



Cover Memorandum/Staff Report

File #: 20-047

Agenda Date: 2/4/2020

Item #: 7.A.

TO: Mayor and Commissioners
FROM: Anthea Giannotes, Development Services Director
THROUGH: George Gretsas, City Manager
DATE: February 4, 2020

RESOLUTION NO: 34-20: A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, APPROVING A CONDITIONAL USE PURSUANT TO LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, AND THE COMPREHENSIVE PLAN, TO ALLOW THE ESTABLISHMENT OF A COMMUNITY RESIDENCE AT 727 PLACE TAVANT WITHIN 570 FEET OF ANOTHER EXISTING COMMUNITY RESIDENCE; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES. (QUASI-JUDICIAL HEARING)

Recommended Action:

Review and consider Resolution No. 34-20, a Conditional Use request to allow for a Family Community Residence located at 727 Place Tavant.

Background:

On July 18, 2017, the Delray Beach City Commission adopted Ordinance No. 25-17, which sets forth the regulatory standards for community residences in the city. A community residence is a residential living arrangement for up to ten unrelated individuals with disabilities living as a single functional family in a single dwelling unit who are in need of the mutual support furnished by other residents of the community residence as well as the support services, if any, provided by the staff of the community residence. A community residence shall be considered a residential use of property for purposes of all zoning, building, and property maintenance codes. Community residences include, but are not limited to, those residences that comport with this definition that are licensed by the Florida Agency for Persons with Disabilities (APD), the Florida Department of Elderly Affairs, the Florida Agency for Health Care Administration (AHCA), and the Florida Department of Children and Families (DCF), and functional family sober living arrangements also known as recovery residences certified by the state's designated credentialing entity established under Section 397.487 of the Florida Statutes

The primary purpose of a community residence is to provide shelter in a family-like environment; medical treatment is incidental as in any home. Supportive inter-relationships between residents are an essential component. There is no basis in law or zoning theory or practice for local zoning to treat community residences differently than other residences based on the nature of their residents' disabilities.

The item before the board is a request to establish a community residence at 727 Place Tavant for 6 residents. Approval of a Conditional Use Permit is required for proposed community residences that are less than 660 linear feet from the closest existing and legally established community residence that houses four or more individuals. The subject property is owned by 727 Place Tavant Land Trust

and Daniel Valk TR. The operator of the proposed community residence is Planned Care Agency Inc. (the Operator). The proposed community residence will be named Planned Care Agency II.

The community residence is proposed to operate as a Group Home for residents with developmental disabilities as recognized by the State of Florida. The Operator has an Agency for Healthcare Administration (AHCA) Home Health Agency License from the State of Florida (the License) for 3 residents. The applicant is requesting approval of a Community Residence Zoning Application (CRZA) on via approval of a Conditional Use Permit to increase the number of occupants to 6 residents. The current License allows for skilled services provided by nurses, therapists, social workers, etc. and/or unskilled services provided by home health aides, certified nursing assistants, homemaker, companions, etc. to patients in their home. The community residence is currently allowed to operate with 3 residents and 2 non-live in staff members without approval because, per the Land Development Regulations (LDR), this meets the definition of "Family", which means a "group of persons not more than three in number who are not so interrelated." A condition is recommended that, if approved, the applicant provide updated AHCA and APD licenses approved for 6 residents within 45 days of City Commission approval.

Pursuant to **LDR Section 4.4.3(D)(7), Single Family Residential (R-1) Districts, Conditional uses and structures allowed**, a Conditional Use Permit may be required for a Family Community Residence that is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the closest existing community residence. The proposed community residence is located within 570 feet from an existing community residence.

Pursuant to **LDR Section 2.4.5 (E)(5), Findings**, in addition to provisions of Chapter 3, the City Commission must make findings that establishing the conditional use will not:

- a) Have a significantly detrimental effect upon the stability of the neighborhood within which it will be located;
- b) Hinder development or redevelopment of nearby properties.

The Chaletelaine Neighborhood where the subject site is located is identified as "Stable" in the comprehensive plan. The community residence seeks to emulate a biological family to normalize its residents and integrate them into the surrounding community. The proposed community residence is not proposing any construction modifications. It is unlikely that the proposed use would have a detrimental effect on the stability of the community, or hinder development of nearby properties.

Pursuant to **LDR Section 4.3.3 (I)(3), Purpose of conditional use permit**. In conjunction with Section 2.4.5(E) of these LDRs, the purpose of this section is to provide narrowly-tailored standards for determining whether to make the reasonable accommodation of granting a conditional use permit to ensure that the community residences these LDRs require to obtain a conditional use permit will:

- (a) Be located a sufficient distance from any existing community residences so that the proposed community residence does not lessen nor interfere with the normalization and community integration of the residents of existing community residences or combine with any existing community residences to contribute to the creation or intensification of a de facto social service district,
- (b) Operate as a functional family (also known as emulating a biological family) that fosters normalization and community integration of its residents, and

- (c) Operate in a manner consistent with the protections afforded by the State of Florida's licensing or certification standards for community residences serving individuals with disabilities similar to those of the proposed community residence in order to protect the residents of the proposed community residence from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications.

The proposed community residence is located within 570 linear feet of one other existing community residence, which is not part of nor accessed from the Chatelaine neighborhood. The two properties are each situated in separate single-family neighborhoods and are separated by opposite fronting properties; the proximity of the two community residences will not alter the residential character of either neighborhood or create a de facto social service district. The proposed community residence has obtained AHCA and APD certifications from the State of Florida to operate a residential style Group Home for occupants with developmental disabilities. The home proposes to operate like a "Family" for 6 residents that intend to emulate a biological family. The licenses required ensure compliance with State standards in the industry, while protecting residents from exploitation, scam operators, fraud and abuse. Planned Care Agency II proposes to operate a non-smoking, illicit drug and alcohol-free home.

Pursuant to **LDR Section 4.3.3 (I)(4), standards for awarding a conditional use permit**, a required conditional use permit may only be issued when the proposed community residence meets the following standards:

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

The proposed community residence is located with 570 feet from another existing community residence that has a reasonable accommodation that preexists Ord. No. 25-17. The two residences are located on separate blocks and in separate neighborhoods. As such it is unlikely that the proposed Community Residence will interfere with the integration of the people in the existing recovery residence because they serve two different populations. The Existing Community Residence is a recovery residence for people in recovery from Substance Use Disorder, while the Proposed Community Residence is a residence for people with developmental disabilities, such as autism, spina bifida, down syndrome and the like. It is unlikely that the residents of the two homes will have much in common and so they are unlikely to meet. It's unlikely that the proposed community residence would create de facto social service because the two community residences because they are not on the same block, are in different neighborhood and serve different populations of the people.

Pursuant to **LDR Section 3.1.1, Required Findings**, prior to the approval of development applications, certain findings must be made in a form, which is a part of the official record. This may be achieved through information on the application, written materials submitted by the applicant, the staff report, or minutes. Findings shall be made by the body that has the authority to approve or deny the development application. The following findings relate to consistency with the Future Land Use Map (FLUM), Concurrency, Comprehensive Plan Consistency, and Compliance with the LDR:

- **FLUM** - The subject property has a FLUM designation of Low Density (LD), and a zoning of R-1-AB Single-Family, which are consistent with each other per the Comprehensive Plan.
- **Concurrency** - There are no site modifications to the existing property or building that would increase the existing traffic demand or increase the demand for solid waste or water and sewer services beyond the current capacity.
- **Consistency** - Ordinance No. 25-17 was adopted on July 18, 2017. It was determined that pursuant to Florida Statutes Section 163.3174(4)(c), the Planning and Zoning Board has determined that the changes are consistent with and further the goals, objectives and policies of the Comprehensive Plan. A review of the goals, objectives, and policies of the adopted Comprehensive Plan was conducted, and the proposal complies with Housing Element policies A11.3 and A11.4. Furthermore, the proposed request complies with the Housing Equity policies HOU 5.1.3, 5.1.6, 5.1.9, and 5.1.10 of Always Delray Comprehensive Plan, which was approved by the City Commission and is pending adoption.
- **Compliance** - The proposed conditional use request has been reviewed for compliance with LDR, as summarized in the analysis sections of this report.

The Planning and Zoning Board is scheduled to make a recommendation regarding the Conditional Use Permit on January 27, 2020.

City Attorney Review:

Approved as to form and legal sufficiency.

Funding Source/Financial Impact:

N/A

Timing of Request:

That the applicant provides updated APD license allowing 6 residents within 45 days of City Commission approval.