



JAMES M. GILLETTE
Law Director & Police Prosecutor
PNC Bank Building
117 South Street, Suite 208
Chardon, Ohio 44024

(440) 286-2669
LAW DIRECTOR

(440) 285-2222
564-7131
834-5830

POLICE PROSECUTOR

(440) 286-1207
FAX

MEMORANDUM

To: Members of Council and staff
From: James M. Gillette, Law Director
Re: Adult Care Facility, 114 Water Street
Date: August 12, 2015

LEGAL BACKGROUND

Federal Fair Housing Act (F.H.A.)

The Federal Fair Housing Act prohibits discrimination against protected classes. Individuals with a physical or mental handicap comprise a protected class; the class includes recovering alcoholics and drug abusers/addicts.

Ohio Revised Code (O.R.C.)

In 2013, the State of Ohio combined the agencies which administered the mental health and drug and alcohol abuse programs into one, the Department of Mental Health and Addiction Services.

Addiction is defined as the chronic and habitual use of alcoholic beverages and/or drugs, and gambling, which the individual no longer can control and results in a dependence by the individual which causes psychological difficulties endangering the health, safety or welfare of the person. Section 5119.01(A)(1) O.R.C.

Mental illness is a "substantial disorder of thought, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality, or the ability to meet the ordinary demands of life". Section 5119.01(A)(12) O.R.C.

A *residential facility* is regulated and licensed by the State. One category of residential facility provides "accommodations, supervision and personal care services" for three to 16 unrelated adults. Section 5119.34(A)(9). *Personal care services* include "assisting residents with activities of daily living." Section 5119.34(A)(8). *Supervision* is monitoring to ensure the resident's health, safety and welfare while engaging in activities of daily living or other activities. Section 5119.34(A)(13)(a). A *residential facility* does not include "alcohol or drug addiction services certified pursuant to §5119.36 of the Revised Code." Section 5119.34(A)(10)(f).

The Ohio Department of Mental Health and Addiction Services (ODMHAS) certifies and regulates agencies which provide community addiction services. Section 5119.36 O.R.C. Lake Geauga Recovery Services, Inc., an Ohio non-profit corporation ("Lake Geauga"), is certified by ODMHAS to provide community addiction services and receives government funding.

Mental Illness vs. Addiction

Mental illness is a substantial disorder that grossly impairs one's ability to meet the ordinary demands of life. *Addiction* causes psychological difficulties endangering the health, safety or welfare of an individual or others. *Addiction* and *mental illness* are identified as different conditions; however addiction falls within the definition of a mental illness. The American Psychiatric Association and the Social Security Administration both recognize substance abuse as a mental impairment which may be so severe that it prevents an individual from working.

Application of zoning under the Ohio Revised Code and Codified Ordinances.

Attached is §15:15 of *Ohio Planning and Zoning Law* which includes the text of §5119.341 of the Ohio Revised Code in footnote 2. The statute provides that a residential facility meeting the criteria described above is "a permitted use in any residential district or zone, including any single-family residential district or zone of any political subdivision." A residential facility that provides accommodations and personal care services for one to five unrelated persons is a permitted use in all residential zoning districts within the City of Chardon.

Does the Ohio Revised Code allow the proposed use at 114 Water Street in an R2 Residential District? Providing alcohol or drug addiction services disqualifies a use as a residential facility. The application, correspondence and other documentation from Lake Geauga indicate that alcohol and drug addiction services will not be provided at 114 Water Street. The impairment of the residents is not so severe that they require further treatment or constant supervision. The men must be clean and sober, employed, pay rent, remain abstinent, participate in drug testing, attend at least four AA or NA meetings a week, and have a sponsor in the program of Alcoholics Anonymous or Narcotics Anonymous; they are not required to receive services from Lake Geauga to qualify.

Codified Ordinances.

Section 1103.03(A)(174), Codified Ordinances (C.O.) defines *residential facility*. Section 1103.03(A)(4) defines an *adult care facility*. Sections 1133.03 and 1135.03(e) restrict an adult family home (residential facility) to no more than five residents in the R1, R2, R3 and R4 Residential-zoning-districts-as-a-permitted-use. The proposed use at 114 Water Street falls within the City's requirements for an adult care facility in all respects. Upon the effective date of HB 483, the use must be licensed to receive State funding.

Before approving the zoning application and issuing the zoning permit, Planning and Zoning Administration Steve Yaney asked me to review the application and codified ordinances. I reviewed the application, discussed it with Melanie Blasco, Executive Director of Lake Geauga, Dan Laux, a Board member, and Steve Yaney. I concluded that the proposed use falls within the purpose and spirit of an adult care facility and a residential facility. The Zoning application was approved as a similar use. Section 1109.03(b)(13)(A).

Is review of the zoning certificate permitted by the Council or the Planning Commission?

The Planning and Zoning Administrator is the sole authority to issue a zoning certificate for a permitted use. The Ohio Revised Code and codified ordinances do not allow an appeal to Council or the Planning Commission. Review by the Council or Planning Commission would require "rubber stamp" approval since the proposed use complies with all requirements of the codified ordinances.

An appeal of the zoning certificate is permitted pursuant to Chapter 2106 of the Ohio Revised Code by filing a complaint, or lawsuit, in the Geauga County Court of Common Pleas. The suit may be filed by an individual with "standing" to challenge the issuance of the zoning certificate. The abutting property owners, and those who own property within close proximity to the proposed use, have "standing" under Ohio law. The City of Chardon does not have standing to appeal its decision.

CONCLUSION

Lake Geauga Recovery Center, Inc., an Ohio non-profit corporation, is licensed by the State of Ohio to provide addiction services. The agency has applied for and received a zoning certificate to use the premises located at 114 Water Street as a residential facility. The premises are located in an R2 Residential zoning district. The Ohio Revised Code preempts local zoning and allows a residential facility in any residential zoning district. Although a use which includes "alcohol or drug addiction services" by an agency certified under the Ohio Revised Code is not a residential facility, those services will not be provided at 114 Water Street. The one to five unrelated male residents will receive supervision of and assistance with activities of daily living from a house manager. Requirements for admission include completion of a drug and alcohol program, total abstinence, employment, paying rent, attending at least four AA or NA meetings per week and an NA or AA sponsor.

The house at 114 Water Street complies with the O.R.C. definition as a residential facility providing accommodations and personal care services for one to five unrelated persons. ~~The premises are a permitted use within any residential zoning district per the O.R.C.~~ The State of Ohio has "preempted" zoning regulation by local governments, and a political subdivision has no authority to regulate a residential facility that complies with Section 5119.341(A) of the Ohio Revised Code.

The use is also a permitted use within an R2 Residential zoning district either as a residential facility or an adult family home under the Codified Ordinances. The residential facility is not required to be licensed by the State of Ohio at the present time, but a license will be required when HB483 becomes effective. The use of 114 Water Street as a residential facility for one to five unrelated males who are recovering from drug and/or alcohol addiction is permitted by both the Ohio Revised Code and the Codified Ordinances.

Page 4

August 12, 2015

If the City of Chardon were to prevent the use of 114 Water Street as a residential facility, it is my opinion as Law Director that the City of Chardon would be subject to potential liability not only for violating the Ohio Revised Code but also the Federal Fair Housing Act which prevents discrimination in housing against recovering alcoholics and addicts.

END OF MEMORANDUM

Westlaw.

OHPLZL § 15:15
Oh. Plan. & Zoning L. § 15:15 (2015 ed.)

Page 1

Baldwin's Ohio Handbook Series Ohio Planning and Zoning Law
Database updated June 2015

Stuart Meck and Kenneth Pearlman

Chapter

15. Other State Statutes Affecting Planning and Land Use Control
Housing and Building**§ 15:15. Group homes for the physically and mentally disabled— Residential facilities (mental illness); relationship to zoning****Legal Encyclopedias**

Ohio Jurisprudence 3d, Buildings, Zoning, and Land Controls § 348

The Department of Mental Health and Addiction Services licenses residential facilities under RC 5119.34. A residential facility is a publicly or privately operated home or facility that provides accommodations, supervision, personal care services, and community mental health services to adults and children with mental illness or severe mental disabilities, and the occupancy can range from one up to 16 unrelated adults in various treatment categories.[1] The licensing procedures are beyond the scope of this treatise. However, RC 5119.341 contains extensive provisions that affect how local governments may regulate such facilities through zoning and architectural design controls.[2]

[FN1] RC 5119.34(A)(9). This contains the full definition of a residential facility.

[FN2] RC 5119.341 provides in full:

(A) Any person may operate a residential facility providing accommodations and personal care services for one to five unrelated persons and licensed as a residential facility that meets the criteria specified in division (A)(9)(b) of section 5119.34 of the Revised Code as a permitted use in any residential district or zone, including any single-family residential district or zone of any political subdivision. Such facilities may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.

(B) Any person may operate a residential facility providing accommodations and personal care services for six to sixteen persons and licensed as a residential facility that meets the criteria specified in division (A)(9)(b) of section 5119.34 of the Revised Code as a permitted use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a zoning ordinance or resolution establishing planned-unit developments as

© 2015 Thomson Reuters. No Claim to Orig. US Gov. Works.

defined in section 519.021 of the Revised Code may exclude such facilities from such districts, and a political subdivision that has enacted a zoning ordinance or resolution may regulate such facilities in multiple-family residential districts or zones as a conditionally permitted use or special exception, in either case, under reasonable and specific standards and conditions set out in the zoning ordinance or resolution to:

(1) Require the architectural design and site layout of the home and the location, nature, and height of any walls, screens, and fences to be compatible with adjoining land uses and the residential character of the neighborhood;

(2) Require compliance with yard, parking, and sign regulation.

(C) Divisions (A) and (B) of this section do not affect any right of a political subdivision to permit a person to operate a residential facility licensed under section 5119.34 of the Revised Code in a single-family residential district or zone under conditions established by the political subdivision.

(D)

(1) Notwithstanding divisions (A) and (B) of this section and except as provided in division (D)(2) of this section, a political subdivision that has enacted a zoning ordinance or resolution may limit the excessive concentration of licensed residential facilities that meet the criteria specified in division (A)(9)(b) of section 5119.34 of the Revised Code.

(2) Division (D)(1) of this section does not authorize a political subdivision to prevent or limit the continued existence and operation of residential facilities existing and operating on September 10, 2012, and that meet the criteria specified in division (A)(9)(b) of section 5119.34 of the Revised Code. A political subdivision may consider the existence of such facilities for the purpose of limiting the excessive concentration of such facilities that meet the criteria specified in division (A)(9)(b) of section 5119.34 of the Revised Code that are not existing and operating on September 10, 2012.

Westlaw. © 2015 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

OHPLZL § 15:15

END OF DOCUMENT

© 2015 Thomson Reuters. No Claim to Orig. US Gov. Works.