PLAN COMMISSION
Wednesday, June 12, 2019
7:00 P.M.
Lorraine H. Morton Civic Center, 2100 Ridge Avenue, James C. Lytle City Council Chambers

AGENDA

1. CALL TO ORDER / DECLARATION OF QUORUM

2. APPROVAL OF MEETING MINUTES: April 10, 2019 and May 29, 2019

3. OLD BUSINESS

   A. Text Amendment (Continued from May 29, 2019)
      Office Use in Residential Districts 19PLND-0041
      A Zoning Ordinance Text Amendment pursuant to City Code Title 6, Zoning, to Chapter 8, Residential Districts of the Zoning Ordinance, to allow office uses and revise special conditions for office uses within Residential Districts.

   B. 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. PUBLIC COMMENT

5. ADJOURNMENT

PLEASE NOTE: The proposed text amendment for the U2 University Athletic Facilities District has been moved to the July 10, 2019 meeting.

The next regular meeting of the Plan Commission is scheduled for WEDNESDAY, JULY 10, 2019 at 7:00 P.M. in JAMES C. LYTLE CITY COUNCIL CHAMBERS of the Lorraine H. Morton Civic Center.

Order of agenda items is subject to change. Information about the Plan Commission is available online at: http://www.cityofevanston.org/plancommission. Questions can be directed to Meagan Jones, Neighborhood and Land Use Planner, at 847-448-8170 or via e-mail at mmjones@cityofevanston.org.

The City of Evanston is committed to making all public meetings accessible to persons with disabilities. Any citizen needing mobility or communications access assistance should contact the Community Development Department 48 hours in advance of the scheduled meeting so that accommodations can be made at 847-448-8683 (Voice) or 847-448-8064 (TYY).

La ciudad de Evanston está obligada a hacer accesibles todas las reuniones públicas a las personas minusválidas o las quines no hablan inglés. Si usted necesita ayuda, favor de ponerse en contacto con la Oficina de Administración del Centro a 847/866-2916 (voz) o 847/448-8052 (TDD).
MEETING MINUTES

PLAN COMMISSION

Wednesday, April 10, 2019
7:00 P.M.

Evanston Civic Center, 2100 Ridge Avenue, James C. Lytle Council Chambers

Members Present: Colby Lewis (Chair), Jennifer Draper, Terri Dubin, George Halik, Peter Isaac, Andrew Pigozzi

Members Absent: Carol Goddard,

Staff Present: Scott Mangum, Planning and Zoning Manager

Presiding Member: Colby Lewis, Chairman

1. CALL TO ORDER / DECLARATION OF QUORUM

Chairman Lewis called the meeting to order at 7:05 P.M.

2. APPROVAL OF MEETING MINUTES: March 13, 2019

Commissioner Isaac made a motion to approve the minutes, seconded by Commissioner Halik. The Commission voted unanimously, 5-0, to approve the minutes of March 13, 2019.

3. NEW BUSINESS

Mr. Mangum announced that the previously scheduled joint meeting of the ZBA and Plan Commission meeting as well as the special meeting of the ZBA had been rescheduled.

A. Text Amendment

Inclusionary Housing Ordinance Bonuses 19PLND-0025
A Zoning Ordinance Text Amendment pursuant to City Code Title 6, Zoning, to revise density and parking bonuses established by the City of Evanston’s revised Inclusionary Housing Ordinance (IHO), 107-O-18.

Mr. Mangum provided a brief overview of the proposed text amendment, describing changes made within the most recent IHO (which was approved on November 29, 2018 and went into effect on January 1, 2019) then emphasizing that the proposed amendment to the Zoning Ordinance mirrors those changes. He added that the Plan Commission’s role is to amend the Zoning Ordinance in places where the IHO is
discussed, specifically in the IHO Bonus Sections and within a more procedural Section regarding voting on site development allowances. The Commission is not to discuss the merit or policy of the changes but is to make a recommendation to include the updated language into the Zoning Code.

Chair Lewis emphasized that the Commission is debating whether or not the content of the Title 5 changes should be brought into Title 6. He explained that the City Council has approved the changes to the IHO and the Plan Commission will not be proposing new language.

Commissioner Isaac stated that the proposed amendment seems straightforward.

The Commission then reviewed the standards for approval of the Special Use and Planned Development Guidelines for the proposed development.

Commissioner Isaac made a motion to recommend approval of the text amendment as presented by staff. Commissioner Pigozzi seconded the motion. A roll call vote was taken and the motion passed, 6-0.

Ayes: Draper, Dubin, Halik, Isaac, Lewis, Pigozzi
Nays:

4. OTHER BUSINESS

There was no other business

5. PUBLIC COMMENT

There was no public comment.

6. ADJOURNMENT

Commissioner Dubin made a motion to adjourn the meeting. Commissioner Isaac seconded the motion.

A voice vote was taken and the motion was approved by voice vote 6-0.
The meeting was adjourned at 7:16 pm.

Respectfully Submitted,
Meagan Jones
Neighborhood and Land Use Planner
Community Development Department
MEETING MINUTES
PLAN COMMISSION
Wednesday, May 29, 2019
7:00 P.M.
Evanston Civic Center, 2100 Ridge Avenue, James C. Lytle Council Chambers

Members Present: Peter Isaac (Vice-Chair), Terri Dubin, Carol Goddard, George Halik, Andrew Pigozzi

Members Absent: Colby Lewis, Jennifer Draper

Staff Present: Scott Mangum, Planning and Zoning Manager

Presiding Member: Vice-Chairman Isaac

1. CALL TO ORDER / DECLARATION OF QUORUM

Chairman Lewis called the meeting to order at 7:10 P.M.

2. APPROVAL OF MEETING MINUTES: April 10, 2019

Commissioner Isaac made a motion to approve the minutes, seconded by Commissioner Halik. The Commission voted unanimously, 5-0, to approve the minutes of April 10, 2019.

3. NEW BUSINESS

A. Text Amendment
   Office Use in Residential Districts
   A Zoning Ordinance Text Amendment pursuant to City Code Title 6, Zoning, to Chapter 8, Residential Districts of the Zoning Ordinance, to allow office uses and revise special conditions for office uses within Residential Districts.

Ms. Jones provided a brief review of the proposed text amendment, emphasizing that the amendment would affect R5 and R6 General Residential Districts, where office uses are currently allowed as Special Uses, that are adjacent to Downtown Core Districts. There would be one Section in the Zoning Code revised as part of the text amendment if approved by City Council.

Vice-Chair Isaac opened the hearing to questions from the Commission.
Commissioner Dubin asked why the proposed amendment was needed. Mr. Mangum responded that the proposed amendment comes from an Aldermanic referral to the Plan Commission from Alderman Fiske and shared her views on possible benefits of the amendment being approved including increasing the local tax base, supporting the transit systems with increased commuters, being compatible with height and setbacks within the zoning districts, and preserving community involvement by requiring Council approval amongst other benefits.

Commissioner Halik inquired about the current vacancy rate. Ms. Jones responded that the vacancy rate for office space in Evanston has been low, typically single digits. Mr. Mangum stated that a recent CoStar information used in Evanston’s Economic Development 2018 reports have the office vacancy rate under 5% with rents at $30 per square foot.

Commissioner Pigozzi asked what possible negative effects there would be on housing in these areas. Ms. Jones responded that it may be possible but difficult to say for certain then added that the staff report states some concern of possibly expanding the downtown into more residential areas. That is part of the reason for keeping the Special Use process as part of project reviews.

Vice-Chair Isaac asked how many parcels would be affected. Ms. Jones referenced the zoning map included in the packet and Mr. Mangum stated that there are approximately 7 different areas this amendment would affect and that instead of individual parcels, zoning lots likely made up of multiple parcels of common ownership would be considered.

Vice-Chair Isaac asked what ground floor uses would be in the office buildings. Ms. Jones responded that they would likely be lobby space, especially since retail use is not permitted within the R5 and R6 districts. Vice-Chair Isaac then asked if there are any restrictions for parking above the ground floor. Ms. Jones responded that she does not believe there is anything that prohibits that use.

Commissioner Halik inquired about how the proposed text amendment would affect the proposed library parking lot development. Mr. Mangum responded that the amendment would allow for future office development without the need to change the zoning as previously proposed. It would permit an office use to be built to zoning standards of the district and not only be within an existing residential housing structure. The library lot project was tabled at by the City Council so that project would not be reconsidered under these regulations unless a new planned development application was submitted.

Vice-Chair Isaac asked if any applicant would have to come before the Commission and City Council and what the voting difference would be for the library lot development. Mr. Mangum responded that it depends on the size of the development. A development meeting thresholds for a planned development would come before Plan Commission
versus ZBA. If there is opposition to a possible map amendment, a petition of 30% of property owners within 500 feet of the property, a super-majority vote of 7 out of 9 is required from City Council.

Vice-Chair Isaac then announced that there is ability of property owners within 500 feet of the affected properties to submit a written request for a continuance of the hearing to refute information presented by the petitioner. A request for continuance was submitted by Marcia Kuhr who wished to have additional time to think about the proposed amendment.

The public hearing was then opened to the public for questions. A total of 9 members of the public spoke with the following questions:

- Janet Steidl inquired as to whether or not this amendment should have gone before the Zoning Committee and if the amendment is targeting these particular properties for office development. Mr. Mangum responded that the amendment came from an Aldermanic referral to the Commission and staff is unable to answer what the full intent of the referral.
- Vicki Burke with the Women’s History and Leadership Organization in the Women’s Club asked how the affected properties came to be included since the most concentrated area incorporates the Women’s Club of Evanston, the WTCU historic property and several residential properties that were a part of the petition against the library lot development. Mr. Mangum referenced the aldermanic referral stating it deals with properties within the R5 and R6 properties that are adjacent to the D2 and D3 districts. Vice-Chair Isaac stated that the affected areas are adjacent to D2 and D3 districts as well as within the R5 and R6 districts.
- Kiera Kelly inquired about the library parking lot needing to be approved with a super majority vote and being brought back to Council for reconsideration and if passing the text amendment would change the threshold for the vote. Mr. Mangum responded that if the amendment were approved, an office could be reviewed and if of a certain size, would be considered a planned development needing Plan Commission review and Council approval. A map amendment which triggered the library lot petition would not be needed. The applicant for the library lot development would need to submit a new application and begin the review process from the beginning. The proposed text amendment would not change the process of the current application.
- Sarah Vanderwicken inquired about height requirements within the zoning districts, notification requirements and whether or not there is a new project at the library lot site could the City provide the land for affordable housing. Ms. Jones reviewed the permitted heights within each of the affected zoning districts and stated that any new office use would still have to go through a Special Use review process for approval of the use or Planned Development process if it meets the minimum thresholds for that type of development. Mr. Mangum stated that the proposed text amendment was noticed within the Evanston Review and
no mailed notices were required, if there is a map amendment then mailed notices would be sent within a certain radius. He added that taxpayer information is obtained through the Cook County Treasurer for that purpose and it is public information. Zoning allows for affordable housing at the library lot site, however, selling the lot would be City Council’s decision.

- Tina Paden stated that the Alderman should be present to answer questions then asked how the parcels were chosen and how this relates to the rezoning within North Downtown Plan. Mr. Mangum stated that the aldermanic referral language created the affected parcels and that the North Downtown Plan was not adopted. Ms. Jones added that the North Downtown Plan is a separate document that was not approved by City Council and does not affect this or other rezoning cases. Ms. Paden then asked if her property that is within the R6 district would be affected. Ms. Jones stated that based on the location of that property, it would not be affected by the proposed text amendment.

- MaryAnn Benveniste asked what effects this amendment would have and if they were taken into consideration. Mr. Mangum stated that the immediate effect would be allowance of more office use within the R5 and R6 districts. Ms. Jones added that the staff report for the proposed amendment mentioned both possible positive and negative outcomes including increased office use and the possibility of being viewed as expanding the downtown into residential areas.

- Anna Roosevelt of the Southeast Evanston Association stated that some answers provided to questions did not clarify the issues with the proposed amendment.

- Harris Miller asked how historic properties would be affected and if properties could be grandfathered in to keep the historic nature. He also inquired about possible effects on Francis Willard grants and variance requests. Mr. Mangum stated that if those properties fall within the guidelines of the text amendment the property may be able to have an office use constructed. Vice-Chair Isaac added that the text amendment would not change the historic nature of the existing buildings or the regulations that govern historic properties within Evanston. There would be no required change to the uses of those properties with this amendment. Mr. Mangum added that this text amendment itself would not have specific impacts to specific properties; individual projects would have more specific effects on adjacent properties.

- Mark Tendam asked if parking would be permitted on lower levels and how bad building aesthetics could be avoided. Vice-Chair Isaac stated that in the R5 and R6 districts, residential uses would still be required to provide parking and would be similar to office uses in that regard. Ms. Jones responded that parking could possibly be permitted on the lower levels. The aesthetic aspect would need to be addressed by staff through the Design and Project Review Committee or through the ZBA or Plan Commission during their review; ultimately it is the final decision of the City Council. Mr. Tendam asked if staff is recommending approval of the amendment. Vice-Chair Isaac responded that staff is not providing a
recommendation but is presenting information for the Commission to make a recommendation regarding the proposed amendment.

Vice-Chair Isaac opened the hearing up to public testimony. A total of 8 people spoke and provided the following comments:

- Kiera Kelly asked for clarification on when the ZBA would look at this item. Ms. Jones clarified that the proposed text amendment will not be reviewed by the ZBA; however, if a project that is affected by the text amendment is applied for, the code would call for that project to be reviewed by the Zoning Board of Appeals. Vice-Chair Isaac added that should a developer propose to build an office building, they would go before the ZBA which will review possible effects on surrounding areas.

- Sarah Vanderwicken expressed confusion regarding the purpose of the continuance. Vice-Chair Isaac explained that the purpose is to present additional information and refute what was already presented. The commission and the public would have the ability to ask questions regarding any new information. Mr. Hugh DuBose added that staff will not present new information and that the purpose is for the continuance requester to prepare information rebutting the statements and evidence presented to this point.

- Tina Paden stated that the City is now in dire need of office space, however, the E2 buildings sit on a site that was originally an office building that sat vacant. It looks like the City is making up a need.

- Anna Roosevelt stated that it seems like the change will reduce neighbors’ attitude toward the project and have no need for a majority vote. The view is the text amendment will assist the library lot project and other effects are not the goal. It would also change required vote for the development. Ms. Roosevelt continued explaining that there are wide implications possible and that it is much more logical to change goals for downtown and outside the downtown. 5 to 10 year goals should be considered and a broader view is needed to connect this project to a longer term plan.

- Harris Miller does not recommend following through and is concerned about the aesthetics of buildings by Chicago and Church. He also suggested talking with other business owners who could be affected. It would be a shame to see changes to the area and some things considered inappropriate for changes.

- Marge Gambow with the Women’s Club of Evanston stated that the organization has not changed its position on the library parking lot.

- Mark Tendam stated that he agreed with Anna Roosevelt and does not see this amendment stopping regardless of staff and Commission recommendations and that raises concerns. He stated that he is not opposed to development but the library parking lot development is flawed and he has concerns about ram rodding the proposed text amendment through. He does not feel the development is what the City should have.

Commissioner Goddard made a motion to continue the item to the June 12,
2019 meeting. Commissioner Pigozzi seconded the motion. A voice vote was taken and the motion passed, 5-0.

Ayes: Dubin, Goddard, Halik, Isaac, Pigozzi
Nays:

Vice-Chair Isaac stated that the statement of the continuance date at the meeting is the only notification that will be provided for this case.

4. PUBLIC COMMENT

Janet Steidl inquired whether the current meeting is a special meeting or not and added that had this been a regular meeting, the continuance would have been one month. Vice-Chair Isaac responded that there is no required minimum amount of time required between meetings. Ms. Steidl added that it is unfair and unfortunate and that the proposed text amendment affects a lot of properties. Not many people are aware of this text amendment and present at the meeting. One month should be provided for the purposes of notification. She then asked if the Zoning Committee would review the proposed amendment. Vice-Chair responded that the Commission will take up once all testimony is completed and deliberations are taking place.

5. ADJOURNMENT

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

A voice vote was taken and the motion was approved by voice vote 5-0.
The meeting was adjourned at 8:43 pm.

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

Text Amendment

Office Uses in Residential Districts
19PLND-0041
Memorandum

To: Chair and Members of the Plan Commission
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
         Office Use in Residential Districts
         19PLND-0041
Date: May 23, 2019

Request
Staff recommends consideration of a text amendment to the Zoning Ordinance to allow office uses and revise special conditions for office uses within R5 and R6 Residential Districts.

Notice
The Application has been filed in conformance with applicable procedural and public notice requirements including publication in the Evanston Review on May 9, 2019.

Analysis
Background
On May 1, 2019, Alderman Fiske made a referral to the Plan Commission for a text amendment to the Zoning Ordinance to permit office uses without ground floor commercial space in R5 and R6 Residential Districts adjacent to D2 Downtown Retail Core and D3 Downtown Core Development Districts.

Per the City’s Zoning Ordinance, the R5 General Residential District “is intended to provide for infill development of a mix of multi-family residential structures at a medium density, including townhouses, two-family dwellings, three-story walk-ups and courtyard apartment buildings that characterize the traditional multiple-family housing development found in this district.”

In contrast, the R6 General Residential District “is intended to provide for high density
residential development of primarily multiple-family dwellings particularly in and around the downtown area."

Office use is considered a Special Use in both the R5 and R6 General Residential Districts but is subject to the general requirements of Section 6-8-1-11.-Special Conditions For Office Uses. Those requirements are listed below.

6-8-1-11. - SPECIAL CONDITIONS FOR OFFICE USES.
In residential districts wherein it is listed as a special use, office use may occur only in the following instances and subject to the following conditions:

(A) The subject property shall be adjacent to any B, C, D, RP, O1, MU, MUE, MXE, or I zoning district.

(B) The subject property shall be improved with, and the office(s) shall be located within, a dwelling originally constructed as a single-family detached or two-family dwelling.

(C) The Zoning Board of Appeals shall consider, make findings of fact regarding, and, if necessary, attach specific conditions to address, the following characteristics of the proposed use:
   1. The number of employees;
   2. The amount of parking;
   3. The amount of traffic;
   4. The number of clients on the subject property at any one (1) time and per day;
   5. The hours of operation;
   6. The hours during which pick-up and delivery are permitted;
   7. The manner in which utilities and other services are provided to the area;
   8. Sources of noise, vibrations, smoke, dust, odor, heat, glare, or electrical interference with radio or television transmission to the area;
   9. Exterior alterations to the residential appearance of the subject property, including, but not limited to, creating a separate or exclusive office entrance, signage or other advertising or display to identify the office, fencing, and outdoor storage; and
   10. The taxable value of buildings and land on, and within the vicinity of, the subject property.

(D) If the City Council grants the special use, the property owner, or his or her agent, shall provide the Cook County assessor's office with appropriate documentation of the nonresidential use of the subject property, including, but not limited to, the amount of floor area devoted to nonresidential use. The property owner, or his or her agent, shall cause to be placed on file in the office of the zoning division a copy of the above described document. Said document and copy shall be received by the Cook County assessor's
office and zoning division before the City may issue a final certificate of occupancy for the nonresidential use.

The D3 downtown core development district “is intended to provide for the highest density of business infill development and large scale redevelopment within downtown Evanston. The district is also intended to encourage and sustain mix of office, retail, and residential uses.”

The D2 downtown retail core district “is intended to define and support the traditional downtown retail shopping function of Evanston. The district is characterized by street level retail storefronts and structures that accent a pedestrian scale.” This district encourages mixed use developments that maintain and perpetuate the established pedestrian retail oriented character with regards to scale and architecture identified within Evanston’s Downtown Plan.

The D2 District also has a provision which calls for at least 75% of the sidewalk grade floor area of a building to be dedicated to retail trade activity. This provision is not a requirement within the D3 District.

A chart comparing the bulk requirements of each of these zoning districts is attached to this memo.

Proposal Overview
The referred text amendment would revise language within Section 6-8-1-11.- Special Conditions for Office Uses so that the use within the R5 and R6 Zoning Districts would allow office use with conditions specific to parcels adjacent to Downtown Core Districts. Specifically, the zoning ordinance would be amended as described below:

6-8-1-11. - SPECIAL CONDITIONS FOR OFFICE USES.
In residential districts wherein it is listed as a special use, office use may occur only in the following instances and subject to the following conditions:

(A) The subject property shall be adjacent to any B, C, D, RP, O1, MU, MUE, MXE, or I zoning district.
(B) The subject property shall be improved with, and the office(s) shall be located within, a dwelling originally constructed as a single-family detached or two-family dwelling, with the exception of parcels located within the R5 or R6 District that are adjacent to the D2 or D3 Districts. In the latter case, the subject property may be improved with office above the ground floor.
(C) The Zoning Board of Appeals shall consider, make findings of fact regarding, and, if necessary, attach specific conditions to address, the following characteristics of the proposed use:
1. The number of employees;
2. The amount of parking;
3. The amount of traffic;
4. The number of clients on the subject property at any one (1) time and per day;
5. The hours of operation;
6. The hours during which pick-up and delivery are permitted;
7. The manner in which utilities and other services are provided to the area;
8. Sources of noise, vibrations, smoke, dust, odor, heat, glare, or electrical interference with radio or television transmission to the area;
9. Exterior alterations to the residential appearance of the subject property, including, but not limited to, creating a separate or exclusive office entrance, signage or other advertising or display to identify the office, fencing, and outdoor storage; and
10. The taxable value of buildings and land on, and within the vicinity of, the subject property.

(D) If the City Council grants the special use, the property owner, or his or her agent, shall provide the Cook County assessor's office with appropriate documentation of the nonresidential use of the subject property, including, but not limited to, the amount of floor area devoted to nonresidential use. The property owner, or his or her agent, shall cause to be placed on file in the office of the zoning division a copy of the above described document. Said document and copy shall be received by the Cook County assessor's office and zoning division before the City may issue a final certificate of occupancy for the nonresidential use.

This proposed amendment would only apply to zoning lots that are adjacent to the D2 and D3 Districts, not the entire Zoning District (map of affected parcels is attached). The existing density and bulk requirements of the zoning districts would be unchanged.

Analysis
The Comprehensive Plan calls for maintaining the appealing character of Evanston’s neighborhoods while guiding their change. Additionally, there is a stated objective to retain and attract business in order to strengthen Evanston’s economic base. Allowing office use in a less restrictive manner in areas that are adjacent to denser downtown areas has the potential to meet these goals and objectives, however, care must be taken to ensure that the building design and bulk does not conflict with the character of nearby residential uses. Otherwise, this could be seen as expanding the downtown into traditionally residential areas.

With the exception of one area north of downtown, the affected zoning lots (outlined in the attached map) all fall within the boundaries of the 2009 Downtown Plan. Specifically
within the West Edge, West Traditional, West core, East Core and East Edge character zones. The West and East Core Zones call for mixed-use buildings with heights between 15 and 18 stories. The West Traditional zone calls for mixed-use buildings between 3 and 5 stories that reinforce the character of the area. The West Edge zone is recommended to continue being predominately residential as small site redevelopment occurs with a recommended building height of 6 to 10 stories. Finally, the East Edge zone calls for mixed-use development with buildings heights between 6 and 10 stories.

The Downtown Plan also states that more opportunities should be provided for affordable Class A office space, a use that has seen more demand in recent years due in part to Evanston’s access to public transportation and low vacancy rates for existing office space.

Standards of Approval
The proposed Zoning Ordinance Text Amendment to allow office uses and revise special conditions for office uses within R5 and R6 Residential Districts may meet the standards for approval of amendments per Section 6-3-4-5 of the City Code. The proposal is consistent with the goal of the Comprehensive Plan to maintain the appealing character of Evanston’s neighborhoods while guiding their change as well as the objective to retain and attract business in Evanston.

The proposed text amendment will help ensure that there is some oversight regarding the design and location of office buildings within the R5 and R6 General Residential Districts while enabling lower density office use on the edges of the downtown. Maintaining the additional review of the Special Use process would help ensure that any possible negative effect on other properties is mitigated.

Recommendation
Staff recommends the Plan Commission discuss the facts presented and make a recommendation to the City Council regarding the proposed text amendment.

Attachments
- Map of Parcels Affected by Proposed Text Amendment
- Comparison of Zoning Requirements
- Permitted and Special Uses in the R5 and R6 Districts
## Zoning District Comparison

<table>
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<tr>
<th>Zoning District</th>
<th>Max. Bldg. Height (ft.)</th>
<th>Max. FAR</th>
<th>Max # of Units</th>
<th>Max. Bldg. Height (ft.)</th>
<th>Max. FAR</th>
<th>Max. # of Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>R5</td>
<td>50</td>
<td>45% (Bldg. lot coverage)</td>
<td>1500 sf for first 4 units + 800 sf for each additional unit</td>
<td>62</td>
<td>15% (Bldg. lot coverage)</td>
<td>25%</td>
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<tr>
<td>R6</td>
<td>85</td>
<td>50% (Bldg. lot coverage)</td>
<td>2,000 sf for first 2 units + 1000 sf for each additional unit</td>
<td>97</td>
<td>20% (Bldg. lot coverage)</td>
<td>25%</td>
</tr>
<tr>
<td>D2</td>
<td>42</td>
<td>2.75</td>
<td>400 sf per dwelling unit</td>
<td>85</td>
<td>4.0</td>
<td>NA</td>
</tr>
<tr>
<td>D3</td>
<td>85</td>
<td>4.5</td>
<td>300 sf per dwelling unit</td>
<td>220</td>
<td>8.0</td>
<td>NA</td>
</tr>
</tbody>
</table>

**Note:**

PD height in Downtown Districts does not include maximum parking level height (up to and additional 40 feet)

D3: Base height on lots less than 95 feet wide is 170 for PDs

Calculations do not include IHO incentives
6-8-7-2. - PERMITTED USES.

The following uses are permitted in the R5 district:

Daycare home—Adult (subject to the general requirements of Section 6-4-3, "Adult Daycare Homes," of this Title).

Daycare home—Child (subject to the general requirements of Section 6-4-2, "Child Daycare Homes," of this Title).

Dwelling—Multiple-family.

Dwelling—Single-family attached.

Dwelling—Single-family detached.

Dwelling—Two-family.

Educational institution—Public.

Home occupation (subject to the general requirements of Chapter 5, "Home Occupations," of this Title).

Neighborhood garden.

Park.

Playground.

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

Shelter for abused persons.

(Ord. No. 43-O-93; amd. Ord. 71-O-05; Ord. No. 81-O-14, § 28, 8-11-2014)

6-8-7-3. - SPECIAL USES.

The following uses may be allowed in the R5 district, subject to the provisions set forth in Section 6-3-5, "Special Uses," of this Title:

Assisted living facility.

Bed and breakfast establishments (subject to the general requirements of Section 6-4-7, "Bed And Breakfast Establishments," of this Title).

Child residential care home.

Community center—Public.

Congregate housing.

Cultural facility.

Daycare center—Adult (subject to the general requirements of Section 6-4-3, "Adult Daycare Homes," of this Title).
Daycare center—Child (subject to the general requirements of Section 6-4-2, "Child Daycare Homes," of this Title).

Educational institution—Private.

Independent living facility.

Long term care facility.

Membership organization.

Office (subject to the general requirements of Section 6-8-1-11, "Special Conditions For Office Uses," of this Chapter).

Planned development (subject to the requirements of Section 6-3-6, "Planned Developments," of this Title and Section 6-8-1-10, "Planned Developments," of this Chapter).

Public utility.

Recreation center—Public.

Religious institution.

Retirement community.

Retirement home.

Retirement hotel.

Rooming house.

Shelter care home.

Transitional shelter (subject to the requirements of Section 6-3-5-11, "Additional Standards For A Special Use For Transitional Shelters," of this Title).

Transitional treatment facility—Category I (subject to the general requirements of Section 6-4-5, "Transitional Treatment Facilities," of this Title).

Transitional treatment facility—Category II (subject to the general requirements of Section 6-4-5, "Transitional Treatment Facilities," of this Title).

(Ord. 44-0-09)
6-8-8-2. - PERMITTED USES.

The following uses are permitted in the R6 district:

Daycare home—Adult (subject to the general requirements of Section 6-4-3, "Adult Daycare Homes," of this Title).

Daycare home—Child (subject to the general requirements of Section 6-4-2, "Child Daycare Homes," of this Title).

Dwelling—Multiple-family.

Dwelling—Single-family attached.

Dwelling—Single-family detached.

Dwelling—Two-family.

Educational institution—Public.

Home occupation (subject to the general requirements of Chapter 5, "Home Occupations," of this Title).

Neighborhood garden.

Park.

Playground.

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

Shelter for abused persons.

(Ord. No. 43-O-93; amd. Ord. 71-0-05; Ord. No. 81-O-14, § 29, 8-11-2014)

6-8-8-3. - SPECIAL USES.

The following uses may be allowed in the R6 district, subject to the provisions set forth in Section 6-3-5, "Special Uses," of this Title:

Apartment hotel.

Assisted living facility.

Bed and breakfast establishments (subject to the general requirements of Section 6-4-7, "Bed And Breakfast Establishments," of this Title).

Child residential care home.

Community center—Public.

Congregate housing.

Cultural facility.
Daycare center—Adult (subject to the general requirements of Section 6-4-3, "Adult Daycare Homes," of this Title).

Daycare center—Child (subject to the general requirements of Section 6-4-2, "Child Daycare Homes," of this Title).

Educational institution—Private.

Independent living facility.

Long term care facility.

Membership organization.

Office (subject to the general requirements of Section 6-8-1-11, "Special Conditions For Office Uses," of this Chapter).

Planned development (subject to the requirements of Section 6-8-1-10, "Planned Developments," of this Chapter and Section 6-3-6, "Planned Developments," of this Title).

Public utility.

Recreation center—Public.

Religious institution.

Retirement community.

Retirement home.

Retirement hotel.

Rooming house.

Shelter care home.

Transitional shelter (subject to the requirements of Section 6-3-5-11, "Additional Standards For A Special Use For Transitional Shelters," of this Title).

Transitional treatment facility—Category I (subject to the general requirements of Section 6-4-5, "Transitional Treatment Facilities," of this Title).

Transitional treatment facility—Category II (subject to the general requirements of Section 6-4-5, "Transitional Treatment Facilities," of this Title).

(Ord. 44-0-09)
Plan Commission

Text Amendment

Residential Care Homes
18PLND-0094
Memorandum

To: Chair and Members of the Plan Commission
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: June 7, 2019

Request
The Zoning Committee recommends that regulations relating to the use of Residential Care Homes remain the same and that consideration of a text amendment to the Zoning Ordinance relating to the distance requirements for Residential Care Homes be tabled pending outcomes of various court cases (Valencia v. Springfield, IL).

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

Analysis
History
October 1, 2018 – During the 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.

November 14, 2018 – The Plan Commission began discussion on the initial proposed text amendment. 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. The proposed amendment was subsequently sent to the Zoning Committee for further discussion.

March 27, 2019- The Zoning Committee of the Plan Commission discussed the proposed amendment and voted unanimously to recommend that existing regulations relating to the use of Residential Care Homes remain the same and to hold discussion on the 900 ft. distance requirement on Residential Care Homes until such time that the current legal cases are decided.
Background
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
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.

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 use description included in the Zoning Committee meeting packet provides more detail on 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 initial 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><strong>Residential Care Home - Category I</strong></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></td>
<td>Special Use in R1, R2, R3, R4, R4a, R5, R6, B1, B1a, B2, B3, D1, D2, D3, D4, MU, MUE, MXE, T1, T2</td>
<td><strong>Proposed Regulations</strong></td>
</tr>
</tbody>
</table>
### Residential Care Home - Category II

| Permitted Use in R4, R5, R6, D1, MU, MXE | Special Use in R1 R2, R3, B1, B2, B3, C1a, D2, D3, D4 and MUE | Special Use in R1, R2, R3, R4, R5, R6, B1, B2, B3, C1a, D1, D2, D3, D4, MU, MUE, MXE |

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 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. As mentioned above, the State of Illinois has an 800 feet
distance requirement for this type of use when funded by the State. 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 Justice Department also filed a suit against Springfield for discrimination against persons with disabilities in November 2017. Springfield has not yet revised their regulations regarding this use but will likely do so upon final determination from the courts.

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.

The Zoning Committee meeting discussion yielded concerns regarding creating additional barriers to the establishment of Residential Care Homes and possibly violating Fair Housing regulations. Having a distance requirement was seen as enabling integration of the homes into the community while discouraging a concentration of the use in one area of the City. Possibly making all Residential Care Homes a Special Use, however, while offering a way to alert neighbors of the use, would create an impediment to the placement of the use in neighborhoods and may be seen as violating Fair Housing regulations.

**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 original 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 comparison chart included in the Zoning Committee meeting packet (linked below), 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

Based on the information and analysis above, the Zoning Committee recommends that the Plan Commission recommend to the City Council that regulations relating to the use of Residential Care Homes remain the same and that consideration of a text amendment to the Zoning Ordinance relating to the distance requirements for Residential Care Homes is not recommended at this time.

Attachments

- Approved Minutes of the March 27, 2019 Zoning Committee
- Packet from the March 27, 2019 Zoning Committee Meeting
- “Legal Lessons” Article Regarding Community Residences for People with Disabilities, Planning Magazine, November 2015
MEETING MINUTES
ZONING COMMITTEE OF THE PLAN COMMISSION
Wednesday, March 27, 2019
7:00 P.M.
Evanston Civic Center, 2100 Ridge Avenue, Room 2403

Members Present: Terri Dubin, Jennifer Draper, Carol Goddard, Peter Isaac, Colby Lewis

Members Absent:

Other Plan Commission Members Present: none

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

Presiding Member: Peter Isaac, Chairman

1. CALL TO ORDER / DECLARATION OF QUORUM

With a quorum present, Chairman Isaac called the meeting to order at 7:02 pm.

2. MINUTES

Approval of November 15, 2017 Zoning Committee of the Plan Commission Meeting Minutes:

Commissioner Goddard made a motion to approve the minutes. Commissioner Dubin seconded the motion. A voice vote was taken and the minutes were approved, 4-0 with one abstention.

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).

Ms. Meagan Jones gave a review of the existing regulations, proposed text amendment referral, as well as the discussion and example cases mentioned during the November Plan Commission meeting. She clarified that staff and the Commission were also asked...
to review the existing distance requirement for Residential Care Homes during that meeting as well.

Commissioner Lewis inquired as to whether or not a hypothetical situation of a 4 unit building being occupied by 2 or 3 residents each could occur. Ms. Jones stated that this is a possibility based on local regulations. Mr. Mangum added that the State regulations for this type of use would also come into consideration with regards to the distance requirements.

Carolyn Keel of Rimland Services stated that there is an 800 ft. distance requirement at the State level that is in place not just for the group home uses receiving state funding but for all group home uses that are licensed by the State of Illinois.

Ms. Jones provided more clarification on the Springfield, IL v. Valencia case and discussion followed on the reasoning behind filing the suit and the State’s distance requirement of 800 ft. vs. Springfield’s 600 ft. requirement.

Trudi Davis, resident, stated that she fears that the amendments would make establishing a residential care home more difficult.

Betty Ester, resident, described the differences between Residential Care Homes and Treatment Facilities and stated that the definitions could be considered a violation of the Fair Housing Act. She suggested that Skokie be looked at for examples regarding this type of use and suggested that the distance requirement be increased to 1,000 ft. as there are too many in close proximity in the 5th Ward. She also stated that the location of the Residential Care Homes could make housing sales more difficult or decrease their value.

Ms. Keel stated that she disagrees with the idea that home values will decrease based on previous studies. Some may increase in value and most homes within neighborhoods are kept in good shape.

Chairman Isaac requested and emphasized that any proposed changes be discussed with the City’s Legal Department prior to being brought back to Plan Commission.

Ms. Davis stated that making the Residential Care Homes a Special Use and adjusting the distance requirement would make it harder for the homes to open and be more expensive.

Chairman Isaac stated that amending the code would increase costs and the review time for new Residential Care Homes. Commissioner Lewis stated that the Special Use would be another hurdle for agencies to get over. He added that there is a waitlist for these facilities and that the City may look as if it is against having that use.

Chairman Isaac asked if there were no Special Use or distance regulations in place if an organization could purchase most of the homes on a block and operate that way.
Commissioner Lewis responded that State regulations would still be able to prohibit too much density similar to that example. Chairman Isaac then asked if these regulations could include seniors. Ms. Jones stated that it is possible. Mr. Mangum added that there are different definitions for senior specific uses such as assisted living and independent living facilities.

Ms. Ester stated that reducing the distance requirement would increase the concentration of the homes in the West Evanston Overlay District. She added that there should be a way to alert the public of these uses, the Special Use process provides a way for that to happen.

Chairman Isaac stated that there does not appear to be that high of a concentration of the Residential Care Homes.

Commissioner Draper stated that many multi-family rentals have more residents within a space and in comparison; the Residential Care Home use does not seem as dense.

Commissioner Dubin inquired if the Committee could just decide on the Special Use aspect of the amendment.

Commissioner Lewis stated that he still feels there should be an impetus for what is proposed.

Ms. Ester stated that even with no distance requirement, the Special Use amendment should be considered in order to alert neighbors of a new home being established.

Ms. Keel stated that as an agency, Rimland makes sure to be a good neighbor to residents.

Ms. Ester expressed that the definitions for this type of use should be updated.

Commissioner Lewis stated that the Committee could decide to leave regulations as is. Commissioner Dubin stated that State regulations will still aid in regulating the use with regards to distance requirements.

Commissioner Draper stated that the business model for the agencies should also be looked at. Rehabbing a home would be contingent on zoning approval for a Special Use which would be an additional burden on an agency. Commissioner Goddard stated that the process could create NIMBYism.

Commissioner Draper also inquired as to whether or not the State distance requirement applies to all uses similar to Residential Care Homes. Chairman Isaac stated that it would not include all uses such as senior living facilities, assisted living facilities, etc.

**Commissioner Goddard made a motion to recommend to the Plan Commission that the regulations relating to the use of Residential Care Homes remain the**
same. Commissioner Dubin seconded the motion. The motion was approved by a voice vote, 5-0.

**Ayes:** Draper, Dubin, Goddard, Isaac, Lewis
**Nays:**

Commissioner Lewis stated that the distance requirement is a lighter control on residential care home location but it does aid in integrating those uses into the community.

Commissioner Dubin proposed to leave the distance requirement alone.

Chairman Isaac stated that we do not know what will be decided in the Springfield, IL v. Valencia case which takes issue with the distance requirement enforced in that City.

**Commissioner Lewis made a motion to hold discussion on the 900 ft. distance requirement on Residential Care Homes until such time that the current case (Springfield, IL v. Valencia) is decided. Commissioner Dubin seconded the motion. The motion was approved by a voice vote, 5-0.**

**Ayes:** Draper, Dubin, Goddard, Isaac, Lewis
**Nays:**

4. **ADJOURNMENT**

Commissioner Dubin made a motion for adjournment and Commissioner Lewis seconded the motion. With all commissioners in favor, the meeting was adjourned at 8:03 p.m.

Respectfully Submitted,
Meagan Jones
Neighborhood and Land Use Planner
Community Development Department
Three decades on, group home zoning still at issue

Community residences for people with disabilities—group homes, recovery communities, sober living homes, small halfway houses—remain a LULU (locally unwanted land use) that generates vigorous neighborhood opposition even 27 years after enactment of the Fair Housing Amendments Act of 1988, which made people with disabilities a protected class and required jurisdictions to make a “reasonable accommodation” in their zoning for community residences.

Much of the inertia arises from municipal attorneys catering to elected officials by insisting that the FHAA does not require community residences to be allowed as of right in residential districts and advocates who insist that the FHAA prohibits any restrictions on these community residences.

As usual, the truth rests between the two extremes.

Sorting it out

Case law and sound planning and zoning practices and principles provide clear guidance to bring zoning into FHAA compliance.

People with substantial disabilities often cannot live alone or with their biological families. They need support in a family-like setting to engage in the everyday life activities most of us take for granted.

The essential characteristic of all community residences is that they seek to emulate a biological family by providing as “normal” a living environment as possible and incorporating their residents into the social fabric of the surrounding community. Licensing protects this vulnerable population.

Extensive research and litigation over zoning for community residences tell us:

- They constitute a residential use.
- When not clustered together, more than 50 studies report they do not affect property values, property turnover rates, neighborhood safety, traffic, noise, or parking demand.
- To achieve normalization and community integration, community residences should be scattered throughout all residential districts rather than concentrated in any neighborhood.
- The FHAA requires local governments to make a “reasonable accommodation” in their zoning to enable people with disabilities to live in the dwelling of their choice.

Many advocates and judges do not understand the circumstances under which courts have invalidated licensing and spacing requirements between community residences:

- When a community residence fits within the zoning code’s definition of “family,” it must be treated the same as other families and cannot be excluded from the family definition. In the absence of such a definition or cap on the number of unrelated individuals that constitutes a family, jurisdictions must treat community residences for people with disabilities the same as any other group of unrelated individuals. When the definition of family places a cap on the number of unrelated individuals living as a single housekeeping unit and a community residence fits within that limit, it too must be treated like any other family. Any additional zoning requirements for community residences are facially discriminatory.
- When a jurisdiction fails to conduct a proper study that finds a need for spacing and licensing requirements before it adopts its zoning for community residences and when it fails to present expert testimony to justify these requirements.
- When local zoning provisions are not in accord with a state’s sloppily written statute requiring local zoning to treat community residences the same as single-family homes. Community residences are sufficiently different from single-family homes to make it unwarranted to treat them identically when the number of occupants of a community residence exceeds the cap on unrelated people in the local definition of family.

But for therapeutic or financial reasons, many if not most community residences need to house more unrelated individuals with disabilities than a jurisdiction’s definition of family allows.

That’s when the FHAA’s “reasonable accommodation” requirement kicks in. The case law collectively requires local zoning for community residences to use the least drastic means necessary to actually achieve intended legitimate government interests.

These interests include preventing clustering of community residences on a block (which undermines their ability to achieve their purposes and function properly, and could alter the residential character of the neighborhood), as well as licensing.

The bottom line is that a proposed community residence for more unrelated people than allowed under a family definition must be allowed as a permitted use in all zones where residential uses are sanctioned if the community residence is at least a typical block away from an existing community residence and has the proper state (or national) licensing or certification.

The heightened scrutiny of a special use permit is warranted when a proposed community residence would be located within this block-long spacing distance or if the state doesn’t require licensing or certification. Otherwise requiring a special use permit flies in the face of the FHAA as well as sound planning and zoning principles.

As the conscience of our communities, planners must persuade elected officials to bring their zoning for community residences for people with disabilities into compliance with sound planning and zoning principles within the context of the Fair Housing Act.

— Daniel Lauber, AICP