

MEMORANDUM

To: Members of Dublin City Council

From: Stephen Smith, Law Director
Jennifer Readler, Assistant Law Director

Date: August 21, 2014

Re: Ordinance 22-14 (Amended) – Amending Chapter 153 of the Codified Ordinance of the City of Dublin, to permit community residences for people with disabilities in residential districts as required by the Fair Housing Amendments Act of 1988 and the Ohio Revised Code, provided necessary dispersal and licensing requirements are met; and amending section 404.5 of the 2009 International Property Maintenance Code adopted by the City of Dublin to establish a square footage requirements for occupants; and section 153.234 “Amendments” to modify the notification requirements for public hearings.

PROCEDURAL BACKGROUND

Late last year, Dublin residents contacted the City about several adult community residences and inquired about various zoning and regulation issues involving these residences.

Since the matter was brought to the City’s attention, the Law Director’s office has been researching the law with regard to the regulation of adult community residences at the direction of City Council. Specifically, City Council directed the Law Director’s office and additional staff to research the law and provide draft zoning code amendments to address these adult community residences.

The Planning and Zoning Commission (the “Commission”) was first presented with legislation regarding adult family homes on Thursday, April 3, 2014. This zoning code amendment proposed to add “adult family homes” as permitted uses in single-family residential districts, and imposed a 500-foot distance requirement between these homes. After much discussion and citizen comment, the Commission voted to table the matter for further research and review of the issues.

Accordingly, the Law Director’s office continued to research the issues regarding adult family homes and met with members of the Mid-Century Dublin Neighbors Association on April 9, 2014 to discuss the matter further.

The proposed zoning code amendment was then brought before the Commission a second time at the April 17, 2014 meeting in substantially the same form. The Commission members, Law Director's Office, and citizens engaged in productive discussion regarding the proposed legislation and the legal issues surrounding the matter. Ultimately, the Commission voted 5-0 to recommend approval to City Council for its consideration.

The proposed legislation proceeded to City Council for consideration at the April 28, 2014 meeting. The proposed legislation was postponed in order for Staff to conduct more research on this issue.

OVERVIEW

Currently, there are three adult community residences in Dublin that are licensed by the state to provide care for up to five individuals. The three homes are located at: (1) 5544 Avery Road; (2) 3741 Tonti Drive; and (3) 50 Longview Drive.

As you are aware, the Law Director's office retained and worked closely with planner and zoning/fair housing attorney Daniel Lauber, AICP, an expert on community residences, to better understand and address issues regarding these residences in Dublin.

Mr. Lauber made several revisions to the proposed zoning code amendment. Specifically, Mr. Lauber placed Ohio state law within the context of federal law and focused on federal law. Additionally, while the original goal of the research and proposed legislation was to address the issue of residential homes that care for up to five unrelated individuals, Mr. Lauber took a more comprehensive approach, in which he addressed all aspects of zoning issues for all community residences. Mr. Lauber has maintained that anything short of a comprehensive zoning code amendment that addresses community residences for *all* individuals with disabilities would fail to satisfy the FHAA by providing for only part of the protected class – elderly people with disabilities – and excluding people with other disabilities.

Mr. Lauber provided the Law Director's office with an expert report and worked with our office to revise and prepare the proposed legislation before you today.

RECOMMENDATION OF THE PLANNING AND ZONING COMMISSION

On April 17, 2014, the Commission voted 5-0 to recommend approval to City Council for its consideration. The proposed amendments made since the Commission's consideration more comprehensively address the regulation of community residences and ensure compliance with federal law.

SUMMARY OF PROPOSED LEGISLATION

As stated above, the proposed zoning code amendment before you today is very comprehensive. The following is a breakdown of some of the key aspects and provisions of the proposed legislation.

A. Definitions

- i. The proposed legislation adds five new definitions to § 153.002 – (1) Community Residence (which is broken into two categories: (2) Family Community Residence and (3) Transitional Community Residence), (4) Disability, and (5) Family.
- ii. The proposed legislation deletes § 153.002(A)(7)(b), which is the definition of Group Residence, and all references to Group Residence in the existing Code.

B. Permitted Uses

- i. The proposed legislation adds Family Community Residences as a permitted use in all residential zoning districts, as long as they meet the rationally-based spacing and other requirements outlined below.
- ii. The proposed legislation adds Transitional Community Residences as a permitted use in all zoning districts that permit multiple-family housing as of right, as long as they meet the rationally-based spacing and other requirements outlined below.

C. Requirements to be a Permitted Use

- i. The proposed legislation permits Family Community Residences in all residential zoning districts, provided that (1) the proposed residence is located at least eight lots away on its side of the street from an existing community residence *and* is at least 660 linear feet from the closest existing community residence as measured from the nearest property line to the nearest property line; and (2) the operator or applicant is licensed or certified by the State of Ohio to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.
- ii. The proposed legislation permits Transitional Community Residences in all zoning districts that permit multiple-family housing, provided that (1) the proposed residence is located at least eight lots away on its side of the street from an existing community residence *and* is at least 660 linear feet from the closest existing community residence as measured from the nearest property line to the nearest property line; and (2) the operator or applicant is licensed or certified by the State of Ohio to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

D. Conditional Uses

- i. If a proposed Family Community Residence does not meet both the spacing and licensing requirements to be allowed as of right, the proposed legislation requires

a conditional use permit in all residential districts. The conditional use permit is subject to the standards for a conditional use permit set forth in § 153.236(C) as well as the following standards: (1) the proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence for people with disabilities; (2) the applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing of community residences; and (3) the proposed community residence in combination with any existing community residences will not alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by excessively concentrating community residences on a block.

1. Factors that may be considered when analyzing the standards for a conditional use permit for a proposed family community residence that is within the spacing distance include, but are not limited to, the following:
 - a. The distance between the proposed community residence and the nearest community residence. A community residence that seeks to locate next door to an existing community residence is more likely to interfere with normalization and community integration than a proposed community residence that seeks to locate 650 feet from an existing community residence.
 - b. Whether the proposed community residence serves the same population as the existing community residence. A community residence that serves the same population as an existing community residence is more likely to interfere with normalization and community integration.
 - c. Whether there is a physical barrier between the proposed community residence and the existing community residence, *e.g.*, a major road, river, hill, etc. A major barrier between the residences will prevent institutionalization since the residents of the two residences would be less likely to interact with one another.
- ii. If a proposed Transitional Community Residence does not meet both the spacing and licensing requirements to operate as of right in any multiple-family district, the proposed legislation requires a conditional use permit in all multiple-family residential districts. The conditional use permit is subject to the standards for a conditional use permit set forth in § 153.236(C) as well as the following standards: (1) the proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence for people with disabilities; (2) the applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing of community residences; and (3) the proposed community

residence in combination with any existing community residences will not alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by excessively concentrating community residences on a block.

1. Factors that may be considered when analyzing the standards for a conditional use permit for a proposed transitional community residence are the same factors as articulated for a conditional use permit for family community residences.
- iii. When the operator of a Transitional Community Residence seeks to locate in a single-family residential district, the home is subject to the standards for a conditional use permit set forth in § 153.236(C), as well as the following standards: (1) the proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence for people with disabilities; (2) the applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing of community residences; and (3) the proposed community residence in combination with any existing community residences will not alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by excessively concentrating community residences on a block.

E. Enforcement & Corrective Action

- i. The City may take any other judicial actions provided by law to address violations of the Comprehensive Residential and Neighborhood Improvement section (§ 153.073).

F. Property Maintenance Code

- i. Mr. Lauber's expert report emphasized that the City's property maintenance code is the proper means to regulate the maximum number of individuals who may live in a community residence for people with disabilities. The maximum number of individuals would apply to all single-family residences.
- ii. The proposed legislation establishes in the property maintenance code an objective measure of "overcrowding." Every room occupied for sleeping purposes by one occupant must contain at least 70 square feet of floor space, excluding closet space, and every room occupied for sleeping purposes by more than one occupant shall contain at least 70 square feet of floor space for each occupant of the room.

G. Notice for Public Hearing

- i. The proposed legislation amends portions of the Zoning Code to provide additional methods of advertising public hearings for rezonings.

RECOMMENDATION

The Law Director's office recommends City Council approval of Ordinance 22-14 (Amended) at the second reading/public hearing on August 25, 2014.

Zoning Code Amendment – Community Residences

§153.002 Definitions

For the purpose of this chapter, the follow definitions shall apply unless the context clearly indicates or requires a different meaning, as determined by the Director.

[Sections 153.002(A) – (A)(3)(d) omitted]

(e) **COMMUNITY RESIDENCE.** A family-like residential living arrangement for five or more unrelated individuals with disabilities in need of the mutual support furnished by other residents of the community residence as well as the support services 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 disabilities of the residents. A community residence seeks to emulate a biological family to normalize its residents and integrate them into the surrounding community. Because it is extremely unlikely that a group of more than 12 people can successfully emulate a family and prevent an institutional atmosphere from developing, no more than 12 individuals may live in a community residence. Its primary purpose is to provide shelter in a family-like environment; treatment is incidental as in any home. Inter-relationships between residents are an essential component. A community residence shall be considered a residential use of property for purposes of all zoning and building codes. The term does not include any other group living arrangement for unrelated individuals who are not disabled nor residential facilities for prison pre-parolees or sex offenders. The term "community residence" includes the following two categories:

FAMILY COMMUNITY RESIDENCE. A relatively permanent living arrangement with no limit on length of tenancy for five or more unrelated individuals with disabilities, including but not limited to Adult Family Homes and Adult Care Facilities licensed by the Department of Mental Health and Addiction Services under section 5119.34 of the Ohio Revised Code.

TRANSITIONAL COMMUNITY RESIDENCE. A temporary living arrangement, with a limit on length of tenancy, for five or more unrelated individuals with disabilities.

~~(e)~~(f) **CONFERENCE CENTER.** A facility designed to accommodate and support meetings or conferences. The facility may be either freestanding or incorporated into a hotel or office facility, and may include eating and drinking facilities but excluding overnight lodging if not part of a hotel.

~~(f)~~(g) **CONSTRUCTION AND CONTRACT SERVICE TRADES.** Facilities used for the repair of machinery, equipment, products or by-products. May include outdoor storage of materials, supplies or equipment as an accessory use.

~~(e)~~(h) **CONSTRUCTION TRAILER/OFFICE.** A trailer or portable building used to provide temporary work space for construction management personnel during the construction of a building or facility.

~~(h)~~(i) **CORPORATE RESIDENCE.** An accessory use integrated as part of a principal structure or in an accessory structure available in conjunction with a nonresidential use that provides temporary housing for personnel or visitors and is not available to the general public.

(4) *Use definitions - D*

[Sections 153.002(A)(4)(a) – (A)(4)(c) omitted]

(d) **DISABILITY.** A physical or mental impairment that substantially limits one or more of an individual's major life activities, impairs an individual's ability to live independently, having a record of such an impairment, or being regarded as having such an impairment. People with disabilities do not include drug addicts or alcoholics when they are using alcohol, illegal drugs, or using legal drugs to which they are addicted.

~~(e)~~(e) **DISTRICT ENERGY PLANT.** A facility that is not a public utility and that generates electrical energy for distribution to a defined area containing ten or more structures.

~~(e)~~(f) **DRIVE-IN/DRIVE-THROUGH.** A structure or building feature, including but not limited to a service window, automated device, or other equipment that is designed to provide sales and service to patrons who remain in their motor vehicles, including associated driveways and driving aisles by which patrons reach the structure or building feature.

~~(f)~~(g) **DWELLING.**

1. **ACCESSORY DWELLING.** A dwelling unit for occupancy by an individual who is providing services to a principal use of the property, such as watchmen, maintenance personnel, or temporary guests, including corporate residences; or an accessory dwelling associated with a single-family dwelling, two-family dwelling, or townhouse dwelling.
2. **DWELLING ADMINISTRATION, RENTAL, OR SALES OFFICES.** A permanent or temporary building or office used to administer a building containing dwelling units or to market the rental or sale of dwelling units on or near the property within a defined development site.
3. **LIVE-WORK DWELLING.** A structure including residential dwelling units connected with principal non-residential uses listed as permitted uses within a particular zoning district. The predominant character of the structure is intended to be harmonious with residential areas.

4. **MULTIPLE-FAMILY DWELLING.** A building arranged or intended for three or more households living independently of each other in separate dwelling units, any two or more of which may be provided with a common entrance or hall. Dwellings located on upper stories of a structure with non-residential uses on other stories are included in the definition of multiple-family dwelling.

5. **SINGLE-FAMILY DWELLING.** A detached or attached building arranged or designed to be occupied by one family, the structure having only one principal dwelling unit.

6. **TOWNHOUSE.** A building consisting of three or more dwelling units attached to each other through the use of shared party walls on one or both sides, with each unit having a ground floor and a separate entrance.

7. **TWO-FAMILY DWELLING.** A building arranged or designed to be occupied by two families, the structure having only two dwelling units with separate entrances.

[Sections 153.002(A)(5)(a) – (A)(5)(g) omitted]

(6) *Uses definitions – F*

(a) **FAMILY.** A family consists of any person living alone or any of the following groups living together as a single housekeeping unit that shares common living, sleeping, cooking, and eating facilities: (1) any number of people related by blood, marriage, adoption, guardianship, or other duly and legally authorized custodial relationship and no more than two unrelated individuals who provide care or assistance or are domestic employees, (2) two unrelated individuals and their children related to either of them and their foster children, or (3) four unrelated individuals. A family does not include any society; club; boarding or lodging house; fraternity; sorority; or group of individuals whose association is seasonal or similar in nature to a resort, motel, hotel, boarding or lodging house, nor that is institutional in nature.

~~(a)~~(b) **FARMERS MARKET.** An area, which may or may not be in a completely enclosed building, where on designated days and times, growers and producers of horticultural and agricultural products may sell those products and/or other incidental items directly to the public.

~~(b)~~(c) **FUELING/SERVICE STATION.** A facility used primarily for the sale of vehicle fuels, oils or accessories. Services may include maintenance and lubrication of automobiles and replacement or installation of minor parts and accessories but shall not include major repair work such as engine or transmission replacement, body and fender repair or spray painting. This use may include the retail sales of convenience goods.

[Section 153.002(A)(7)(a) omitted]

(7) *Uses definitions - G*

~~(b) **GROUP RESIDENCE.** A facility occupied by two or more individuals meeting the definition of handicapped in the federal Fair Housing Act Amendments, and living as a single housekeeping unit with shared common facilities. The facility may also provide food, shelter, personal care, assistance or supervision and supplemental health care services. For purposes of this definition, the term handicapped does not include persons currently using or addicted to alcohol or controlled substances who are not in a recognized recovery program, and does not include facilities or half-way houses for individuals in the criminal justice system.~~

[Remainder of Section 153.002 omitted]

§153.059 Uses

[Sections 153.059(A) omitted]

(B) *Use Table.* Refer to Table 153.059-A.

Table 153.059-A

TABLE 153.059-A: PERMITTED AND CONDITIONAL USES IN BSC DISTRICTS												
Permitted Permitted on upper floor(s) only Conditional Size Limited Time Limited Use	BSC Districts											Use Specific Standards See § 153.059(C)
	Residential	Office Res.	Office	Commercial	Hist. Core	Hist. Res. (exist)	Hist. Trans.	Indian Run	Sawmill Center	Vert. Mixed Use	Public	
PRINCIPAL USES												
Residential												
Dwelling, Single- Family	P					P						(1)(a)
Dwelling, Two- Family	P											
Dwelling, Townhouse	P	P					P	P	P			(1)(b)
Dwelling, Live- Work	C	P	P		P		P	P	P	P		(1)(c)
Dwelling,	P	P	P	U	U		P	P	P	P		

Multiple-Family												
Group Residence	S	P										(1)(d)
Civic/Public/Institutional												
Cemetery											P	
Community Center	C	C					P	P	P	P		(2)(a)
Community Garden	P	P	P	P	P	P	P	P	P	P	P	(2)(b)
Day Care, Adult or Child		P	P	P	P		P	P	P	P		(2)(c)
District Energy Plant	C	C	C	C	C		C	C	C		C	(2)(d)
Educational Facility		P	P	P	P		P	P	P	P	P	
Elementary or Middle School		P	P	P	P	P	P	P	P	P	P	
Government Services, Safety	C	C	C	C			C	C	C	C	P	
High School		P	P	P	P		P	P	P	P	P	
Hospital		C/S	C/S					C/S	C/S	C/S	C/S	(2)(e)
Library, Museum, Gallery	P	P	P	P	P		P	P	P	P	P	(2)(f)
Municipal Parking Lot		P	P	P	P		P	P	P	P	P	
Religious or Public Assembly			C/S	C/S	C/S		C/S	C/S	C/S	C/S	C/S	(2)(g)

[Remainder of Table omitted]

[Sections 153.059(C) – (C)(1)(c) omitted]

~~(d) — Group residence. No more than six residents are permitted per dwelling, not including caregivers, in the BSC Residential district."~~

[Remainder of Section 153.059 omitted]

§153.065 Site Development Standards.

Table 153.065-A

TABLE 153.065-A: REQUIRED VEHICLE PARKING		
USE	MINIMUM REQUIRED	MAXIMUM PERMITTED
Principal Uses		
Residential		
Dwelling, Single-Family	2 per dwelling unit	2 per dwelling unit
Dwelling, Two-Family		
Dwelling, Townhouse		
Dwelling, Live-Work	2 per dwelling unit	3 per dwelling unit
Dwelling, Multiple-Family	Studio/efficiency and one bedroom: 1 per dwelling unit	2 per dwelling unit
	Two bedrooms: 1.5 per dwelling unit	
	Three or more bedrooms: 2 per dwelling unit	
	Age-restricted housing: 2 per 3 dwelling units if 80% of units are restricted for occupancy by those 65 or older	
	Handicapped housing: 1 per 2 dwelling units if 80% of units are reserved for those meeting the definition of "handicap" under the federal Fair Housing Act Amendments	
Group Residence	General requirement: 1 per 4 residents capacity as shown on the building permit	1 per 3 resident capacity
	Age-restricted housing: 1 per 5 residents capacity if 80% of units are restricted for occupancy by those 65 or older	
	Handicapped housing: 1 per 6 residents capacity if 80% of units are reserved for those meeting the definition of "handicap" under the federal Fair Housing Act Amendments	

[Remainder of Table and Section 153.065 omitted]

§153.073 Comprehensive Residential and Neighborhood Improvement.

[Sections 153.073(A) – 153.073(D) omitted]

(E) Community Residences for People With Disabilities

- (1) A family community residence shall be allowed as of right in zoning districts R, R-1, R-2, R-3, R-4, R-10, R-12, BSC-R, BSC-OR, BSC-O, BSC-HC, BSC-HR, and all Planned Unit Developments, provided (1) it is located at least eight lots on its side of the street from an existing community residence and is at least 660 linear feet from the closest existing community residence as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Ohio to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.
- (2) A conditional use permit is required to establish any community residence within eight lots on its side of the street from an existing community residence or within 660 linear feet of the closest existing community residence as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Ohio does not require the operator to be licensed or certified to operate the community residence or Congress does not recognize or sanction the community residence. The conditional use permit is subject to the standards for a conditional use permit set forth in § 153.236(C) and the following standards:
 - (a) The proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence for people with disabilities, and
 - (b) The applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing to protect the health, safety, and welfare of the occupants of the community residence; and
 - (c) The proposed community residence in combination with any existing community residences will not alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by excessively concentrating community residences on a block.
- (3) A transitional community residence shall be allowed as of right in zoning districts R-12, BSC-R, BSC-OR, BSC-O, and BSC-HTN, and in any Planned Unit Development in which buildings with three or more dwelling units are allowed, provided (1) it is located at least eight lots on its side of the street from an existing community residence and is

at least 660 linear feet from the closest existing community residence as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Ohio to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

- (4) In the R-12, BSC-R, BSC-OR, BSC-O, and BSC-HTN zoning districts, a conditional use permit is required to establish a transitional community residence within eight lots on its side of the street from an existing community residence or within 660 linear feet of the closest existing community residence as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Ohio does not require the operator to be licensed or certified to operate the community residence or Congress does not recognize or sanction the community residence. The conditional use permit is subject to the standards for a conditional use permit set forth in § 153.236(C) and the following standards:

(a) The proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence for people with disabilities.

(b) The applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing to protect the health, safety, and welfare of the occupants of the community residence; and

(c) The proposed community residence in combination with any existing community residences will not alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a de facto social service district by concentrating community residences on a block.

- (5) A transitional community residence shall be allowed by conditional use permit in residential districts R, R-1, R-2, R-3, R-4, R-10, and all Planned Unit Developments, subject to the standards for a conditional use permit set forth in § 153.236(C) and the following standards when there is an existing community residence within eight lots on its side of the street from the proposed community residence or within 660 linear feet of the closest existing community residence as measured from the nearest property line of the proposed community

residence to the nearest property line of the existing community residence, or (2) the State of Ohio does not require the operator to be licensed or certified to operate the community residence or Congress does not recognize or sanction the community residence:

(a) The proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence for people with disabilities,

(b) The applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing to protect the health, safety, and welfare of the occupants of the community residence; and

(c) The proposed community residence in combination with any existing community residences, will not alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by concentrating community residences on a block.

~~(E)~~(F) *Corrective action by municipal officials.*

- (1) All violations of this section which remain uncorrected after not less than ten days notice to the owner or resident, may be corrected by the municipality, or by any person, firm or organization selected by the municipality, and the costs thereof shall be paid by the owner of such property within 30 days.
- (2) Any such charges which remain unpaid for the 30 days may be collected in any manner provided by law and shall be certified by the administration to the auditor of each county wherein such property may be located to be charged as a lien against the property.
- (3) Violations occurring on construction sites may result in the issuance of a stop-work order until the site is brought into compliance.
- (4) The City may also take any other judicial actions provided by law to address violations of this section.

~~(F)~~(G) *Appeals.* Any person affected or aggrieved by this section may appeal a decision of the Administrative Official or designee directly to Council, and the decision of Council shall be final.

§150.231 Additions, Insertions and Changes.

Section 404.5 Overcrowding. Amend to read as follows:

In every dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space, excluding closet space, and every room occupied for sleeping purposes by more than one occupant shall contain at least 70 square feet of floor space for each occupant of the room, excluding closet space.

§153.234 Amendments.

[Sections 153.234(A) – 153.234(C)(2) omitted]

- (C) Procedure for consideration of proposed change or amendment.
 - (3) *Notice of hearing.* Notice setting forth the time and place of such public hearing and the nature of the proposed change or amendment shall be published on the City's website or other generally accepted medium, as designated by City Council ~~given by Council in a newspaper of general circulation in the municipality.~~

[Remainder of Section 153.234 omitted]

RECORD OF ORDINANCES

Ordinance No. 22-14 (Amended) Passed _____, 20____

AN ORDINANCE AMENDING CHAPTER 153 OF THE CODIFIED ORDINANCES OF THE CITY OF DUBLIN, TO PERMIT COMMUNITY RESIDENCES FOR PEOPLE WITH DISABILITIES IN RESIDENTIAL DISTRICTS AS REQUIRED BY THE FAIR HOUSING AMENDMENTS ACT OF 1988 AND THE OHIO REVISED CODE, PROVIDED NECESSARY DISPERSAL AND LICENSING REQUIREMENTS ARE MET; AND AMENDING SECTION 404.5 OF THE 2009 INTERNATIONAL PROPERTY MAINTENANCE CODE ADOPTED BY THE CITY OF DUBLIN TO ESTABLISH A SQUARE FOOTAGE REQUIREMENT FOR OCCUPANTS; AND SECTION 153.234 "AMENDMENTS" TO MODIFY THE NOTIFICATION REQUIREMENTS FOR PUBLIC HEARING.

WHEREAS, Chapter 153 of the Codified Ordinances of the City of Dublin ("Codified Ordinances") provides zoning regulations for the City of Dublin (the "City"); and

WHEREAS, Section 153.073 of the Codified Ordinances establishes general development standards applicable to all residential and neighborhood improvements; and

WHEREAS, one objective of the City of Dublin's *Community Plan* is to "encourage a broader range of housing options for Dublin residents while preserving the quality and desirability of Dublin's existing residential neighborhoods;" and

WHEREAS, community residences for the frail elderly further enable residents to grow old with dignity in Dublin in accord with the City of Dublin's aim to create a community-driven, strategic plan that provides Dublin residents the services, opportunities and infrastructure so that they can grow old with dignity in their own homes while remaining active and engaged members of their community; and

WHEREAS, the City desires to add family community residences for people with disabilities, including Adult Family Homes and Adult Care Facilities, as a permitted use in each of the districts that permit residences, subject to certain limitations to foster normalization and community integration, and to define family community residences in section 153.002 of the Codified Ordinances; and

WHEREAS, the City desires to add transitional community residences for people with disabilities as a permitted use in each of the districts that permit multiple-family dwellings and as a conditional use in each of the districts that permit residential uses except multiple-family dwellings, subject to certain limitations to foster normalization and community integration, and to define transitional community residences in section 153.002 of the Codified Ordinances; and

WHEREAS, the City desires to make the requisite reasonable accommodation for community residences for people with disabilities by enabling this residential use to be located in all residential areas of the City; and

WHEREAS, the City desires to define "Family" in section 153.002 of the Codified Ordinances; and

WHEREAS, it is the established policy of the United States of America and the State of Ohio to enable persons with disabilities to live in the least restrictive setting; and

WHEREAS, the nation's Fair Housing Amendments Act of 1988 (102 U.S. Stat. 1619) prohibits discrimination in housing against persons with disabilities; and

RECORD OF ORDINANCES

Ordinance No. _____

Passed _____, 20____

WHEREAS, it is found that a substantial number of people with disabilities need to live together in community residences with or without support staff as a functional family to be enabled to live within the community in the least restrictive setting and not be inappropriately forced to live in an institution or nursing home; and

WHEREAS, community residences for people with disabilities constitute a family-like living environment and belong in residential neighborhoods in order to achieve their core goals of normalization and community integration; and

WHEREAS, community residences that have a time limit on tenancy have density and tenancy characteristics more typical of multiple-family housing than single family housing; and

WHEREAS, over 50 research studies of the impacts of community residences for people with disabilities find that such residences generate no adverse impacts on the surrounding community as long as they are licensed and not clustered together on a block; and

WHEREAS, it is necessary to prevent clustering of community residences on a block in order to facilitate the essential goals of normalization and community integration and to preserve the residential character of the surrounding neighborhood; and

WHEREAS, the City desires to establish an objective standard for identifying overcrowding in all dwelling units; and

WHEREAS, the City desires to add methods for advertising public hearings for rezonings.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, State of Ohio, _____ of the elected members concurring:

Section 1. Section 153.002 of the Codified Ordinances of the City of Dublin is hereby amended and shall provide as follows:

§ 153.002 Definitions

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning, as determined by the Director.

(A) *Uses definitions.*

(3) *Uses definitions – C*

(e) **COMMUNITY RESIDENCE.** A family-like residential living arrangement for five or more unrelated individuals with disabilities in need of the mutual support furnished by other residents of the community residence as well as the support services 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 disabilities of the residents. A community residence seeks to emulate a biological family to normalize its residents and integrate them into the surrounding community. Because it is extremely unlikely that a group of more than 12 people can successfully emulate a family and prevent an institutional atmosphere from developing, no more than 12 individuals may live in a community residence. Its primary purpose is to provide shelter in a family-like environment; treatment is incidental as in any home. Inter-relationships between residents are an essential component. A community residence shall be considered a residential use of property for purposes of all zoning and building codes. The term does not include any other group living arrangement for unrelated

RECORD OF ORDINANCES

individuals who are not disabled nor residential facilities for prison pre-parolees or sex offenders. The term "community residence" includes the following two categories:

FAMILY COMMUNITY RESIDENCE. A relatively permanent living arrangement with no limit on length of tenancy for five or more unrelated individuals with disabilities, including but not limited to Adult Family Homes and Adult Care Facilities licensed by the Department of Mental Health and Addiction Services under section 5119.34 of the Ohio Revised Code.

TRANSITIONAL COMMUNITY RESIDENCE. A temporary living arrangement, with a limit on length of tenancy, for five or more unrelated individuals with disabilities.

(4) *Uses definitions – D*

(d) **DISABILITY.** A physical or mental impairment that substantially limits one or more of an individual's major life activities, impairs an individual's ability to live independently, having a record of such an impairment, or being regarded as having such an impairment. People with disabilities do not include drug addicts or alcoholics when they are using alcohol, illegal drugs, or using legal drugs to which they are addicted.

(6) *Uses definitions – F*

(a) **FAMILY.** A family consists of any person living alone or any of the following groups living together as a single housekeeping unit that shares common living, sleeping, cooking, and eating facilities: (1) any number of people related by blood, marriage, adoption, guardianship, or other duly and legally authorized custodial relationship and no more than two unrelated individuals who provide care or assistance or are domestic employees, (2) two unrelated individuals and their children related to either of them and their foster children, or (3) four unrelated individuals. A family does not include any society; club; boarding or lodging house; fraternity; sorority; or group of individuals whose association is seasonal or similar in nature to a resort, motel, hotel, boarding or lodging house, nor that is institutional in nature.

Section 2. Table 153.059-A of the Codified Ordinances of the City of Dublin with regard to principal uses is hereby amended to delete the principal use "Group Residence" and shall appear as follows:

TABLE 153.059-A: PERMITTED AND CONDITIONAL USES IN BSC DISTRICTS

P = Permitted U = Permitted on upper floor(s) only C = Conditional S = Size Limited T = Time Limited Use	BSC Districts											Use Specific Standards See § 153.059(C)
	Residential	Office Res.	Office	Commercial	Hist. Core	Hist. Res. (exist)	Hist. Trans.	Indian Run	Sawmill Center	Vert. Mixed Use	Public	
PRINCIPAL USES												

RECORD OF ORDINANCES

Ordinance No. _____ Passed _____, 20____

Parks and Open Space	P	P	P	P	P	P	P	P	P	P	P	
Transportation, Park & Ride			C	C				C	C	C	C	
Transportation, Transit Station			C	C				P	P	C	C	
Commercial												
Animal Care, General Services, Veterinary Offices, and Veterinary Urgent Care and Animal Hospitals			P	P	P			P	P	P	P	(3)(a)
Bank		P	P	P	P			P	P	P	P	
Bed and Breakfast					P							(3)(b)
Conference Center			C					P	P	P	U	
Eating and Drinking	C/S	P/S	P/S	P	P			P	P	P	P	(3)(c)
Entertainment / Recreation, Indoor		P/S	P/S	P/S				P/S	P	P	P	C (3)(d)
Fueling / Service Station				C								(3)(e)
Hotel		P	P	P	P			P	P	P	P	
Office, General		P	P	P	P			P	P	P	U	
Office, Medical		P	P	P	P			P	P	P	P	
Parking, Structure		P/C	P/C	P/C	C			P/C	P/C	P/C	P/C	P/C (3)(f)
Parking, Surface Lot		C	P	C	C				P	P	C	(3)(g)
Personal, Repair, & Rental Services	C/S	P/S	P/S	P/S	P/S			P/S	P	P	P/S	(3)(h)
Research & Development		P	P	P	P			P	P	P	U	
Retail, General	C/S	P/S	P/S	P	P/S			P/S	P	P	P	(3)(i)

RECORD OF ORDINANCES

Ordinance No. _____

Passed _____, 20____

District Energy Plant	Per approved parking plan		
Educational Facility	1 per 3 persons maximum occupancy of largest seating area or maximum building capacity, whichever is higher, as shown on the building permit	125% of minimum	
Elementary or Middle School	Per approved parking plan demonstrating adequate site circulation, including pick-up and drop-off areas		
Government Services, Safety	2 per 1,000 sq. ft.	150% of minimum	
High School	Per approved parking plan demonstrating adequate site circulation, including pick-up and drop-off areas		
Hospital	Per approved parking plan		
Library, Museum, Gallery	Library: 3.3 per 1,000 sq. ft.	125% of minimum	
	Museum or Gallery: 1 per 1,000 sq. ft.		
Religious or Public Assembly	1 per 6 persons maximum capacity in the largest seating area, as shown on the building permit	200% of minimum	
Parks and Open Space	Per approved parking plan		
Transportation, Park and Ride	Per approved parking plan		
Transportation, Transit Station	Per approved parking plan		
Commercial			
Animal Care, General Services, Veterinary Offices, and Veterinary Urgent Care and Animal Hospitals	2.5 per 1,000 sq. ft.	150% of minimum	
Bank	2.5 per 1,000 sq. ft.	125% of minimum	
Bed and Breakfast	1 per guest bedroom, plus 1 for operator	150% of minimum	
Conference Center	1 per 6 persons maximum capacity in the largest seating area, as shown on the building permit	125% of minimum	
Eating and Drinking	10 per 1,000 sq. ft.	125% of minimum	
Entertainment / Recreation, Indoor	Theater: 1 per 4 persons maximum capacity in the largest seating area, as shown on the building permit	150% of minimum	
	Sports courts: 2 per court		
	Other uses: Per approved parking plan		
Fueling / Service Station	4 per 1,000 sq. ft., plus 1 per dispensing station	150% of minimum	
Hotel	2 per 3 guest rooms, plus 4 per 1,000 sq. ft. of accessory use area	125% of minimum	
Office, General	Less than 50,000 sq. ft.	2.5 per 1,000 sq. ft.	125% of

RECORD OF ORDINANCES

	50,000-150,000 sq. ft.	3 per 1,000 sq. ft.	minimum
	Greater than 150,000 sq. ft.	4 per 1,000 sq. ft.	
Office, Medical	2.5 per 1,000 sq. ft.		125% of minimum
Parking, Structure	N/A		N/A
Parking, Surface Lot	N/A		N/A
Personal, Repair & Rental Services	2 per 1,000 sq. ft.		125% of minimum
Research & Development	2 per 1,000 sq. ft.		125% of minimum
Retail, General	3 per 1,000 sq. ft.		125% of minimum
Sexually Oriented Business Establishments	Per approved parking plan		
Vehicle Sales, Rental and Repair	2 per 1,000 sq. ft., plus 1 per 2,000 sq. ft. of outdoor vehicle display area		150% of minimum
Wireless Communications	N/A		N/A

Section 4. Section 153.073 of the Codified Ordinances of the City of Dublin is hereby amended and shall provide as follows:

§ 153.073 Comprehensive Residential and Neighborhood Improvement.

(E) Community Residences for People With Disabilities

(1) A family community residence shall be allowed as of right in zoning districts R, R-1, R-2, R-3, R-4, R-10, R-12, BSC-R, BSC-OR, BSC-O, BSC-HC, BSC-HR, and all Planned Unit Developments, provided (1) it is located at least eight lots on its side of the street from an existing community residence and is at least 660 linear feet from the closest existing community residence as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Ohio to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

(2) A conditional use permit is required to establish any community residence within eight lots on its side of the street from an existing community residence or within 660 linear feet of the closest existing community residence as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Ohio does not require the operator to be licensed or certified to operate the community residence or Congress does not recognize or sanction the community residence. The conditional use permit is subject to the standards for a conditional use permit set forth in § 153.236(C) and the following standards:

RECORD OF ORDINANCES

Ordinance No. _____

Passed _____, 20____

(a) The proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence for people with disabilities, and

(b) The applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing to protect the health, safety, and welfare of the occupants of the community residence; and

(c) The proposed community residence in combination with any existing community residences will not alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by excessively concentrating community residences on a block.

(3) A transitional community residence shall be allowed as of right in zoning districts R-12, BSC-R, BSC-OR, BSC-O, and BSC-HTN, and in any Planned Unit Development in which buildings with three or more dwelling units are allowed, provided (1) it is located at least eight lots on its side of the street from an existing community residence and is at least 660 linear feet from the closest existing community residence as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Ohio to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

(4) In the R-12, BSC-R, BSC-OR, BSC-O, and BSC-HTN zoning districts, a conditional use permit is required to establish a transitional community residence within eight lots on its side of the street from an existing community residence or within 660 linear feet of the closest existing community residence as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Ohio does not require the operator to be licensed or certified to operate the community residence or Congress does not recognize or sanction the community residence. The conditional use permit is subject to the standards for a conditional use permit set forth in § 153.236(C) and the following standards:

(a) The proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence for people with disabilities,

(b) The applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing to protect the health, safety, and welfare of the occupants of the community residence; and

(c) The proposed community residence in combination with any existing community residences will not alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by concentrating community residences on a block.

RECORD OF ORDINANCES

(5) A transitional community residence shall be allowed by conditional use permit in residential districts R, R-1, R-2, R-3, R-4, R-10, and all Planned Unit Developments, subject to the standards for a conditional use permit set forth in § 153.236(C) and the following standards when there is an existing community residence within eight lots on its side of the street from the proposed community residence or within 660 linear feet of the closest existing community residence as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Ohio does not require the operator to be licensed or certified to operate the community residence or Congress does not recognize or sanction the community residence:

(a) The proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence for people with disabilities,

(b) The applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing to protect the health, safety, and welfare of the occupants of the community residence; and

(c) The proposed community residence in combination with any existing community residences, will not alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by concentrating community residences on a block.

(F) *Corrective action by municipal officials.*

(1) All violations of this section which remain uncorrected after not less than ten days notice to the owner or resident, may be corrected by the municipality, or by any person, firm or organization selected by the municipality, and the costs thereof shall be paid by the owner of such property within 30 days.

(2) Any such charges which remain unpaid for the 30 days may be collected in any manner provided by law and shall be certified by the administration to the auditor of each county wherein such property may be located to be charged as a lien against the property.

(3) Violations occurring on construction sites may result in the issuance of a stop-work order until the site is brought into compliance.

(4) The City may also take any other judicial actions provided by law to address violations of this section.

(G) *Appeals.* Any person affected or aggrieved by this section may appeal a decision of the Administrative Official or designee directly to Council, and the decision of Council shall be final.

Section 5. Section 150.231 of the City of Dublin Building Regulations, in which the City of Dublin adopted the 2009 International Property Maintenance Code, is hereby amended and shall provide as follows:

404.5 Overcrowding. Amend to read as follows:

In every dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space, excluding closet space, and every room occupied for sleeping purposes by more than one

RECORD OF ORDINANCES

Ordinance No. _____

Passed _____, 20____

occupant shall contain at least 70 square feet of floor space for each occupant of the room, excluding closet space.

Section 6. Section 153.234 of the Codified Ordinances of the City of Dublin is hereby amended and shall provide as follows:

§153.234 AMENDMENTS

- (C) Procedure for consideration of proposed change or amendment.
- (3) *Notice of hearing.* Notice setting forth the time and place of such public hearing and the nature of the proposed change or amendment shall be published on the City's website or other generally accepted medium, as designated by City Council.

Section 7. This Ordinance shall be effective on the earliest date permitted by law.

Passed this _____ day of _____, 2014.

Mayor - Presiding Officer

ATTEST:

Clerk of Council

**Dublin, Ohio:
Principles to Guide
Zoning for Community
Residences for People
With Disabilities**

Prepared for Frost Brown Todd LLC
One Columbus, Suite 2300
Columbus, Ohio 43215
www.frostbrowntodd.com

**Prepared by
Daniel Lauber, AICP**
River Forest, Illinois
June 2014

Law Office Daniel Lauber

Author: Planner/Attorney: Daniel Lauber, AICP

Copyright © 2014 by Daniel Lauber. All rights reserved.

Permission granted to Frost Brown Todd LLC to reproduce and distribute this report to officials of the City of Dublin, Ohio and to Dublin, OH residents, and to use this report solely in conjunction with the City of Dublin, Ohio.

Cite this report as:

Daniel Lauber, *Dublin, Ohio: Principles to Guide
Zoning for Community Residences for People With Disabilities*
(River Forest, IL: June 2014)

Introduction

This report explains the basis for text amendments that will be proposed to revise the sections of Chapter 153, Dublin’s zoning regulations, that govern community residences for people with disabilities. The proposed amendments based on this study will seek to make the reasonable accommodations for community residences for people with disabilities that are necessary to bring the city’s zoning into compliance with national law and sound zoning practices. The recommended zoning approach is based upon a careful review of:

- ◆ The functions and needs of community residences and the people with disabilities who live in them
- ◆ Sound city planning and zoning principles and policies
- ◆ The Fair Housing Amendments Act of 1988 (FHAA) and amended Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601–3619 (1982)
- ◆ Report No. 100–711 of the House Judiciary Committee interpreting the FHAA amendments (the legislative history)
- ◆ The HUD regulations implementing the amendments, 24 C.F.R. Sections 100–121 (January 23, 1989)
- ◆ The totality of case law interpreting the 1988 Fair Housing Act amendments relative to community residences for people with disabilities
- ◆ Ohio State Statutes §5119.22, §5119.34, §5123.19, and §5103.0318.
- ◆ The existing provisions of Dublin’s Code of Ordinances, Chapter 153: Zoning Regulations

Community Residences

Community residences are crucial to achieving the adopted goals of the State of Ohio and the United States of America to enable people with disabilities to live as normal a life as possible in the least restrictive living environment. We have made great strides from the days when people with disabilities were warehoused in inappropriate and excessively restrictive institutions, out of sight and out of mind.

People with substantial disabilities often need a living arrangement where they receive staff support to engage in the everyday life activities most of us take for granted. These sorts of living arrangements fall under the broad rubric “community residence” — a term that reflects their *residential nature* rather than the institutional nature of a nursing home or hospital. Their primary use is as a residence or a home like yours and mine, not a treatment center nor an institution.

One of the essential elements of community residences is that they seek to emulate a family. The staff (or in the case of a self-governing community residence, the officers) function as parents, doing the same things our parents

did for us and we do for our children. The residents with disabilities are in the role of the siblings, being taught or retaught the same life skills and social behaviors our parents taught us and we try to teach our children.

Community residences seek to achieve “normalization” of their residents and incorporate them into the social fabric of the surrounding community. They are operated under the auspices of a legal entity such as a non-profit association, for-profit private care provider, or a government entity.

The vast majority of all community residences for people with disabilities house four or more unrelated people for both therapeutic and financial reasons, depending on the disability of its residents.¹ Like other cities across the nation, Dublin needs to adjust its zoning to enable community residences for people with disabilities to locate in all residential zoning districts.

So that community residences for people with disabilities can locate in *all* residential zoning districts, the nation’s Fair Housing Act has since 1989 required all cities, counties, and states to make a “reasonable accommodation” in their zoning when the number of residents is greater than the local cap on the number of unrelated people who can live together as a “family.”

When President Reagan signed the Fair Housing Amendments Act of 1988 (FHAA), he added people with disabilities to the classes protected by the nation’s Fair Housing Act (FHA). The 1988 amendments recognized that many people with disabilities need a community residence (group home, recovery community, sober living home, small halfway house) in order to live in the community in a family-like environment rather than being forced into an inappropriate institution.

Consequently, the act requires all cities, counties, and states to allow for community residences for people with disabilities by making some exceptions in their zoning ordinance provisions that, for example, may limit how many unrelated people can live together in a dwelling unit.

1. While the trend for people with developmental disabilities is toward smaller group home households, valid therapeutic and financial reasons lead to community residences for people with mental illness or people in recovery from drug and/or alcohol addiction to typically house eight to 12 residents. However, a community residence must comply with occupancy standards like any other residence. If the local property maintenance or building code would allow only six people in a house, then that’s the maximum number of people who can live in that house period, whether it’s a community residence for people with disabilities or it houses a biological family.

*People without disabilities and people with disabilities who pose “a direct threat to the health or safety of others” such as prison pre-parolees and sex offenders are **not** covered by the 1988 amendments to the Fair Housing Act. Therefore, cities do **not** have to make the same reasonable accommodation for them as cities must for people with disabilities who do not pose “a direct threat to the health or safety of others.” The zoning amendments to be based on this study will **not** permit community residences for people who fall into these categories of dangerous people.*

The Fair Housing Amendments Act’s (FHAA) legislative history states that:

“The Act is intended to prohibit the application of special requirements through land–use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice within the community.”²

While many advocates for people with disabilities and some legal commentators³ suggest that the FHAA prohibits all zoning regulation of community residences, the FHAA’s legislative history suggests otherwise:

“Another method of making housing unavailable has been the application or enforcement of otherwise neutral rules and regulations on health, safety, and land–use in a manner which discriminates against people with disabilities. Such discrimination often results from false or overprotective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose. These and similar practices would be prohibited.”⁴

Many states, counties, and cities across the nation continue to base their zoning regulations for community residences on these “unfounded fears.” The 1988 amendments require all levels of government to make a *reasonable accommodation* in their zoning rules and regulations to enable community residences for people with disabilities to locate in the same residential districts as any other residential use.⁵

It is well settled that for zoning purposes, a community residence is a residential use, *not* a business or commercial use. The Fair Housing Amendments Act of 1988 specifically invalidates provisions in restrictive covenants that attempt to treat community residences as a business or commercial use. The Fair

-
2. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173.
 3. For example, see Daniel Mandelker, “Housing Quotas for People with Disabilities: Legislating Exclusion,” 43 *The Urban Lawyer* 4 (2011).
 4. *Ibid.*
 5. 42 U.S.C. §3604(f)(B) (1988).

Housing Act renders these restrictive covenants unenforceable against community residences for people with disabilities.⁶

Type of community residences

Within the broad category of community residences are two types of living arrangements that warrant slightly different zoning treatments tailored to their specific characteristics:

- ◆ **Family community residences** which include uses commonly known as group homes, recovery communities, and sober living homes, and
- ◆ **Transitional community residences** which include such uses commonly known as halfway houses

Family Community Residences

A *family community residence* offers a relatively permanent living arrangement for people with disabilities that emulates a family. They are usually operated under the auspices of an association, corporation, or other legal entity, or their parents or individual legal guardians. Some, like recovery communities and sober living environments for people in recovery from alcohol and/or drug addiction, are self-governing.

Residence, not treatment, is the home's primary function. *There is no limit to how long an individual can live in a family community residence. Depending on the nature of a specific family community residence, there is an expectation that residents will live there for at least a year. Tenancy is measured in years, not months.* Family community residences are most often used to house people with developmental disabilities (mental retardation, autism, etc.), mental illness, physical disabilities including the frail elderly, and individuals in recovery from addiction to alcohol or drugs (legal or illegal) who are *not* currently "using." A recovery community or a sober living home is often the only house on a block that is completely free of alcohol use and illegal drugs.

Family community residences are often called *group homes* and, in the case of people with alcohol or drug addictions, *recovery communities* or *sober living homes*.⁷ Their key distinction from *transitional community residences* is that people with disabilities can reside, and are expected to reside in a family community residence for a year or longer, not just months or weeks. In a nation where the typical household lives in its home for five to seven years, these are

6. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2184. The overwhelming majority of federal and state court that have addressed the question have found that a subdivision's restrictive covenants that exclude businesses or "non-residential uses" do *not* apply to community residences for people with disabilities.

7. For the sake of simplicity, the rest of this report will use the term "recovery community" as including "sober living homes."

long-term, relatively permanent residences.⁸ There is no limit on how long someone can dwell in a family community residence as long as they obey the rules or do not constitute a danger to others or themselves, or in the case of recovering alcoholics or drug addicts, do not use alcohol or illegal drugs.



Figure 1: An existing group home for the frail elderly in Dublin.

To be successful, a community residence needs to be located in a conventional residential neighborhood so that normalization and community integration can take place. The underlying rationale for a community residence is that by placing people with disabilities in as “normal” a living environment as possible, they will be able to develop to their full capacities as individuals and citizens. The atmosphere and aim of a community residence is very much the *opposite* of an institution. Consequently, the operators of community residences seek to locate them in safe, conventional residential neighborhoods. While such homes can be located in mixed use buildings and neighborhoods, they are more likely to be successful in a single-family or lower-density multiple-family neighborhood. The zoning proposed for Dublin will allow community residences in the predominantly residential districts where they belong and function most effectively. Historically they operators have often located community residences in less desirable neighborhoods including ones that are predominantly commercial — a generally undesirable location — because zoning ordinances have excluded them from the residential neighborhoods in which they can be most successful at normalization and community integration.

8. In 2012–2013, 5.1 percent of homeowners moved while 25 percent of renters moved in the U.S. U.S. Census Bureau, *Current Population Survey, 2013 Annual Social and Economic Supplement*. Available online at <http://www.census.gov/hhes/migration/data/cps/cps2013.html>. See Table 1.

The family community residence emulates a family in most every way. The activities in a family community residence are essentially the same as those in a dwelling occupied by a biologically-related family. Essential life skills are taught, just like we teach our children. Most family community residences provide “habilitative” services for their residents to enable them to develop their life skills to their full capacity. *Habilitation* involves learning life skills for the first time as opposed to *rehabilitation* which involves relearning life skills.

While recovery communities are like group homes in most respects, they tend to engage more in rehabilitation where residents relearn the essential life skills we tend to take for granted, although for some very long-term alcoholics or drug addicts in recovery, they may be learning some of these life skills for the first time. Recovery communities are often referred to as *three-quarter houses* because they are more family-like and permanent than the better known *halfway house* which falls under the *transitional community residence* category. Recovery communities do not limit how long somebody can live in them. The residents periodically elect officers who act in the parental role while the other residents are in the role of siblings. In a group home, staff functions in the parental role.



Figure 2: A house doesn't need to be a group home to have a ramp as this conventional household demonstrates

Interaction between the people who live in a family community residence is essential to achieving normalization. The relationship of a community residence's inhabitants is much closer than the sort of casual acquaintances that occur between the residents of a boarding or lodging house where interaction between residents is merely incidental. In both family and transitional community residences, the residents share household chores and duties, learn from each other, and provide one another with emotional support — family-like relationships not essential for, nor present in lodging houses, boarding houses, fraternities, sororities, nursing homes, or other institutional uses. Table 1 illustrates the many functional differences between community residences for people with disabilities, institutional uses like nursing homes, and lodging or

boarding houses.

Table 1

Differences Between Community Residences, Institutions & Nursing Homes, and Lodging or Boarding Houses			
Characteristic	Community Residence for People With Disabilities	Institution Including Nursing Homes	Lodging or Boarding House
Proper Environment	Residential Home-like	Institutional Hospital-like	Residential Hotel-like
Appropriate Zoning District	Single-family residential Multiple-family in limited instances	Commercial, medical, institutional	Multiple-family residential
Relationship of Residents	Sibling-like relationships essential Single housekeeping unit emulating a biological family	Relationships not planned nor essential Incidental friendships may develop	No dependency on other residents Incidental friendships may develop Relationships not planned nor essential
Supervision	Staff in the role of the parents	Total staff supervision	Landlord-tenant relationship
Values Fostered	Family values	None	None
Primary Functions:	Emulate a biological family Provides support in a family-like residential setting; residents dependent on each other like in a biological family Share family and household tasks Educate residents in areas in which parents normally educate their children: Personal health and hygiene Eating habits Dressing/clothing care Household duties and chores House maintenance House safety Developing social and interpersonal skills Developing shopping skills Developing public behavior skills Developing recreational skills Using public transportation Use and value of money Using public facilities (stores, restaurants, theaters, recreational facilities)	Provide medical treatment and institutional care No family-like living; not residential No family tasks; patients are cared for No educational role	Lodging for unrelated individuals Residents are completely independent of each other Residents do not share household tasks; each boarder functions as an individual; no attempt to emulate a biological family

Prepared by Daniel Lauber, AICP. Copyright 2013. All rights reserved.

As the courts have consistently concluded, community residences foster the same family values that even the most restrictive residential zoning districts promote. Family community residences comply with the general purposes of Dublin’s residential districts and the purpose statements for each of Dublin’s residential districts. Even before passage of the 1988 amendments to the Fair Housing Act, most courts concluded that family community residences for people with disabilities must be allowed as of right in all residential zones.⁹

9.

Transitional Community Residences

In contrast to the group homes and recovery communities that fit in the category of family community residences, *transitional community residences* such as small halfway houses are a comparatively temporary living arrangement that is *not* quite as family-like as a group home or recovery community. Residency is measured in weeks or months, not years. Nearly all halfway houses impose a limit on how long someone can live there.¹⁰

A halfway house offers a *temporary* living opportunity in the community for individuals who need supportive living while they prepare to reenter society and live on their own or with their family. The residents need to relearn life skills they may have lost — halfway houses seek to rehabilitate their residents rather than habilitate them. Like all community residences, a halfway house is operated by some legal entity such as a non-profit association, a for-profit company, or a government agency. Typical of the people with disabilities who need a halfway house are people with mental illness who leave an institution and need only a short stay in a halfway house before moving to a less restrictive living environment. Similarly, people recovering from addictions to alcohol or drugs move to a halfway house following detoxification in an institution until they are capable of living in a recovery community or other less restrictive environment.

Halfway houses are also used for prison pre-parolees. *However, such individuals are not, as a class, people with disabilities.* Zoning can be more restrictive for halfway houses for people *not* covered by the Fair Housing Act. Consequently the proposed zoning amendments do treat zoning of small halfway houses for prison pre-parolees or other populations not covered by the Fair Housing Act differently than protected classes. They would *not* be allowed in Dublin under the proposed amendments to the zoning ordinance.

“Direct threat” exclusion

The Fair Housing Amendments Act of 1988 does not cover individuals with disabilities who “constitute a direct threat to the health or safety of others.” 42 U.S.C. § 3602(f)(9) (1988). Consequently, licensing rules that prohibit such individuals from living in community residences do not violate the Fair Housing Act.

Small halfway houses that can emulate a family are residential uses that need to locate in conventional residential neighborhoods if they are to succeed. But since they do not emulate a family as closely as a group home or recovery community does, and the length of tenancy is relatively temporary, it is likely that a jurisdiction can require a conditional use permit for halfway houses in

However, a city could establish a rationally-based spacing distance between community residences and require a license or its equivalent.

10. The discussion here addresses solely halfway houses with populations small enough to emulate a family, generally eight to 12 individuals. During the past two decades, a “halfway house” industry has developed that consists of mini-institutions for prison preparolees. These mini-institutions have co-opted the phrase “halfway house.” These mini-institutions are not community residences and would *not* be allowed under the proposed amendments to Dublin’s zoning code.

single-family districts while allowing them as a permitted use in multiple family districts subject to the two requisite conditions explained later in this report. *However, it is important to remember that a conditional use permit cannot be denied on the basis of neighborhood opposition rooted in unfounded myths and misconceptions about the residents with disabilities of a proposed halfway house.*¹¹

Rational Foundations for Regulating Community Residences

No small land use has been studied as often as community residences. To understand the rationale for the guidelines to regulate community residences that are suggested in this document, it is vital to review what is known about community residences, including their appropriate location, number of residents needed to succeed both therapeutically and financially, means of protecting their vulnerable populations from mistreatment or neglect as well as excluding dangerous individuals from living in them, and their impacts, if any, on the surrounding community.

Relative location of community residences. For at least 40 years, researchers have found that some community residence operators will locate their community residences close to other community residences, especially when zoning does not allow community residences for people with disabilities as of right in all residential districts. They tend to be clustered in a community's lower cost or older neighborhoods and in areas around colleges.¹² In every jurisdiction for which Planning/Communications has conducted an Analysis of Impediments to Fair Housing Choice, we have found clustering of community residences in the jurisdictions that did *not* require a rationally-based spacing distance between community residences that were allowed as of right.

Why clustering is detrimental. Placing numerous community residences too close to each other can create a *de facto* social service district and can seriously hinder their ability to achieve normalization for their residents as well as integration into the surrounding community — two of the foundations on which the concept of community residences is based. In today's society, people tend to get to know nearby neighbors on their block within a few doors of their

-
11. Note that the proposed definitions of "community residence," "family community residence," and "transitional community residence" all speak of a family-like living environment. These definitions *exclude* the large institutional facilities for a score or more occupants that are often called "halfway houses." The city's current zoning treatment of these large facilities will remain unchanged.
 12. See General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* (August 17, 1983) which found that 36.2 percent of the group homes for people with developmental disabilities surveyed were located within two blocks of another community residence or an institutional use. At 19. Also see D. Lauber and F. Bangs, Jr., *Zoning for Family and Group Care Facilities*, American Society of Planning Officials Planning Advisory Service Report No. 300 (1974) at 14; and *Family Style of St. Paul, Inc., v. City of St. Paul*, 923 F.2d 91 (8th Cir. 1991) where 21 group homes that housed 130 people with mental illness were established on just two blocks.

home (unless they have children together in school or engage in walking, jogging, or other neighborhood activities). Neighbors that close to a community residence serve as role models to the community residence dwellers.

For normalization to occur, it is essential that community residence residents have such so-called “able-bodied” neighbors as role models. But if another community residence is opened very close to an existing group home — such as next door or within a few lots of it — the residents of the new home are likely to replace the “able-bodied” role models with other people with disabilities and quite possibly hamper the normalization efforts of the existing community residence. Clustering three or more community residences on the same block not only undermines normalization but could inadvertently lead to a *de facto* social service district that alters the residential character of the neighborhood. All the evidence recorded to date shows that one or two well-separated community residences for people with disabilities on a block have *not* altered the residential character of a neighborhood.¹³

As long as community residences are not clustered on the same block (the idea is to assure there are at least several structures between community residences on a linear block) they will not generate these adverse impacts. Consequently, when community residences are allowed as a permitted use, it is reasonable to imposing a spacing distance between community residences that keeps them about 600 to 800 feet apart in terms of actual walking distance.¹⁴ It is also reasonable to not allow another community residence to locate adjacent to an existing community residence as a permitted use.

If the operator of a proposed community residence wishes to locate it within the spacing distance, then the heightened scrutiny of a conditional use permit is warranted. The conditional use permit process allows a jurisdiction to evaluate the cumulative effect of locating so close to an existing community residence and whether the proposed community residence would interfere with normalization and community integration at the existing community residence or alter the character of the neighborhood. For example, if there is a geographic feature such as a freeway, drainage channel, or hill between the proposed and existing community residences that acts as a barrier between the two, it is unlikely that allowing the proposed community residence would interfere with

-
13. See General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* 27 (August 17, 1983).
14. Some cities and counties establish a different spacing distance between community residences allowed as of right based on the density of the zoning district. The denser the district, the shorter the spacing distance. See Peter Natarelli, *Zoning for a New Kind of Family* 17 (Westchester County Department of Planning, Occasional Paper 5, 1976) where spacing distances vary by the number of persons per square mile. The spacing distance in Clark County, Nevada reduces the 660-foot spacing distance to 100 feet when there is a street, freeway, or drainage channel wider than 99 feet between community residences. See Table 30.44-1, *Clark County Code*, Section 4, Title 30, Chapter 30.44. Also see *An Ordinance Amending Title 6 of the Village of Lincolnshire Village Code (Community Residential Homes)*, Ordinance No. 90-1182-66, adopted December 10, 1990, Lincolnshire, Illinois, which established spacing distances ranging from 500 to 1,500 feet between community residences depending on the zoning district. Lincolnshire has some zoning districts with extremely large minimum lot sizes greater than an acre. Probably due to the complexity involved, very few jurisdictions establish different spacing distances in different zoning districts. Most use the same spacing distance throughout the city or county.

normalization, community integration, or alter the community's character — and the conditional use permit should be granted.

To avoid any ambiguity, the zoning ordinance should specify how the spacing distance is measured. Some ordinance measure the spacing distance from the front door of the closest community residence along the public or private rights of way to the front door of the proposed community residence. The idea is to measure the actual distance people would have to travel to go from one community residence to another, as opposed to measuring as the crow flies. Other ordinances measure the distance from the nearest lot line of the existing community residence to the nearest lot line of the proposed community residence. Another measure that can be used with either of the above tools is to require a minimum number of lots on the side of the street on which an existing community residence is located. This approach creates a spacing distance on the street of an existing community residence that varies as the density of the lots varies.

To implement whichever spacing approach Dublin chooses, it is necessary for the operator of every proposed community residence to complete the Zoning Compliance Application form that is recommended for Dublin to use so the city can measure spacing distances from existing community residences. The city should also continue to maintain a database and map of the locations of all existing community residences so it can apply the spacing distance to any proposed community residence.¹⁵

The technical explanation. Normalization and community integration require that persons with disabilities substantial enough to require a supportive living arrangement like a community residence be absorbed into the neighborhood's social structure. Generally speaking, the existing social structure of a neighborhood can accommodate no more than one or two community residences on a single block. Neighborhoods seem to have a limited absorption capacity for service-dependent people that should not be exceeded.¹⁶

Social scientists note that this capacity level exists, but an absolute, precise level cannot be identified. Writing about service-dependent populations in general, Jennifer Wolch notes, "At some level of concentration, a community may become saturated by services and populations and evolve into a service-dependent ghetto."¹⁷

-
15. It is critical to note that a community residence that houses as many unrelated individuals as the cap on unrelated individuals allows in the city's definition of "family" or "household." Consequently, such homes must always be treated as a "family" or "household" — to do otherwise would constitute discrimination on its face in violation of the Fair Housing Act. Such homes *cannot* be used to calculate spacing distances. Spacing distances are applicable only to community residences for people with disabilities that exceed the cap on unrelated people in the definition of "family" or "household." *United States v. City of Chicago Heights*, 161 F. Supp. 2d 819 (N.D. Ill. 2001).
 16. Kurt Wehbring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill* 14 (no date) (mimeographed).
 17. Jennifer Wolch, "Residential Location of the Service-Dependent Poor," 70 *Annals of the Association of American Geographers*, at 330, 332 (Sept. 1982).

According to one leading planning study, “While it is difficult to precisely identify or explain, ‘saturation’ is the point at which a community’s existing social structure is unable to properly support additional residential care facilities [community residences]. Overconcentration is not a constant but varies according to a community’s population density, socio-economic level, quantity and quality of municipal services and other characteristics.” There are no universally accepted criteria for determining how many community residences are appropriate for a given area.¹⁸

This research strongly suggests that there is a legitimate government interest to assure that group homes do not cluster. While the research on the impact of group homes makes it abundantly clear that two group homes separated by at least several other houses on a block produce no negative impacts, there is very credible concern that group homes located more closely together on the same block — or more than two on a block — can generate adverse impacts on both the surrounding neighborhood and on the ability of the group homes to facilitate the normalization and community integration of their residents, which is, after all, their *raison d’être*.

Maximum number of residents. The majority view of the courts, both before and after enactment of the Fair Housing Amendments Act of 1988, is that community residences a functional family and that zoning should treat the occupants of a community residence as a residential use. However, the U.S. Supreme Court has ruled that a jurisdiction can establish a cap on the number of unrelated persons who can occupy a dwelling unit.¹⁹ *The Fair Housing Act requires jurisdictions to make a reasonable accommodation for community residences for people with disabilities by making narrow exceptions to these caps.*

In *Belle Terre*, the Court upheld the resort community’s zoning definition of “family” that permitted no more than two unrelated persons to live together. It’s hard to quarrel with the Court’s concern that the specter of “boarding housing, fraternity houses, and the like” would pose a threat to establishing a “quiet place where yards are wide, people few, and motor vehicles restricted.... These are legitimate guidelines in a land-use project addressed to family needs....”²⁰ Unlike the six sociology students who rented a house during summer vacation in Belle Terre, Long Island, a community residence emulates a family, is not a home for transients, and is very much the antithesis of an institution. In fact, community residences for people with disabilities foster the same goals that zoning districts and the U.S. Supreme Court attribute to single-family zoning.

One of the first community residence court decisions to distinguish *Belle Terre* clearly explained the difference between community residences and other group living arrangements like boarding houses. In *City of White Plains v.*

18. S. Hettinger, *A Place They Call Home: Planning for Residential Care Facilities* 43 (Westchester County Department of Planning 1983). See also D. Lauber and F. Bangs, Jr., *Zoning for Family and Group Care Facilities* at 25.

19. *Belle Terre v. Borass*, 416 U.S. 1 (1974).

20. *ibid.* at 7–9.

Ferraioli,²¹ New York’s highest court refused to enforce the city’s definition of “family” against a community residence for abandoned and neglected children. The city’s definition limited occupancy of single-family dwellings to related individuals. The court found that it “is significant that the group home is structured as a single housekeeping unit and is, to all outward appearances, a relatively normal, stable, and permanent family unit...”²²

Moreover, the court found that:

“The group home is not, for purposes of a zoning ordinance, a temporary living arrangement as would be a group of college students sharing a house and commuting to a nearby school. (c.f., *Village of Belle Terre v. Boraas*, [citation omitted]). Every year or so, different college students would come to take the place of those before them. There would be none of the permanency of community that characterizes a residential neighborhood of private homes. Nor is it like the so-called ‘commune’ style of living. *The group home is a permanent arrangement and akin to the traditional family, which also may be sundered by death, divorce, or emancipation of the young.... The purpose is to emulate the traditional family and not to introduce a different ‘life style.’*”²³

The New York Court of Appeals explained that the group home does not conflict with the character of the single-family neighborhood that *Belle Terre* sought to protect, “and, indeed, is deliberately designed to conform with it.”²⁴

In *Moore v. City of East Cleveland*,²⁵ Justice Stevens favorably cited *White Plains* in his concurring opinion. He specifically referred to the New York Court of Appeals’ language:

“Zoning is intended to control types of housing and living and not the genetic or intimate internal family relations of human beings. So long as the group home bears the generic character of a family unit as a relatively permanent household, and is not a framework for transients or transient living, it conforms to the purpose of the ordinance.”²⁶

Justice Stevens’ focus on *White Plains* echoes the sentiments of New York Chief Justice Breitel who concluded that “the purpose of the group home is to be quite the contrary of an institution and to be a home like other homes.”²⁷

21. 313 N.E.2d 756 (N.Y. 1974).

22. *ibid.* at 758–759.

23. *Ibid.* at 758 [citation omitted]. *Emphasis added.*

24. *Ibid.*

25. 431 U.S. 494 (1977) at 517 n. 9.

26. *Ibid.*

27. *City of White Plains v. Ferraioli*, 313 N.E. 2d at 758.

Since 1974, the vast majority of state and federal courts have followed the lead of *City of White Plains v. Ferraioli* and treated community residences as “functional families” that should be allowed in single-family zoning districts despite zoning ordinance definitions of “family” that place a cap on the number of unrelated residents in a dwelling unit. In a very real sense, the FHAA essentially codifies the majority judicial treatment of zoning ordinance definitions with “capped” definitions of “family.”

Dublin . Dublin’s zoning code does not define “family” or “household” at all, much less establish a cap on the number of unrelated people who constitute a “family” or “household.”²⁸ With no definition of “family” in its zoning code, Dublin has no limit on the number of unrelated people who can live together in a dwelling unit.

Consequently, the city cannot currently regulate community residences because it allows any number of unrelated people to dwell together. Requiring a spacing distance between community residences or even a license would constitute discrimination on its face under the Fair Housing Act since only people with disabilities would be subjected to these requirements while the same number of people without disabilities would not be subject to them.

For the city to be able to regulate community residences for people with disabilities, it must first adopt a definition of family that established a reasonable cap on the number of unrelated people who can dwell together as a single-housekeeping unit.²⁹ The following definition of “family” allows up to four unrelated individuals to live together and places no limitation on foster children or others related to the householder. It explicitly excludes institutional uses and such commercial uses as lodging houses, hotels, fraternities, and clubs. Groups of five or more unrelated individuals without disabilities would not be allowed.

FAMILY. A family consists of any person living alone or any of the following groups living together as a single housekeeping unit that shares common living, sleeping, cooking, and eating facilities: (1) any number of people related by blood, marriage, adoption, guardianship, or other duly and legally authorized custodial relationship and no more than two unrelated individuals who provide care or assistance or are domestic employees, (2) two unrelated individuals and their children related to either of them and their foster children, or (3) four unrelated individuals. A family does not include any

28. In *Freedom Township*, 16 Ohio App.3rd 387 held that a group home for adults with mental retardation was a permitted residential use when the township’s zoning code did not define “family.” In the absence of a definition of “family,” the court looked to the ordinary meaning of a family use as opposed to a commercial use and not surprisingly ruled that, in light of case law, the group home functioned as a family and was a family for the purposes of zoning.

29. RC 5103.0318 requires municipal, county, and township zoning codes to treat certified foster homes as a “residential use of property” and as “a permitted use in all zoning districts in which residential uses are permitted.” It prohibits any jurisdiction from requiring a “conditional use permit or any other special exception certification for any certified foster home.” Due to this state law, the recommended definition of “family” includes foster care.

society; club; boarding or lodging house; fraternity; sorority; or group of individuals whose association is seasonal or similar in nature to a resort, motel, hotel, boarding or lodging house, nor that is institutional in nature.

Under this definition, any group of four or fewer unrelated individuals constitutes a family. Consequently, a proposed community residence for four or fewer people with disabilities comprises a family and must be treated the same as any other family. The city cannot impose a spacing distance, licensing requirement on these homes; nor can it require more off-street parking than is required for the type of structure (single-family detached, townhouse, multi-family, etc.) in which the community residence is located. As a “family,” they can not be counted as an existing community residence for calculating a spacing distance.³⁰

Any community residence for people with disabilities that would house more than four unrelated individuals allowed by this definition is entitled to a “reasonable accommodation” which is what this study proposes for Dublin’s zoning regulations. It is important to remember, however, that *no matter what cap a city’s zoning code establishes, the number of residents in any type of dwelling is ultimately limited by the property maintenance code that applies to all residential uses* as discussed beginning on page 21.

The U.S. Supreme Court brought this point home in its 1995 decision in *Edmonds v. Oxford House*.³¹ The Court ruled that housing codes that “ordinarily apply uniformly to all residents of all dwelling units ... to protect health and safety by preventing dwelling overcrowding” are legal.³² Zoning ordinance restrictions that focus on the “*composition* of households rather than on the total number of occupants living quarters can contain” are subject to the Fair Housing Act.³³

As the discussion above implies, classifying community residences by the number of residents is inappropriate.

Protecting the residents and neighbors. People with disabilities who live in community residences constitute a vulnerable population that needs protection from possible abuse and exploitation. So far, licensing or certification of the

30. This rule is most clearly stated in *United States v. City of Chicago Heights*, 161 F.Supp.2d 819 (N.D.Ill. 2001) where Thresholds sought to open a group home for eight adults with mental illness. About 500 feet away was a group home for five adults with profound developmental disabilities. The city told Thresholds to apply for a special use (aka, conditional use) permit because the proposed home was within the 1,000 foot spacing distance required between community residences to be allowed as of right. However, the court insightfully recognized that the existing “group home” fit within the city’s definition of “family” and, therefore, for zoning purposes it had to be treated the same as any other family and considered a “family.” Hence there was no group home within 1,000 feet of the proposed group home, and the proposed home had to be allowed as a permitted use. (Disclosure: The author of this monograph was an expert witness for the Department of Justice in this case and suggested the use of this line of reasoning.)

31. 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995).

32. *Ibid.* at 1781 [emphasis added]. See the discussion of minimum floor area requirements beginning on page 21.

33. *Ibid.* at 1782. [emphasis added]

operator or the specific community residence have been the most effective way to make sure that these vulnerable individuals receive adequate care and supervision. Sometimes a state does not establish licensing or certification for a particular population served by community residences. In these situations, certification by an appropriate national certifying organization or agency that is more than simply a trade group can be used in lieu of formal licensing. State licensing or certification almost always prohibits the placement into community residences people who pose a danger to others or themselves, or to property. Such people are not covered by the Fair Housing Act.



Figure 3: Another group home for the frail elderly in Dublin.

Therefore, there is a legitimate government interest in requiring that a community residence or its operator be licensed by the State of Ohio. If state licensing does not exist for a particular type of community residence, the residence can meet the certification of an appropriate national certifying agency, if one exists, or is otherwise sanctioned by the federal or state government.³⁴ If there is no governmental or quasi-governmental body that requires licensing or certification for a particular type of community residence and no level of government has sanctioned it, then the heightened scrutiny of a conditional use permit is warranted so the city can make sure that the residents of a proposed community residence are protected.

Impacts of community residences. The impacts of community residences have been studied more often than those of any other small land use. Over 50 statistically-valid studies have found that licensed community residences *not*

34. For example, the U.S. Congress has recognized and sanctioned the recovery communities that operate under the auspices of Oxford House.

clustered on a block produce no adverse impacts on the surrounding neighborhood. They do not affect property values, nor the ability to sell even the houses adjacent to community residences. They do not affect neighborhood safety nor neighborhood character — as long as they are licensed and not clustered on a block. They do not create excessive demand on public utilities, sewer systems, water supply, street capacity, or parking. They do not produce any more noise than a conventional family of the same size. All told, licensed, unclustered community residences for people with disabilities have consistently been found to be no different a neighbor than biological families.

Clustering community residences only undermines their ability to achieve their central goals of normalization and community integration. A community residence needs to be surrounded by so-called “normal” or conventional households, the sort of households this living arrangement seeks to emulate. Clustering community residences adjacent to one another or within a few doors of each other increases the chances that their residents will interact with other service-dependent people living in a nearby community residence rather than conventional households with non-service dependent people.

Appendix B presents an annotated bibliography of representative studies. The evidence is so overwhelming that few studies have been conducted in recent years since the issue is well settled: *Community residences that are licensed or certified and not clustered on a block generate no adverse impacts on the surrounding community.*

Recommended regulatory approach

The 1988 amendments to the nation’s Fair Housing Act require all government jurisdictions to make a “reasonable accommodation” in their zoning codes and other rules and regulations to enable group homes and other community residences for people with disabilities to locate in the residential districts where they belong. The zoning ordinance amendments that will be proposed for Dublin make this reasonable accommodation that the Fair Housing Amendments Act of 1988 requires for those people with disabilities who wish to live in a community residence. The legislative history of the Fair Housing Amendments Act of 1988 makes it clear that jurisdictions *cannot* require a conditional use permit in residential districts for family community residences for people with disabilities. It does *not*, however, prohibit requiring conditional use permits in single-family districts for transitional community residences. Nor does the Fair Housing Amendments Act of 1988 require that a city allow community residences for persons who do *not* have disabilities.

Like any other dwelling, when a community residence — whether it be “family” or “transitional” — complies with the cap on the number of unrelated persons that constitutes a “family” under the zoning code definition of “family,” it is allowed as of right in all residential districts. No additional zoning restrictions can be imposed on them. Licensing cannot be required; a spacing distance

cannot be imposed. There is no doubt that any additional zoning requirements for community residences that comply with the cap in Dublin’s proposed definition of “family” would be “facially discriminatory.”

Reasonable Accommodation. But when a proposed community residence would house more than the number of unrelated individuals than the proposed definition of “family” allow to live together in a dwelling unit, the zoning must make a “reasonable accommodation” to enable these homes to locate in the residential districts in which they belong. Taken as a whole, the case law suggests that any reasonable accommodation must meet three tests:

- ◆ The proposed zoning restriction must be *intended* to achieve a legitimate government purpose.
- ◆ The proposed zoning restriction must *actually achieve* that legitimate government purpose.
- ◆ The proposed zoning restriction must be the *least drastic means necessary to achieve* that legitimate government purpose.

In *Bangerter v. Orem City Corporation*, the federal Court of Appeals said the same thing a bit differently, “Restrictions that are narrowly tailored to the particular individuals affected could be acceptable under the FHAA if the benefits to the handicapped in their housing opportunities clearly outweigh whatever burden may result to them.”³⁵

The proposed zoning amendments seek to enable community residences to locate in all residential zoning districts through the least drastic regulation needed to accomplish the legitimate government interests of preventing clustering (which undermines the ability of community residences to achieve their purposes and function properly and to maintain the residential character of a neighborhood) and of protecting the residents of the community residences from abuse and improper or incompetent care. They are narrowly tailored to the needs of the residents with disabilities to provide greater benefits than any burden that might be placed upon them. And they constitute the requisite legitimate government purpose for regulating community residences for people with disabilities.

Key to establishing a regulatory approach in compliance with the Fair Housing Act and Ohio law is classifying community residences on the basis of functionality rather than on the number of people who live in the community residence.

Family community residences

Unlike the transitional community residences discussed below, tenancy in family community residences is relatively permanent. There is no limit on how

35. 46 F.3d 1491 (10th Cir. 1995) at 1504.

long people can live in them. In terms of stability, length of tenancy, and functionality, family community residences are more akin to the traditional owner-occupied single-family home than are transitional community residences. As the courts have not been hesitant to point out, tenancy can last for many years, even a lifetime, in a such homes — just like biological families.

To make this reasonable accommodation for people with disabilities who wish to live in a community residence, the proposed zoning ordinance amendments make family community residences for people with disabilities that exceed the cap on the number of unrelated people (four) a permitted use in all zoning districts where residential uses are currently allowed, subject to two objective, nondiscretionary administrative criteria:

- ◆ The operator of the family community residence or the specific community residence must receive any license or certification required by the State of Ohio, certification from an appropriate national accrediting agency, or recognition or sanctioning by Congress to operate the proposed family community residence; and
- ◆ The proposed family community residence is not located within a rationally-based distance of an existing community residence.

Transitional community residences

Residency in transitional community residences is more transitory than in family community residences because transitional community residences impose a maximum time limit on how long people can live in them.³⁶ Tenancy is measured in months or weeks, not years. This key characteristic makes a transitional community residence more akin to multiple-family residential uses than single-family dwellings. Even though multiple-family uses are not allowed in single-family districts, the Fair Housing Act requires every city and county to make a “reasonable accommodation” for transitional community residences for people with disabilities. This reasonable accommodation can be accomplished via the heightened scrutiny of a conditional use permit when an operator wishes to locate a transitional community residence in a single-family district.

However, in multiple-family districts, a transitional community residence should be allowed as a permitted use subject to two objective, nondiscretionary administrative criteria:

- ◆ The operator of the family community residence itself must receive any license or certification required by the State of Ohio, certification from an appropriate national accrediting agency, or recognition or

36. Time limits typically range from 30 days to 90 days, and as long as six or nine months, depending on the nature of the specific transitional community residence and the population it serves. With no time limit, residents of family community residences can live in them for many years, even decades.

sanctioning by Congress to operate the proposed family community residence; and

- ◆ The proposed transitional community residence is not located within a rationally-based distance of an existing community residence.

Conditional use permit backup

Sometimes an operator will seek to establish a new community residence within the spacing distance of an existing community residence. For some types of community residences, neither the State of Ohio nor the federal government requires a license, certification, or accreditation, or recognition or sanctioning of the living arrangement. In these situations, the heightened scrutiny of a conditional use permit review is warranted. There are two circumstances under which a conditional use permit should be required:

(1) **Locating within the spacing distance.** To determine whether a community residence should be allowed within the spacing distance from an existing community residence, Dublin needs to consider whether allowing the proposed community residence will hinder the normalization and community integration of the residents in the existing community residence.

(2) **When no state or federal licensing, certification, or accreditation program or recognition applies.** If the operator of a community residence seeks to establish a community residence in Dublin for which neither Ohio nor the federal government requires a license or certification (nor shows its approval through sanctioning the use), the operator must show that the proposed community residence will be operated in a manner that protects the health, safety, and welfare of its residents.

*Under the proposed zoning amendments if the required Ohio or federal license, certification, or accreditation has been denied to a proposed community residence or its operator, it is **ineligible** for a conditional use permit and cannot be located in Dublin.*

In evaluating an application for a conditional permit, a city *can* consider the cumulative effect of the proposed community residence because altering the character of the neighborhood or creating a *de facto* social service district interferes with the normalization and community integration at the core of a community residence. A city can consider whether the proposed community residence in combination with any existing community residences will alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by concentrating community residences on a block.

It is vital to stress that the decision on a conditional use permit must be based on a record of factual evidence and not on neighborhood opposition rooted in unfounded myths and misconceptions about people with disabilities. As explained earlier in this report, restrictive covenants *cannot* exclude a community residence for people with disabilities — and such restrictions are, of course, irrelevant when evaluating an application for the conditional use permit.

Maximum number of occupants of a community residence

Ohio licensing regulations for community residences often establish the maximum number of individuals who can live in a community residence. Even with these state-imposed caps, the number of residents *cannot* exceed the number permissible under the provisions in Dublin's property maintenance code to prevent overcrowding that apply to *all* residences.

Dublin has adopted the *2009 International Property Maintenance Code* which defines “overcrowding” in a highly subjective manner:

404.5 Overcrowding. The number of persons occupying a dwelling unit shall not create conditions that, in the opinion of the code official, endanger the life, health, safety or welfare of the occupants.

This highly subjective definition is reminiscent of U.S. Supreme Court Justice Potter Stewart's concurring opinion in *Jacobellis v. Ohio*, 378 U.S. 184 (1964), about pornography, “I know it when I see it.” It is very subjective and in our experience we have yet to interview a building inspector who is comfortable with it.

Dublin is free to amend the *2009 International Property Maintenance Code*. The city ought to replace this definition of “overcrowding” with an objective, easily measurable formula that gives both the city and operators of community residences clear certainty on the number of residents permissible in any dwelling.

Dublin should replace its current subjective definition of “overcrowding” with one that establishes a minimum floor area for bedrooms based on the number of people who use the room for sleeping purposes. We recommend adoption of the widely-used formula based on health and safety concerns that requires at least 70 square feet for the first bedroom occupant and another 70 square feet for each additional bedroom occupant.³⁷ ***These minimum floor area requirements will apply to all residences in Dublin, including community residences for people with disabilities.***

Under this formula, a bedroom could be no smaller than 7 feet by 10 feet if only one person sleeps in it. A bedroom in which two people sleep could be no

37. Some property maintenance codes require just 50 additional square feet for each bedroom occupant in addition to the first occupant. The Dublin City Council will have to choose the standard it thinks is most appropriate in Dublin. Again, this formula will apply to all dwelling units in the city.

smaller than 140 square feet, or 10 feet by 14 feet, for example.³⁸ Keep in mind that these are minimums based on health and safety standards. Bedrooms, of course, are often larger than these minimums. This sort of provision is the type that the U.S. Supreme Court has ruled applies to all residences including community residences.³⁹

For example, if the formula in the city's property maintenance code limits the number of residents in a dwelling unit to six, no more than six people can live there whether it's a residence occupied by a biological family or a community residence occupied by a generic family.

Under the totality of fair housing case law, it is quite clear that *for determining the maximum number of occupants*, community residences established in single-family structures are to be treated the same as all other single-family residences. Those located in a multiple-family structure are to be treated the same as all other multiple-family residences. The number of occupants is typically regulated for health and safety reasons.⁴⁰

It is clearly illegal to apply building or housing code standards for institutions, lodging houses, boarding houses, rooming houses, or fraternities and sororities to community residences for people with disabilities.

Other zoning regulations for community residences

The State of Ohio has enacted statewide legislation that makes smaller community residences for people with certain disabilities a permitted use in all single-family residential districts and larger ones a permitted use in multiple-family districts.⁴¹ The state statutes include redundant provisions that the lo-

38. Obviously these dimensions are examples. A 140 square foot room could also be 11.6 feet by 12 feet as well as other dimensions that total 140 square feet.

39. *City of Edmonds v. Washington State Building Code Council*, 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995). "Maximum occupancy restrictions... cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms. See, e. g., International Conference of Building Officials, Uniform Housing Code § 503(b) (1988); Building Officials and Code Administrators International, Inc., BOCA National Property Maintenance Code §§ PM-405.3, PM-405.5 (1993) (hereinafter BOCA Code); Southern Building Code Congress, International, Inc., Standard Housing Code §§ 306.1, 306.2 (1991); E. Mood, APHA—CDC Recommended Minimum Housing Standards § 9.02, p. 37 (1986) (hereinafter APHA—CDC Standards).[6] *These restrictions ordinarily apply uniformly to all residents of all dwelling units. Their purpose is to protect health and safety by preventing dwelling overcrowding.* See, e. g., BOCA Code §§ PM-101.3, PM-405.3, PM-405.5 and commentary; Abbott, Housing Policy, Housing Codes and Tenant Remedies: An Integration, 56 B. U. L. Rev. 1, 41-45 (1976)." At 733. [*Emphasis added*]

40. This principle, however, does not preclude setting a rationally-based upper limit on the number of occupants of all community residence based on the ability to emulate a biological family. As discussed earlier, at some point the number of residents becomes so great that they cannot emulate a family and an institutional atmosphere can be created.

41. RC 5123.19(O)–(P) requires local zoning to treat licensed residential facilities with a family setting for six to eight people with mental retardation or a developmental disability as a permitted use in all residential zones, including single-family zones. Homes for nine to 16 are a permitted use in all multiple-family zones although local jurisdictions are free to adopt conditions that "limit excessive concentration." reside RC §5119.22(E)(1) establishes that local zoning must treat the group homes for up to five unrelated individuals authorized under §5119.34(A)(9) for people with "mental illness or severe mental disabilities" as a permitted residential use in all residential zoning districts, including single-family districts. RC

cal jurisdiction can require compliance with area, height, yard (side yard, front yard, back yards), and architectural compatibility requirements. But community residences are required to comply with all local zoning regulations that apply to the same sort of structure that houses the community residence. So all regulations of the zoning district apply to a community residence including height, lot size, yards, building coverage, habitable floor area, off-street parking, and signage. The only exception is the number of unrelated people in a community residence can exceed the cap in a city's zoning definition of "family" — which is the key reasonable accommodation a local jurisdiction must make to comply with the nation's Fair Housing Act.

Just following the State of Ohio's statutory provisions regarding community residences does not offer a city "safe harbor" under the Fair Housing Act. The state statutes do not cover all disabilities and, we believe, are defective under the Fair Housing Act. Local zoning must go beyond the state statutes to cover all disabilities and must be carefully crafted to actually achieve legitimate government interests in the least drastic manner.

There has to be a rational, factual basis for imposing other zoning requirements on community residences for people with disabilities that exceed the cap of four in the proposed Dublin definition of "family." For example, different types of community residences may generate very different off-street parking needs. Generally the residents of community residence do not drive. People with developmental disabilities and the frail elderly do not drive and will not generate a need for off-street parking. They will get around town in a van the operator provides. A very small percentage, if any, of people with mental illness may drive. But unlike the other categories of disabilities, people in recovery often drive and have a motor vehicle. A vehicle is critical for the recovery of many, especially if public transportation is not easily available. An essential component of their rehabilitation is relearning how to live on their own in a sober manner. So one of the most common conditions of living in a recovery community is that each resident agrees to spend the day at work, looking for a job, or attending classes. They cannot just sit around the house during the day.

So off-street parking requirements must be carefully crafted and be based on fact. Dublin's current zoning code establishes that all of the residential uses in Dublin must provide two off-street parking spaces per dwelling unit.

Since a community residence constitutes a single dwelling unit, the current code requires two off-street parking spaces. For the vast majority of community residences for people with disabilities, that should provide enough off-

§5119.22(E)(2) requires that these homes for six to 16 persons be a permitted use in all multiple-family zoning districts. RC §5119.22(E)(3) allows local jurisdictions to establish conditions to be a permitted use in single-family zones. RC §5119.22(E)(4) allows local jurisdictions to adopt provisions to "limit the excessive concentration" of group homes. It is critical to remember that state statutes, as well as local zoning regulations, are subject to the nation's Fair Housing Act. The Ohio statutes address zoning for just a subset of community residences for people within the disabilities protected class. ***Local zoning needs to provide for all disabled populations, not just for people with mental illness or developmental disabilities.***

street parking for staff. While it is likely additional people will serve the residents during the day, on-street parking generally suffices as it does for the visitors to any residence. However, some community residences might be located on narrow streets that cannot accommodate on-street parking. In such circumstances, the city might need to require additional off-street parking.

As noted above, the residents of a recovery community are often likely to have a car of their own. They are a much more mobile population than the residents of most community residences. A recovery community of eight residents, could have as many as eight cars.

Before adopting off-street parking requirements for community residences, the City of Dublin needs to conduct some research to identify the actual the parking needs of different types of community residences that serve different disabled populations. Once this information is known, the city can craft off-street parking requirements that meet the needs of different types of community residences, largely based on the nature of their residents.

Summary

The proposed regulatory approach offers the least restrictive means needed to achieve the legitimate government interests of protecting people with disabilities from unscrupulous operators and assuring that their health and safety needs are met, enabling normalization and community integration to occur by preventing clustering of community residences, and maintaining the residential character of the surrounding neighborhood. These provisions help assure that no adverse impacts will be generated. As with all zoning issues, city staff will assure zoning code compliance.

The proposed amendments to Dublin's zoning regulations establish a cap of four unrelated individuals under a definition of "family." It will treat community residences that comply with this cap on unrelated individuals the same as any other family. The zoning regulations cannot impose additional zoning requirements upon them.

However, when the number of unrelated occupants in a proposed community residence exceeds the maximum number of four unrelated dwellers allowed under the proposed Dublin's zoning definition of "family," the proposed amendments will make the reasonable accommodations that the Fair Housing Act requires. "Family community residences" for people with disabilities will be a permitted use in all residential districts and planned unit developments subject to rationally-based licensing and spacing criteria. Transitional community residences will be permitted as of right in all multiple-family districts and planned unit developments with multiple-family housing subject to these same two criteria and allowed in single-family districts only by conditional use permit.

When a proposed community residence does not meet the spacing and licensing criteria to be permitted as of right, the heightened scrutiny achieved by requiring a conditional use permit is warranted. Consequently, the operator would have to obtain a conditional use permit if her proposed community resi-

dence would be located within the spacing distance or if the proposed home does not fit within any licensing, certification, or accreditation program of the State of Ohio or the federal government. The burden rests on the operator to show that the proposed home would meet the standards Dublin requires for issuing a conditional use permit. A community residence that has been denied a required license, certification, or accreditation would *not* be allowed in Dublin at all. But if there is no certification, licensing, or accreditation required or available, then the community residence operator can seek a conditional use permit under the conditional use permit backup provision.

Since the zoning amendments that will be proposed are strictly for community residences *for people with disabilities*, halfway houses for prison pre-parolees and sex offenders will continue to be *prohibited* from locating in Dublin.

To implement these amendments, the city will need to maintain a map and database of all community residences for people with disabilities within its jurisdiction.

Appendix A: Sample Form for Zoning Compliance Application

The next two pages offer a sample form that Dublin can use in addition to its current zoning compliance application forms. The information that the form requests makes it easy for planning officials to objectively determine if the proposed community residence complies with the zoning code and whether it should be allowed as of right or must obtain a conditional use permit

It is crucial that the operators of all proposed community residences be required to complete this form so the city can identify spacing distances between community residences and determine appropriate zoning treatment. Completing this form places no burden on people with disabilities while offering them substantial benefits by helping to prevent clustering so that essential normalization and community integration can occur.

If the city wishes to use this form, we can convert it into a PDF file with fields for the applicant to complete.

Zoning Determination Application — Dublin, Ohio

Applicants: Please complete this form

To establish a community residence for people with disabilities, the owner and/or operator must file this application for a zoning determination. If the application meets the criteria for a community residence for people with disabilities allowed by right under Dublin's zoning regulations, the city will issue a statement of approval within 15 calendar days. No public hearing is required. If staff determines that a conditional use permit is required, a public hearing is necessary and staff will provide instructions on how to apply for a conditional use permit. Be sure to keep a copy of this completed application for your records.

The applicant must provide all information requested. Please type or print clearly.

Date application submitted to the City of Dublin: _____, 20__

Full address of the proposed community residence:

Zoning district or Planned Unit Development in which the proposed community residence would be located: _____

Applicant information:

Print the name of the group or individual that will operate the proposed community residence:

Address: _____

City-State-Zip Code: _____

Telephone: _____ Cell phone: _____

Print applicant's name and title: _____

Applicant's signature: _____

Evidence of licensing or certification for proposed community residence or its operator:

Check here if the State of Ohio requires a license or certification to operate the proposed community residence

Check here if the proposed community residence is an Oxford House

Check here if there is *no* applicable national accreditation agency or body for the proposed use.

State or local licensing program under which the proposed community residence will be operated:

Please submit a copy of any state or federal license or certification you have received to operate the proposed community residence.

Identify the licensing or certification agency (include address, telephone phone number, and, if possible, the contact person) that licenses or certifies the proposed community residence. If the applicant has not received a required license or certification, please explain why not.

Check and fill in the maximum length of time residents can live in the proposed community residence:

___ days ___ months ___ years ___ No limitation

Appendix A: Sample Form for Zoning Compliance Application

Please provide the information requested in the following table (use an additional sheet if needed):

	Width and length in feet of each bedroom <u>excluding</u> closets	Total square feet in bedroom <u>excluding</u> closets	Number of residents to sleep in the bedroom	Total gross floor area of all habitable rooms of the dwelling unit
1				If you are unsure how to measure this, please ask the City Inspector for instructions. Print the square footage in the cell below.
2				
3				
4				
5				
6				
Total number of people with disabilities to live in this residence (exclude staff): _____				_____ square feet

Maximum number of support staff who will live in the home (excludes shift staff): _____

Describe the general nature of the residents' disabilities (do not discuss specific individuals):

The findings below indicate whether the applicant can establish the proposed community residence as a permitted use or whether a conditional use permit is required. Like all community residences, the proposed community residence must also comply with all other applicable Dublin codes.

FOR CITY USE ONLY:

Findings: [City staff person shall fill in or check the appropriate boxes.]

- _____ Zoning district in which proposed use would be located
- _____ Number of residents including live-in staff
- _____ Number of residents who are people with disabilities
- Proposed use or operator is or will be properly licensed, certified, accredited, or recognized by the State of Ohio or the federal government (includes uses sanctioned by Congress such as Oxford House)

Proposed residence is:

- Family community residence
- Transitional community residence
- Not a community residence
- The State of Ohio does *not* require a license, certification, accreditation, or recognition for this type of community residence

- The proposed community residence is _____ linear feet from the closest existing community residence. If the proposed community residence is on the same block as an existing one, the proposed community residence is _____ lots from the existing community residence. List the addresses (and the distance) of all existing community residences within 660 feet and on the same side of the block:

Determination

- Allowed as of right
- Applicant must apply for a conditional use permit
- Not allowed as of right nor is it eligible for a conditional use permit. Application denied.

Staff review conducted by: _____

Signed: _____

Date: _____, 20____

Appendix B: Representative Studies of the Impacts of Community Residences

Over 50 scientific studies have been conducted to identify whether the presence of a community residence for people with disabilities has any effect on property values, neighborhood turnover, or neighborhood safety. No matter which scientifically-sound methodology has been used, the studies have concluded that community residences that meet the health and safety standards imposed by licensing and that are not clustered together on a block have no effect on property values — even for the house next door — nor on the marketability of nearby homes, neighborhood safety, neighborhood character, parking, traffic, public utilities, nor municipal services. The following studies constitute a representative sample. Few studies have been conducted recently simply because this issue has been studied so exhaustively and the findings they generate no negative impacts have been so consistent. Funding for more studies not available.

- Christopher Wagner and Christine Mitchell, *Non-Effect of Group Homes on Neighboring Residential Property Values in Franklin County* (Metropolitan Human Services Commission, Columbus, Ohio, Aug. 1979) (halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12–18 years old).
- Eric Knowles and Ronald Baba, *The Social Impact of Group Homes: a study of small residential service programs in first residential areas* (Green Bay, Wisconsin Plan Commission June 1973) (disadvantaged children from urban areas, teenage boys and girls under court commitment, infants and children with severe medical problems requiring nursing care, convicts in work release or study release programs).
- Daniel Lauber, *Impacts on the Surrounding Neighborhood of Group Homes for Persons With Developmental Disabilities*, (Governor's Planning Council on Developmental Disabilities, Springfield, Illinois, Sept. 1986) (found no effect on property values or turnover due to any of 14 group homes for up to eight residents; also found crime rate among group home residents to be, at most, 16 percent of that for the general population).
- Minnesota Developmental Disabilities Program, *Analysis of Minnesota Property Values of Community Intermediate Care Facilities for Mentally Retarded (ICF-MRs)* (Dept. of Energy, Planning and Development 1982) (no difference in property values and turnover rates in 14 neighborhoods with group homes during the two years before and after homes opened, as compared to 14 comparable control neighborhoods without group homes).
- Dirk Wiener, Ronald Anderson, and John Nietupski, *Impact of Community-Based Residential Facilities for Mentally Retarded Adults on Surrounding Property Values Using Realtor Analysis Methods*, 17 *Education and Training of the Mentally Retarded* 278 (Dec. 1982) (used real estate agents' "comparable market analysis" method to examine neighborhoods surrounding eight group homes in two medium-sized Iowa communities; found property values in six subject neighborhoods comparable to those in control areas; found property values higher in two subject neighborhoods than in control areas).
- Montgomery County Board of Mental Retardation and Developmental Disabilities, *Property Sales Study of the Impact of Group Homes in Montgomery County* (1981) (property appraiser from Magin Realty Company examined neighborhoods surrounding seven

Appendix B: Representative Studies of the Impacts of Community Residences

group homes; found no difference in property values and turnover rates between group home neighborhoods and control neighborhoods without any group homes).

Martin Lindauer, Pauline Tung, and Frank O'Donnell, *Effect of Community Residences for the Mentally Retarded on Real-Estate Values in the Neighborhoods in Which They are Located* (State University College at Brockport, N.Y. 1980) (examined neighborhoods around seven group homes opened between 1967 and 1980 and two control neighborhoods; found no effect on prices; found a selling wave just before group homes opened, but no decline in selling prices and no difficulty in selling houses; selling wave ended after homes opened; no decline in property values or increase in turnover after homes opened).

L. Dolan and J. Wolpert, *Long Term Neighborhood Property Impacts of Group Homes for Mentally Retarded People*, (Woodrow Wilson School Discussion Paper Series, Princeton University, Nov. 1982) (examined long-term effects on neighborhoods surrounding 32 group homes for five years after the homes were opened and found same results as in Wolpert, *infra*).

Julian Wolpert, *Group Homes for the Mentally Retarded: An Investigation of Neighborhood Property Impacts* (New York State Office of Mental Retardation and Developmental Disabilities Aug. 31, 1978) (most thorough study of all; covered 1570 transactions in neighborhoods of ten New York municipalities surrounding 42 group homes; compared neighborhoods surrounding group homes and comparable control neighborhoods without any group homes; found no effect on property values; proximity to group home had no effect on turnover or sales price; no effect on property value or turnover of houses adjacent to group homes).

Burleigh Gardner and Albert Robles, *The Neighbors and the Small Group Homes for the Handicapped: A Survey* (Illinois Association for Retarded Citizens Sept. 1979) (real estate brokers and neighbors of existing group homes for the retarded, reported that group homes had no effect on property values or ability to sell a house; unlike all the other studies noted here, this is based solely on opinions of real estate agents and neighbors; because no objective statistical research was undertaken, this study is of limited value).

Zack Cauklins, John Noak and Bobby Wilkerson, *Impact of Residential Care Facilities in Decatur* (Macon County Community Mental Health Board Dec. 9, 1976) (examined neighborhoods surrounding one group home and four intermediate care facilities for 60 to 117 persons with mental disabilities; members of Decatur Board of Realtors report no effect on housing values or turnover).

Suffolk Community Council, Inc., *Impact of Community Residences Upon Neighborhood Property Values* (July 1984) (compared sales 18 months before and after group homes opened in seven neighborhoods and comparable control neighborhoods without group homes; found no difference in property values or turnover between group home and control neighborhoods).

Metropolitan Human Services Commission, *Group Homes and Property Values: A Second Look* (Aug. 1980) (Columbus, Ohio) (halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12–18 years old).

Tom Goodale and Sherry Wickware, *Group Homes and Property Values in Residential Areas*, 19 *Plan Canada* 154–163 (June 1979) (group homes for children, prison pre-parolees).

City of Lansing Planning Department, *Influence of Halfway Houses and Foster Care Facilities Upon Property Values* (Lansing, Mich. Oct. 1976) (No adverse impacts on property values due to halfway houses and group homes for adult ex-offenders, youth offenders, alcoholics).

Michael Dear and S. Martin Taylor, *Not on Our Street*, 133–144 (1982) (group homes for persons with mental illness have no effect on property values or turnover).

John Boeckh, Michael Dear, and S. Martin Taylor, *Property Values and Mental Health Facilities in Metropolitan Toronto*, 24 *The Canadian Geographer* 270 (Fall 1980) (residential mental health facilities have

Appendix B: Representative Studies of the Impacts of Community Residences

no effect on the volume of sales activities or property values; distance from the facility and type of facility had no significant effect on price).

Michael Dear, *Impact of Mental Health Facilities on Property Values*, 13 *Community Mental Health Journal* 150 (1977) (persons with mental illness; found indeterminate impact on property values).

Stuart Breslow, *The Effect of Siting Group Homes on the Surrounding Environs* (1976) (unpublished) (although data limitations render his results inconclusive, the author suggests that communities can absorb a "limited" number of group homes without measurable effects on property values).

P. Magin, *Market Study of Homes in the Area Surrounding 9525 Sheehan Road in Washington Township, Ohio* (May 1975) (available from County Prosecutors Office, Dayton, Ohio). (found no adverse effects on property values.)

Existing Group Home With 660 ft. Area & 8 Adjacent Properties Buffer

50 Longview Dr.



- Existing Group Home
- 660 ft. Area
- 8 Adjacent Properties

Ms. Tammy Noble-Flading said the applicant contacted her late this afternoon and requested the application be tabled to make additional modifications to the proposal.

Jackson Reynolds, Smith and Hale, 37 West Broad Street, Columbus, Ohio, representing the applicant, said the applicant's requests additional time to better define the use of the property and return to the Commission with a more defined plan.

Motion and Vote

Mr. Budde moved to table the application based on the applicant's request. Mr. Hardt seconded. The vote was as follows: Ms. Kramb, yes; Mr. Taylor, yes; Ms. Newell, yes; Mr. Hardt, yes; and Mr. Budde, yes. (Tabled 5 – 0.)

**2. Zoning Code Amendment – Notification and Adult Family Home Amendments
14-006ADMC Administrative Request**

Mr. Taylor said the following application to modify the Zoning Code regarding the notification requirements for public hearings and requirements for Adult Family Homes was an administrative request.

Mr. Taylor swore In witnesses that intended to address the Commission on this case.

Ms. Jennifer Readler said the Law Director's office is proposing several amendments and presented an overview of those amendments. She said the first revision is to add adult family homes as a permitted use in single-family residential districts, which is permitted and required by the Ohio Revised Code. She said the proposed modifications are intended to update the Code to reflect the State Law. She said this is the same for the second set of facilities, the adult care facilities, which is permitted and required by the Ohio Revised Code. She stated an adult care facility is a larger facility that is permitted in multiple family districts. She said the proposal also adds a 500-foot minimum distance requirement between these types of facilities, which is the one stipulation the Ohio Revised Code states municipalities are able to include.

Ms. Readler said an unrelated amendment is to revise the notice requirements for rezoning hearings to add additional methods of publication.

Ms. Readler said the Ohio Revised Code provides that anyone can operate an adult family home that provides accommodations and personal care services for up to 5 unrelated individuals in any single-family residential district. She said adult family homes must follow all Code requirements that pertain to single family homes. Ms. Readler said these types of facilities do not include alcohol or drug addiction services, facilities licensed to provide methadone treatment, or homeless facilities.

Ms. Readler said municipalities are permitted to adopt zoning regulations under our police power. She said cities cannot adopt any regulation that would conflict with a general law. She stated general laws are areas the State governs and general laws preempt local laws. She said the Ohio Attorney General has given an opinion that adult family home regulations are general laws, so State Law prevails over local law. She said adult family homes have to comply with fire, building restrictions, locations of accessory uses, and can be governed exactly as any other single-family homes.

Ms. Readler said the Ohio Revised Code gives municipalities one additional power, which is to restrict the density or the concentration of these homes. She said the specific Code Section of the Revised Code says they can adopt regulations that limit the excessive concentration of such facilities. She said they have been directed by City Council to prepare a dispersal ordinance, but want to ensure the distance will be upheld in court. She stated a court within Ohio has held that 500 feet is a permissible minimum distance between these facilities, which is recommended with the proposed modification. She showed a slide of

summaries of court cases and attorney general opinions where larger distance requirements have been invalidated. She said those distances range from 1,000 feet and upwards.

Ms. Readler said the unrelated notification amendment currently limits the City in advertising for public hearings for rezoning in a newspaper of general circulation. She said this amendment will expand the outlets that could the City can advertise. She said the proposed amendment allows advertisement on the City's website or other generally accepted medium, as designated by City Council.

Ms. Readler said the Law Department and Planning recommend the Planning and Zoning Commission recommend approval of this amendment to City Council.

Mr. Taylor invited the public to provide comments.

Deborah Mitchell, 178 Longview Drive, representing Mid-Century Dublin Neighbors Association, said she has prepared a PowerPoint presentation and had printed copies of the presentation.

Ms. Mitchell said this is a short presentation to re-iterate that their neighborhood and plenty of concerned residents do understand the law. She said when people first encounter this topic they react with surprise and sometimes negatively but they have made a point to try and help folks understand the law and understand it themselves. She said beginning with the 1968 Fair Housing Act and later with the 1988 Fair Housing Act Amendments, it is illegal to discriminate housing and the FHAA in 1988 was about extending protections to the disabled and the disabled is a broad category includes many different kinds of disabilities. She said this came from a movement in the 1950's but did not take hold until the FHA was passed so that people can be guaranteed access to housing even if they were disabled and started primarily for developmental disabilities, but today it does cover a broad range including Alzheimer's and Dementia patients. She said it is true it does not cover any alcohol or drug addiction treatment, but does include sober living accommodations for people that are transitioning out of that kind of treatment. She said if anyone is curious about what kinds of disabilities are covered, the Law and the Code for the State of Ohio is very clear. She said the powers of these laws are very strong and many states have affirmed them as the State of Ohio has. She said the Law is to provide for community residential facilities so that the disabled can have access to housing.

Ms. Mitchell said in Ohio there are different classifications depending on the number of individuals in the home, but there are not real classifications based on the type of disabilities. She said many people do not know that the business models for these kinds of residential facilities vary dramatically, some are for profit and some are for not-for-profit. She said some take insurance, including Medicaid or Medicare and some are self-pay with very high margin businesses with an interest in growing this segment among businesses. She said it is a myth these homes only go into less affluent neighborhoods where the homes may not be as expensive, because with a self-pay business model these homes can go anywhere. She said there was one in Weston, an affluent suburb in Maryland, a home that went in recently where people pay 650.00 a night not covered by insurance and the home is a 1.59 million dollar home, 5,000-square-foot home for up to 6 individuals that are transitioning from being in a mental hospital to being able to live on their own or live elsewhere.

Ms. Mitchell said plenty of legal scholars, Planning scholars and a section of case law, affirms the premise that the disabled need to be in residential neighborhoods and the neighborhoods need to stay residential and therefore they cannot become clustered with too many community residential buildings because the whole point of mainstreaming from the 1950's on and affirmed by the FHAA was the notion that the disabled should be able to live in residential neighborhoods where normalization is the goal so that the people are able to experience a normal residential neighborhood experience.

Ms. Mitchell said the question becomes how much is too much and people struggle with how many homes in one area are too many, there is no magic number or rule. She said some say there should not

be more than one per street block, others such as the state of New York say they are not going to put a number on this or the amount of space between each one because it is context dependent. She showed a few graphics to show just how contextual this can be. She said New York uses a model that mandates dispersal or putting a certain amount of space between residential facilities so that they do avoid the clustering phenomena, but they do not put a number out there. She said in general a lot of states have these dispersal ordinances on the books and new ones continue to be created. She said Chandler, Arizona had a 1,200 feet dispersal ordinance for the larger group homes and now extending it to adult family homes with 3 to 5 residents. She said Prescott, Arizona has similar changes in their dispersal ordinance and New Port Beach, California and other communities both at the state and municipal levels.

Ms. Mitchell said if a community wants to enact something like this to make sure that the disabled don't end up in a social services ghetto and they don't end up in a neighborhood that is no longer residential because the nature has been changed by the number of these kinds of facilities in them there are a couple of guidelines to think about. She said it should not violate the law and should allow a residential neighborhood to maintain its residential nature while absorbing the introduction of residential facilities. She said there are a certain number of facilities a neighborhood can absorb and still maintain its residential nature, but too many and it starts to change.

Ms. Mitchell said the category of Ohio and the 6th circuit case law, the Larkin Case in the State of Michigan was mentioned already. She said the 1,500-foot separation between each residential facility and a restrictive notification was struck down. She said in *Harding vs. City of Toledo* nothing was judicially mandated, Toledo already had a dispersal regulation of 990 feet and it was going to be challenged so they voluntarily brought it down to 500 feet and the Judge agreed. She said in the City of Montgomery, Ohio vs. *Our Family Home*, the City of Montgomery tried to sue to try and keep this home out in violation of the FHAA and the State Law, but in that case *Our Family Home* was upheld and the City of Montgomery was told the home was permitted per State Law and the Judge unilaterally said for one year or until the City of Montgomery can pass its own dispersal ordinance there could not be another home within 750 feet. She said there is no one magic number.

Ms. Mitchell said this becomes clearer when you look outside the 6th circuit. She said there is a very famous case that is in all the law books is *Familystyle of St. Paul vs. the City of St. Paul, Minnesota*, which held up under appeal a dispersal regulation of 1,320 feet or a ¼ of mile which has held up since the early 90's found to be constitutionally in-line with the FHAA and continues to be held up. She said *Jennings vs. New York, State Office of Mental Health* since the early 90's the Padavan Law has been upheld, mandated dispersal but spacing is context dependent of each request to put a home in. She said *Oconomowoc Residential Programs vs. the City of Milwaukee* rule requiring 2,500 feet spacing was a complicated ordinance saying if there was a home within 2500 feet they had to have a special variance, the court said requiring special variances have not been fondly looked upon because communities would require special variances to keep homes out and so the court struck it down because they do not like special use provisions because they are used to keep homes out, so it was less about the 2500 feet or dispersal and more about what Milwaukee was trying to do vis-à-vis *Oconomowoc Residential Programs*.

Ms. Mitchell said the upshot to all this is that there is conflicting results in case law, but clearly support for dispersal and not at necessarily at 500 feet and that there is no magic number and 500 is not the typical number that is seen in dispersal ordinances if looking broadly across many situations and in fact that 750 feet was suggested by a judge within Ohio. She said States like Minnesota and New York have had on their books dispersal rules that are greater than 500 feet and as much 1,320 feet since the early 90's and have been challenged and held up on appeal.

Ms. Mitchell said the goal for the disabled is to live in a balanced neighborhood. She showed graphics using the on-line tools provided by the City of Dublin and was able to map the different neighborhoods within Dublin the effects of 500 feet dispersal, included was south of Downtown Dublin, Amberleigh, and Muirfield Golf Club Areas. She said the Mid-Century Dublin Neighbors Association and other concern

residents are strongly recommending consideration of dispersal ordinance greater than 500 feet because they want something that is not going to violate the Law but there is plenty of Law to make this more ambiguous or more complicated than perhaps what is shown or what they have seen so far with regards to the Harding and Toledo Case. She said they also want something that is going to ensure balanced neighborhoods and they feel very strongly that 500 feet will not ensure a balanced neighborhood.

Ms. Mitchell said currently the ordinance recommends parking for community residential facilities for two off-street spaces for employees and they realize the parking section of any ordinance about community residential homes cannot be overly restrictive because that could be potentially viewed as discriminatory and they also believe it is important to consider how many of these can be on one street. She showed an example of a current residential facility at 50 Longview Drive which is being repurposed into an adult family home and the garage has become two bedrooms and the driveway is very short. She showed examples of the street widths of 18 feet with no on-street parking providing a narrow space of a broom width between two cars on Longview Drive. She said they have collected data on police runs, ambulance runs that are typical at adult family homes. She said parking can seem mundane until you can't find a parking spot or until there are people parking in your yard because there is no parking on the street and this affects the residential nature of the neighborhood.

Ms. Mitchell said as a neighborhood they wanted to make sure that if the City of Dublin is going to pass an ordinance about dispersal and in general anything related to community residential facilities that the whole span of the categories were considered from adult foster care up to the larger group homes. She said there is merit toward bigger dispersal in the Law to encourage further and deeper consideration rather than adoption of 500 feet dispersal. She said the nature and balance of neighborhoods is going to be affected if only 500 feet dispersal was approved and they need to keep the neighborhoods residential so that the disabled can enjoy all the benefits that they are entitled to under the FHAA and State Law. She encouraged the Planning and Zoning Commission and City Council to take these factors into consideration because the law is not straight forward on this and there are many laws on the books that advocate much bigger dispersal, there are two States that have held it up for over 20 years and when you look at Dublin neighborhoods you can see that it is not necessarily like the west side of Columbus or any part of Columbus in many ways.

Roger Vogel, 177 Longview Drive, said he is the president of the Mid-Century Dublin Neighborhood and the neighborhood has been anxious for and urging for this ordinance because they are in a neighborhood where a home has come in and wanted to see the regulations enacted soon, but having looked at this topic further and done the research, the neighborhood wants to get this right and if it means stepping back and taking a further look then they support that.

Sid Beavers, 163 Longview Drive, said he is moving into this neighborhood on Monday, said he was unaware of the facility. He said he understands there is a need for the facility, but witnessed a concern with the narrowness of the street, as their furniture truck was parked along the edge of the road and they had to drive off the pavement to get around the truck. He recommended they take a ride down Longview and see what is there and see how wide it is. He said if they go and see for themselves they will see 500 feet it is not very far and the roads are not wide and there will be a problem if there are fire trucks, ambulances and delivery trucks. He said you can barely get two cars passed much less a big truck or a fire truck or ambulance.

Tom Smith, 8217 Glencullen Court, Amberleigh, said he is here at the request of the homeowners association to just be present and show support, he questioned if there is notification when one of these homes move into a neighborhood, is there an application to City Council.

Ms. Readler indicated there is no such application.

Mr. Smith asked if they know how many homes are operating within Dublin. Ms. Readler said they believe there are three.

Mr. Smith asked if there were any in Amberleigh South. Ms. Readler said she believes there is one on Tonti Drive, Longview Drive and Avery Road.

Mr. Smith asked if these homes because of their nature use City services at a disproportionate level to a normal residential service or do they shift some of their costs onto the tax payers by using more calls to emergency services or ambulance calls or something more than a normal resident would use.

Ms. Readler said she is not aware of any. She said the Avery Road location has been operating for a period of time and she is not aware of any kind of differential amount of emergency responses. She said the Tonti Drive facility is new and the Longview Drive is not operational.

Mary Ellen Wissel, 57 Longview Drive, said she lives across the street from 58 Longview that was pictured in the slide. She said she bought her house almost 20 years ago from Sherman Sheldon former City Manager of Dublin and said she recently retired and worked hard in her life and when she looked across the street today there were 9 vehicles and felt for the first time that she was living across the street from a business.

Mr. Taylor asked if she knew if the people had moved in yet or were the cars contractor vehicles. Ms. Wissel said she did not know what they were but there were 9 and 7 were personal vehicles.

Erin Sheen, 191 Longview, said she lives on the other end of the street of the current group home and thought there is a mix of care givers and they are doing work at the house and they will be moving in soon. She said she spoke with the woman that lives next to the Tonti Drive facility, Nancy Gwyn, and stated the neighbor's frustration was no one in the neighborhood was informed when the other Our Family Home moved in, it just appeared and her concerns which involved parking primarily went unnoticed. She said Ms. Gwyn stated parking on her street is a huge concern and the FedEx truck has had trouble getting passed the cars on the street and at any given time there could be 4 to 7 cars in the street. She said as a neighborhood they do welcome the one house that is moving and understands that if you have a loved one that needs a place this it could be a really nice option. She said they became alarmed as a neighborhood when they found out a press release stated the owner wanted to triple the number of homes that he owns from 9 to 27 this year and then found out he was looking at the another house in the neighborhood at the end of the street. She said the press release stated he wants to dramatically increase the number of houses that he owns and has been seen looking at a house that was for sale on their street and that is why they are concerned about balance.

Ms. Readler said there was a significant case law discussed during the public comment and she wanted to make several clarifications. She said the Toledo case was not a settlement agreement. She said Toledo has an ordinance mandating the 500 foot distance requirement and that ordinance has been analyzed by a court. She said the Montgomery situation was in State Court and then another lawsuit was filed in Federal Court. She stated their office has spoken to the Law Director's office in Montgomery and there was a consent decree so the parties went through a mediation and Our Family Home agreed to certain things in that settlement that they were not obligated under the Law to do and they agreed to notify for a certain period in exchange for certain give and take on the settlement. She said the 750 feet is not something they think was judicially blessed, but part of a consent decree of that mediation. She said they appreciate the reference to larger distance requirements in other states that have not been challenged, but they have a list of case law where courts explicitly found that similar distance requirements were too much.

Mr. Taylor asked if these homes have to be inspected and approved by the Building Department prior to occupying the house.

Ms. Readler said the building inspections are related to remodeling and they have been out there prior to the license being granted. She said they are far into the remodeling part of it before they get a state license.

Mr. Taylor confirmed a building permit application would be required to be submitted prior to the work being done. Ms. Readler agreed and said an application was filed for the conversion of a garage and that is filed by a contractor, but is not necessarily a red flag it will be an adult family home.

Mr. Taylor asked for the Commissioners comments.

Ms. Kramb said if they are going to restrict parking on the street because it is a narrow street then it would have to go through Engineering. She said one option of the neighborhood would be for them to petition no parking on the street, but that would apply to everyone not just the group home. Ms. Readler agreed.

Ms. Kramb agreed with the 500 feet because of the case law and the research that has been done and would defer to the Law Director's office. She said she does not see a way to regulate parking despite the concerns raised.

Mr. Hardt said it seems like the City does not have a lot of options given the case law that they have seen. He asked in the presentation mentioned the 3 types of homes and asked why all three were not included in the ordinance.

Ms. Readler said they didn't look at the adult foster home with one to two residents because the legislation was aimed at dealing with some of the issues the City has experienced with adult family homes. She said the adult care facilities were added because those facilities would be the two types of facilities that would have the most impact.

Mr. Hardt said the proposed Code modification includes language that state adequate off-street parking for employees shall be provided and asked if there is a notion for a typical number of employees is for one of these facilities. Ms. Readler said she believes one person will be onsite at all times and there could others in and out with different types of therapies.

Mr. Hardt said the situation on Longview Drive is in part exasperated because of the remodeling going on and anyone could have their homes remodeled and have 4, 6, or 8 work trucks in front for a brief period of time. He said long term the number of employees becomes the critical issues and hypothetically if there is only two it seems the driveway however short it may be could accommodate two vehicles much like any single-family home driveway could, but if there are more than that he can see where that would be a problem. He confirmed a community can govern the parking aspect but it applies to everyone within the neighborhood. Ms. Readler agreed.

Mr. Budde said he was interested in the State Licensing aspect of this use and what the lead time is to apply for a license and when notification comes if the State is required to notify the City.

Ms. Readler said the State is not required to notify the City. She said they have had several conversations with the Licensing Department and the license comes after the home is purchased and secured and the facility would have to be fully ready to get the license granted.

Mr. Budde asked if the State Licensing is transparent or do they list the addresses of the approved licensees or a procedure where a search is done once a month or quarter. Ms. Readler said there are searchable databases.

Mr. Budde said he would support the recommendation of the Law Department and hoped they have a citizenry that is vigorously monitoring what is going on in their neighborhoods and they feel compelled to notify the City if they see something that would violate the Zoning requirements.

Mr. Hardt said the proposed Code Amendment allows the use alternative communication methods to notify residents of zoning cases and asked if it was his understanding that it is not their intention to use the website in lieu of the newspaper, it is their intention to expand the number of notification methods.

Ms. Readler said the way the revision is worded it would be website or other generally excepted medium designated by Council. She said they will still use the newspaper; it will not be the only method they have to use.

Mr. Hardt said they are broadening their options, not narrowing. Ms. Readler agreed.

Ms. Newell said she has a lot of concern in terms of parking and equally the quantity of residents that occupy the house. She said it does not seem appropriate to take a garage and turn it into bedrooms. She said she knows there are provisions in the Zoning Code in terms of Home Occupation and limitations that are placed on parking. She asked if they could make a correlation and take into account at least one full time staff member is working in that facility on regular bases and potential family members come and visit. She said she has two family members in her own family that live in an adult care facility like this for developmental disability and one because they were hit as a child riding a bicycle and left with a traumatic brain injury and is tri-plegic. She said she is compassionate to having these facilities in their neighborhoods, but equally the 500 feet is not necessarily a good magic number and she doesn't know enough about case laws that have been presented if there is other ways they could look at that dispersal and not simply say 500 feet.

Ms. Readler said she appreciates the parking concerns but unfortunately in this situation the difference between home occupation and the adult family home is that State Law has decided to govern in the area of adult family homes. She said the State Legislature has told them what they can regulate with regard to the adult family homes and parking beyond what would be required for a single family residence is not explicitly permitted. She said they feel they do not have the authority to require additional parking restrictions that are applicable only to these facilities in an amount that is over what would be used in a typical single family home.

Ms. Newell asked if there was a different way they could look at the dispersion and not purely on distance.

Ms. Readler said because these regulations are so heavily regulated by the Ohio Revised Code they wanted to have the most defensible ordinance they could if it were challenged. She said if they go to some formula that has not been tested in the courts they are vulnerable to a lawsuit where they are interpreting it in an arbitrary manner. She said the 500-foot was explicitly upheld by an Ohio Court and a City already has that on the books. She said they felt that was the strongest argument that restriction is going to be defensible in court.

Ms. Newell asked if they looked at other options other than dispersion.

Ms. Readler said they talked about larger distance, looking at the type of streets, and they came back that they wanted to go with something that had been tested and the 500 feet was tested.

Ms. Newell said asked if there was spaces reserved for home occupation or do they have to prove there are spaces to have visitors at their home.

Mr. Gunderman said they are not required to do something extraordinary they are expected to have spots within their driveway, but in most cases a garage would have two spaces.

Ms. Newell said in this presentation there is the potential that the garage is going to be lost, so you are looking at only 2 spaces available and one will always be occupied by the superintendent of the facility and others by therapists and family visitors, so very quickly there will not be adequate parking. She said this is the one aspect that she is really concerned about especially with 5 residents the parking can fill up very quickly. She said when these facilities do get licensed they do have to have an occupancy permit when they go through renovations of a facility before they can receive their license similarly like a day care facility. She said there are legitimate concerns that they could look beyond just saying they get to do nothing.

Ms. Readler said they do have the requirement that there be two spaces for employees.

Ms. Newell asked how it would be singling out if there is outside therapist coming to that facility to care for someone and not giving a place to park. She said residents are there with vehicles and those vehicles should have permanent spaces and there should be guest spaces for people that come and go from that facility. She said she does not think that is singling them out not to keep them out of the residential neighborhood or keeping the facility out, but the Zoning Code has a line for adequate parking but no definition to what adequate parking is and there should be a definition.

Ms. Readler said they feel constrained when there could be a single family home with three teenagers and everyone has a car and there are guests and there could be parking impacts that are created by single-family homes. She said going beyond requiring that there are certain employee parking available leaves them vulnerable.

Ms. Newell asked if there any other case laws in other communities that have tried to establish parking. She said it is appropriate to provide parking for people living in the facility or the superintendents of the facilities and guest parking and does not think that is unreasonable.

Ms. Readler said they could explore that issue, but could not require more parking than they would have with a typical single-family home and part of the concern is if the garage is converted or if something is done to the driveway, there would be adequate off-site parking for the number people who would have cars in that facility. She said they could put a condition on the recommendation that they explore and see if there are any alternatives for requiring more parking at the facility before it is taken to Council.

Ms. Newell said she would be more comfortable with that, rather than just passing what they have this evening. She said she would rather spend more time looking at and thinking how best they could approach this for the City.

Ms. Readler said to keep it on track they could explore that and have a suggestion on the parking for the first reading of Council.

Mr. Budde said there is State Licensing and permitting for remodeling what is keeping them including in the Code modification requiring register their use with the City and have a determination made that what they want to do complies with the ordinance.

Ms. Readler said State Law says they have to be treated as a permitted use and as a single family home and the only thing they can do is the dispersal requirement. She said to add a layer of registration would be stricken by a court.

Mr. Hardt said he agrees with Ms. Newell and would like to have the parking explored. He said the regulation says that adequate off street parking for employees shall be provided and he interprets that if

a particular location has three employees, those three cars have got to be accommodated off the street on the driveway somehow and that makes him feel better, but he wasn't thinking of the others such as therapist and deliveries. He said one of the primary differences is that the average person has guests it is the rare occurrence such as the Super Bowl party that happens once a year and not every single day. He said he would like to pass this onto Council with a request or recommendation that some more thought be put into the parking to see what they can do.

Mr. Taylor thanked everyone for participating.

Mr. Taylor asked if the language was precipitated by the residents bringing it to the city. Ms. Readler said it was and that given the new facility and the potential proliferation they wanted to make sure they retain the residential character and were as aggressive as they could be under the restrictions they have.

Mr. Taylor asked if there was a rush on the City's part to move this along. Ms. Readler said City Council has directed that they wanted to get this back to them as quickly as possible

Mr. Taylor said they want to get this right and there is some time for additional consideration on this and the presentation from Ms. Mitchell outlining the desire to achieve balance. He said the question is what does that mean and in which way is it balanced, what proportions and what are the methodology's to do that and while he completely understands the Law Director's conclusion that the dispersal is the most effective and defensible way to achieve some balance. He said he is not sure this could not be enhanced by additional conversation between the city, residents and the Law Director's office. He said he is not prepared to send this forward to City Council with a recommendation either way at this point and would like this can be held so that some additional conversation could be had to achieve the proper balance. He realizes the immediate concern is with Mid-Century but this will affect the entire city and he would like to see this tabled and have the Law Director's office lead a conversation with the neighbors and explore other options.

Ms. Readler agreed to table.

Motion and Vote

Mr. Budde moved, Mr. Hardt seconded, to table this administrative request as agreed by the Law Director's office.

The vote was as follows: Ms. Newell, yes; Ms. Kramb, yes; Mr. Taylor, yes; Mr. Hardt, yes; and Mr. Budde, yes. (Tabled 5 – 0.)

Communications

Mr. Taylor asked Planning if there were any communications items to discuss.

Ms. Husak said they hoped to have an additional member at the next meeting and that would be the time they elect officers. She said Mr. Budde had indicated he will not be able to be at that meeting.

Mr. Taylor asked about the length of the agenda for the April 17th. Ms. Husak said there are currently 3 items on the proposed agenda.

Roundtable

Mr. Taylor asked if there were any roundtable topics.

Mr. Hardt said last fall they began a process at the request of City Council to review the Bridge Street Code on a global bases and correct things that Planning and the Commission felt ought to be tweaked.

more pressure on an intersection that is operating as an "F". She said she would not support this going forward without a reconfiguration of that intersection and would not support holding off on landscape enhancements. She said it all needs to come in at one time for the benefit of the tenants of that center. She believes that is a high occupancy center with very little vacancies and when one tenant goes out, something comes in very quickly. She said more creative things could happen to utilize the drive aisles; she can easily see stacking of 15 – 20 cars in line for Starbucks. She understands the applicant has exceeded the stacking requirement but when this center was build, she is not sure if Starbucks had even hit the Midwest. She said Tim Horton's does not have enough stacking. She sees a huge asset to that outparcel with the reconfiguration of the intersection because they can stack cars all the way to the drive aisle and they will. She agreed the building would have to match the center.

Ms. Amorose Groomes invited the applicant to ask questions and get clarity.

Ms. Newell wanted to follow up to say she was not comfortable leaving the landscaping until a second phase. She said she has seen a number of trees that are dead within the islands. Ms. Amorose Groomes commented that there are a lot of ash tree failures that have not been dealt with yet. Mr. Fraas explained the trees were treated with fertilizer that killed them and they are in the middle of a lawsuit to remedy the situation.

Mr. Fraas thanked the Commission for their input, encouragement, and support for the application. He said unfortunately, they are not in a position to move that driveway as part of the condition with the tenants. He said if they cannot do it the way it is, they might have to wait.

Ms. Amorose Groomes said we would welcome Starbucks to the community in this location and hopefully they can figure out a way to make that work with the balance of the tenants.

**2. Emerald Parkway Phase 8 – Office Building
14-027INF**

**Emerald Parkway
Informal Review**

This case was postponed prior to the meeting.

**3. Zoning Code Amendment – Notification and Adult Family Home Amendments
14-006ADMC** **Administrative Request**

Chris Amorose Groomes introduced the application for a request for amending the Dublin Code of Ordinances (Zoning Code) Section 153.234(C)(3) to modify the notification requirements to be consistent with City Council Rules of Order; and Amending Chapters 153.002, and 153.073 to add requirements regarding Adult Family Homes.

Jennifer Readler said this case was tabled at the April 3, 2014 meeting with direction from the Commission for staff to meet with the residents and discuss in more detail, the residents' concerns that were voiced at that meeting. She said they had the opportunity to meet with the residents on April 9, 2014 and discussed the case law and the state and federal regulations that govern these types of uses. She reported the residents would like a larger dispersal distance than is being proposed in the Code Amendment tonight. She said while state law permits municipalities to limit the excessive concentration, it does not define the parameters so it was suggested that the residents get the City's assistance seeking verification for what that really means. She said they revised the Code Amendment so all the regulations are in one place.

Ms. Readler presented the proposed Code Amendment to:

- Add adult family homes as permitted uses in single-family residential districts, as required by the Ohio Revised Code (1-5 unrelated adults)

- Add adult care facilities as permitted uses in multiple family residential districts, as required by the Ohio Revised Code (3-16 unrelated adults)
- Add definitions for adult family homes and adult care facilities in section 153.022
- Add 500-foot minimum distance requirements for above facilities measured from property line to property line by shortest distance
- Require adequate off-street parking for employees
- Revise the notice requirements for rezoning hearings to provide additional methods of advertising such as the City's website or other generally accepted medium, as designated by City Council
- Place all other amendments in one new code section – Section 153.073

Ms. Readler concluded that the Law Department and Planning recommend that the Planning and Zoning Commission recommend approval of this amendment to City Council.

Ms. Amorose Groomes asked the Commissioners if there were any questions for Ms. Readler. [There were none.]

Ms. Amorose Groomes invited public comment and asked Deb Mitchell to step forward and state her name and address for the record.

Deb Mitchell, 178 Longview Drive, said she wanted to extend her presentation from the previous meeting and reiterate a few points that the residents would like to make in response to the April 9, 2014 meeting with Frost Brown Todd. She said one of the key priorities for Dublin per the City's website is a liveable, sustainable, and safe set of neighborhoods. She said one of the phrases that they have developed among the residents and used in several works by legal and planning scholars is the notion of "balanced neighborhoods" that are sustainable. She explained when the single-family nature of the neighborhoods are maintained, including diverse groups of folks living in adult family facilities as well as those living in traditional configurations, there is sustainable balance. She said based on law and research done on this shared topic, the whole notion of the law is to make sure disabled have every opportunity and right to live in residential settings along with everyone else, to live, thrive, and grow, without barriers. She said the FHAA amendments in 1988 solidified this. She said a neighborhood cannot be residential or "normal" if several adult family residential facilities are located there.

Ms. Mitchell reiterated that the neighbors welcome diversity but making sure there is that balance is also important. She stated there is no magic number and asked how much is too much. She noted that many municipalities as well as states have passed ordinances reflecting that balance is consistent with what many legal and planning scholars have said such as roughly one adult family facility per street and not clustered in any one neighborhood or area. She provided examples in several cities where they adopted the 100-foot to 1,325-foot dispersal distance ordinances to maintain balance. She said the real estate market and home values have dropped in the last five years allowing more ease for developers and entrepreneurs to buy multiple homes for adult facilities. She said she is all for capitalism but she is a neighbor, too.

Ms. Mitchell said clustering was likely to happen in Dublin without adequate dispersal distance if left at 500 feet. She noted on one particular street, a developer has actively tried to buy additional houses on that street for this use. She explained that some neighborhoods disproportionately attract some developers who wish to grow their adult family facilities in number and footprint, which will force an imbalance. She presented a map that showed an area that contained an existing adult residential facility and provided a hypothetical scenario to show dispersal of 500 feet. She said this area in mid-century Dublin could have 6 – 9 facilities, depending on where the property lines are drawn and the residents recommend more than 500 feet for dispersal and balance.

Ms. Mitchell said not much action has been taken in Ohio and asked that the City of Dublin take the leadership position. She noted that the residents do not believe a defensible, zero-risk position would ensure balance. She said they are willing to accept some uncertainty about a possible legal challenge and acknowledge a trade-off because they care about balance. She said one neighborhood is being actively pursued with two or three homes per street. She encouraged the Commission to weigh the risks with potential outcomes and presented some scenarios in the form of a decision tree.

Roger Vogel, 177 Longview Drive, said they met the other night with Legal but had questions that reflected what the residents of Dublin have. He referred to the memorandum from the Legal team that showed the main bullet points, specifically points one and three:

- Such facilities may need to be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residents, within the district or zone.
- Adult family homes must comply with general fire and building restrictions such as area, height, yard, and architectural compatibility.

He referred to Section 153.073 of the existing Code that we are considering amending, titled Comprehensive Residential and Neighborhood Improvement. He questioned the section that deals with Home Occupation (B) and assumed that an adult family home would come under the heading of home occupation.

Ms. Readler said it would not. She explained there was a subsection that is applicable only to home occupations and state law specifically says to treat these facilities as single-family homes.

Mr. Vogel said they have to comply with area, height, yard, and architectural compatibility requirements.

Ms. Readler said that is applicable to ANY single-family home.

Mr. Vogel asked how removing garaged doors and turning garages into bedrooms is not a violation.

Ms. Readler said that is not a violation.

Mr. Vogel again challenged the architectural compatibility as it pertains to the garage and the stipulation that there should be no change in the outside appearance of the building or premise.

Ms. Readler said that only applied to home occupations.

Mr. Vogel then asked about the parking provision where home occupation parking on non-curbed streets is prohibited.

Ms. Readler said they created a parking restriction in this new amendment, requiring off-street parking for employees.

Mr. Vogel questioned the Code referring to cars of customers and so forth does not apply to the single-family homes.

Ms. Readler stated that applies only to home occupations.

Mr. Vogel said he was puzzled about the conformity.

Richard Taylor said there are a whole bunch of requirements in the Zoning Code that apply to single-family homes, beyond the section Mr. Vogel is referring to.

Mr. Vogel asked for clarification that none of these under 153.073 apply to single-family homes.

Ms. Readler said the subsection he is delineating is only applicable to home occupation. She explained the City of Dublin has a Code Enforcement Department that oversees any violations reported.

Ms. Amorose Groomes asked if there was anyone else that wanted to speak with regards to this application.

Mary Ellen Wissel, 57 Longview Drive, said she had the 1954 survey of the old Longview Addition for Longview Drive. She said a 500-foot distance between property lines would allow every fifth residential property to be an adult family home on Longview Drive. She said she was concerned with the possibility of that excessive concentration and the dispersal distance of 500 feet is not adequate or appropriate in this specific context.

Ms. Amorose Groomes asked if Ms. Readler wanted to respond at this time to the initial questions of defensibility.

Ms. Readler reported that there is a case of 500-foot dispersal decided in the 6th Circuit Court of Appeals in Michigan that struck down a 1,500-foot distance. She said the distance in dispersals is not clear but the 500-foot distance has been considered by court and upheld, which prompted the rationale behind suggesting that number.

Ms. Amorose Groomes said Ms. Mitchell made some outstanding points of the policy decisions as it relates to these and when this is forwarded to City Council, it does not become the Zoning Code. She said it goes to them to weigh in on the policy aspects, getting to the hands that it really belongs in, who are the policy decision makers for the City of Dublin who are capable of taking calculated risks. She explained that is not the role of the Commission. She encouraged them to get the best representation through their elected officials on City Council whereas the Planning and Zoning Commissioners are volunteers. She emphasized the need to stay engaged and fight for the integrity of their neighborhoods.

Ms. Newell asked if there were other ways to come up with dispersion without putting a limitation on what that distance in feet but perhaps a stipulation of one or two residence per street is permitted. Ms. Readler said there were other options such as one per street, one per block, and other different delineations besides using that firm number.

Ms. Newell asked if there were other cases found where they used another form that was upheld.

Ms. Readler answered no.

Motion and Vote

Mr. Hardt moved, Mr. Taylor seconded, to recommend approval to City Council of the Zoning Code Amendment request. The vote was as follows: Ms. Kramb, yes; Ms. Newell, yes; Ms. Amorose Groomes, yes; Mr. Taylor, yes; and Mr. Hardt, yes. (Approved 5 – 0)

4. Perimeter Center PUD, Subarea F-4 – Perimeter Center Shopping Center Sign 14-021AFDP 6644-6748 Perimeter Loop Road Amended Final Development Plan

Chris Amorose Groomes introduced the application for a request for a new joint identification sign to be located at the Perimeter Loop Road entrance for the Perimeter Center shopping center on the east side of Perimeter Loop Road, southeast of the intersection with Avery-Mulrfield Drive.

Ms. Amorose Groomes swore in witnesses that intended to address the Commission on this case.