

ORDINANCE #98-2

AN ORDINANCE to amend Article I. In General, Section 21-3. Definitions, of Chapter 21, Zoning of the **Code of the Town of Ashland, Virginia** to revise the definition of *family* to no more than three (3) unrelated persons occupying a single-family dwelling, living together as a single nonprofit housekeeping unit.

NOW THEREFORE BE IT ORDAINED by the Council of the Town of Ashland, Virginia that:

- 1) Section 21-3. Definitions of Article I. In General, of Chapter 21, Zoning of the *Code of the Town of Ashland, Virginia*, is amended as set forth below:

Family. One or more persons related by blood, marriage or adoption, including foster children ~~or and domestic servants~~ household employees, or not more than ~~five (5)~~ **three (3)** unrelated persons occupying a single-family dwelling, living together as a single nonprofit housekeeping unit.

For purposes of this definition, not more than eight (8) unrelated mentally ill, mentally retarded, or developmentally disabled persons, with one or more resident counselors or other staff persons, occupying a residential facility for which the Department of Mental Health, Mental Retardation and Substance Abuse Services of the Commonwealth of Virginia is the licensing authority pursuant to the Code of Virginia, shall be considered residential occupancy by a single family. Mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in Sec. 54.1-3401 of the Code of Virginia, 1950, as amended.

The term "family" shall also include not more than eight (8) handicapped persons, as defined by the Federal Fair Housing Act, occupying a single dwelling unit, together with one or more resident counselors or other staff persons.

A family day home as defined in Sec. 63.1-195 of the Code of Virginia, 1950, as amended, and serving not more than five (5) children, exclusive of the provider's own children and any children who reside in the home, shall be considered as residential occupancy by a single family.

The term "family" shall not be construed to include a fraternity, sorority, club or a group of persons occupying a hotel, motel, tourist home, lodging house or institution of any kind, except as specifically included by this definition.

- 2) All sections of the **Code of the Town of Ashland, Virginia**, Ordinances, or parts of Ordinances inconsistent with and/or in conflict with this Ordinance are hereby repealed.
- 3) The provisions of this Ordinance shall be in force immediately upon adoption.
- 4) It is hereby declared to be the intention of the Town Council of Ashland, Virginia that the clauses, phrases, sentences paragraphs and sections of the Ordinance are severable, and, if any clause, phrase, sentence, paragraph, or section of this Ordinance hereby adopted shall be declared unconstitutional or otherwise invalid by a valid judgement of decree by a Court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining clauses, phrases, sentences, paragraphs and sections of this ordinance hereby adopted.

Introduced: December 1997

Advertised:

Planning Commission: Mondays, January 5 and 12, 1998

Town Council: Mondays, March 9 and March 16, 1998

Public Hearing:

Planning Commission: January 21, 1998, action March 18, 1998

Town Council: March 24, 1998

Adopted:

Effective:

March 24, 1998

Public Hearing #1

TO Town Council
FROM Barbara Schoeb Nelson, Director of Planning
RE Proposed ORD #98-2
Revised Definition of Family

Following a public hearings in January, the Planning Commission and Town Council both recommended a 60 day deferral in order to give the Town Attorney additional time to research the possibility of reducing the number of unrelated individuals to live together as family from five to three.

The number of persons that constitute a “family” may be regulated provided there is sufficient research to support the resulting number that is used to define a family unit. At the request of Council, the staff contacted the City of Williamsburg and the City of Charlottesville. The City of Williamsburg defines a family as three non related persons living together. The City of Charlottesville uses four as their number to define a family. From our discussions, it appears as though limited research was performed by either locality in enacting their respective “number” to define a family. Based on the 1990 census, the average number of persons living in a household in the Town of Ashland is 2.47. Therefore, three may be a reasonable number for the definition of family in the Town of Ashland.

The Town had the National Legal Research Group, Inc. research this issue and their research only concluded that family size or definition may not be use to discriminate from group homes. The Town is aware of that we can not discriminate against group homes and addressed this issue in the definition.

Since the number of people living as a “family” is not a use, it would not be subject to nonconforming status. If this ordinance is adopted; following completion of any existing leases, no one would be able to lease to more than three people at a time. Enforcement of the proposed ordinance would be on a complaint basis.

PLANNING COMMISSION RECOMMENDATION

At their meeting on March 18, 1998, the Commission recommended approval of the attached ordinance.

Staff Recommendation

The staff would recommend approval.