

According to state statutes (Wis. Stat. 60.23(i)3.) all Community Living Arrangements 1-8 residents must be permitted by-right in all residential zoning districts if they are licensed and follow the statutes. In our recommended approach, small (1-8 resident) Community Living Arrangements, would be permitted by-right in the SR-2, SR-3, SR-5, SR-7, MH-7, DR-8, TF-10, MRL-8, MRM-12, MRH-30, I, NMU, SMU, UMU, DPMU, and DHMU zoning districts. The licensing, process, and penalty requirements from the Conditional Use Criteria section of the existing ordinance would still be applied to the land use.

The other two tiers of Community Living Arrangement land uses (9-15 and 16+) would then provide the City increased control for these more intense uses and the ability to orient them to specific areas of the City. The more intensive land uses would only be allowed with a Conditional Use Permit (following the regulations outlined in the existing ordinance). Community Living Arrangements for 9-15 residents is recommended as a Conditional Use in all Residential and Mixed-Use Zoning Districts (SR-2, SR-3, SR-5, SR-7, MH-7, DR-8, TF-10, MRL-8, MRM-12, MRH-30, I, NMU, SMU, UMU, DPMU, and DHMU). The Community Living Arrangements for 16+ residents are recommended as a Conditional Use in the Multi-Family and Mixed-Use Zoning Districts (MRL-8, MRM-12, MRH-30, I, NMU, SMU, UMU, and DPMU).

We do understand that there is a reason the City chose to take the approach that it did with Community Living Arrangements (to possibly avoid any potential legal challenges), but based on Statutes, the City does have the ability to have increased regulation on these uses through the new ordinance's recommended approach. Our recommended approach will allow CLAs in most of the community and retain the regulations outlined in the existing ordinance.

3. Assisted Living Facility (Institutional Residential)

We recommend this also being separated out from the CLA Facilities land use category. Assisted Living Facilities can be regulated separately from Community Living Arrangements (based on the recommended new definition) so that the large-scale land uses like retirement homes, nursing homes, and assisted living facilities are oriented toward areas designed for more intense uses. This added control provides the City with another tool in directing these more intense uses away from single-family neighborhoods, where the existing ordinance simply just uses a 1 or more unrelated individual regulation. This land use would continue to be a Conditional Use (using the specific process outlined in the existing ordinance), permitted in the Multi-Family and Mixed-Use Zoning Districts (MRL-8, MRM-12, MRH-30, I, NMU, UMU, and DPMU).

4. Foster Homes (4 or less children)

The existing CLA Facilities ordinance lumps Foster Homes (four or fewer foster children) into the same category with many of these other larger-scale more intense uses previously described. Instead, we recommend that these uses be built directly into the new definition of Family (Functional Family) and the Single-Family Living Arrangement land use category, which would allow them to be permitted by-right in all Residential and Mixed-Use Zoning Districts (SR-2, SR-3, SR-5, SR-7, MH-7, DR-8, TF-10, MRL-8, MRM-12, MRH-30, NMU, UMU, DPMU, and DHMU). It would also remove the strict regulations placed on them through the existing ordinance's Conditional Use Permit process. Our extensive experience in other communities, as advised by City Attorneys, is to consider small-scale foster arrangements within the definition of "family", rather than identified with CLAs.

However, for any foster home larger than 4 children, our recommended approach for the 3-tiered Community Living Arrangements land uses (See 2. Above) would take effect. Utilizing this method, the larger and more intense uses exceeding 4 foster children would be regulated under the existing ordinance's Conditional Use Permit Criteria. Essentially, we recommend only strictly regulating Group Foster Homes from the existing ordinance.

Also see the Land Use Descriptions of Boarding Housing Living Arrangement, Community Living Arrangement (1-8), Community Living Arrangement (1-8), Community Living Arrangement (1-8), and Institutional Residential in Article III of draft zoning ordinance. Definitions for Family and Functional Family can be found in Article I.