

# CASE SUMMARY

## *Land Development Code Amendment*

<b>Meeting:</b>	City Council, October 5, 2010
<b>Case Number:</b>	LDC-6-1009
<b>Proposed Amendment:</b>	To amend the use regulations, separation requirements, and definitions for various care facility uses
<b>Code Section(s):</b>	Chapter 18, Article 5, Division II. District Regulations, Secs. 18-177, 18-178, 18-179, 18-180, 18-181, 18-182, 18-183, 18-184, 18-185, 18-187, 18-188, 18-189, 18-190, 18-191, 18-193, 18-194, 18-195, 18-196, 18-202 and 18-213.3, Article 6, Division I. Prescribed Conditions, Special Use Prerequisites, and Accessory Uses and Structures, Secs. 18-265, 18-267, 18-270, 18-276, 18-277 and 18-292, and Article 15. Definitions, Sec. 18-812
<b>Applicant:</b>	City of Wilmington
<b>Presented By:</b>	Brian Chambers, Associate Planner
<b>Planning Commission Recommendation:</b>	<b>APPROVAL, 5-1</b>
<b>Staff Recommendation:</b>	<b>APPROVAL</b>

**This report has been modified since the August 4, 2010 Planning Commission meeting.**

### ***BACKGROUND***

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The proposed amendment would modify the means by which various care facilities are permitted, regulated and defined within the Land Development Code (LDC). These amendments would change the way in which “assisted living residence,” “day care,” “nursing home,” “retirement center and life care community,” and “family care home” uses are permitted, amend the separation requirements for “day care center” uses, amend the definitions for “assisted living care facility, elderly,” “day care, child,” “child day care home,” “group day facility,” “group home residential,” “nursing and personal care,” and “retirement center and life care community” and amend the supplemental development regulations for “nursing homes” and “assisted living residence.”

In the spring of 2002, a 12-member care facilities task force was formed to study group living facilities, to update the city’s regulations regarding care facilities to be consistent with the latest case law, the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA), and to ensure that the city can accommodate special needs housing for the disabled as defined in the ADA. The principal goals of the task force were to provide for special needs housing and, at the

same time, to preserve the residential character of neighborhoods. The task force included representatives of care facilities and residential neighborhoods. The task force produced various drafts of amendments to the city code regarding care facilities.

Thereafter, eight public hearings and two workshops were held in 2002 and 2003 before the Planning Commission and City Council to review, hear public comment, and consider the proposed code amendments. Through this process, amendments to the Zoning Ordinance were prepared to adequately provide for special needs housing and, at the same time, to promote integration of care facilities throughout the city so as to prevent clustering in any residential area and to preserve the character of residential neighborhoods. On March 18, 2003, the City Council adopted an ordinance that amended various city regulations regarding care facilities.

In May of 2006 the Federal District Court upheld the city's care facilities regulations under the FHA and ADA, including the city's separation requirements. The court did not uphold the city's two persons per bedroom requirement and supervision requirement. These two requirements were subsequently removed from the city's care facilities regulations.

In the fall of 2009, an applicant-initiated LDC amendment was brought forward that proposed to permit "nursing and personal care" as a use permitted by special use permit (SUP) in the multi-family zoning districts. The applicant ultimately withdrew this request. Due to the merit of the request, staff brought the amendment forward. Sound planning practice holds that it is appropriate to permit "nursing and personal care" in the multi-family districts, provided that the use is regulated in the same way as other group living facilities. This amendment was recommended for approval by the Planning Commission with a change to the proposed separation requirements for "nursing and personal care" in the multi-family districts.

On November 4, 2009, City Council continued the proposed amendment at the request of the City Attorney's Office (CAO) to allow the time for the CAO to review the impacts of the separation requirements that were recommended by the Planning Commission. During this review, several inconsistencies were discovered with regard to the city's regulation of care facilities. On February 2, 2010, City Council continued the proposed amendment a second time at the request of the CAO to allow time for the CAO, together with planning staff, to comprehensively review all care facilities regulations and bring back an amendment(s) that address these irregularities and improves these regulations. During this time, an applicant-initiated request was made to remove the separation requirements for day care centers associated with religious institutions in the residential districts. This request is included in the comprehensive review of care facilities performed by staff and has been incorporated into this amendment, as appropriate.

**On June 15, 2010, City Council continued the proposed amendment to their July 6, 2010 meeting to allow additional time for the public to review and comment on the proposed changes. On July 6, 2010, City Council voted to remand the proposal back to Planning Commission for further input and discussion. On August 4, 2010, the Planning Commission continued the proposed amendment at the request of planning staff to allow time for additional review and research. The proposed amendment has been modified as a result of this review.**

## **ANALYSIS**

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The proposed amendment includes 4 major changes to the city's care facilities regulations, summarized as follows:

**Permitted uses** – The proposed amendment would change the use categories for the following (see Attachment 7):

*Nursing home* – Permit by right in the MX and RFMU districts and with prescribed conditions in the O&I-1 and O&I-2 districts.

The proposed amendment would separate “nursing and personal care” into two uses: “nursing home” and “assisted living residence.” Nursing homes are currently permitted in the MX, RFMU, O&I-1, and O&I-2 districts by special use permit (SUP). Due to similarities between nursing homes and other group living facilities that are permitted with prescribed conditions in these districts, staff believes it is acceptable to also permit nursing homes with prescribed conditions in these districts. Similarities include the number of residents permitted in each facility, the building form, the impact on the surrounding neighborhoods, the provision of overnight accommodations for more than three unrelated persons, and similar SUP requirements.

*Assisted living residence* - Permit by right in the MX and RFMU districts, with prescribed conditions in the O&I-1 and O&I-2 districts, and by SUP in the multi-family, CB, RB, CBD, and MSMU districts.

The proposed amendment would separate “nursing and personal care” into two uses: “nursing home” and “assisted living residence.” “Assisted living care facility, elderly” is a use currently permitted within the South 17<sup>th</sup> Street Corridor regulations and is not listed anywhere else in the LDC. The proposal would also change “assisted living care facility, elderly” to “assisted living residence.” In addition to allowing assisted living residences in the same zoning districts and use categories as nursing homes, the proposal would also allow assisted living residences within the multi-family zoning districts by SUP. Due to the similarities between assisted living residences and group living facilities that are permitted by SUP in the multi-family districts, staff believes it is appropriate to also permit assisted living residences in these districts. Similarities include the number of residents permitted in each facility, the building form, the impact on the surrounding neighborhoods, and the provision of overnight accommodations for more than three unrelated persons. The proposal would also allow limited nonresidential uses associated with assisted living residences, such as incidental food service and personal services (e.g. salon, barber), provided these uses serve solely the residents of the assisted living residence. The proposed amendment is consistent with the purpose of the multi-family districts.

*Family care home* - Move from a use permitted by right to a use permitted with prescribed conditions in the residential, MHP, MF-L, MF-M, MF-MH, MF-H, HD, HD-MU and HD-R.

Allowing “family care home” as a use permitted by right in these districts is inconsistent with the intent of the supplemental development regulations prescribed for this use. Article 6 of the LDC requires a one-half-mile separation for all family care homes located within residential districts. It is implied that these uses are to meet these prescribed conditions; however, family care homes are currently permitted by right in these districts. Moving family care home to a use permitted under prescribed conditions would correct this inconsistency.

*Day care, adult or child* – Move from a use permitted by SUP in the CB, RB, and MX districts to a use permitted with prescribed conditions in the CB and RB districts and a use permitted by right in the MX district.

“Day care, adult or child” is currently permitted in the O&I-1, O&I-2, and CBD districts with prescribed conditions. Reclassifying to a use permitted with prescribed conditions in the CB and RB districts will make this use consistent with the other nonresidential districts. Day cares are currently permitted by right within the RFMU district. Reclassifying to a use permitted by right in the MX district makes the use consistent with the RFMU district and removes an unnecessary constraint as the development standards of the MX and RFMU districts are intended to regulate form more so than for specific uses.

Retirement center and life care community & nursing home - Move from a use permitted by SUP to a use permitted by right in the MX and RFMU districts.

“Retirement center and life care community” and “nursing and personal care” are both currently permitted by SUP in the MX and RFMU districts. Reclassifying to uses permitted by right removes an unnecessary constraint on these uses as the development standards of these districts are intended to regulate form more so than for specific uses.

**Separation Requirements** – The proposed amendment would change the separation requirements for the following:

Day care center – Remove the separation requirements for day care centers that are associated with permitted institutional uses within residential districts. Day care centers associated with “community centers,” “private recreation centers,” “religious institutions,” and “schools, primary and secondary” within any residential, HD, or HD-MU district would be permitted without a separation requirement.

All of these primary uses are currently allowed within these districts, either under prescribed conditions or by special use permit, without any separation requirement. Day care centers associated with these uses would still be required to obtain a special use permit when locating within any of these districts. The SUP requirement allows for additional oversight as well as additional stipulations to be placed upon these uses within the residential districts.

**Definitions** – The proposed amendment would change the definitions for the following:

Assisted living care facility, elderly – Replace “assisted living care facility, elderly” with “assisted living residence” and amend the definition to reference the relevant sections of the North Carolina General Statutes (NCGS).

Day care, child – Amend the definition of “daycare, child” to reference the relevant sections on the NCGS.

Child day care home – Replace “child day care home” with “family child care home” and amend the definition to reference the relevant sections of the NCGS.

Nursing and personal care – Replace “nursing and personal care” with “nursing home” and amend the definition to reference the relevant sections of the NCGS.

Retirement center and life care community – Provide a definition for “retirement center and life care community” within the LDC.

**Supplemental Development Regulations** – The proposed amendment would change the supplemental development regulations for the following:

Nursing home – Remove the occupancy limit, floor space requirement, and adequate supervision requirement from the supplemental development regulations for nursing homes.

All health care facilities must be licensed by the state and must adhere to all regulations prescribed by the NCGS. The occupancy, minimum floor space, and resident supervision requirements contained in the NCGS are satisfactory and including additional standards in the LDC is unnecessary.

Assisted living residence – Provide supplemental development regulations for assisted living residences.

The proposal would allow assisted living residences within several zoning districts by either prescribed conditions or SUP. The amendment would provide standards that would be applied to assisted living residences within these districts.

## **JUSTIFICATION**

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Wilmington is now nearly 90% built-out. Nationwide, our population is aging. It is critical that we allow for housing options for all ages and “classes” of people. The city must prepare for the maturing of our community. The baby boomers are rapidly approaching retirement age, with the trend expected to peak in 2030, when the number of people in the U.S. over the age of 65 will reach 71.5 million, or 1 in every 5 Americans (more than twice their number in 2000) and the number of people in New Hanover County over the age of 65 will reach 83,000, or 1 in every 3 residents.

Safe and easy access to services and amenities and the basic components of daily life are critical needs for any community. Too often, our development pattern has been formed around the automobile and the elderly (as well as youth, the disabled, and the impoverished) become isolated and unable to reach their daily needs. Multi-family districts are well suited for putting residents within reach of these components. Land use plans, policies, and regulations that enable and encourage housing in proximity to services support the formation of intergenerational, mixed-income communities. Allowing “assisted living residence” in multi-family districts is appropriate because it functions in a similar manner to other group living facilities permitted in these districts.

A fundamental element to the quality of life of a community is the livability of its neighborhoods, including limitations on congestion, traffic, parking and noise. Existing use categories and separation requirements provide for care facilities throughout the city without institutionalizing any neighborhood. To remain effective, these standards must be applied logically and consistently. The proposed amendment is intended to place all care facility uses within their correct use categories within each zoning district in which they are permitted.

The amendment places all care facility uses in the appropriate use category based upon the purpose of the district and suitability of these uses within each district. Since care facilities are institutional uses it is appropriate for these uses to be permitted within the office and institutional districts with the least possible restriction. Allowing care facility uses in the O&I-1 and O&I-2 districts with prescribed conditions as opposed to requiring an SUP removes an unnecessary barrier as these districts are the most appropriate place for care facilities to locate.

Limited institutional uses are appropriate for neighborhoods as they strengthen the social fabric and provide needed amenities and services for the community. Churches, schools, and similar

institutional uses are currently permitted in the residential districts with no separation requirement. Day care centers are also permitted within the residential districts but must adhere to a one-half-mile separation requirement between centers. Allowing day care centers as an accessory use to currently permitted institutional uses within the residential districts is appropriate. Allowing currently permitted institutional uses to provide day care services fortifies their relationship with the community and serves the daily needs of its residents.

All health care facilities must be licensed by the state and must adhere to all applicable regulations prescribed by the NCGS. The LDC also provides supplemental regulations for individual uses within each zoning district, including "nursing homes." The amendment would eliminate several regulations from the development standards for "nursing homes." The amendment would remove the occupancy, minimum floor space, and resident supervision requirements for "nursing homes." These standards are adequately addressed by the NCGS and including them in the LDC is both unnecessary and redundant.

**PROPOSED AMENDMENT**

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Additions are underlined and deletions are in ~~strikethrough~~.

Amend Article 5, Division II. District Regulations, Sections 18-177, 18-178, 18-179, 18-180, 18-181, 18-182, 18-183, 18-184, 18-185, 18-187, 18-188, 18-189, 18-190, 18-191, 18-193, 18-194, 18-195, 18-196, 18-202 and 18-213.3.

**Sec. 18-177. R-20, Residential District**

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(b) *Uses permitted by right.*

\*\*\*

(2) ~~Family care home~~ Reserved.

(c) *Uses permitted under prescribed conditions.*

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(9) Family care home.

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**Sec. 18-178. R-15, Residential District**

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(b) *Uses permitted by right.*

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(2) ~~Family care home~~ Reserved.

(c) *Uses permitted under prescribed conditions.*

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(10) Family care home.

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**Sec. 18-179. R-10, Residential District**

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(b) *Uses permitted by right.*

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(2) ~~Family care home~~ Reserved.

(c) *Uses permitted under prescribed conditions.*

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(9) Family care home.

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**Sec. 18-180. R-7, Residential District**

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(b) *Uses permitted by right.*

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(2) ~~Family care home~~ Reserved.

(c) *Uses permitted under prescribed conditions.*

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(9) Family care home.

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**Sec. 18-181. R-5, Residential District**

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(b) *Uses permitted by right.*

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(3) ~~Family care home~~ Reserved.

(c) *Uses permitted under prescribed conditions.*

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(9) Family care home.

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**Sec. 18-182. R-3, Residential District**

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(b) *Uses permitted by right.*

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(2) ~~Family care home~~ Reserved.

(c) *Uses permitted under prescribed conditions.*

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(8) Family care home.

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**Sec. 18-183. MHP, Manufactured Housing Park District**

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(d) *Uses permitted by right.*

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(1) ~~Family care home~~ Reserved.

(e) *Uses permitted under prescribed conditions.*

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(7) Family care home.

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**Sec. 18-184. Multifamily Residential Districts (MF-L, MF-M, MF-MH, MF-H)**

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(b) *Uses permitted by right.*

\*\*\*

(5) ~~Family care home~~ Reserved.

(c) *Uses permitted under prescribed conditions.*

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(11) Family care home.

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(d) *Permitted by special use permit.*

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(10) Assisted living residence.

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**Sec. 18-185. MX, Mixed Use District**

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(c) *Permitted uses.*

(1) *Principal uses.*

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d. *Institutional, quasi-public use, or public use category:*

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iii. ~~Nursing homes and personal care, by special use permit.~~

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iv. ~~Day care, adult or child, by special use permit.~~

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viii. ~~Retirement centers and life care communities, by special use permit.~~

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xii. Assisted living residence.

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**Sec. 18-187. HD, Historic District**

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(d) *Uses permitted by right.*

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(2) ~~Family care home~~ Reserved.

(e) *Uses permitted under prescribed conditions.*

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(3) Family care home.

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**Sec. 18-188. HD-MU, Historic District-Mixed Use**

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(d) *Uses permitted by right.*

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(6) ~~Family care home~~ Reserved.

(e) *Uses permitted under prescribed conditions.*

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(5) Family care home.

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**Sec. 18-189. HD-R, Historic District-Residential**

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(e) *Uses permitted by right.*

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(1) ~~Family care home~~ Reserved.

(f) *Uses permitted under prescribed conditions.*

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(3) Family care home.

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**Sec. 18-190. O&I-1, Office and Institutional District 1.**

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(c) *Uses permitted under prescribed conditions.*

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(15) Assisted living residence.

(16) Nursing homes.

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(d) *Permitted by special use permit.*

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~~(6) Nursing and personal care~~ Reserved.

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**Sec. 18-191. O&I-2, Office and Institutional District 2.**

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(c) *Uses permitted under prescribed conditions.*

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(17) Assisted living residence.

(18) Nursing homes.

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(d) *Permitted by special use permit.*

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~~(6) Nursing and personal care~~ Reserved.

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**Sec. 18-193. MSMU, Main Street Mixed Use.**

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(d) *Permitted by special use permit.*

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~~(3) Nursing homes and personal care.~~

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(4) Assisted living residence.

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**Sec. 18-194. CB, Community Business District.**

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(c) *Uses permitted under prescribed conditions.*

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(23) Day care, adult or child.

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(d) *Permitted by special use permit.*

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~~(1) Day care, adult or child~~ Assisted living residence.

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~~(7) Nursing homes and personal care.~~

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**Sec. 18-195. RB, Regional Business District.**

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(c) *Uses permitted under prescribed conditions.*

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(22) Day care, adult or child.

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(d) *Permitted by special use permit.*

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(1) ~~Day care, adult or child~~ Assisted living residence.

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(7) ~~Nursing homes and personal care.~~

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**Sec. 18-196. CBD, Central Business District.**

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(d) *Permitted by special use permit.*

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(7) ~~Nursing homes and personal care.~~

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(9) Assisted living residence.

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**Sec. 18-202. RFMU, Riverfront Mixed Use District**

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(c) *Permitted uses.*

(1) *Principal uses:*

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d. *Institutional, quasi-public use, or public use category.*

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iv. ~~Nursing homes and personal care, by special use permit.~~

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vi. ~~Retirement center and life care community, by special use permit.~~

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vii. Assisted living residence.

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**Sec. 213.3. South 17<sup>th</sup> Street/Independence Boulevard Corridor regulations.**

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(a) For all new residential and nonresidential construction within the study area, the following standards shall apply:

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(3) *Districts and uses.*

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e. Planned Development District (PD) regulations.

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iv. *Office and Institutional.*

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c. ~~Assisted living-care facility, elderly residence.~~

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Amend Article 6, Division I. Prescribed Conditions, Special Use Prerequisites, and Accessory Uses and Structures, Sections 18-265, 18-276, and 18-292.

**Sec. 18-265. Day care, adult or child.**

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(a) In any residential district and in the HD and HD-MU districts, all signs shall be non-

illuminated and shall not exceed four (4) square feet in area.

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- (e) Child day care centers licensed for six (6) to twenty-nine (29) children, inclusive, shall have seventy-five (75) square feet per child of outdoor play area for the total number of children for which the center is licensed. In addition, the total number of children on the playground shall not exceed the number the space will accommodate at seventy-five (75) square feet per child.

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- (i) In any residential district and in the HD and HD-MU districts, whether contiguous or not, adult day care and child day care centers shall not be located closer than a one-half (1/2) mile radius from any existing permitted adult day care and child day care center in a residential district. This separation requirement shall not apply to day care centers that are accessory to community centers, private recreation centers, religious institutions, or primary and secondary schools located in any residential district and in the HD and HD-MU districts. The distance between the proposed use and the existing permitted adult day care or child day care center shall be measured by following a straight line from the nearest point of the lot line of the proposed use to the nearest point of the lot line of the lot on which the existing permitted use is located.

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**Sec. 18-276 Group home supportive small, medium and large, family care home, group home residential: separation requirements.**

(a) A proposed family care home shall be located no closer than within a one-half-mile radius from an existing permitted family care home within any single-family residential, MHP, HD-R, HD, and HD-MU ~~and MX~~ Districts whether contiguous or not.

(b) A proposed group home residential shall be located no closer than within a one-mile radius from any existing permitted group home residential, group home supportive small, group home supportive medium, group home supportive large, or family care home within any residential, MHP, HD-R, HD, and HD-MU ~~and MX~~ Districts whether contiguous or not.

(c) A proposed group home supportive small, medium, or large shall be located no closer than within a one-half-mile radius from any existing permitted group home supportive small, medium or large, family care home, and a one-mile radius from any existing permitted group home residential within any residential, MHP, HD-R, HD, and HD-MU ~~and MX~~ Districts whether contiguous or not. There shall be no separation requirement for any family care home, group home supportive small and group home supportive medium in multifamily residential districts.

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**Sec. 18-292. Nursing homes and personal care.**

Nursing homes and personal care facilities shall comply with all requirements of the North Carolina General Statutes (NCGS) and the following:

- (a) The minimum lot size shall be fifteen thousand (15,000) square feet.
- (b) There shall be a floor plan showing the number of residential units ~~and the residential quarters for the resident supervisory personnel.~~

- (c) ~~There shall be no more than two (2) residents occupying a bedroom, and the usable floor space shall be no less than two hundred fifty (250) square feet per resident~~ Reserved.
- (d) There shall be a management plan submitted with the application for a special use permit that includes at a minimum the following:
- (1) ~~A plan of supervision that includes adequate supervision provided twenty-four (24) hours per day by full-time, compensated, on-premises resident supervisory personnel associated with the facility and said personnel shall be of a level sufficient to adequately supervise the residents and to monitor and enforce the other requirements of this section. Adequate supervision shall also be provided in accordance with any licensing requirement. If a license is not required or does not require adequate supervision, then the fraternity or sorority house shall also have written operating procedures or manual, established goals and objectives for residents, and a structured system of management with a board of directors. Any more than three (3) final determinations of violations of the City Code and/or criminal convictions related to the premises within one (1) month, or six (6) within one (1) year shall constitute inadequate supervision and a violation of the special use permit. Offenders shall include property owners as well as lessees, tenants, residents, and occupants~~ Reserved.
  - (2) A plan for noise and solid waste management approved as part of the management and site plan.
  - (3) Adequate provision for the recreation and laundry needs of the residents.
  - (4) Projected maximum number of residents and resident supervisory personnel.
- (e) The density for nursing homes ~~and personal care facilities~~ shall be that permitted for multiple family housing units in the zoning district in which the nursing home ~~or personal care facility~~ is located. This density shall be determined as follows: when the cooking and restroom facilities are located within the individual units of accommodation (apartment format), each individual unit of accommodation shall be deemed to be equivalent to a single housing unit; and when the individual units of accommodation are served by common cooking or restroom facilities, the equivalent density shall be based on the number of residents, with each three (3) residents being deemed equal to one (1) housing unit for density calculation purposes.
- (f) The site design of nursing homes ~~and personal care facilities~~ shall orient all recreational areas, front of buildings, parking facilities, and other sources of activity away from any adjoining residentially-zoned areas. For new construction, the facade of the structure shall be designed to be architecturally compatible with the streetscape of the district in which it is located. Any proposed change to the facade of an existing structure shall be architecturally compatible with the surrounding neighborhood.
- (g) The nursing home ~~or personal care facility~~ shall not be established, constructed, expanded, altered, changed, operated, or occupied, except in accordance with

the Minimum Housing Code and Abandoned Structures Ordinance, and all applicable federal, state, and local regulations, including but not limited to any licensing requirements.

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**Sec. 18-321. Assisted living residence.**

Assisted living residences shall comply with all requirements of the North Carolina General Statutes (NCGS) and the following:

- (a) The minimum lot size shall be fifteen thousand (15,000) square feet.
- (b) There shall be a floor plan showing the number of residential units.
- (c) There shall be a management plan submitted with the application for a special use permit that includes at a minimum the following:
  - (1) A plan for noise and solid waste management approved as part of the management and site plan.
  - (2) Adequate provision for the recreation and laundry needs of the residents.
  - (3) Projected maximum number of residents and resident supervisory personnel.
- (d) The density for assisted living residences shall be determined as follows: when the cooking and restroom facilities are located within the individual units of accommodation (apartment format), each individual unit of accommodation shall be deemed to be equivalent to a single housing unit; and when the individual units of accommodation are served by common cooking or restroom facilities, the equivalent density shall be based on the number of residents, with each three (3) residents being deemed equal to one (1) housing unit for density calculation purposes.
- (e) The site design of assisted living residences shall orient all recreational areas, front of buildings, parking facilities, and other sources of activity away from any adjoining residentially-zoned areas. For new construction, the facade of the structure shall be designed to be architecturally compatible with the streetscape of the district in which it is located. Any proposed change to the facade of an existing structure shall be architecturally compatible with the surrounding neighborhood.
- (f) The assisted living residence shall not be established, constructed, expanded, altered, changed, operated, or occupied, except in accordance with the Minimum Housing Code and Abandoned Structures Ordinance, and all applicable federal, state, and local regulations, including but not limited to any licensing requirements.
- (g) Limited nonresidential uses, such as incidental food service and personal services, in the manner of internal service facilities, may be permitted, provided such facilities are designed to serve solely the residents of and occasional visitors to the assisted living residence use.

**Secs. 18-320322-18-339. Reserved.**

Amend Article 9. Off-Street Parking and Loading; Driveways, Section 18-532.

**Sec. 18-532. Parking schedule.**

USES	REQUIRED NUMBER OF OFF-STREET PARKING SPACES	
	Maximum	Minimum
Related Residential Uses ***	***	***
Nursing <del>homes and personal care facilities</del>		1 per 4 beds and 1 per supervisor and staff person
Assisted living residence		1 per 4 beds and 1 per supervisor and staff person

Amend Article 15. Definitions, Section 18-812.

**Sec. 18-812. Definitions.**

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Assisted living care facility, elderly residence: ~~An e~~Establishments licensed pursuant to N.C.G.S. Chapter 131D primarily engaged in the provision of residential, social, and personal care for the elderly who have some limits on their ability for self-care, but where medical care is not a major element of the services provided at the facility. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E.

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Day care, child: ~~A place facility licensed pursuant to N.C.G.S. Chapter 110, Article 7 that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit receiving a payment, fee, or grant for the care of for three (3) or more preschool-age children or nine (9) or more school-age children more than five (5) children, thirteen (13) years of age or less, for more than four (4) hours per day, without transfer of custody.~~

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Family Cchild day care home: ~~A home or facility, registered in G.S. article 7 of Chapter 110 licensed pursuant to G.S. Chapter 110, Article 7,~~ wherein at least two (2) but not more than eight (8) ~~five (5)~~ children less than (13) years of age receive care away from their own home by persons other than their own parents, legal guardians, or relatives within the fourth degree of kinship, on a regular basis more than once per week for more than four (4) hours per day. The facility must operate twelve (12) hours per day or less. All children other than the children of the operator must be counted. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment are not included, provided there is no paid staff. Family Cchild day care homes shall be considered a home occupation. The operator of the home must reside on the premises. The home must meet applicable requirements of the North Carolina State Building Code. Family Cchild day care homes are permitted by right in all residential districts.

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*Group day facility:* Establishments primarily engaged in the provision of day-care, shelter, or supervision of persons that does not include overnight accommodations. A group day facility is only permitted in a residential district as an accessory use to a religious institution and excludes child day care center, family child day-care home and adult day care center.

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*Group home residential:* Establishments primarily engaged in the provision of care or supervision of persons that includes over night accommodations. This definition does not include: dormitories; fraternity and sorority houses; associations or organizations, civic, social and fraternal; hospitals; motels and hotels; nursing homes and personal care facilities; schools; guest lodging; group home supportive small; group home supportive medium; group home supportive large; and any other similar uses that provide overnight accommodations.

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*Nursing home and personal care:* Establishments licensed pursuant to G.S. Chapter 131E, Article 6 primarily engaged in providing some nursing and health related personal care, but not continuing nursing services. A nursing home provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. These establishments have at least one (1) shift with a licensed or registered nurse to provide routine health care and observation. Included are rest homes, convalescent homes, and other institutions where health care is a major element.

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*Retirement center and life care community -* A development that allows residents to age in place with flexible accommodations designed to meet health and housing needs as they change over time. These communities may include personal services, nursing care, and recreation amenities all collocated to enable seniors to remain within the community as they age.

## **CONCLUSIONS / RECOMMENDATION**

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Our population is aging and it is critical that we provide housing options that allow our citizens to age in place. Our citizens need to have safe and convenient access to the services and amenities they require. Multi-family districts are well suited to put residents in close proximity to their daily needs. Assisted living residences function in a similar manner to other group living facilities and allowing assisted living residences within multi-family districts is appropriate. Allowing assisted living residences to locate within multi-family districts will make it easier for our aging residents to find safe and convenient housing throughout the community.

Limited institutional uses are appropriate in residential districts as they reinforce a sense of community and provide desired neighborhood amenities. Schools, churches, and similar institutional uses are currently permitted within residential areas without any separation requirements. Allowing day care centers associated with these uses without a separation requirement is appropriate as it treats all of these uses in a similar manner.

Existing use categories and separation requirements provide for care facilities throughout the city without institutionalizing any neighborhood. The proposed amendment corrects several inconsistencies found within the LDC regarding the means by which care facilities are permitted,

regulated and defined. The proposed amendment improves the regulation of care facilities by applying appropriate use categories, supplemental regulations, and separation requirements and making definitions concurrent with state statutes. Therefore, staff recommends **approval** this amendment.

***NEIGHBORHOOD CONTACT***

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<b>City Notifications:</b>	<b>Planning Commission</b>	<b>City Council</b>
Signs Posted	N/A	N/A
Adjacent Letters	N/A	N/A
Advertisement Dates	7/30/10	9/24/10 & 10/1/10

**General Inquiries:** Robert Steenson, Matt Nichols, Annette Walton, Morris Massey, Johnnie Henagan, Alvin Rogers

***ACTIONS TO DATE***

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In the fall of 2009, an applicant-initiated LDC amendment was brought forward that proposed to permit “nursing and personal care” as a use permitted by special use permit in the multi-family zoning districts. The applicant ultimately withdrew this request; however, due to the merit of the request staff brought the amendment forward to Planning Commission at their October 2009 meeting.

**Planning Commission:** 10/7/09, Recommended approval, 6-0

The proposal that was presented to Planning Commission at their 10/7/09 was to permit “nursing and personal care” as a use permitted by special use permit in the multi-family zoning districts with a 1-mile separation requirement. During the public hearing one citizen spoke in favor of the amendment, but suggested the 1-mile separation requirement be removed. After discussion with staff and the Assistant City Attorney, Planning Commission unanimously voted to approve the amendment, but with a ¼-mile separation requirement. Planning Commission’s recommended language for Sec. 18-292(h) was as follows:

- (h) For proposed nursing and personal care facilities located within the multi-family districts, the use shall not locate closer than a one-quarter (1/4) mile radius from any existing permitted nursing and personal care, private dormitory, fraternity house, sorority house, guest lodge, family care home, group home supportive small, group home supportive, medium, group home supportive, large, and group home residential in a residential district. The distance between the proposed use and the existing permitted nursing and personal care, private dormitory, fraternity house, sorority house, guest lodge, family care home, group home supportive small, group home supportive, medium, group home supportive, large, and group home supportive residential shall be measured by following a straight line from the nearest point of the lot line of the proposed use to the nearest point of the lot line of the lot on which the existing permitted use is located.

**City Council:** 11/4/09, continued to 2/2/10, 6-0

At the November 4, 2009 City Council meeting, the City Attorney’s Office (CAO) requested that the proposal be continued in order to allow time for the CAO, together with planning staff, to

review the impacts of the separation requirement that was recommended by the Planning Commission. City Council voted unanimously to continue this item to their 2/2/10 meeting.

**City Council:** 2/2/10, continued to 6/15/10, 6-0

During staff's review of the Planning Commission's recommended separation requirement, a number of irregularities were discovered within the city's care facilities regulations. At the February 2, 2010 City Council meeting, the CAO requested that the proposal be continued a second time to allow time for the CAO, together with planning staff, to comprehensively review all care facilities regulations and bring back an amendment to address these irregularities and improve the regulations. City Council voted unanimously to continue the proposal to their June 15<sup>th</sup> meeting.

During this time, an applicant-initiated request was made to remove the separation requirement for day care centers associated with religious institutions. This request was included in the comprehensive review of care facilities performed by staff and has been incorporated into this proposal, as appropriate.

**City Council:** 6/15/10, continued to 7/6/10, 7-0

At the June 15, 2010 meeting, staff presented a proposal that included several amendments that would change the means by which various care facility uses are permitted, regulated and defined. In addition to the original proposal to allow nursing and personal care facilities within the multi-family zoning districts, these amendments would change the use categories, separation requirements, and definitions for several care facility uses. One citizen spoke in support of the proposal stating he was in favor of the amendment that would remove the separation requirement for day care centers associated with religious institutions. Three citizens had questions about the need for and impacts of the proposed amendments. There was a brief discussion among council members about the potential impacts of the proposed amendments. City Council continued the item to their July 6, 2010 meeting, requesting additional information and to allow additional time for the public to review and comment on the proposed changes. The proposed amendments were posted on the city's website for public review.

**City Council:** 7/6/10, remanded to Planning Commission, 7-0

Several citizens spoke in opposition to the proposed amendments, specifically to the proposed change in the group home residential separation requirement. One citizen spoke in favor of the proposed change that would remove the separation requirement for day care centers associated with religious institutions. After discussion, City Council voted unanimously to remand the item back to Planning Commission for further input and discussion.

**Planning Commission:** 8/4/10, continued to 9/1/10, 7-0

Staff provided a brief history of the proposed amendments and requested that the item be continued to the 9/1/10 Planning Commission meeting to allow time for additional review and research. After discussion, the Planning Commission voted unanimously to continue the item to their September 1, 2010 meeting. The proposed amendment has been modified based upon the additional research and review performed by staff.

**Planning Commission:** 9/1/10, Recommended approval, 5-1

Staff provided an overview of the revised amendments. These revisions include removing all amendments to the group care facility regulations. The focus of the revised amendments is now limited to nursing, assisted living, and day care facilities. One citizen spoke in favor of the item

stating the proposal would benefit the community by allowing more opportunities for assisted living facilities to locate within the city. Three citizens spoke in opposition to the item stating that the group home regulations should not be altered, group home uses should require a special use permit in the residential districts, and that the care facility definitions should not reference the state statutes. The Planning Commission discussed the reasoning behind removing the amendments to the group living facility uses. After discussion, the Planning Commission voted 5-1 to recommend approval of the item and also recommended that the City Council consider a comprehensive study specifically of the group home regulations.

**City Council:** Scheduled for public hearing 10/5/10

## ***ATTACHMENTS***

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1. Table of care facilities information and proposed amendments
2. Planning Commission recommendation
3. October 7, 2009 Planning Commission minutes
4. February 2, 2010 City Council Minutes
5. June 15, 2010 City Council Minutes
6. August 4, 2010 Planning Commission Minutes
7. September 1, 2010 Planning Commission Minutes
8. Ordinance