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Published August 26th, 2015

Council Resolves Zoning Issues

By Victor Ryerson

In anticipation of a prospective application to develop a parcel at 1 Wilder Road with an assisted living facility, the Orinda City Council has decided to retain the current Orinda Municipal Code requirement that each unit of a "congregate care" facility include a kitchen. The council also decided that the property, and all property in a Public, Semi-Public and Utility (PS) District, is subject to the property development standards applicable in the closest residential or downtown district, even though the closest such district is not "adjoining" the property in question. The development proposal was not before the council when it discussed these matters Aug. 18, and the proposal will ultimately be subject to public review and discussion under Orinda's design review, scenic corridor, use permit, and other standards.

"Congregate care facility," as one public speaker commented, may be considered an outmoded term in this day and age, because an entire spectrum of facilities from active seniors' residences to nursing homes fall within this rubric. Each is characterized by different kinds and amounts of assistance provided by the facility. Orinda's zoning law defines a congregate care residence as a facility that provides 24-hour nonmedical care of people in need of personal services, supervision or assistance "essential for sustaining the activities of daily living or for the protection of the individual." The code states that such a facility contains small individual units of usually one or two rooms with a small kitchen "allowing for independent living," but also common dining, housekeeping, recreational and social facilities - the controversy centered around the individual kitchen requirement.

City staff recommended that the requirement be retained, but this elicited several public comments concerning the safety of incorporating any device that produces heat, even a microwave, in congregate care facilities such as "memory care" facilities. Such a facility cares for persons with conditions like dementia, and they are often unaware of the nature of what they are doing and may, for example, place a shoe in a microwave instead of food, creating a hazard. Although acknowledging that neighboring communities do not have the kitchen requirement in their zoning laws, the consensus of the council was not to amend the current Orinda zoning law and potentially create new problems of interpretation, but to continue to require a kitchen in each unit, even a minimal one, as any potentially hazardous appliances could be disabled for safety's sake.

On the question of what quantitative development standards (for example, setbacks and building height requirements) apply to this PS district, the council faced the conundrum that Orinda's zoning law specifies that the standards be those required by the "closest adjoining residential or downtown district" regulations, but that there is no adjoining district. After briefly struggling with the issue, the council determined that in this instance - the only one like it in the city - the word "adjoining" should be ignored. This means that the property development standards of the Oak Springs district, RL-6, should apply. At a later date the matter will return for consideration of a formal clarifying amendment to the Orinda Municipal Code.

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