

**TOWNSHIP OF ROCKAWAY
COUNTY OF MORRIS, NEW JERSEY**

ORDINANCE NO. 23-05

**AN ORDINANCE AMENDING SECTIONS 54-4.1 ENTITLED
“DEFINITIONS,” 54-14.3 ENTITLED “NOTICE OF HEARING; WHEN
REQUIRED,” AND 54-30.15 ENTITLED “REGULATIONS
GOVERNING CONDITIONAL USES” OF THE LAND
DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF
ROCKAWAY, MORRIS COUNTY, NEW JERSEY TO ESTABLISH
DEFINITIONS AND CONDITIONAL USE REGULATIONS
PERTAINING TO COOPERATIVE SOBER LIVING
ARRANGEMENTS AND OXFORD HOUSE MODEL RECOVERY**

WHEREAS, the Municipal Land Use Law ("MLUL") of the State of New Jersey, N.J.S.A. 40:55D-1 et seq. grants to municipalities the power to adopt a zoning ordinance relating to the nature and extent of the uses of lands, buildings and structures thereon; and

WHEREAS, the Township of Rockaway (“Township” or “Rockaway”) undertook a review of its Land Development Ordinance with regard to the regulation of community residences for people with disabilities; and

WHEREAS, the Township of Rockaway (Township) wishes to adopt an amendment to the Zoning Ordinances with respect to Cooperative Sober Living Facilities as well as rooming homes and boarding houses; and

WHEREAS, N.J.S.A. 40:55D-66.1, which excludes Cooperative Sober Living Residence rooming or boarding houses having been issued a "F" License by the New Jersey Department of Community Affairs pursuant to N.J.A.C. 5:27-1.1 et seq., permits certain community residences in all residential districts of a municipality

stating the requirements thereof shall be the same as for a single-family dwelling unit located within such districts; and

WHEREAS, the Township recognizes that the Fair Housing Act as amended (42 U.S.C. § 360I) 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 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, 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 persons with certain disabilities differently than groups of people with other disabilities; and

WHEREAS, clustering of community residences on a block or in a neighborhood undermines the ability of community residences to achieve normalization and community integration for their residents which is one of the essential purposes of a community residence for people with disabilities; and

WHEREAS, the Township is hereby amending its Zoning Ordinances to make the reasonable accommodations 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 is hereby amending its Zoning Ordinances 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 constitute a family under the Township's Zoning Ordinances and must be treated the same as any other family; and

WHEREAS, these new zoning provisions make the reasonable accommodation the

Fair Housing Act requires by allowing rooming or boarding houses of up to ten people with disabilities as a conditional use in specifically designated districts subject to rationally based spacing distances; and

WHEREAS, because transitional recovery homes for people with disabilities are more akin in terms of function and performance to a rooming or boarding house than single- family residences, the heightened scrutiny of a conditional use permit is warranted for such transitional community residences in single-family zoning districts; and

WHEREAS, this ordinance specifies standards narrowly tailored to assure that the proposed recovery homes will not interfere with normalization or community integration of the occupants of any nearby existing recovery homes nor contribute to creating a de facto social service district that thwarts the purpose and successful functioning of recovery homes and results in segregation of people with disabilities; and

WHEREAS, the heightened scrutiny of a "use" variance 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 "F" license would not be permitted due to the state's own requirements for licensing as a cooperative sober living residence; and

WHEREAS, like all residential uses, the occupancy provisions in the Township's Housing Code L.O. 12-8 et seq. and Section 404 et seq. of the 2018 International Property Maintenance Code adopted by L.O. 14-1 et seq. shall determine the maximum number of occupants of a recovery home for people with disabilities; 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 individualized basis, and cannot be based on general assumptions or speculation about the nature of a disability, and

WHEREAS, the Township desires to amend Sections _____ of the Land Development Ordinance of the Township of Rockaway to include zoning regulations that achieve those legitimate government interests and provide clarity and certainty to the public and the prospective operators of community residences for people with disabilities on where such community residences may locate as of right and via conditional use permits.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Rockaway, County of Morris, and State of New Jersey as follows:

SECTION ONE. Section 54-4.1, Definitions, of the Land Development Ordinance of the Township of Rockaway, Morris County, New Jersey is hereby amended and supplemented by the addition of the following:

1. **BOARDING HOUSE:** Boarding house has the meaning set forth in N.J.S.A. 55:13B-3.

2. **COOPERATIVE SOBER LIVING RESIDENCE, (CSLR):** A recovery home that is a rooming or boarding house that has been issued a "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." In addition to the other requirements specified in the regulations, a cooperative sober living residence must satisfy the following criteria;

- a. Management by an entity or organization that provides an operator who shall reside in the residence and exercise some level of control over the operation of the residence and establishes the residence's rules;
- b. Occupancy shall not exceed number of individuals allowable by the cited ordinances aforesaid, exclusive of the operator;
- c. The requirement of the maintenance of an alcohol and drug free environment;
- d. No provision of on-site counseling therapy, clinical treatment, or alcohol and/or drug treatment by the licensee;
- e. o provision of food, laundry, financial, or other personal services by the licensee;
- f. Ability of licensee, at its discretion, to provide non clinical recovery and support services. The licensee may also elect to mandate or encourage residents to attend self-help recovery programs, participate in activities related to maintaining sobriety and continuing recovery, or receive off-site services deemed desirable or necessary to maintain sobriety; and
- g. Ability of licensee, at its discretion, to require drug or alcohol testing of residents.

3. ON-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 on site 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 rooming homes or boarding houses.

4. 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.

SECTION TWO. Section 54-14.3, Notice of hearing; when required, of the Land Development Ordinance of the Township of Rockaway, Morris County, New Jersey, is hereby amended as follows to add the following subsection I:

I. Any application for a conditional use.

SECTION THREE. Section 54-30.15, Regulations Governing Conditional Uses, of the Land Development Ordinance of the Township of Rockaway, Morris County, New Jersey is hereby amended by the addition of the following:

O. Cooperative Sober Living Residence. Cooperative sober living residences shall be permitted as a conditional use only in the B-1, B-2, and R-P Districts if and only if the following standards are complied with:

- (1) Purpose. These regulations are intended to provide reasonable accommodation for persons with disabilities.
- (2) 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.
- (3) Minimum distance to other Cooperative Sober Living Residence or non-Oxford house model recovery home use: 200 feet
- (4) Structures are regulated under the residential regulations of the underlying zone district.


SECTION Four. All Ordinances or parts of Ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in such conflict or inconsistent.

SECTION Five. This Ordinance may be renumbered for codification purposes.

SECTION Six. In the event that any section, part or provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so held unenforceable or invalid.

SECTION Seven. This Ordinance shall take effect 20 days after passage and publication as provided by law.


Everett Falt, RMC
Township Clerk



Joe Jackson
Mayor

APPROVED ✓
VETO__ (SEE ATTACHED STATEMENT)



Howard Kritz
Council President

ORDINANCE 23-05

INTRODUCED: JAN 17 TOWNSHIP COUNCIL REGULAR MEETING

MOTION R. BROOKES

SECOND VP QUINN

ROLL CALL: AYE FRIEDLANDER, NOON, D BROOKES, SACKETT, R BROOKES,
SALBERG, WOJTOWICZ, VP QUINN, PRESIDENT KRITZ

NAY NONE

ADVERTISED: JAN 20, 2023

ADOPTED: FEB 28 TOWNSHIP COUNCIL REGULAR MEETING

MOTION R. BROOKES

SECOND SALBERG

ROLL CALL VOTE: AYE SACKETT, R. BROOKES, SALBERG, VP QUINN,
PRESIDENT KRITZ

NAY FRIEDLANDER, NOON

ADVERTISED MARCH 6, 2023