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## Memorandum

**Date:** February 19, 2024

**From:** Daniel Lauber, AICP, Attorney/Planner

**To:** David Recor, Director of Development Services, City of Pompano Beach

**Subject:** Evaluating Special Exception Applications for Community Residences and Recovery Communities Proposed to Locate Within the Permitted Use Spacing Distance

This memo seeks to clarify the zoning requirements and processes for when a community residence or recovery community is proposed for a location within the spacing distance to be a permitted use from the closest existing community residence or recovery community. This memo will first give an overview of the governing concepts and then go into greater detail on how to properly evaluate special exception requests to locate within the applicable permitted use spacing distance from the closest existing community residence or recovery community. This memo addresses only locating within the permitted use spacing distance and does not address the other circumstances when special exception case-by-case review is warranted.

As the study<sup>1</sup> upon which the zoning amendments were based explains, the spacing distance to be a permitted use could be measured either of two ways:

- ◆ Measure on the ground along the public pedestrian right of way — the actual distance somebody would have to walk to get from the existing community residence or recovery community to the proposed one (this is the more precise method), and
- ◆ Measure “as the crow flies,” namely a radius around the closest existing community residence or recovery community (this is the more practical and useable method for this initial review)

As the study explains, even though the first method to determine permitted uses is more precise, it has some flaws in the real world and is impractical to use for determining whether a proposed use should be a permitted use. Instead, the study recommended employing the radius or “as the

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<sup>1</sup> Daniel Lauber, *Pompano Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (River Forest, IL: Planning/Communications, June 2018) 16.

crow flies” approach for the initial determination of whether a proposed community residence or recovery community qualifies to be a permitted use since it’s practical, predictable, and feasible.

**As the Fair Housing Act requires, these spacing distances were never intended to be inflexible.**

The zoning amendments were written, as the study recommended and the Fair Housing Act requires, to allow a proposed community residence or recovery community to locate within this *permitted use spacing distance* when two narrowly-crafted standards are met. This is why Pompano Beach’s *Zoning Code* allows proposed community residences and recovery communities to locate within the spacing distance via the special exception route.

*The “as the crow flies” radius around the closest existing community residence or recovery community was intended to be used only as the first level of review to administratively determine whether a proposed community residence or recovery community is a permitted use.* As explained in the study upon which the zoning amendments were based, we are very confident that a community residence or recovery community located outside the applicable spacing distance will not impede the success of the nearby existing one.

But we’re not so confident that a community residence or recovery community located within the applicable permitted use spacing distance will be so neutral.

Hence, applications to locate within the applicable permitted use spacing distance warrant a case-by-case review, which is done by special exception in Pompano Beach. *When considering a special exception to the permitted use spacing distance, the “as the crow flies” radius is no longer a factor.*

We can be much more rigorous when reviewing a special exception and be more precise by measuring the actual ground distance along the pedestrian right of way as a major factor for determining whether the proposed use meets the applicable special exception standards.

*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 when the narrowly-crafted specific standards are met.*

## Two levels of review

Those 2018 amendments established two levels of review to facilitate locating these two uses so they can achieve their central core characteristics of normalization and community integration (including the use of nondisabled neighbors as role models) of their residents.

### Review Level 1

The first level of review is purely administrative to determine whether a proposed

- ◆ Community residence is actually a “family” of three or fewer people with disabilities, a permitted use, a use that requires case-by-case review via the special exception process, or not allowed at all at the proposed site; or whether
- ◆ A proposed recovery community is a permitted use, requires case-by-case review using the special exception process to locate within the specified permitted use spacing distance, or is not allowed at the proposed location.

The spacing distances to be a permitted use are:

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

The extensive research reported upon in the city's 2018 study suggests that we can be very confident that when these uses are that far apart, they will not lead to adverse impacts nor interfere with 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 when the narrowly-crafted specific standards are met.*

## Review Level 2

This case-by-case review kicks in when a community residence or recovery community is proposed for a location within the applicable permitted use spacing distance from the closest community residence or recovery community. In this situation, we're not as confident that another community residence or recovery community will not interfere with normalization or community integration — consequently, the case-by-case review via the special exception process gives a housing provider the opportunity to show that her proposed community residence or recovery community won't interfere.

There are plenty of circumstances where allowing another community residence or recovery community within the designated permitted use spacing distance will not impede normalization or community integration at the nearest existing community residence or recovery community — and will not create or intensify an existing cluster or concentration of these uses or alter the character of the neighborhood. This memo provides guidance on how to identify those circumstances.

It should be noted at this time that it is critical that the evaluation of whether to allow a proposed community residence (or recovery community) be based solely on the specific standards that govern locating within the permitted use spacing distance from the closest existing community residence or recovery community as stated in Section 155.2406 of the city's *Zoning Code*:

## 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.

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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. As many as ten people with disabilities can live in a community residence as of right (permitted use).

### Underlying concepts in detail

While the research shows that we can be quite confident that adhering to the chosen permitted use spacing distances will not interfere with ability of occupants of community residences or recovery communities to attain normalization and community integration while not altering the residential character of a neighborhood through clustering or concentrations, we can be equally confident that there are circumstances like those described above where allowing an exception to the applicable spacing distance will also have no effect on the ability to achieve these essential goals.

The permitted use spacing distances used to determine when a proposed community residence or recovery community is a permitted use is a well-educated estimate of the minimum distance needed between community residences (and recovery communities) to achieve these goals — a line has to be drawn somewhere. It is very likely that close calls should usually be resolved in favor of the proposed use — but *every fact situation must be evaluated on its own according to the two standards specified in the city's Zoning Code, and only those two standards.*

Consequently, local zoning needs to provide a mechanism to reasonably accommodate, on a case-by-case basis, proposals to locate a community residence or recovery community within the applicable spacing distance for a permitted use. These proposals should be objectively evaluated individually according to narrowly-crafted standards based upon the reasons for having a spacing distance to be a permitted use. Speculation, myths about the impacts of people with disabilities,



*Only the two standards specified in the zoning code are applicable when deciding a special exception to locate within a spacing distance.  
The other standards for special exceptions do not apply here.*

and neighborhood opposition can *never* constitute a valid reason to deny an application to locate within the spacing distance.

### An underlying concept to keep in mind

An ongoing thread in this analysis is that the occupants of a community residence need the opportunity to interact with their nondisabled neighbors as part of normalization and community integration — and that the permitted use spacing distance help facilitates this interaction. So it's important to understand the basis for this approach.

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 home. These closest neighbors will be the most likely to serve as role models for the people living in a community residence or recovery community.

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

The permitted use spacing distances are designed to minimize the chances that the occupants of nearby community residences and recovery communities will interact only with each other and enhance their use of nondisabled neighbors as role models.

**But if the residents of the community residences don't know the other community residence exists, then the chances of interacting primarily with the occupants of the other community residence are close to nil. And this is why the discussion below often looks at the juxtaposition of the proposed and closest existing community residence or recovery community and its effect on facilitating interaction with neighbors without disabilities.**

### Locating within the permitted use spacing distance

So while we're quite confident that locating a new community residence or recovery community outside of the permitted use spacing distance of the closest community residence or recovery

community won't impede the core goals of normalization and community integration nor create or intensify clustering or concentrations, there isn't as much confidence that these goals would be attained when another licensed or certified community residence or recovery community were to locate within the applicable permitted use spacing distance of an existing one.

Consequently, it is critical that application of a permitted use spacing distance must be flexible to allow for the many circumstances where locating another community residence or recovery community within that spacing distance of an existing community residence or recovery community will not produce adverse impacts. That is why the study recommended using Pompano Beach's special exception process to enable exemptions from the permitted use spacing distance when narrowly-crafted standards are met. It cannot be emphasized enough that there are many circumstances where a city should allow a proposed use to locate within the applicable spacing distance for permitted uses in order to make the reasonable accommodation that the Fair Housing Act requires. These scenarios are examined in some detail later in this memorandum.

## Evaluating compliance with Standard a

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*Standard 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.*

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### Measuring spacing distances for a permitted use

While spacing distances are measured from the nearest lot line to an existing community residence (or recovery community) that is closest to a proposed community residence, there are two schools of thought on the most appropriate method for measuring that spacing distance.

#### "Radius" or "as the crow flies" method — best for **Level 1** permitted use review

The more feasible school of thought for determining a permitted use holds that the spacing distance for allowing community residences and recovery communities as permitted uses should be measured "as the crow flies" from the closest lot line of the nearest existing community residence or recovery community and the proposed community residence or recovery community. This method establishes a predictable radius around existing community residences and recovery communities that can be quickly and accurately measured using a jurisdiction's geographic information system or printed maps. Even with superblocks, this approach would preclude a new community residence from locating as of right back to back or lot corner to lot corner with an existing community residence. This is the more appropriate and pragmatic approach to use when determining the spacing distance for a permitted use.

## “Pedestrian right of way” method — best for Level 2 case-by-case review

The other school of thought calls for a more precise measurement 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.

Implementing this approach to determine permitted uses ranges from extremely difficult to next to impossible. It would be very difficult for a prospective housing provider (and for city staff) to identify potential locations that meet the applicable permitted use spacing distance using this approach.

This approach also leaves some gaping loopholes when used to determine permitted uses. This “pedestrian right of way” approach fails to achieve the objectives of spacing distances when a jurisdiction contains “superblocks,” namely blocks that are substantially lengthier than the average American urban block of 660 feet. The greater length of a superblock — twice that of a typical block — would allow clustering and concentrations to develop by enabling a community residence to locate as of right back to back or lot corner to lot corner with an existing community residence — one of the scenarios that permitted use spacing distances seek to prevent from happening.

**While the “pedestrian right of way” approach is impractical for determining spacing to be allowed as a permitted use, it definitely should be used when determining whether to grant a special exception when the city conducts a case-by-case review of an application to locate *within* the applicable spacing distance.**

## Why the actual on-the-ground distance matters

Like most decisions on special exceptions, you don’t arrive at a decision on whether the applicable standards are met via a straight line. You often have to put 2 + 2 together — and that’s the exact situation with special exceptions for community residences and recovery communities to locate within the Level 1 permitted use spacing distance of 660 or 1,200 respectively.

Let’s think logically about how the residents of a proposed community residence or recovery community would interfere with normalization or community integration and an existing one. They’d have to be in contact with the occupants of the other community residence or recovery community and interact primarily with them to the near total exclusion of nondisabled neighbors. *But if they don’t even know the other community residence or recovery community exists, it’s not likely they’ll be interacting with the occupants of the other one.*

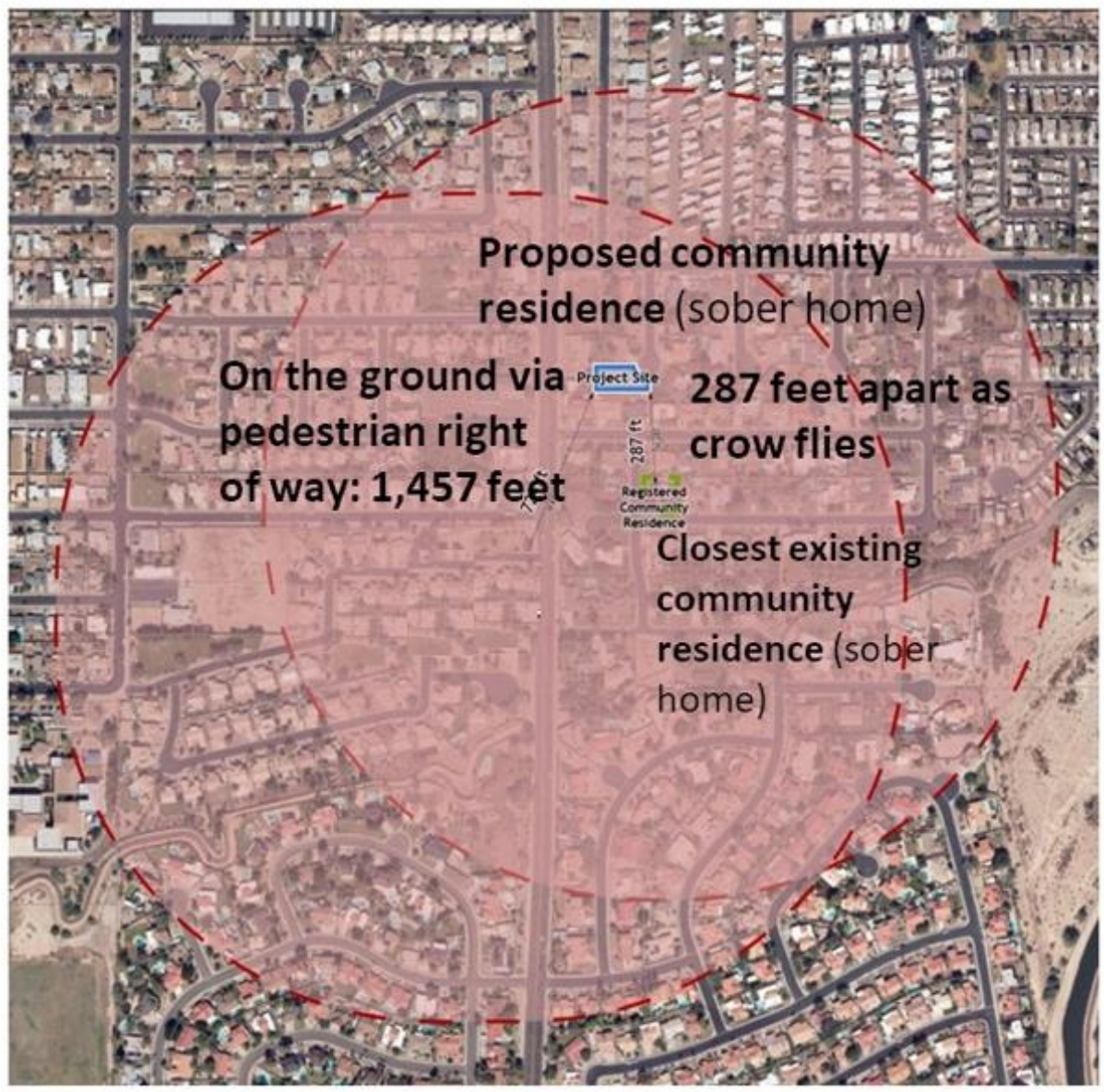
*And if they’re not interacting with the occupants of the other community residence or recovery community, then they certainly won’t be impeding normalization or community integration at it.*

So when an applicant seeks to locate within an applicable permitted use spacing distance through the case-by-case review of a special exception, the “pedestrian right of way” method should be among the key factors considered when determining whether locating within the permitted use spacing distance would interfere with normalization, community integration, or using nondisabled neighbors as role models.

## Applying the Level 2 review in the real world

Let’s look at a real world example and imagine it’s in Pompano Beach. The proposed sober home is just 287 feet as the crow flies from an existing community residence (sober home). Consequently,

under Review Level 1, it's within Pompano's 660 foot spacing distance and a special exception is required to locate at this site.



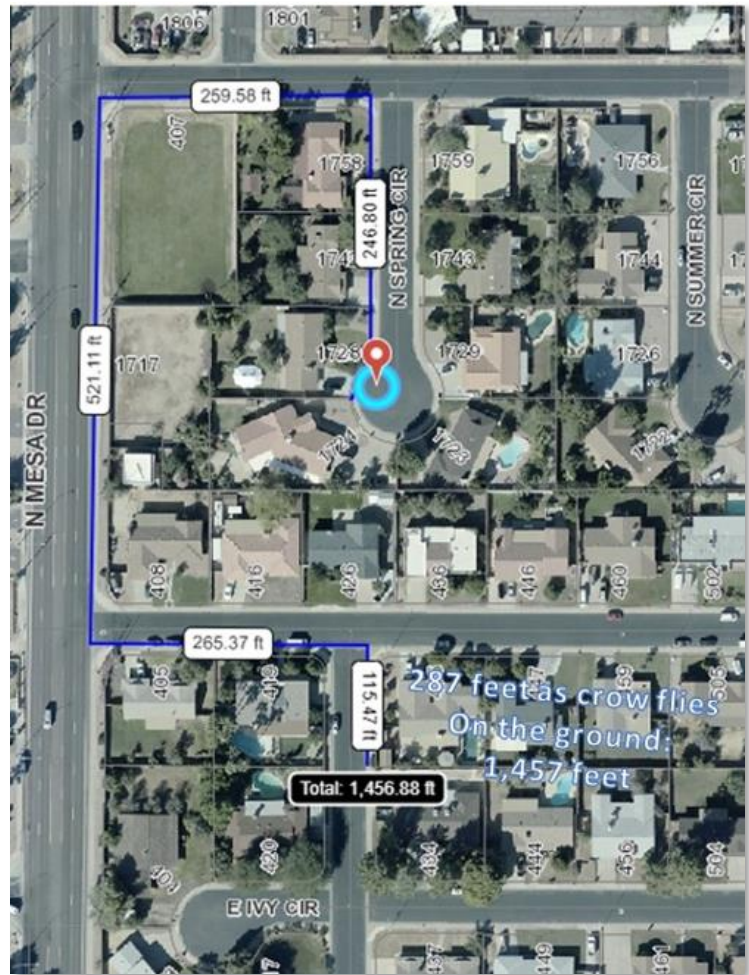
There are several factors to take into account when determining if the zoning standard is met.

The special exception process gives us the opportunity to look more closely to determine the likelihood that granting the special exception would lead to the new community residence interfering with the existing one and vice versa — using the Level 2 review approach.

Remember, determining that likelihood requires adding up 2 + 2; it's not a straight line. We need to look more closely at the actual on-the-ground relationship between the two sites as shown in the overhead view below.

While the proposed sober home is 287 feet as the crow flies from the existing one, the residents of each site are people, not crows. The proposed sober home (see the blue circle in the figure below) would be located near the south end of this cul-de-sac and, thanks to the fenced in lots south of the proposed site, there is no direct on-the-ground path to the existing sober home.

The actual real world on-the-ground distance along the pedestrian right of way between the two sites is 1,457 feet (follow the blue lines). The sites are not even visible to each other. How likely is it that the residents of the existing home and the residents of the proposed home would even become aware that the other one exists? And if the residents of the two sites aren't aware the other exists..., Add it up: they are not likely to interact and possibly impede normalization or community integration at the other community residence.



Other factors, like geography, can also have an impact on how likely the residents of two nearby sites would interact. A freeway, major arterial, drainage channel, body of water, or small hill between the proposed and existing community residences that acts as a barrier to interaction of the occupants of the two sites will often make the distance along pedestrian pathways great enough to assure that the proposed community residence will not interfere with normalization and community integration at the existing site, discourage the use of nondisabled neighbors as role models, or alter the community's character.

The juxtaposition of the two homes in this scenario has the same impact as the geographical features just discussed.

And given that the two sober homes are under different ownerships, it is very likely that their residents will not attend the same meetings or receive treatment at the same treatment center — further lessening the likelihood that they would become aware of the other sober home and interact primarily with its residents.

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*Standard 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.*

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Adding all these factors together, would not the proposed sober home in the above scenario satisfy Pompano Beach's standard "a" to be granted a special exception to locate within the spacing distance of the closest community residence (sober home) that is 287 feet away as the crow flies?

Variations on this scenario are endless. For example, imagine that the new sober home is proposed to be located about 550 feet, as the crow flies, from an existing sober home under different ownership. The juxtaposition of the two sites is such that neither is visible from the other. They are over 650 feet apart via the pedestrian right of way, and you'd have to cross three streets to get from one to the other. No other community residences are nearby.

Here too, what is the likelihood that the residents of the either of these sober homes would be aware the other one even exists and that their residents would interact primarily with the residents of the other sober home? Still pretty slim.

Additional scenarios are examined later in this memorandum.

## Evaluating compliance with Standard b

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*Standard b: The applicant demonstrates that the proposed community residence 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.*

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The key question with standard "b" is what would constitute a cluster or concentration of community residences and/or recovery communities? As nebulous as this may be, the answer is much like Supreme Court Justice Potter Stewart's definition of pornography, " ... I know it when I see it ...."

These two maps of actual sites of community residences and recovery communities in Prescott, Arizona offer clear visualizations of clustering and concentrations.

The first map of the downtown neighborhood shows two concentrations encircled in red, one with 21 sites and the other with 15 sites, both within a fairly compact area.

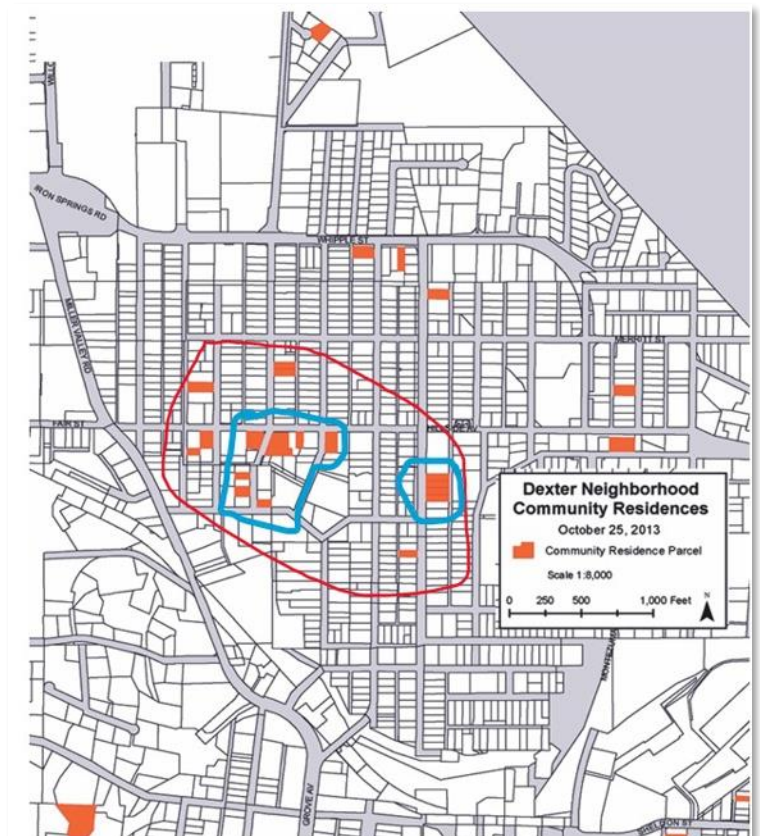
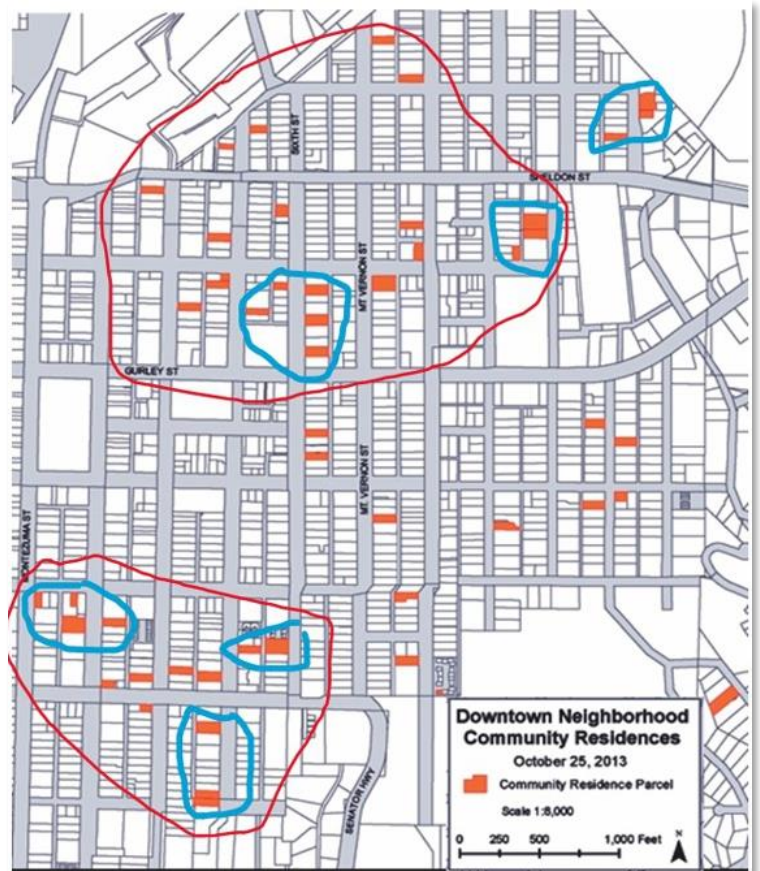
There are three clusters circled in blue, two within the concentration and a third cluster outside it. Within the lower concentration there are three clusters circled in blue. In addition there are two sites located back to back.

These clusters certainly increase the likelihood that the residents of these homes will be quite aware of the other homes and, if the residents have the same disabilities, increase the chances that they will interact primarily with the occupants of the other community residences in the cluster.

These two concentrations had produced an more institutional atmosphere in their neighborhoods and constituted small *de facto* social service districts.

The second map which shows the Dexter neighborhood displays a concentration of 19 community residences with two clusters within the concentration. The cluster on the right consists of four adjacent community residences. Nine community residences are clustered together on the left dominating the immediate area to create a small *de facto* social service district.

Now compare these to two scenarios discussed earlier under Standard a. In each instance there would be two sober homes in the area and no other community residences close by. Even if there were a third or fourth community residence a few blocks away, that would not constitute a cluster or a concentration.



## Additional 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 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 houses frail elderly individuals or people with developmental disabilities. A sober living home is proposed to be located five lots away on the same block.

#### 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 community residence as well the effect on the use of nondisabled neighbors 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 existing community residence).

On the flip side, it's not very likely that the residents of the proposed sober home would have any interactions with the occupants of the existing community residence, especially if the residents of the existing 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 constitute a cluster or concentration that would alter the residential character of the neighborhood.

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

Same fact situation as #1, but the existing community residence is 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 almost exclusively with each other rather than the nondisabled people in the neighborhood. It is possible that normalization and community integration would be impeded.

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.

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 likely should be denied. The second standard regarding clustering and concentrations does not even have to be addressed (although these would not create a cluster nor alter the residential character of the neighborhood)..

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 not visible to each other and separated by almost the permitted use spacing distance as measured along the pedestrian right of way

Same fact situation as in #2, except that the proposed recovery community is a block away and is separated from the existing community residence by three streets as well as more than half a dozen houses. The two community residences are not visible to each other and are owned by different housing providers. The on-the-ground distance between the two sites is close to the 660 foot permitted use spacing distance.

### **Analysis:**

If the two sites are not visible to each other, the chances their residents will know the other even exists are reduced. Occupants of either recovery residence would have to cross three streets and more than a physical block to interact with the residents of the other recovery residence. It is highly likely that 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:

Given the actual ground distance between the two sites which are under different ownerships and their juxtaposition so that they aren't visible to each other, it's likely the residents of each won't know that the other one even exists. Consequently, it's likely that neither sober home would hinder normalization and community integration at the other one. It's likely that 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 an 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 a bridge enabling pedestrians to cross over the highway within two blocks of the streets on which the two recovery residences would be located.

### Analysis:

The highway serves as an 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 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 #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 requirement and the special exception should be denied. However, if an applicant does meet this requirement, 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

A **recovery community** consists of a multifamily building or buildings, townhouses, and even single-family detached homes *exclusively* for people in recovery. Unlike a community residence, this aggregation of people does not emulate a biological family and is a more intense use than a community residence. They exert a wider area of influence around them than the much smaller community residence does — hence the greater spacing distance from a recovery community.

### 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.

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, it's very likely that the proposed recovery community would exceed the capacity of the neighborhood to absorb the residents of the 96-person recovery community into its social structure. 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 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.