

TOWNSHIP OF MOORESTOWN

ORDINANCE NO. 7-2024

**AMENDING CHAPTER 180 OF THE CODE OF THE TOWNSHIP OF MOORESTOWN
ENTITLED “ZONING” TO DEFINE AND REGULATE COOPERATIVE SOBER
LIVING FACILITIES IN A MANNER CONSISTENT WITH THE FAIR HOUSING ACT
AND APPLICABLE STATE RULES**

WHEREAS, the Moorestown Township Council wishes to adopt an amendment to the Township zoning ordinance with respect to Cooperative Sober Living Facilities; and

WHEREAS, N.J.S.A. 40:55D-66.1 permits certain community residences in all residential districts of a municipalities stating that the requirements thereof shall be the same as for a single-family dwelling unit located within such districts; and

WHEREAS, the Township of Moorestown recognizes that the Fair Housing Act, as amended (42 U.S.C. § 3601) provides protections for persons with disabilities; and

WHEREAS, the Fair Housing Act does not preempt local zoning laws or preclude the adoption, amendment, or enforcement of zoning regulations by the Township of Moorestown pursuant to its local police powers as long as the zoning regulations are consistent with state and federal law, including the Fair Housing Act as amended; and

WHEREAS, the legislative history of the Fair Housing Amendments Act of 1988 cautions that local zoning regulations that result “from false or over protective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose” are prohibited. H. R. Rep. No. 711, 100th Cong. 2D Session, reprinted in 1988 U.S.C.C.A.N. 2173, 2192 (1988); and

WHEREAS, the State of New Jersey has recognized the social and public health impacts of substance abuse and addiction, and established the Office of the New Jersey Coordinator of Addiction Responses and Enforcement Strategies (NJ CARES) and the preparation of an annual Recovery Housing Program Action Plan by the Department of Community Affairs to assist with addiction treatment and recovery through the provision of support services; and

WHEREAS, the New Jersey Administrative Code (N.J.A.C. 5:27) was amended in 2018 to define a “Class F License” that is valid only for cooperative sober living residences as defined, along with administrative regulations governing their operation; and

WHEREAS, zoning regulation of community residences for people with disabilities should seek to achieve legitimate government interests, actually achieve those legitimate government interests, and be the least drastic means of actually achieving those legitimate government interests; and

WHEREAS, the Fair Housing Act does not provide for local land use policies or actions that treat groups of people with certain disabilities differently than groups of people with other disabilities; and

WHEREAS, the Township of Moorestown is hereby amending its Zoning Ordinance to make the reasonable accommodation the Fair Housing Act requires by removing any terms and conditions that have the effect of limiting or making housing unavailable to people with disabilities and adding definitions while preserving the ability of community residences for people with disabilities to emulate a family and achieve normalization and community integration of their residents; and

WHEREAS, the Township of Moorestown is hereby amending its Zoning Ordinance to give prospective operators of community residences for people with disabilities clarity and certainty on where such homes may locate as of right and via conditional use permits; and

WHEREAS, community residences for people with disabilities that meet the definition of a single housekeeping unit as consistent with the definition of “Family” in the Township of Moorestown Zoning Ordinances shall be treated the same as any other family; and

WHEREAS, the Oxford House Model Recovery Home is a federally recognized type of recovery home that operates as a community residence and functions as a single housekeeping unit; and

WHEREAS, these new zoning provisions permit Oxford House Model Recovery Homes in all residential districts and regulate them in the same manner and to the same extent as single-family dwellings; and

WHEREAS, because some transitional recovery homes for people with disabilities have more expansive functions than a single-family residence, the heightened scrutiny of a conditional use permit is warranted for such transitional community residences in certain zoning districts; and

WHEREAS, these new zoning provisions make the reasonable accommodation the Fair Housing Act requires by allowing cooperative sober living residences, with up to ten residents with disabilities as a conditional use in certain zoning districts subject to meeting certain standards; and

WHEREAS, the heightened scrutiny of a “use” variance pursuant to N.J.S.A. 40:55D-70.d is warranted when a proposed recovery home for people with disabilities fails to meet the definition of a single housekeeping unit or the criteria to be allowed as a conditional use; and

WHEREAS, a recovery home that does not meet the definition of a single housekeeping unit that has been denied a Class F license would not be permitted due to the state’s requirements for licensing as a cooperative sober living residence; and

WHEREAS, like all residential uses, the overcrowding provisions in the Township’s adopted housing code determines the maximum number of occupants of a recovery home for people with disabilities no matter how many the zoning code would allow, with or without a reasonable accommodation request to house more than ten people; and

WHEREAS, the Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others, provided; however, that determining whether someone poses such a direct threat must be made on an individual basis, and cannot be based on general assumptions or speculation about the nature of a disability.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWNSHIP COUNCIL OF MOORESTOWN, NEW JERSEY AS FOLLOWS:

Section 1. Section 180-2 “Definitions” is hereby amended as follows:

1. COOPERATIVE SOBER LIVING RESIDENCE (CLSR): A recovery home that has been issued a Class F License by the New Jersey Department of Community Affairs pursuant to N.J.A.C. 5:27-1.1 et seq. It does not operate as a single housekeeping unit. The 2017 New Jersey Uniform Construction Code defines a CSLR as “a residential setting that serves solely as a home for individuals who are recovering from drug or alcohol addiction and is intended to provide an environment where the residents can support each other’s sobriety and recovery.”
2. NON-OXFORD HOUSE MODEL RECOVERY HOME: A recovery home that does not operate using the Oxford House model and does not operate as a single housekeeping unit. Examples of activities that indicate the house is a Non-Oxford House Model, may include but are not limited to: residents enter into individual leases with the owner or operator of the home for the occupancy of their room and the common area; there is a limited number of staff onsite who will enforce rules, oversee the taking of medication, and perform random drug screening; residents are required to attend AA/NA meetings; residents are required to attend mandatory house meetings; residents are prohibited from sleeping outside the house; staff enforces a curfew; or guests are prohibited. They are to be regulated as CSLRs.
3. OXFORD HOUSE MODEL RECOVERY HOME: Oxford House has been authorized by Congress to provide community living arrangements for persons with drug and alcohol addiction. It is a recovery home in which the residents are self-governing, all residents contribute to the maintenance and expenses of the house, the residents determine who can reside in the house, there is no limit to how long an individual can reside in the house, there is no addiction treatment, therapy, or paid staff provided; the house operates as a single housekeeping unit, and the house is not required to be licensed by the New Jersey Department of Community Affairs.
4. RECOVERY HOME: A residential environment that provides people in recovery a safe alcohol and drug free place to live as they transition back into the community.

Section 2. Article XVIII “RLC Residence-Limited Commercial Districts” is amended as follows:

Section 180-54 “Use restrictions and regulations”

M. In those portions of an RLC Residence-Limited Commercial District which are designated on the Zoning Map as RLC, a cooperative sober living residence, or non-oxford house model recovery home is conditionally permitted subject to the conditions at Section 180-96.E.(5).

Section 3. Article XIIA Residential / Professional Office Districts is amended as follows:

Section 180-39.2 “Use restrictions and regulations”

180-39.2.A (3) Conditional uses permitted shall be as follows:

- (a) A cooperative sober living residence, or non-oxford house model recovery home subject to the conditions at Section 180-96.E.(5).

Section 4. Article XXV Miscellaneous Restrictions, Regulations and Provisions is amended as follows:

Section 180-96 “Conditional Uses”

180-96.E.(5) A Cooperative Sober Living Residence subject to the following criteria:

- (a) A minimum of three (3) off-street parking spaces shall be provided.
- (b) The residence shall be located a minimum of 1,000 feet from a primary or secondary school, to be measured from the school building and any associated parking lots, playgrounds, and athletic fields to the boundary of the property containing the CSLR.
- (c) The owner shall obtain a Class F license to operate a cooperative sober living residence from the New Jersey Department of Community Affairs pursuant to N.J.A.C. 5:27-1.1 et seq.
- (d) Occupancy of the residence shall not exceed 10 individuals, exclusive of the operator.
- (e) No on-site counseling therapy, clinical treatment, or alcohol and/or drug treatment will be provided at the residence. At the time of application, the applicant shall provide documentation affirming compliance with this condition.
- (f) The residence shall be managed by an entity or organization that provides an operator who shall reside in the residence, establish the residence’s rules, and exercise control over the operation of the residence.
- (g) The operator of the residence shall ensure that prospective residents comply with the provisions of Megan’s Law, as set forth in N.J.S.A. 2C:7-2(d), which state: “Upon a change of address, a person shall notify the law enforcement agency with which the person is registered and must re-register with the appropriate law enforcement agency no less than 10 days before he intends to first reside at his new address.” For purposes of this condition, anyone who sleeps in the residence shall be considered to have their “address” at the residence.

Section 5. Article XXV Miscellaneous Restrictions, Regulations and Provisions is amended as follows:

180-99.7 Oxford House Model Recovery Homes

- A. Oxford House Model Recovery Homes shall be a permitted use in all residential districts and regulated in the same manner and to the same extent as single-family dwellings.

Section 6. Repealer. All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency only.

Section 7. Interpretation. If the terms of this Ordinance shall be in conflict with those of another Ordinance, the provision which imposes the greater restriction or limitation shall control.

Section 8. Severability. If any section, part of any section, or clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this Ordinance. The Township Council of the Township of Moorestown declares that it would have passed the Ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section 9. Effective Date. This Ordinance shall take effect 20 days after adoption, transmittal to the Burlington County Planning Board, and publication according to law.

Section 10. Short Title. This Ordinance shall be known as Ordinance 7-2024

CERTIFICATION

I, Vicki M. Gough, Deputy Township Clerk, hereby certify that the attached is a true and correct copy of Ordinance No. 7-2024 which was introduced and adopted on first reading on March 11, 2024 and heard on second reading and was duly adopted by the Township Council of the Township of Moorestown, County of Burlington, State of New Jersey at a meeting of the Township Council held on April 8, 2024.

<u>VOTE:</u>	
GILLESPIE	YES
LAW	YES
MAMMARELLA	YES
VAN DYKEN	YES
ZIPIN	YES

Vicki M. Gough, RMC
Township Clerk