

## Legislation Details (With Text)

**File #:** LN-546      **Version:** 1      **Name:**

**Type:** ZBA Submission      **Status:** Passed

**File created:** 11/21/2023      **In control:** Zoning Board of Appeals

**On agenda:** 6/18/2024      **Final action:** 6/18/2024

**Title:** RECONSIDERATION OF A PREVIOUSLY DENIED ITEM

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 06.18.2024\_PublicNotice for Reconsideration\_23-17000010.pdf, 2. Staff Report 05.16.24\_23-17000010.pdf, 3. Staff Pedestrian Measurement Task.pdf, 4. Pompano Beach - Principles to Guide Zoning for Community Residences for People with Disabilities.pdf, 5. 02.19.24\_Updated Lauber Memo - Evaluating SpEx Applications for Community Residences\_02.19.2024.pdf, 6. 05.15.18 Memo - Tips for Evaluating Special Exception Applications for Community Residences Located Within the Spacing Distance.pdf, 7. Ordinance No. 2018-60.pdf, 8. 05.16.24\_Applicant Presentation.pdf, 9. 01.18.2024 FARR Letter of Support, 10. 00\_Application-OwnersCert\_23-17000010.pdf, 11. 01\_Narrative-Justification\_23-17000010.pdf, 12. 02\_Survey and Site Plan\_23-17000010.pdf, 13. 03\_Floor Plan 1302 NE 4 St Unit 1\_23-17000010.pdf, 14. 04\_Floor Plan 1302 NE 4 St Unit 2\_23-17000010.pdf, 15. 05\_FARR Certification Exp 5-27-24\_23-17000010.jpg, 16. Legal Description\_23-17000010.pdf, 17. Denied Community Residence Application\_Staff Review.pdf, 18. Fire Memo\_23-17000010.pdf, 19. Aerial Map\_23-17000010.pdf, 20. Code Case 23-09002815.pdf, 21. Public Notice\_23-17000010.pdf

Date	Ver.	Action By	Action	Result
6/18/2024	1	Zoning Board of Appeals	APPROVED WITH CONDITIONS	
5/16/2024	1	Zoning Board of Appeals	DENIED	
3/21/2024	1	Zoning Board of Appeals	APPROVED	
1/18/2024	1	Zoning Board of Appeals	DENIED	
12/14/2023	1	Zoning Board of Appeals	POSTPONED	

Zoning Board of Appeals  
Meeting Date: June 18, 2024

## RECONSIDERATION OF A PREVIOUSLY DENIED ITEM

**Request:** Special Exception [Family Community Residence]  
**P&Z#** 23-17000010  
**Owner:** Augustin Crocco  
**Project Location:** 1302 NE 4 Street  
**Folio Number:** 484236030580  
**Land Use Designation:** Two-Family Residence (RD-1)  
**Zoning District:** LM- LOW-MEDIUM 5-10 DU/AC  
**Agent:** Jeffrey Lynne  
**Project Planner:** Scott Reale



**Summary:**

The Applicant Landowner is requesting SPECIAL EXCEPTION approval as required by Section 155.4202(I) (3) [Family Community Residence Standards] of the City's Zoning Code in order to utilize the subject property (Zoning District: RD-1) for a family community residence located less than 660 linear feet from an existing family community residence rather than separated by at least 660 linear feet as required by code.

The property is located on the south side of NE 4<sup>th</sup> Street, between NE 13<sup>th</sup> Avenue and NE 14<sup>th</sup> Avenue, in the Ocean Way Park subdivision.

**ZONING REGULATIONS****155.4202. RESIDENTIAL: HOUSEHOLD LIVING USES**

...

**I. Family Community Residence****1. Districts Where Permitted**

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
P	P	P	P	P	P	P	P	P	P	P		P	P	P	

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-1
						P						P	P	P	P	P

**2. Definition**

A family community residence is a community residence that provides a relatively permanent living arrangement for people with disabilities where, in practice and under its rules, charter, or other governing document, does not limit how long a resident may live there. The intent is for residents to live in a family community residence on a long-term basis, typically a year or longer. Oxford House is an example of a family community residence.

**3. Standards**

a. Except as required by Chapter 419 state law, a family community residence shall be allowed as of right in the designated zoning districts, when:

i. It is at least 660 linear feet from the closest existing community residence housing four or more individuals or recovery community as measured from the nearest property line of the proposed community residence to the nearest property line of the closest existing community residence or recovery community, and

ii. The operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence such as an Oxford House.

b. A family community residence that does not comply with both standards a. and b. may be allowed only by special exception in accord with the applicable standards in Section 155.2406 of this Code.

**4. Reasonable Accommodation Required for More than Ten Occupants**

To establish a family community residence for more than ten occupants, the applicant shall submit a request for reasonable accommodation in accord with the procedures and applicable standards in Section 155.2432 of this Code except as required by state law.

**5. License Certification, or Recertification Denied or Suspended**



A family community residence that has been denied a license the State of Florida requires or certification offered by the State of Florida, had its license or certification suspended, or be denied recertification is not allowed in the City of Pompano Beach and must cease operations and vacate the premises within 60 days of the date on which its license or certification was denied or suspended or recertification denied.

### **PROPERTY INFORMATION AND STAFF ANALYSIS**

1. The subject property has no open building permits and no active Business Tax Receipts.
2. The subject property has an active code case (Case #23-09002815) for operating a residential rental property without a Business Tax Receipt.
3. The subject property contains a duplex, one unit with two bedrooms and the other with three bedrooms. The applicant is proposing a Family Community Residence at this location.
4. Ordinance No. 2018-60, adopted 6/12/2018, codified Pompano Beach land use regulations to give prospective operators of community residences for people with disabilities and recovery communities clarity and certainty on where such uses may locate as of right and via Special Exception.
5. Community Residences and Recovery Communities are subject to distance separation requirements from other similar uses so as to avoid clustering and altering the character of the neighborhood. A group home that doesn't comply with the minimum distance separation may be permitted in single-family and two-family (duplex) neighborhoods; however, they must seek approval of the Zoning Board of Appeals, by way of a Special Exception in order to operate.
6. Pompano Beach requires that applicants of such facilities must obtain Special Exception approval when they are located within 660 linear feet from an existing community residence housing four or more individuals or recovery community as measured from the nearest property line of the proposed community residence to the nearest property line of the closest existing community residence or recovery community. Staff has determined there is a 507 ft linear distance (the way the crow flies) between the subject property and a lawfully existing Community Residence facility, located at 413 NE 12<sup>th</sup> Avenue, about a block and a half away.
7. The applicant has submitted proof they are a FARR (Florida Association of Recovery Residences) Certified Recovery Residence.
8. *Pompano Beach, Florida: Principles to Guide Zoning for Community Residences for People with Disabilities* by Daniel Lauber, AICP, June 2018, is included in the backup of this agenda item. Mr. Lauber is a well-respected planning and law expert on zoning for community residences since 1974 and has written model zoning guidelines for community residences on behalf of the American Planning Association and American Bar Association. This study was approved and accepted by City Commission Resolution #2018-99 (later revised to its current version and approved and accepted by Resolution #2018-178), and was the impetus and framework for the aforementioned Ordinance that codified Community Residence regulations in Pompano Beach. Following are a few of the pertinent findings in the study, particularly as they relate to separation between similar facilities.
  - The study states that, "When community residences are allowed as a permitted use, it is most reasonable to imposing a spacing distance between community residences that keeps them about a block apart in terms of actual walking distance, generally about 660 feet." (660 feet is the



length of the typical American urban block.)

- It goes on to state that, “Proposals to locate another 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.”
  - “Generally speaking, the existing social structure of a neighborhood can accommodate no more than one or two community residences on a single block face.”
  - “This research strongly suggests that there is a legitimate government interest to assure that community residences do not cluster.”
  - “[Although] 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...”
  - “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 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 Pompano Beach zoning district that allows residential uses.”
9. As part of their narrative and justification, the applicant has incorporated and referenced many aspects of this study.
10. Included in the backup of this agenda item is a 5/15/2018 Memorandum from Daniel Lauber titled *Tips for Evaluating Special Exception Applications for Community Residences and Recovery Communities Located Within the Spacing Distance*.
11. This Special Exception application was previously denied by the Board on 1/18/2024; however, the applicant formally requested a rehearing, which the Board granted on 3/21/2024. Subsequent to the initial denial, and in furtherance of the City’s position, the City reengaged the services of Mr. Lauber to supplement his initial report and to clarify the zoning requirements and processes for evaluating a community residences. The 2/19/2024 Memo from Mr. Lauber is provided in the agenda backup.
12. The updated memo encourages flexibility when looking at spacing distance between two community residences. Specifically, decision makers should consider two types of measurements: (1) airline route/as the crow flies (which is currently in the Zoning Code), and (2) the public pedestrian right-of-way (actual distance somebody would have to walk to get from one community residence to another). Toward that end, four Development Services staffers were tasked with determining the walking distance between the two facilities (1302 NE 4<sup>th</sup> St and 413 NE 12<sup>th</sup> Ave) using the Google Earth and BCPA measurement tools. The results varied but the mean distance was determined to be 668 feet.
13. The definition of a *Family Community Residence* states, “The intent is for residents to live in a family community residence on a long-term basis, typically a year or longer.” Conversely, a *Transitional*



*Community Residence* community residence is “a community residence that provides a temporary living arrangement for four to ten unrelated people with disabilities with a limit on length of tenancy less than a year that is measured in weeks or months as determined either in practice or by the rules, charter, or other governing document of the community residence. A community residence for people engaged in detoxification is an example of a very short-term transitional community residence.” Again, the applicant is seeking a Special Exception for a *Family Community Residence* so the expectation and requirement involves long term tenancy of its residents, and the applicant’s narrative affirms the intent. Moreover, the applicant’s narrative states here will be no treatment or clinical services in any form at the property, and will be used exclusively as a recovery residence.

14. Staff finds the proposed Family Community Residence use appropriate and compatible with the neighborhood. If the code allowed distance separation between such facilities to be measured using actual streets and sidewalks rather than “the way the crow flies,” a Special Exception would not even be required in this case.
15. Unlike almost all other application types that are heard by the ZBA, a Special Exception for a Community Residence requires only a simply majority vote rather than a super majority vote. Moreover, there are only two review standards to consider when a Community Residence seeks Special Exception approval because of the separation requirement. Those standards are included in this report and the applicant has addressed each of them in their narrative.

### **LAND USE PATTERNS**

Subject property (Zoning | Existing Use):

- RD-1 | two-family residence

Surrounding Properties (Zoning District / Existing Use):

- North: CF | Pompano Beach High School
- South: RS-2 | single-family residence
- East: RD-1 | two-family residence
- West: RD-1 | two-family residence

### **SPECIAL EXCEPTION REVIEW STANDARDS FOR COMMUNITY RESIDENCES**

A Special Exception for a community residence (family or transitional) shall be approved by simple majority vote of the Board members present, only on a finding that there is competent substantial evidence in the record that the Special Exception meets the following 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 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.



**Staff Conditions:**

Should the Board determine the applicant has provided competent substantial evidence sufficient to satisfy the two Special Exception review standards for a Community Residence, staff request the Board include the following conditions as part of the Order:

1. Obtain all necessary governmental permits and approvals, including an approved Community Residence Certificate and a BTR for a rental property.
2. Maintain FARR certification.
3. Changes or alterations to the composition of the resident population and/or lease agreements for a term of less than one year would require a new Special Exception approval.
4. Approval is strictly limited to a “Family Community Residence” and changes to the operation of a “Transitional Community Residence” would require a Special Exception approval.
5. Substantial conformance to all applicable zoning code standards.