ZONING COMMITTEE OF THE
PLAN COMMISSION
Wednesday, February 20, 2019
7:00 P.M.
Lorraine H. Morton Civic Center, 2100 Ridge Avenue, Room 2403

AGENDA

1. CALL TO ORDER / DECLARATION OF QUORUM

2. MINUTES: Approval of the November 15, 2017 Meeting Minutes

3. NEW BUSINESS

   A. TEXT AMENDMENT
      Residential Care Homes 18PLND-0094
      A Zoning Ordinance Text Amendment pursuant to City Code Title 6, Zoning to modify
      regulations regarding Residential Care Home uses (Section 6-4-4) including potential related
      amendments within the Residential, Business, Commercial, Downtown, Transitional
      Manufacturing, Special Purpose and Overlay Zoning Districts (Sections 6-8 through 6-15).

4. ADJOURNMENT
MEETING MINUTES
ZONING COMMITTEE OF THE PLAN COMMISSION
Wednesday, November 15, 2017
7:00 P.M.
Evanston Civic Center, 2100 Ridge Avenue, Room 4802

Members Present: Carol Goddard, Colby Lewis, Terri Dubin

Members Absent: Simon Belisle, Peter Isaac

Other Plan Commission Members Present: none

Staff Present: Meagan Jones, Neighborhood and Land Use Planner
Scott Mangum, Planning and Zoning Administrator

Presiding Member: Colby Lewis, Chairman

1. CALL TO ORDER / DECLARATION OF QUORUM

With a quorum present, Chairman Lewis called the meeting to order at 7:00 pm.

2. MINUTES

Approval of October 11, 2017 Zoning Committee of the Plan Commission Meeting Minutes:

Chair Lewis requested a minor edit to the minutes. Commissioner Dubin then made a
motion to approve the minutes as amended.

Commissioner Goddard seconded the motion. A voice vote was taken and the minutes
were approved as amended with a voice vote 3-0.

3. OLD BUSINESS

A. DISCUSSION
C1a Regulations

Plan Commission referral to the Zoning Committee to discuss possible
retirement of or revisions to the C1a Commercial Mixed-Use Zoning District, per
Aldermanic referral.

Ms. Meagan Jones gave a brief overview of what was discussed at the October Zoning
Committee meeting, revisions made to the recent development data in the C1a chart,
and provided a brief overview of what staff proposed as possible text amendment
including: Increase in the minimum lot size per dwelling unit from 350 square feet to 400 square feet; reduction of the maximum planned development site development allowance for dwelling units from 40% to 30%; reduction of the the height allowed by right from 67 feet to 55 feet with a height incentive possible should an increase in front yard building setback be provided at a rate of 5 feet in height per additional foot of front yard setback provided or establishing a required front setback from the curb to the face of the building to allow for adequate pedestrian walkway using both public right-of-way and private property.

Discussion followed regarding the intent of the suggested amendments. The proposed reduction of the site development allowance for the number of dwelling units in planned developments and the increase in minimum lot size for the district was intended to encourage larger units. It was emphasized that this is not a guaranteed result due to the ability for Council to grant site development allowances above code requirements with a supermajority vote.

Chair Lewis inquired about how existing and proposed regulations compare to neighboring zoning districts. The zoning district comparison chart indicated the existing and proposed revisions would be in line with nearby zoning districts.

A brief discussion followed regarding sidewalks. Commissioner Goddard inquired about who provides sidewalk widths for larger developments. Staff responded that it can be either the City or the developer who push to provide sidewalks above the minimum requirement. Examples were given where the City pressed for wider sidewalks as well as instances where pedestrian area requirements have been written into the code such as with the Central Street Overlay District. Commissioner Lewis pointed out that a developer ultimately has no control of where a curb is should the City decide to widen a street or alternately, widen a sidewalk.

Commissioner Goddard expressed that she is still uncertain that the proposed amendments are needed. Dubin inquired how much the proposed amendments might reduce density and what consequences may be. A brief discussion followed regarding the optimal location of the district with regards to transit and fairly wide streets. Chair Lewis asked about the establishment of the C1a and if the establishment of the district and changes adopted in 2000 have been optimal. Commissioner Goddard responded that she believes they are but would not support increasing those standards.

Commissioner Lewis stated that he has concerns regarding the sidewalk widths, comparing sidewalks of the AMLI development to those of the townhomes near South Boulevard as an example. He stated that providing an incentive to get wider sidewalks could lead to taller buildings than preferred as well as inconsistent sidewalk widths throughout the district. Additionally, sidewalk furniture and landscaping would need to be taken into consideration.

Clarification was provided on the proposed recommended text amendments and a discussion followed regarding appropriate sidewalk widths, market demand for smaller
units and studios and possible development sites within the district. It was also stated that a reduction in building heights likely is not needed if the proposed incentive is not adopted.

Commissioner Goddard made a motion to recommend to the Plan Commission to increase the minimum lot size per dwelling unit from 350 square feet to 400 square feet and to require a sidewalk width of 12 feet within the C1a Commercial Mixed Use District. Commissioner Dubin seconded the motion.

The motion was approved by a voice vote, 2-1.

Ayes: Dubin, Goddard
Nays: Lewis

4. ADJOURNMENT

Commissioner Dubin made a motion for adjournment and Commissioner Goddard seconded the motion. With all commissioners in favor, the meeting was adjourned at 8:01 p.m.

Respectfully Submitted,
Meagan Jones
Neighborhood and Land Use Planner
Community Development Department
Zoning Committee of the Plan Commission

Text Amendment

Residential Care Homes
18PLND-0094
To: Chair and Members of the Zoning Committee
From: Johanna Leonard, Director of Community Development
Scott Mangum, Planning and Zoning Manager
Meagan Jones, Neighborhood and Land Use Planner

Subject: Zoning Ordinance Text Amendment - Residential Care Homes as a Special Use
18PLND-0094

Date: February 15, 2019

Request
Staff recommends consideration of a text amendment to the Zoning Ordinance to make Residential Care Homes a Special Use in zoning districts in which they are currently permitted.

Notice
The Application has been filed in conformance with applicable procedural and public notice requirements.

Analysis
Background
At the October 1, 2018 Rules Committee meeting, Ald. Fiske made a referral to the Plan Commission for a possible text amendment to the Zoning Ordinance to make Residential Care Homes a Special Use.

At the November 14, 2018 Plan Commission meeting, discussion on the proposed amendment began. Clarification was provided regarding the reasoning behind the proposal, both the possibility of making Residential Care Homes a Special Use and strengthening the existing distance requirement between this use. Concerns were raised that making Residential Care Homes a Special Use would be creating barriers to fair and affordable housing, however, there was support expressed in solidifying the distance requirement. The proposed amendment was subsequently sent to the Zoning Committee for further discussion.

Residential Care Homes are currently permitted in a variety of zoning districts. There are two categories of Residential Care Homes which are based on the number of residents (excluding staff): Category I permits 4-8 residents; and Category II allows between 9 and 15 residents. Similarly, Child Residential Care Homes are permitted as a
Special Use in residential zoning districts and permit between 4-8 residents under the age of 21.

Existing Regulations for Residential Care Homes
The Zoning Ordinance currently defines Residential Care Homes - Category I as:

**Residential Care Home - Category I:** A dwelling unit shared by four (4) to eight (8) unrelated persons, exclusive of staff, who require assistance and/or supervision and who reside together in a family type environment as a single housekeeping unit. "Residential Care Home - Category I" shall not include a home for persons who are currently addicted to alcohol or narcotic drugs or are criminal offenders serving on work release or probationary programs.

This use is currently permitted by right in all residential, business and downtown zoning districts as well as the C1a, MU, MXE, T1 and T2 districts, and allowed as a special use in the MUE district. A Residential Care Home – Category II has a similar definition but allows between 9 and 15 unrelated people and is allowed by right only in the R4, R5, R6, D1, MU and MXE zoning districts. Category II homes are currently allowed as a special use in the R1 R2, R3, B1, B2, B3, C1a, D2, D3, D4 and MUE Districts.

The Zoning Ordinance defines Child Residential Care Homes as:

**Child Residential Care Home:** A dwelling unit shared by four (4) to eight (8) unrelated persons, under the age of twenty-one (21) years, exclusive of staff, who require assistance and/or supervision while pursuing a primary or secondary education curriculum, and who reside together in a family-type environment as a single housekeeping unit. "Child residential care home" shall not include a home for persons who are currently addicted to alcohol or narcotic drugs or who are criminal or juvenile offenders serving on work release, probationary or court-ordered supervisory programs for offenders; nor a dormitory, fraternity/sorority dwelling, boarding house, rooming house or nursing home.

Both Residential Care Homes and Child Residential Care Homes are required to be licensed by the State of Illinois Department of Human Services and the City of Evanston through the Department of Health and Human Services. Additionally, regardless of whether the use is permitted or a special use, it must be a minimum of 900 feet from another Residential Care Home, Child Residential Care Home or Transitional Treatment Facility. The attached use description provides more detail on the latter of these uses. This use is considered a Community Integrated Living Arrangement (CILA) by the State of Illinois. Per Rule 115.310 of the Illinois Joint Committee on Administrative Rules’ Administrative Code, "CILAs owned or leased by an agency and funded by the Department of Human Services shall not be located within a distance of 800 feet, measured via the most direct driving route, from any other setting licensed or funded to provide residential services for persons with a developmental disability or mental illness."
Proposal Overview
The referred text amendment would make Residential Care Homes - Category 1 and Category II a Special Use in a number of zoning districts. A Chart outlining the change is below:

<table>
<thead>
<tr>
<th></th>
<th>Current Regulations</th>
<th>Proposed Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Care Home - Category I</td>
<td>Permitted Use in R1, R2, R3, R4, R4a, R5, R6, B1, B1a, B2, B3, D1, D2, D3, D4, MU, MXE, T1, T2</td>
<td>Special Use in MUE</td>
</tr>
<tr>
<td>Residential Care Home - Category II</td>
<td>Permitted Use in R4, R5, R6, D1, MU, MXE</td>
<td>Special Use in R1, R2, R3, R4, R5, R6, B1, B1a, B2, B3, D1, D2, D3, D4, MU, MUE, MXE, T1, T2</td>
</tr>
</tbody>
</table>

Changes to the R1 Single Family Residential District, Sections 6-8-2-3. - Permitted Uses and 6-8-2-4. – Special Uses, are shown below as an example of the changes:

- **6-8-2-3. - PERMITTED USES.**
  The following uses are permitted in the R1 district:

  Residential care home—Category I (subject to the general requirements of Section 6-4-4, "Residential Care Homes and Residential Care Homes," of this Title).

- **6-8-2-4. - SPECIAL USES.**
  The following uses may be allowed in the R1 district, subject to the provisions set forth in Section 6-3-5, "Special Uses," of this Title:

  Residential care home—Category I (subject to the general requirements of Section 6-4-4, "Residential Care Homes and Residential Care Homes," of this Title).

  Residential care home—Category II (subject to the general requirements of Section 6-4-4, "Residential Care Homes and Residential Care Homes," of this Title).

  Transitional treatment facility—Category I (subject to the general requirements of Section 6-4-5, "Transitional Treatment Facilities," of this Title).
The Comprehensive General Plan calls for maintaining the appealing character of Evanston’s neighborhoods while guiding their change as well as ensuring that Evanston, with neighboring communities, will share in the responsibility of providing for its special needs populations. The Comprehensive Plan also references the HUD Consolidated Plan which provides a more detailed analysis of the housing market especially as it relates to these populations and low and moderate-income income households. It points to a need for additional supportive housing for persons with mental illness, developmental disabilities and other disabling conditions.

Analysis
Staff reviewed regulations from bordering municipalities, comparable national communities and consulted the American Planning Association’s (APA) Planning Advisory Service for research on example ordinances and broader national trends. The attached chart provides a brief overview. Group Homes of similar size are largely permitted within residential districts by right and have distance requirements ranging from 600 feet to 1320 feet. A recent legal case in Springfield, IL Valencia v. City of Springfield, challenged that City’s 600 foot distance requirement for family care residences which allow up to 6 unrelated residents. The court in that case issued a preliminary injunction against Springfield in August 2017. That ruling was upheld by the U.S. Court of Appeals for the Seventh Circuit in March of 2018. As of the date of this memo, the City of Springfield has not appealed that decision.

The Fair Housing Amendments Act (FHAA) of 1988 requires communities to make reasonable accommodations to give people with disabilities an equal right to housing and prohibits communities from imposing additional barriers to community residences for people with disabilities. In July 2015 new regulations were issued, Affirmatively Furthering Fair Housing; Final Rule (Link included below) 24 CFR Parts 5, 91, 92 et al. This requires recipients of federal entitlement funds, including Community Development Block Grant funds, to affirmatively further fair housing by taking meaningful actions to overcome the legacy of segregation, unequal treatment and historic lack of access to opportunity in housing by members of protected classes, which includes persons with mental and physical disabilities. This Rule was further adjusted in early 2018, delaying compliance deadlines. Making approval of housing for persons with disabilities that is currently by right a special use could be viewed as adding an impediment to fair housing choice for persons with disabilities.

Standards of Approval
The proposed Zoning Ordinance Text Amendment to make Residential Care Homes - Category I and Category II Special Uses in the districts it is currently permitted by right may meet some of the standards for approval of amendments per Section 6-3-4-5 of the City Code. An objective of the Comprehensive General Plan is to maintain the appealing character of Evanston’s neighborhoods while guiding their change, however, it is unclear whether residential care homes, with the existing distancing requirements, are affecting this objective. Additionally, the proposal appears to be in contrast with the objective of ensuring that Evanston, along with neighboring communities, will share in the responsibility of providing for its special needs populations.
As regulations for Residential Care Homes direct the homes to fit within the context of the neighborhood they are located in as well as not create additional traffic within that area, there are no adverse effects to public utilities that would be expected from this type of use nor does staff believe that a well operated facility would have adverse effects on the values of adjacent properties. As detailed in the previous comparison chart, almost all communities permit the operation of similar facilities by-right while implementing distance requirements similar to Evanston to prevent any one area from having an over-concentration of residential care homes.

Adding the special use process may be seen as a hindrance to entities who meet existing use standards. There is also a concern that this proposed action would not align with the Fair Housing Amendments Act. With the existing 900-foot distance requirement between homes and regulations at the local and state levels, the intensity and impact of this use appears to have been largely mitigated within the residential districts.

**Recommendation**

Staff recommends the Zoning Committee discuss the facts presented and make a recommendation to the Plan Commission regarding the proposed text amendment.

**Attachments**

- List and Map of current Residential Care Homes
- Facility descriptions (Residential Care Homes and Transitional Facilities)
- Comparable City Regulations
- American Planning Association- Zoning Practice, Issue Number 6: *Practice Group Housing*
- Plan Commission Minutes from November 14, 2018 Meeting
### Licensed Residential Care Homes as of 07/19/16

<table>
<thead>
<tr>
<th>Address</th>
<th>Type</th>
<th>Operator</th>
<th>Zoning District</th>
</tr>
</thead>
<tbody>
<tr>
<td>115-117 Custer Avenue</td>
<td>Category 1</td>
<td>Rimland Services</td>
<td>R5</td>
</tr>
<tr>
<td>219 Hartrey Avenue</td>
<td>Category 1</td>
<td>Rimland Services</td>
<td>R2</td>
</tr>
<tr>
<td>1423 Hartrey Avenue</td>
<td>Category 1</td>
<td>Rimland Services</td>
<td>R2</td>
</tr>
<tr>
<td>1537 Fowler Avenue</td>
<td>Category 1</td>
<td>Rimland Services</td>
<td>R2</td>
</tr>
<tr>
<td>1746 Dodge Avenue</td>
<td>Category 1</td>
<td>Rimland Services</td>
<td>R3</td>
</tr>
<tr>
<td>1826 Foster Street</td>
<td>Category 1</td>
<td>Rimland Services</td>
<td>R3</td>
</tr>
<tr>
<td>2124 Dewey Avenue</td>
<td>Category 1</td>
<td>Rimland Services</td>
<td>R4</td>
</tr>
<tr>
<td>2308 Emerson Street</td>
<td>Category 1</td>
<td>Rimland Services</td>
<td>R2</td>
</tr>
<tr>
<td>608 Sheridan Road</td>
<td>Category 2</td>
<td>Yellowbrick</td>
<td>R5</td>
</tr>
<tr>
<td>823 Gaffield Place</td>
<td>Child</td>
<td>Boys Hope</td>
<td>R4a</td>
</tr>
<tr>
<td>827 Gaffield Place</td>
<td>Child</td>
<td>Boys Hope</td>
<td>R4a</td>
</tr>
<tr>
<td>1127 Hinman Avenue</td>
<td>Child</td>
<td>Girls Hope</td>
<td>R1</td>
</tr>
<tr>
<td>1818 Simpson Street</td>
<td>Residence</td>
<td>Rimland Services</td>
<td>R3</td>
</tr>
<tr>
<td>3334 Colfax Street</td>
<td>Residence</td>
<td>Rimland Services</td>
<td>R2</td>
</tr>
<tr>
<td>1934 Brown Avenue</td>
<td>Residence</td>
<td>Rimland Services</td>
<td>R3</td>
</tr>
</tbody>
</table>

Category 1 = 4 to 8 occupants; 900' distance requirement  
Category 2 = 9 to 15 occupants; 900' distance requirement  
Child = child residential care home = 4 to 8 occupants; 900' distance requirement  
Residence = 3 or less occupants; no distance requirement
Residential Care Homes

- **Category-1 RCH**
- **Child RCH**
- **Residence (3 or less occupants)**
- **900' buffer (Cat-1 and Child)**

- **Main Road**
- **Local Street**
- **Railroad**
- **Water**
- **City Boundary**

1 inch = 0.5 mile

This map is provided "as is" without warranties of any kind. See [www.cityofevanston.org/mapdisclaimers.html](www.cityofevanston.org/mapdisclaimers.html) for more information.
Residential Care Homes and
Transitional Treatment Facilities

Residential Care Homes
*License required from City department of Health and Human Services

Residential Care Home - Category I: A dwelling unit shared by four (4) to eight (8) unrelated persons, exclusive of staff, who require assistance and/or supervision and who reside together in a family type environment as a single housekeeping unit. "Residential care home - category I" shall not include a home for persons who are currently addicted to alcohol or narcotic drugs or are criminal offenders serving on work release or probationary programs.
- Allowed as a permitted use, as of right, in R1, R2, R3, R4, R5, R6, B1, B2, B3, C1a, D1, D2, D3, D4, MU, MXE, T1 and T2. (In B1, B2, B3, C1a, D2, D3 and D4 must be above ground floor)
- Allowed as special use in MUE
- Must be minimum of 900' of another child residential care home, residential care home or transitional treatment facility.

Residential Care Home - Category II: A dwelling unit shared by nine (9) to fifteen (15) unrelated persons, exclusive of staff, who require assistance and/or supervision and who reside together in a family type environment as a single housekeeping unit. "Residential care home — category II" shall not include a home for persons who are currently addicted to alcohol or narcotic drugs or are criminal offenders serving on work release or probationary programs. (Ord. 43-0-93).
- Allowed as a permitted use, as of right, in R4, R5, R6, D1, MU and MXE
- Allowed as special use in R1, R2, R3, B1, B2, B3, C1a, D2, D3, D4, MU, MXE, T1 and T2 (In D2, D3 and D4 must be above ground floor)
- Must be minimum of 900' from another child residential care home, residential care home or transitional treatment facility.

Child Residential Care Home: A dwelling unit shared by four (4) to eight (8) unrelated persons, under the age of twenty-one (21) years, exclusive of staff, who require assistance and/or supervision while pursuing a primary or secondary education curriculum, and who reside together in a family-type environment as a single housekeeping unit. "Child residential care home" shall not include a home for persons who are currently addicted to alcohol or narcotic drugs or who are criminal or juvenile offenders serving on work release, probationary or court-ordered supervisory programs
for offenders; nor a dormitory, fraternity/sorority dwelling, boarding house, rooming house or nursing home. (Ord. 40-0-95)

- Allowed as Special Use in R1, R2, R3, R4, R5 and R6.
- Must be minimum of 900’ from another child residential care home, residential care home, transitional treatment facility or an existing childcare institution.

**Transitional Treatment Facility**
*License required from City Department of Health and Human Services*

**Transitional Treatment Facility**: A facility licensed by the state of Illinois that provides supervision, counseling and therapy through a temporary living arrangement for individuals recovering from addiction to alcohol or narcotic drugs in order to facilitate their transition to independent living. Residents of this facility have been previously screened in another treatment setting and are determined to be sober/drug free but require twenty-four (24) hour staff supervision and a peer support structure in order to strengthen their recovery/sobriety. Transitional treatment facility shall not include any facility for persons awaiting adjudication by any court of competent jurisdiction or any facility for persons on parole from correctional institutions.

**Transitional Treatment Facility (Category I – 4-8 Residents)**
- Allowed as special use in R1, R2, R3, R4, R5, R6, MU, MUE, MXE, T1 and T2
- Must be minimum of 900’ from another child residential care home, residential care home or transitional treatment facility

**Transitional Treatment Facility (Category II – 9-15 Residents)**
- Allowed as special use in R4, R5, R6, MU, MUE, MXE, T1 and T2
- Must be minimum of 900’ from another child residential care home, residential care home or transitional treatment facility

**Transitional Treatment Facility (Category III – 16 or more Residents)**
- Allowed as special use in B2 and B3
- Must be minimum of 900’ from another child residential care home, residential care home or transitional treatment facility
Become a Group Home Guru

By Dwight H. Merriam, FAICP

Group homes are *sui generis*, truly a class unto themselves in terms of planning and regulation.

They present nearly intractable challenges for planners, regulators, neighbors, advocates, developers, and many other stakeholders, chief among them the residents. Largely because of misperceptions by many people and a lack of understanding, group homes are among the most disfavored land uses. One study in 1998 found that people felt that group homes were wanted even less in their communities than industrial uses, landfills, and waste disposal sites (Takahashi and Gaber).

One of the problems exacerbating the resistance to the orderly siting of group homes is the lack of proper planning and regulation. This brief treatment of the issues is a basic primer in planning and regulating group homes.

Unquestionably, and facilitated by good planning and regulation, the appropriate siting of group homes will help a community become a richer and more diverse place, and facilitate the ends of social justice. Social justice is the watchword here. People with disabilities, particularly those with developmental disabilities and suffering from mental health issues, have been treated despicably and only in recent times have come, in large measure though not universally, to be protected and respected.

Historically, those most fortunate were cared for at home (Hogan 1987). When government fails to provide adequate housing for people with disabilities, they are usually rendered homeless and left on the streets, where they are often victims of crime and prone to drug addiction (Apfel 1995). That homelessness among those with disabilities is a continuing problem is evidence that adequate housing is still not always available.

‘GROUP HOME’ DEFINED

The term “group home” generally refers to any congregate housing arrangement for a group of unrelated people. Typically the residents share a condition, characteristic, or status not typical of the general population. These congregate living arrangements include community residential facilities, group living facilities, community care homes, nursing homes, assisted living facilities, and many others. They may be permanent or transitional, for-profit or nonprofit, professionally managed or self-managed.

How a group home is defined ultimately delimits the reach of planning and regulation, and guides public policy making. The U.S. Department of Justice has defined the term (2015). Many state and local governments have their own definitions as well. It is worth-while to consider the broadest range of definitions from many sources and pare that down to those types of living arrangements needing local attention.

But before we go further, consider how local planning and regulation is sometimes inextricably linked with federal laws requiring that local regulations conform to federal mandates.

FEDERAL ZONING

Of course, the U.S. government does not zone land, but there are many federal laws that have such an impact on local land-use regulations that we might call those laws “ersatz federal zoning.” The National Flood Insurance Program is one example. It requires that local governments prohibit certain activities in floodways and floodplains. To preserve the right of property owners to get federal flood insurance, local governments must plan and regulate consistently with the national program.

The Religious Land Use and Institutionalized Persons Act (RLUIPA) gives religious organizations and institutionalized persons the right to seek redress in state or federal court when they believe the government is infringing on their legal rights. RLUIPA can be, and very often is, used to force zoning changes to allow
This terminology and grammatical structure. Some argue that the generally preferred phrasing “a person with a disability” suggests a medical, rather than the social model (e.g., see Eagan 2012).

While the FHAA does not explicitly address group homes, the U.S. Department of Justice makes it clear (in a joint statement with the U.S. Department of Housing and Urban Development) that the FHAA does prohibit local governments from discriminating against residents on the basis of “race, color, national origin, religion, sex, handicap [disability] or familial status [families with minor children]” through land-use regulation (2015). The upshot is that group homes occupied by unrelated individuals with disabilities have special protection from exclusionary zoning under the FHAA.

Not included within the reach of the federal law, except to the extent that the residents also are disabled, are group homes that are alternatives to incarceration, temporary housing for workers, halfway houses for ex-offenders, homeless shelters, places of sanctuary and prayer, homes for those who are victims of domestic violence, college dormitories . . .

Federal law similarly influences local planning and regulation for group homes for people with disabilities. That law is the Fair Housing Amendments Act (FHAA), enacted in 1988 to extend the protections of the 1968 Fair Housing Act to people with disabilities. The FHAA prohibits a party from discriminating “in the sale or rental [of], or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap” (42 U.S.C. §3604(f)(1)). A “handicap” is defined with three alternatives: “Handicap means, with respect to a person, (1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in 21 U.S.C. §802)” (42 U.S.C. §3602(h)). This is essentially the same definition of the term as has been incorporated in the Americans with Disabilities Act (42 U.S.C. §12102).

Note that federal law, and many state and local laws, use the now-outmoded term “handicapped.” The more accurate, appropriate, and respectful description is to use the phrase “a person with a disability” and not a “handicapped person” or a “disabled person.” There is by no means universal agreement on
and agreed to pay the group homes $5.25 million. In short and in sum, the fight cost the city $10 million. Even at the cost of building a new, high-end group home specially adapted for people for physical disabilities, this $10 million “wasted” in the litigation could have provided more than 80 new beds in Newport Beach, based roughly on the $600,000 recently spent elsewhere to build a five-bed facility (Salasky 2012).

THE ‘SEVEN-NUN CONUNDRUM’
To illustrate the dramatic effect of the FHAA, consider this real controversy. It is guaranteed to make you smile, shake your head in wonderment, and provide you with a conversation starter with other people who share your interest in planning and zoning.

We need to start with the typical zoning definition of “family.” Nearly every local government defines “family” consistent in most respects with the definition upheld by the U.S. Supreme Court in 1974:

> With this definition an unlimited number of people can live together so long as they are related by blood, adoption, or marriage, or in the alternative, no more than two unrelated people can live together. Some local regulations allow an unlimited number of related persons to live together and along with them some limited number, say two or three, unrelated persons.

Is your definition similar? Almost certainly it is. Remember, however, that we actually have 51 constitutions in this country, one federal and 50 state, and what may be constitutional under federal law may not be constitutional under state law. A half-dozen or so states interpreting their state constitutions have ruled this kind of definition of family unconstitutional under their state constitutions, holding that the definition is not reasonably related to promoting the public’s health, safety, and general welfare.

Obviously a typical group home of six or eight or more unrelated individuals, with or without one or two resident managers, cannot be located in the residential districts of nearly all of the municipalities in this country, unless those local governments happen to have some type of group home zoning.

This brings us to Joliet, Illinois, in the mid-1990s when three nuns, Franciscan Sisters of the Sacred Heart, proposed to live together in a single-family zoning district, bringing in a fourth sister and wanting to have at any time up to three additional guests, women considering becoming members of the order (Merriam and Sitkowski 1998). The regulations allowed only three unrelated people to live together. The nuns sought zoning approval to allow four nuns to live in the home and to convert the basement into the three additional bedrooms for their guests.

More than 100 home owners signed a petition against the application, claiming that the convent would damage the single-family character of the neighborhood, depress property values, and result in increased taxes when the home was removed from the tax rolls. One neighbor said: “We have no objection to three nuns living there but we do object to four or more. If this variation is allowed to go through, the city council, in effect, will be allowing a mini-hotel to be established in our neighborhood. The nuns will come and go, novices will come and go, visitors will come and go. The result will be that our property values would decrease” (Ziemba 1998).

The city council did vote to give the zoning approval, and the mayor, who lived nearby, noted that a family of seven—a couple with five children—could move into the same house without any zoning approval: “It would be legal, even though the impact would be more intense” (Ziemba 1998). Now, here is the punchline and the question you ask your planner friends at the next social event after you have described this background: Under what condition could these seven nuns live together in virtually any single-family dwelling unit in any neighborhood in any city, town, or county anywhere all across this great country regardless of the local definition family and regardless of the federal constitutional right of local government to restrict the definition of family?

Answer: These seven nuns could live together as a household unit as a matter of federal law, the FHAA to be specific, if they were recovering alcoholics or substance abusers, or otherwise disabled. The “Seven-Nun Conundrum” teaches us two things: the traditional definition of family needs to be reconsidered, as it is a complete bar to group homes, and local governments need to get out ahead of the group homes issue by affirmatively planning and regulating for them so that they are sited in the best locations and no one will ever have reason to go to court and claim that they are excluded from living in the community.

IT ALL STARTS WITH PLANNING
Planning for and regulating group homes
requires some careful thought about the community’s needs and the demand for such uses. Regardless of the special attention the attorney fees provisions may demand, it is best to plan for all types of group living arrangements at the same time and under the same terms, except as is necessary to recognize that there are differences between them. It should not be the threat of the FHAA that drives a local government to plan and regulate for just those types of group living arrangements that are within the reach of the federal law.

The first step is to identify all types of group living arrangements that are needed now and in the future in your community. Survey social service agencies locally and regionally; interview state-level departments with responsibilities for those who might live in such homes. The agencies will have a list of existing group homes. Some of the homes will likely predate local regulation or may have become established by variances. It is useful to understand what is in place now in order to be able to determine current and future needs.

The operators serving the residents of area group homes can provide insight into gaps in coverage and challenges, particularly opposition, that may lie ahead. As you get further the planning process, you will likely find that access to public transportation is important for many types of facilities. Also, it is important to note that in some states, group homes operated by, contracting with, or funded by a state agency may be immune from local zoning ordinances (Kelly 2016).

The U.S. Census Bureau collects data on the disability status of respondents to the American Community Survey (ACS), and that data is helpful in developing a needs-driven comprehensive planning element. The census data categorizes disabilities as visual, hearing, ambulatory, cognitive, health care, and independent living. The data is also disaggregated by gender, age, race, education level, employment, and health insurance coverage. The ACS also has data on “Group Quarters” generally, of all types (2016).

What is often lacking in the available data and in the surveys conducted is the ability of families to care for those who are disabled and who may be prospective residents of a group home. There are many advocacy groups for people with all types of disabilities that may prove helpful in identifying the hidden demand—families who are caring for their own, often struggling and anxious about the future care of their family members. Among these organizations are the American Association of People with Disabilities, the National Disabilities Rights Network, the National Information Center for Children and Youth with Disabilities, the National Organization on Disability, and the National Supportive Housing Network.

After the need for various types of group homes, the number of beds for each, and the time frame within which they must be developed, the planning process involves identifying appropriate locations and reaching out to the neighborhoods to attempt to mitigate community opposition through meetings and workshops.

One essential decision is whether to concentrate group homes in one area, particularly where they have access to services, or to disperse them throughout the community to avoid clustering and to facilitate mainstreaming the residents. The courts are not settled on which is the preferred approach. Spacing requirements establishing minimum separating distances between group homes have met with mixed results in the courts. Ultimately, a hybrid approach may be best, locating group homes in a somewhat more clustered way with ready access to services and transportation, while the same time dispersing group homes throughout moderately low-density residential neighborhoods so that they blend seamlessly with the rest of the population.

THE REGULATIONS

Good regulations start with good definitions. Spend plenty of time talking about the types of group homes and how you will define them. See the many types listed in the ACS. You must define “family” and “disability.” And to reiterate, providing for group housing is not just about persons with disabilities. There remains a critical need to accommodate all manner of group living arrangements, most of which have no protection under federal law, although they may under state law. For example, local regulations may address the many other types of group homes noted at the outset, chief among them shelters for victims of domestic violence, homes for juveniles, halfway houses for those released from incarceration or as alternatives to incarceration, homeless shelters, congregate housing, job corps shelters, workers’ group living quarters (pejoratively labeled “man camps” by some), religious homes such as convent and clergy houses, retirement homes, and even fraternity and sorority houses.

They are all deserving of careful review and attention to whether current and future needs are being met, where such uses might be best located, how many beds are needed during the planning period, what design and siting considerations may be established in advance as criteria for approval, and what processes might be followed—all of which may vary from one type of group living arrangement to another.

Regulation may range from highly discretionary to as-of-right. The most discretionary would be to use a “floating zone” for group homes, where approval requires rezoning the subject parcel. That application typically includes a conceptual site plan so the regulators know what they will get if they vote to allow the floating zone to descend and apply. It is the best of both worlds for planners because the local officials are making a legislative decision in rezoning the land. Courts give the greatest deference to legislative decisions, as distinguished from quasi-judicial decisions such as variances, and administrative decisions, which include subdivision and site plan approvals.

At the same time, the locality gets to see what it is going to get by having a conceptual site plan as part of the rezoning application. The applicants for group homes also may prefer this approach because the conceptual site plan is inexpensive to produce, and once they have the zoning they will have a vested right to develop it consistent with the conceptual site plan. At that point they can finance the detailed architectural and engineering work to get to the final site plan approval stage.

At the other end of the continuum is the as-of-right approach, with zoning districts allowing group homes subject only to compliance with the code and issuance of a certificate of zoning compliance and building permits.

In between these end points is the quasi-discretionary conditional use permit, sometimes called a special permit, special use permit, or special exception. In these cases, the group home use is permitted, but an application and public hearing are required to determine if it is appropriate for a particular site.

Take care not to stigmatize the potential residents. Federal appellate courts covering about half of the country have found that a formal, discretionary approval, such a conditional use permit, is not acceptable when used in making a decision regarding persons with disabilities or those otherwise protected under the FHAA, because they stigmatize the resi-
students by requiring them to come “hat in hand” for permission to live like any other household. The floating zoning approach has the same problem. At the same time, local officials have a real need to make sure that the group home meets the needs of its residents, fits in with its neighbors, and blends in such that it is indistinguishable from others. Questions that arise include access to transportation, appearance and scale, parking, and density of occupancy. Locational criteria such as these and others must be assessed either through a public review or by staff.

Which approach to take along the continuum of discretion is a difficult, even intractable, ethical, legal, and public policy decision. Ultimately, it may be politically necessary to have some discretion in the process.

Given that residents may have cognitive or physical disabilities affecting mobility, it is especially essential to give special care to housing, building, and fire codes in the administration of any group homes program. One common issue is determining the “right” number of residents permitted. Some of the federal courts have used a “rule of eight” allowing up to eight essentially as-of-right—but beyond that, supporting greater discretion by the local government. (Oxford House-C v. City of St. Louis, 77 F 3d, 249, 253). Smaller group homes tend to be better integrated in single-family detached neighborhoods, while the larger group homes provide economies of scale, the opportunity for a higher level of service, and often peer support that is essential to some populations, such as those in drug and alcohol abuse recovery. Again, a hybrid approach allowing a range of levels of occupancy depending upon the setting may prove to be the most advantageous strategy. For example, a group home in a single-family residence of not more than eight people including caregivers and managers might be as-of-right. Any home with greater occupancy could be required to have some type of formal review, perhaps site plan review at a public meeting, or a conditional use permit, or even a rezoning with a floating zone or overlay district. But it also may depend upon the context. Would it be necessary, for example, to require a public hearing for the conversion of an existing 10-apartment building to a group residence for 40 people recovering from addiction?

**ONE REALLY GOOD EXAMPLE**

Almost three decades ago, the city of Ames, Iowa, the home of Iowa State University, found itself in a perfect storm of neighborhood invasions by college students, challenges to the traditional definition of family, the need to accommodate a variety of household types, and a state statutory mandate regarding group homes. Somehow, under the leadership of elected and appointed officials, including the then planning director Brian O’Connell, the community developed a comprehensive approach mitigating all of the impacts of the storm. I was along for the ride as a consultant to the city in developing the regulations.

By developing definitions of “family” (§29.201) and “functional family” (§29.1503(4)(d)), Ames was able to prevent groups of undergraduates from taking over single-family houses and at the same time accommodate any seven Franciscan nuns who might choose to live in the city and any other groups of people that were truly functioning as a type of family, including extended gay and lesbian families with unrelated individuals and foster children (long before the right to same-sex marriage).

Group homes (“Group Living”), defined in part as being “larger than the average household size,” were addressed consistent with the state statutes, while distinguishing them from “Household Living,” considered to be “[r]esidential occupancy of a dwelling by a family,” and the definition of family was made less restrictive. The regulations today have evolved in some respects from the initial ones first adopted in the early 1990s, and they are better for it. One especially salutary aspect of this definitional scheme is that a group home for persons with disabilities with eight or fewer residents is considered a “Family Home” as defined in Section 29.201 of the Ordinance and in Iowa Code Section 414.22, and is treated like any single-family use. What is also interesting is how Ames conformed its local regulation with state definitions and requirements.

The regulations are not perfect—no regulations are—and they should not be considered a model for adoption elsewhere without careful consideration. However, the city did a good job of reconciling competing needs and the regulations are worthy of consideration.

**THE ULTIMATE ESCAPE HATCH: ‘REASONABLE ACCOMMODATION’**

If a community does not have good planning and regulations, such that group homes are not readily approved and developed without discrimination, the FHA requires that local governments provide a “reasonable accommodation” for group homes with disabled persons (42 U.S.C. §604(0)(3)(B)). In the words of a federal appellate court: “reasonable accommodation provision prohibits the enforcement of zoning ordinances and local housing policies in a manner that denies people with disabilities access to housing on par with that of those who are not disabled” (Hobson’s, Inc. v. Township of Brick, 89 Fed. 3d 1096, 1104 (3rd Cir. 1996)). A reasonable accommodation
can be anything, including use or dimensional variances, amending the regulations, issuing a building permit even though it is illegal under the regulations, and allowing a group home to be considered similar enough to some other use permitted under the regulations, such as a bed and breakfast. Being forced to make a reasonable accommodation is a poor substitute for good planning and regulation, but sometimes it may be all you have.

**MEET THE NEED, MEET THE LAW**

Becoming a group homes guru requires recognizing the need for them, and planning for and regulating them with a fine-grained approach to make sure that they are fully integrated with the rest of the community while protecting the interests of all stakeholders. It is the right thing to do, and it is the law. Community opposition to group homes can often be traced back to shortcomings in local procedures that preclude full public participation in the decision-making process, outright prejudice and bias, and conflicting interests and development goals (Iglesias 2002).

The federal Fair Housing Amendments Act, the principal federal law dealing with matters of housing discrimination against people with disabilities, and other federal and state antidiscrimination laws (including the Americans With Disabilities Act, the Rehabilitation Act, and state-law equivalents), require local governments to plan for and enable group homes through reasonable regulation for those expressly protected under the law. In addition, it is the responsibility of all of us to provide safe, clean, decent housing for all citizens, many of whom can only be accommodated in group homes.

**ABOUT THE AUTHOR**

Dwight H. Merriam, FAICP, founded Robinson & Cole’s Land Use Group in 1978, where he represents land owners, developers, governments, and individuals in land-use matters. He is past president of the American Institute of Certified Planners and received his masters of regional planning degree from the University of North Carolina and his Juris Doctor from Yale.

Cover photo: AlexeyVS/Thinkstock

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**REFERENCES**


U.S. Census Bureau. 2016. “Frequently Asked Questions: Can you tell me more about group quarters (GQ) or group housing facilities in the American Community Survey (ACS)!!” Available at tinyurl.com/znydky.


HAS YOUR COMMUNITY MADE SPACE FOR GROUP HOUSING?
MEETING MINUTES
PLAN COMMISSION
Wednesday, November 14, 2018
7:00 P.M.
Evanston Civic Center, 2100 Ridge Avenue, James C. Lytle Council Chambers

Members Present: Colby Lewis (Chair), Terri Dubin, Carol Goddard, Andrew Pigozzi, Peter Isaac

Members Absent: Jennifer Draper, George Halik

Staff Present: Meagan Jones, Neighborhood and Land Use Planner
Scott Mangum, Planning and Zoning Administrator

Presiding Member: Colby Lewis, Chairman

1. CALL TO ORDER / DECLARATION OF QUORUM

Chairman Lewis called the meeting to order at 7:00 P.M.

2. APPROVAL OF MEETING MINUTES: October 10, 2018

Commissioner Goddard made a motion to approve the minutes, seconded by Commissioner Isaac. The Commission voted unanimously, 5-0, to approve the minutes of October 10, 2018.

3. NEW BUSINESS

A. Text Amendment 18PLND-0094

Residential Care Homes

A Zoning Ordinance Text Amendment pursuant to City Code Title 6, Zoning to modify regulations regarding Residential Care Home uses (Section 6-4-4) including potential related amendments within the Residential, Business, Commercial, Downtown, Transitional Manufacturing, Special Purpose and Overlay Zoning Districts (Sections 6-8 through 6-15).

Ms. Jones provided a brief presentation of the proposed text amendment which was an aldermanic referral.

Chair Lewis opened up the hearing to questions from the public and invited Alderman Fiske to speak.
Alderman Fiske explained that the reason for her referral was concern that Springfield had not adequately defined why they had a distance requirement in place and she wanted Evanston to more clearly define its reasoning before there are any issues. She also wished to extend regulation to include residential care homes with fewer than 4 residents.

Sue Loellbach stated she has no issues looking at the distance requirements but she does have concerns about exacerbating issues by making a Special Use where they currently are not. It would discourage affordable housing options.

Chair Lewis then opened up the hearing to questions from the Commission. There were several, including:

- Commissioner Pigozzi asked for further clarification on the goal of the text amendment. The goal is to more successfully defend distance requirement justification for group home uses as well as extend regulations to include residential care homes with fewer than 4 people.
- Commissioner Goddard asked if what is discussed is a different text amendment. Ms. Jones responded that with clarification, the text amendment could be decided upon as is or altered to include more details for distance requirements and extending regulations.
- Commissioner Isaac inquired about the reference to Transitional Treatment Facilities. Ms. Jones responded that those are not within the purview of the proposed text amendment. Commissioner Isaac then asked if the use of residential care homes is a newer phenomenon and if there was an update to the Springfield case. Alderman Fiske stated that the use is not new and many exist within the 5th Ward with some newer ones within the 1st Ward. She believes care homes with fewer than 4 residents should be included within the text amendment. She added that the City of Springfield did not appeal the Circuit Court’s ruling.

Jackie Eddy stated that rules for how close the residential care home use can be are made at the state level if state funding is accepted.

Chair Lewis reviewed the different options the Commission could take for the proposed text amendment. Commissioner Isaac stated that the Commission has not fully gone over the appropriateness of the text amendment and that it should go to committee.

Keralyn Keele of Rimland Services explained that Rimland Services has 13 homes used for adults with autism and she came to the meeting to hear more about what is proposed. She was hoping that there are no hurdles to the work being done. She clarified that the state has a 800 foot distance requirement. She added that their smallest homes consist of only 2 residents and the largest consist of 8 residents.

Commissioner Pigozzi stated that he does not like the idea of making all Residential Care Homes a special use but he would like clarity within the zoning ordinance. He
inquired if the goal could be to redefine the ordinance to not get hung up on the distance requirement.

Chair Lewis expressed that he does not believe this to be an issue and that the proposed amendment seems exclusionary.

Commissioner Goddard made a motion to recommend that the item be brought before the Zoning Committee for further research and discussion. Commissioner Goddard seconded the motion. A roll call vote was taken and the motion was approved, 5-0.

Ayes: Dubin, Goddard, Isaac, Pigozzi, Lewis.
Nays:

4. Discussion

A. Text Amendment

Public Benefits for Planned Developments

Discussion of existing public benefits required of Planned Developments and direction for a possible text amendment to update those requirements.

Mr. Mangum provided an overview of the discussion item which is a referral from City Council. He explained current regulations and reviewed public benefits from more recently approved planned developments.

Chair Lewis asked if there are issues with the current regulations and if the preference would be to redraft an incentives section on a whole or just the sections addressing public benefits. Mr. Mangum responded that there are questions that have been raised regarding what is appropriate for different projects and that there is a disconnect between the code and past practices. He then provided details on the City Council’s discussions and stated that both revising certain sections and the whole incentives section are options.

Commissioner Isaac asked if staff had reached out to other municipalities. Mr. Mangum responded that this has not happened but is a good suggestion. Commissioner Dubin stated that Evanston is a unique area for development. Oak Park and Arlington Heights were suggested as possible comparable cities to review.

Chair Lewis stated that this is an opportunity to provide regulations that will be better able to be enforced. Commissioner Isaac stated that he would like to see breadth and specificity at the same time. This would enable flexibility for any changes that occur with regards to community or site needs.

Commissioner Pigozzi stated that the list within the staff report is good and
suggested that streetlight replacement be added as a possible benefit to be more inline with new lighting standards. Chair Lewis responded that lighting could be added to a broader list of improvements or possible benefits so as not to get too specific with regards to a public benefit list. Ms. Goddard suggested that staff do some research and return with a list that generalizes the list included in the report.

Ms. Jones confirmed what the Commission would like staff to do. Chair Lewis replied that clumping the detailed list together into different categories would be a start. He stated that it would be good to list overall goals then provide examples on how to reach them through specific public benefits. Commissioner Pigozzi added that it will be good for developers to have a list that shows what Evanston values.

The Commission requested that staff draft possible amendments based on the points brought up during the discussion. The amendment will be brought back to the Plan Commission at a date to be determined.

5. PUBLIC COMMENT

There was one comment to make sure that public benefits of a planned development benefit the public and not just the development’s tenants.

6. ADJOURNMENT

Commissioner Goddard made a motion to adjourn the meeting. Commissioner Pigozzi seconded the motion.

A voice vote was taken and the motion was approved by voice call 5-0. The meeting was adjourned at 8:14 pm.

Respectfully Submitted,
Meagan Jones
Neighborhood and Land Use Planner
Community Development Department