

Exhibit 1: Contextual Framework and Detailed Response to Grounds for Appeal

Executive summaries of the facts, timeline, Zoning Administrator's determination, pertinent Mesa Zoning Ordinance (MZO) code sections, and responses to the Appellants' grounds for appeal are provided in the Board of Adjustment Staff Report.

This Contextual Framework and Detailed Response to Grounds for Appeal provides further details and analysis to assist the Board in its determinations.

Comprehensive Background and Contextual Framework

March 2021: The City commissioned a study of the MZO by a nationally recognized expert in zoning for Community Residences - Daniel Lauber, an authority in the field since 1974. (Exhibits 20 and 21)

- Mr. Lauber has authored model zoning guidelines for the American Planning Association and the American Bar Association, provided consulting services to dozens of jurisdictions nationwide, and served as an expert witness for both the U.S. Department of Housing and Urban Development and the U.S. Department of Justice.
- The planning and legal study issued by Mr. Lauber, *Zoning Principles for Community Residences for People with Disabilities and for Recovery Communities in Mesa, Arizona* (March 2021), explained that the Transitional Community Residences are more transitory than Family Community Residences because they either impose a maximum time limit on how long people can live in them or actually house people for a few months or weeks. (Exhibit 21, pgs. 33-34, 36, 42, and 113 and fns. 2, 12, 13, 14, 25, 36, 63)
- Per the study, this key characteristic makes a Transitional Community Residence more akin to multifamily residential uses such as apartments with a higher turnover rate typical of rentals than single family dwellings.
- Because Multiple Residence uses are not permitted in Single Residence (RS) zoning districts in Mesa, the study recommended, and the City adopted, a zoning structure that allows Transitional Community Residences in RM (Multiple Residence) districts by right, and in RS districts only through the SUP process.
- The study explained that the SUP process for Transitional Community Residences serves as the "reasonable accommodation" required by the Fair Housing Act, allowing access for people with disabilities while still evaluating whether Transitional uses are appropriate in low-density residential neighborhoods.

July 8, 2021: The City Council of the City of Mesa passed and adopted Ordinance No. 5632, pertaining to community residences and other group residential uses based upon Mr. Lauber's. (Exhibit 31 Ordinance) The ordinance added "Community Residence" as a land use in the Zoning Ordinance, added associated definitions, and set out registration requirements for Community Residences to operate in Mesa.

- Pursuant to Ordinance No. 5632, 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. MZO 11-86-2.
- Community Residences are broken down into two different types: Family and Transitional. MZO 11-86-2. The distinction between the two uses is how long residents will stay at the facility.
 - A Family Community Residence is defined as:

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.
 - A Transitional Community Residence is defined as:

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.
- In Single Residence (RS) zoning districts, Family Community Residences go through an administrative review process whereas Transitional Community Residences are not allowed by right but require the approval of a conditional use permit. (Exhibit 16)

December 16, 2024: The Appellants applied to the City to register the Property as a Family Community Residence.

- The information submitted on December 16, 2024, required revision and resubmittal.

February 4, 2025: The Appellants submitted their revised Community Residence, Assisted Living, and Nursing and Convalescent Home Registration Application and supporting materials (the "Application"). (Exhibit 4)

- The Application form requires an applicant to sign and affirm that the information presented in support of the registration is true and correct to the best of their knowledge. (Exhibit 4)
- The Application form also includes a statement that the applicant is responsible for the accuracy of all information provided, submittal of erroneous information or failure to disclose information may result in denial, and errors found after processing may result in loss of registration and removal of a registered location from Mesa Map of Registered Community Residences. (Exhibit 4)
- Included with the Application was a narrative in support, which included the following statements:
 - **The type of Community Residence:**
 - Family Community Residence specializing in residential behavioral health
...
 - **Length of Residency**
 - There is no maximum or minimum time period that residents may live at the home. Some residents may live there for 3-6 months while others may choose to live there for longer than a year.

Exhibit 4.

- At the time of submittal, 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)

- The MZO provides for provisional registration approval for Community Residences that comply with all City requirements but have not yet obtained the necessary licensure or certification to operate. 11-31-14(C). Community Residences receive provisional zoning approval to submit for state licensing. (Exhibit 22)

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)

- The Certificate issued was for a change of use – Appellants applied to change the Property's use from one residential use to another.
- Based upon the Application certifying that the building complies with the Building Code, no construction permits were required.
- In the Application, Appellants indicated that a fire sprinkler system was installed on the Property (Exhibit) (City records demonstrate a permit for a fire sprinkler system was issued

in 2003). Because Appellants also certified that the residents would be self-ambulatory in case of an emergency, City Code did not require the installation of a sprinkler system.

- Appellants did not apply for and were not granted any construction or building permits prior to submitting the Application. If Appellants performed any construction or improvements to the Property, that was done without involvement or notification to the City.

March 17, 2025: A Mesa resident spoke at the City Council meeting during “Items from citizens present” and questioned why the Community Residence was approved without approval of a Special Use Permit (SUP). (Exhibit 7)

- Following the City Council meeting, the Development Services Department received several inquiries about the proposed Community Residence specifically asking whether an SUP was required based on the apparent short-term living arrangement.
- City staff reviewed Legacy’s website and noted that it advertised residents at its Chandler location would stay at the facility for 30 days. The Appellant’s application for the Mesa location did not include any references to a 30-day tenancy.
- Without knowing whether the Mesa location was intended to operate similarly to the Chandler location, and whether a 30-day tenancy also applied to the Mesa location, the City required additional information to evaluate the questions raised about the length of tenancy.

March 18, 2025: A Code Compliance case was opened to investigate the claim that the proposed Community Residence was operating as a Transitional Community Residence without approval of an SUP.

March 19, 2025: Code Compliance conducted an inspection and found no exterior evidence of a violation and closed the Code Compliance case.

- Appellants did not yet have licensing to operate, so it is unsurprising that an exterior inspection did not reveal a code violation.

March 20, 2025: The City of Mesa’s Development Services Director Nana Appiah emailed Appellants requesting a copy of the application submitted to the State of Arizona for a license that would allow them to operate a Community Residence (Exhibit 8)

March 24, 2025: The City of Mesa continued to receive emails from residents with questions about the proposed Community Residence. (Exhibit 18) On March 24, 2025, one such email attached documents suggesting that the proposed Community Residence did not meet the definition of a Family Community Residence based on its length of tenancy, (Exhibits 12, 13, and 14), including:

- Three Sworn Affidavits averring the affiants attended an open house at Legacy and spoke with Legacy’s CEO who told them a typical stay at the facility is between six to eight

weeks¹, and they were led to believe the proposed Community Residence would operate in the same manner as Legacy's Chandler location.

- An audio recording of a conversation between two unknown individuals. The email represented the recording was taken at Legacy's open house and captured an exchange with a Legacy representative who, when asked what the typical length of stay is, stated four to six weeks and confirmed Legacy would connect individuals in need of more care with outpatient programs.
- A PDF of what was represented to be screenshots of Legacy's website² (taken March 23, 2025), which included the following:

Frequently Asked Questions About Our Mental Health and Addition Services

...

How long do the treatment programs last?

The duration of treatment programs at Legacy Recovery Center varies depending on the individual's needs. Typical programs are 30 days, but longer stays can be arranged if necessary.

...

Luxury and Comfort

...

Our 30-day inpatient program allows you to immerse yourself fully in a nurturing environment, free from the distractions of the outside world. We understand that the setting for recovery is nearly as important as the treatment itself, and our residential facility reflects that understanding.

March 25, 2025: The City of Mesa's Building Official, John Sheffer, sent an email to Appellants following up on the March 20, 2025 email. (Exhibit 10)

- The email informed Appellants the City received information about the typical length of tenancy at the proposed Community Residence which seemed inconsistent with the Application submitted to the City.
- In order for the City to fully assess the length of tenancy at Appellant's facility, and through that assessment, determine whether the proposed Community Residence is a Transitional Community Residence requiring an SUP to operate at its location, the Building Official requested Appellants submit additional information and documentation supporting the length of tenancy, including:

¹ The body of the March 24, 2025 email and audio recording state the typical stay is four to six weeks.

² The screenshots attached to the March 24, 2025, are a fair and accurate representation of Legacy's website viewed by staff on March 20, 2025.

1. any advertising or marketing materials.
 2. any rental or service agreements entered with or on behalf of the tenants receiving care.
 3. all materials submitted to the State and any correspondence with the State regarding the use and licensing of the Property.
 4. After receiving the alleged screenshots of Legacy's website, which were a fair and accurate representation of what staff had previously observed, staff reviewed the website again. However, as of March 25, 2025, the Legacy website had been modified and the prior references to 30-day treatment program (initially seen by staff and later captured in the screenshots) had all been removed. In the March 25, 2025, the Building Official asked whether Appellants had modified the section of its website related to length of stay or duration of treatment programs, and if so, why and how? The email requested if changes were made that Appellants provide the City with the archived versions of the website prior to the recent changes.
- The email requested all information be sent for the City's review by April 1, 2025.

April 1, 2025: The Appellants asked for an extension to submit the requested information after close of business. (Exhibit 11)

- The request was granted and through that email, the City encouraged Appellants not have residents at the facility until staff had been able to receive and review all of the requested information. (Exhibit 11)
- At the time Appellants were advised not to have residents at the facility until after the City had completed its review, Appellants had not provided the City with any of the requested supplemental information or with its state licensure.
- Later that night, Appellant emailed several documents to the City's Development Services Director and Building Official (Exhibits 12, 13, and 14) attaching:
 - Financial Agreement – Appellants' housing contract with residents - which measures cost of treatment in terms of days at \$1,000 per day and calculates the total amount owed at admission. (Exhibit 13 (F))
 - Because the contract's total cost is determined at admission and measures cost based on each day of treatment, the total number of days a resident is housed at the proposed Community Residence (their length of tenancy) is set at admission.
 - Correspondence from Appellants' counsel.
 - An attached April 1, 2025 letter confirmed that Appellants' treatment plans/treatment periods are measured in days, and one treatment plan/period lasts for 30 days. (Exhibit 12)
 - Appellants' 6:54 pm email confirmed that they use 30-day treatment plan reevaluation "cycles" and if a resident requires additional treatment

after their initial 30-days, a new 30-day treatment plan/period will begin.
(Exhibit 14)

- Application to Arizona Department of Health Services. (Exhibit 13(E))
 - In the Residential Program Description, Appellants reported to the State that the average length of services is 45 days.

April 2, 2025: In apparent response to the City's encouragement not to have residents at the Property until review had occurred, Appellants confirmed that as of March 31, 2025, only three residents were living at the Property. (Exhibit 25)

- The definition of Community Residence requires five to ten individuals. Three unrelated individuals living together meets the definition of "Family", and no registration would be required. (Exhibit 16)

April 15, 2025³: The City of Mesa's Zoning Administrator (ZA) sent a certified copy and email of a letter, informing the Appellant that based only on the supplemental information provided by the Appellant, the proposed Community Residence is considered a Transitional Community Residence. (Exhibit 3)

- All supplemental documents measured residents' treatment/housing in terms of days, with the exception of one reference to a "4-to-6-week initial commitment."
- None of the supplemental documents measured residents' treatment/housing in terms of months or years
- The only use of the words "month" and "year" to describe the length of tenancy was in the original narrative submitted with the Application.
- The letter informed Appellants that based upon their supplemental documentation, the facts show the proposed Community Residence is a relatively temporary living arrangement measured in terms of days.
 - **Transitional Community Residence.** A community residence that provides a relatively temporary living arrangement... MZO 11-86-2.
- The facts show that through practice and through Appellants Financial Agreements, tenancy at the proposed Community Residence is limited to less than one year.
 - **Transitional Community Residence...**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. MZO 11-86-2.

³ The original letter was inadvertently dated April 10, 2025. The date was corrected, and a notation of the error was later added to avoid confusion determining the appeal deadline.

- The Zoning Administrator did not consider any information provided by third-parties in reaching this conclusion because the City could not verify the accuracy of such information.
 - The information supplied by third parties closely mirrored Appellants' own documents and further supports the Zoning Administrator's determination.
- The determination voided the provisional registration approval because Transitional Community Residences in RS zoning districts require approval of an SUP.
- The Appellants were informed that all operations must cease until the SUP is heard and acted upon by the Board of Adjustment. Appellants were invited submit their application for an SUP through the City's online DIMES portal.

April 30, 2025: The Appellants submitted an appeal to the Zoning Administrator's decision (Exhibit 15).

Detailed Response to Grounds for Appeal

The following section provides detailed responses to the grounds raised in the Notice of Appeal; however, they 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.

In addition, the Appellants raise legal challenges to the City's action that are distinct from the Zoning Administrator's interpretation arguments, and as such, 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 – Detailed Analysis:

The Appellants assert the proposed Community Residence is a Family Community Residence per the MZO. Although not substantively addressed in their Notice of Appeal, in their April 1, 2025, correspondence, the Appellants suggested that the proposed Community Residence qualifies as a Family Community Residence because:

Legacy's family environment for its residents is the key factor in this determination. As disclosed in our application:

The residents at the property are in treatment/recovery for substance and alcohol use, with some residents seeking treatment for co-occurring behavioral health issues (i.e. depression, anxiety). The only individuals receiving treatment at the location will be the 10 individuals approved to occupy the home. Legacy's housing replicates a family environment in the look and feel of the home. Residents at Legacy are not adjudicated, and they come to the program of their own free will to seek help with behavioral health issues. Clinical services provided on-site include resident assessments, individual

therapy, and group therapy. The therapists and house managers will also assist with teaching life skills such as cooking and cleaning, resume building, and employer interview coaching.

No medical or treatment services will be provided at the Property that would not typically occur in a residential setting. A nursing assessment and vitals check are completed upon intake, but those are the only medical services provided at the location. No detoxification will occur on-site.

The residents live in a family environment and emulate a family. They go grocery shopping, cook, clean and complete chores together. They hold each other accountable and support one another.

This description is accurate and describes the family model implemented at Legacy's residence.

(Exhibit 12)

The Appellants are correct in that the model they describe meets the general definition of a Community Residence. All Community Residences are:

residential living arrangement[s] for five to ten individuals with disabilities...living as a family...who are in need of the mutual support furnished by other residents of the community residence as well as support services...[that] seek to emulate a biological family to foster normalization of [their] residents and integrate them into the surrounding community. [Their] primary purpose is to provide shelter in a family-like environment...

11-86-2. (Exhibit 16) The family environment described by Appellants qualifies it as a Community Residence in the first instance but does not assist in the determination of whether it is a Family Community Residence or Transitional Community Residence use.

However, the Appellants fail to address the qualifications to be considered a Family Community Residence. As previously noted, Family Community Residence and Transitional Community Residences are distinguished by their length of tenancy. A Family Community Residence is a relatively permanent living arrangement with a minimum length of tenancy that is typically a year or longer, whereas 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. Any limit on length of tenancy is "determined either in practice or by the rules, charter, or other governing document of the community residence." 11-86-2. The narrative description supplied in the Application does not dictate the decision.

The Appellants' housing contracts and supplemental information supplied on April 1, 2025, show in practice the tenancy of residents at the proposed Community Residence is expected to be between 30-45 days. (Exhibits 12, 13, and 14) This is a relatively temporary living arrangement. Further, because the total cost of a resident's stay is determined on a per-day basis and agreed upon at the time of admission, the length of tenancy is contractually limited to an initial 30-day period. The Appellants' own practice supports this limitation: at the end of each 30-day treatment plan, they reassess whether continued treatment is appropriate. If continued treatment is

appropriate, rather than extending the existing agreement⁴, residents enter into a new financial agreement for another 30 days, at which point the resident is re-evaluated – the 30 day “cycle”. This process may repeat, but each Financial Agreement stands alone as a separate, time-limited contract. As a result, the residents’ tenancy is never open-ended or indefinite - it is always defined and limited by the terms of the current 30-day contract. The ability to enter into multiple, sequential agreements does not alter the fact that each individual tenancy period is expressly limited to 30 days by contract.

In their April 1, 2025, correspondence, the Appellants suggest that the initial narrative of length of tenancy was accurate: “There is no maximum or minimum time period that residents may live at the home. Some residents may live there for 3-6 months while others may choose to live there for longer than a year.” (Exhibit 12) However, the Appellants’ own documents and supplemental information contradict this claim and reveal the initial narrative description is at least inaccurate, if not designed to be intentionally misleading. (Exhibits 12, 13, and 14)

Notably, the internal documents and correspondence from the Appellants describe the operations of the proposed Community Residence in terms of days and weeks. (Exhibits 3, 12, 13, and 14) Unlike the original narrative, the supplemental materials never characterize resident stays in terms of months—let alone years. (Exhibits 3, 12, 13, and 14) Most compellingly, in seeking its licensure from the State of Arizona, Legacy’s Residential Program Description identified the average length of services for each resident as just 45 days. (Exhibit 13(E))

These materials confirm that residents’ stays are typically limited to 30 to 45 days, with the hypothetical potential for multiple, separate tenancy periods. In contrast, a Family Community Residence is defined by a significantly longer duration of stay, typically one year or more. (Exhibit 16)

The evidence makes clear that the proposed Community Residence does not meet this standard. Instead, based on the short-term nature of the tenancy, the proposed Community Residence qualifies as a Transitional Community Residence and must comply with the MZO requirements that apply to that use.

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 – Detailed Analysis:

The Appellants contend that the City’s provisional registration approval of a Family Community Residence was consistent with other similar approvals issued prior to February 2025. This is accurate.

The City’s request for additional information and review in this instance was prompted by citizen complaints. If the City receives complaints or questions about the process used to approve or evaluate a use, it is standard practice to review those questions and investigate if appropriate.

⁴ The Financial Agreement does not contain any terms contemplating or permitting an extension. (Exhibit 13(F))

In this case, once residents raised questions about whether a SUP was required for Appellants' proposed Community Residence, the need to review length of tenancy during the application stage became clear. After receiving documents and reviewing information that contradicted Appellants' narrative, the City investigated further and requested supplemental documentation. (Exhibits 7, 8, and 9) Appellants' supplemental documents and licensure materials directly contradicted the original narrative, revealing that resident stays are typically limited to 30 to 45 days, with occupancy extended through new contracts every month. (Exhibit 13(F)) This model is clearly short-term, and its high turnover rate closely resembles a Multiple Residence or Transitional use, not the stable, long-term living arrangement required for a Family Community Residence.

- The Appellants' proposed Community Residence is not the only project from which the City has requested additional length of tenancy information after the initial application was submitted, nor is it the only project the City has classified as a Transitional Community Residence when the initial application indicated the project was a Family Community Residence. (Exhibit 23)
- In this case, once residents raised questions about whether a SUP was required for Appellants' proposed Community Residence, the need to review length of tenancy during the application stage became clear.
- After receiving documents and reviewing information that contradicted Appellants' narrative, the City investigated further and requested supplemental documentation. (Exhibits 8 and 9)
- Appellants' supplemental documents and licensure materials directly contradicted the original narrative, revealing that resident stays are typically limited to 30 to 45 days, with occupancy extended through new contracts every month. (Exhibits 12, 13, and 14)
- This model is clearly short-term, and its high turnover rate closely resembles a Multiple Residence or transitional use, not the stable, long-term living arrangement required for a Family Community Residence.

Given the relative recency of the Community Residence addition to the MZO (Exhibit 20), like with any other ordinance, the City is always looking for ways to enhance its service and assist applicants. In fact, this process was well underway at the time of Appellants' Application. As part of these ongoing process improvements the City has:

- Updated the "Processes and Procedures" webpage for Community Residences.
- Mailed annual registration renewal letters to registered Community Residences to obtain their renewals, ensuring continued compliance; and keeping records up to date.
- Published a detailed Community Residence FAQs webpage on the City's website tailored for Mesa residents, as well as specific FAQs outlining the application process. (Exhibit 17)
- Updated the "Community Residence application form, Assisted Living Facility, and Nursing and Convalescent Homes Registration Application" to request specific information regarding tenancy length and stability. (Exhibit 24)
- Is developing a new Community Residence registration application through the City's online portal, DIMES, to streamline submissions and improve record-keeping.

Appellants are being treated similarly to all other Community Residences with this ongoing process improvement. After concerns were raised, the City investigated and reclassified as appropriate. Indeed, there are several other properties that have been reviewed in this same manner. (Exhibit 23)

Ground 6: The ZA 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 – BOA Jurisdiction:

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 adjudicate federal civil rights claims. Therefore, any arguments alleging Fair Housing Act violations are outside the scope of this Board's decision-making authority.

Response 6 – Detailed Analysis:

Even if the Board concludes that it has jurisdiction to determine a violation of the Fair Housing Act, the facts show that the 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 Zoning Administrator's determination was based entirely on objective facts submitted by Appellants themselves, and the classification was grounded in documents and statements Appellants provided that consistently describe a relatively short-term, temporary housing arrangement. (Exhibit 3) 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.

Although the City did receive unsolicited input from third parties--including concerns raised by nearby residents--this information was not a factor in the Zoning Administrator's decision. In fact, the City explicitly declined to consider these external materials due to their unverifiable nature. (Exhibit 3) To the extent any third-party comments may have included discriminatory language or bias, those statements are legally and factually irrelevant to the zoning classification analysis. The City's role was not to judge the nature of the residents, but solely to determine whether the proposed Community Residence met the MZO definition for a Transitional Community Residence based on documented practices. The City acted appropriately at all times.

The record demonstrates that the Zoning Administrator's decision was impartial, fact-driven, and based solely on Appellants' own representations. There is no basis to conclude that discriminatory comments or motivations played any role in the determination.

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 – Detailed Analysis:

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 Appellants can't establish any such right through either the provisional registration approval for a Family Community Residence or the Certificate of Occupancy, because both were obtained based on inaccurate and incomplete information and were, at all times, conditional upon compliance with applicable laws, including the MZO.

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 materials provided, which later proved to be inconsistent with Appellants' own subsequent submissions. The City's February 6, 2025, Certificate of Occupancy was similarly issued in reliance on the Application materials and under the assumption that proposed Community Residence complied with the MZO.

Likewise, 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 Section 11-86-2 of the MZO, and thus, whether a SUP is required. As noted above, a party 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.

Further, the 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 and, to the City's knowledge, Appellants did not perform any structural work as they did not request any construction permits – nothing that could constitute evidence of reliance. Instead, Appellants simply changed occupancy classification and represented that the home met residential code requirements and that residents could self-evacuate.

The Appellants also did not secure a state license for the facility until March 27, 2025—well after concerns were raised about the operations and whether the proposed Community Residence qualifies as a Transitional Community Residence. Final registration required submission of that license through the City's DIMES system, which was never completed. (Exhibit 22) Rather, the license was only emailed on April 1, 2025, as part of a broader set of supplemental materials submitted in response to the City's inquiry. (Exhibits 12, 13, and 14)

Critically, the Appellants were expressly encouraged by City staff not to admit residents until the review was complete. (Exhibit 11). On April 2, 2025, the Appellants acknowledged that only three residents were on the premises (Exhibit 25)—an arrangement permissible while the review

process was ongoing and consistent with the zoning allowance for a non-regulated residence.⁵ If Appellants have since chosen to expand occupancy beyond that level, they have done so at their own risk and in knowing disregard of the City's instructions and the incomplete status of their approval.

While Appellants now claim that they invested in the project—purportedly spending \$500,000 and hiring staff (Exhibit 12)—none of that information was disclosed to the City in advance, nor was any of it required for approval. More importantly, these expenditures 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. In short, to the extent the Appellants expended \$500,000, they knowingly expended those costs on the basis of a revocable provisional registration, upon which they relied to their own peril.

Similarly put, the Appellants cannot establish any vested right to operate the facility as a Family Community Residence or under the February 6, 2025, Certificate of Occupancy issuance. The initial approvals were based on incomplete and inaccurate information; the Appellants failed to comply with conditions for final approval; and no substantial, irreversible reliance occurred in good faith.

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 – BOA Jurisdiction:

The Board does not have jurisdiction to decide claims based on equitable estoppel because the Board's authority is limited to determining whether the Zoning Administrator correctly applied the Zoning Ordinance based on the facts and law. Section 9–462.06(H)(1), Arizona Revised Statutes, which describes the limits on the Board, states that the Board “may not [m]ake any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.” Allowing Appellants to run a Transitional Community Residence based on estoppel but without the required SUP would be contrary to the Board's powers. Bypassing MZO requirements based on estoppel would usurp the City Council's power to amend or repeal zoning ordinances⁶.

⁵ This meets the definition of a “family” pursuant to the MZO, and as such, would not require a SUP because it does not meet the definition of a Community Residence, which houses between 5-10 individuals.

⁶ See *Ivancovich v. City of Tucson Bd. of Adjustment*, 22 Ariz. App. 530, 535 (1974); see also *Dembiec v. Town of Holderness*, 105 A.3d 1051, 1055 (N.H. 2014) (“[T]he zoning board could not have compelled the compliance officer to violate the ordinance merely because doing so, arguably, would have been ‘equitable.’”)

Response 2 – Detailed Analysis:

Even if the Board could decide this case on estoppel grounds, there could be no estoppel here.

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 conduct⁷. 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 formal⁸. Mere inaction, delay, or administrative oversight does not give rise to estoppel⁹.

Here, Appellants cannot demonstrate the elements of estoppel. First, 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 MZO and submission of a valid state license. (Exhibits 16 and 22) 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. (Exhibits 6 and 19) That Appellants’ information was later found erroneous, voiding the provisional registration, is *consistent* with the provisional nature of the approval.

Second, the facts also support that Appellants cannot show reliance. Not only was the provisional registration subject to new information and revocation throughout the process, it also could not form the basis for good-faith reliance. As stated, the provisional registration was approved with the explicit warning that if incorrect information was submitted, the registration could be denied or revoked. 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, as occurred here. Moreover, the City is under no obligation to ignore new information or perpetuate a classification that no longer aligns with the facts, particularly when an applicant withheld key operational details at the time of the initial, provisional approval.

Third, Appellants cannot show detrimental reliance, the third required element of equitable estoppel. They undertook no building improvements requiring permits, did not trigger inspections, and did not receive their state license until March 27 (Exhibit 12(B))—after the City had already begun investigating whether the facility complied with zoning. They failed to upload the state

⁷ *de Szendeffy v. Town of Carefree*, No. 1 CA-CV 08-0449, 2009 WL 757360, at *4 ¶ 17 (App. Mar. 24, 2009) (citations omitted).

⁸ *Id.*

⁹ *See City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 191 (App. 2008) (prior laxity of enforcement or dilatory conduct by the government does not support an estoppel claim against a governmental agency).

license as required through DIMES (Exhibit 22) and only submitted it via email on April 1, long after concerns had been raised (Exhibit 8 and 9). Furthermore, before Appellants submitted the state license, they were advised not to admit residents until the review process was completed. On April 2, they confirmed that only three residents were present (Exhibit 25)—consistent with a “family” for which no registration is required, and what would be allowed during review. Any decision to expand occupancy beyond that point was made at their own risk and contrary to the City’s recommendations.

Appellants now claim to have invested substantial resources in staff, property improvements, and program development. But these actions were taken unilaterally and without coordination with or reasonable reliance on the City. Regardless, Appellants have not supplied any information on the timing of any of the alleged expenditures. Nonetheless, every conceivable scenario demonstrates that Appellants cannot show determinantal reliance:

- Were these expenditures made before provisional registration approval and the certificate of occupancy were granted on February 5 and 6, respectively? If so, Appellants invested their resources and expenses without any indication from the City that Appellants could operate, even provisionally.
- Were these expenditures made after February 5 and 6, but before Appellants obtained the state license on March 27? If so, Appellants were aware that their registration with the City was provisional only, and they had no certainty that they would be issued a state license and could not reasonably rely on any action of the City to make the claimed improvements and expenditures.
- Were these expenditures made after March 20, 2025? If so, Appellants had already been contacted by the City and notified that there were questions about the length of tenancy and were aware that the City was reviewing the proposed Community Residence’s use.

Either way, such expenditures—made with knowledge of regulatory uncertainty—do not support estoppel.

Fourth, to the extent Appellants argue that prior laxity in designations of Family Community Residences and Transitional Community Residences or administrative error in issuing the Certificate of Occupancy should prevent enforcement now, that argument fails as a matter of law. Governmental bodies are not estopped from correcting mistakes or enforcing zoning regulations simply because they failed to act sooner¹⁰. Even assuming an initial “misclassification” occurred, the City has both authority and an obligation to rectify that error upon discovering the true facts.

¹⁰ See *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 191 (App. 2008) (prior laxity of enforcement or dilatory conduct by the government does not support an estoppel claim against a governmental agency)

Lastly, 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 powers¹¹.

In sum, equitable estoppel is inapplicable here. There were no affirmative misrepresentations by the City, no good-faith detrimental reliance by Appellants, and no legal bar to the City's correcting course once the full scope of Appellants' operations became clear.

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 - BOA Jurisdiction:

The Board does not have the authority to determine whether the Fair Housing Act has been violated. Rather, the federal Fair Housing Act requires the aggrieved party to file an action in court¹². The state Fair Housing Act also requires the party to seek relief in court¹³. Those statutes do not contemplate the adjudication of fair housing claims before a municipal board of adjustment. Moreover, the Board does not have the authority to find that a City ordinance violates the Fair Housing Act, because "[t]he Board cannot amend or repeal any zoning ordinance for this power belongs to the City Council¹⁴." 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. Therefore, any arguments alleging Fair Housing Act violations are outside the scope of this Board's decision-making authority.

Ground 5 - Detailed Analysis:

To the extent the Board determines it has jurisdiction to hear Appellants' Fair Housing Act claim, the facts demonstrate that there has been no violation.

In 2021, following a comprehensive policy study, the City amended the Zoning Ordinance to adopt Community Residences as a use permitted in certain zoning districts and distinguished between Family and Transitional Community Residences based on the length and stability of occupancy. (Exhibit 20)

This amendment was the direct result of a detailed planning and legal study titled *Zoning Principles for Community Residences for People with Disabilities and for Recovery Communities in Mesa, Arizona* (March 2021). (Exhibit 21) The study was commissioned by the City and conducted by a nationally recognized expert in zoning for Community Residences—Daniel Lauber, an authority in the field since 1974. Mr. Lauber has authored model zoning guidelines for

¹¹ See *de Szendeffy*, 2009 WL 757360, at *4 ¶ 17; *Ivancovich v. City of Tucson Bd. of Adjustment*, 22 Ariz. App. 530, 535 (1974) ("The Board cannot amend or repeal any zoning ordinance for this power belongs to the City Council.").

¹² 42 U.S.C. 3613(a)(1)(A).

¹³ A.R.S. § 41-1491.31(A).

¹⁴ *Ivancovich v. City of Tucson Bd. of Adjustment*, 22 Ariz. App. 530, 535 (1974).

the American Planning Association and the American Bar Association, provided consulting services to dozens of jurisdictions nationwide, and served as an expert witness for both the U.S. Department of Housing and Urban Development and the U.S. Department of Justice.

The study, which served as the basis for the 2021 code amendments, explained that Transitional Community Residences are more transitory than Family Community Residences because they either impose a maximum time limit on how long people can live in them or actually house people for only a few months or weeks. Per the study, this key characteristic makes a Transitional Community Residence more akin to multifamily residential uses such as apartments with a higher turnover rate typical of rentals than single family dwellings.

Because Multiple Residence uses are not permitted in Single Residence (RS) zoning districts in Mesa, the study recommended, and the City adopted, a zoning structure that allows Transitional Community Residences in RM (Multiple Residence) districts by right, and in RS districts only through the SUP process.

This SUP process serves as the “reasonable accommodation” required by the Fair Housing Act, allowing access for people with disabilities while still evaluating whether Transitional uses are appropriate in low-density residential neighborhoods.

The 2021 code amendment was not arbitrary—it was grounded in national best practices and a study-driven understanding of how different residential uses impact zoning compatibility. The City engaged in a well-reasoned process and consideration of relevant facts in amending its code. The City had, and continues to have, a valid, legitimate basis distinguishing between long-term and short-term community residences.

While the City fully recognizes and supports the rights of individuals with disabilities to live in residential neighborhoods under the Fair Housing Act, federal and state protections do 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 Appellants serve 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, as discussed above. The study, authored by nationally recognized zoning expert, 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 its zoning code to clearly distinguish between Family Community Residences and Transitional Community Residences. 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. 11-5-2. However, the City permits Transitional Community Residences in RS zoning districts through the issuance of an SUP—a process, as

explained by Mr. Lauber in the study, which is designed to serve as a reasonable accommodation under the Fair Housing Act to allow individuals with disabilities to reside in RS districts.

- Family Community Residences, in contrast, involve longer, more stable tenancy and are allowed by right in RS zones.

The Zoning Ordinance and need for an SUP for Transitional Community Residences in RS zones fully incorporate the Fair Housing Act's requirement to make reasonable accommodations, while still preserving the integrity of low-density residential neighborhoods.

Importantly, 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 zones does exactly that. Appellants have not requested a reasonable accommodation in this instance.

While Appellants claim protections under the Fair Housing Act, those protections do not override zoning regulations that were developed specifically to accommodate disabled populations. Rather than being excluded from Single Residence districts, Transitional Community Residences are allowed—with an SUP as a reasonable accommodation—ensuring a balanced approach to neighborhood compatibility and access to housing for people with disabilities.

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 about the length of tenancy, additional information was requested.

The supplemental information provided by the Appellants demonstrated that the tenancy for those in the proposed Community Residence is 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 Appellants from applying for a Special Use Permit to operate a Transitional Community Residence at the same location or from using the Property for any other use permitted by the MZO, including use as a “family” as it was as of April 2, 2025.

For the reasons stated in this Exhibit, the Zoning Administrator recommends that the Board **deny** the appeal and uphold the ZA Determination.