



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING & ZONING BOARD

727 Place Tavant (Planned Care Home II)

Meeting	File No.	Application Type
January 27, 2020	2020-033-USE-PZB	Conditional Use Permit (Community Residence)

Request

Consideration of a Conditional Use Permit to establish a Community Residence, also referred to as a Planned Care Home II, at the property located at 727 Place Tavant. The community residence is being proposed to operate as a Group Home for residents with developmental disabilities as recognized by the State of Florida.

Foreword

On July 18, 2017, the Delray Beach City Commission adopted Ordinance No. 25-17, which set 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. Residents may be self-governing or supervised by a sponsoring entity or its staff, which provides habilitative or rehabilitative services, related to the residents' disabilities. A community residence seeks to emulate a biological family to normalize its residents and integrate them into the surrounding community. 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.

A community residence shall be considered a residential use of property for purposes of all zoning, building, and property maintenance codes. The term does not include any other group living arrangement for unrelated individuals who are not disabled nor residential facilities for prison pre-parolees or sex offenders. 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), 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.

A community residence occupied by four to ten unrelated individuals with disabilities can be a "family community residence" or a "transitional community residence." The owner or operator of a community residence may apply for an administrative reasonable accommodation to house more than ten residents in accord with the standards. A Community Residence Zoning application (CRZA) must be completed in full and submitted to the Development Services Department prior to occupancy or construction of the proposed community residence to determine whether the proposed community residence is a permitted use or requires a conditional use permit to determine the maximum number of occupants allowed under city code provisions that apply to all residential uses, the maximum number of off-street parking spaces required, and to identify whether any further accommodation is needed.

Background Information

The subject property is located on Lot 7, Block 3, of Plat No. 1 Chatelaine in the R-1-AB Single-Family Residential zoning district. A 2,769 sf, four-bedroom, one-story masonry block single-family home was constructed on the property in 1972. The following is a list of actions related to the subject property:

- On July 12, 2016, permit 16-164392 was issued for an after-the-fact interior alteration associated with bathroom and kitchen remodel, a water heater replacement, and installation of fire alarms.

- On January 10, 2019, the Development Services Department received a CRZA application from Planned Care Agency to establish a community residence for 6 residents at 727 Place Tavant. Upon review of the application it was determined that the property was located within 660 feet of another existing community residence, and therefore the proposed community residence required approval of a Conditional Use Permit in accordance with Ordinance No. 25-17.
- On January 31, 2019, the Development Services Department received a CRZA application from Planned Care Agency to establish a community residence for 3 residents at 727 Place Tavant. Based on the information provided, which indicated that there would be less than 3 residents in the dwelling unit, the proposed community residence at the referenced location complied with the definition of "Family" in accordance with the City's Land Developments Regulations, no approval was required.
- On October 31, 2019, the Development Services Department received a Conditional Use Permit (2020-033) to establish a community residence for 6 residents at the subject property within 660 feet of another existing community residence.

Project Description

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 being 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), and certification of license from the Agency for Persons with Disabilities (APD) for 3 residents. The Licenses allow for the providing of skilled services (by nurses, therapists, social workers) and/or unskilled services (by home health aides, certified nursing assistants, homemaker, companions) to patients in their homes. The community residence is currently allowed to operate with 3 residents and two non-live in staff members without approval because, per the Land Development Regulations (LDR), it meets the definition of "Family", which means a "group of persons not more than three in number who are not so interrelated." The applicant is requesting approval of a CRZA application via approval of a Conditional Use Permit to increase the number of occupants to a total of 6 residents. A recommended condition of approval is provided that, if approved, the applicant must provide updated the AHCA license that lists the 727 Place Tavant address, and an APD license that lists approval of 6 residents within 45 days of City Commission approval.

Analysis

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. The City Commission, by motion, after review and recommendation for approval by the Planning and Zoning Board may approve or reject a request for a conditional use.

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 Housing Element of the Comprehensive Plan mentions that "in evaluating proposals for new development or redevelopment, the City shall consider the effect that the proposal will have on the stability of nearby neighborhoods. Factors such as noise, odors, dust, traffic volumes and circulation patterns shall be reviewed in terms of their potential to negatively impact the safety, habitability and stability of residential areas." The Planned Care Agency proposes to expand and operate as a Group Home for 6 residents with developmental disabilities in a supervised environment with 24-hour supervision by AHCA accredited nursing staff and professionals. The community residence seeks to emulate a biological family to normalize its residents and integrate them

into the surrounding community; the primary purpose is to provide shelter in a family-like environment, and medical treatment is incidental as in any home. The applicant has indicated that the average stay of the residents would be over a year. The 2,769-sf home where the use will be located has existed in the neighborhood since 1972. The home is a conventional 4-bedroom single family residence with a fenced backyard and a two-car garage. It is unlikely that the proposed use would have a detrimental effect upon the stability of neighborhood since community residences function like traditional single-family homes.

Pursuant to **LDR Section 4.3.3 (l)(3), Community residences application form and conditional use permit requirements, 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 meet the LDR:

- 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, and**

The proposed community residence located at 727 Place Tavant is within 570 linear feet of only 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, thereby, not creating 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**

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 applicant mentions that they will provide residents with trained and experienced staff that will assist the occupants with day-to-day activities. The home features four bedrooms, a living room, patio, dining room and screened air-conditioned patio. The applicant indicates that the current residents have been introduced to several neighbors in the area, who have welcomed them into the community.

- 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 Healthy Communities Element Policy HCE 1.5.1 of the proposed Always Delray Comprehensive Plan (Proposed Comp Plan) submitted to the Florida Department of Economic Opportunity (FDEO) requires the City to continue to enforce regulations that establish a healthy environment that support equal access to safe housing options. The City implements this policy by requiring that all community residences maintain required State certifications and provide annual recertification renewals. The licenses required ensure compliance with State standards in the industry, while protecting residents from exploitation, scam operators, fraud and abuse. Planned Care Agency has a current AHCA Home Health Agency license and APD Foster Home license from the State of Florida and a Landlord Permit with the City of Delray Beach. Planned Care Agency II proposes to operate a non-smoking, illicit drug and alcohol-free home.

Required Findings LDR Section 4.3.3 (l)(4):

Pursuant to LDR Section 4.3.3 (l)(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

- The proposed community residence is located within 570 feet from another existing community residence with an approved reasonable accommodation that preexisted Ord. 25-17. The two residences are located on separate blocks and in separate neighborhoods. The two community residences are separated by single-family residential homes opposite facing single-family homes. Further, 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. As such, it is unlikely that the proposed community residence will interfere with the integration of the people in the existing community residence and vice versa because they serve two different populations.

Planned Care Agency is considered a Family Community Residence that provides a relatively permanent living arrangement for 6 unrelated people with disabilities with no limit on how long a resident may live in the home. The length of tenancy would be measured in years. The distance between the community residences does not appear to create a pseudo social service district or deteriorate the normalization of the neighborhood. The community residence appears to integrate the residents into the community by operating like a traditional family.

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.

- Proposed community residence located at 727 Place Tavant is the only community residence on record located on Block 3 in the Chatelaine Place neighborhood. The neighborhood is a single-family home community. It is unlikely that the proposed community residence would interfere with the existing character of the neighborhood as the proposed community residence intends to function like a single-family, just with unrelated people. Furthermore, the families in the community will serve as role models to the residents of the proposed community residence, which will provide healthy integration into the society of the neighborhood.

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:

- a) **Future Land Use Map (FLUM):** The resulting use of land or structures must be allowed in the zoning district within which the land is situated and said zoning must be consistent with the applicable land use designation as shown on the Future Land Use Map.
- 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. The proposed family community residence, is allowed within the R-1-AB zoning district subject to approval as a conditional use as it is located “within 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 provided that certain findings can be made.”

- b) **Concurrency:** Concurrency as defined pursuant to Objective B-2 of the Future Land Use Element of the Comprehensive Plan must be met and a determination made that the public facility needs, including public schools, of the requested land use and/or development application will not exceed the ability of the City and The School District of Palm Beach County to fund and provide, or to require the provision of, needed capital improvements in order to maintain the Levels of Service Standards established in Table CI-GOP-1 of the adopted Comprehensive Plan of the City of Delray Beach.
- 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.
- c) **Consistency.** A finding of overall consistency may be made even though the action will be in conflict with some individual performance standards contained within Article 3.2, provided that the approving body specifically finds that the beneficial aspects of the proposed project (hence compliance with some standards) outweighs the negative impacts of identified points of conflict.
- 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 following applicable policy is noted:

Current Comprehensive Plan (Adopted)

- **Housing Element Policy A-11.3** In evaluating proposals for new development or redevelopment, the City shall consider the effect that the proposal will have on the stability of nearby neighborhoods. Factors such as noise, odors, dust, traffic volumes and circulation patterns shall be reviewed in terms of their potential to negatively impact the safety, habitability and stability of residential areas. If it is determined that a proposed development will result in a degradation of any neighborhood, the project shall be modified accordingly or denied. Ord. 25-17 helps to protect the residents of community residences by mandating licensure or certification by the state unless the residence is Congressionally chartered. This ordinance also helps to prevent new concentrations of community residences from developing and existing concentrations from intensifying. As explained in the Study adopted by reference in Ord. 25-17, these concentrations have been known to hinder the ability of community residences to achieve their essential goals of normalization and community integration.

All lots surrounding the subject property are zoned R-1 AB, with a Low Density Residential FLUM designation. The subject property fronts on 727 Place Tavant and has a canal to the west; only the northern and southern property lines abut directly to a residential property. There is an existing fence between the neighboring single-family homes on both sides as well as some landscaping to help create a buffer between the residences. Entrances on the southern side of the residence appear to be west of northern side of the adjoining building to negate ingress and egress disruption from the subject residence. Parking areas provided on the site are paved to prevent excess dust during utilization. The gathering area for the property is located at the rear of the house, away from the view of property frontage. While negative effects from odors or noise could be a possibility, it appears that residents will spend most of the time indoors, and some of the times in the fenced rear yard and patio areas, which is typical for a single family neighborhood. It is to be noted that any land use established within the City of Delray Beach must comply with the requirements of Chapter 99, Noise Control, of the Code of

Ordinances. The proposed community residence does not allow residents to drive personal vehicles and provides parking for two non-live-in staff members that take care of the residents throughout the day, thus not generating any more traffic than a typical single-family home. The existing two-car garage can accommodate two permanent spaces and front driveway can accommodate two guest parking spaces. Although it is not a code requirement, the staff has researched the police and fire records for the property and there are no reported incidents of concern since the applicant moved into the home in January 2019.

Policy A-11.4 The City will provide planning and technical assistance to implement neighborhood-supported initiatives aimed at preserving the character of existing residential areas. Such assistance may involve the formulation of regulations that would limit the size and scale of new homes to be consistent with existing structures within a defined neighborhood, and analysis of the housing inventory to determine if the area qualifies for designation as a historic district, and similar measures.

The City is providing planning assistance through the CRZ application and recertification process to help preserve the character of its neighborhoods. The distance separation regulations provided in Ord. 25-17 help deter concentrations of community residences from creating de facto social service districts that could alter the character of a neighborhood.

Always Delray Comprehensive Plan (Pending Adoption)

Objective HOU 5.1, (Housing Equity) – “Support housing options which ensure equitable access and elimination of disparities for all residents and household types.”

Policy HOU 5.1.3 identifies housing for residents with disabilities as an allowable and encouraged housing option. Policy HOU 5.1.6 recommends support of social and health service organizations that offer local programs and facilities for residents with special needs. Policy HOU 5.1.9 recommends the monitoring of development and distribution of group homes and residential care facilities to ensure that adequate sites and infrastructure are provided without an over-concentration in any residential area. Policy HOU 5.1.10 encourages the development of community residences as alternatives to institutionalization.

The proposed community residence provides a group home for 6 residents with developmental disabilities. The residents will be supported by licensed care nurses 24 hours a day. The proposed community residence furthers the applicable policies contained in the Housing Element, under the objective regarding Housing Equity by providing a community residence for disabled residents. Additionally, the CRZ application implements Policy HOU 5.1.9 by regulating the concentration of group homes in a specific neighborhood, while requiring that all community residences are sufficiently licensed and/or certified to ensure that the residents are properly cared for and that the properties are well maintained. The proposed community residence provides a home for residents with developmental disabilities in a family setting, thus providing an alternative to institutional uses, and complying with Policy HOU 5.1.10.

Board Action Options:

- A. Move a recommendation of approval to the City Commission of the Conditional Use Permit request for a Community Residence (Planned Care Home II) located at 727 Place Tavant as amended, by finding that the request is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations; with the condition that the applicant must provide updated the AHCA license that lists the 727 Place Tavant address, and an APD license that lists approval of 6 residents within 45 days of City Commission approval.

B. Move a recommendation of denial to the City Commission of the Conditional Use Permit request for a Community Residence (Planned Care Home II) located at 727 Place Tavant, by finding that the request is inconsistent with the Comprehensive Plan and does not meet the criteria set forth in the Land Development Regulations.

C. Move to continue with direction

Public and Courtesy Notices

___ Courtesy Notices are not applicable to this request

- ✓ Courtesy Notices were provided to the following Homeowner's Associations:
- Chaletelaine Neighborhood
 - Brandon Drive Neighborhood

- ✓ Public Notice was posted at the property on **January 20, 2020**
- ✓ Public Notice was mailed to property owners within a 500' radius on **January 17, 2020** at least ten days before the meeting date.
- ✓ Public Notice was posted to the City's website on **January 17, 2020**.
- ✓ Public Notice was posted in the main lobby at City Hall on **January 17, 2020**.
- ✓ Courtesy Notice was e-mailed on **January 20, 2020**.