

Exhibit C

LEE COUNTY, FLORIDA ZONING DIVISION

Administrative Interpretation

TYPE OF CASE: Administrative Interpretation for Oasis Cove RPD/CPD
Zoning Resolution Z-10-009

CASE NUMBER: ADD2012-00077

APPLICATION SUMMARY:

Applicant: Charles J. Basinait

Location: The subject property is located at 7210 Congdon Road and 7650 Gladiolus Drive, in S35-T45-R24, Lee County, FL. (District #2)

Request: Interpretation of Condition #1 of Resolution Z-10-009 regarding the types of units that could be developed and density ratio confirmation for Assisted Living units (ALF), Continuing Care Facility (CCF) and Independent Living Units (ILU).

Discussion:

This request for an interpretation is a two part request. The first part relates to Condition #1 of Resolution Z-10-009 and is in regards to the types of units that could be developed. The second part is confirmation of density ratios for various types of units.

Part #1

In reviewing the written record, the wording of Condition 1 was not an issue of controversy or much substantive discussion. It was generally agreed by all parties that a residential use, including all forms of assisted living products, was consistent with the Lee Plan, compatible with all surrounding uses, including Lakes Park, and raised no issues with concurrency such as traffic impacts or availability of utilities. Issues such as public safety and the Coastal High Hazard Zone were addressed through conditions, upon which there was agreement and consensus between the applicant and staff.

The condition in question reads, "The RPD is limited to a maximum of 190 multi-family dwelling units, or a maximum of 160 units of ALF/CCF units, plus a maximum of 300 ILU units, or any combination of ALF, CCF, or ILUs, so long as the project density does not exceed 190 standard dwelling units on 21.75 +/- acres of land." This is consistent with the recommendation of the staff report and the Hearing Examiner recommendation.

During the sufficiency process and drafting of the staff report the applicant and staff discussed the mix of assisted living products. The residential density the applicant proposed was +/- 8.7 units per acre, slightly under the maximum allowed 10 units per acre (with no bonus density) in the Central Urban Future Land Use category. This equates to 190 standard dwelling units. A maximum of 160 ALF/CCF units plus 300 ILU units equates to 190 standard dwelling units for example. Staff agreed that the mix of dwelling units was not a substantive issue and drafted a condition to allow a maximum of flexibility. The 160 ALF/CCF and 300 ILU units was meant to serve as an example of a mix of units which would be permitted under this zoning resolution. The mix of units could include all ILU units, all ALF/CCF units, or any combination. Thus the language "any combination of ALF, CCF or ILU, so long as the project density does not exceed 190 standard dwelling units" was included specifically to provide maximum flexibility in

the mix of assisted living products. Any mix of these products would be permitted, given compliance with the LDC as determined during the Development Order process and adherence to the conditions per Z-010-009.

Part #2

This part is for confirmation of density for the various types of units approved by Resolution Z-10-009. The types of units approved were for Assisted Living Facilities (ALF), Continuing Care Facilities (CCF) and Independent Living Units (ILU).

Density equivalents for these uses are provided in the following sections from the LDC:

Sec. 34-1494 (b). Density equivalents.

- 1) Where health care, social service, adult living facilities (ALF), continuing care facilities, or other "group quarters" (df) are provided in dwelling units, wherein each unit has its own cooking facilities, density equivalents will be calculated on a 1:1 ratio.
- (2) Except as may be specifically set forth elsewhere in this chapter, where health care, social service, adult living facilities (ALF), continuing care facilities (CCF), or other "group quarters" (df) are provided in dwelling units or other facilities wherein each unit does not have individual cooking facilities and where meals are served at a central dining facility or are brought to the occupants from a central kitchen, density equivalents will be calculated at the ratio of four people equals one dwelling unit.

Sec. 34-1414. Continuing care facilities.

(c) Density. Density equivalents for a continuing care facility will be calculated for any assisted living facility units and nursing beds pursuant to division 12, subdivision II, of this article, and for independent living units on the basis of two independent living units equal to one residential dwelling unit.

This section provides criteria that must be met to be a CCF and if these criteria are met density may be calculated on the basis of two independent living units equal one residential dwelling unit.

- (1) A continuing care facility must provide housing for older persons pursuant to title VII USC.
- (2) A continuing care facility must provide full common dining facilities on the site. Individual units may be equipped with kitchens, but an average of at least one meal a day must be provided by the continuing care facility for all residents.
- (3) A continuing care facility must incorporate one or more resident services on the site, such as banking facilities, barbershops or beauty shops, pharmacies, and laundry or dry cleaning.
- (4) A continuing care facility must provide a shuttle bus service or similar transportation service for residents.

The term Memory Care Assisted Living Units (MCALU) is not a defined use in the Land Development Code (LDC). The description in your letter dated July 10, 2012 states the MCALU will not have individual kitchens but may have a kitchenette with a microwave, a small refrigerator and a cook top – none with requires a 220 volt outlet. The MCALU will have a central kitchen and serve 3 meals a day. Based on this description, the most similar use to a MCALU in the LDC is ALF which is defined as:

“a residential land use, licensed under chapter 58A-5, Florida Administrative Code, which may be a building, a section of a building, a section of a development, a private home, a special boarding home, a home for the aged or similar place, whether operated for profit or not, which undertakes

through its ownership or management to provide, for a period exceeding 24 hours, housing and food service plus one or more personal services for four or more adults not related to the owner or administrator by blood or marriage. A facility offering services for fewer than four adults may be within the context of this definition if it advertises to or solicits the public for residents or referrals and holds itself out to the public as an establishment providing such services. These facilities are not synonymous with the term "nursing home." For purposes of this definition only, the term "personal services" means assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications, restoration therapy and assistance with securing health care from appropriate sources."

Based on these descriptions, the density would be calculated at 4 ALF units equals one dwelling unit. There is no unit size requirement.

The term Congregate Care Facilities also is not defined in the LDC. Your letter described this use as units that will have individual kitchens but will have a central kitchen associated with the facility serving 3 meals a day. This is a similar use to a CCF. The LDC defines CCF as:

"a facility, licensed under F.S. ch. 651, which must be developed as a planned development (PD), which undertakes through its ownership or management to provide housing and food service to adult residents. The facility must meet the criteria for exemption from the Fair Housing Act Amendments of 1988, title VII USC."

Your letter further states a Congregate Care Facilities is not required to have a state license however it has many attributes of a CCF. The facility will provide housing for older residents pursuant to Title VII USC and will include services for the residents such as banking facilities, barbershops, beauty shops, pharmacies, laundry and dry cleaning facilities. A CCF is required to be licensed under F.S. ch. 651 and must be in a planned development zoning.

Sec. 34-620 of the LDC provides a mechanism for addressing such instances where a proposed use is not specifically listed in the use activities groups or in any of the use regulation tables based upon the placement of a similar listed uses. Section 34-933 goes on further to state, "Uses that are not specifically listed in Section 34-934 may also be permitted if, in the opinion of the director, they are substantially similar to a listed permitted use". The Director is authorized to determine that uses that are not specifically listed in the use activity groups or in any of the use regulation tables are permitted by right or by special exception in a particular zoning district based upon the placement of similar listed uses in the various districts.

Based on the description of the Congregate Care Facilities in your letter, the uses are similar to a CCF. The density for a CCF is two independent living units equal to one residential dwelling unit.

Your letter also defines a villa product that will have all the attributes of an independent living facility. The homes would be duplex format with individual kitchens. The residents would have access to the Congregate Care Facility with regard to the central kitchen, banking facilities, barbershops, beauty shops, pharmacies, laundry and dry cleaning facilities. The LDC defines ILU as

"a unit which is authorized only as a part of a licensed continuing care facility (CCF), which may be equipped with a kitchen."

Based on this description, the density would be calculated at two independent living units equal to one residential dwelling unit. There is no unit size requirement.

Findings and conclusions:

Part #1

Upon reviewing the written record, the language of Condition 1 was not an issue of controversy. The

developer could construct any combination of ALF, CCF or ILU units so long as the project density does not exceed 190 standard dwelling units. The applicant is correct in their interpretation of this condition.

Part #2

Based on the above findings, the density for each type of unit is as follows:

- Assisted Living Facility (Memory Care Assisted Living Unit, as described herein) - 4 ALF units equals one dwelling unit.
- Continuing Care Facility (Congregate Care Facility) - two independent living units equal to one residential dwelling unit.
- Independent Living Units (Villa product) - two independent living units equal to one residential dwelling unit.

Please be advised that the information provided herein is based on current regulations and may be subject to change as ordinances are enacted or amended.

Should you have further questions, please do not hesitate to contact our office.

DULY SIGNED this 10th day of August, A.D., 2012.

BY: Nettie Richardson
Nettie Richardson, Principal Planner
Department of Community Development
Zoning Division

cc: zoning file
Billie Jacoby
Tony Palermo, AICP