



## Agenda Item Summary

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### **Submitted By**

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### **Reviewed By**

LKS

### **Agenda Item Title**

**Concur with the Plan Commission's Recommendation and Adopt an Ordinance Amending Article 8 ("Uses"), Section 8.3 ("Use Restrictions"), Table 8-1 ("Use Matrix"), and Article 8 ("Uses"), Section 8.4 ("Principal Use Standards"), Subsection 8.4E ("Community Residence") of the Oak Park Zoning Ordinance Regarding Community Residences.**

### **Overview**

As a condition of approval of the revised Zoning Ordinance, the Village Board remanded to the Plan Commission for further consideration a review of the regulations associated with Community Residences.

### **Recommendation**

The Plan Commission recommends approval of text amendments to the Oak Park Zoning Ordinance regarding Community Residences as detailed below.

### **Staff Recommendation**

Staff supports the Plan Commission's recommendations.

### **Fiscal Impact**

N/A.

### **Background**

After a two and half year process to update and revise the Village's Zoning Ordinance, the Village Board reviewed and approved the recommended document in September 2017 with a few items to be remanded to the Plan Commission for further consideration. One of those is the subject of this agenda item - Community Residence. The previous and current Zoning Ordinance contains regulations for this land use. After public comment at a Village Board meeting, the direction by the Village Board to the Plan Commission was to look at ensuring the new Zoning Ordinance language was/is appropriate and within the Village's legal parameters.

### **Alternatives**

- Approve the recommendation as presented by the Plan Commission.
- Do not approve the recommendation by the Plan Commission and keep the regulation as written in the Zoning Ordinance.
- Modify the recommendation.

### **Previous Board Action**

The Village Board approved the revised Zoning Ordinance at their September 18, 2017 meeting with direction to the Plan Commission to re-review a some zoning regulations.

### **Citizen Advisory Commission Action**

The Plan Commission held working sessions in January and February 2018 to review possible scenarios for community residence language changes. It was determined that additional legal review was necessary. The Plan Commission attorney was asked by the Commission and directed by staff to review and comment on this subject. At the February meeting, the Plan Commission attorney presented a memorandum to the Plan Commission detailing State and Federal regulations as well as examples from other similar communities. The Plan Commission reviewed and discussed the memorandum and then set a public hearing date.

The Plan Commission held the public hearing on March 1, 2018 where it was determined that additional considerations should be contemplated relative to Community Residence regulations. The Plan Commission stated that the Zoning Ordinance should be slightly modified to include language relative to the “reasonable accommodations” process based on the fact that both the Fair Housing Act and the Americans with Disabilities Act require that a municipality must “reasonably accommodate a disabled person by making changes in rules, policies, practices or services [including requirements in zoning ordinances] as is necessary to provide that person with access to housing that is equal to that of those who are not disabled.” The Fair Housing Act provides in this regard that it is unlawful to refuse “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.” The Americans with Disabilities Act’s regulations provide in this regard that a “public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” In addition, the Plan Commission asked that these changes also be considered; 1. Better define Community Residence, and 2. Community Residences shall be a permitted use in all residential districts.

At the March 1, 2018 hearing only one person provided public comment. The public comment was about the ordinance as proposed was neither open nor inclusive as it didn’t have the definition of family. He said without a definition of family the regulation of community residences could not occur and that the U.S. Supreme Court has upheld definitions of family. He said the zoning proposed was illegal and Oak Park was going down the wrong path, therefore he suggested variations to the proposed ordinance. He suggested a definition of family with a cap on the number of people unrelated at 10; if a community residence fit within this definition no other regulations (spacing, size, etc.) would be allowed. If it exceeded the cap then a reasonable accommodation provision could be used. He said community residences should be allowed in residential districts subject to a rationally based spacing distance of about one block and having a license and certification.

At the conclusion of the public hearing on March 1st, the Plan Commission directed staff to re-notice the hearing with in order to review further modifications not noticed in the first hearing. The next hearing was on April 5, 2018.

In preparation for the April 5th public hearing, staff contacted the Village’s zoning ordinance consultant

(Camrios) to seek their professional input regarding this matter. It was stated by the consultant that the proposed modification of eliminating the density requirements and allowing Community Residences as permitted uses in all residential districts is an approach they have used as well in other communities. It was also mentioned that the Plan Commission was reviewing the validity of the descriptor “functional” relative to “disability” within the definition of Community Residence. They indicated that “functional disability” is a term that is/has been used by government agencies, such as the Center for Disease Control (CDC) and World Health Organization (WHO). Other agencies like HUD talk about disability as affecting major life activities; for example, WHO says: “A functional concept of disability, defines a disability as any long-term limitation in activity resulting from a condition or health problem.” For the HUD definition, major life activity is; “Activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking (disability is a limitation on that).” Essentially the intent is to distinguish long term from short term; for example, breaking arms or legs in an accident that will heal and will not impact major life activities.

At the April 5, 2018 hearing only one person provided public comment. He now stated the Village ordinance under review by the Plan Commission was legal. He cautioned the Plan Commission of potential unintended consequences with having no definition of “family” and no cap on unrelated persons within a definition of “family”. He indicated that the Village could not regulate whether or not a group home is a licensed facility. Staff, the Village consultant, Camiros and the Plan Commission Attorney Greg Smith all disagree with this statement.

At the conclusion of the public hearing, the Plan Commission determined that their recommendation to the Village Board would be 1.) modify the definition of Community Residence as proposed in the Findings of Fact Report, 2.) Include the “reasonable accommodation” language in Article 8(8.4)E, and 3.) modify Table 8.1 to permit Community Residences in all residential zoning districts without density restrictions.

The Plan Commission approved the Findings of Fact Report with these recommendation at their April 5, 2018 meeting.

### **Anticipated Future Actions/Commitments**

Additional remanded Zoning Ordinance regulations will be scheduled for Board consideration in the future.

### **Intergovernmental Cooperation Opportunities**

Zoning and land use matters are unique to Village government within the corporate limits of Oak Park and therefore, intergovernmental cooperation opportunities do not exist.

### **Performance Management (MAP) Alignment**

A Governance Priority established for the Development Customer Services Department is Land Use Regulations.