



# PLAN COMMISSION

Wednesday, November 14, 2018

7:00 P.M.

Lorraine H. Morton Civic Center, 2100 Ridge Avenue, James C. Lytle City Council Chambers

## AGENDA

1. CALL TO ORDER / DECLARATION OF QUORUM
2. APPROVAL OF MEETING MINUTES: October 10, 2018
3. NEW BUSINESS

### A. Text Amendment

#### Residential Care Homes

**18PLND-0094**

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

### 4. DISCUSSION

#### A. Public Benefits for Planned Developments

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

### 5. PUBLIC COMMENT

### 6. ADJOURNMENT

The next regular meeting of the Plan Commission is scheduled for **WEDNESDAY, December 12, 2018** at **7:00 P.M.** in **JAMES C. LYTLE CITY COUNCIL CHAMBERS** of the Lorraine H. Morton Civic Center.

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

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

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



**MEETING MINUTES**

**PLAN COMMISSION**

Wednesday, October 10, 2018

7:00 P.M.

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

Members Present: Colby Lewis (Chair), Jennifer Draper, Terri Dubin, Carol Goddard, Andrew Pigozzi, George Halik (7:10 P.M.), Peter Isaac

Members Absent:

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

Presiding Member: Colby Lewis, Chairman

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**1. CALL TO ORDER / DECLARATION OF QUORUM**

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

**2. APPROVAL OF MEETING MINUTES: June 13, 2018 and August 8, 2018**

Chair Lewis made a correction to page one of the minutes for August 8, 2018. Commissioner Pigozzi then made a motion to approve the minutes as amended, seconded by Commissioner Goddard. The Commission voted unanimously, 6-0, to approve the amended minutes of August 8, 2018.

Chair Lewis made a correction to page four of the minutes for June 13, 2018. Commissioner Goddard made a motion to approve the meeting minutes as amended, seconded by Commissioner Draper. The Commission voted unanimously, 6-0, to approve the minutes of June 13, 2018.

**3. NEW BUSINESS**

**A. Major Adjustment to a Planned Development  
1571 Maple Avenue**

**18PLND-0082**

**Michael McLean, applicant, submits for a major adjustment to the planned development approved by ordinance 19-O-15, and amended by ordinance 61-O-16, in order to modify the number of required leased parking spaces from 101 to 50 and amend the parking lease between the applicant and the**

**City of Evanston to include parking in the Sherman Avenue Garage. The proposed major adjustment will also modify the affordable housing requirement from two-onsite units at 100% AMI to one affordable at 60% AMI.**

Ms. Jones provided a brief presentation of the requested adjustment to the Planned Development, emphasizing that no physical changes were proposed to the constructed building and that only the parking lease portion of the proposed adjustment was under the purview of the Plan Commission.

Mr. John McLinden provided an overview and reason for the request. He provided a brief history of the initial project review and stated that the parking spaces leases from building residents is currently well under the required 101 parking space lease. Fewer than 40 parking spaces are currently leased. He added that the studies that were included in the initial planned development review predicted a low vehicle ownership and parking space use.

Chair Lewis opened up the hearing to questions from the public.

- Mr. Alan Gratch asked several questions including: Why was the proposed change not considered and abandonment of the original plan? Is there evidence that the proposed adjustment is a reasonable request or indicates a change in circumstances? Has staff researched the applicant's history of plan modifications? Has the City considered the effect of the adjustment on revenue? Ms. Jones explained that the zoning code allows for adjustments to approved planned developments and that this project falls under those regulations. She added that the review process for a major adjustment is largely the same as the process for a new planned development. Mr. McLean stated that he believes due diligence has been done with regards to the needed parking, referencing the parking study that was done during the review of the planned development. The approved and constructed development was required to provide more parking despite the study foreseeing a lack of vehicle use within the building. The E2 development is an example of how too much parking can create the need for adjustments in order to keep spaces utilized. Ms. Jones added that should the lease be modified, it could open up parking space availability for other customers.
- Mr. Ed Williams asked for clarification on the number of existing spaces due to the two existing Maven car-share spaces being in the parking lot. Approved to provide 12 on-site parking spaces. 13 spaces appear to be on the site, two of which are used by Maven car-share.
- Ms. Julie Rosen inquired about how the number of people with vehicles is determined, where they are being parked and if that information is accurate. She also questioned the availability of spaces within the Sherman Plaza garage. Mr. Bernard Citron, attorney for the petitioner, stated that the Parking Revenue Manager stated that initially parking spaces were not available in the Sherman Plaza garage, however, circumstances have changed. Mr. McLean clarified that

the request is to obtain the ability to park in the Sherman Plaza garage which the development does not currently have. Mr. McLinden added that leases require that the tenant disclose their vehicle ownership. Ms. Jones then stated that the Secretary of State provides information on car ownership within Evanston which is used for the purposes of obtaining wheel tax.

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

- Chair Lewis asked if there is a way to determine if residents are parking on the street and what permit parking is nearby. Ms. Jones referenced the Secretary of State information but stated she would need to check to see what permit parking areas are nearby. Chair Lewis then asked if the spaces in the on-site parking lot are leased. Mr. McLean responded that the on-site parking lot is open to the public and there are no leased spaces at that location.
- Commissioner Isaac asked if the City is amenable to a executing a new parking lease. Ms. Jones stated that there have been discussions with staff regarding this possible change to the lease and that a new lease would be tied to any change in the parking requirement. Mr. Mangum added that should the adjustment be approved, the lease would be amended as a part of the adjustment either at the same meeting or immediately thereafter.
- Commissioner Draper inquired about the occupancy of the apartment building and asked for clarification on the parking space breakdown. Mr. McLean stated that with the exception of the two affordable units, occupancy is 100%. He added that the request would be to reduce the leased spaces to 50 but that number is in addition to the on-site parking spaces at the site.
- Commissioner Pigozzi asked if the parking lease cost is directly passed on to the tenants. Mr. McLinden responded that the cost is passed on directly to the tenant.
- Commissioner Halik questioned how the applicant would know if tenants do not indeed have vehicles. Both Mr. McLean and Mr. McLinden stated that it is possible that a tenant has not disclosed their vehicle ownership. Building managers are also observant and have not noticed any additional vehicles.

Chair Lewis the opened up the public hearing to public testimony. Three member of the public spoke, providing the following comments:

- Mr. Gratch asked that the Commission consider the number of tenants and the fact that that number could change. He also stated that the City should consider the \$900,000 windfall that could come to the developer and how that may affect revenue.
- Mr. Williams stated that he was present during the initial review of the planned development and made comments regarding the parking then. At the time Sherman Plaza had a waitlist and could not lease additional parking spaces, stated that if approved, the City should consider charging for the spaces lost. He also stated that the believed the reduction in on-site affordable units was

unconscionable and that the applicant could get assistance in renting out those units. He then referred to issues with regards to miscalculations made in shutting down Elmwood Avenue and that promises made were easy to break.

- Ms. Rosen agreed with Mr. Williams' comments and asked that the City consider the budget and have proper comparison for the number of tenants with vehicles.

Commissioner Isaac asked if there were any other developments that are similar to 1571 Maple with regards to the small amount of on-site parking. Ms. Jones stated that this project is unique with regards to proximity to available transit options and the small amount of on-site parking spaces.

Mr. McLinden made a closing statement emphasizing the data that shows the low parking space leasing counts and the studies from the initial review which predicted them. Mr. Mangum added that the DAPR and staff recommendation came about from the fact that the project is still new, being a just a year into occupancy and the need to have additional parking spaces should the demand change.

The Commission then entered deliberation. Commissioner Halik stated that he believes that TOD projects are great and the development trend is continuing. He added that it is unfortunate that many TODs are required to build garages that are more and more unused. With regards to revenue, if the demand for the spaces is there, the revenue will be recouped. This development is lucky to be in the location that it is in and the proposed lease reduction is a good move to make.

Commissioner Goddard recalled that the original project was not well received. Questioned how long the tenancy will be and stated that it is not the Commission's duty to address revenue either for the City or the applicant. She would like to have more information on the number of parking spaces available in the Sherman Plaza garage.

Commissioner Dubin reiterated Commissioner Goddard's comments and agreed that TOD is a good idea.

Chair Lewis inquired whether or not it would be possible to write the changes in a way to permit changes to the lease without future petitions.

The Commission then reviewed the following Zoning Code Sections: Standards for a Special Use (Section 6-3-5-10), the Standard for Planned Development (Section 6-3-6-9) and standards and guidelines established for Planned Developments in the D3 Downtown Core Development District. (Section 6-11-1-10). The Commission found that the applicable standards had been met or maintained from the original development.

**Commissioner Isaac made a motion to recommend amendment of the ordinance to reduce the number of required parking leases from 101 to 70 with an option to rent parking spaces in either Maple Avenue or Sherman Plaza**

garage as available. Commissioner Draper seconded the motion. A roll call vote was taken and the motion was approved, 6-1.

**Ayes:** Draper, Dubin, Halik, Isaac, Pigozzi, Lewis.

**Nays:** Goddard

**4. OTHER BUSINESS**  
**Election of a Vice Chair**

Commissioner Goddard made a motion to nominate Commissioner Peter Isaac as Vice-Chair of the Plan Commission, seconded by Commissioner Halik. A voice vote was taken and the motion was approved, 6-0 with one abstention.

**Ayes:** Draper, Dubin, Goddard, Halik, Lewis, Pigozzi.

**Nays:**

**Abstention:** Isaac

**5. PUBLIC COMMENT**

There was no public comment.

**6. ADJOURNMENT**

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

**A voice vote was taken and the motion was approved by voice call 7-0.**

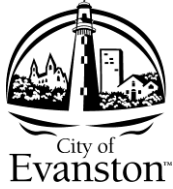
**The meeting was adjourned at 8:26 pm.**

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

Plan Commission

Text Amendment

Residential Care Homes  
18PLND-0094



# Memorandum

To: Chair and Members of the Plan Commission

From: Johanna Leonard, Director of Community Development  
Scott Mangum, Planning and Zoning Administrator  
Meagan Jones, Neighborhood and Land Use Planner

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

Date: November 8, 2018

## **Request**

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

## **Notice**

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

## **Analysis**

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### Background

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

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

### *Existing Regulations for Residential Care Homes*

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

**Residential Care Home - Category I:** A dwelling unit shared by four (4) to eight (8) unrelated persons, exclusive of staff, who require assistance and/or supervision and who reside together in a family type environment as a single



housekeeping unit. "Residential Care Home - Category I" shall not include a home for persons who are currently addicted to alcohol or narcotic drugs or are criminal offenders serving on work release or probationary programs.

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

The Zoning Ordinance defines Child Residential Care Homes as:

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

Both Residential Care Homes and Child Residential Care Homes are required to be licensed by the State of Illinois Department of Human Services and the City of Evanston through the Department of Health and Human Services. Additionally, regardless of whether the use is permitted or a special use, it must be a minimum of 900 feet from another Residential Care Home, Child Residential Care Home or Transitional Treatment Facility. The attached use description provides more detail on the latter of these uses.

Proposal Overview

The referred text amendment would make Residential Care Homes - Category 1 and Category II a Special Use in a number of zoning districts. A Chart outlining the change is below:

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

<b>Residential Care Home - Category II</b>	Permitted Use in R4, R5, R6, D1, MU, MXE	Special Use in R1 R2, R3, B1, B2, B3, C1a, D2, D3, D4 and MUE	Special Use in R1, R2, R3, R4, R5, R6, B1, B2, B3, C1a, D1, D2, D3, D4, MU, MUE, MXE
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*Changes to the R1 Single Family Residential District, Sections 6-8-2-3. - Permitted Uses and 6-8-2-4. – Special Uses, are shown below as an example of the changes:*

- **6-8-2-3. - PERMITTED USES.**

The following uses are permitted in the R1 district:

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

- **6-8-2-4. - SPECIAL USES.**

The following uses may be allowed in the R1 district, subject to the provisions set forth in [Section 6-3-5](#), "Special Uses," of this Title:

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

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

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

The Comprehensive General Plan calls for maintaining the appealing character of Evanston’s neighborhoods while guiding their change as well as ensuring that Evanston, with neighboring communities, will share in the responsibility of providing for its special needs populations. The Comprehensive Plan also references the HUD Consolidated Plan which provides a more detailed analysis of the housing market especially as it relates to these populations and low and moderate-income households. It points to a need for additional supportive housing for persons with mental illness, developmental disabilities and other disabling conditions.

Analysis

Staff reviewed regulations from bordering municipalities, comparable national communities and consulted the American Planning Association’s (APA) Planning Advisory Service for research on example ordinances and broader national trends. The attached chart provides a brief overview. Group Homes of similar size are largely permitted within residential districts by right and have distance requirements ranging from 600 feet to 1320 feet. A recent legal case in Springfield, IL *Valencia v. City of*

*Springfield*, challenged that City's 600 foot distance requirement for family care residences which allow up to 6 unrelated residents. The court in that case issued a preliminary injunction against Springfield in August 2017. That ruling was upheld by the U.S. Court of Appeals for the Seventh Circuit in March of this year.

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

#### Standards of Approval

The proposed Zoning Ordinance Text Amendment to make Residential Care Homes - Category I and Category II Special Uses in the districts it is currently permitted by right may meet some of the standards for approval of amendments per Section 6-3-4-5 of the City Code. An objective of the Comprehensive General Plan is to maintain the appealing character of Evanston's neighborhoods while guiding their change, however, it is unclear whether residential care homes, with the existing distancing requirements, are affecting this objective. Additionally, the proposal appears to be in contrast with the objective of ensuring that Evanston, along with neighboring communities, will share in the responsibility of providing for its special needs populations.

As regulations for Residential Care Homes direct the homes to fit within the context of the neighborhood they are located in as well as not create additional traffic within that area, there are no adverse effects to public utilities that would be expected from this type of use nor does staff believe that a well operated facility would have adverse effects on the values of adjacent properties. As detailed in the previous comparison chart, almost all communities permit the operation of similar facilities by-right while implementing distance requirements similar to Evanston to prevent any one area from having an over-concentration of residential care homes.

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

#### **Recommendation**

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

### **Attachments**

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- List and Map of current Residential Care Homes
- Facility descriptions (Residential Care Homes and Transitional Facilities)
- Comparable City Regulations
- American Planning Association- Zoning Practice, Issue Number 6: *Practice Group Housing*
- Link to *Affirmatively Furthering Fair Housing; Final Rule*:  
<https://www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17032.pdf>

**Licensed Residential Care Homes as of 07/19/16**

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

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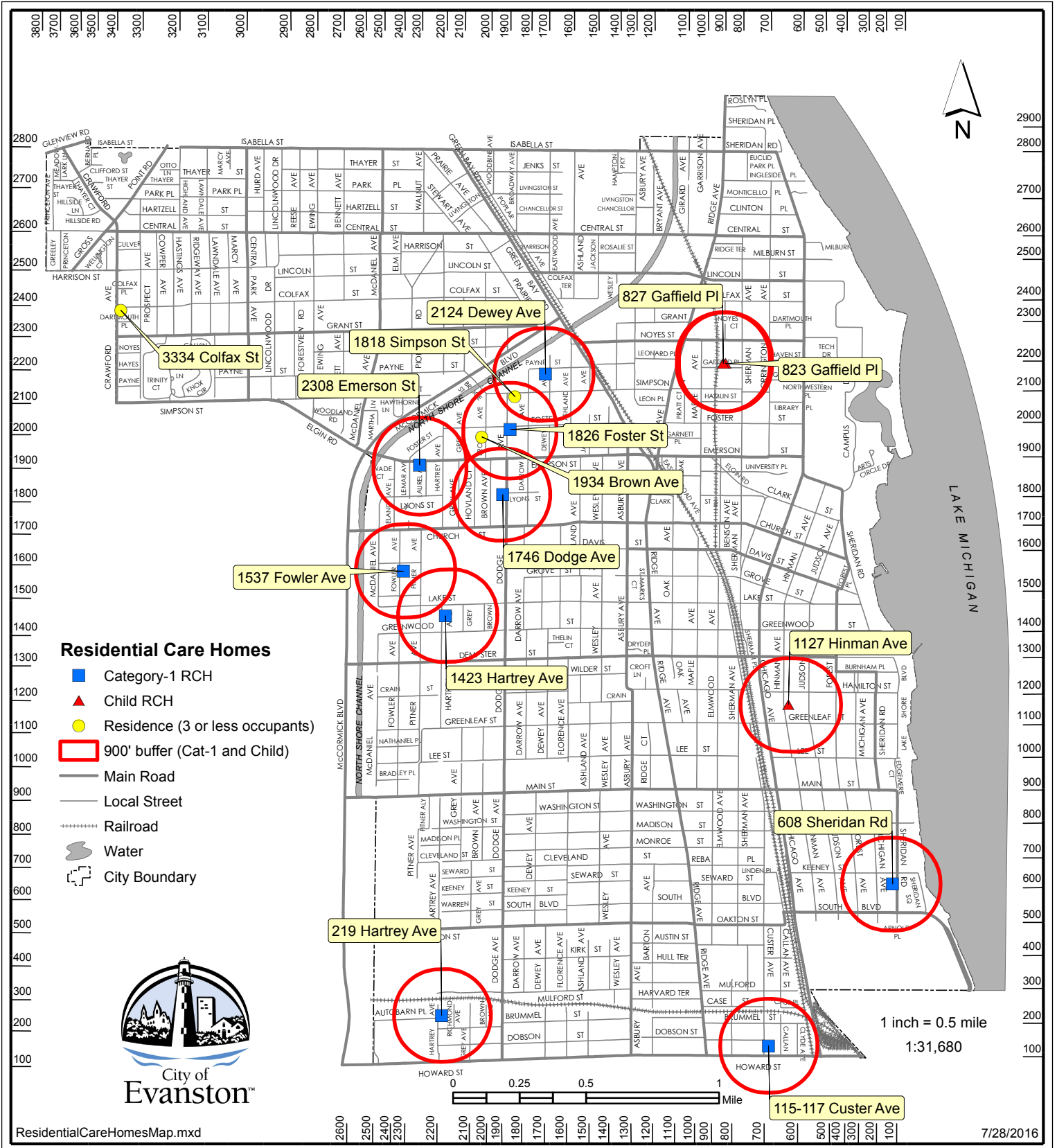
Category 1 = 4 to 8 occupants; 900' distance requirement

Category 2 = 9 to 15 occupants; 900' distance requirement

Child = child residential care home = 4 to 8 occupants; 900' distance requirement

Residence = 3 or less occupants; no distance requirement

# Residential Care Homes



This map is provided "as is" without warranties of any kind. See [www.cityofevanston.org/mapdisclaimers.html](http://www.cityofevanston.org/mapdisclaimers.html) for more information.

# Residential Care Homes and Transitional Treatment Facilities

## **Residential Care Homes**

\*License required from City department of Health and Human Services

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

- Allowed as a permitted use, as of right, in R1, R2, R3, R4, R5, R6, B1, B2, B3, C1a, D1, D2, D3, D4, MU, MXE, T1 and T2. (In B1, B2, B3, C1a, D2, D3 and D4 must be above ground floor)
- Allowed as special use in MUE
- Must be minimum of 900' of another child residential care home, residential care home or transitional treatment facility.

***Residential Care Home - Category II:*** A dwelling unit shared by nine (9) to fifteen (15) unrelated persons, exclusive of staff, who require assistance and/or supervision and who reside together in a family type environment as a single housekeeping unit. "Residential care home — category II" shall not include a home for persons who are currently addicted to alcohol or narcotic drugs or are criminal offenders serving on work release or probationary programs. (Ord. 43-0-93).

- Allowed as a permitted use, as of right, in R4, R5, R6, D1, MU and MXE
- Allowed as special use in R1, R2, R3, B1, B2, B3, C1a, D2, D3, D4, MUE, T1 and T2 (In D2, D3 and D4 must be above ground floor)
- Must be minimum of 900' from another child residential care home, residential care home or transitional treatment facility.

***Child Residential Care Home :*** A dwelling unit shared by four (4) to eight (8) unrelated persons, under the age of twenty-one (21) years, exclusive of staff, who require assistance and/or supervision while pursuing a primary or secondary education curriculum, and who reside together in a family-type environment as a single housekeeping unit. "Child residential care home" shall not include a home for persons who are currently addicted to alcohol or narcotic drugs or who are criminal or juvenile offenders serving on work release, probationary or court-ordered supervisory programs

for offenders; nor a dormitory, fraternity/sorority dwelling, boarding house, rooming house or nursing home. (Ord. 40-0-95)

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

### **Transitional Treatment Facility**

\*License required from City Department of Health and Human Services

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

### **Transitional Treatment Facility (Category I – 4-8 Residents)**

- Allowed as special use in R1, R2, R3, R4, R5, R6, MU, MUE, MXE, T1 and T2
- Must be minimum of 900' from another child residential care home, residential care home or transitional treatment facility

### **Transitional Treatment Facility (Category II – 9-15 Residents)**

- Allowed as special use in R4, R5, R6, MU, MUE, MXE, T1 and T2
- Must be minimum of 900' from another child residential care home, residential care home or transitional treatment facility

### **Transitional Treatment Facility (Category III – 16 or more Residents)**

- Allowed as special use in B2 and B3
- Must be minimum of 900' from another child residential care home, residential care home or transitional treatment facility



City	Use Title(s)	# of Residents	Regulations	Distance Requirement (ft)
Skokie, IL	Congregate Living Facilities	up to 10 (permitted), 11+ (special use)	May only be in a residence otherwise identified as permitted or special uses in a district	600 in R1 & R2, 300 in R3 & R4
Wilmette, IL	Group Homes	2 to 5 people	Permitted use in all but highest density residential district	none specified
Chicago, IL	Community Homes	Family- Up to 8 people Group- 9 to 15 people	Permitted by right in all residential districts Group- Special Use in lower density residential districts, permitted in higher density residential district	none specified
Oak Park, IL	Community Residence- Residential Care Home/Facility	Up to 6 people	Permitted by right in all residential districts. Residential Care Facilities Special Use	600
Champaign, IL	Community Living Facility Category I&II	Cat. 1- Up to 4 people Cat. 2- Up to 8 people	Permitted by right in all residential districts	1000
Schaumburg, IL	Group Home	Up to 8 people	Designated as a Special Use but may be permitted if home compliant with Special Use regulations	1320 (single family districts) 600 (multi-family districts)
Geneva, IL	Group Home	Up to 8 people	Permitted by right in all residential districts. Special Use for more than 8 people	1320
Pasadena, CA	Group Home	Up to 6 people	Permitted by right in residential districts, subject to code regulations and obtaining a "reasonable accomodation permit"	500
Centennial, CO	Type A Group Home (Type B- any group home that does not meet Type A standards or service a protected group under fair housing.)	Up to 8 people	Permitted by right subject to distance requirements and basic standards	750
Arlington Heights, IL	Small/Large Community Residence	Small: 1-4; Large: 5-8	Small- Permitted by right; Large- must obtain administrative occupancy permit; Special Use if over 8 people	none specified
Carpentersville, IL	Nursing Homes (no other group homes permitted)	No limit for nursing homes	Special Use in R1-5 Districts	-
Buffalo Grove, IL	Family Community Residence Family Residential Care Home	Up to 6 people	Permitted by right in all residential districts	1000
Des Plaines, IL	Residential Care Home	Small: 1-5; Large: 6-10	Permitted- Small: R1-4; Large: R3-4; Special Use- Small: C-1; Large: R1-2	1000 (can be waived by City Council)
Winnetka, IL	Group Home	Up to 8 people		1320 (single family districts) 600 (multi-family districts) (can be waived by City Council)

# ZONING PRACTICE

JUNE 2016



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 6

## PRACTICE GROUP HOUSING



# 6

# Become a Group Home Guru

By Dwight H. Merriam, FAICP

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

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

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

Unquestionably, and facilitated by good planning and regulation, the appropriate siting of group homes will help a community become a richer and more diverse place, and facilitate

the ends of social justice. Social justice is the watchword here. People with disabilities, particularly those with developmental disabilities and suffering from mental health issues, have been treated despicably and only in recent times have come, in large measure though not universally, to be protected and respected.

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

## 'GROUP HOME' DEFINED

The term "group home" generally refers to any

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

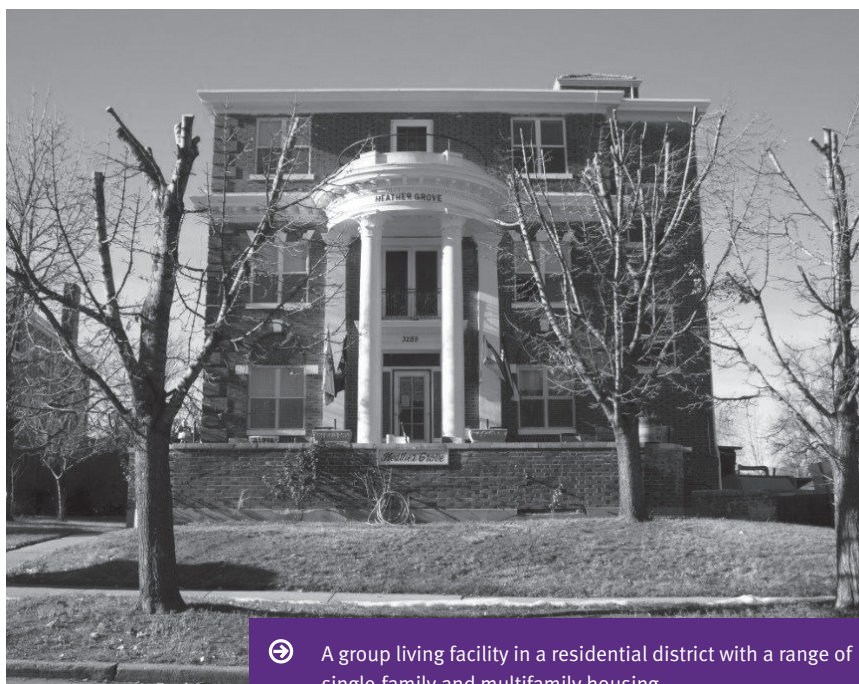
How a group home is defined ultimately delimits the reach of planning and regulation, and guides public policy making. The U.S. Department of Justice has defined the term (2015). Many state and local governments have their own definitions as well. It is worthwhile to consider the broadest range of definitions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

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

## FEDERAL ZONING

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

The Religious Land Use and Institutionalized Persons Act (RLUIPA) gives religious organizations and institutionalized persons the right to seek redress in state or federal court when they believe the government is infringing on their legal rights. RLUIPA can be, and very often is, used to force zoning changes to allow



➡ A group living facility in a residential district with a range of single-family and multifamily housing.

religious activities involving the use of land to go forward, overriding local plans and local regulations as necessary.

The Telecommunications Act of 1996 requires that local governments not regulate in a manner that prohibits or has the effect of prohibiting antennas and towers providing personal wireless services. The Act also directs that communities act on applications within a reasonable time and that any denial of an application must be made in writing and supported by substantial evidence. The Act is unusual in that it expressly preempts local regulation under certain circumstances. It does so if the local decision denying an application is based directly or indirectly on the environmental effects of radiofrequency emissions (47 U.S.C. §332(c)(7)).

One of the most direct initiatives from our federal government is the Air Installations Compatible Use Zones (32 CFR §256.5). The program mandates that the secretaries of military departments coordinate with local governments around military air installations “to work toward compatible planning and development in the vicinity of military airfields. . . .”

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

Note that federal law, and many state and local laws, use the now-outmoded term “handicapped.” The more accurate, appropriate, and respectful description is to use the phrase “a person with a disability” and not a “handicapped person” or a “disabled person.” There is by no means universal agreement on



Brian J. Connolly



A facility for persons with cognitive disabilities in Denver.

this terminology and grammatical structure. Some argue that the generally preferred phrasing “a person with a disability” suggests a medical, rather than the social model (e.g., see Eagan 2012).

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

Not included within the reach of the federal law, except to the extent that the residents also are disabled, are group homes that are alternatives to incarceration, temporary housing for workers, halfway houses for ex-offenders, homeless shelters, places of sanctuary and prayer, homes for those who are victims of domestic violence, college dormitories . . . you can readily add to this list. Providing for these other types of group homes is important and can be done at the same time as the community addresses its required compliance with the FHAA, but (now take a deep breath) there is one important and dramatic distinction for those types of group homes falling under the protection of the FHAA.

#### SHOW ME THE MONEY

That distinction has to do with the endgame of an FHAA action. In a typical zoning appeal, for example when a homeless shelter developer is denied a conditional use permit and appeals

and wins, the developer still has to pay for all of its own legal costs. However, consider what happens if the developer of a group home within the reach of the FHAA—one for adults with developmental disabilities, for example—is denied a conditional use permit. If the developer appeals and also brings an action under the FHAA—and wins—that developer is a prevailing party in a fair housing suit, and is allowed, in the court’s discretion, reasonable attorney fees (42 U.S.C. §3613(c)).

If the action is brought under the Civil Rights Acts of 1871, a so-called Section 1983 action for a violation of federal constitutional or statutory law, the prevailing party may recover attorney fees under the 1976 Civil Rights Attorney’s Fees Act (42 U.S.C. §1988). Unless there are special circumstances, a prevailing plaintiff should be awarded attorney fees, but a prevailing defendant, for example the local planning board, is entitled to attorney fees only if the suit was “frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so” (*Hensley v. Eckerhart*, 461 U.S. 424 (1983)). The attorney fees provision, enacted to encourage lawyers to take on these cases, brings a heavy thumb down on the scales of justice.

How bad can that be? Last year, Newport Beach, California, settled some long-running litigation against the city brought by providers of group homes who claimed the city violated the FHAA in effectively prohibiting group homes with seven or more residents in most of the residential areas, as well as requiring that existing group homes go through the same permit process as is required for new homes, including a public review process (Fry 2015). The city of Newport Beach spent more than \$4 million of its own money defending its position





A small drug and alcohol recovery facility in a low-density residential setting.

Brian J. Connolly

and agreed to pay the group homes \$5.25 million. In short and in sum, the fight cost the city \$10 million. Even at the cost of building a new, high-end group home specially adapted for people for physical disabilities, this \$10 million “wasted” in the litigation could have provided more than 80 new beds in Newport Beach, based roughly on the \$600,000 recently spent elsewhere to build a five-bed facility (Salasky 2012).

### THE ‘SEVEN-NUN CONUNDRUM’

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

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

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

Is your definition similar? Almost certainly it is. Remember, however, that we actually have 51 constitutions in this country, one federal and 50 state, and what may be constitutional under

federal law may not be constitutional under state law. A half-dozen or so states interpreting their state constitutions have ruled this kind of definition of family unconstitutional under their state constitutions, holding that the definition is not reasonably related to promoting the public’s health, safety, and general welfare.

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

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

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

hood. The nuns will come and go, novices will come and go, visitors will come and go. The result will be that our property values would decrease” (Ziemba 1998).

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

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

### IT ALL STARTS WITH PLANNING

Planning for and regulating group homes

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

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

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

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

What is often lacking in the available data and in the surveys conducted is the ability of families to care for those who are disabled and who may be prospective residents of a group home. There are many advocacy groups for people with all types of disabilities that may prove helpful in identifying the hidden demand—families who are caring for their own, often struggling and anxious about the future

care of their family members. Among these organizations are the American Association of People with Disabilities, the National Disabilities Rights Network, the National Information Center for Children and Youth with Disabilities, the National Organization on Disability, and the National Supportive Housing Network.

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

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

## THE REGULATIONS

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

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

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

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

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

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

Take care not to stigmatize the potential residents. Federal appellate courts covering about half of the country have found that a formal, discretionary approval, such a conditional use permit, is not acceptable when used in making a decision regarding persons with disabilities or those otherwise protected under the FHAA, because they stigmatize the resi-



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➡ An assisted living facility outside of Denver.

dents by requiring them to come “hat in hand” for permission to live like any other household. The floating zoning approach has the same problem. At the same time, local officials have a real need to make sure that the group home meets the needs of its residents, fits in with its neighbors, and blends in such that it is indistinguishable from others. Questions that arise include access to transportation, appearance and scale, parking, and density of occupancy. Locational criteria such as these and others must be assessed either through a public review or by staff.

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

Given that residents may have cognitive or physical disabilities affecting mobility, it is especially essential to give special care to housing, building, and fire codes in the administration of any group homes program. One common issue is determining the “right” number of residents permitted. Some of the federal courts have used a “rule of eight” allowing up to eight essentially as-of-right—but beyond that, supporting greater discretion by the local government. (*Oxford House-C v. City of St. Louis*, 77 F.3d, 249, 253). Smaller group homes tend to be better integrated in single-family detached neighborhoods, while the larger group homes provide economies of scale, the opportunity for a higher level of service, and often peer support that is essential to some populations, such as those in drug and alcohol abuse recovery. Again, a hybrid approach allowing a range of levels of occupancy depending upon the setting may prove to be the most advantageous strategy. For example, a group home in a single-family residence of not more than eight people including caregivers and

managers might be as-of-right. Any home with greater occupancy could be required to have some type of formal review, perhaps site plan review at a public meeting, or a conditional use permit, or even a rezoning with a floating zone or overlay district. But it also may depend upon the context. Would it be necessary, for example, to require a public hearing for the conversion of an existing 10-apartment building to a group residence for 40 people recovering from addiction?

**ONE REALLY GOOD EXAMPLE**

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

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

Group homes (“Group Living”), defined in part as being “larger than the average household size,” were addressed consistent with the state statutes, while distinguishing them from

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

The regulations are not perfect—and they should not be considered a model for adoption elsewhere without careful consideration. However, the city did a good job of reconciling competing needs and the regulations are worthy of consideration.

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

If a community does not have good planning and regulations, such that group homes are not readily approved and developed without discrimination, the FHAA requires that local governments provide a “reasonable accommodation” for group homes with disabled persons (42 U.S.C. §604(f)(3)(B)). In the words of a federal appellate court: “reasonable accommodation provision prohibits the enforcement of zoning ordinances and local housing policies in a manner that denies people with disabilities access to housing on par with that of those who are not disabled” (*Hobson’s, Inc. v. Township of Brick*, 89 Fed.3d 1096, 1104 (3rd Cir. 1996)). A reasonable accommodation



can be anything, including use or dimensional variances, amending the regulations, issuing a building permit even though it is illegal under the regulations, and allowing a group home to be considered similar enough to some other use permitted under the regulations, such as a bed and breakfast. Being forced to make a reasonable accommodation is a poor substitute for good planning and regulation, but sometimes it may be all you have.

### MEET THE NEED, MEET THE LAW

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

The federal Fair Housing Amendments Act, the principal federal law dealing with mat-

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

### ABOUT THE AUTHOR

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

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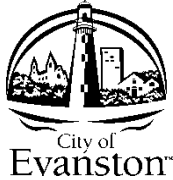
HAS YOUR COMMUNITY MADE  
SPACE FOR GROUP HOUSING?

6

# Plan Commission

## Discussion

### Public Benefits for Planned Developments



## Memorandum

To: Honorable Mayor and Members of the City Council

From: Johanna Leonard, Director of Community Development  
Scott Mangum, Planning and Zoning Administrator

Subject: Public Benefits for Planned Developments

Date: August 6, 2018

### Recommended Action

Staff requests City Council direction, which could come in the form of a referral to the Plan Commission if a Text Amendment is recommended or a recommendation for no further action.

### Livability Benefits

Built Environment: Provide compact and complete streets and neighborhoods.

### Summary

An exaction, commonly known as a public benefit, is a legal concept in which a condition for development is imposed on a piece of property that requires the developer to mitigate negative impacts of the development.

The City of Evanston Zoning Ordinance (City Code Section 6-3-6-3) lists the nine public benefits to the surrounding neighborhood and the City as a whole that are intended to be derived from the approval of planned developments, which include, but are not limited to:

- (A) Preservation and enhancement of desirable site characteristics and open space.
- (B) A pattern of development which preserves natural vegetation, topographic and geologic features.
- (C) Preservation and enhancement of historic and natural resources that significantly contribute to the character of the City.
- (D) Use of design, landscape, or architectural features to create a pleasing environment or other special development features.
- (E) Provision of a variety of housing types in accordance with the City's housing goals.
- (F) Elimination of blighted structures or incompatible uses through redevelopment or rehabilitation.

- (G) Business, commercial, and manufacturing development to enhance the local economy and strengthen the tax base.
- (H) The efficient use of the land resulting in more economic networks of utilities, streets, schools, public grounds, buildings, and other facilities.
- (I) The substantial incorporation of generally recognized sustainable design practices and/or building materials to promote energy conservation and improve environmental quality, such as level silver or higher LEED (leadership in energy and environmental design) certification.

Recent planned development ordinances have contained a range of conditions of approval relating to public benefits. An updated catalogue of recently approved planned developments and their associated benefits is attached. Many of the benefits relate to supporting transportation systems, streetscape infrastructure, public art components, sustainability elements, and affordable housing.

While a definitive list of all appropriate public benefits does not exist, the following exactions can be utilized by the City for a development (loosely ordered by relative cost):

Dedications for Streets, Sidewalks, and Other Public Ways

Dedication of Public Open Space

Public Right-of-Way Infrastructure Improvements

Historic Preservation

Payment into a Public Fund in excess of code requirement (e.g. Inclusionary Housing Ordinance)

Improvements to public infrastructure such as parks, transit stations or viaducts

Public Art

Provision of Cultural Facilities

Facilities for Non-Profit Organizations

Recreational Facilities open to the Public (e.g. Parks or Gardens)

Landscaping/Creation of Open Space for the Public

Free or Discounted Transit Passes for Employees and Renters

Operation of a Shuttle Service

Apprentice Program for Students

Local hiring of a minimum number of Evanston residents

Bird Friendly building measures

Green Building certification exceeding LEED Silver

Public Access to Private Facilities

Public Access to Electric Vehicle Charging Stations

Public Access to Car Share Programs

Pedestrian Countdown Timers

Crosswalk Improvements

Public Safety Enhancements (such as blue lights)

Divvy Station Sponsorship

Public Bike Parking

Tree Preservation  
Transit Tracker Board  
Wayfinding signage

#### Other Local Municipalities

Preliminary research indicates that other municipalities have enacted ordinances which vary in whether or how they address public benefits. For example, the Village of Skokie provides for the imposition of reasonable contributions, including dedications of land for public purposes, installation of streetscape infrastructure, and/or preservation of areas containing significant natural, environmental, or historic resources. The Village of Wilmette requires benefits to grant exceptions to district regulations for Planned Developments including community amenities, preservation of historic structures, adaptive reuse, preservation of environmental features, public open space, public infrastructure, affordable or accessible dwelling units, and/or sustainable design. The City of Highland Park requires public benefits, which include sustainable building and site design, streetscape improvements, and/or downtown improvements.

A number of other municipalities either do not have ordinances that require public benefits for planned developments or have requirements for impact fees relating to all residential development. Impact fees are more common in jurisdictions where considerable open land exists that requires new infrastructure in order to be developed.

#### Incentive Zoning

Some municipalities have implemented incentive based zoning regulations, where developers are granted development bonuses (i.e. increased height, floor area ratio, etc.) as a result of certain development criteria (i.e. green roofs, preservation, increased building setbacks, and other urban design features). This approach was included in the Form Based Zoning component of the 2009 Downtown Plan that was proposed in the plan, but never codified.

#### City of Chicago – Neighborhood Opportunity Fund

The City of Chicago moved away from an incentive based downtown zoning strategy in 2016 with the establishment of the Neighborhood Opportunity Bonus. The Neighborhood Opportunity Bonus essentially allows developments to voluntarily purchase additional FAR in specified areas adjacent to downtown where a map amendment is requested in the form of a planned development. Cash contributions for additional FAR are allocated toward the Neighborhood Opportunity Fund (80%) used for economic development in underserved areas of the City, Local Impact Fund (10%) to support improvements near the site, and Adopt-a-Landmark Fund (10%) to restore structures designated as official landmarks.

#### Attachments

Public Benefits approved per 9 recent Planned Development Ordinances  
City of Chicago, [Neighborhood Opportunity Bonus](#) system

Public Benefit	128-130 Chicago Ave.	1727 Oak Ave.	1450 Sherman Ave.	831 Emerson St.	824 Noyes St.	1815 Ridge/Oak Ave.	1620 Central St.	1571 Maple Ave.	835 Chicago Ave.
<b>Affordable Housing</b>	Must provide 5 on-site affordable units: (3) 1-bedroom and (2) 2-bedroom units at 80% AMI	Must provide 17 on-site affordable studio or 1-bedroom units: 4 units at 50% AMI, 5 units at 60% AMI, 8 units at 80% AMI	Must provide 15 on-site affordable units: 3 units at 50% AMI, 6 units at 60% AMI and 6 units at 80% AMI	Must provide a \$2,400,000 contribution to the affordable housing fund	Must provide 4 on-site affordable units: 1 studio 50% AMI, 1 one-bedroom at 60% AMI, 1 two-bedroom at 50% AMI and 1 three bedroom at 60% AMI	Must have 2 onsite affordable units at 80% AMI	Applicant agrees to provide two on-site affordable housing one-bedroom units to household earning at or below 100%AMI. The applicant must submit a compliance report by Jan. 31 of each year to the Housing Division of the Com Dev. Department showing the unit number, number of bedrooms, tenant name, number of persons in each affordable household unit, annual gross income of each affordable housing unit, date of income certification and monthly unit rent. The report must include the list of any utilities included in the rent.	Applicant must provide 2 one-bedroom affordable housing units on site (with a goal of 1 one-bedroom and 1 two-bedroom unit) to households earning no more than 100% AMI. The units must be affordable for 10 years. The applicant must submit a compliance report by Jan 31 each year to Housing and Grants Division of Com. Dev. Dept. showing unit number, number of bedrooms, tenant name, number of persons in each affordable household unit, annual gross income of each household occupying affordable unit, date of income certification and monthly rent. The compliance report must include list of any utilities.	If the project is converted into condos, the applicant must pay \$440,000 to the City's Affordable Housing fund
								Must pay \$400,000 towards Affordable Housing fund in two installments: First installment shall be made within 10 days of Final CO issuance and Second installment within 1 year of Final CO issuance.	
<b>Divvy</b>			Applicant shall provide one free Divvy or similar car-share membership for each unit who is not on record as having paid the Evanston wheel tax for any vehicles registered out of state		Must make a one-time \$10,000 contribution to the Divvy Bike Share Program prior to FCO	Must provide a \$10,000 sponsorship for the Divvy bike share program prior to issuance of building permit	Must provide one divvy bike share membership for every unit for 3 years	Applicant must pay one-time Divvy sponsorship \$56,000.	
<b>Public Art</b>			Must pay a one-time contribution of \$50,000 to the City's Public Art Fund		Must make a one-time \$10,000 contribution to the Public Art fund prior to issuance of FCO	Must install art installation within the pocket park north of the proposed building			Must include public art visible to pedestrians. This may be stamped concrete, special brick work, glass blocks, or landscaping art. The applicant is responsible for installation and continued maintenance
<b>CTA/Metra</b>		Must install CTA Transit Tracker Display Board or like system as information/technology changes within building lobby and visible from adjacent sidewalk in perpetuity	Must restore the Union Pacific/Metra viaduct located of Lake Street for one lifecycle of the life of the restored paint in the form of painting and lighting upgrades unless a one-time \$50,000 in-lieu payment is requested by the City Manager		Will install a CTA Transit Tracker display board in the building lobby area		Must provide one free transit pass for each unit, based on each unit lease's prescreen of either CTA or Metra for one year.		
			Must install CTA Transit Tracker Display Board or like system as information/technology changes within building lobby in perpetuity						
<b>Car-Share</b>			Applicant shall provide one free Divvy or similar car-share membership for each unit who is not on record as having paid the Evanston wheel tax for any vehicles registered out of state	Must provide two on-site car-share spaces through a third party commercial car-share company	Must provide one free Enterprise car-share pass to each building unit for the first year of leasing		Must arrange for two car-share spaces to be provided along Central St with an arrangement with a common third party commercial car-share company.	Must provide one car share membership per unit	Must provide two car-share spaces. In the event the building is converted to condos, this requirement no longer applies.
<b>Streetscape-Infrastructure</b>	Agrees to continue working with Metra/UP to install and maintain landscaped embankment improvements adjacent to the property for the life of the development	Must provide \$17,000 to pay for installation of two additional on-street parking pay boxes and cost of lost meter revenue during construction	Must provide \$50,000 contribution to the City for Capital Improvements for park revitalization within 1/2 mile of the subject site	Must resurface alley adjacent to the subject property per engineering standards and install a sidewalk to the west of the alley	Must repave 100 linear feet of alley adjacent to the subject property	Must construct Oak Ave streetscape improvements and modify island at Clark St. and Oak Ave. per exhibits B and C of the ordinance	Must bury overhead utility lines in the alley adjacent to the property, if possible.	Must improve streetscape including street trees along Elmwood and Maple per Development and Landscape Plans	Must construct Chicago Ave and Main St. streetscape per approved landscape plans
	Must replace all sidewalks adjacent to the full length of the subject property on Howard St and Chicago Ave	Responsible for repainting the protected bike lane on Church Street between Oak Avenue and Maple Avenue	Must implement a maintenance program for Harper Park	Must install streetscape elements inclusive of street trees as detailed in exhibits D and E	Must install and maintain streetscaping improvements including new sidewalk from subject property to alley east of property and parkway landscaping as in Exhibit C of the ordinance	Must upgrade existing traffic signals at Church St. and Oak Ave to include pedestrian countdown timers	Must construct streetscape improvements along Central St per Exhibits B and C of ordinance	Must install and maintain landscaping materials on the east side of Elmwood Ave along the embankment as shown on landscape plans	The applicant must bury adjacent property utility lines, including but not limited to the lines on the four adjacent utility poles.

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	Must install all improvements to the streets, including grinding of existing pavement parkings, restriping, and asphalt patching at new water/sewer services within the Howard St and Chicago Ave ROWs	Must provide \$15,000 contribution to Evanston towards the installation of pedestrian countdown timers for nearby traffic signals	Must resurface Sherman Avenue full street width, curb to curb from Lake Street to Grove Street post construction and restore the west alley adjacent to subject property	Must make crosswalk improvements including raised sidewalk at Emerson entrance to alley and restriping of crosswalks to high-visibility	Must provide improvements to the pedestrian crosswalk at Noyes St and Noyes Ct intersection as in exhibit B of the ordinance	Must install crosswalks at east side of Ridge Ave and Clark St intersection; east side of Clark St and Oak Ave intersection; all sides of Church St and Oak Ave intersection		Must install 16 reverse U-shape bike parking facilities near the intersection of Maple and Elmwood	Applicant agrees to apply for City's Special Assessment Process to have the north-south alley repaved. If the Special Assessment Process is not approved, the applicant must reconstruct the ally at its sole cost along its property.
	Install and maintain landscaping improvements as depicted in Exhibit E	Must make improvements to the midblock crosswalk on Oak Avenue including curb extensions, restriping, and additional signage	Must install and maintain streetscaping improvements along Lake Street and Sherman Avenue as depicted in Exhibit C	Must provide \$20,000 contribution to Evanston towards the installation of pedestrian countdown timers for nearby traffic signals		Must construct streetscape improvements along Ridge Ave per exhibits B and C of the ordinance			
		Must install and maintain streetscaping improvements including bike racks, wayfinding signage, curb extension, street trees, and landscaping as depicted in Exhibit C.	Must install wayfinding signage pointing to transit service at the Davis Street Metra, Chicago Transit Authority, Pace and Divvy stations. Will also be installed to direct safe pedestrian route to Dempster Street CTA station	Must install 18 bicycle parking spaces for visitors and customers along Emerson Street		Must install 28 bicycle parking space for visitors on west and south portions of the development			
			Must contribute \$15,000 to the City towards the installation of pedestrian countdown timers when the City conducts its traffic light update	Must bury utilities where possible					
			Must install landscaping as approved in Exhibit C.	Must install landscaping as approved in the ordinance.					
			Must bury utilities where possible						
<b>Green Building</b>			LEED Silver. Seeking LEED Gold or higher	LEED Silver	LEED Silver	LEED Silver	LEED Silver	LEED Silver	LEED Silver
	Applicant will implement following strategies to improve and incorporate bird friendly measures: install low reflective glass windows; install metal balcony railing rather than glass doors and balconies; minimize external lighting from 12:00 am to dawn during Spring and Fall migration; and avoid guy wires and roof lighting that pose a bird hazard		Applicant agrees to be in full compliance with LEED 55 standards for Zone 1 of the building(36 feet above grade) and 12 feet above any green roof	Must provide one on-site electric vehicle charging station			Must install two on-site electric charging stations and make them available free of charge.	Must install one free on-site electric vehicle charging station	
				Must install utilization measures to mitigate harm to migratory birds, including use of fritted glass on the amenity deck railing.			Must construct green roof on portion of the underground garage per Exhibit C of ordinance	Must install a pervious parking lot on the property	
							Must install multiple green roofs as shown on Landscape Plans		
<b>Other</b>		Applicant to create publicly accessible dog park to be maintained by on-site building management	Applicant will create a publicly accessible pocket park on the South end of the subject property as depicted in Exhibit B	Must install 18 bicycle parking spaces for visitors and customers along Emerson Street			Must preserve Elm tree in the southeast corner of the property	Applicant agrees to prepare and record an access easement for the benefit of two properties to the west for trash pick up along north side of parking lot. A copy of the recorded document must be submitted prior to building permit issuance.	Applicant agrees to work with the waste management company to assure the alley is passable during waste collection/or pick-up.
			Must pay a one-time contribution in the amount of \$60,000 for the purchase of a shipping container for self-contained vegetable growth near subject property	Applicant agrees to hire a minimum of 5 Evanston residents during construction			Must provide a 15-foot access easement for SFR owners to the east and pave 10 feet of that for access to rears of SFR lots. A copy of the recorded easement must be submitted before the permit is issued.	Applicant must sign a lease for 101 parking spaces at Maple Ave garage for 7 years initially. After the first 7 years, the parking lease agreement can be modified every five years. The applicant must hold valid parking lease with the City of Evanston for the lifetime of the project.	Must pay \$2,250 for each on-street metered parking space lost during construction

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			Applicant will contribute \$50,000 to ETHS Entrepreneurship/Apprentice Program for on-site teaching of students. Will create 18 month training workshop				Must replace existing wood fence along the west property line belonging to the townhouse association adjacent to the west	Must install two landscape seating areas on private property along Maple Ave	Must pay \$72,281 for permanent loss of 4 on-street metered parking spaces to the City's Parking Fund prior to issuance of temp CO
			Must waived any tenant leasing application, move-in, or similar rental fees to be paid in advance of leasing space for employees of Evanston's 10 largest employers					Must include commercial space along Davis St.	
			Applicant agrees to hire a minimum of 5 Evanston residents, with a primary goal of 10, during construction					Must provide on-site parking for public with two-hour limits between 10am and 5 pm. Management company must manage and arrange for violators to be towed.	