



**Palm Beach County-Zoning Division
May 4, 2021**

**Community Meeting
Community Residential Homes
Recovery Community
Congregate Living Facility
Skilled Nursing and Residential Treatment Facility**

Consultant Daniel Lauber, AICP

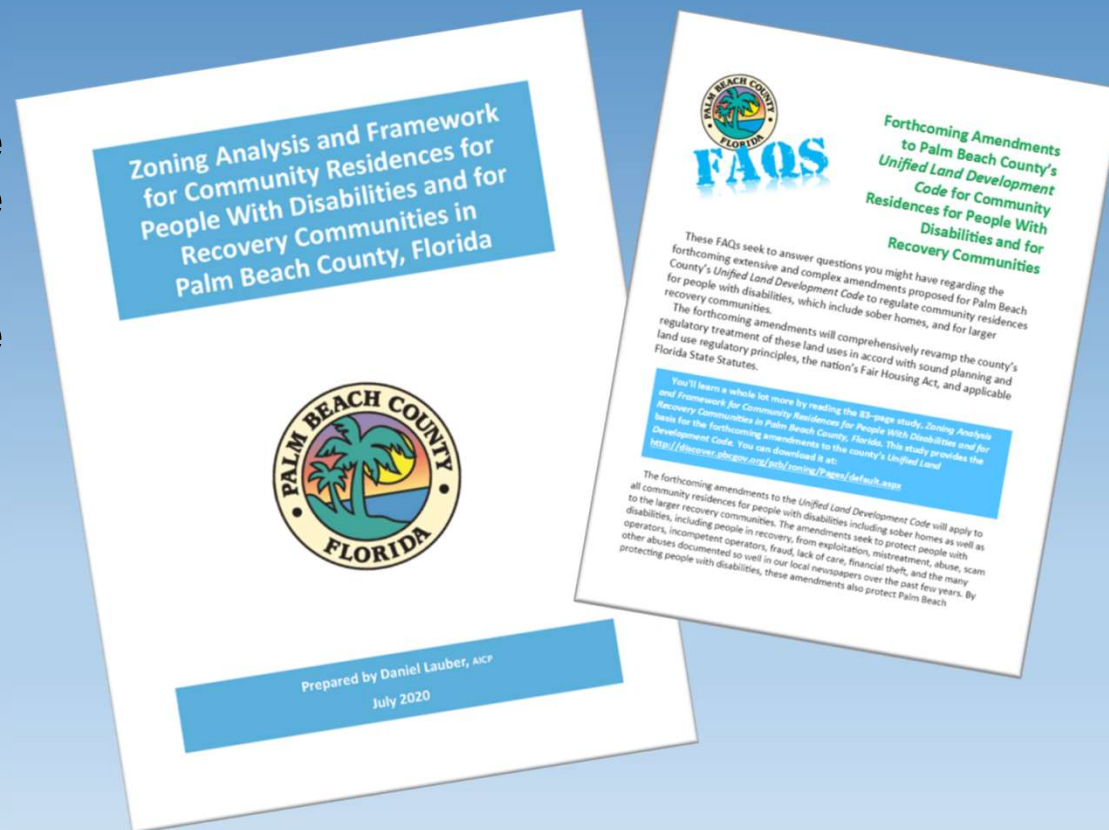
- Professional Planner and Attorney
- More than 40 years of experience working on zoning issue relating to Community Residences for people with disabilities
- Written Zoning regulations for Community Residences in compliance with the Fair Housing Act for multiple cities, including the City of Delray Beach and Pompano Beach
- Witness for the US Department of Justice in housing discrimination cases for people with disabilities, including also Sarasota County, FL regarding defense of housing discrimination

Background

- Congregate Living Facilities has been in the Palm Beach County Unified Land Development Regulations since the 1980's, which included 3 different categories of a Type 1, 2 and 3 based on number of residents.
- Ordinance 2011-016- the ULDC was modified to incorporate regulations for Reasonable Accommodation, relating to requests for persons with disabilities as provided under Federal Fair housing Amendments Act and Americans with Disabilities Act.
- In 2018, Staff, through Land Development Regulations Advisory Board, established a Subcommittee to review the requirements for CLF's and Reasonable Accommodation to propose amendments to the ULDC. At the May 2018 meeting it was determined that Staff would hold off on the amendment in order to prepare a study and hire a consultant.
- In 2019, Staff entered into an Emergency Contract with Mr. Daniel Lauber to assist in the preparation of a Study, Frequently Asked Questions and ULDC requirements to address Community Residences, our existing Congregate Living Facilities, Reasonable Accommodations and findings that the regulations would be compliant with Fair Housing and Americans with Disabilities Acts, as well as other State and Federal Regulations

Background

- As part of Phase 1, Mr. Lauber prepared a Study along with Frequently Asked Questions based on his research and review of our code and FHA and ADA, and published them in July of 2020.
- Phase 2, began in July in coordination with Staff in the preparation and drafting of the proposed amendments.
- Subcommittee was created and code was review, presented and discussed with the members and interested parties.



LINKS

1. Consultant Final Report and Analysis:
https://discover.pbcgov.org/pzb/zoning/AdminNewsReleases/Community_Residential_Housing.pdf
2. Consultant FAQ on Findings and Analysis:
https://discover.pbcgov.org/pzb/zoning/AdminNewsReleases/FAQ_2020.pdf
3. LDRAB Subcommittee Meetings and Results:
<https://discover.pbcgov.org/pzb/zoning/Pages/LDRAB-Subcommittee-2020-01.aspx>
4. Memo from Zoning Director dated 2/5/21 on Status:
https://discover.pbcgov.org/pzb/zoning/AdminNewsReleases/Medical_Use_Memo_02-05-21.pdf
5. LDRAB/LDRAC Meeting – 3/24/21 Exhibits:
<https://discover.pbcgov.org/pzb/zoning/Hearings-Meetings-LDRAB/LDRAB-Agenda-03242021.pdf>
6. Summary of ULDC Amendments related to Community Residential Housing:
https://discover.pbcgov.org/pzb/zoning/AdminNewsReleases/Medical_Use_Summary.pdf
7. BCC Zoning Hearing – Permission to Advertise Exhibit 4/22/21:
<https://discover.pbcgov.org/pzb/zoning/Hearings-Meetings-BCC/2021-04-22-Agenda.pdf>
8. Community Residential Housing Community Zoom Meeting 5/4/2021
https://discover.pbcgov.org/pzb/zoning/AdminNewsReleases/Community_Residential_Housing_Zoom_Meeting_05-04-2021.pdf

Schedule to Date:

- 02/26/2021 - Final Subcommittee Meeting
- 03/24/2021 - LDRAB/LDRC Meeting
 - Recommendation for BCC Approval 16-0
 - Determination of Consistency with the Plan 16-0
- 04/22/2021 - BCC Request for Permission to Advertise
 - Approved 7-0
- 05/04/2021 - Community Meeting
- 05/27/2021 - BCC Hearing (1st Reading)

Anticipated Schedule:

- 07/22/2021 - BCC Hearing (Final Adoption)

Fair Housing Act, Americans with Disabilities and Florida Statutes

- The Fair Housing Act enacted to prohibit discrimination by providers of housing, in relation to race or color, religion, sex, national origin, familial status or disability.
- Americans with Disabilities Act “..is to ensure that people with disabilities have the same rights and opportunities as everyone else. The ADA guarantees this for people with [disabilities](#) in all aspects of everyday life – from [employment](#) opportunities, to being able to purchase goods and services, to participating in state and local governments' programs and services.”
- Multiple Florida Statutes that provide guidance for persons with disabilities. The proposed amendments reference several of these statutes.

Florida Statutes

Title XXX- Social Welfare 409-430	Title XXIX- Public Health 381-408	
Community Residence 419	Substance Abuse Services 397	Nursing Homes and Related Health Care Facilities 400
<p>“Resident” means any of the following:</p> <ul style="list-style-type: none"> • a frail elder as defined in s. 429.65; • a person who has a disability as defined in s. 760.22(3)(a); • a person who has a developmental disability as defined in s. 393.063; • a non-dangerous person who has a mental illness as defined in s. 394.455; • a child who is found to be dependent as defined in s. 39.01 or s. 984.03, • a child in need of services as defined in s. 984.03 or s. 985.03. 		

Congregate Living Facilities

	Existing	Proposed
Definition	A facility which provides long-term care, housing, food service, and one or more assistive care services for persons not related to the owner or administrator by blood or marriage.	A facility which provides long-term care, housing, food service, and one or more assistive care services for persons not related to the owner or administrator by blood or marriage. <u>A permanent or temporary group living arrangement for people without disabilities, or a group living arrangement in which normalization and/or community integration are not integral elements, or a group living arrangement for people undergoing treatment in a program under the same or affiliated ownership, or congregate housing for people with disabilities who pose a direct threat to the health or safety of others including as an alternative to incarceration, or intermediate care or assisted living facilities that do not emulate a family.</u>
Statutes	419 and 397 (Do not consider as a detox facility, falls under Nursing Home)	

Congregate Living Facilities

	Existing	Proposed
Type 1 CLF	<ul style="list-style-type: none"> • 1-6 Residents, excluding staff • Allowed by right in all residential Zoning Districts, mixed use districts, IPF, PDDs and TDDs • Separation 1000 feet • 419 or 397 • No requirements on length of stay • No requirements regarding Levels of Treatment 	<ul style="list-style-type: none"> • Proposed to remove; • Most cases will apply as a Community Residence
Type 2 CLF	<ul style="list-style-type: none"> • 7-14 Residents, excluding staff • Allowed in AR, RS, PDDs as Class A Use • Allowed in mixed used Districts as a DRO • Allowed by right in RM • Separation 1200 feet <u>only</u> in RM District • Min Lot size • 419 or 397 • No requirements on length of stay • No requirements regarding Levels of Treatment 	<ul style="list-style-type: none"> • Proposed to remove • Most cases will apply as a Community Residence

Congregate Living Facilities

	Existing	Proposed
Type 3 CLF	<ul style="list-style-type: none"> • Greater than 14 residents, based on 2.39 residence per acre. • Allowed in RS with MR5 or higher FLU, RM, PDDs, TDDs and some Commercial/Mixed use Districts as a Class A Use. • May require certification/license • Location requirements- Roadway and frontage Arterial/Collector • 419 or 397 	<ul style="list-style-type: none"> • Remove references as “Type 3”; • When not a Community Residence, over 14 residence, and based on 2.39 residents/beds per acre (No change); • No change to where use is allowed or process; • No change: May require certification/license by the state • Minor changes: Location with the addition of Local Commercial Street • New: Separation from other CLF, Community Residences or Recovery Communities dependent on the number of residents (660 feet or 7 lots or 1200 feet) • New: Type 2 Waiver- new when the use does not meet the separation requirements. • Will still apply to residents described under 419 or 397 when they are not a family, as well as other residents not covered under FHA or ADA • Detox type facilities will still be classified as Skilled Nursing and Residential Treatment

Community Residences

- New Definition in Article 1, this is an overall definition for the use.
- A Community Residence is a Family Community Residence, or Transitional Community Residence.
- Residential living arrangement for five to ten unrelated individuals with disabilities (397) or 5-14 (419) living as a single functional family in a single dwelling unit who need the mutual support furnished by other residents of the dwelling unit as well as the support services, if any, provided by any staff of the Community Residence.
- Residents may be self-governing or supervised by a sponsoring entity or its staff, which provides habilitative or rehabilitative services related to the residents' disabilities.
- A Community Residence emulates a biological family to foster normalization of its residents and integrate them into the surrounding community.
- Its primary purpose is to provide shelter; foster and facilitate life skills; and, meet the physical, emotional, and social needs of the residents in a family-like environment.

Community Residences

- Medical treatment is incidental as in any home. Supportive inter-relationships between residents are an essential component.
- Upon termination, revocation, or suspension of its license or certification, a Community Residence must be closed within 60 calendar days, and the operator of the Community Residence must return residents to their families or relocate them to a safe and secure living environment.
- Community Residences include, but are not limited to those residences that comport with this definition that are licensed by the Florida Agency for Persons with Disabilities, the Florida Department of Elder Affairs, the Florida Agency for Health Care Administration, and the Florida Department of Children and Families, pursuant to F.S. ch. 419, Community Residential Homes; and Recovery Residences certified by the State's designated credentialing entity established under F.S. § 397.487, Substance Abuse Services

Community Residences

Family Community Residence

- Permanent living of a year or longer;
- Replaces the Type 1 and Type 2
- Emulates a family;
- Includes Oxford House- homes
- Medical Treatment is incidental
- Permitted by right where Single Family is allowed (All Residential Zoning Districts, and non residential or mixed use districts) if:**
 - 1-10 residents, including staff that live on site for Residents **certified under 397**, or others; or
 - 1-14 residents, including staff that live on site for Residents **licensed by state agencies 419**;
 - Must be certified/licensed by the state; and,
 - Separation Distance requirements 660 ft or 7 lots.
- Type 2 Waivers (NEW)**
 - When requesting more than 10 residents (397); or
 - If no license/certification available from the state; or
 - The site is less than the distance requirements.
 - This is the Reasonable Accommodation.
- Zoning Confirmation Letter (NEW)**
 - Confirms it meets number of residents, certification/licensing and are me.

Community Residences

Transitional Community Residence

- Temporary living of less than a year;
- Emulates a family;
- Medical Treatment is incidental
- Permitted by Right** RM, Mixed Use, some is allowed in some non-residential districts, if:
 - 1-10 residents, including staff that live on site for Residents **certified under 397**, or others; or
 - 1-14 residents, including staff that live on site for Residents **licensed by state agencies 419**;
 - Must be certified/licensed by the state; and.
 - Separation Distance requirements 660 ft or 7 lots.
- Type 2 Waivers** RM, Mixed Use, some is allowed in some non-residential districts, **if**:
 - When requesting more than 10 residents (397); or
 - If no license/certification available from the state; or
 - The site is less than the distance requirements.
- Permitted by Right** in AGR, AR, RS, RE, RT, Detached Unit Pods of PDDs or TDDs, if
 - 1-6 residents, including staff that live on site for Residents **licensed by state agencies 419**;
 - Must be certified/licensed by the state; and.
 - Separation Distance requirements 660 ft or 7 lots.
- Type 2 Waivers** AGR, AR, RS, RE, RT, Detached Unit Pods of PDDs or TDDs, if
 - When requesting more than 6 residents (419); or
 - If no license/certification available from the state; or
 - The site is less than the distance requirements.

Community Residences

Transitional Community Residence

- Type 2 Waiver** AGR, AR, RS, RE, RT, Detached Unit Pods of PDDs or TDDs, **to allow this use** if
 - When 5 to 10 residents (397);
 - When license/certification is available from the state; and
 - The site is meets 660 or 7 lots location requirements.
 - In comparison to a Type 1, this is more restrictive than current procedures, and similar for Type 2
 - This process is the Reasonable Accommodation
- Additional Type 2 Waiver(s)** AGR, AR, RS, RE, RT, Detached Unit Pods of PDDs or TDDs, **to allow this use** if:
 - When requesting more than 10 residents (397); or
 - If no license/certification available from the state; or
 - The site is less than the distance requirements.
 - Procedures are the Reasonable Accommodation
- Zoning Confirmation Letter**
 - Confirms it meets number of residents, certification/licensing and are me.

Recovery Community

- Temporary or Permanent living;
- Medical Treatment is incidental
- Typically in Attached Housing, however they may be in a group of detached housing
- Permitted by right RM, Mixed Use, some is allowed in some non-residential districts, if:**
 - Must be certified/licensed by the state; and.
 - Separation Distance requirements 1200 feet or 10 lots, and from the perimeter of the grouping of detached housing.
- Type 2 Waivers**
 - The site is less than the distance requirements.
- Zoning Confirmation Letter**
 - Confirms it meets distance and certification requirements.

Skilled Nursing and Residential Treatment Facility

- Allowed in RS, RM and non-residential districts subject to Public Hearing or Administrative Reviews.- **No change**
- Institutional Use – **No change**
- Number of residents based on acreage 1/1000 sq ft of lot – **No change**
- Medical treatment is not incidental
- Residents include those described under F.S 400; as well as 397 that require more medical treatment that is not incidental for the Recovery Communities or Community Residences (ie Level 1);
- Location Criteria based on the type of road the parcel is adjacent to.

Process

- | | |
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| <ul style="list-style-type: none">• Permitted by Right | <ul style="list-style-type: none"><input type="checkbox"/> Based on Fair Housing and ADA the number of residents typically allowed by right has increased<ul style="list-style-type: none">• Type 1 was max 6 residents, and Type 2 was max 14 residents;• Proposed is a maximum 10 for those licensed under F.S. 397 or others; and 14 for those licensed under F.S. 419 (dependent on location and Community Residence type)<input type="checkbox"/> Must be licensed/certified<input type="checkbox"/> Must meet distance requirements |
| <ul style="list-style-type: none">• DRO/Conditional Use | <ul style="list-style-type: none"><input type="checkbox"/> If the specific housing type, ie Zero Lot Line, Town House or Multifamily, requires a higher Administrative or Public Hearing approval, because housing doesn't exist, then the Community Residences would follow that same approval process. |

Process

- | | |
|--|--|
| <ul style="list-style-type: none">• Type 2 Waiver | <ul style="list-style-type: none"><input type="checkbox"/> New Waivers Standards are created, and Applicant must meet all standards to render support or approval of the requests<input type="checkbox"/> Requires recommendation from Zoning Commission and final decision by the Board of County Commissioners<input type="checkbox"/> Used as the means for Reasonable Accommodation for Community Residences and Recovery Communities<input type="checkbox"/> The Board would be reviewing requests relating to the Community Residences or Recovery Communities if:<ul style="list-style-type: none">• If no license/certification was available from the State• If they did not meet the location distance requirements• If they exceed the allowed maximum number allowed by right• If they want to have a Transitional Community Residence Use in the RS (or other Single Family type Zoning Districts) for residents licensed under 397 (even if it has 10 or fewer, meets the distance and has a license)<input type="checkbox"/> Appeal would be pursuant to the Circuit Court |
| <ul style="list-style-type: none">• Reasonable Accommodation | <ul style="list-style-type: none"><input type="checkbox"/> Revised to clarify that the RA process does not apply for Community Residences or Recovery Communities as it is now included in their supplemental requirements and the Type 2 Waiver |

Summary of Modifications

• Article 1

- New Definition for
 - Community Residence,
 - Continue Care Facility,
 - Greater Weight of Evidence (for the Standards)
 - Oxford House
- Modified existing definitions
 - Congregate Living Personal Services,
 - Dwelling Unit,
 - Disabled

• Article 2

- New Type 2 Waiver Standards specifically for Community Residences, Recovery Communities, and CLF, related to Location, Licensing/Certification or Number of Residents as allowed in Article 4
- New / Codified procedures for confirming compliance for location, licensing/certification and number
- Revocation when licensing/certification has been revoked
- Clarification that procedures for Reasonable Accommodation will not apply for Community Residences or Recovery Communities as they are part of the new Waiver procedures.
- Zoning Director authority to review that licenses/certifications are maintained.

Summary of Modifications

<ul style="list-style-type: none">• Article 3	<ul style="list-style-type: none"><input type="checkbox"/> Westgate Overlay and Urban Redevelopment Area, modify to add new uses or modify existing code references<input type="checkbox"/> PDDs relocate generator requirements to Article 5<input type="checkbox"/> TDDs refer to housing types to Article 4
<ul style="list-style-type: none">• Article 4	<ul style="list-style-type: none"><input type="checkbox"/> Modification to Congregate Living Facility<input type="checkbox"/> New Family Community Residence<input type="checkbox"/> New Transitional Community Residence<input type="checkbox"/> New Recovery Community<input type="checkbox"/> Modifications to Skilled Nursing and Residential Treatment Facility
<ul style="list-style-type: none">• Article 5	<ul style="list-style-type: none"><input type="checkbox"/> Relocation and clarification on requirements for generators, compliant with Statutes<input type="checkbox"/> Modifications relating to references to Congregate Living Facilities under the Density Bonus Programs
<ul style="list-style-type: none">• Article 6	<ul style="list-style-type: none"><input type="checkbox"/> Addition of the new uses for parking. Because the uses emulate families the parking is treated the same, with same rules on the location of parking, restrictions on street, and allowances for off-site. Treated the same.
<ul style="list-style-type: none">• Article 7	<ul style="list-style-type: none"><input type="checkbox"/> Modifications to remove Type 2 CLF buffering requirements<input type="checkbox"/> Landscaping requirements would follow the same allowances as other Residential use Types.

Questions ?