

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

**DISCUSSION OF A DEVELOPMENT CODE AMENDMENT AS IT RELATES TO
RESIDENTIAL CARE FACILITIES / GROUP HOMES**

Summary Statement:

At the April 1, 2009 Planning Commission meeting, the Commission reviewed Conditional Use Permit No. 2009-001, a request to operate a Large Residential Care Facility for a maximum of eight (8) elderly residents. The single-family residence is currently a licensed residential care facility for six (6) or fewer elderly residents. The proposed CUP did not conform to the Code provision requiring a 2,000 foot separation distance from a "Sensitive Similar Use"; therefore, staff recommended denial. Following review of the information within the staff report, public input and discussion by the Planning Commission, the Commission concluded that the applicant should withdraw the CUP application. The reasoning, as stated by Vice-Chairman Tinsley, was "because this particular type of residential care should not be categorized as a "group home" in the Development Code." Further discussion prompted the Commission to direct staff to submit a recommendation to the Town Council indicating that, in its opinion, the proposed Conditional Use Permit application is beyond the legislative intent of the current "Residential Care Facilities, Group Homes and Sexual Offender Residency" Ordinance. The Commission requested that the Council direct the Planning Commission to review the current "Residential Care Facilities, Group Homes and Sexual Offender Residency" Ordinance, and recommend amendments to the Town Council that address the issues contained within this staff report.

As the Council may be aware, on September 25, 2006 a moratorium for residential care facilities and group homes, not licensed by the State or housing more than six (6) residents, was adopted by the Town Council. This was to allow the Town adequate time to hold public workshops and modify the regulations for group homes and residential care facilities. On May 8, 2007, the Town adopted Ordinance No. 340 as it pertains to establishing requirements for Residential Care Facilities, Group Homes, Parolee Homes and regulating residency locations for registered sex offenders. The Ordinance requires that residential care facilities, housing more than six (6) residents, obtain a Conditional Use Permit (CUP).

(continued on next page)

Recommended Action:

Move to receive and file the report and direct staff to initiate a Development Code Amendment.

Proposed by: Planning Division **Item Number** _____

Town Manager Approval: _____ **Budget Item** Yes No N/A

Town Council Meeting: April 28, 2009

The intent of the adopted ordinance is to ensure that the Town can properly control and regulate the establishment of residential care facilities and group homes in residentially zoned districts. Section 9.29.140 "Residential Care Facilities, Group Homes and Sexual Offender Residency" was amended to include regulations that apply to Large Residential Care and Group Home uses collectively and the regulations are applied equally with respect to the Code provisions of "Purpose, Conditional Use Requirement, Locational Requirements, Operation Requirements and Revocation" processes.

When a Conditional Use Permit for a Large Residential Care Facility or Group Home is requested, other than for renewal, ownership transfer or expansion of an existing Large Residential Care Facility or Group Home, a minimum separation distance of 2,000 feet is required from an existing or proposed park, school, religious institution, youth facility, library, video arcade or similar sensitive uses.

During the review and analysis of the proposed Large Residential Care facility, staff identified a licensed Large Residential Child Care facility within 2,000 feet of the site. The facility is located at 12848 Skyline Ranch Place. Although this particular facility is licensed to care for fourteen (14) children, staff interpreted this as a "similar sensitive use" (youth facility) and as noted above, "a minimum separation distance of 2,000 feet is required from an existing or proposed park, school, religious institution, *youth facility*, library, video arcade or *similar sensitive uses*". In this case, staff determined that a Large Child Care Facility is considered a "similar sensitive use" (youth facility) and is in conflict with the 2,000 foot separation distance provision.

As an added note, one of the issues is not the quality of care given by the facility, but that it simply does not adhere to the Development Code requirement of a 2,000 foot separation. In addition, the ordinance does not separate the elderly from sex offenders and parolees who reside in a group home/residential care facility. Typically, care of the elderly will have less impact on surrounding properties and would not only provide a community service but also preserve an area of residential development with a substantially low-impact population.

Based upon the action taken by the Planning Commission, this issue should be analyzed and discussed by the Town Council to review and reassess the "Residential Care Facilities, Group Homes and Sexual Offender Residency" Ordinance to determine if the current regulations are appropriate for care facilities for the elderly. Assuming the Council agrees with the Planning Commission, the Council should direct the Planning Commission to prepare an appropriate Development Code Amendment.

Attachment: Minute Excerpt from April 1, 2009 Planning Commission meeting

MINUTE EXCERPT
TOWN OF APPLE VALLEY
PLANNING COMMISSION
Regular Meeting
Wednesday, April 1, 2009

PUBLIC HEARING ITEMS

2. Conditional Use Permit No. 2009-001.

Applicant: Ms. Yolanda Alkawass

Location: The property is located at 20276 Majestic Drive; APN 3087-192-31.

Chairman Kallen opened the public hearing at 6:04 p.m.

Ms. Becky Reynolds, Principal Planner, presented the staff report as filed by the Planning Division. She stated that the project was legally noticed; the Ad Hoc Group Home Committee was also notified by mail.

Commissioner Putko had questions regarding the requirement for the Conditional Use Permit.

Ms. Reynolds responded that the Development Code was amended in 2007 and required that a residential care home with more than six (6) residents would require a Conditional Use Permit. The applicant was requesting two (2) more residents which would bring her facility up to eight (8) residents. Ms. Reynolds further commented, that since there is a child care facility within 2000 feet of the proposed facility, the application did not meet the Code requirements for separation distance.

Mr. Ken Henderson, Assistant Town Manager – Economic and Community Development, stated that the Commission may want to consider that the creation of the Group Home Ordinance was to focus on the potential for parolees, sex offenders and criminals placed in a group home within a residential area. Although the applicant's residence houses the elderly, the facility falls within the group home category.

Mr. Henderson suggested that, if the Commission desired to make an exception in this case, it make a recommendation to the Town Council to amend the existing ordinance.

Commissioner Putko stated that the facility is licensed by the State as a residential care facility, and upon visiting the site, he was very impressed.

Mr. Henderson commented that, under the Ordinance, the facility is classified as a group home.

Ms. A. Haviva Shane, Town Attorney, stated that, even if a provision was made to the Ordinance with exceptions to care facilities, the project would still fall under the Conditional Use Permit requirements because it would exceed the six (6) resident limit.

Ms. Yolanda Alkawass, the applicant, stated she has received approval from the State of California for two (2) more residents. She stated there was very little traffic to and from the facility and no parking problems due to visitors. She further stated the facility is staffed twenty-four (24) hours daily, and the seniors are mobile but do not leave the facility.

Commissioner Hernandez, requested to know when the applicant became aware of the need for a Conditional Use Permit.

Ms. Alkawass stated she added six (6) bedrooms to the five (5) bedroom home in anticipation of having eight (8) residents. However, due to concerns about a group home in the neighborhood, she was allowed only six (6) residents.

Ms. Reynolds explained the reason for the Conditional Use Permit was for more than six (6) residents as a use of the property, not the construction of the added bedrooms.

Ms. Marie Burton, Apple Valley, stated she lives in the neighborhood and was not notified of the proposed project. She was opposed to the expansion of eight (8) residents and concerned about parking issues that have been ongoing since the facility opened.

Mr. Richard Kain, Apple Valley, also a neighbor of the applicant, expressed his opposition of the project and also commented on parking issues.

Mr. Joseph Camera, Apple Valley, expressed his support of the project, stating he has a relative living at the facility and they are cared for very well.

Mr. Michael Camera, of Victorville, spoke in favor of the project.

Mr. Gary Mitchell, of Apple Valley, felt the facility should not be allowed any more residents and was against the Conditional Use Permit application.

Ms. Kimberly Licea, Victorville, stated she is a cosmetologist and goes to the facility once a week to administer her services to the residents. She stated she has not noticed any traffic and spoke in favor of the project.

Ms. Bonita Rouch, Apple Valley, commented she did not receive notification of the project and expressed concerns about the residents being a danger to children and the community. She was against the project.

Mr. David Phillips, Apple Valley, expressed his concerns regarding declining property values because of the project.

Ms. Cheryl Martin, stated her aunt, who has dementia, lives at the facility and is very satisfied with the care.

Ms. Ida Hinterberg, Apple Valley, spoke against the project.

Ms. Alkawass, the applicant, spoke about her facility, stating the patients deserved to have a nice home, and she has not had an aggressive patient that would pose a danger to the neighborhood.

Since there was no one else in the audience requesting to speak to this item, Chairman Kallen closed the public hearing at 7:02 p.m.

Chairman Kallen cautioned the Commission against discussing finances in relation to this project.

Commissioner Hernandez stated that the issue is not the quality of care given by the facility, but that it simply does not adhere to the Development Code requirement of a 2000 foot separation.

Commissioner Cusack stated that, when the home was built for eight (8) residents, it did adhere to the previous Development Code. He stated that, if allowed, it must be used for elderly residents only.

Vice-Chairman Tinsley agreed, but felt that amendments should be made to the Development Code because this particular type of residential care should not be categorized as a "group home" in the Development Code. He stated he agreed with Mr. Henderson's recommendation to ask the Council to consider a Development Code Amendment.

Commissioner Putko agreed.

Chairman Kallen stated that, upon looking at the compatibility with the neighborhood and the parking issue, he was not in support of the Conditional Use Permit.

Ms. S. Haviva Shane, Town Attorney, advised the Commission to adhere to the Code, as it is currently, and if they so desire, send a recommendation to the Council concerning an Amendment of the Ordinance.

Mr. Henderson stated that for clarification, a residential care facility of six (6) or less can be approved by the State, without Town approval. However, if it is going to be more than six (6) residents, the Town can become involved in the approval. He stated, if the Commission wanted to approve the project, then policy direction must be sought from the Council. The item could be continued, tabled, denied (as recommended by staff), or the Commission could make a recommendation to the Town Council to amend the Development Code.

MOTION:

Motion by Commissioner Hernandez, seconded by Chairman Kallen, that the Planning Commission move to:

1. Find that, pursuant to the California Environmental Quality Act (CEQA), Section 15332, Class 32, the proposed request is Exempt from further environmental review.
2. Find the facts presented in the staff report do not support the required Findings for approval for Conditional Use Permit No. 2009-001.
3. Adopt the negative comments, as provided in the staff report, for the Findings to deny Conditional Use Permit No. 2009-001.

ROLL CALL VOTE:

Ayes: Commissioner Hernandez
Chairman Kallen
Noes: Commissioner Cusack
Commissioner Putko
Vice-Chairman Tinsley
Abstain: None
Absent: None.
The motion failed by a 2-3-0-0 vote

MOTION:

Motion by Vice-Chairman Tinsley, seconded by Commissioner Putko, to have staff submit a recommendation to the Town Council indicating that the proposed Conditional Use Permit application is beyond the legislative intent of the current Group Home Ordinance and request that the Council direct the Planning Commission to review and consider the current Group Home Ordinance.

Discussion on Motion:

Ms. Shane, Town Attorney, suggested the Commission not limit the review to only Conditional Use Permit applications, but to exclude residential care facilities for elderly from the 2000-foot separation distance as is currently in the Development Code.

Chairman Kallen requested to know what would become of this application during the review period of the Ordinance, and if the residents in the neighborhood would be notified when these items come before the Commission in the future.

Mr. Henderson responded that the legal advertising would be done, and in addition, any resident who wished to be notified, can provide staff with their name and address and they will receive notification by mail.

Chairman Kallen re-opened the public hearing at 7:21 p.m. He then asked the applicant, Ms. Alkawass, if she understood the motion that was presented, and if

she was willing to withdraw her application based on the Planning Commissions recommendation to the Town Council that the Group Home Ordinance be reviewed.

Ms. Alkawass stated she understood and agreed she would withdraw her application at this time.

ROLL CALL VOTE:

Ayes: Commissioner Cusack
 Commissioner Putko
 Vice-Chairman Tinsley
Noes: Commissioner Hernandez
 Chairman Kallen
Abstain: None
Absent: None.
The motion passed by a 3-2-0-0 vote