

Law Office of Daniel Lauber

7215 Oak Avenue 📍 River Forest, Illinois 60305 ☎ 708/366-5200

Email: [dan@grouphomes.law](mailto:dan@grouphomes.law)

<http://www.grouphomes.law>

## Memorandum

**Date:** May 15, 2018

**From:** Daniel Lauber, AICP

**To:** Jennifer Gomez

**Subject:** Tips for Evaluating Special Exception Applications for Community Residences and Recovery Communities Located Within the Spacing Distance

The new amendments to the Zoning Code that apply to community residences and recovery communities to be allowed as permitted uses (“as of right”):

- ◆ To be allowed as of right, a **proposed community residence** must be at least 660 feet away from any existing community residence or recovery community
- ◆ To be allowed as of right, a **proposed recovery community** must be at least 1,200 foot away from any existing community residence or recovery community.

The research suggests that allowing these uses that far apart will not lead to adverse impacts nor interference in the ability of the proposed and existing uses to achieve normalization and community integration or to use nondisabled people in the neighborhood as role models. However, these spacing distances have never been intended to be rigid and exceptions have always been expected to be granted on a case-by-case basis if specific standards can be met.

Sometimes an operator will seek to establish a new community residence or recovery community within the applicable spacing distance from an existing one. Determining whether to grant the required special exception is a very fact-specific endeavor and can get a bit nuanced. However, if we keep in mind the purposes of these spacing distances, we can provide some guidance for evaluating these applications on a case-by-case basis.

Keep in mind that a **community residence** is a small group of people with disabilities living together as a single housekeeping unit that emulates a biological family. *Generally speaking*, up to ten people can live in a community residence.

A **recovery community** consists of a multifamily building or buildings *exclusively* for people in recovery. They do not emulate a biological family and are more intense use than a community residence, hence the longer spacing distance.

For your convenience, the applicable zoning provisions with standards are shown immediately below. They appear in Pompano Beach’s zoning code under Section 155.2406. Special Exception.

## Applicable Zoning Provision for Community Residences

### E. Special Exception Review Standards for Community Residences

A Special Exception for a community residence (family or transitional) shall be approved only on a finding that there is competent substantial evidence in the record that the Special Exception meets the applicable standards:

1. When the proposed community residence arrangement is required to obtain a special exception because it would be located within 660 linear feet of an existing community residence or recovery community:
  - (a) The applicant demonstrates that the proposed community residence or recovery community will not interfere with the normalization and community integration of the residents of any existing community residence or recovery community and that the presence of other community residences or recovery communities will not interfere with the normalization and community integration of the residents of the proposed community residence, and
  - (b) The applicant demonstrates that the proposed community residence in combination with any existing community residences and/or recovery communities will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating or intensifying an institutional atmosphere or *de facto* social service district by concentrating or clustering community residences and/or recovery communities on a block face or in a neighborhood.

## Applicable Zoning Provision for Recovery Communities

### F. Special Exception Review Standards for Recovery Communities

A Special Exception for a recovery community shall be approved only on a finding that there is competent substantial evidence in the record that the Special Exception meets the applicable standards:

1. When the proposed recovery community is required to obtain a special exception because it would be located within 1,200 linear feet of an existing recovery community or community residence,

- (a) The applicant demonstrates that the proposed recovery community will not interfere with the normalization and community integration of the residents of any existing community residence or recovery community and that the presence of existing community residences or recovery communities will not interfere with the normalization and community integration of the residents of the proposed recovery community, and
- (b) The applicant demonstrates that the proposed recovery community in combination with any existing recovery communities or community residences will not alter the residential character of the surrounding neighborhood by creating or intensifying an institutional atmosphere or creating or intensifying a *de facto* social service district by concentrating or clustering recovery communities and/or community residences on a block face or in a neighborhood.

## Guiding Principles

In both cases, the first standard focuses on whether or not the proposed community residence (for simplicity's sake, let's just use "community residence" for now instead of "community residence or recovery community") will interfere with normalization and community integration at the closest existing community residence or recovery community and whether any existing community residences or recovery communities will interfere with normalization and community integration at the proposed community residence.

So we're asking the two questions:

- ◆ When a proposed community residence would be located within 660 feet of an existing community residence or recovery community, will the proposed community residence interfere with achieving the core purposes of normalization and community integration of the existing community residence or recovery community?
- ◆ And conversely, would the existing community residence(s) and/or recovery community(ies) interfere with attaining normalization and community integration at the proposed community residence?

The second standard asks whether the proposed community residence combined with any existing community residences and/or recovery communities will alter the neighborhood's residential character by creating an institutional atmosphere or *de facto* social service district by concentrating or clustering the uses on a block face or in a neighborhood. It takes more than two community residences on a block to constitute a cluster. Concentrations are more challenging to define. For examples of concentrations, see pages 23–34 of the study, *Pompano Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities*.

## A few points to keep in mind

Social interaction with your closest neighbors — in housing that abuts your property, be it next door or across the alley — is pretty common. Those are the people who will have the most impacts on your household and the most immediate interaction. There's social interaction with others on your block as well. The closer a neighbor is to your home, the more likely you and your family will have some interaction with that neighbor.

These neighbors, whether they intend to or not, serve as role models for your children. Similarly with a community residence that emulates a biological family, the nondisabled neighbors are expected to serve as role models — that's an essential relationship that facilitates normalization. Consequently, when reviewing an application for a special exception, you should take into consideration how the addition of the proposed community residence (or recovery community) might affect the chances of the nondisabled neighbors serving as role models.

And we can all attest that when people on a block find they have something important in common, there's a greater likelihood that they will interact with each other. It's just human nature.

The situation is pretty much the same for the residents of community residences (and recovery communities). They will likely interact the most with the neighbors in the homes that abut their community residence. These closest neighbors will be the most likely to serve as role models for the people living in a community residence.

And people living in a community residence are just as likely as we are to interact with neighbors with whom they have something in common, especially something that defines their lives.

It is impossible, of course, to detail all the possible scenarios — the permutations are infinite. The examples below seek to provide some guidance which you can extrapolate to other factual situations that will arise on a case-by-case basis.

## Scenarios for a proposed community residence

Keeping all that in mind, imagine a situation where a community residence already exists on a block. And suppose another community residence is proposed for the house three doors away, well within the city's spacing distance between community residences allowed as permitted uses. The operator of the second community residence is required to apply for a special exception. How should this be application be resolved?

The answer is: "It all depends."

The details make all the difference in the world.

### Fact situation #1: Nearby community residences serving different populations

The existing community residence is a recovery residence. The proposed community residence would house frail elderly individuals or people with developmental disabilities.

### Analysis:

First we want to determine whether this second community residence would likely interfere with normalization and community integration of the people in the existing recovery residence as well as serve as role models.

What is the likelihood that there would be much social interaction between the residents of the two community residences? Slim to none.

The people in recovery aren't very likely to have much in common with the people in the existing community residence. And if they do have some interaction, they aren't very likely to see their frail elderly neighbors or neighbors with developmental disabilities as role models. And if the people in the existing community residence aren't very ambulatory, it's likely the residents of the two community residences will never meet (unless the folks in the recovery residence volunteer to help out at the proposed community residence).

On the flip side, it's not very likely that the residents of the proposed community residence would have any interactions with the occupants of the existing recovery residence, especially if the residents of the proposed community residence aren't very ambulatory.

It's hard to see how the presence of these two community residences would alter the neighborhood's residential character or create a *de facto* social service district or institutional atmosphere in the immediate neighborhood.

### Conclusion:

The proposed community residence should be approved. The presence of the proposed community residence will not interfere with normalization and community integration, nor the use of nondisabled as role models. Together the two community residences do not alter the residential character of the neighborhood.

### Fact situation #2: Nearby community residences serving the same population

Same fact situation as #1, but the proposed community residence would be another recovery residence.

### Analysis:

Since the populations of both community residences would be ambulatory people in recovery, the residents of the two homes have a great deal in common. Consequently, there is a very strong likelihood that the occupants of the two recovery communities will interact with each other rather than the nondisabled people in the neighborhood.

The mere presence of the two recovery communities, however, would be unlikely to alter the neighborhood's residential character or create a *de facto* social service district or institutional atmosphere in the immediate neighborhood. However, if the occupants of the two recovery residences were to interact largely with each other — a likely result of the proximity of two community residences serving the same population — this *could* alter the neighborhood's residential character or contribute to creating a *de facto* social service district or institutional atmosphere in the immediate neighborhood.

The burden rests with applicant to demonstrate that these adverse impacts would not occur.

**Conclusion:**

The strong likelihood that the occupants of the two recovery residences will interact largely with each other rather than nondisabled neighbors would interfere with achieving normalization and community integration — and greatly lessen the use of nondisabled neighbors as role models. The ability of either home to achieve these key goals would be undermined. The special exception for the proposed recovery residence should be denied. The second standard regarding clustering and concentrations does not even have to be addressed.

If the applicant can demonstrate to your satisfaction that these adverse impacts are unlikely to occur, then the special exception should be approved.

**Fact situation #3: Nearby community residences serving the same population but separated by a physical barrier**

Same fact situation as in #2, except that the proposed recovery community is on the next block and is separated from the existing community residence by a major arterial road or higher capacity roadway like Dixie Highway or Federal Highway with no legal pedestrian crossing for a block or more in either direction. Traffic is so intense that pedestrians rarely try to cross the street between the two homes and instead walk more than a block to an intersection with a stop light.

**Analysis:**

Occupants of either recovery residence would have to walk the equivalent of two or three blocks to interact with the residents of the other recovery residence. The major arterial serves as a substantial barrier to interaction between the residents of the existing recovery residence and the proposed recovery residence. The presence of the proposed recovery residence would not interfere with normalization or community integration, nor would it discourage the use of nondisabled neighbors as role models.

**Conclusion:**

Since the major arterial road achieves the same result as the spacing distance to facilitate normalization and community integration — and the use of nondisabled neighbors as role models — the special exception should be granted. However, if the two recovery residences are in an area with an existing concentration of community residences, it *may* be appropriate to deny the special exception. The Zoning Board of Appeals will have to consider the intensity of an existing concentration and the location of existing community residences relative to the proposed community residence. Each fact situation will be different.

**Fact situation #4: Nearby community residences serving the same population but separated by a substantial physical barrier**

Same fact situation as in #3, except that the proposed recovery community is on the next block and is separated from the existing community residence by a divided highway like U.S. 95 with

bridge enabling pedestrians to cross over the highway within two blocks of the street on which the two recovery residences would be located.

**Analysis:**

The highway serves as a substantial barrier to interaction between the residents of the existing recovery residence and the proposed recovery residence by forcing the occupants of the either recovery residence to walk one or more blocks to interact with the residents of the other recovery residence. Consequently, the presence of the proposed recovery residence would not interfere with normalization or community integration, nor would it discourage the use of nondisabled neighbors as role models.

**Conclusion:**

The highway serves the same purpose as the spacing distance and the special exception should be granted. However, if the two recovery residences are in an area with an existing concentration of community residences, it *may* be appropriate to deny the special exception. The Planning & Zoning Board will have to consider the intensity of an existing concentration and the location of existing community residences relative to the proposed community residence. Each fact situation will be different.

**Fact situation #5: Community residences located on adjacent properties**

The existing community residence houses people with developmental disabilities. An operator has proposed to open a community residence for people with mental illness on an adjacent lot (could be next door; could be across the alley; the back yards could abut each other). The residents of the existing and proposed community residences are ambulatory.

**Analysis:**

The immediate proximity of the two community residences should give decision makers pause. You'll need to determine whether there would likely be much interaction between the occupants of the existing and proposed community residences. You'll need to determine whether the proximity of the two homes would reduce the likelihood that nondisabled neighbors would actually serve as role models for the occupants of the two community residences. The burden rests with the applicant to provide convincing evidence that allowing the proposed community residence to locate adjacent to an existing community residence will not interfere with normalization, community integration, or the use of nondisabled neighbors as role models. Given the immediate proximity of the two homes, this is a high burden to meet.

**Conclusion:**

Generally speaking, it is unlikely that an applicant can meet this burden and the special exception should be denied. However, if an applicant can meet this burden, the special exception should be granted.

## **Fact situation #6: Community residences housing people in recovery located on adjacent properties**

A community residence housing people in recovery is proposed to be located on a lot adjacent (could be next door; could be across the alley; the back yards could abut each other) to an existing community residence housing people in recovery.

### **Analysis:**

In this case, the residents of both community residences are highly likely to interact more with their neighbors with whom they immediately know they have something in common — each other — rather than with their nondisabled neighbors. Adjacent community residences that serve the same population pose the strong possibility of recreating an institutional atmosphere where the other people with whom the occupants have contact are largely other people with the same disability. That would, of course, undermine the ability of either community residence to foster normalization and community integration, as well as to utilize nondisabled neighbors as role models. This is particularly true in the case of community residences housing people in recovery since they are not only ambulatory, but also more active outside the community residence than people with many other disabilities.

### **Conclusion:**

Barring convincing evidence to the contrary, the special exception should be denied since the proposed community residence would likely interfere with the core essentials of community residences: normalization, including the use of nondisabled neighbors as role models, and community integration.

## **A general principle:**

When the residents of the proposed community residence — or closest existing community residence within the spacing distance — are not ambulatory, the chances of social interaction between the residents of both community residences is very low, especially the greater the distance between the homes. Consequently, it is likely that granting a special exception for the proposed community residence will not lead to interference with normalization and community integration and the use of neighbors as role models.

## **Scenarios for a proposed recovery community**

The analysis for recovery communities is very similar to the analyses for the different scenarios described above for community residences. The primary difference is that recovery communities are a more intensive use with a wider area of possible impact — hence the 1,200 foot spacing distance for as of right uses when a recovery community is involved.



## A few guiding principles

A lot depends on the size of the proposed recovery community. A recovery community consisting of four adjacent buildings, each with 24 people in recovery, has different impacts than one-building recovery community with 24 occupants.

In the first situation, the ability of the neighborhood to absorb the residents of the 96-person recovery community into its social structure is highly taxed and is likely exceeded. Such an intense concentration may already hinder normalization and community integration — it certainly minimizes any chance of nondisabled neighbors serving as role models. It is difficult to imagine a fact situation that would warrant granting a special exception to allow another recovery community to locate within 1,200 of the existing recovery community. It is possible that a community residence, especially for people with a disability other than addiction, could function successfully if located close to the edge of the 1,200 foot spacing distance. It all depends on the specific fact situation.

In the second situation, the intensity of the existing recovery community is much less. While it is difficult to imagine a fact situation that would warrant granting a special exception to allow another recovery community or even a community residence to locate within a block of the existing recovery community, it is possible to imagine a fact situation where it is appropriate to grant a special exception to allow a community residence or even another recovery community to locate more than a block away from the existing recovery community. Again, it all depends on the specific fact situation.

As before, the details make all the difference in the world.

Rather than repeat the six fact situations discussed for a proposed community residence, just take each of those situations and reimagine them for a proposed recovery community — or reimagine them with the existing use being a recovery community. The same basic principles apply here but with allowances made for the greater intensity of the recovery community land use and the longer spacing distance which reflects the larger geographical impact that recovery communities have.