

Exclusionary Zoning: Overcoming Zoning That Excludes Affordable Housing, Minorities, and Group Homes for People with Disabilities

Zoning for Group Homes:
Complying With the Fair Housing Act

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Guiding Principles for Community Residence Zoning

To make the “reasonable accommodation” that the Fair Housing Act requires, zoning protections must be fact-based and:

- Be intended to achieve a legitimate government interest
- Actually accomplish that legitimate government interest
- Constitute the least drastic means needed to actually attain that legitimate government interest

What to do when lost?
Return to the beginning.

— Vizzini advises Inigo Montoya and Fezzik
in *The Princess Bride*

The Beginning

All community residences for people with disabilities including sober homes:

- Emulate biological family
- Normalization and community integration
- Use neighbors without disabilities as role models
- A residential land use
- To succeed, need to be located in safe residential neighborhoods, *not* clustered on a few adjacent blocks nor concentrated in a neighborhood

The Beginning 2

What we know about community residences

- Over 50 studies on impacts on property values, neighborhood safety, and more
- No adverse impacts as long as not clustered on a block or a few adjacent blocks and they are licensed or certified
- Clustering may occur when more than one or two community residences are on a block or three or four on a few adjacent blocks

Why zone for community residences?

- Need to comply with nation's Fair Housing Act
- Level the housing playing field for people with disabilities
- Establish strongest legal protection against scam operators
- Scam operators leaving Delray Beach, Palm Beach County, Pompano Beach, Panama City, West Palm Beach, Prescott AZ, and other jurisdictions that have adopted some variation of proposed zoning approach
- Prevent concentrations and clustering from even starting
- Provide some zoning certainty to housing providers

Zoning approach seeks to actually achieve legitimate government interests:

- Require all community residences — including existing ones — to obtain available license or certification in order to:
 1. Extend to people in recovery from substance use disorder the same protections afforded to people with other disabilities: Protection from abuse, mistreatment, exploitation, theft, and fraud at the hands of unscrupulous or incompetent operators
 2. Assure they receive the support they need to achieve normalization and community integration, and in the case of people in recovery, achieve long-term sobriety

Zoning approach seeks to actually achieve legitimate government interests continued:

Enable community residences to achieve core principles of normalization and community integration by:

- (1) Preventing any existing clusters or concentrations in a neighborhood from expanding and becoming more intense
- (2) Preventing new clusters or concentrations from forming

Fair Housing Amendments Act of 1988 Adds to Sec. 804 (U.S.C. 3604)

Adds “handicap” to list of protected classes, but also makes unique provisions for people with “handicaps”

“(3) For purposes of this subsection, discrimination includes ...

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” — §3604 (f)(3)(B)

Fair Housing Act Kicks In

“The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. 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 in the community.”

— House of Representatives Report Number 711, 100th Congress, 2d Session 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173

Fair Housing Act Keeps Kicking In

“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 over-protective 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.”
— House of Representatives Report Number 711, 100th Congress, 2d Session 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173

Guiding Principles for Community Residence Zoning 2

To make the “reasonable accommodation” that the Fair Housing Act requires, zoning protections must be fact–based and:

- Be intended to achieve a legitimate government interest
- Actually attain that legitimate government interest
- Constitute the least drastic means needed to actually accomplish that legitimate government interest

Threshold Zoning Regulatory Question:

Start with local zoning code's definition of "family" or the lack thereof

Basic legal principle from the case law:

Zoning that treats a group of people with disabilities differently than the same sized group of people without disabilities constitutes discrimination on its face

Zoning code doesn't define "family" or "household"

Definition of "family" or "household" allows any number of unrelated individuals to live together as a single housekeeping unit

Community residence fits within cap on number of unrelated individuals that constitutes a "family" or "household"

Group home case law is very fact-specific

Many have misinterpreted court rulings in

Valencia v. City of Springfield, Illinois

883 F.3d 959 (2018)

United States v. Chicago Heights, Illinois

161 F.Supp.2d 819 (2001)

- Valencia: Both group homes were families under Springfield's zoning definition of "family" that allowed up to 5 unrelated individuals
- Chicago Heights: The existing group home housed 5 people, within Chicago Heights' zoning definition of "family" allowing up to 5 unrelated individuals

Definition of “family” allows up to 4 unrelated

- Fits within the cap of 4 unrelated individuals that constitutes a “family”
- Therefore, it’s a “family” and must be treated the same as any other “family.”

All community residences for people with disabilities with up to 4 residents are a permitted use in all districts where residences are allowed with no additional zoning requirements

- Exceeds cap of 4 unrelated individuals that constitutes a “family”
- Zoning code must make a “reasonable accommodation” for community residences for people with disabilities
- Using least drastic means that actually achieve a legitimate government interest

Community residence occupied by more than the 4 unrelated individuals that constitute a “family”

Family Community Residence

- Relatively permanent tenancy
- No time limit on length of residency
- Typically at least 6 months by rules and/or in practice

Transitional Community Residence

- Relatively shorter tenancy
- Residency limited to weeks or months
- Typically fewer than 6 months by rules and/or in practice

Family Community Residence

- Community residence occupied by more than the 4 unrelated individuals that constitute a “family”
- Relatively permanent tenancy
- No time limit on length of residency
- Typically at least 6 months

Family Community Residence Continued

Permitted use in all zoning districts
where residences are allowed when:

- A. Located more than 660 feet or 9 lots, whichever is greater, from the closest existing community residence or recovery community
- B. Licensed, certified, or Oxford House Charter
- C. No more than 12 occupants (including live-in staff)

If A, B, or C is *not* met: Apply for a “reasonable accommodation”

Reasonable accommodation can be made via a special use or conditional use permit, or by a codified “reasonable accommodation” process

Transitional Community Residence

- Community residence occupied by more than the 4 unrelated individuals that constitute a “family”
- Relatively transient tenancy
- Residency limited to weeks or months
- Typically less than 6 months

Transitional Community Residence Continued

Permitted use in all zoning districts
where residences are allowed when:

- A. Located more than 660 feet or 9 lots, whichever is greater, from the closest existing community residence or recovery community
- B. Licensed or certified
- C. No more than 12 occupants (including live-in staff)

If A, B, or C is not met or the site is in a pure single-family district: Apply for a “reasonable accommodation”

Reasonable accommodation can be made via a special use or conditional use permit, or by a codified “reasonable accommodation” process

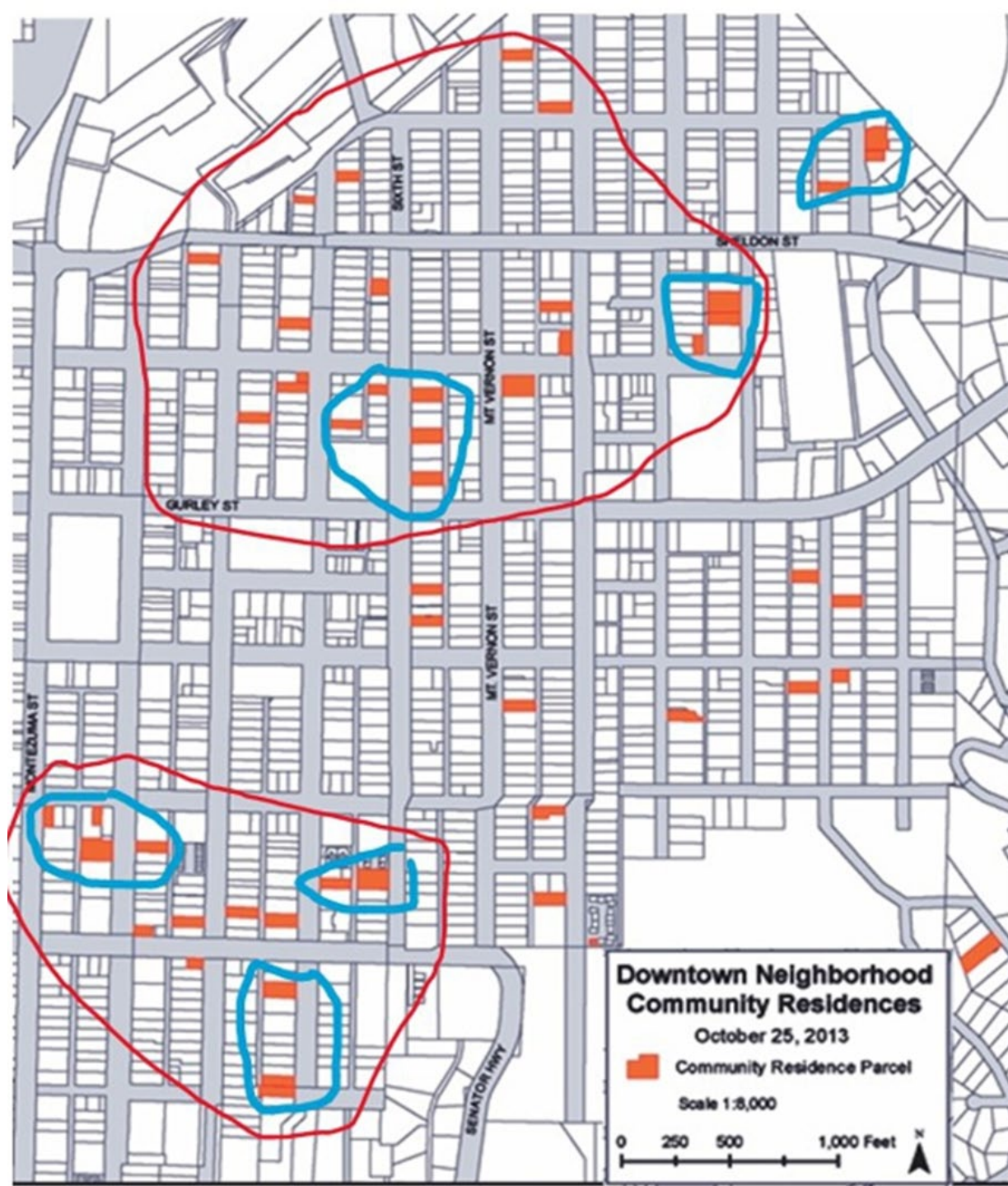
Bottom line on number of residents

- Local property maintenance code, minimum housing code, building code, etc. usually includes ...
- ... a formula to prevent overcrowding
- Applies to *all* residences
- One occupant of sleeping area: 70 square feet
- More than one occupant of sleeping area: 50 square feet per occupant

Examples of Clustering and Concentrations

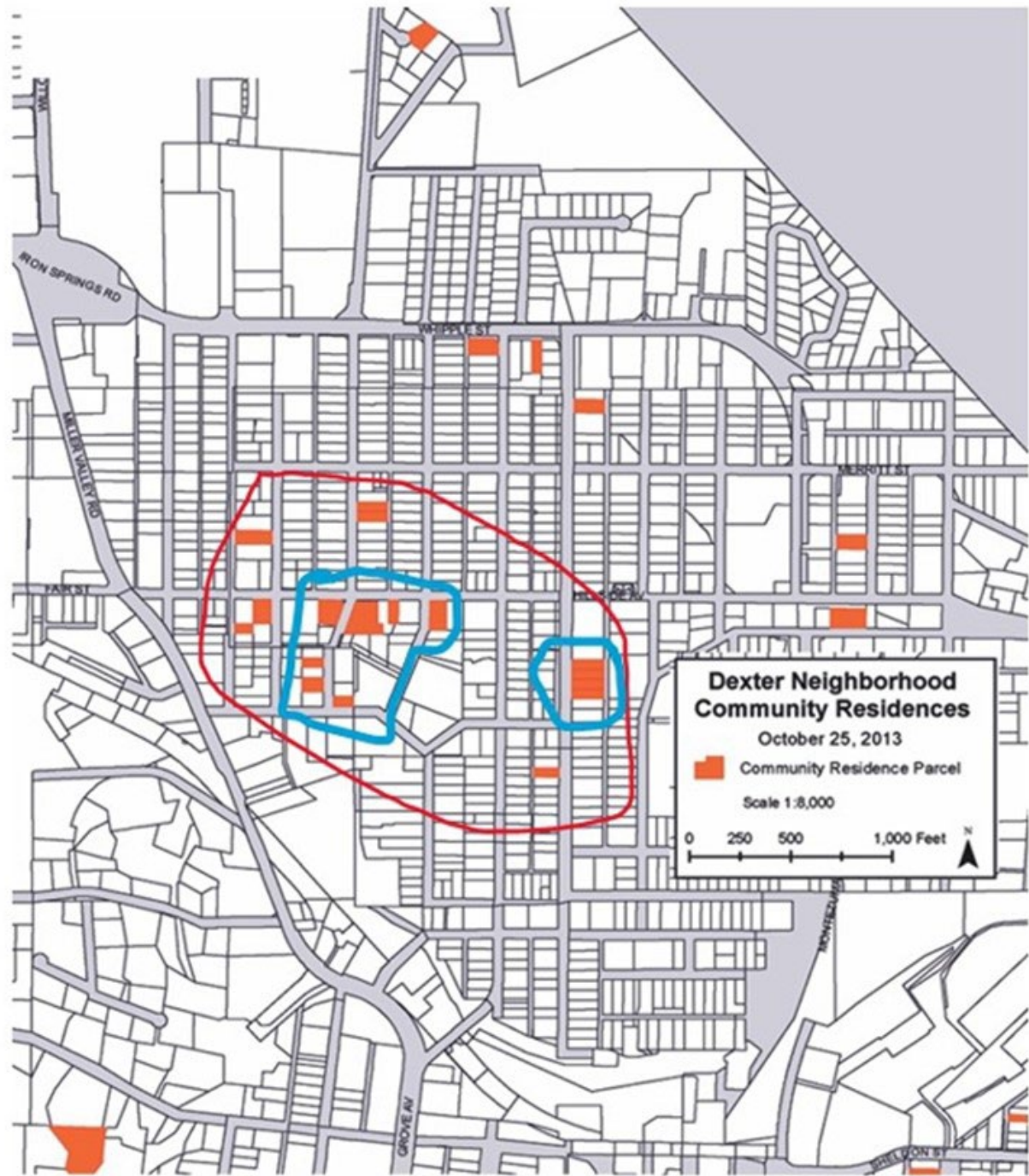
- 2 concentrations:
 - 21 sites (top)
 - 15 sites (bottom)
- Top half of map:
- 3 clusters

- Lower concentration:
- 3 clusters
 - +
2 sites located back to back



Examples of Clustering and Concentrations 2

- Concentration:
- 19
- Clusters:
- 4 adjacent
- 9 community residences clustered together on the left dominating the immediate area likely creating a small de facto social service district



Recovery Communities

Cities need to define and zone specifically for recovery communities because many operators try to skirt around zoning regulation.

From top to bottom:

96 people in 4 adjacent apartment buildings with the darker roofs

Red dots indicate two adjacent recovery communities with 20 and 26 people operated by the same housing provider

28 people in 4 adjacent townhomes



Recovery Community Zoning

Not permitted in strict single family zoning districts

- Except an existing recovery community may continue as a lawful nonconforming use if it obtains and maintains state license or certification within 9 months of zoning amendments being adopted

Zoning districts where multi-family or institutional uses are allowed

Permitted use when:

- Located outside applicable tiered spacing distance from the closest existing community residence or recovery community
- State licensed or certified

When located within applicable spacing distance of the closest existing community residence or recovery community:

- Apply for a reasonable accommodation (SUP, etc.)

Example of Tiered Spacing Distance for Proposed Recovery Communities

Example of Tiered Spacing Distance for Proposed Recovery Communities		
Number of residents	Spacing distance is the greater of...	
	Minimum number of feet	Minimum number of lots
Up to 16	600	9
17-30	900	12
31-50	1,100	14
51-100	1,300	16
100+	1,500	20

Download the draft state of the art Clearwater study, learn about recovery communities and an accessible PDF of Dan's PowerPoint, and more at these identical sites:

<http://www.grouphomes.law/michigan>

<http://www.planningcommunications.com/michigan>

If your browser reports the site is not secure, plow ahead anyway.

Both sites actually are secure. Their security certificates just aren't working right.

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