



**Palm Beach County
Board of County Commissioners**

**June 16, 2021
Zoning Division Public Hearing**

Consultant Daniel Lauber, AICP

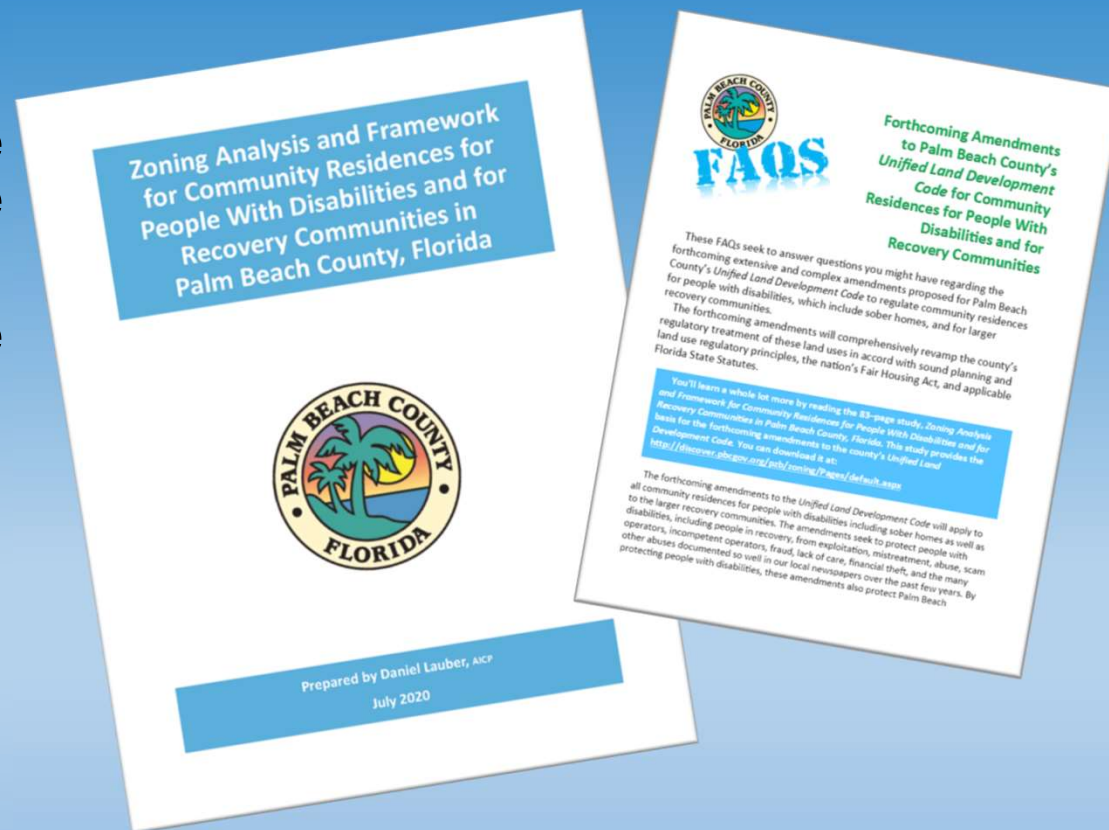
- Professional Planner and Attorney
- More than 40 years of experience working on zoning issue relating to Community Residences for people with disabilities
- Written Zoning regulations for Community Residences in compliance with the Fair Housing Act for multiple cities, including the City of Delray 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.



Schedule to Date:

- 02/26/2021 - Final Subcommittee Meeting
- 03/24/2021 - LDRAB/LDRC Meeting
 - Unanimous Recommendation for BCC Approval (16-0 vote)
- 04/22/2021 - BCC Request for Permission to Advertise
 - Approved 7-0
- 05/04/2021 – Zoom Community Meeting
- 05/27/2021 - BCC Hearing (1st Reading) **Postponed 7-0**
- 06/10/2021 – Zoom Community Meeting
- 06/16/2021 - Zoom Community Meeting
- 07/08/2021 – Zoom Community Meeting

Anticipated Schedule:

- 07/22/2021 - BCC Hearing (1st Reading)
- 08/26/2021 – 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 and Florida Administrative Code** 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 FS 419	Substance Abuse Services FS 397	Nursing Homes and Related Health Care Facilities FS400
<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. 		

State Agency and Others

AHCA- Agency for Health Care Administration
 FARR- Florida Association of Recovery Residences.

DCF- Department of Children and Families
 Oxford House

Where do we start?

Unified Land Development Code's Definition of "Family"

Fits within cap of 4 unrelated individuals that constitutes a "family"

Therefore, it's a "family" and must be treated the same as any other "family."

All community residences for people with disabilities must be a permitted use in all districts where residences are allowed with no additional zoning requirements

Exceeds cap of 4 unrelated individuals that constitutes a "family"

Unified Land Development Code must make a reasonable accommodation for these homes

Using least drastic means that actually achieve a legitimate government interest

To be removed

Congregate Living Facility

Type 1 CLF

- 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


Type 2 CLF

- 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 only in RM District
- Min Lot size
- 419 or 397
- No requirements on length of stay
- No requirements regarding Levels of Treatment

To remain and edit

*Congregate Living
Facility*

Type 3 CLF



- 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

Community residence occupied by more than the 4 unrelated individuals that constitute a “family”

Family Community Residence
Relatively *permanent* tenancy
No time limit on length of residency
Typically at least a year

Transitional Community Residence
Relatively *transient* tenancy
Residency limited to weeks or months
Typically less than a year

Permitted use in districts where residences are allowed only when:

- ✓ Located more than 660 feet or 7 lots, whichever is greater, from the closest existing community residence, recovery community, or congregate living facility
- ✓ Licensed or certified

Permitted use in districts where multi-family housing is allowed only when:

- ✓ Located more than 660 feet or 7 lots, whichever is greater, from the closest existing community residence, recovery community, or congregate living facility
- ✓ Licensed or certified

If both criteria are *not* met:
Apply for a Type 2 Waiver

If both criteria are *not* met or site is in a single-family district:
Apply for a Type 2 Waiver

If proposed community residence would house more than 10 residents and is *not* a state licensed “Community Residential Home” for 7 to 14 residents:
Apply for a Type 2 Waiver

Bottom line on number of residents



Palm Beach County's *Housing Code* includes ...



... a formula to prevent overcrowding



Applies to *all* residences



One occupant of sleeping area: **70 square feet**



More than one occupant of sleeping area: **50 additional square feet per occupant**

Recovery Community

Single-family districts

Not permitted

except an existing recovery community may continue as a lawful nonconforming use if it obtains and maintains state certification from FARR within nine months of zoning amendments being adopted



Zoning districts where multifamily or institutional uses are allowed

Permitted use when:

- ✓ Located more than 1,200 feet or 10 lots, whichever is greater, from the closest existing community residence or recovery community
- ✓ State certified by FARR (initial “provisional” certification followed by annual certification)



When located within 1,200 feet or 10 lots, whichever is greater, of the closest existing community residence or recovery community:

Apply for a Type 2 Waiver

Compliance

Must receive licensure, certification, or recertification from the designated state entity
9 months after adoption of amendments to the *Unified Land Development Code*



Amendments include provision to rescind zoning approval if license or certification is revoked, suspended, or not granted

Process

- | | |
|---|--|
| <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<input type="checkbox"/> No other RA would be allow for requirements described in Article 4<input type="checkbox"/> To deviate from other code requirements, ie parking, landscaping, the Applicant must see a Variance first, before a Reasonable Accommodation could be sought. |
| <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 ?