




Board of Adjustment Report

Date	July 29, 2025		
Case No.	BOA25-00384		
Project Name	Legacy Recovery Center, LLC Community Residence		
Request	• Appeal of the Zoning Administrator's interpretation ¹ that the proposed Community Residence at 2338 East Minton Street is a "Transitional Community Residence" and not a "Family Community Residence."		
Project Location	2338 East Minton Street		
Parcel No(s)	141-06-237		
Project Area	0.48± acres		
Council District	District 1		
Existing Zoning	Single Residence-15		
General Plan Designation	Traditional Residential		
Appellants	Legacy Recovery Center, LLC, Dr. Roland Segal, and Dr. Ehab S. Abdallah		
Appellants' Legal Counsel	Heather N. Dukes, Esq.		
Staff Planner	Mary Kopaskie-Brown, Planning Director & Zoning Administrator		
City Legal Counsel	Kirstin Dvorchak Charlotte McDermott		

¹ In Appellants' Notice of Appeal, they refer to the Zoning Administrator's "interpretation" in reference to the correspondence sent on April 15, 2025, finding the proposed Community Residence qualifies as a Transitional Community Residence. This letter and decision is also referenced as the Zoning Administrator's "determination" or "decision" pursuant to MZO Section 11-86-1, which states the Zoning Administrator may "determine" the classification of a specific use.

Introduction

Request/Appeal:

Legacy Recovery Center, LLC, Dr. Roland Segal, and Dr. Ehab S. Abdallah (collectively, the “Appellants²”) are appealing the Mesa Zoning Administrator’s final determination (Exhibit 3), dated April 15, 2025, that their proposed use of the property located at 2338 East Minton Street, Mesa, AZ 85213, (the “Property”) is a “Transitional Community Residence”, and therefore must obtain a Special Use Permit (SUP) to register and operate within the City of Mesa (the “Appeal”).

Board of Adjustment Consideration:

Is Legacy Recovery Center a Transitional Community Residence?

- The central issue for the Board’s consideration is the length of residents’ tenancy at the Legacy Recovery Center location at 2338 East Minton Street.
- The length of tenancy determines whether a Community Residence is classified as a “Family Community Residence” or a “Transitional Community Residence” and directly impacts zoning compliance; therefore, length of tenancy lies at the core of the Appeal before the Board.
- While the Appellants have raised several allegations in the Appeal, each of these concerns is ultimately secondary to the fundamental question of residents’ tenancy at the property.
- The length of tenancy determines whether a Community Residence is classified as a “Family Community Residence” or a “Transitional Community Residence” and directly impacts zoning compliance; therefore, length of tenancy lies at the core of the Appeal before the Board.

City Appeal Submissions

To assist the Board in its review of the Appeal, the City has prepared and included as Exhibit 1, a 19-page document that provides comprehensive and detailed background context, a timeline of relevant facts, and detailed responses to each of the Appellants’ grounds for the Appeal.

For the Board’s convenience, a summary of Exhibit 1 is included below in this staff report. This separation of this information is intended to provide both a summary and details of the City’s position.

Factual Background Summary

- **December 16, 2024:** The Appellants applied to the City to register the Property as a Family Community Residence
 - The information submitted required revision and resubmittal.

² “Appellants” is used throughout this report to describe all entities and individuals associated with or acting on behalf of the Appellants, including legal counsel. There are instances in which emails, communications, or documents were exchanged between one Appellant or legal counsel, but as the individuals were all acting on behalf of Appellants and for sake of clarity, the word “Appellants” is used.

- **February 4, 2025:** The Appellants submitted their revised Community Residence, Assisted Living, and Nursing and Convalescent Home Registration Application and supporting documents (the “Application”) (Exhibit 4).
 - At the time of submittal, the Appellants were not yet licensed to operate by the State of Arizona, and therefore, could not obtain final registration as required by Section 11-31-14(C) of the Mesa Zoning Ordinance (MZO).
- **February 5, 2025:** City staff reviewed the information provided in the Application and provided provisional registration approval for the proposed Family Community Residence. (Exhibit 5)
- **February 6, 2025:** Based upon the provisional registration approval, the City of Mesa’s Building Official, John Sheffer, issued a certificate of occupancy for the Property for R-4 Occupancy (Residential Care/Assisted Living). (Exhibit 6)
- **March 17, 2025:** A Mesa resident spoke at the City Council meeting during “Items from citizens present” and questioned why the proposed Community Residence was approved without approval of a SUP. (Exhibit 7)
- **March 20, 2025:** Because legitimate questions about the length of tenancy had arisen, the City of Mesa’s Development Services Director, Nana Appiah, emailed the Appellants requesting a copy of the application submitted to the State of Arizona for a license that would allow them to operate a Behavioral Health Home³. (Exhibit 8)
- **March 24, 2025:** The City of Mesa received an email from the resident who spoke at the March 17, 2025, City Council meeting with information suggesting that the proposed Community Residence did not meet the definition of a Family Community Residence based on its length of tenancy. (Exhibit 9). The email included:
 - Three Sworn Affidavits from citizens stating that they were told by Richard Miller, Chief Executive Officer of Legacy Recovery Center, that a typical stay at the facility would be between six to eight weeks⁴; (Exhibit 9)
 - An audio recording of a conversation between the facility operator and a touring individual, stating a typical stay at the facility is between four to six weeks; (Exhibit 9); and
 - Screenshots taken March 23, 2025, of Legacy Recover Center’s website, stating typical treatment programs last 30 days. (www.legacyrecoverycenter.com - Exhibit 9)
- **March 25, 2025:** The City of Mesa’s Building Official, John Sheffer, sent an email to the Appellants following up on the Development Services Director’s March 20, 2025, email request for the state license application for the proposed Community Residence. (Exhibit 10)

³ The Arizona Department of Health Services issues various licenses for facilities that may qualify as a Community Residence under the MZO. The terminology of facilities that are licensed by the state are not the same as the terminology used in the MZO called “Community Residence License.” The license the Appellant sought in this instance is for a Behavioral Health Residential Facility (“BHRF”).

⁴ The body of the March 24, 2025, email and audio recording state the typical stay is four to six weeks.

- The March 25, 2025 email informed the Appellants that the City received information about the typical length of tenancy at the proposed Community Residence which was inconsistent with the Application submitted to the City.
- The City requested the Appellants submit additional information and documentation supporting the length of tenancy, including all communication pertaining to the Appellants' license application to the state, and requested this information be provided by April 1, 2025, for review.
- **April 1, 2025:** The City emailed the Appellants and encouraged them not to have residents at the facility⁵ until the City received and reviewed all of the requested information. (Exhibit 11) Several hours later, the Appellants emailed the requested information to the City's Development Services Director and Building Official. (Exhibits 12, 13, and 14)
- **April 15, 2025:** The City of Mesa's Zoning Administrator sent a certified copy and email of a letter, informing the Appellants that based on the supplemental information provided by the Appellants, the proposed Community Residence is considered a Transitional Community Residence⁶. (Exhibit 3)
 - The determination voided the provisional registration approval because Transitional Community Residences in Single Residence zoning districts require approval of an SUP.
 - The Appellants were informed that all operations must cease⁷ until the SUP was heard and acted upon by the Board of Adjustment.
 - The Appellants were invited to submit their application for an SUP through the City's online DIMES portal.
 - The Zoning Administrator did not consider any information provided by third-parties in reaching this conclusion because the City could not verify its accuracy . However, the information supplied by third parties closely mirrored Appellants' submitted documents and further supports the Zoning Administrator's determination.
- **April 30, 2025:** The Appellants submitted an appeal to the Zoning Administrator's decision. (Exhibit 15)

⁵ This would not prohibit the Appellants from using the Property for any other use permitted by the MZO.

⁶ The original letter was incorrectly dated April 10, 2025, rather than April 15, 2025. This was corrected and the letter was stamped with "Date of Letter Correction April 15, 2025."

⁷ The cessation of operations applied to its use as a Community Residence, and not for any other permitted uses in the MZO.

Mesa Zoning Ordinance (MZO) Requirements

Excerpts of the MZO sections, relevant to this Appeal, are included below for reference and context. The full MZO sections are attached as Exhibit 16.

Chapter 86 - Community Residence Definitions:

The following definitions related to Community Residence are included in Section 11-86-2 of the MZO.

Community Residence: A community residence is a residential living arrangement for five to ten individuals with disabilities, excluding staff, living as a family in a single dwelling unit who are in need of the mutual support furnished by other residents of the community residence as well as the support services, if any, provided by the staff of the community residence. Residents may be self-governing or supervised by a sponsoring entity or its staff, which provides habilitative or rehabilitative services related to the residents' disabilities. A community residence seeks to emulate a biological family to foster normalization of its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter in a family-like environment. Medical treatment is incidental as in any home. Supportive interrelationships between residents are an essential component. Community residence includes sober living homes and assisted living homes but does not include any other group living arrangement for unrelated individuals who are not disabled nor any shelter, rooming house, boarding house or transient occupancy.

Family Community Residence: A community residence is a relatively permanent living arrangement with no limit on the length of tenancy as determined in practice or by the rules, charter, or other governing documents of the community residence. The minimum length of tenancy is typically a year or longer.

Transitional Community Residence: A community residence that provides a relatively temporary living arrangement with a limit on length of tenancy less than a year that is measured in weeks or months, as determined either in practice or by the rules, charter, or other governing document of the community residence.

Chapter 5 – Residential Districts Land Use Regulations:

The Property is zoned Single Residence-15 (RS-15). Below are the land use requirements for Community Residences in Residential Districts per Section 11-5-2 of the MZO.

11-5-2: - LAND USE REGULATIONS

In Table 11-5-2, the land use regulations for each Residential Zoning District are established by letter designations as follows:

- "P" designates use classifications permitted in the Residential District.
- "SUP" designates use classifications permitted on approval of a Special Use Permits.
- "CUP" designates use classifications permitted on approval of a Council Use Permits.

- "TUP" designates use classifications permitted on approval of a Temporary Use Permits.
- "(x)" a number in parentheses refers to a limitation following the table.

Use classifications not listed are prohibited. The "Additional Use Regulations" column includes specific limitations applicable to the use classification or refers to regulations located elsewhere in this Ordinance.

Table 11-5-2: Residential Districts				
Proposed Use	RS	RSL	RM	Additional Use Regulations
Residential Use Classifications				
...				
Community Residence				
Family Community Residence	P (13, 14)	P (13, 14)	P (12, 13, 14)	Section 11-31-14, Community Residences
Transitional Community Residence	SUP (13, 14)	SUP (13, 14)	P (12, 13, 14)	
...				
12. Detached Single Residence is not permitted in RM-5 district.				
13. Use not permitted when the property is subject to the AOA 1 overflight area, see Section 11-19-2, Runway Protection Zones and Airport Overflight Areas.				
14. Use not permitted when the property is subject to the AOA 2 overflight area, see Section 11-19-2, Runway Protection Zones and Airport Overflight Areas.				
...				

Chapter 31 - Standards for Specific Uses and Activities – Community Residences:

Community Residences are subject to the Specific Uses and Activities Standards in Section 11-31-14 of the MZO. Below are code sections pertinent to the Appeal.

- **Section 11-31-14(A)(3)**
 3. **Licensure and Certification.** A community residence must obtain one (1) or more of the following:
 - (a) License or certification from the State of Arizona required to operate the proposed community residence; or
 - (b) Certification by the Arizona Recovery Housing Association if not required to be licensed by the State of Arizona; or
 - (c) A "Permanent" Oxford House Charter.

- **Section 11-31-14(C)**

- C. **Registration, Renewal, and Revocation.** A community residence must register with the City and renew its registration as set forth below:
1. ***Registration Process for Community Residences That Do Not Require a Conditional Use Permit.*** An applicant for a community residence that does not require a conditional use permit to operate and is not requesting a reasonable accommodation under Section 11-31-14(D), must register with the City by submitting the City's registration application according to Chapter 67, Common Procedures. If the use complies with all City requirements, the applicant will receive provisional registration approval from the planning division. To obtain final registration, the applicant must provide evidence of the required license or certification within 120 days from the date the provisional registration was approved.
 2. ***Registration Process For a Community Residence That Requires a Conditional Use Permit or is Requesting a Reasonable Accommodation.*** A community residence that requires a conditional use permit to operate or that requests a reasonable accommodation to the standards in Section 11-31-14(a), must register with the city by submitting the City's application for a conditional use permit according to Chapter 67, Common Procedures, and by providing evidence of compliance with all City requirements. The request will be reviewed by the applicable governing body. approval of the conditional use permit grants the applicant provisional registration. To obtain final registration, the applicant must provide evidence of the required license or certification within 120 days from the date the provisional registration was approved; except registration for a community residence that is granted a reasonable accommodation to the license and certification requirement is considered final and no other action is required.

Zoning Administrator's Determination Related to Proposed Project (Findings of Fact)

The Zoning Administrator identified the following facts that support the determination that the proposed Community Residence is a Transitional Community Residence and not a Family Community Residence. (Exhibit 3)

Each of these facts is established by Appellants' documents and information supplied directly from the Appellants. Appellants' documents convey the following facts:

- The Financial Agreement is a resident's housing contract. (Exhibit 13[F]).
 - The resident's housing contract measures cost in terms of days at \$1,000 per day per the financial agreement.
 - The resident housing contract calculates the total amount owed at admission.
- Because total cost is determined at admission, and measures the cost based on each day, the total number of days a resident will be housed at the proposed Community Residence is set at admission.
- Resident treatment plans/periods are measured in days. (Exhibit 12).

- One treatment plan/period lasts for 30 days.
- The facility uses 30-day treatment plan reevaluation “cycles.” (Exhibit 12)
 - If after 30 days, a resident requires additional treatment, a new 30-day treatment plan/period will begin.
- Each resident’s housing contract is limited to 30 days because:
 - One treatment plan/period lasts for 30 days;
 - It is unknown if any additional treatment is needed until after a reevaluation;
 - The financial agreement (resident housing contract) total cost is determined at admission; and
 - The resident’s housing contract does not include costs for more than one treatment plan/period.
- If a resident requires additional treatment after 30 days, a new financial agreement (housing contract) is required. Because the facility uses 30-day reevaluation “cycles”, any subsequent housing contract would also be limited to 30 days.
- The average length of stay reported to the Arizona Department of Health Services is 45 days. (Exhibit 13[E])
- Appellants’ documents refer to residents’ treatment/housing in terms of days with one exception in the letter of April 1, 2025, which uses weeks (request for 4-to-6-week initial commitment). (Exhibits 12, 13, and 14) Appellants’ documents do not measure treatment/housing in terms months or years. The only use of the words “month” or “year” to describe length of tenancy is in the Application’s narrative.

The information provided in the Application is inconsistent with the information provided by the Appellants on April 1, 2025. The Application suggests a much longer, more permanent, typical tenancy as it describes tenancy in terms of months or more than a year. This is not supported by any of the supplemental documents submitted to the City.

The City’s application form clearly states that the applicant is responsible for the accuracy of all information provided, submitting erroneous information or errors found after processing may result in denial of an application or loss of registration, respectively. (Exhibit 4)

Based on the information submitted by the Appellants, the facts show that the proposed Community Residence is a relatively temporary living arrangement that is measured in terms of days (both 30 days and 45 days are reported). Tenancy, through practice and contracts, is limited to less than one year. Information received by third parties, although not verified for accuracy and not used in the Zoning Administrator’s determination, support the information provided by the Appellant. (Exhibit 3)

Based on the tenancy length identified by the Appellants’ documents, the proposed Community Residence meets the definition of a Transitional Community Residence in the MZO. Because the facility is a Transitional Community Residence, approval of a SUP is required to operate the proposed Community Residence at this location in the City of Mesa. As the provisional registration approval was based upon erroneous information and errors found after the fact, the registration was voided.

Appeal Responses

The following provides an executive summary of the grounds raised in the Appeal. A comprehensive, detailed response is attached in Exhibit 1.

The Grounds and City's response are not presented in the order submitted by the Appellants. Because the central issue concerns the length of time that residents stay at the proposed Community Residence, the City addresses that argument first.

The Appellants also raise legal challenges to the City's action that are distinct from the Zoning Administrator's determination. Those issues are also addressed out of order for clarity and coherence.

The City's responses to each of Appellants' grounds for the Appeal are numbered to correspond with the number assigned by the Appellants in their Notice of Appeal.

Ground 3

The Legacy Recovery Center behavioral health residential facility use at the Property constitutes a Family Community Residence under the Zoning Ordinance.

Response 3

- The Appellants assert that the proposed Community Residence is a Family Community Residence because it provides a family environment for its residents; however, this meets the general definition of Community Residence, not whether it is a Family Community Residence or Transitional Family Residence. (Exhibit 12)
- Family Community Residences and Transitional Community Residences are distinguished by their length of tenancy. (Exhibit 16)
 - A Family Community Residence is a relatively permanent living arrangement with a minimum length of tenancy that is typically a year or longer.
 - A Transitional Community Residence provides a relatively temporary living arrangement with a limit on length of tenancy less than a year that is measured in weeks or months.
- The length of tenancy is determined either in practice or by the rules, charter, or other governing document of the Community Residence. (Exhibit 16)
- The supplemental documents provided to the City by the Appellants on April 1, 2025, which are detailed in the Zoning Administrator's April 15, 2025 letter, demonstrate that the proposed Community Residence is a Transitional Community Residence because the average stay is between 30-45 days. (Exhibits 12, 13, and 14)
- A SUP for a Transitional Community Residence, heard and acted upon by the Board of Adjustment, is required for this location.

Ground 4

The City's Family Community Residence approval issued to Legacy Recovery Center was consistent with other Family Community Residence approvals issued by the City to similar uses with behavioral health residential facility licenses prior to February 2025.

Response 4

- The provisional registration approval issued on February 5, 2025, was based on review of information provided by the Appellants in their Application that specifically listed the proposed Community Residence as a Family Community Residence.
- The City's request for additional information and review for the proposed Community Residence was prompted by citizen complaints.
- If the City receives complaints or questions about the process used or approvals or evaluations a use, standard practice to review those questions and investigate as appropriate.
- The City has requested additional length of tenancy from other Community Residences after the initial application was submitted. (Exhibits 9 and 10) This is not the only project that the City has classified as a Transitional Community Residence when the initial application indicated the project is a Family Community Residence. (Exhibit 23)
- The supplemental documents provided by the Appellants on April 1, 2025, demonstrate that the typical tenancy is based on days (30-45 days), rather than months or years. (Exhibits 12, 13, and 14)
- The proposed Community Residence is a Transitional Community Residence rather than a Family Community Residence. A SUP is required to be heard and acted upon by the Board of Adjustment to register and operate the proposed Community Residence in the City of Mesa.
- The City introduced the concept of Community Residences into the MZO in 2021 and is always striving to improve processes to assist applicants. The City also provides information to the general public as it relates to those processes. The City is implementing on-going process improvements related to Community Residences, which include:
 - Yearly registration renewal letters;
 - An "FAQ" on the City's website for Mesa residents (Exhibit 17);
 - An "FAQ" on the City's website for the application process identified (Exhibit 17);
 - Updated application form to request specific tenancy information (Exhibit 24); and
 - An automated renewal process through the City's online portal DIMES.

Ground 6

The Zoning Administrator's Interpretation was initiated and issued as a result of discriminatory correspondence and actions of Mesa residents and therefore violates the Fair Housing Act.

Response 6

- The Board does not have the authority to determine whether the Fair Housing Act has been violated. The Board's role is limited to interpreting and applying local zoning ordinances; it is neither empowered nor equipped to decide federal civil rights claims. Therefore, any arguments alleging Fair Housing Act violations are outside the scope of this Board's decision-making authority.
- If the Board of Adjustment determines it has jurisdiction over a violation of the Fair Housing Act, the facts show that Zoning Administrator's determination that the use qualifies as a Transitional Community Residence was in no way based upon, reliant on, or influenced by any discriminatory comments or motivations.
- The initial complaint, which prompted the City to seek additional information from the Appellants, questioned why the proposed Community Residence was not required to obtain approval of a SUP and asserted that an SUP was required because the facility operated as a Transitional Community Residence.
- The City received contact from other residents whose comments were focused on the length of tenancy, and were not rooted in fears, prejudices, or stereotypes about the occupants. (Exhibit 18)
- Once concerns were raised, the City requested additional information from the Appellants.
- The Zoning Administrator's determination that the proposed Community Residence qualifies as a Transitional Community Residence was based solely on objective facts submitted by the Appellants and not in any way on discriminatory motivations or third-party comments.
 - The classification was grounded in documents and statements provided directly by Appellants, which consistently describe a relatively short-term, temporary housing arrangement.
 - The Zoning Administrator reasonably relied on the most specific, detailed, and internally consistent documentation: the financial agreement, description of treatment plans and periods, direct written communications from Appellants, and representations to the state for licensing purposes.
- The Zoning Administrator's decision relied solely on Appellants' documents and explanations. The Zoning Administrator did not rely on any information supplied by third parties, nor was the investigation or decision at all dependent or motivated by any statements by third parties that were not related to the length of tenancy of residents at the proposed Community Residence.
- The Zoning Administrator's determination that the proposed Community Residence is a Transitional Community Residence affects only the approval process, not the type of

residents allowed to reside there, or the recognition of the residence as a home for people with disabilities.

- Whether it be a Family Community Residence or Transitional Community Residence, the City expects such homes to serve residents with a broad range of disabilities in a non-institutional, home-like environment. Any discriminatory statements by third parties are irrelevant to the issue of the approval process.

Ground 1

The Legacy Recovery Center Family Community Residence and Certificate of Occupancy approvals issued by the City of Mesa in February 2025 are vested.

Response 1

- Under Arizona law, property owners do not acquire vested rights in zoning approvals or certificates of occupancy unless they have undertaken substantial actions in good-faith reliance on a valid, final government authorization.
- The City's February 5, 2025, provisional registration approval is explicitly not a final approval. It was granted solely on a preliminary review of the Application documents provided, which later proved to be inconsistent with Appellants' own subsequent submissions.
 - Per MZO Section 11-31-14(A)(3), a License or Certification from the State of Arizona or a permanent Oxford House Charter is required for a Community Residence to register with the City.
 - Per MZO Section 11-31-14(C)(1) and Section 11-31-14(C)(2), to obtain final registration for a Community Residence, the applicant must provide evidence of the required license or certification within 120 days from the date of the provisional registration approval.
 - The City of Mesa's website further specifies that to obtain final registration of a Community Residence, an applicant must upload a copy of the required license or certification to their case file in the Development Services Department's online portal: DIMES.
 - The February 6, 2025, Certificate of Occupancy was similarly issued in reliance on the Application documents and under the assumption that the Proposed Project's use complied with the Zoning Ordinance.
 - Per Section 4-1-6(E) of the Mesa Building Code, the Building Safety Director may suspend or revoke a Certificate of Occupancy if issued based on incorrect information supplied. (Exhibit 19)
 - A Certificate of Occupancy does not override the application of the Zoning Ordinance. Section 4-1-4(M) of the Building Code provides that the Building Safety Director is authorized to prevent occupancy or use of a structure that is in violation of any other Mesa ordinances, including the MZO. (Exhibit 19)
 - Section 4-1-4(O) of the Building Code provides that the Building Safety Director may revoke or suspend if a permit, including a certificate of occupancy, if it is issued in

error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any Mesa ordinance. (Exhibit 19)

- The Appellants have not uploaded a copy of their State license to their case file in DIMES.
- Appellants cannot demonstrate good-faith reliance that they had obtained property rights. In their application, Appellants submitted incorrect information about the length of residents' stay, which is a deciding factor as between the particular Community Residence Classification under City Code 11-86-2, and thus whether a special use permit is required.
 - The Application, signed by the Appellants, clearly states that submitting erroneous information, or errors found after processing, may result in denial of an application or loss of registration. (Exhibit 4)
 - An applicant cannot rely on approvals, provisional or otherwise, acquired by presenting an inaccurate or incomplete picture of the proposed use, and then claim protection from enforcement when the contrary material facts come to light.
- Appellants did not undertake any substantial physical improvements or incur obligations in reliance on the City's action that would support a vested rights claim.
 - No building permits were sought or required for the occupancy change, and no inspections were conducted because the Appellants certified compliance with the Building Code.
 - Appellants were not required to install fire sprinklers.
 - To the City's knowledge, Appellants did not perform any structural work as they did not request any construction permits.
 - The Appellants did not secure a state license for the facility until March 27, 2025, after concerns were raised about their operations and whether the proposed Community Residence qualifies as a Transitional Community Residence. (Exhibit 13[E])
 - Appellants were expressly encouraged by City staff not to admit residents until the review was complete. (Exhibit XX)
 - On April 2, 2025, the Appellants acknowledged that only three residents were on the premises — an arrangement permissible while the review process was ongoing and consistent with the zoning allowance for a non-regulated residence. (Exhibit 25)
- Any expenditures by Appellants were undertaken with full knowledge that (1) their registration was only provisional, (2) their state license had not yet been granted, and (3) their operations were still under review due to questions about zoning compliance.
- Voluntary expenditures made in the face of unresolved legal and regulatory questions do not create vested rights or support estoppel against enforcement.

Ground 2

The City of Mesa is equitably estopped from rescinding, suspending or revoking the Family Community Residence and Certificate of Occupancy approvals issued to Legacy Recovery Center.

Response 2

- The Board of Adjustment does not have jurisdiction to decide claims based on equitable estoppel. The Board's authority is limited to determining whether the Zoning Administrator correctly applied the Zoning Ordinance based on the facts and law.
- To the extent the Board of Adjustment decides it has jurisdiction to find equitable estoppel, the City is not estopped in this matter because Appellants cannot show it should apply.
- Equitable estoppel generally applies when (1) the party to be estopped committed acts inconsistent with a position it later adopted; (2) the other party relied on those acts; and (3) the latter party was injured by the former's repudiation of its prior conduct.
- When estoppel is asserted against a governmental entity, that party must show applying estoppel would neither unduly damage the public interest nor substantially and adversely affect the exercise of governmental powers, and that the government's alleged inconsistent actions were both affirmative and formal.
- Mere inaction, delay, or administrative oversight does not give rise to estoppel.
- The City did not act inconsistently. The City provisionally approved the registration, but on the condition that submitting erroneous information, or errors found after processing, may result in a denial of an application or loss of registration. (Exhibit 4)
 - The February 5 registration approval was clearly provisional and expressly conditioned on compliance with the Zoning Ordinance and submission of a valid state license. The February 6 certificate of occupancy was issued solely on the assumption—based on Appellants' own representations—that the proposed use qualified as a Family Community Residence. That Appellants' information was later found erroneous, voiding the provisional registration, is *consistent* with the provisional nature of the approval.
- Appellants cannot show reliance.
 - The provisional registration was approved with the explicit warning that if incorrect information was submitted, the registration could be denied or revoked. (Exhibit 4)
 - To submit incorrect information, or omit material information, and then claim reliance when the registration is provisionally approved on that basis, is unreasonable. There can be no equitable estoppel when approvals are based on material omissions or inaccuracies.
- Appellants cannot show detrimental reliance.
 - The Appellants undertook no building improvements requiring permits, did not trigger inspections, and did not receive their state license until March 27, 2025 (Exhibit 12[E]) — after the City had already begun investigating whether the facility complied with zoning.

- They failed to upload the state license as required through DIMES and only submitted it via email on April 1, 2025, after concerns had been raised. (Exhibit 22)
- Before the Appellants submitted the state license to the City, they were advised not to admit residents until the review process was completed. (Exhibit 11)
- On April 2, 2025, they confirmed that only three residents were present—consistent with what would be allowed during review. (Exhibit 25)
- Any decision to expand occupancy beyond that point was made at their own risk and contrary to the City’s recommendations.
- Governmental bodies are not estopped from correcting mistakes or enforcing zoning regulations simply because they failed to act sooner. Even assuming an initial “misclassification” occurred, the City has both authority and an obligation to rectify that error upon discovering the true facts.
- Applying estoppel here would damage both the public interest and adversely affect the exercise of governmental powers by forcing the Board to go beyond the limitation of its powers and denigrate the City Council’s powers.

Ground 5

The Legacy Recovery Center use is protected by the Fair Housing Act as a family environment for disabled individuals who may live in communities of their choice, regardless of the length of stay.

Response 5

- The Board does not have the authority to determine whether the Fair Housing Act has been violated. The Board’s role is limited to interpreting and applying local zoning ordinances. A.R.S. § 9-462.06(G).
- It is neither empowered nor equipped to adjudicate federal or state civil rights claims. To the extent the Board of Adjustments determines it has jurisdiction to hear the Appellants’ Fair Housing Act claim, the facts demonstrate that there has been no violation.
- The Fair Housing Act does not exempt facilities from complying with neutral, generally applicable zoning requirements — particularly where, as here, the City has adopted a zoning framework that is specifically designed to accommodate such uses in a lawful, reasonable, and non-discriminatory manner.
- The central issue is not whether Legacy serves individuals with disabilities, but whether the use fits the definition of a Family Community Residence or Transitional Community Residence under the MZO.
 - This distinction is not arbitrary. It is the result of a comprehensive legal and planning study authored by nationally recognized zoning expert Daniel Lauber. (Exhibit 21)
 - In the study, Mr. Lauber concluded that length and stability of tenancy are key characteristics that differentiate stable, single-family-like environments (Family Community Residences) from more transitory, institutional, or high-turnover

arrangements, which are more akin to multifamily housing like apartments (Transitional Community Residences).

- Based on Mr. Lauber's expert findings, the City amended the MZO to clearly distinguish between Family Community Residence and Transitional Community Residence. Under that amendment:
 - Transitional Community Residences, due to their short-term, cyclical nature, are treated more like Multiple Residence uses. Notably, Multiple Residence uses are not permitted in RS zoning districts in Mesa. (Exhibit 21)
 - Per MZO Section 11-5-2, the City permits Transitional Community Residences in Single Residence Districts through the issuance of a SUP. As explained by Mr. Lauber, an SUP is designed to serve as a reasonable accommodation under the Fair Housing Act to allow individuals with disabilities to reside in Single Residence Districts. (Exhibit 21)
 - Family Community Residences, in contrast, involve longer, more stable tenancy and are allowed by right in Single Residence Districts. (Exhibit 21)
- The MZO and requirement for an SUP for Transitional Community Residences in RS Districts fully incorporates the Fair Housing Act's requirement to make reasonable accommodations, while still preserving the integrity of low-density residential neighborhoods. (Exhibit 21)
 - The Fair Housing Act does not prohibit municipalities from applying zoning classifications based on objective operational factors, such as the length and nature of tenancy.
 - Nor does it guarantee the right to operate any type of facility, in any manner, in any zone, without meeting applicable regulatory requirements.
 - The Fair Housing Act requires municipalities to provide a *reasonable accommodation*—and Mesa's SUP process for Transitional Community Residences in Single Residence Districts does exactly that. (Exhibit 21)

Conclusion

Based on the information provided on the Application, which was signed by the Appellants, a provisional registration was approved for the proposed Family Community Residence. When questions were raised on the length of tenancy, additional information was requested of the Appellants.

The supplemental information provided by the Appellants demonstrated that the tenancy for those in the proposed Community Residence was of a short duration and meets the definition of a Transitional Community Residence. Because the provisional registration approval was provided for a Family Community Residence, the registration was revoked.

The determination by the Zoning Administrator does not prevent the Appellant from applying for a Special Use Permit to operate a Transitional Community Residence at the same location.

Recommendation

Based on the Application received, the supplemental information provided, and the preceding analysis, Staff recommends that the Board of Adjustment **deny** the appeal and **uphold** the Zoning Administration's Determination.

Exhibits

1. Contextual Framework and Detailed Response to Grounds for Appeal
2. Vicinity Map
3. April 15, 2025 - ZA Determination/Interpretation Letter
4. Legacy Recovery Center Application
5. Legacy Recovery Center Application/Provisional Registration
6. Certificate of Occupancy
7. March 17, 2025, Transcript City Council Meeting - Michael Stephan
 - A. Video Excerpt – Michael Stephan
 - B. Link to City Council Meeting - Full Video
8. March 20, 2025, Nana Appiah email to Heather Dukes
9. March 24, 2025, Michael Stephan Email to Nana Appiah with Attachments
 - A. Affidavits
 - B. LRC Audio Recording
 - C. LRC Website Screenshots
 - D. Amy Johnson Email
10. March 25, 2025, John Sheffer Email to Richard Miller
11. April 1, 2025 at 3:23 PM, John Sheffer Email to Heather Dukes
12. April 1, 2025 at 5:54 PM, Heather Dukes Email to Nana Appiah and John Sheffer with Attachments:
 - HND N Appiah and J Sheffer re Legacy Community Residence C of O and License 2025.04.01
 - Exhibit A - PMT24-21631 - Review Comments - 01-06-2025
 - Exhibit B - PMT24-21631 - Community Residence Approved 2338 E Minton St 2025.02.05
 - Exhibit C - C of O for 2338 E Minton St
 - Exhibit D - BHRF License for Minton Street - 2025.03.27
13. April 1, 2025 at 6:05 PM, Heather Dukes Email to Nana Appiah and John Sheffer with Attachments:
 - Exhibit E - ADHS License Application – 2338 E Minton St.
 - Exhibit F - Financial Agreement Forms
14. April 1, 2025 at 6:54 PM, Heather Dukes Email to John Sheffer
15. April 30, 2025, Legacy Recovery Center Notice of Appeal
16. Mesa Zoning Ordinance Community Residence Regulations
 - 11-5-2 Land Use Regulations
 - 11-31-14 Community Residences Use Standards
 - 11-86-2 Community Residence Definitions
 - 11-87-1 "Family" Definition

17. Community Residence FAQs
18. Resident Emails
 - March 28, 2025 - Rochelle Deriso Email to Mayor and District 1
 - March 28, 2025 - Amanda Misinco Email to Yvonne Anaya and Councilmember Adams
 - March 28, 2025 - Erin Lyman Email to Mayor
 - March 30, 2025 - Jocelyn Condon Email to District 1
 - March 31, 2025- Amanda Misinco Email to Mayor, District 1, and City Manager
19. Mesa Building Regulations
20. Community Residence Ordinance No. 5632
21. City of Mesa Study
22. Community Residence Registration (Overview/Step 6) (Website Nov. 2024)
23. Other TCR Properties
 - Rachel Phillips Letter to Nathan Finch RE: Community Residence Registration – Expired Provisional Approval (PMT24-16710)
 - PMT25-05654 Consolidated Comments
 - PMT25-09172 Consolidated Comments
24. City of Mesa Revised Application
25. April 2, 2025, Heather Dukes Email to John Sheffer