Principles to Guide Zoning for Community Residences for People With Disabilities in Fort Lauderdale, Florida

Prepared by
Daniel Lauber, AICP

February 13, 2018

Law Office Daniel Lauber

Attorney/Planner: Daniel Lauber, AICP

Published by:

PLANNING/COMMUNICATIONS

Cite this report as:

Daniel Lauber, *Principles to Guide Zoning for Community Residences for People With Disabilities in Fort Lauderdale, Florida*
(River Forest, IL: Planning/Communications, Feb. 2018)

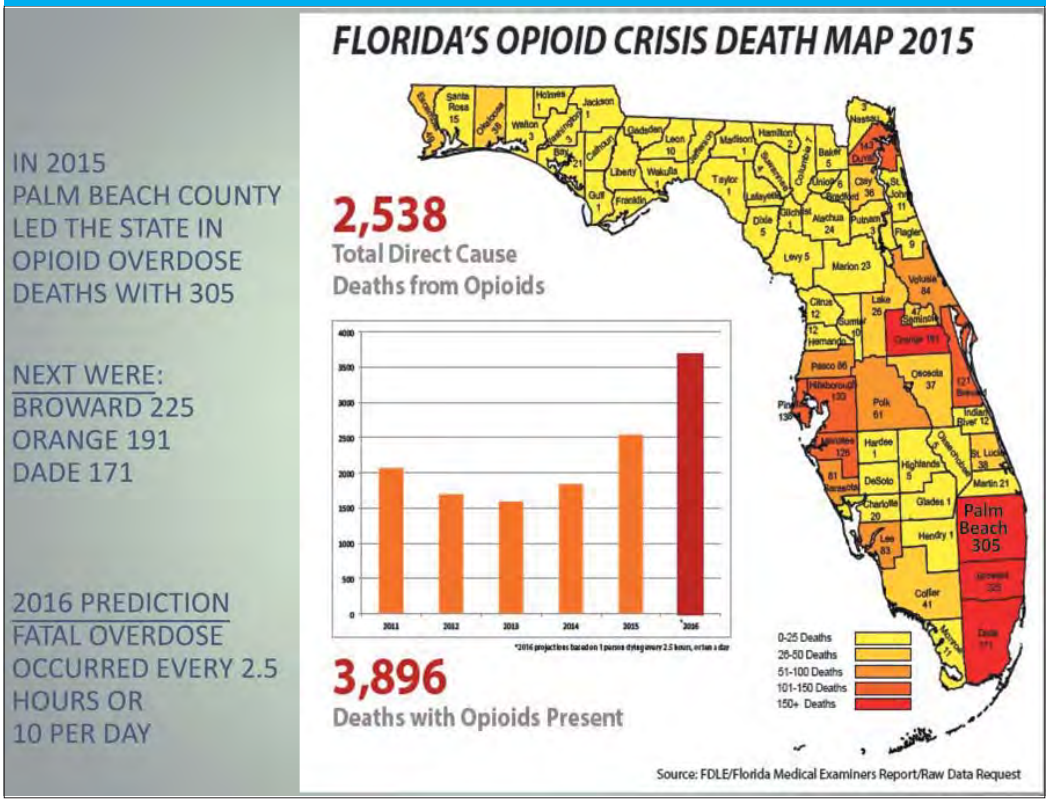
Table of Contents

Introduction

The United States continues to struggle to win the War on Drugs and Alcohol Abuse while in the midst of an opioid, drug, and alcohol addiction epidemic of unprecedented proportions for the past decade. One of the most essential weapons in the War on Drugs and Alcohol Abuse is the recovery residence, recovery community, or sober home. Properly operated and located, these types of community residences offer a supportive family–like living environment that fosters the normalization and community integration essential to attain long–term, permanent sobriety for their residents.

The State of Florida has been experiencing an "Opioid Crisis" with opioids, 2015, the direct cause of 2,538 deaths and present in an additional 3,896 fatalities. *This crisis does not respect municipal boundaries.* More people died of opiods in Broward County, where Fort Lauderdale is the county seat, than anywhere else in the state except Palm Beach County.

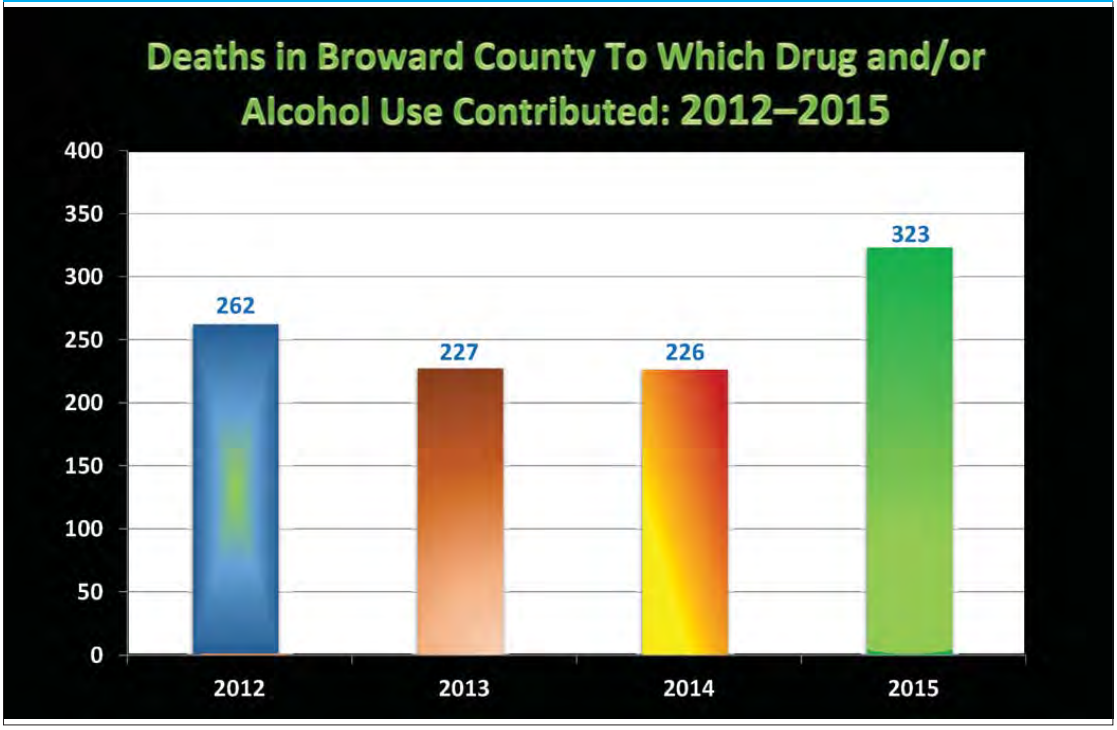
Figure 1: Florida's Opioid Crisis Death Map 2015



Source: Palm Beach County, *Addressing the Opioid Epidemic: County Staff Report to the Board of County Commissioners* (April 4, 2017) 5.

In Broward County, the frequency of fatalities due to opioid overdoses and alcohol soared by 43 percent from 2014 to 2015, the most recent years for which data are available.

Figure 2: Deaths in Broward County To Which Drug and/or Alcohol Use Contributed: 2012–2015



Source: Annual Drug Raw Data spreadsheets for 2012 through 2015 prepared by Policy and Special Programs, Medical Examiners Commission, Florida Department of Law Enforcement, 2016.

Sober living homes or recovery residences are a crucial component to achieve long–term recovery and sobriety. Just a 28 miles north of Fort Lauderdale is Delray Beach, dubbed "the recovery capital of America" by the newspaper of record a decade ago. The *New York Times* reported that "Delray Beach, a funky outpost of sobriety between Fort Lauderdale and West Palm Beach, is the epicenter of the country's largest and most vibrant recovery community, with scores of halfway houses, more than 5,000 people at 12–step meetings each week, recovery radio shows, a recovery motorcycle club and a coffeehouse that boasts its own therapy group…."[1] But as noted earlier, *this epidemic does not respect municipal boundaries.*

During the past decade, operators of recovery residences have expanded beyond Delray Beach. As noted on page 24 of this report, there are at least 83 certi-

1. Jane Gross, "In Florida, Addicts Find an Oasis of Sobriety," *New York Times,* Nov. 11, 2007. Available online at http://www.nytimes.com/2007/11/16/us/16recovery.html

fied or licensed recovery residences in Fort Lauderdale plus at least another 17 that are thought to be recovery residences but not confirmed as such. Delray Beach had 183 verified sober homes and another 64 thought to be sober homes in 2017.[2]

In more than 40 years of working on zoning for community residences for people with disabilities, the author of this study rarely sees such large numbers and intense concentrations of community residences of any type in a single city of any size, much less in two nearby cities. The concentration of recovery residences in southeast Florida is substantial.

As this report explains, clustering community residences — especially recovery residences — on a block and neighborhood reduces their efficacy by obstructing their ability to foster normalization and community integration. For the residents of these homes to achieve long–term sobriety, it is critical to establish regulations and procedures that assure a proper family–like living environment, free of drugs and alcohol, that weed out the incompetent and unethical operators, and protect this vulnerable population from abuse, mistreatment, exploitation, enslavement, and theft.

The southeast Florida media have been reporting[3] on ongoing criminal investigations of sober living operators. These investigations have found so–called sober homes that kept residents on illegal drugs, patient brokering, enslavement of residents into prostitution, kickbacks, bribery, and other abuses.

In the absence of mandatory state licensing or certification of recovery residences, a key expert estimates that at least half of the sober homes in Fort Lauderdale do not comply with the minimum "Quality Standards" that the National Alliance of Recovery Residences has promulgated.[4]

This failure to comply with even minimal standards of the recovery industry and the clustering of community residences in Fort Lauderdale may help explain the inability of so many sober living homes in Fort Lauderdale and southeast Florida to achieve sobriety among their residents and for high recidivism rates. These failures are in contrast to the much lower recidivism rates around the country of residents of certified sober living homes and of homes in the Ox-

2. Daniel Lauber, *Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (River Forest, IL: Planning/Communications, 3rd ed. August 2017).
3. A sampling of articles: "Kenny Chatman pleads guilty to addiction treatment fraud," *mypalmbeachpost.com* (March 16, 2017); Christine Stapleton, "Three more sober home operators arrested in Delray Beach," *Palm Beach Post* (Feb. 27, 2017); Lynda Figueredo, "Two Delray Beach sober home owners arrested for receiving kickback," *cbs12.com* (Nov. 19, 2016); Pat Beall, "Patient–brokering charges against treatment center CEO ramped up to 95," *mypalmbeachpost.com* (Dec. 27, 2016).
4. Email from John Lehman, CEO and Board Chair, Florida Association of Recovery Residences to Daniel Lauber, Law Office of Daniel Lauber (Nov. 16, 2017, 9:34 a.m. CST) (on file with the Law Office of Daniel Lauber).

ford House network which are subject to the demanding requirements of the Oxford House Charter and an inspection regime Oxford House maintains.[5]

The failure to comply with minimal standards was a focus of a grand jury that the Palm Beach County State Attorney's Office convened to investigate fraud and abuse in the addiction treatment industry. The grand jury reported:[6]

> The Grand Jury received evidence from a number of sources that recovery residences operating under nationally recognized standards, such as those created by the National Alliance for Recovery Residences (NARR), are proven to be highly beneficial to recovery. The Florida Association of Recovery Residences (FARR) adopts NARR standards. One owner who has been operating a recovery residence under these standards for over 20 years has reported a 70% success rate in outcomes. The Grand Jury finds that recovery residences operating under these nationally approved standards benefit those in recovery and, in turn, the communities in which they exist.
>
> In contrast, the Grand Jury has seen evidence of horrendous abuses that occur in recovery residences that operate with no standards. For example, some residents were given drugs so that they could go back into detox, some were sexually abused, and others were forced to work in labor pools. There is currently no oversight on these businesses that house this vulnerable class. Even community housing that is a part of a DCF [Department of Children and Families] license has no oversight other than fire code compliance. This has proven to be extremely harmful to patients.

The grand jury reported 484 overdose deaths in Delray Beach in 2016, up from 195 in 2015.[7] It recommended certification and licensure for "commercial recovery housing."[8] For full details on the grand jury's findings and recommen-

---

5. L. Jason, M. Davis, and J. Ferrari, The Need for Substance Abuse Aftercare: Longitudinal Analysis of Oxford House, 32 *Addictive Behaviors* (4), (2007), at 803-818. For additional studies, *also see* Office of Substance Abuse and Mental Health, *Recovery Residence Report Fiscal Year 2013–2014 General Appropriations Act,* Florida Department of Children and Families (Oct. 1, 2013), 21–25. Since the report focused on Palm Beach County, it did not provide similar data for cities outside that county.

   Oxford House is discussed throughout this study. The later discussion of Oxford House will make it clear that, unlike the recovery residences so prevelent in Fort Lauderdale and southeast Florida, each Oxford House is a self–run and self–governed sober home completely independent from any treatment center. Also see footnote 8 below.
6. Palm Beach Grand Jury in the Circuit Court of the 15th Judicial Circuit In and For Plam Beach County, Florida, *Report on the Proliferation of Fraud and Abuse in Florida's Addiction Treatment industry*, (Dec. 8, 2016) 16–17. While the report focused on Palm Beach County which is immediately north of Broward County, the applicability of its recommendations, like the opiod epidemic, is not limited by municipal boundaries.
7. Ibid. 99–101.
8. Ibid. 18. In contrast to the self–governed Oxford Houses that adhere to the Oxford House Charter and are subject to inspections by Oxford House, "commercial recovery housing" is operated by a

dations, readers should see the grand jury's report.[9]

Thanks in large part to the crackdown on patient brokering and other discordant practices of illegitimate predator sober homes in Palm Beach County, it has been noted that there is a migration of patient brokering and of sober homes to Broward County. According to the head of the Florida Association of Recovery Residences (FARR), requiring certification or licensing of sober homes appears to deter "those who are driven to enter the recovery housing arena by opportunities to profit off this vulnerable population. When seeking where to site their programs, this predator group evaluates potential barriers to operation. For them, achieving and maintaining FARR Certification is a significant barrier."[10]

****

This report explains the basis for text amendments that will be proposed to add provisions to Fort Lauderdale's *Unified Land Development Regulations* to 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 achieve full compliance with national law and sound zoning and planning practices and policies. 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)
- Case law interpreting the 1988 Fair Housing Act amendments relative to community residences for people with disabilities
- Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land*

---

profit–making third party entity, sometimes affiliated with a specific treatment program, complete with supervisory staff like most community residences for people with disabilities. In Florida, as elsewhere, such homes are almost always required to obtain a license from the state.

9. The grand jury's report is available online at: http://www.trbas.com/media/media/acrobat/2016-12/70154325305400-12132047.pdf.
10. Email from John Lehman, CEO and Board Chair, Florida Association of Recovery Residences to Daniel Lauber, Law Office of Daniel Lauber (Nov. 16, 2017, 9:34 a.m. CST) (on file with the Law Office of Daniel Lauber).

Use Laws and Practices and the Application of the Fair Housing Act (Nov. 10, 2016)[11]

- Florida state statutes governing local zoning for different types of community residences: Title XXIX Public Health, chapters 393 (Developmental Disabilities), 394 (Mental Health), 397 (Substance Abuse Services), 419 (Community Residential Homes); Title XXX, chapters 429 (Assisted Care Communities — Part 1: Assisted Living Facilities, Part II: Adult Family–Care Homes); and Title XLIV, Chapter 760 (Discrimination in the Treatment of Persons; Minority Representation) (2016)
- Florida state statute establishing voluntary certification of recovery residences: Title XXIX Public Health, chapter 397 (Substance Abuse Services) §397.487 (2016)
- The actual Florida certification standards for recovery residences as promulgated and administered by the certifying entity, the Florida Association of Recovery Residences based on standards established by the National Alliance of Recovery Residences
- The existing provisions of Fort Lauderdale's *Unified Land Development Regulations*

Community residences

Community residences are crucial to achieving the adopted goals of the State of Florida and the nation to enable people with disabilities to live as normal a life as possible in the least restrictive living environment. The nation has 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 and family–like living environment* rather than the institutional nature of a nursing home or hospital or the non–family nature of a boarding or lodging house. Their primary use is as a residence or a home like yours and mine, not a treatment center, an institution, nor a boarding house.

One of the core elements of community residences is that they seek to emulate a family in how they function. The staff (or in the case of a recovery community, 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

11. At http://www.justice.gov/crt/page/file/909956/download.

and incorporate them into the social fabric of the surrounding community, often called "community integration." 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 number of people who live in a specific community residence tends to depend on its residents' types of disabilities as well as therapeutic and financial needs.[12] Like other cities across the nation, Fort Lauderdale needs to adjust its zoning to enable community residences for people with disabilities to locate in all residential zoning districts, subject to objective conditions via the least drastic means needed to actually achieve a legitimate government interest.

Since 1989, the nation's Fair Housing Act has required all cities, counties, and states to make a "reasonable accommodation" in their zoning when the number of residents exceeds the local zoning code's cap on the number of unrelated people who can live together in a dwelling so that community residences for people with disabilities can locate in all residential zoning districts.[13]

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, 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.

---

12. 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, all community residences must comply with minimum floor area requirements like any other residence. If the local building code or property maintenance code would allow only six people in a house, then six is the maximum number of people that can live in the house whether it's a community residence for people with disabilities or a biological family. *City of Edmonds v. Oxford House* 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995).
13. As explained in this study, "family community residences" should be allowed as a permitted use in all zoning districts where dwellings are allowed when located outside a rational spacing distance from the nearest existing community residence and if licensed or certified. "Transitional community residences" should be allowed as of right in districts where multiple family dwellings are permitted uses (subject to spacing and licensing) and as a conditional use in other residential districts. A conditional use back–up is needed for proposed community residences that would be located within the spacing distance or for which a license or certification is not available.

*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 allow as a permitted use halfway houses 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."[14]

While many advocates for people with disabilities suggest that the Fair Housing Amendments Act prohibits all zoning regulation of community residences, the Fair Housing Amendments Act'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."[15]

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 other residential uses.[16]

It is well settled that for zoning purposes, a community residence is a residential use, not a business use. The Fair Housing Amendments Act of 1988 specifically invalidates restrictive covenants that would exclude community residences from a residential district. The Fair Housing Act renders these restrictive cove-

14. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173.
15. Ibid.
16. 42 U.S.C. §3604(f)(B) (1988).

nants unenforceable against community residences for people with disabilities.[17]

Types 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 and those recovery communities and sober living homes that offer a relatively permanent living environment that emulates a biological family;
- **Transitional community residences** which include such uses commonly known as halfway houses as well as those recovery communities and sober living homes that offer a relatively temporary living environment like a halfway house does.

The label an operator places on a community residence does *not* determine whether it is a family or a transitional community residence. That is ascertained by the relevant performance characteristics of each community residence.

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 the parents or legal guardians of the residents with disabilities. Some, like recovery communities 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 each resident will live there for as long as each resident needs to live there. 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."

Family community residences are often called *group homes* and, in the case of people with alcohol or drug addictions, *recovery communities, recovery resi-*

17. 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 courts that have addressesd the question have concluded that the restrictive covenants of a subdivision and the by–laws of a homeowner or condominium association that exclude businesses or "non–residential uses" do *not* apply to community residences for people with disabilities — even before passage of the Fair Housing Amendments Act of 1988.

dences, sober living homes, or *sober homes.*[18] *Their key distinction from transitional community residences* is that people with disabilities can reside, are expected to reside, and actually do live 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 five to seven years, these are long–term, relatively permanent tenancies. 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 or abuse prescription drugs.

To be successful, a community residence needs to be located in a conventional residential neighborhood so that normalization 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.

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 have been 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.

The original recovery community concept popularized by Oxford House does not limit how long somebody can live in one. In an Oxford House, the residents periodically elect officers who act in a supervisory role much like parents in a biological family while the other residents are like the siblings in a biological family.[19] In a group home and in structured sober living homes, the staff functions in the supervisory parental role.

---

18. For example, those "sober living homes" that limit how long occupants may live there are most accurately characterized as "transitional community residences." *It is crucial that a jurisdiction evaluates each proposed community residence on how it operates and not on how its operator labels it.*

19. Each Oxford House is subject to the demanding requirements of the Oxford House Charter which includes a monthly financial accounting and at least an annual inspection. This procedure constitutes a functional equivalent of licensing and for the purposes of zoning ordinances, would serve as a proxy for formal licensing or certification. A small, but growing number of Oxford Houses have opened in Florida.

Recovery communities are essential for people in recovery for whom a supportive living environment is needed to learn how to maintain sobriety — *before* they can return to their family. Tenancy in a recovery community can last for years in contrast to tenancy in a sober living environment or small halfway house where there is a limit on length of tenancy measured in weeks or months.

Interaction between the people who live in a 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.

Interaction with neighbors without severe disabilities is an essential component to community residences and one of the reasons planners and the courts long ago recognized the need for them to be located in residential neighborhoods. Their neighbors serve as role models which helps foster the normalization and community integration at the core of community residences.

As was realized a century ago, being segregated away in an institution only teaches people how to live in an institution. It does nothing to facilitate learning the skills needed to be all you can be and live as independently as possible integrated into the community.

For example, filling an apartment building with people in recovery segregates them away with other peope in recovery as their neighbors, depriving them of the interaction with sober neighbors that fosters normalization and community integration. Placing recovery residences in a series of adjacent single–family homes or townhouses has the same effect. While these arrangements possess some of the characteristics of community residences, they also possess many institutional characteristics and function more like mini–institutions than the biological family a community residence is supposed to emulate.

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 purpose statements for each of Fort Lauderdale zoning district that allows residential uses.

Even before passage of the 1988 amendments to the Fair Housing Act, most courts concluded that community residences for people with disabilities that emulate a biological family must be allowed as of right in all residential zones. Under the Fair Housing Act, a city can require a spacing distance between community residences and a license of community residences allowed as permitted uses when the number of residents in a proposed community residences exceeds the cap on unrelated occupants in the city's zoning code definition of "family."

Table 2 below illustrates the many functional differences between community residences for people with disabilities, institutional uses, and lodging or boarding houses.

Table 2: Differences Between Community Residences, Institutional Uses, and Rooming or Boarding Houses

Differences Between Community Residences, Institutional Uses, and Rooming or Boarding Houses			
Characteristic	**Community Residence for People With Disabilities**	**Institutional Uses (Including Nursing Homes)**	**Rooming or Boarding House**
Proper Environment	Residential Home–like	Institutional Hospital–like	Residential Hotel–like
Appropriate Zoning Districts	Single–family residential Multiple–family in limited instances	Commercial, medical, institutional	Multiple–family residential
Relationship of Residents	Single housekeeping unit emulating a biological family Sibling–like relationships essential	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; officers in self–governed homes in role of parents	Total staff supervision	Landlord–tenant relationship
Values	Family values	None	None
Purpose	Achieve normalization and community integration Habilitation or rehabilitation	No effort to achieve normalization or community integration	No effort to achieve normalization, community integration, habilitation or rehabilitation
Relationship to Neighbors On the Block	Interaction with neighbors is an essential component of normalization and community integration; neighbors without disabilities serve as role models to foster normalization and	Interaction with neighbors not facilitated; use is largely self–contained. Neighbors have no role related to the occupants of the institutional use	Interaction with neighbors is hit or miss
Residential Integration	Integration with the surrounding community is essential in contrast to the segregation of living in an institution surrounded by people with the same disability	Essentially segregated from the surrounding community such that immediate neighbors are people with the same disability	Not applicable
Primary Functions	Emulate a biological family Provides support in a family–like residential 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, banks)	Provide medical treatment and institutional care No family–like living; not a residential nature No family tasks; patients are cared for No educational role	Lodging for unrelated individuals Residents are completely independent of each Residents do not share household tasks; each boarder functions as an individual; no attempt to emulate a biological family No educational role

Transitional community residences

In contrast to the group homes and recovery communities that fit in the category of family community residences, *transitional community residences* are a comparatively temporary living arrangement that is more transitory than a group home or recovery community and a bit less family–like. Residency is measured in weeks or months, not years. A recovery community or sober living residence that imposes a limit on how long someone can live there exhibits the performance characteristics of a transitional community residence, much like

the better known small halfway house.[20]

Typical of the people with disabilities who need a temporary living arrangement like a halfway house are people with mental illness who leave an institution and need only a relatively 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, short–term recovery community, or sober living home following detoxification in an institution until they are capable of living in a relatively permanent long–term recovery community or other less restrictive environment.

Federal "Direct threat" exclusion

Individuals with disabilities who "constitute a direct threat to the health or safety of others" are not covered by the Fair Housing Amendments Act of 1988. 42 U.S.C. § 3602(f)(9) (1988). Consequently, municipal ordinances that prohibit such individuals from living in community residences do not run afoul of the Fair Housing Act.

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 zoning codes can and should treat halfway houses for prison pre–parolees or other populations not covered by the Fair Housing Act differently than classes that the Fair Housing Act protects.

The community residences for people with disabilities that limit the length of tenancy are residential uses that need to locate in residential neighborhoods if they are to succeed. But since they do not emulate a family as closely as a more permanent group home or recovery residence does, and the length of tenancy is relatively temporary, it is likely that a jurisdiction can require a conditional use permit for them in 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 neighbor-*

Florida "Direct threat" exclusion

"Nothing in this section shall permit persons to occupy a community residential home who would constitute a direct threat to the health and safety of other persons or whose residency would result in substantial physical damage to the property of others." *Florida Statutes* §419.001 (10) (2016). This prohibition which applies to homes with state licenses is equivalent to the Fair Housing Act's exclusion for people who constitute a direct threat.

20. As used in this study, the term "halfway house" refers to the original halfway house concept that is small enough to emulate a biological family; not to the large halfway houses occupied by 20, 50, or 100+ people. The latter are mini–institutions and *not* residential uses. Consequently, sound zoning principles call for them to be located in commerical or institutional zoning districts. A residential neighborhood is not essential for them to function successfully.

hood opposition rooted in unfounded myths and misconceptions about the residents with disabilities of a proposed transitional community residence.[21]

Rational bases for regulating community residences

Community residences have probably been studied more than any other small land use. To understand the rationale for the guidelines to regulate community residences that are suggested in this report, 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.[22] In every jurisdiction for which Planning/Communications has conducted an Analysis of Impediments to Fair Housing Choice, there was clustering or concentrations of community residences when the zoning did *not* require a rationally–based spacing distance between community residences allowed as of right. As discussed below, counterproductive clustering of community residences has developed in quite a few blocks and neighborhoods in Fort Lauderdale.

Why clustering is counterproductive. Placing community residences too close to each other can create a *de facto* social service district and can seriously

---

21. Note that the proposed definitions of "community residence," "family community residence," and "transitional commmnity residence" all speak of a family–like living environment. These definitions *exclude* the large institutional facilities for many more occupants that are often called "halfway houses."
The city's current zoning treatment of those large facilities will remain unchanged. The proposed zoning, however, will provide for an administrative "reasonable accommodation" process under which the operator of a proposed "community residence" for more than ten individuals with disabilities can seek zoning approval if it can prove therapeutic and/or financial need for more than ten residents and demonstrate that the home will emulate a biological family. Spacing and licensing/certification requirements would still apply.
22. *See* General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* (August 17, 1983) 19. This comprehensive study 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. *Also see* Daniel Lauber and Frank 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.

hinder their ability to achieve normalization for their residents — one of the core 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 home (unless they have children together in school or engage in walking, jogging, or other neighborhood activities). The underlying precepts of community residences expect neighbors who live close to a community residence to serve as role models to the occupants of a community residence — which requires interacting with them.

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 doors of it — the residents of the new home may 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 nonadjacent community residences for people with disabilities on a block do *not* alter the residential character of a neighborhood.[23]

The research strongly suggests that as long as several community residences are not clustered on the same block face they will not generate these adverse impacts. Consequently, *when community residences are allowed as a permitted use*, it is most reasonable to impose a spacing distance between community residences that keeps them about a block to a block and a half apart in terms of actual walking distance, generally about 660 to 1,000 feet respectively.[24] It is also reasonable to not allow another community residence to locate adjacent to an existing community residence *as a permitted use.* But there are times when locating another community residence within the spacing distance of an existing community residence will not interfere with normalization or community integration. Proposals to locate an-

23. See General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* 27 (August 17, 1983).

24. 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.

other community residence so close to an existing one warrant the case–by–case consideration.

If the operator of a proposed community residence wishes to locate it within the spacing distance, then the heightened scrutiny of a special use permit is warranted. The special 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 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 normalization or alter the community's character — and the special use permit should be granted.

There are several schools of thought on the most appropriate way to measure a spacing distance. They measure from the lot line nearest the existing community residence that is closest to a proposed community residence. One school of thought calls for measuring along the public or private pedestrian right of way. The idea is to measure the actual distance people would have to walk to go from one community residence to another, as opposed to measuring as the crow flies. This approach works when a jurisdiction does not contain any "superblocks," namely blocks that are substantially lengthier than the typical American urban block of 660 feet. The greater length of a superblock — twice that of a typical block — would facilitate the creation of concentrations by enabling a community residence to locate back to back or lot corner to lot corner with an existing community residence as of right — one of the scenarios that spacing distances seek to prevent from happening. Using the right of way system would render the zoning approach suggested here inoperable due to the presence of a significant number of superblocks in Fort Lauderdale.

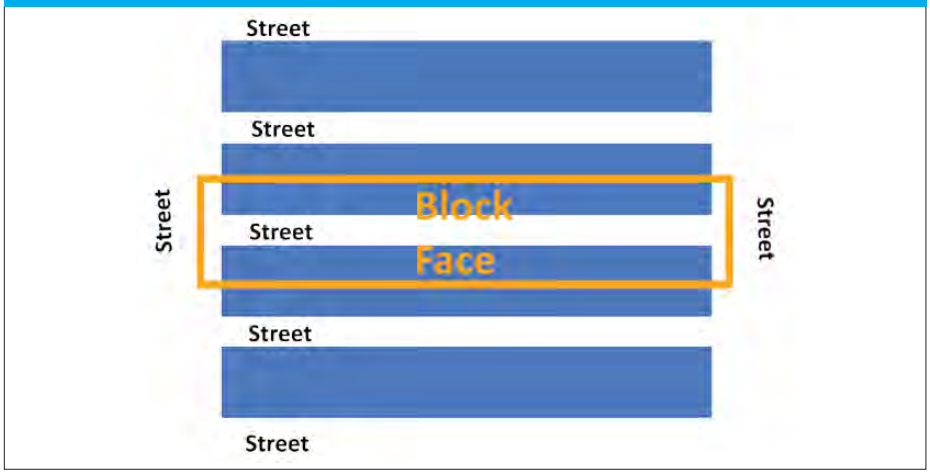
The other school of thought holds that the spacing distance should be measured from the closest lot lines of the existing community residence and the proposed community residence. This method establishes a predictable radius around existing community residences that can quickly be measured using a jurisdiction's geographic information system. Even with superblocks, this approach would preclude a new community residence from locating back to back or lot corner to lot corner with an existing community residence as of right. It is the more appropriate approach to use in Fort Lauderdale and most other jurisdictions.

Whichever approach is used, it is necessary for the operator of every proposed community residence to complete a "Community Residence Zoning Application" form that is recommended for Fort Lauderdale to use so the city can measure spacing distances from existing community residences and implement its zoning provisions for community residences. The city should also maintain a database and map of the locations of all existing community residences so it can apply the spac-

ing distance to any proposed community residence.[25]

The technical explanation. Normalization and community integration require that persons with disabilities substantial enough to need 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 face. Neighborhoods seem to have a limited absorption capacity for service–dependent people that should not be exceeded.[26]

Figure 3: Block Face Illustrated



The area within the orange rectangle is a "block face."

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

25. It is critical to note that when the number of occupants of a community residence falls within the zoning code's cap on unrelated individuals permitted in the city's definition of "family," "household," or "single housekeeping unit," the *zoning ordinance* must always treat the community residence as a "family" or "household" — to do otherwise would constitute discrimination on its face in violation of the Fair Housing Act. In Fort Lauderdale, a cap of three unrelated individuals is being proposed. Such homes *cannot* be used to calculate spacing distances for *zoning* purposes. Spacing distances are applicable only to community residences for people with disabilities that exceed the cap on unrelated people in the definition of "family," "household," or "single housekeeping unit." This principle is most clearly ennunciated in *United States v. City of Chicago Heights,* 161 F. Supp. 2nd 819 (N.D. Ill. 2001). *Also see* Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (Nov. 10, 2016) 10–12.
26. Kurt Wehbring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill* 14 (no date) (mimeographed).

become saturated by services and populations and evolve into a service–dependent ghetto."[27]

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.[28]

This research strongly suggests that there is a legitimate government interest to assure that community residences do not cluster. While the research on the impact of community residences makes it abundantly clear that two community residences separated by at least several other houses on a block produce no negative impacts, there is very credible concern that community residences 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 community residences to facilitate the normalization of their residents, which is, after all, their raison d'être.

Limitations on number of unrelated residents. The majority view of the courts, both before and after enactment of the Fair Housing Amendments Act of 1988, is that community residences constitute a functional family and that zoning should treat the occupants of a community residence as a "family" *even if the community residence does not fit within a jurisdiction's zoning code's definition of family.*

At first glance, that approach appears to fly in the face of a 1974 Supreme Court ruling that allows cities and counties to limit the number of unrelated people that constitutes a "family" or "household." Zoning ordinances typically define "family" or "household" as (1) any number of related individuals and (2) a limited number of unrelated persons living together as a single housekeeping unit. As explained in the paragraphs that follow, the U.S. Supreme Court ruled that a local zoning code's defnition of "family" can place this cap on the number of unrelated persons living together as a single housekeeping unit.[29] *But 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 on the number of unrelated people living together that qualify as a "family" or "household."*

In *Belle Terre*, the U.S. Supreme Court upheld the resort community's zon-

27. Jennifer Wolch, "Residential Location of the Service–Dependent Poor," 70 *Annals of the Association of American Geographers,* at 330, 332 (Sept. 1982).

28. 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.

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

ing 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.…"[30] 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. Ferraioli,*[31] 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.…" [32]

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.'"*[33]

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."[34]

30. Ibid. at 7–9.
31. 313 N.E.2d 756 (N.Y. 1974).
32. Ibid. at 758–759.
33. Ibid. at 758 [citation omitted]. *Emphasis added.*
34. Ibid.

In *Moore v. City of East Cleveland,*[35] 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 r*elatively permanent household*, and is not a framework for transients or transient living, it conforms to the purpose of the ordinance."[36]

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."[37]

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 Fair Housing Amendments Act of 1988 essentially codifies the majority judicial treatment of zoning ordinance definitions with "capped" definitions of "family."

Fort Lauderdale's *Unified Land Development Regulations* (ULDR) do not place a cap on the number of unrelated individuals living together as a single housekeeping unit that can constitute a "family." Consequently, the city needs to amend its ULDR to establish a cap on the number of unrelated individuals living together as a single housekeeping unit in order to adopt any zoning regulation of them. The approach suggested in this study facilitates the ability of community residences for people with disabilities to achieve their core functions of fostering normalization, community integration, and the use neighbors without disabilities as role models, as well as preserving the residential character of neighborhoods, preventing the development of *de facto* social service districts that impede the ability of community residences to achieve these core goals, and integrating people with disabilities rather than segregating them.

If Fort Lauderdale amends the definition of "family" to include up to three unrelated individuals living as a single housekeeping unit, any community residence for up to three people with disabilities would be treated the same as any other family. A community residence housing more than three unrelated people with disabilities would be entitled to a "reasonable accommodation" which is the regulatory landscape this study proposes for Fort Lauderdale's *Unified Land Development Regulations* within the precepts of the nation's Fair Housing Act.

However, as explained below, *no matter what cap a city's zoning ordinance places on the number of unrelated individuals that constitutes a "family," the city code provisions applicable to all residential uses determines the maximum num-*

35. 431 U.S. 494 (1977) at 517 n. 9.

36. Ibid. *Emphasis added.*

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

ber of people that can occupy any type of residence.[38]

The U.S. Supreme Court brought this point home in its 1995 decision in *City of Edmonds v. Oxford House.*[39] 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.[40] 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.[41]

As the discussion above implies, classifying community residences simply on the basis of the number of residents is inappropriate. A more appropriate and rational approach is proposed beginning on page 38 of this report.

Protecting the residents. People with disabilities who live in community residences constitute a vulnerable population that needs protection from possible abuse and exploitation. Community residences for these vulnerable individuals need to be regulated to assure that their residents receive adequate care and supervision. Licensing and certification are the regulatory vehicles used to assure adequate care and supervision.[42] Florida, like many other states, has not established licensing or certification for some populations with disabilities that community residences serve. 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. Licensing or certification also tends to exclude from community residences people who pose a danger to others, themselves, or property. As noted earlier, such people are *not* covered by the Fair Housing Act.

Therefore, there is a legitimate government interest in requiring that a community residence or its operator be licensed in order to be allowed as of right as a permitted use. 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.[43] Florida law appears to allow a city or county to establish its own licensing requirements for community residences not covered by state

38. Fort Lauderdale's *Minimum Housing Code* requires every room used for sleeping purposes to have a gross floor area of at least 70 square feet. A room in which more than one person sleeps must have a gross floor area of at least 50 square feet for each occupant of the sleeping room. Article VI. – Minimum Housing Code, §9–277.
39. 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995).
40. Ibid. at 1781*[emphasis added]*. See the discussion of minimum floor area requirements beginning on page 18.
41. Ibid. at 1782.
42. Any local or state licensing must be consistent with the Fair Housing Act. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (Nov. 10, 2016) 13.
43. For example, the U.S. Congress has recognized and sanctioned the recovery communities that operate under the auspices of Oxford House. Oxford House maintains its own procedures and

licensing. 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.

The State of Florida does not *require* licensing or certification of recovery residences. Instead, in 2015, the state established *voluntary certification* for recovery residences.[44] The state statute required the state's Department of Children and Family Services to approve at least one credentialing entity by December 1, 2015.[45] The department named the Florida Association of Recovery Residences as a credentialing entity. As §397.487 mandates, the association promulgates and administers requirements for certifying recovery residences and established procedures for the application, certification, recertification, and disciplinary processes. It has established a monitoring and inspection compliance process, developed a code of ethics, and provided for training for owners, managers, and staff.[46]

As the state statute requires, the operator of a proposed recovery residence must submit with its application and fee a policy and procedures manual that includes job descriptions for all staff positions; drug–testing requirements and procedures; a prohibition of alcohol, illegal drugs, and using somebody else's prescription medications; policies that support recovery efforts; and a good neighbor policy.[47] Each certified recovery residence must be inspected at least once a year for compliance. The certification process allows for issuance of provisional certification so the home can open. Actual certification is issued only after the home has been inspected and residents and staff interviewed after the home has been in actual operation for a specific length of time.

The requirements of Florida's voluntary certification process and standards for recovery residences are comparable to the state's existing licensing processes and standards for community residences that serve other populations of people with disabilities.

Impacts of community residences. The impacts of community residences have been studied more than those of any other small land use. Over 50 statistically–valid studies have found that licensed community residences *not clustered* on a block face do not generate adverse impacts on the surrounding

staff to inspect and monitor individual Oxford Houses to enforce the organization's strict charter and standards designed to protect the residents of each Oxford House and foster community integration and positive relations with its neighbors. An Oxford House can lose its authorization if found in violation of the Oxford House Charter. The charter and inspections are the functional equivalent of licensing or certification.

44. *Florida Statute,* §397.487 (2016).
45. Ibid. at §397.487(2).
46. Ibid. The standards that the Florida Association of Recovery Residences adopted are based on the nationally–accepted standards of the National Alliance of Recovery Residences.
47. Ibid. at §397.487(3).

neighborhood. They do not affect property values, nor the ability to sell even the houses adjacent to them. They do not affect neighborhood safety nor neighborhood character — *as long as they are licensed and not clustered on a block face.* 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* group homes, recovery communities, and small halfway houses have consistently been found to be as good a neighbor as biological families.

Clustering community residences only undermines their ability to achieve their core 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 who, under the theory and practice that provide the foundation for the community residence concept, are to serve as role models.

Appendix A is 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 and not clustered on a block face do not generate adverse impacts on the surrounding community.*

Clustering and *de facto* social service districts

Department of Sustainable Development staff at the City Fort Lauderdale have compiled the following maps that show two categories of community residences for people with disabilities:

1. **"Licensed or Certified Community Residences"** which are community residences for people with disabilities that have been either (1) certified under the Florida state statute establishing voluntary certification of recovery residences, Title XXIX Public Health, chapter 397 (Substance Abuse Services) §397.487 (2016) or (2) licensed under Title XXIX Public Health, chapter 419 (Community Residential Homes licensed to serve residents who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Families or licensed by the Agency for Health Care Administration).
2. **"Unconfirmed Community Residences"** are locations that city staff have concluded may be operating as recovery residences. These are recovery residences that have not applied for state certification issued through the Florida Association of Recovery Residences and that have not obtained a state license under Title XXIX Public Health, chapter 419. These homes are homes about which the city's Code Compliance Division has received complaints or that have been found through an Internet search.

To facilitate analysis, the maps divide the city into nine areas as shown in the map below. The maps that follow show the relative locations of community residences for people with disabilities in each of the nine areas of Fort Lauderdale.

Fort Lauderdale has verified the existence of 83 certified or licensed recovery residences within its jurisdiction. In addition, there appear to be 17 locations believed to be recovery residences, but not confirmed as such.

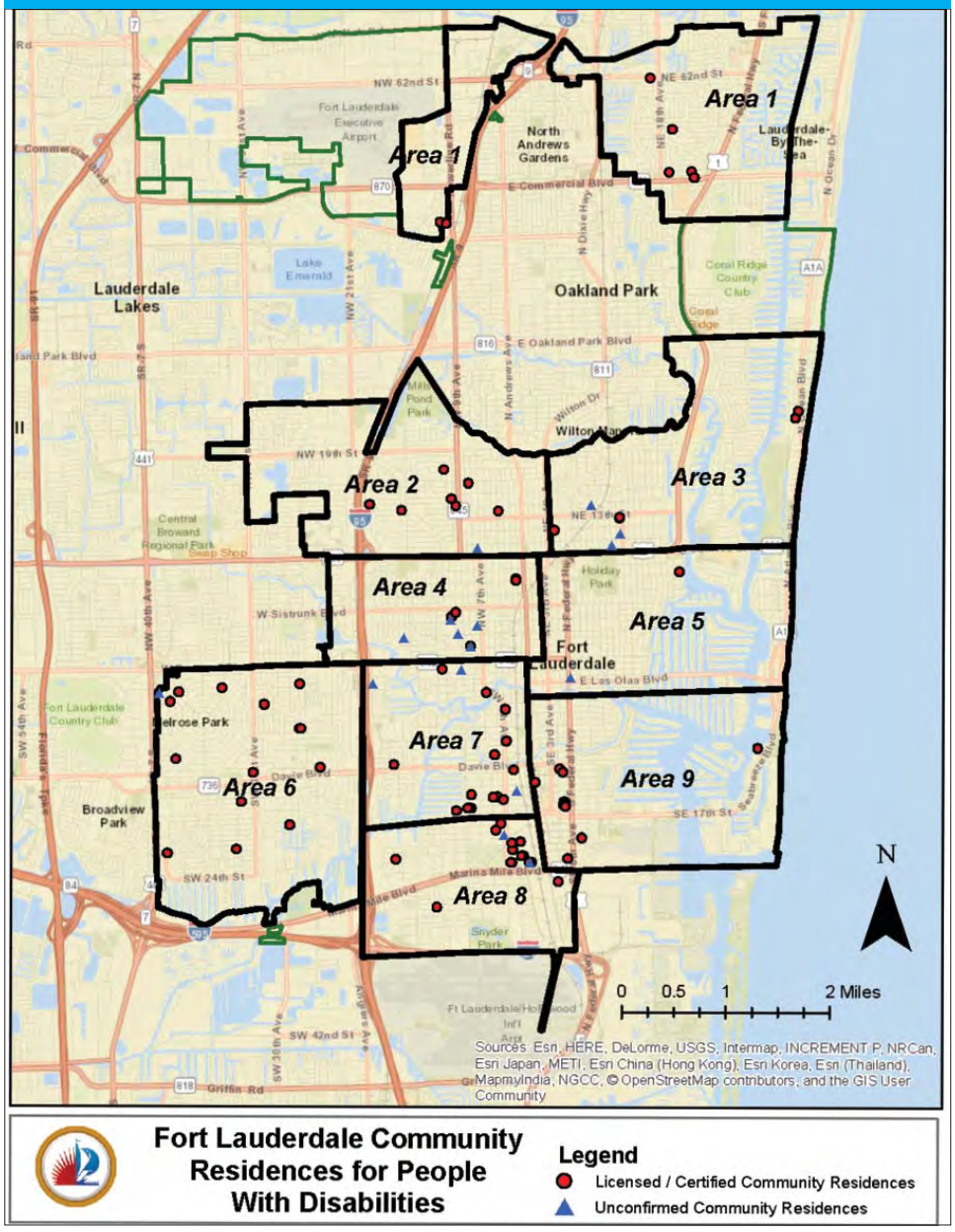
There are numerous "recovery residences" in Fort Lauderdale located in multifamily buildings where the operators essentially take over an entire apartment building to create a segregated mini–institution. One operator has placed 60 people in recovery in 16 units at one building on Harbor Drive and another 42 in 17 units on 33rd Avenue. Another operator has placed 52 people in recovery in a 15 unit multifamily building on 26th Street.

At an apartment building on 51st Court, an operator has placed 24 people in recovery in eight units and another 26 in the other eight units of the building — creating another segregated mini–institution.

Another operator has clustered 16 units of new construction adjacent to each other housing a total of 50 people in recovery. Yet another operator has placed 36 people in nine units on 26th Avenue while another has set up 33 people in recovery in 14 units on Ocean Boulevard.

These kinds of mini–institutions fall outside the bases upon which the courts have long rested their decisions to treat community residences as residential uses including emulating a biological family and utilizing nearby neighbors without disabilities as role models to help achieve normalization as well as participation in the nondisabled community to achieve community integration.

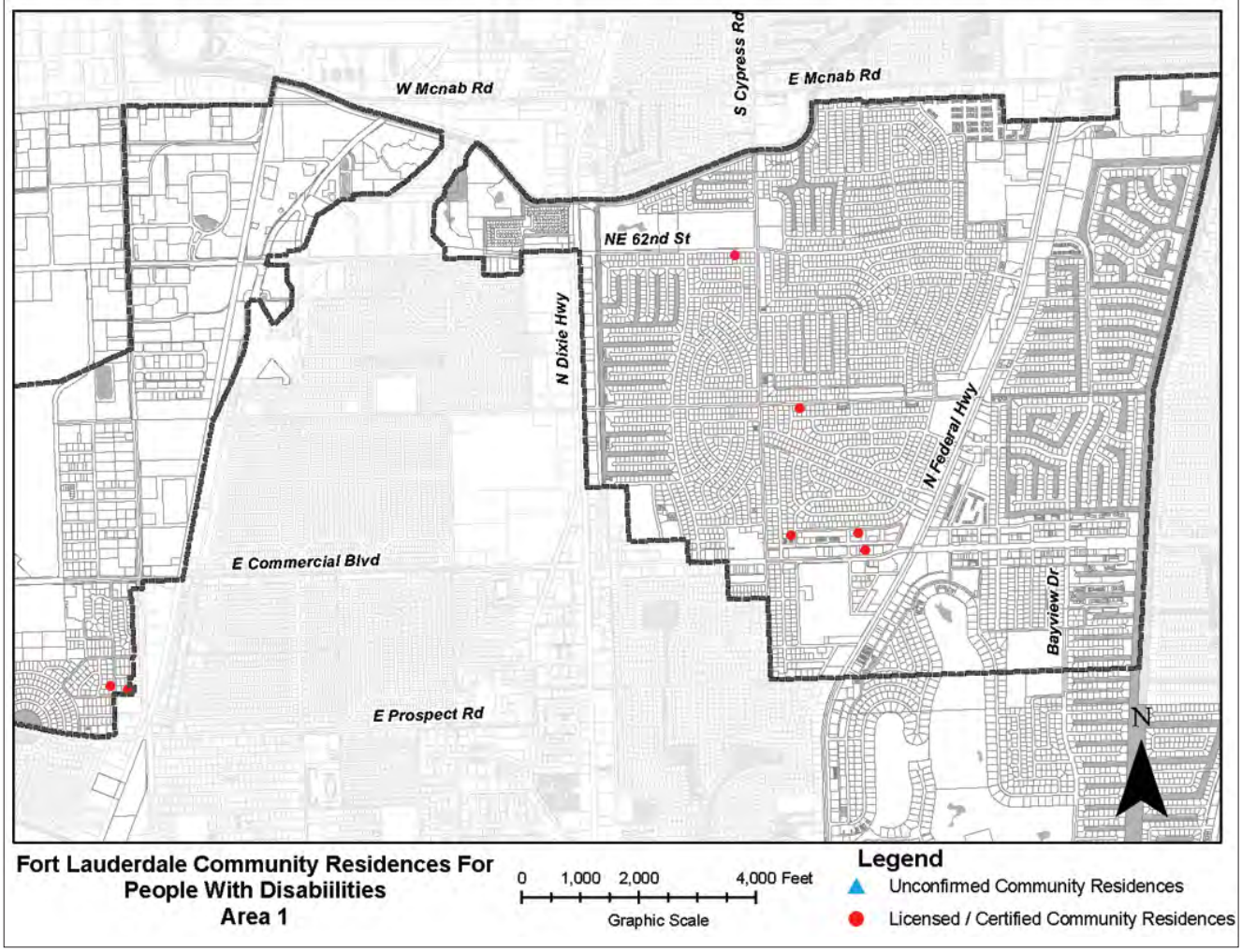
Figure 4: Nine Areas of Fort Lauderdale



Source: City of Fort Lauderdale, Florida, February 2018.

The above map shows the relative locations of the nine areas in the maps that follow as well as an overview of where community residences are currently located in Fort Lauderdale.

Figure 5: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Area 1

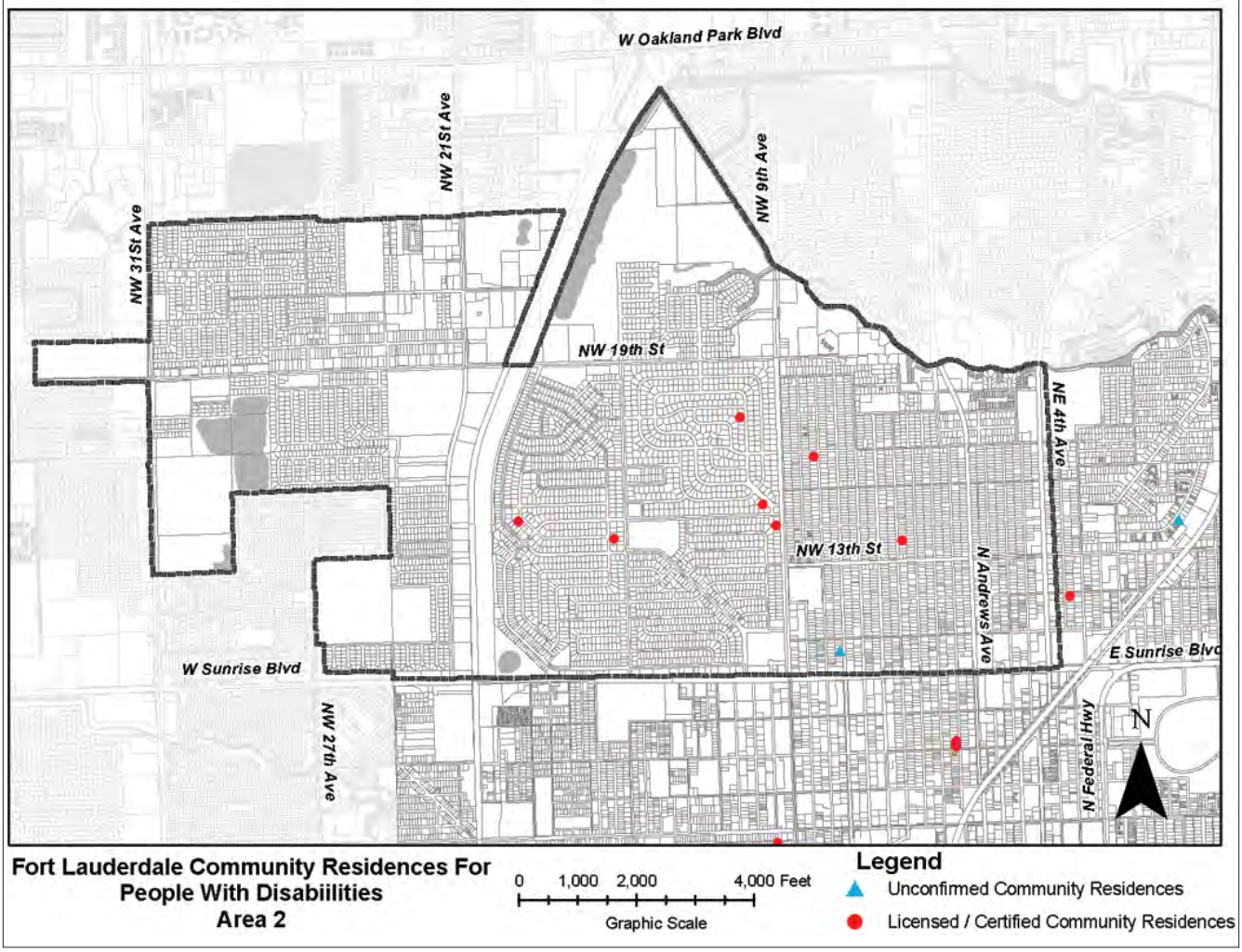


Source: City of Fort Lauderdale, Florida, February 2018

Figure 5 above shows at two instances of two community residences located a few lots apart. A third community residence is just a block from one of these pairs.

The two other community residences are sufficiently far apart that they would not affect the ability of the other community residences to achieve normalization and community integration.

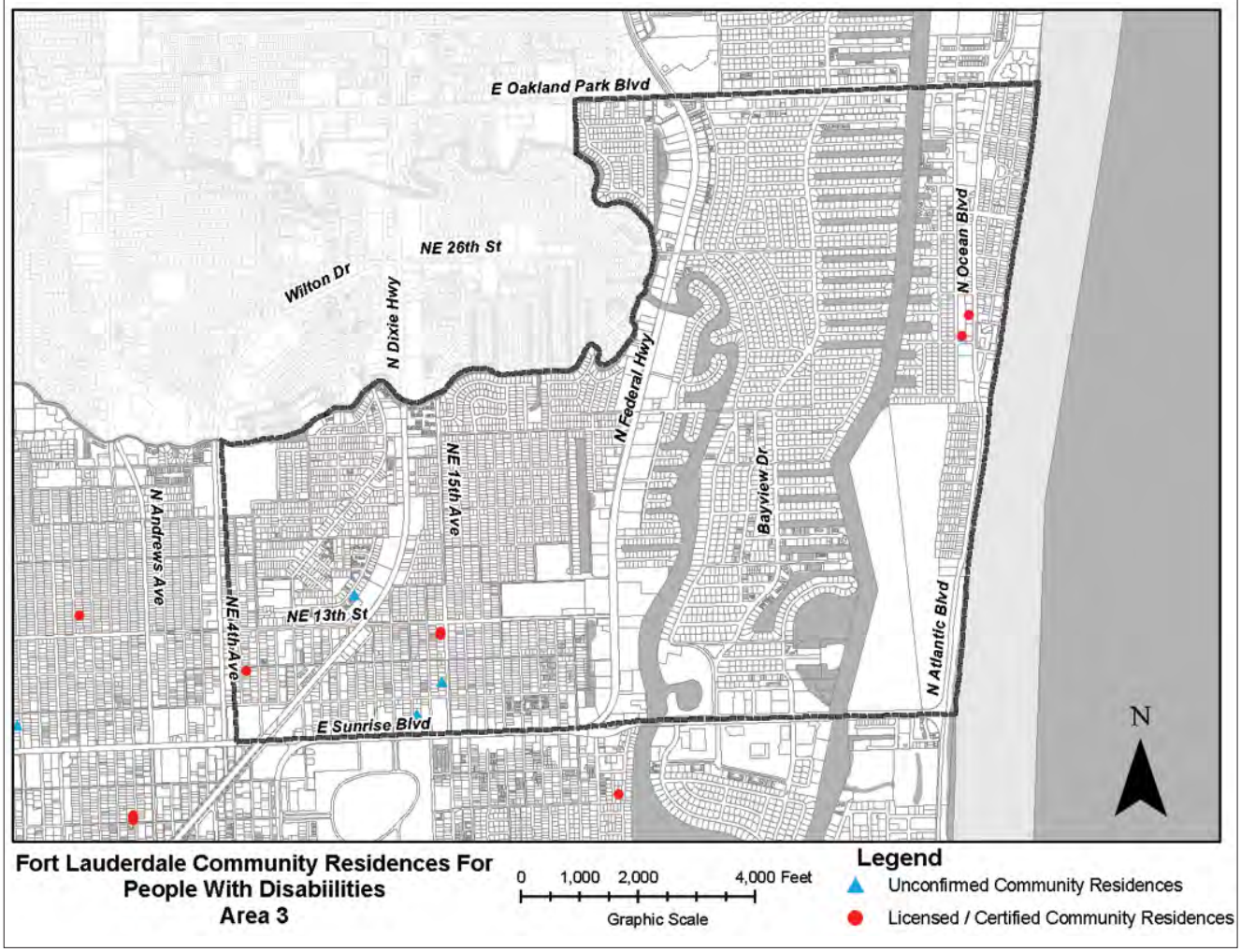
Figure 6: Locations of Known and Unconfirmed Recovery Residences for People With Disabilities in Area 2



Source: City of Fort Lauderdale, Florida, February 2018.

Two community residences in the center of Area 2 are within a few lots of each other. The other community residences are far enough apart not to interfere with normalization or community integration at another community residence.

Figure 7: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Area 3



Source: City of Fort Lauderdale, Florida, February 2018.

As shown in Figure 7 above, in the center of the south end of Area 3 there are two community residences are located within the equivalent of a block and a half, roughly 1,000 feet, of a third community residence between them.The other community residences are suitably scattered except for the pair less than a block apart on N Ociean Boulevard.

48. Emails from John Lehman, Executive Director of the Florida Association of Recovery Residences to Daniel Lauber, Law Office of Daniel Lauber (Nov. 17, 2017, 9:34 a.m. CST and Nov. 20, 2017, 11:27 a.m. CST) (on file with the Law Office of Daniel Lauber).

Voluntary Certification of Sober Homes in Fort Lauderdale

Since the state's voluntary certification law described beginning on page 22 went into effect, 21 different providers have applied for certification for 190 single family or multiple family dwelling units at 59 locations with Fort Lauderdale addresses. These recovery communities can house a total of 830 individuals.

Nine of these 21 providers with a total of 23 sites are currently certified. As of this writing, the certification of one operator with five sites has been revoked as has another operator's certification for one site. The application of another operator with multiple sites is pending denial. The applications of two operators have been withdraw. The remaining applications are in different stages of the certification review process.

The Florida Association of Recovery Residences (FARR) uses an extensive and demanding certification process to determine whether a recovery residence is actually operated in accord with certification standards. FARR does not rely on a prospective operator's promises of how she will operate the home. Instead, applicants go through the six steps required to achieve certification. These steps are explained at http://farronline.org/certification/apply-for-certification. Detailed certification and compliance protocols are available to download at http://farronline.org/document-library.

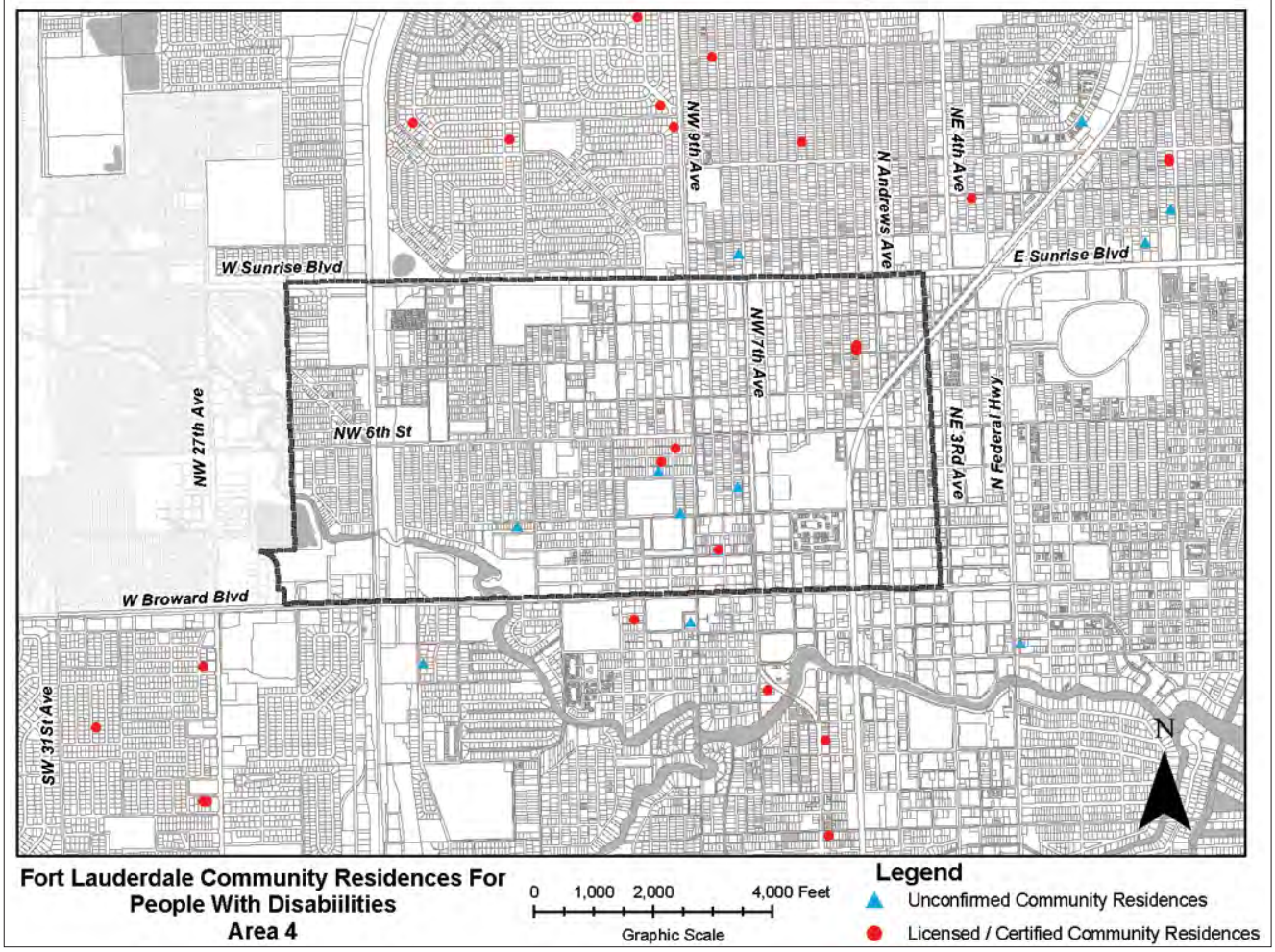
FARR requires unrestricted access to interview management, staff, and residents to ensure that policies, procedures, and protocols are actually being followed at the recovery residence.[49]

So while an applicant must meet FARR's initial criteria to open a recovery residence on a provisional basis, FARR makes its final determination on certification *after* the recovery residence has been in operation for 90 days.

When a jurisdiction requires licensing or certification for community residences, FARR issues an initial provisional certification until the initial annual certification can be decided.

49. Emails from John Lehman, Executive Director of the Florida Association of Recovery Residences to Daniel Lauber, Law Office of Daniel Lauber (Nov. 17, 2017, 9:34 a.m. CST and Nov. 20, 2017, 11:27 a.m. CST) (on file with the Law Office of Daniel Lauber).

Figure 8: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Area 4

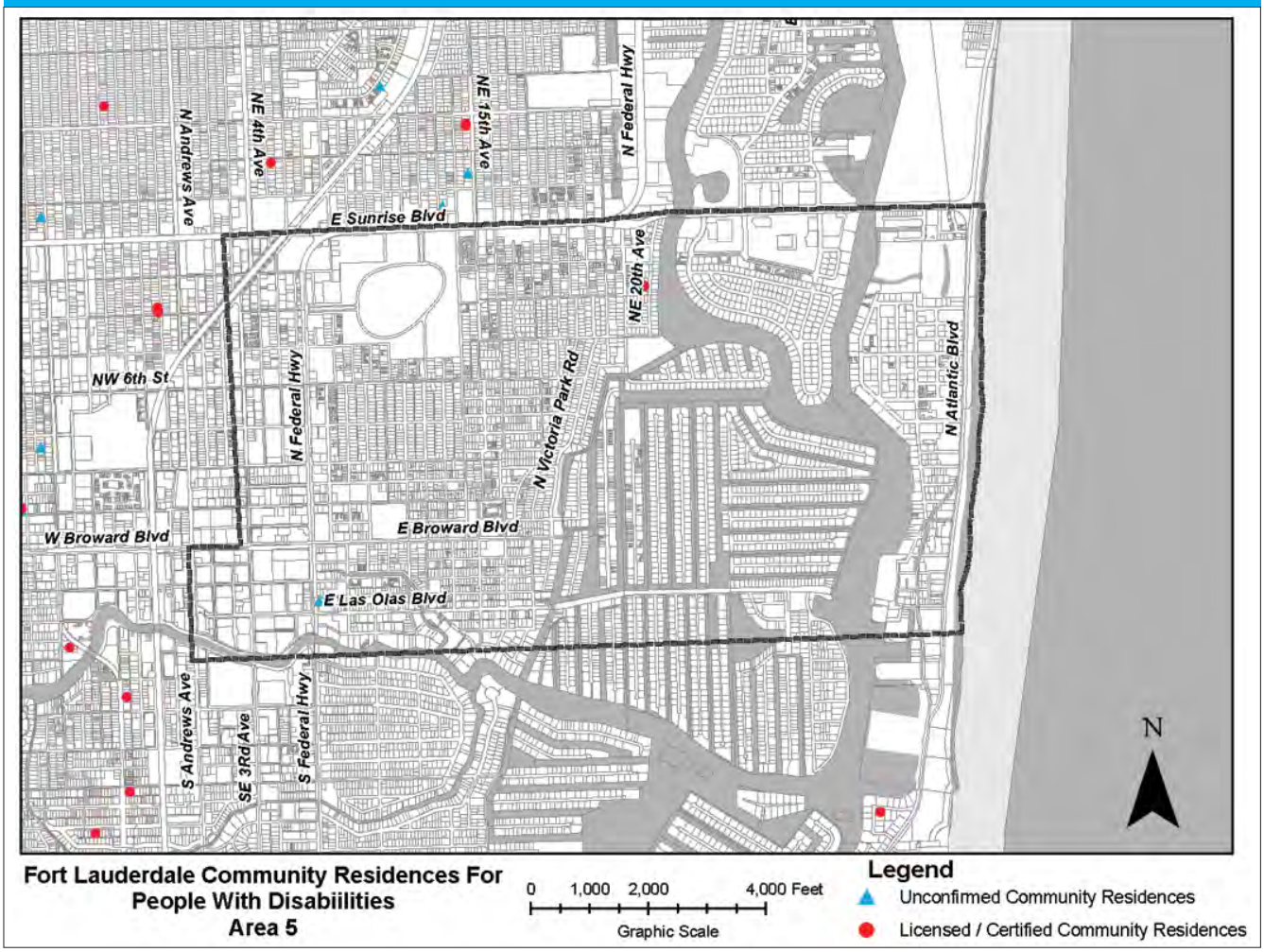


Source: City of Fort Lauderdale, Florida, February 2018.

Figure 8 above shows a cluster of three community residences in the center of Area 4 with two of them on abutting lots. A fourth community residence is a bit more than a block south. A fifth is about three blocks away with a sixth less than a 1,000 feet away. There are two adjacent community residences in the northeast corner of Area 4.

As explained beginning on page 14, this clustering of community residences for people with disabilities in the center of Area 4 runs counter to the underlying principles of community residences and can interfere with achieving their core goals of normalization and community integration. Additional community residences within a block and a half of this cluster would make the concentration more intense and could effectively create a *de facto* social service district.

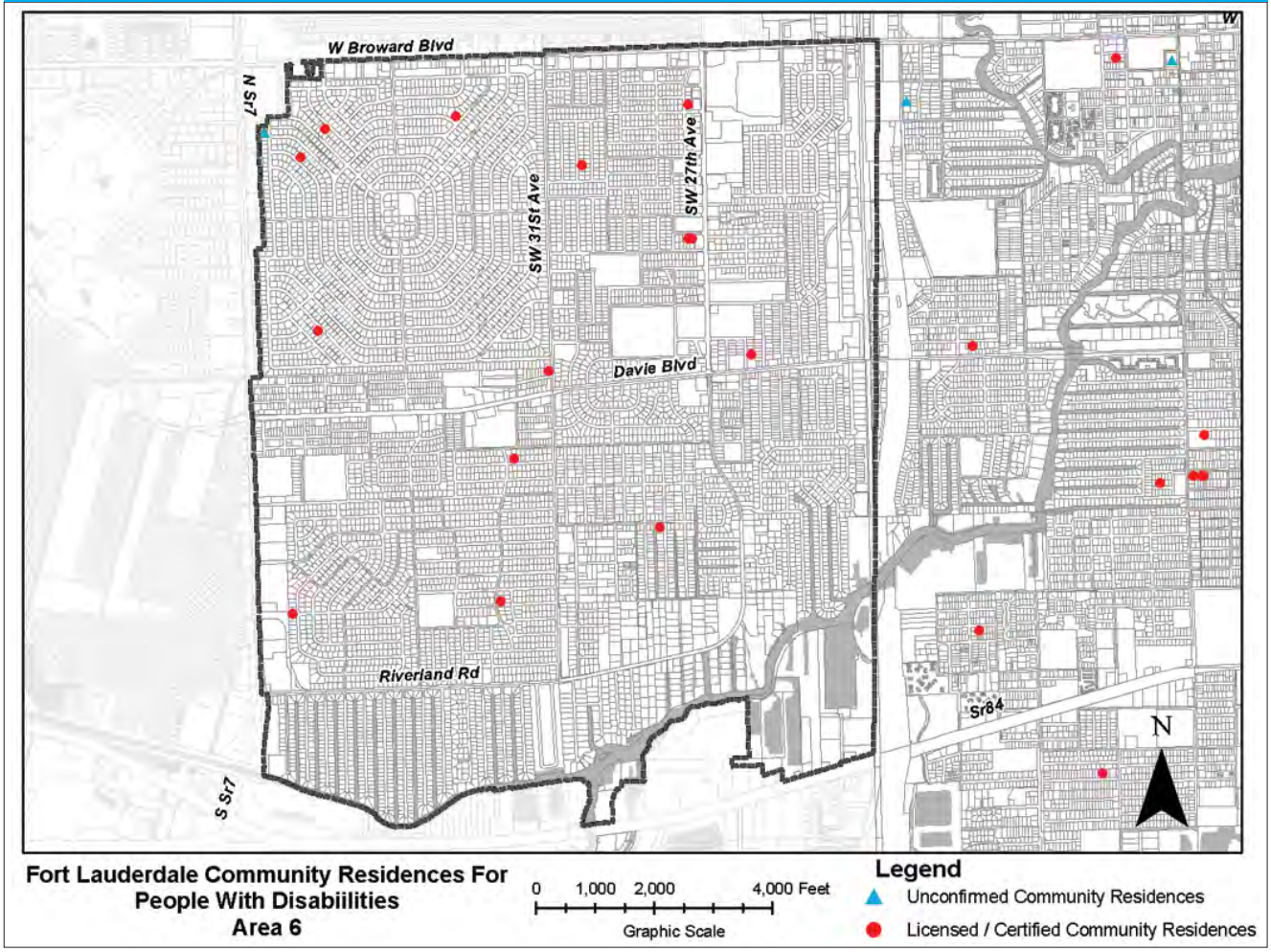
Figure 9: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Area 5



Source: City of Fort Lauderdale, Florida, February 2018.

With just two widely separated community residences, Area 5 has plenty of carrying capacity in reserve to absorb service depending people into its social structure.

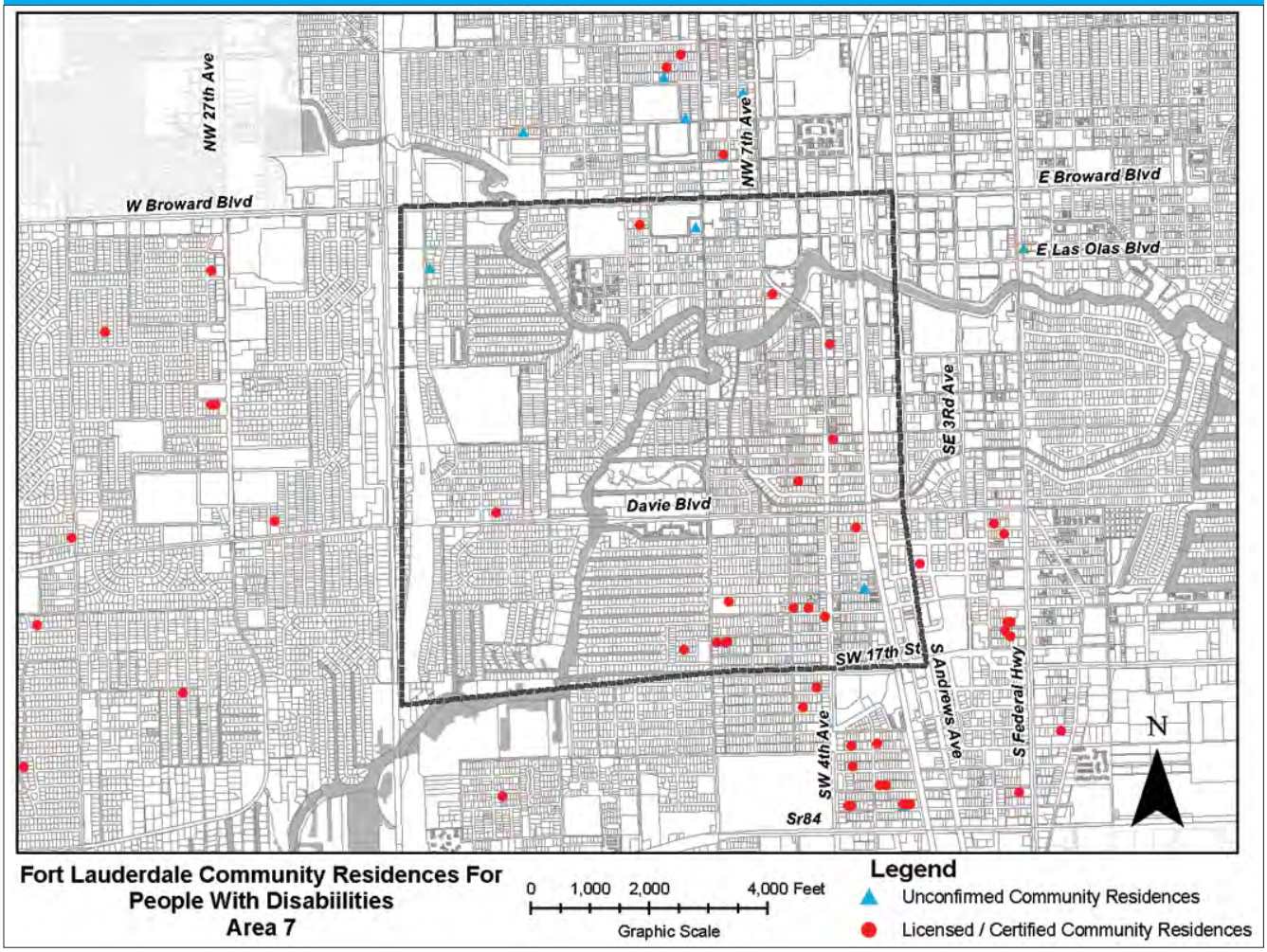
Figure 10: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Area 6



Source: City of Fort Lauderdale, Florida, February 2018.

With two exceptions, community residences are widely scattered in Area 6: (1) Two adjacent community residences just west of SW 17th Avenue in the north quadrant of Area 6 and (2) three community residences within a block and a half of each other in the northwest corner of Area 6. The two licensed or certified community residences are not likely to interfere with each other beause they are separated by two block faces. The unconfirmed community residence and the community residence southeast of it *could* lead to interference with normalization and community integration if they both serve the same ambulatory population.

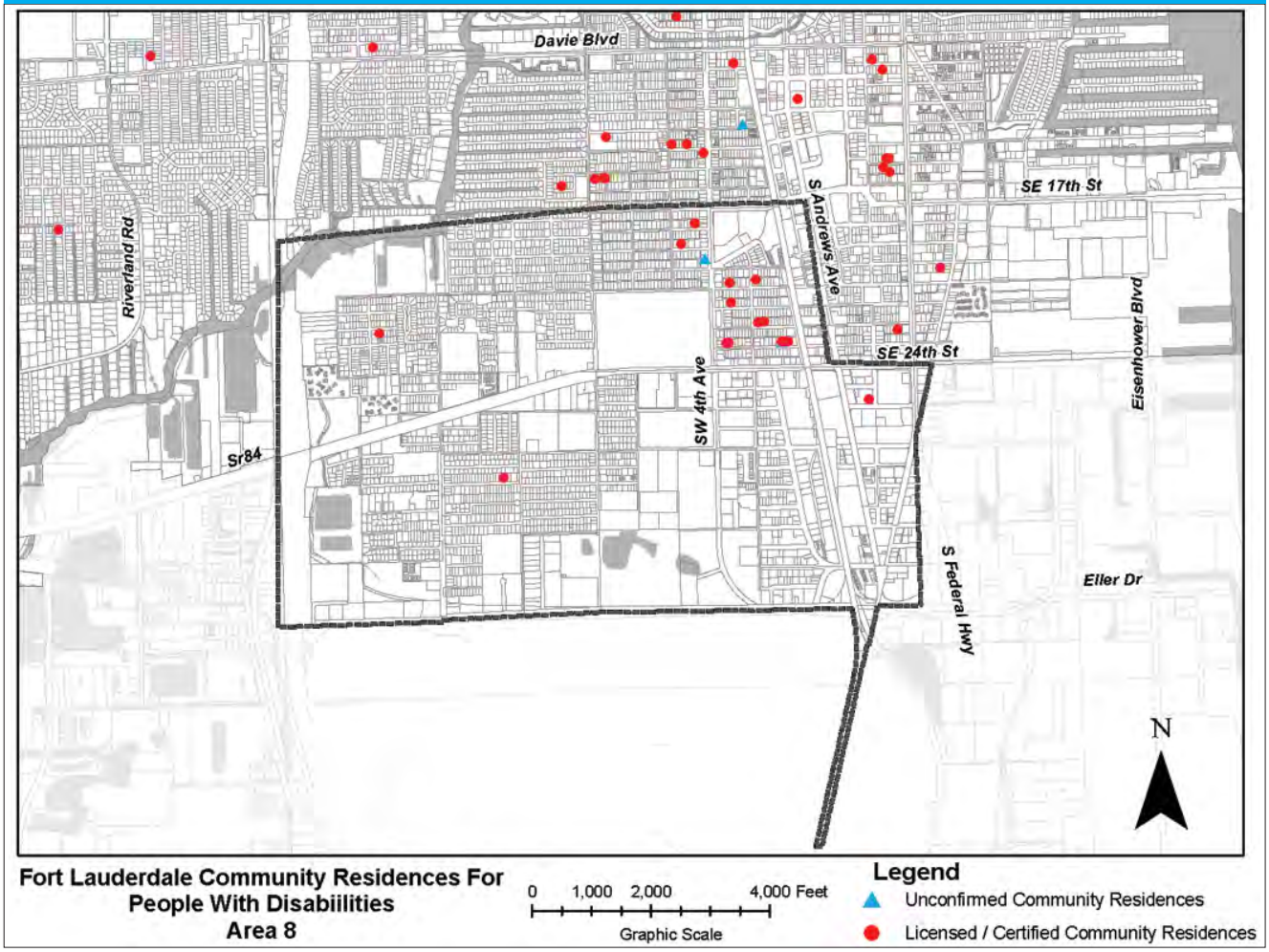
Figure 11: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Area 7



Source: City of Fort Lauderdale, Florida, February 2018.

With the exception of two community residences located within a block and half at its north end, community residences are suitably scattered north of Davie Boulevard in Area 7. A concentration appears to be developing south of Davie Boulevard where this is a cluster of four community residences two blocks north of SW 17th Street. Three of the community residences are adjacent to each other with a fourth less than a block and a half west. A fifth is located two block faces north of this cluster and another cluster of three community residences starts a block east. Another community residence is less than a block and a half northeast of the second cluster. This concentration extends south of SW 17th Street into Area 8.

Figure 12: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Area 8



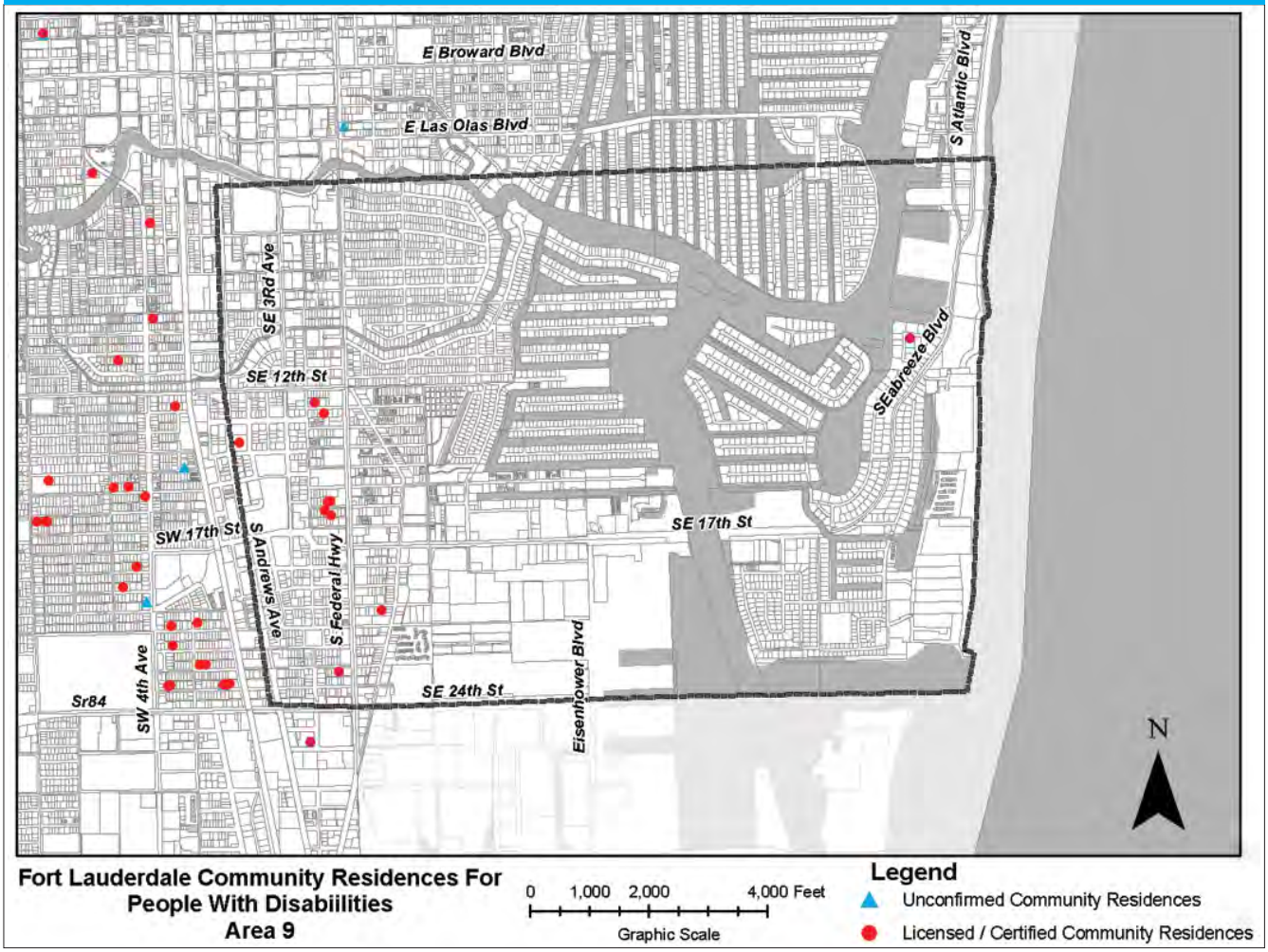
Source: City of Fort Lauderdale, Florida, February 2018.

The concentration of community residences in the southeast corner of Area 7 extends into the northeast corner of Area 8 where there are 12 more community residences. Among these are three pairs of adjacent community residences north of SE 24th Street — each pair within a block and half of the other two pairs. Another community residence is located one block face north with two more on the next block face north. These two appear to separated by just five lots. Less than a block to the northwest is an unconfirmed community residence with a licensed or certified community residence on the block face north of it and another one on the next block face north.

As explained beginning on page 14, this concentration of community residences for people with disabilities in Areas 7 and 8 runs counter to the funda-

mental principles of community residences and can interfere with achieving their core goals of normalization and community integration. Additional community residences within a block and a half of this concentration would make the concentration more intense and could effectively create a *de facto* social service district.

Figure 13: Locations of Known and Unconfirmed Community Residences for People With Disabilities in Area 9



Source: City of Fort Lauderdale, Florida, February 2018.

All but one of the community residences in Area 9 are a few blocks east of the concentration in the southeast corner of Area 7. Four community residences are clustered together just west of S Federal Highway and north of SW 17th Street.Two appear to be adjacent on the north side of the street with two adjacent ones immediately across the street. Two other community residences are located across the street from each other a few blocks north. The other commu-

nity residences are sufficiently scattered to facilitate normalization and community integration.

Conclusions on clustering and concentrations

There are no concentrations of community residences in areas 1, 2, 3, 5, and 6 although there are a number of instances of two community residences being located within a block of each other.

A concentration may be developing in Area 4. The largest concentration in fort Lauderdale has developed in Areas 7 and 8 which, unchecked, could lead to the formation of a *de facto* social service district which would likely hinder the ability of the community residences to acheive their core goals of normalization and community integration. This concentration may extend into the southwest corner of Area 9 where there is one intense cluster of four community residences and a pair of community residences on the same block face about five blocksfurther north.

Based on the experience across the nation, absent adequate rational zoning safeguards, these concentrations can grow more intense and expand to create *de facto* social service districts and alter the character of the residential neighborhoods in which they are located. Zoning provisions are needed in Fort Lauderdale to foster the integration of people with disabilities into the community and their normalization by (1) preventing existing concentrations from becoming more intense and expanding, (2) preventing new concentrations and clusters from developing, and (3) facilitating the establishment of community residences away from existing concentrations.

Recommended zoning 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 essential to them succeeding. The zoning ordinance amendments that will be proposed for Fort Lauderdale 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 a conditional use permit 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 in residential districts.

General principles from the case law. Like any other dwelling, when a community residence — whether it be "family" or "transitional" — fits within the cap on the number of unrelated persons the zoning definition of "family" or "single housekeeping unit" sets, it must be allowed as of right in *all* residential

districts the same as any other family or single housekeeping unit. The case law is very clear: No additional zoning restrictions can be imposed on a community residence for people with disabilities *that fits within the cap on the number of unrelateds in the local definition of "family."* Consequently, if a zoning code allows up to three unrelated people to constitute a "family," the zoning ordinance *cannot* require licensing or a spacing distance around a community residence with as many as three occupants with disabilities.[50]

As explained beginning on page 20, Fort Lauderdale should amend its *Unified Land Development Regulations* to redefine "family" as allowing three unrelated people living as a single housekeeping unit rather than any number of unrelated individuals for many of the same reasons enunciated by the U.S. Supreme Court in *Belle Terre*.[51] As explained earlier, any community residence for people with disabilities that fits within this cap of three must be treated as a "family" and it cannot be used for calculating spacing distances required by *local zoning*, as explained in a footnote beginning on page 17. The rest of this discussion assumes that Fort Lauderdale adopts the amendment suggested in this paragraph.

But when a proposed community residence would house more than the maximum of three unrelated individuals that Fort Lauderdale's zoning code will allow to live together as a single housekeeping unit, the zoning must make a "reasonable accommodation" to enable these homes to locate in the residential districts in which they need to be located to achieve their purpose.

Taken as a whole, the case law suggests that any reasonable accommodation must meet these 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."[52]

But the nation's Fair Housing Act is not the only law that affects how cities and counties in Florida can regulate community residences for people with dis-

50. However, there is a distinction to be made between local zoning and licensing. A licensing statute or ordinance *can* require licensing of community residences of any number of residents, including recovery residences, and licensing *can* establish rational spacing requirements between community residences of any number of residents — even those that fit within a jurisdiction's definition of "family." This is a nearly universal practice by states across the nation.

51. *Belle Terre v. Borass*, 416 U.S. 1 (1974). See the discussion beginning on page 18.

52. 46 F.3d 1491 (10th Cir. 1995) 1504.

abilities. The State of Florida has adopted several statutes that restrict local zoning of community residences for specific populations with disabilities that are licensed by the state.

The proposed zoning amendments take into account both federal fair housing law and the Florida statutes that limit local zoning.

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 accomplish their purposes and function properly, and which alters the residential character of a neighborhood) and of protecting the residents of the community residences from improper or incompetent care and from abuse. 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 zoning approach in compliance with the Fair Housing Act is classifying community residences on the basis of functionality rather than on the number of people living in the community residence — at least as much as the legal provisions of Florida's statutes allow.

Community residences for people with disabilities (both family and transitional) that house no more than the proposed cap of three unrelated residents in a single housekeeping unit would be treated the same as any other family and would not be included when calculating spacing distances between community residences for people with disabilities.

Community residences in general

As emphasized throughout this report, emulating a biological family is an essential core characteristic of every community residence. It is difficult to imagine how more than ten to 12 individuals can successfully emulate a biological family. Once the number of occupants exceeds a dozen, the home tends to take on the characteristics of a mini–institution rather than a family or a residential use. Fort Lauderdale should consider defining community residences as housing no more than a ten or 12 people,[53] while allowing for a reasonable accommodation process for proposed community residences that demonstrate they can emulate a family and need more than 10 or 12 residents for therapeutic and/or financial reasons.[54]

---

53. The maximum number of residents in community residences allowed as of right should be an even number to accommodate the established need of assuring all recovery home residents have a roommate.

54. As explained beginning on page 46, community residences for people with disabilities are subject to a jurisdiction's building code provisions to prevent overcrowding that apply to all residential uses. So if a jurisdiction's building code would allow just seven people in a dwelling unit, then

Misusing the definition of "family" to create *de facto* mini–institutions

Across the country, some recovery residence operators seek to skirt the zoning provisions to prevent adverse clustering by misusing the cap on the number of unrelated individuals in the zoning code's definition of "family." In these instances, when a city has a cap of three unrelateds in its definition of "family" like Fort Lauderdale is considering, the operator places three people in recovery in multiple units in an apartment building or sets up a series of recovery residences in adjacent houses and town homes with three people in each dwelling unit. They theorize that since they are keeping the number of occupants in each dwelling unit within the zoning definition of "family" cap on the number of unrelated individuals, they must be treated the same as any other "family."

As noted on page 24, some operators in Fort Lauderdale have packed multifamily buildings with people in recovery, creating functionally segregated mini–institutions operating under the guise of recovery residences. Sixty people in recovery are in one complex of 16 apartments. Fifty–two people in recovery are in the 16 apartments in the building shown below in Figure 9

Figure 14: Fort Lauderdale Apartment Building Turned Into a Recovery Mini–Institution

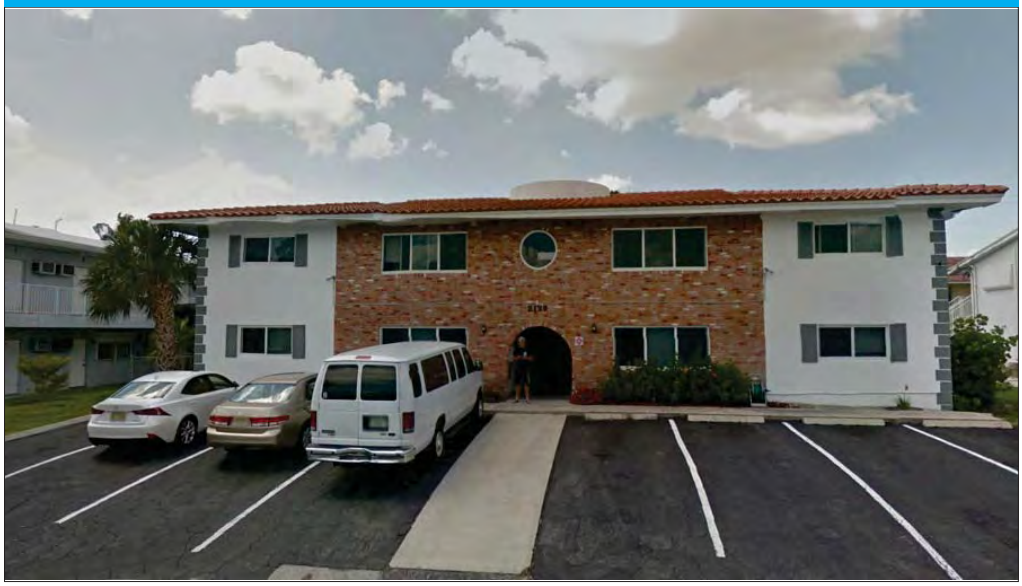


Photo from Google Earth.

It is difficult to imagine how these arrangements are anything but a mini–institution as opposed to a simple dwelling unit or residence. Operators are known to move residents around between apartments or houses — unlike how

that is the maximum number of people who can live in that dwelling unit whether it is occupied by a biological family, children in foster care, or the functional family of a community residence for people with disabilities.

a family or three roommates behave. This sort of arrangement certainly does *not* constitute a community residence in any sense of the words — remember that community residences are supposed to emulate a biological family. The segregated housing it creates runs counter to the core purpose of a community residence: to achieve normalization and community integration with your "able–bodied" neighbors as your role models.

Figure 15: Cluster of Four Adjacent Buildings in Fort Lauderdale With 56 People in Recovery

Photo: Google Earth.

As noted earlier, a key basis for community residences locating in residential zoning districts has long been that the "able–bodied" neighbors serve as role models for the people with disabilities. Consequently, this essential rationale for community residences expects the occupants of the community residences to interact with their neighbors. Filling apartment buildings or adjacent single–family structures with people in recovery is hardly conducive to achieving these fundamental goals. Instead the occupants of the apartments will almost certainly interact nearly exclusively with the other people in recovery rather than with people in the surrounding neighborhood in sobriety.

Introducing such mini–institutions alters an area's residential character. In addition, there is no evidence that such arrangements do not affect property values, property turnover rates, or neighborhood safety — studies of the impacts of community residences examined actual community residences that emulate a family, not these mini–institutions. These kinds of *de facto* social service districts fall far outside the foundations upon which the courts have long based their decisions to treat community residences as residential uses including emulating a biological family and utilizing nearby neighbors without disabilities as role models to foster normalization as well as participation in the

broad community to achieve community integration.

It is important to remember that zoning is based on how each land use functions. The original community residence concept is based on the community residence behaving as a "functional family" that emulates a biological family. Such homes need to be in a residential neighborhood where the so–called "able bodied" neighbors serve as role models. Those are key cornerstones upon which the court rulings that require community residences to be allowed in residential districts rest.

Figure 16: Fort LauderdaApartment Building Turned Mini–Institution for 36 in Recovery

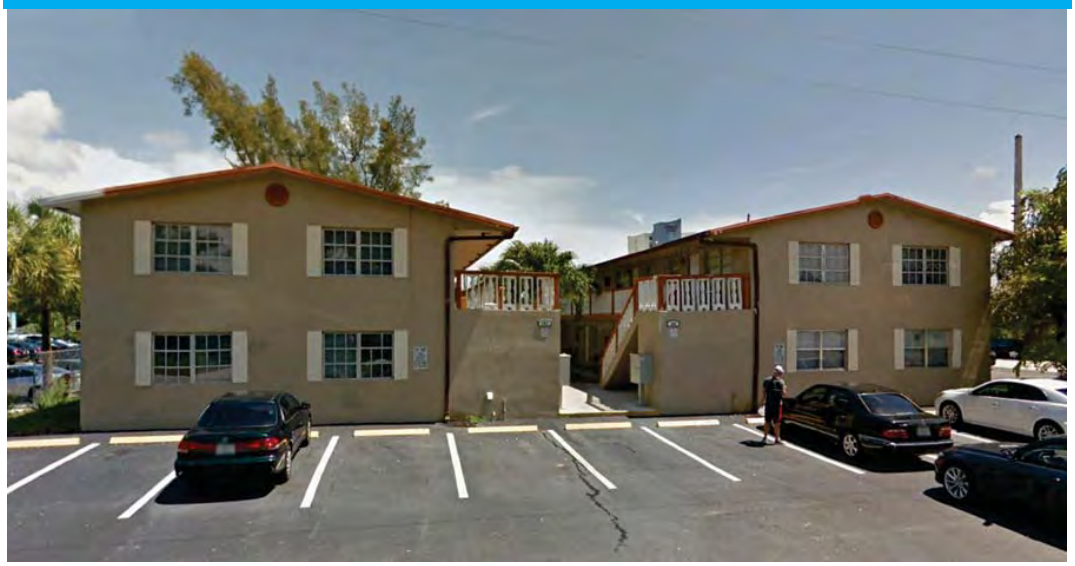


Photo: Google Earth.

But filling a multifamily building with people in recovery — or filling a block of houses with people in recovery — hardly emulates a biological family in a residential neighborhood. Instead of so–called "able–bodied" people in the surrounding dwelling units to act as role models, everybody is surrounded by other people in recovery. It is difficult to imagine how such segregated living arrangements foster the normalization and community integration at the core of the community residence concept. Such arrangements are like a step back to the segregated institutions in which people with disabilities were placed before deinstitutionalization became the nation's policy more than half a century ago.

These are among the reasons why spacing distances are so crucial to establishing an atmosphere in which community residences can enable their occupants to achieve normalization and community integration. And these are

among the reasons that zoning should be treating these arrangements as the mini–institutions that they functionally are.[55]

Additional issues to consider

The precise language of the zoning amendments will need to make allowances for the legal provisions in the Florida state statutes on zoning for certain types of community residences for people with specific disabilities.

Note that the state statute governing local zoning for most types of community residences for people with disabilities (called state licensed "community residential homes") allows local governments to adopt zoning that is *less restrictive* than the state statutes.[56] The zoning proposed here is broader in scope than the state statutes. The proposed zoning covers community residences for *all* types of disabilities including disabilities that the state statutes do not address.

The state statutes, for example, do *not* establish any zoning standards for recovery residences — sober homes, recovery communities, and small halfway houses for people in recovery. As discussed earlier, the state statutes do establish a voluntary credential for recovery residences administered by the Florida Association of Recovery Residences. The credentialing standards and processes are as demanding or even more demanding than some existing licensing laws in other states.

While there are few Oxford Houses in Florida as of this writing, local zoning provisions for community residences must provide for these unstructured, self–governed recovery communities. Oxford House has been recognized by Congress and has its own internal monitoring system in place to inspect and maintain compliance with the Oxford House Charter.[57] The standards and procedures that both Oxford House and the State of Florida's voluntary certification of recovery residences employ are functionally comparable to licensing requirements and procedures for recovery communities in other states. The zoning approach suggested here recommends that Oxford House and certified recovery residences be treated the same as state certification.

---

55. The case law that requires *zoning* to treat a community residence residence that fits within the cap on unrelateds in the definition of "family" is based on fact situations involving actual, individual community residences. The case law under the Fair Housing Act regarding community residences for people with disabilities is very fact specific. It is difficult to imagine that a court would fail to recognize that, for example, placing 96 people with disabilities in four buildings on a block is an attempt to subvert the definition of "family" and would be anything but an institutional use plopped down in a residential area.
56. *Florida Statutes*, §419.001(12). "State law on community residential homes controls over local ordinances, but nothing in this section prohibits a local government from adopting more liberal standards for siting such homes."
57. Oxford House does not allow its recovery communities to open in a state until Oxford House has established its monitoring and inspection processes to assure that Oxford Houses will operate within the standards the Oxford House Charter establishes.

Family community residences

Unlike the transitional community residences discussed below, tenancy in family community residences is relatively permanent. There is no limit on how long people can live in them. In terms of stability, tenancy, and functionality, family community residences for people with disabilities are more akin to the traditional owner–occupied single–family home than are transitional community residences for people with disabilities.

To make this reasonable accommodation for more than three people with disabilities who wish to live in a community residence, the proposed zoning ordinance amendments will make family community residences for four to 10 people with disabilities a permitted use in all zoning districts where residential uses are currently allowed, subject to two objective, nondiscretionary administrative criteria:

- The specific community residence or its operator must receive authorization to operate the proposed family community residence by receiving the license that the State of Florida requires, the voluntary certification available through the Florida Association of Recovery Residences, or a self–imposed inspection and set of criteria that are the functional equivalent of certification or licensing (Oxford House);[58] and
- The proposed family community residence is not located within a rationally–based distance (1,000 feet, the length of a typical block and a half) of an existing community residence as measured from the nearest lot lines.

Transitional community residences

Residency in transitional community residences is more transitory than in family community residences because transitional community residences either impose a maximum time limit on how long people can live in them or actually house people for a few months or weeks.[59] Tenancy is measured in months or weeks, not years. This key characteristic makes a transitional community residence more akin to multiple–family residential uses with a higher turnover rate typical of rentals than single–family dwellings with a lower turnover rate typical of single–family ownership housing. Even though multiple–family uses are not allowed in single–family districts, the Fair Housing Act requires every city and

58. There appears to be no legal reason why any local Florida jurisdiction could not require recovery residences to obtain certification from the State of Florida to satisfy this criterion. As noted above, Oxford House, which is recognized by Congress, maintains its own standards and procedures that are comparable to the standards and procedures of licensing laws in jurisdictions outside Florida. Consequently, Oxford Houses, as well as recovery residences certified by the State of Florida, would meet this first criterion.
59. Time limits typically range from 30 days to 90 days, and as long as six, nine, or 12 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.

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 for four or more people with disabilities should be allowed as a permitted use subject to two objective, nondiscretionary administrative criteria:

- The specific community residence or its operator must receive authorization to operate the proposed transitional community residence by receiving the license that the State of Florida requires, the voluntary certification available through the Florida Association of Recovery Residences, or a self–imposed inspection and set of criteria that are the functional equivalent of certification or licensing (Oxford House);[60] and
- The proposed transitional community residence is not located within a rationally–based distance (1,000 feet, the length of a typical blockblock and a half) of an existing community residence as measured from the nearest lot lines.

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, the local jurisdiction, the State of Florida, and the federal government may not require a license, certification, or accreditation, nor recognize or sanction the congregate living arrangement. In these situations, the case by case heightened scrutiny of a conditional use permit is warranted to protect the occupants of the prospective community residence from the same mistreatment, exploitation, incompetence, and abuses from which licensing, certification, accreditation, or recognition from Congress protects them. There are two circumstances under which a conditional use permit could be sought:

(1) **Locating within the spacing distance.** To determine whether a community residence should be allowed within the spacing distance from an existing community residence, the city would need to consider whether allowing the proposed community residence will hinder the normalization for residents and community integration in the existing community residence and/or whether the proposed community residence

60. There appears to be no legal reason why any local Florida jurisdiction could not require recovery residences to obtain certification from the State of Florida to satisfy this criterion. As noted above, Oxford House, which is recognized by Congress, maintains its own standards and procedures that are comparable to the standards and procedures of licensing laws in jurisdictions outside Florida. Consequently, Oxford Houses, as well as recovery residences certified by the State of Florida, would meet this first criterion.

would alter the character of the neighborhood.

(2) **When no local, state, or federal licensing, certification, or accreditation program is applicable.** If the operator of a proposed community residence seeks to establish a community residence in Fort Lauderdale for which the city, State of Florida, or the federal government does not require or offer a license or certification or is not under a self–imposed license equivalency like Oxford House, 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 that is comparable to typical licensing standards.[61]

Under the proposed zoning amendments if the required 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 Fort Lauderdale.

In evaluating an application for a conditional use 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 or in a neighborhood.

It is vital to stress that the decision on a conditonal 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.

61. When evaluating a proposed recovery residence's application for a conditional use permit under these circumstances, a local jurisdiction would be perfectly within its rights to apply the standards for the state's voluntary credentialing program in the interest of protecting the health, safety, and welfare of the residents of the proposed recovery residence.

Maximum number of occupants

State licensing regulations for community residences often establish the maximum number of individuals that can live in a community residence. Even with these state–imposed caps, the number of residents *cannot* exceed the number permissible under the occupancy provisions of Fort Lauderdale's building code that apply to *all* residences. For example, if the formula in the city's housing or building code limits the number of residents in a dwelling unit to five, no more than five people can live there whether the residence is occupied by a biological family or a functional family of a community residence.

Fort Lauderdale's municipal code establishes minimum dwelling space requirements to prevent overcrowding.[62] The code requires a minimum of 150 square feet of floor space for the first occupant of a dwelling unit and at least 100 additional square feet for each additional occupant, based on the total area of all habitable rooms.[63]

The code also requires a minimum of 70 square feet gross floor area for a sleeping area occupied by one person. For bedrooms occupied by two or more people, the code requires at least 50 square feet for each occupant of the sleeping area.[64] ***These minimum floor area requirements apply to all residences in Fort Lauderdale, including community residences for people with disabilities.***

Under this formula, a room in which just one person sleeps could be no smaller than seven feet by ten feet or other dimensions that add up to 70 square feet. A bedroom in which two people sleep could be no smaller than 100 square feet, or ten by ten, for example. A bedroom for three people must be at least 150 square feet, or ten by 15, for example.[65] Keep in mind that these are minimum criteria to prevent overcrowding 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.[66]

---

62. *Code of Ordinances of the City of Fort Lauderdale, Florida,* Chapter 9 - Buildings and Construction, Article VI. - Minimum Housing Code, Division 3. - Standards and Requirements, §9–277.
63. Ibid. at §9–277 (b).
64. Ibid. at §9–277 (c)(1). Sleeping areas must also be at least eight feet wide. Ibid. At §9–277 (c)(2).
65. Obviously these dimensions are examples. A 150 square foot room could also be 12 feet by 12.5 feet as well as other dimensions that add up to 150 square feet.
66. *City of Edmonds v. Oxford House, Inc.,* 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*

Under 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. Fort Lauderdale's current occupancy provisions meet these criteria.

Under the Fair Housing Act, it is clearly improper 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.

However, given that emulation of a biological family is a core component to community residences for people with disabilities, it is reasonable for a jurisdiction to establish the maximum number of individuals in a community residence that certainly can emulate a biological family. It is likely that as many as ten to 12 unrelated individuals in a community residence can emulate a biological family. It is very doubtful if larger aggregations can. Consequently the proposed zoning amendments will cap community residences at 10 occupants and establish a structured administrative "reasonable accommodation" procedure to lift the cap for a specific community residence on a case–by–case basis. The burden will be on the applicant to show the therapeutic or financial need for more than 10 residents and to convincingly demonstrate how the residents will emulate a biological family. The proposed community residence will be subject to the spacing and licensing/certification requirements applicable to all community residences for people with disabilities.

Other zoning regulations for community residences

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. There is no need for the land development code to repeat these requirements in its sections dealing with community residences.

The state's statute reinforces this basic concept:

> A dwelling unit housing a community residential home established pursuant to this section shall be subject to the same local laws and ordinances applicable to other noncommercial, residential family units in the area in which it is established.[67]

Off–Street Parking. Even within the context of the state statute quoted immediately above, localities can establish off–street parking requirements for

---

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]*

67. *Florida Statutes,* §419.001(8) (2017).

community residences for people with disabilities. Some community residences generate parking needs that exceed what a biological family might generate. However, 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 three in Fort Lauderdale's proposed definition of "family." For example, different types of community residences may generate very different off–street parking needs. Generally the residents of community residences do not drive. People with developmental disabilities and the frail elderly do not drive and will not generate a need for off–street parking for their occupants. They will get around town with a vehicle and driver 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 accessible. 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 *legitimate* recovery community or sober living home 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. Visitor parking can be accommodated on the street as it is for all residential uses. In warm–weather climates like Fort Lauderdale, many recovery homes residents own and drive electric or gas–powered scooters which, obviously require less space to park than automobiles.

It is, however, rational to require off–street parking for staff, whether it be live–in staff or staff that works on shifts. The city needs to carefully craft off–street parking requirements for community residences for people with disabilities that allow for the varying needs of community residences for people with different disabilities.

Factoring in the Florida state statute on locating community residences

While the State of Florida has adopted statewide zoning provisions for what it calls "community residential homes," it is vital to remember that these limitations on local zoning establishes apply *only* to the community residences licensed by the five state agencies listed on page 6.[68] Local jurisdictions are perfectly free to establish different zoning regulations for community residences these five state agencies do not license. None of these five state agencies licenses recovery residences. As explained earlier, recovery residences can apply for voluntary certification administered by the Florida Association of Recovery Residences, the state's chosen entity.

The State of Florida's statute on zoning for "community residential homes" it gives localities some leeway to craft local zoning provisions:

> Nothing in this section requires any local government to adopt a new ordinance if it has in place an ordinance governing the placement of community residential homes that meet the crite-

68. Florida Statutes, §419.001 (1)(a) (2017).

> ria of this section. State law on community residential homes controls over local ordinances, but *nothing in this section prohibits a local government from adopting more liberal standards for siting such homes*.[69]

Consequently, any local jurisdiction is free to adopt its own zoning regulations for community residences for people with disabilities that are "more liberal" or less restrictive than the state's.[70]

The proposed zoning amendments for community residences for people with disabilities will be crafted to abide with the provisions of the state statutes that comply with the nation's Fair Housing Act.[71]

Impact of Florida statute on vacation rentals

In some circles there appears to be confusion over the major differences between vacation rentals and community residences for people with disabilities. These are diametrically different land uses subject to different zoning and licensing or certification treatments.

The Florida legislature has adopted a state statute that pre–empted home rule and now allows vacation rentals in residential zoning districts throughout the state. Local laws regulating vacation rentals were allowed to stand.[72] Within the bounds permitted by state statutes, Fort Lauderdale adopted an ordinance regulating vacation rentals on August 18, 2015.[73]

This state law has no impact on how a jurisdiction can zone for community residences for people with disabilities. Vacation rentals are nothing like community residences for people with disabilities. The former are commercial uses akin to a mini–hotel while the latter are residential uses. The former do not make any attempt to emulate a biological family; the host is a landlord and there is no effort for the guests to merge into a single housekeeping unit with the owner of the property.

The language in the state statutes does not suggest any similarities between vacation rentals and community residences for people with disabilities. The Florida state statutues define "vacation rental" as:

---

69. *Florida Statutes,* §419.001(10) (2017). *Emphasis added.*
70. While the author has never before seen statutory language using the phrase "more liberal," the most rational interpretation of the phrase is that it means the same as "less restrictive."
71. Local governments have learned that state statutes that violate the Fair Housing Act do *not* offer a "safe harbor." The statutes of the State of Texas had required a clearly illegal 2,500 foot spacing distance between group homes for people with disabilities. Attempts by cities to justify their 2,500 foot spacing distances based on the state statute failed to shield them from being found in violation of the Fair Housing Act.
72. *Florida Statutes,* §509.032(7)(b) (2017).
73. Ordinance No. C–15–29 (2015).

> any unit or group of units in a condominium or cooperative or any individually or collectively owned single–family, two–family, three–family, or four–family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.[74]

The state statutes define "transient public lodging establishment" as:

> any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.[75]

Community residences for people with disabilities constitute a very different land use than a "transient public lodging establishment." No community residence for people with disabilities is "held out *to the public* as a place regularly rented to guests" *[emphasis added]*. Each community residence houses people with a certain type of disability — *not* members of the general public. In fact, by definition, occupants of a community residence are not "guests" in any sense of the word. They are residents, not vacationers.

In contrast to a "vacation rental" which, by state law, is a "transient public lodging establishment," a community residence by definition is a single housekeeping unit that seeks to emulate a biological family to achieve normalization and community integration of its occupants with disabilities. Family community residences offer a relatively permanent living arrangement that can last for years — far different than a vacation rental. Transitional community residences establish a cap on length of residency that can be as much as six months or a year — very different than vacation rentals.

Unlike the guests in a vacation rental unit, the occupants of a community residence for people with disabilities constitute a vulnerable service–dependent population for which each neighborhood has a limited carrying capacity to absorb into its social structure. The occupants of a community residence are seeking to attain normalization and community integration — two core goals absolutely absent from vacation rentals. The occupants of a community residence rely on their so–called "able bodied" neighbors to serve as role models to help foster habilitation or rehabilitation — a concept completely foreign to a transient public lodging establishment. It is well–documented that the vulnerable occupants of a community residence need protection from unscrupulous operators and care givers. In terms of type of use, functionality, purpose, operations, nature of their occupants, and regulatory framework, there is nothing comparable between community residences for people with disabilities including recovery residences and transient public lodging establishments including vacation rentals.

---

74. Florida State Statutes, §509.242(1)(c) (2016).
75. Florida State Statutes, §509.013(4)(a)1 (2016).

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, assuring that their health and safety needs are met, enabling normalization and community integration to occur by preventing clustering or concentrations of community residences from developing or intensifying, and preventing the creation of *de facto* social service districts. Protecting the residents of community residences for people with disabilities also protects the neighborhoods in which the homes are located. These provisions help assure that adverse impacts will not be generated. As with all zoning issues, city staff will enforce zoning code compliance.

The proposed amendments will establish a definition of "family" with a cap of three unrelated individuals functioning as a single housekeeping unit. The zoning amendments will treat community residences that comply with the cap of three unrelated individuals in the city's definition of "family" the same as any other family. They will impose no additional zoning requirements upon them.

However, when the number of unrelated occupants in a proposed community residence exceeds three unrelated individuals, the proposed amendments make the "reasonable accommodation" that the nation's Fair Housing Act requires. The amendments will make "family community residences" for people with disabilities a permitted use in all residential districts when they meet objective, rationally–based licensing and spacing standards. Transitional community residences will be permitted as of right in all multifamily districts when they meet these same two criteria and allowed in single–family districts via a conditional use permit based on standards that are as objective as possible to promote compatibility with the single–family neighborhood.

When a proposed community residence for four or more people does not satisfy the spacing and licensing criteria to be permitted as of right, the heightened scrutiny of a conditional use permit is warranted. Consequently, the operator would have to obtain a conditional use permit if her proposed community residence would be located within the adopted spacing distance from an existing community residence for four or more people or if the proposed home does not fit within any licensing, certification, or accreditation program of the State of Florida, the federal government, or the Oxford House Charter. The burden rests on the operator to show that the proposed home would meet the standards Fort Lauderdale requires for issuing a conditional use permit. A community residence that has not been issued a *required* license, certification, or accreditation would *not* be allowed in Fort Lauderdale at all. But when no certification, licensing, or accreditation is required or available, then the community residence operator can seek a conditional use permit.

Standards for a conditional use permit will be narrowly tailored meet the legitimate government interests of facilitating normalization and community integration of the residents of community residences for people with disabilities and protecting these residents from abuse, maltreatment, or other mistreatment by an operator or staff.

Since the zoning amendments that will be proposed are strictly for community residences *for people with disabilities,* there will be no change in how Fort Lauderdale regulates halfway houses for prison pre–parolees or sex offenders.

To implement and administer these amendments, the city will need to maintain a map and its own internal database of all community residences for people with disabilities within and around Fort Lauderdale[76] — otherwise it would be impossible to implement the spacing distances required by the proposed zoning and by existing state licensing of some types of community residences.

76. Since it is possible that community residences for people with disabilities may be located within whatever spacing distance the city chooses to adopt, it is critical that the city be fully aware of any community residences outside its borders, but within the chosen spacing distance. The adverse effects of clustering community residences do not respect municipal boundaries.

Appendix A: Representative studies of community residence impacts

More than 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 studies that cover community residences for more than one population provide data on the impacts of the community residences for each population in addition to any aggregate data.

The following studies constitute a representative sample. Few studies have been conducted recently simply because this issue has been studied so exhaustively and their findings of no adverse impacts have been so consistent. Consequently, funding just isn't available to conduct more studies on a topic that has been studied so exhaustively.

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 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 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.)

Appendix B: Sample zoning compliance application form

In order the implement the proposed zoning amendments, Fort Lauderdale will need to create a form for applicants wishing to establish a community residence for any number of people with disabilities. The form will enable city staff to determine whether the proposed community residence:

- Is allowed as of right under the zoning code's definition of "family"
- Is allowed as of right in the zoning district in which it would be located,
- Is required to apply for a special use permit (a conditional use permit in the case of Fort Lauderdale)
- Needs to also request a reasonable accommodation to house more than ten individuals
- Meets the minimum floor area requirements to which all rental housing is subject, and
- Provides the required minimum number of off–street parking spaces.

The application form that Delray Beach uses is a good example of such a form. It can be adapted for use in Fort Lauderdale.

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 to foster the normalization and community integration essential to operate a community residence.

Community Residence Zoning Application

Applicants: Please complete this form so city staff can identify the zoning requirements that apply to your proposed community residence for people with disabilities.

Instructions: This application must be completed to establish a community residence for people with disabilities in Delray Beach or to recertify a reasonable accommodation applied for *before* July 19, 2017. The city will issue a determination on an application to establish such a community residence for 3 or fewer occupants within 2 business days of receiving the *completed* application. When an application to establish such a community residence for 4 or more occupants meets the criteria for a community residence for people with disabilities allowed as of right by the *Delray Beach Land Development Regulations,* the city will issue a statement of approval within 10 business days of receiving the *completed* application. Any review of a completed application that takes longer that stated here does *not* constitute automatic approval of the application. No public hearing is required. If a conditional use permit is required, a public hearing is necessary and you will need to apply for a conditional use permit. If a reasonable accommodation is needed, staff will provide instructions and any required application form.

☐ **Please keep a copy of this completed application for your records.**

Date this application submitted to the City of Delray Beach: _____ _____, 20___

Full address of proposed community residence: _____

Zoning district in which the proposed community residence would be located: _____

Application Purpose (check only one):

☐ Initial application ☐ Recertification of reasonable accommodation applied for *before* July 19, 2017

Applicant information:

Applicant's name and title: _____

Applicant's signature: _____

By signing this form, I attest under penalties of perjury, that the information provided is true and accurate.

Name of entity (or individual) that owns the proposed community residence:

_____

☐ Check box if owner of the property is also the operator

Owner of the property contact information

Address: _____

City–State–Zip Code: _____

Telephone: _____

Cell phone: _____ Email: _____

Operator information if different than owner of the property:

Name of Operator (entity or individual): _____

Address: _____

City–State–Zip Code: _____

Telephone: _____

Cell phone: _____ Email: _____

Owner's Consent: (This consent section must be completed by ALL property owners. Reproduce this page for additional owners and include with your application.)

I,_____, (print owner's name) the fee simple owner of the property located at _____, Delray Beach, Florida, Property Control Number _____, hereby petition to the City of Delray Beach for (check one):

☐ Zoning approval to establish a community residence at the aforementioned address

☐ Recertification of the reasonable accommodation for this property that was granted before July 19, 2017 to establish a community residence for people with disabilities at this address

I certify that I have examined the application and that all statements and diagrams submitted are true and accurate to the best of my knowledge. I consent to inspection and photographing of the subject property by the Planning and Zoning Department staff for purposes of consideration of this application and/or presentation to the approving body or entity. Further, I understand that this application, attachments and fees become part of the Official Records of the City of Delray Beach, Florida, and are not returnable.

Owner's signature: _____

The foregoing instrument was acknowledged before me this_____ day of _____, 20_____ by _____ , who is personally known to me or has produced _____ (type of identification) as identification and who did (did not) take an oath.

_____ (Printed name of notary public)

_____ (Signature of notary public)

Commission #: _____

My commission expires: _____

(Notary's Seal)

Residency

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

☐_____ days ☐_____ month(s) ☐____ year(s) ☐_____ No limitation

How long will residents *typically* live in the home? _____ week(s) _____month(s) _____ year(s)

Number of occupants

A Number of people with disabilities who will live in the proposed community residence: _____

B Number of live–in staff (if any): _____

Total number of occupants: Add **A + B** = _____

To determine compliance with the City of Delray Beach's *Housing Code,* please enter the requested information:

Bedroom	Width and length in feet of each bedroom excluding closets	Total square feet in bedroom excluding closets	Number of residents (including any live-in staff) to sleep in each bedroom	Total gross floor area of all habitable rooms
1				If unsure how to measure this, ask city staff for instructions. **Print the total gross floor area in the cell below**
2				
3				
4				
5				
6				
Totals			_____residents	_____ square feet

If an answer to a question will not fit within the space allotted, please feel free to add additional pages as needed.

Licensing and Certification

Describe the general nature of the residents' disabilities (developmental disabilities, recovery from addiction, mental illness, physical disability, frail elderly, etc.). *Do not discuss specific individuals*:

Check the appropriate box(es) below and provide the information requested:

☐ The State of Florida (including FARR) has issued the certification or required license or to operate this community residence as a _____
(License categories include, but are not limited to: "community residential home" and "assisted living facility"; certification includes "recovery residence")

FARR Certification Level (if applicable): _____

Name of Certified Recovery Residence Administrator (if applicable): _____

Name of state licensing or certification agency:
_____

Statutory number under which license is required: _____

Provide official verification that certification or the requisite license has been issued or applied for.

☐ Check here if certification has been applied for and provisional certification has been issued.
Date on which provisional certification was issued: _____ _____, 20____

If provisional certification, annual certification, or a required license has *not* been issued, please explain why and when it is expected to be issued:

☐ The State of Florida does ***not*** require a license or offer certification for this type of community residence

☐ The proposed community residence is sanctioned by Congress (example: Oxford House)

Off-street parking

Number of residents allowed to have a motor vehicle on the site: _____

Number of staff present at any one time (excludes during shift changes): _____

A Number of off-street parking spaces on the site: _____ spaces

B Number of off-street parking spaces off the site at a remote location(s): _____ spaces

Total number of off-street parking on the site and off the site at remote location(s):

Add **A + B** = _____

Address(es) of off–site location(s) for any remote off–street parking:

For CITY Staff Use Only

Findings

Zoning District: _____

The closest existing community residences within a 660 foot radius of the proposed community residence:

Address	Distance from proposed community residence

____ Number of residents who are people with disabilities

____ Total number of residents including live-in staff *[more than 10 requires a reasonable accommodation unless the home is licensed by the State of Florida; then 14 are allowed]*

____ Maximum number of occupants allowed under Delray Beach *Housing Code*

_____ Minimum number of off-street parking spaces required on site or at remote location(s)

Proposed use is a (check only one):

☐ Family community residence ☐ Transitional community residence

☐ Not a community residence *for people with disabilities*

Licensing/Certification Status (check all that apply):

☐ The State of Florida requires a state license to operate the proposed community residence

☐ The State of Florida does ***not*** require a state license or ***does not offer*** certification for this use

☐ Proposed use or operator has been issued a required state license, state certification, or is sanctioned by Congress (Oxford House) *[see next line for provisional certifications]*

☐ Operator has been issued provisional certification to operate the proposed recovery residence

☐ Operator has applied for state certification or a required state license, but has not been issued the certification or license sought. Expected date of issuance: _____, 20___

☐ Operator or proposed use has been **denied** certification or required state license

Zoning Determination **Check all applicable boxes**

☐ Off-street parking requirements are met

☐ Complies with Delray Beach *Housing Code*

☐ Use constitutes a "family" of 3 or less and is allowed without spacing or licensing

☐ Use is allowed as of right

☐ Use requires a conditional use permit

☐ Use requires a reasonable accommodation

☐ Use issued state license or certification

☐ Use may open only *after* receiving state license or provisional certification

☐ Recertify existing reasonable accommodation

☐ **Application denied** *(Check all applicable reasons):*

- ☐ Lacks certification or required license
- ☐ Not allowed as of right
- ☐ Not eligible for a conditional use permit
- ☐ Not a community residence for people with disabilities
- ☐ Doesn't comply with *Housing Code*
- ☐ Doesn't meet off–street parking minimum
- ☐ Doesn't meet requirements to recertify existing reasonable accommodation

Staff review conducted by: _____

Signed:_____

Date: _____ , 20__