

While referred to as ‘housing facilities’ by the Code of Virginia, in practice recovery residences are independent households comprised of individuals unrelated by blood or marriage, who have selected a congregate living environment to facilitate recovery from substance abuse disorders. Recovery residences typically occupy rental dwellings located in residential neighborhoods.

At present, the provisions in the Zoning Ordinance are silent on recovery residences. As such, they are not explicitly permitted. The closest cognate is group residential facilities for persons with developmental disabilities.

Unlike group residential facilities for individuals with developmental disabilities, recovery residences are self-governing and self-accountable. Other key distinctions between recovery residences and group residential facilities include:

- **Licensure**
Recovery residences are not licensed by the Virginia Dept. of Behavioral Health & Developmental Services [VA BHDS]. Instead, recovery residence households are certified by VA BHDS as complying with the standards in Code of Virginia §37.2-431.1 *Recovery residences*.
- **Operation & Oversight**
Recovery residences are typically autonomously operated as opposed to being directly managed by nonprofit or governmental social service institutions.
- **Care and/or Assistance Services**
Recovery residences generally do not provide resident care and/or assistance services on premises. Likewise, generally there are no staff providing assistance residing at or attached to the premises.

Overall, the characteristics and operation of recovery residences are more comparable to a residential household as opposed to a licensed, managed housing facility.

The certification of recovery residences is implemented by nonprofit organizations known as “credentialing entities” as opposed to the VA BHDS directly. Oxford House, Inc. is one such credentialing entity. The Code of Virginia specifies that these credentialing entities both develop and administer certification programs “*according to standards of the National Alliance for Recovery Residences or standards endorsed by Oxford House, Inc.*” [Code of Virginia [§37.2-431.1](#)].

Household Living in the Zoning Ordinance:

In the residential neighborhoods that recovery residences seek to locate, the predominant housing type is one-family detached dwellings. The provisions in the Zoning Ordinance specify that a One-Family Detached Dwelling can be occupied by one (1) ‘Family’ with four types of families identified:

- An individual, or two or more persons related by blood or marriage;
- Four (4) or less persons not related blood or marriage;
- Eight (8) or less unrelated persons with mental illness, intellectual disability or development disability;
- Assisted living facilities with eight (8) or less unrelated aged, infirm, or disabled persons licensed by the Virginia Department of Social Services.

While recovery residences ostensibly meet the criteria for families comprising up to eight (8) persons with mental illness, intellectual disability or developmental disability, the Zoning Ordinance further defines these types of households as residential facilities licensed by the Virginia Department of Behavioral Health and Developmental Services, having one or more resident or nonresident staff on the premises. The lack of licensure and staffing effectively precludes recovery residences from being allowed as residential facilities for persons with developmental disabilities, as currently defined in the Zoning Ordinance.

Proposed Zoning Provisions:

The proposed text amendments are appended in *Attachment A* but in summary include the following:

- **New Definition for ‘Recovery Residence’**

The amendment introduces a new defined term for §18.2 *General Terms Defined*:

“Recovery Residence: A dwelling certified by the Virginia Department of Behavioral Health and Development Services providing alcohol-free and illicit-drug-free housing to persons with substance abuse disorders and/or co-occurring mental illnesses but where no clinical and/or substance abuse treatment services are provided on premises.”

This new definition serves to explicitly identify what constitutes a recovery residence. The proposed language aligns with the definition for recovery residences in the Code of Virginia §37.2-431.1; clearly specifying certification by the Virginia Department of Behavioral Health & Developmental Services is a key characteristic of the use.

- **Modifications to the Residential Use Categories**

The amendment explicitly categorizes recovery residences as an example of Residential Household Living, per §12.2.3.A *Household Living*. Concurrently, the amendment cites recovery residences as not being an example of Residential Group Living, per §12.2.3.B *Group Living*.

- **Modifications to the Principal Use Tables**

The amendment adds recovery residences as a specific use type for each of the Principal Use Tables in the ACZO to identify the zoning districts where recovery residences are permitted as well as citing the new use standards [see below]. The amendment proposes permitting recovery residences in every zoning district which allows One-Family Detached Dwellings.

- **New Use Standard for Recovery Residences**

The amendment introduces a new use standard for recovery residences:

“In any district, recovery residences with eight or fewer residents are permitted by-right in one-family detached dwellings. Recovery residences with more than eight residents and/or located in a dwelling other than a one-family detached dwelling shall require County Board approval of a use permit, per §15.4.”

The new use standard permits recovery residences with up to eight (8) residents by-

right in One-Family Detached Dwellings, both satisfying Oxford House’s specific reasonable accommodation request while aligning with the existing allowances for residential facilities for persons with developmental disabilities. In addition, the proposed use standard provides a special exception use permit option for recovery residences that exceed eight (8) residents and/or seeking to occupy housing types other than One-Family Detached Dwellings, such as duplexes or townhouse dwellings.

House Bill No. 646:

The Virginia General Assembly’s 2024 legislative session saw the introduction of [House Bill No. 646](#) [HB646]. This bill proposed to amend the provisions in Code of Virginia [§15.2-2291](#) *Assisted living facilities and group homes of eight or fewer*, to require local zoning ordinances to expressly permit certified recovery residences as a single-family residential use with no restrictions beyond those imposed on residences occupied by person related by blood, marriage, or adoption. The proposed provision reads:

C. Zoning ordinances for all purposes shall consider a certified recovery residence, as defined in § 37.2-431.1, in which individuals with substance use disorder reside, either with or without one or more resident or nonresident staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such certified recovery residence.

Code of Virginia §15.2-2291 was first adopted in 1990 and required local zoning ordinances to consider residential facilities with up to eight (8) individuals with mental illness, intellectual disability or developmental disability as a single-family residential occupancy. HB646 proposes imposing a similar requirement on local jurisdictions in considering and treating recovery residences, but without specifying a maximum occupancy threshold of individuals that can reside in a recovery residence.

HB646 was ultimately not acted up by the full General Assembly during the 2024 legislative session. After the proposed bill was reviewed in committee, it was continued to the 2025 legislative session. While not germane to the reasonable accommodation request, the proposed text amendments took into consideration this pending bill. Should the County Board adopt the zoning ordinance amendment to explicitly clarify recovery residences as a permitted use, and should the General Assembly adopt a version of HB646 in 2025 that diverges from the amended text that the Board adopts, staff intends to recommend further amendments to ensure alignment between the ACZO and the Code of Virginia.

Conclusion

The proposed zoning text amendment represents a nominal change in zoning policy in regard to residential household living uses, which the County is obliged to accommodate under the Federal Fair Housing Act. The Code of Virginia grants the Zoning Administrator broad authority to interpret and apply the regulations in the Zoning Ordinance when there is uncertainty or ambiguity. The relevant text pertaining to Oxford House’s reasonable accommodation request is clear and unambiguous, and consequently beyond the interpretive powers of the Zoning

Administrator. As such, the only avenue for granting the reasonable accommodation is County Board approval of a zoning text amendment.

Anticipated Schedule

- July 16, 2024: Planning Commission’s Zoning Committee (ZOCO) review
- July 22, 2024: County Board Request to Advertise
- September 4/6, 2024: Planning Commission final consideration and recommendation
- September 14, 2024: County Board final consideration and action

Attachments

- Attachment 1: Draft Zoning Text

COMMERCIAL/MIXED USE (C) DISTRICTS PRINCIPAL USE TABLE

Specific Use Types	RA4.8	R-C	RA-H	RA-H-3.2	C-1-R	C-1	MU-VS	C-1-O	C-O-1.0	C-O-1.5	C-O-2.5	C-O	C-O-A	C-O ROSSLYN	C-O CRYSTAL CITY	C-2	C-TH	C-3	C-R	Use Standards	
KEY: C = requires use permit and site plan approval; P = allowed by-right; U = requires use permit approval; S = requires site plan approval; Blank cell = not permitted																					
Living (See §12.2.3.A)	Duplexes	P	P		P															P	
	Semidetached	P	P		P															P	
	Multiple-family	P	S	P	P		S		S	S	S	S	S	S	S				P	P	S
	Townhouses	P		P	P																
	Townhouse, semidetached and existing one-family	S	S		S																§12.3.4
	Independent living facilities	S	S	S	S		S		S	S	S	S	S	S	S					S	§12.3.12
	Independent living facilities within the Clarendon Revitalization District as designated on the General Land Use Plan						U											U	U	U	§12.3.12 §9.2.2.D.3 §12.3.12 §10.2.5.A.2
	Recovery residence	P	P		P	P	P		P	P	P	P	P	P	P	P		P	P	P	P
	U	U		U	U	U		U	U	U	U	U	U	U	U		U	U	U	U	

Article 12. Use Standards

§12.2. USE CATEGORIES

§12.2.3. Residential use categories

A. Household living

1. Characteristics

Household Living is characterized by residential occupancy of a dwelling unit by a family. Tenancy is arranged on a month-to-month or longer basis, except in limited accessory capacity where explicitly allowed by this Ordinance. Principal uses where tenancy may be arranged for a shorter period are not considered residential; they are considered a form of transient lodging (see Overnight Accommodations and Social Service Institutions).

2. Examples

Examples of Household Living include one-family detached; one-family attached; duplexes; semidetached; townhouses; multiple-family buildings; independent living facilities; **recovery residences**.

3. Accessory uses

Accessory uses include accessory dwellings; accessory homestay; car-sharing; direct broadcast satellite dishes; family/caregiver suites; family day care homes; greenhouses and nurseries not engaged in retail trade; garden, guest house; personal;

hobbies; home occupations; parking of occupants' registered vehicles; raising of pets; recreational activities; storage sheds; and swimming pools.

4. Uses not included

Bed and breakfast establishments (see Overnight Accommodations); boarding or rooming houses (see Group Living); extended-stay facilities (see Overnight Accommodations); group home (see Group Living); halfway house (see Social Service Institutions); hotels or motels; inns; nursing home (see Group Living); assisted living facilities (see Group Living).

B. Group living

1. Characteristics

Group Living is characterized by residential occupancy of a structure by a group of people, other than a family, typically providing communal kitchen/dining facilities and no kitchens in individual living units. The size of the group may be larger than a family. Tenancy is typically arranged on a monthly or longer basis.

2. Examples

Examples of group living include but are not limited to assisted living facilities and nursing homes, intermediate care, boarding houses, dormitories, fraternity and sorority houses, convents, group homes, monasteries, and rooming houses.

3. Accessory uses

Accessory uses include associated offices; garden, personal; hobbies; food preparation and dining facilities; laundry facilities and services; parking of vehicles for occupants and staff; and recreational facilities.

4. Uses not included

Adult day care (see Day Care); alternative or post-incarceration facilities; exclusive care and treatment for psychiatric, alcohol, or drug problems, where patients are residents (see Social Service Institutions); bed and breakfast establishments (See Overnight Accommodations); child care center (see Day Care); independent living facilities (see Household Living); extended-stay facilities, hotels or motels, inns (see Overnight Accommodations); family day care home (see Accessory Uses); **recovery residences (see Household Living)**; residential occupancy of a dwelling unit by a family on a month-to-month or longer basis (see Household Living); time-shared interval ownership facility (see Overnight Accommodations); treatment centers, transient lodging or shelters (see Social Service Institutions).

§12.3. RESIDENTIAL USE STANDARDS

§12.3.9. ~~Reserved~~ Recovery Residences

In any district, recovery residences with eight or fewer residents are permitted by-right in one-family detached dwellings. Recovery residences with more than eight residents and/or located in a dwelling other than a one-family detached dwelling shall require County Board approval of a use permit, per §15.4.

Articles 18. Definitions

§18.2. GENERAL TERMS DEFINED

For the purposes of this zoning ordinance certain terms and words used herein shall be defined and interpreted as follows.

Recovery Residence: A dwelling certified by the Virginia Department of Behavioral Health and Development Services providing alcohol-free and illicit-drug-free housing to persons with substance abuse disorders and/or co-occurring mental illnesses but where no clinical and/or substance abuse treatment services are provided on premises.