

**VILLAGE OF LOMBARD**  
**INTER-DEPARTMENTAL REVIEW GROUP REPORT**

TO: Lombard Plan Commission

HEARING DATE: January 26, 2004

FROM: Department of  
Community Development

PREPARED BY: William Heniff, AICP  
Senior Planner  
and  
George Wagner  
Village Counsel

**TITLE**

**PC 03-43; Text Amendment to the Lombard Zoning Ordinance:** The Village of Lombard requests the following text amendments to the Lombard Zoning Ordinance:

1. Amend Section 155.219, Regulations for Group and Family Care Facilities.
2. Amend Section 155.802, Definitions.
3. Amend Section 155.602, Off-Street Parking Requirements.

**BACKGROUND**

In August, 2003, the Village of Lombard applied for a Community Development Block Grant (CDBG) to facilitate right-of-way, parking and utility improvements for properties located along East North Broadway. As part of this submittal to DuPage County, the Village was required to provide a letter stating that the Village Code meets the provisions of the Fair Housing Act. Staff directed Counsel to provide a letter to this effect.

In review of our codes, Counsel found that the Village should modify provisions within the Zoning Ordinance to verify that we are in compliance with the Act. The public hearing associated with the proposed text amendments were continued from the December, 2003 Plan Commission meeting. Further review of the proposed text amendments was undertaken by Counsel and the additional recommendations are included within this report.

As with all text amendments, if it is approved, it would be applicable to all properties in the Village.

## **INTER-DEPATARTMENTAL REVIEW COMMENTS**

### **ENGINEERING**

#### **Private Engineering**

From an engineering or construction perspective, the Private Engineering Services Division has no comments.

#### **Public Works**

The Engineering Division of the Public Works Department has no comments regarding the petition.

### **BUILDING AND FIRE**

The Fire Department will continue to enforce our Building and Fire Prevention Codes as to use. As indicated by Village Counsel, this is acceptable and in the interest of safety for the residents and public at large.

### **PLANNING**

Attached as Exhibit A is the Village Counsel opinion regarding this matter. The proposed amendments include changes to the standards of group and family care establishments, modifies the definitions of “Family Care Facility”, “Group Care Facility” and “Handicapped Person”, and modified the associated parking standards for family and group care facilities. Staff is using this opinion as the primary basis for the amendments.

#### **Compatibility with the Zoning Ordinance**

##### **Standards for Text Amendments**

For any change to the Zoning Ordinance, the standards for text amendments must be affirmed. Based on a review of the Counsel opinion, staff’s comments are noted below:

- 1. The degree to which the proposed amendment has general applicability within the Village at large and not intended to benefit specific property;*

The proposed amendments are not site specific and will be generally applicable within the Village. Thus, the amendments are not intended to benefit specific property, but are intended to reduce conflicts within the existing Zoning Ordinance and to create consistencies with the Fair Housing Act and the Illinois Human Rights Act.

2. *The consistency of the proposed amendment with the objectives of this ordinance and the intent of the applicable zoning district regulations;*

The proposed amendments are intended to create consistencies between regulations associated with the types of residential housing available in the Village.

3. *The degree to which the proposed amendment would create nonconformity;*

The proposed amendments would not affect any of the existing group care or family care homes in the Village as the amendments make the provisions for these facilities less restrictive than currently referenced in code. The proposed amendments create no non-conformities because the proposed regulations clarify the nature of group or family care home regulations.

4. *The degree to which the proposed amendment would make this ordinance more permissive;*

The proposed amendments are less restrictive in the following aspects:

Family Care facilities are listed within Sections 155.405 through 155.410 (i.e., the R1 through R6 residential zoning districts) as permitted uses, subject to the provisions noted in Section 155.219. However, Section 155.219 notes that these facilities can be approved by the Director of Community Development should they meet the associated provisions of the chapter and meet the standards for conditional uses. This last provision creates a contradiction with the previously noted zoning district regulations that notes family care facilities as a permitted use.

The proposed amendment is intended to clarify that family care facilities are indeed permitted uses. The Village can establish reasonable regulations as noted in Section 155.219. However, Counsel recommends elimination of the vehicle parking provisions for family care uses, as they would be required to meet the same parking standards as any single-family residence. However, Counsel suggests listing and enumerating the parking provisions noted in Table 6.3 of Section 155.602 (C) for Group Care Uses, and suggests that one space per licensed driver to be required.

5. *The consistency of the proposed amendment with the Comprehensive Plan;*

The Housing and Residential Land-Use Areas section of the January 1998 Comprehensive Plan identifies the goal to provide for housing to meet the needs of a maturing and diverse population. Group and family care housing is one type of housing that is needed to provide a housing to all types of residents. Therefore, these amendments are intended to advance the housing goals of the Plan.

6. *The degree to which the proposed amendment is consistent with village policy as established in previous rulings on petitions involving similar circumstances.*

The Village has a history of amending its Zoning Ordinance to address evolving circumstances and to reflect modifications associated with case law and new legislation. The proposed amendments are consistent with established Village policy in this regard.

Staff feels that the proposed amendment is consistent with the objectives of the residential districts and is in keeping the Village's development regulations for residential properties.

Proposed Text Amendments

The following are the proposed text amendments for the Zoning Ordinance and Code of Ordinances. Proposed changes to the ordinance are denoted by underlining or ~~striking~~ text.

**SECTION 155.219: REGULATIONS FOR FAMILY AND GROUP ~~AND FAMILY CARE~~ FACILITIES**

The purpose of these regulations includes the conserving of the taxable value of land and buildings, and the lessening and avoiding of congestion in the public streets, promotion of the public welfare, and securing and promoting the quiet, seclusion, clean air, and clean surroundings in residential areas. In order to provide for group housing and accomplish these purposes, the following group occupancies of family care and group care facilities shall be permitted within any zone where residences occupied by families are permitted, provided that such facilities receive administrative approval from the Director of Community Development.

A. Administrative Approval of Permitted Use for Family Care Facilities.

~~The Director of Community Development shall give administrative approval to family care facilities providing that they are occupied by no more than eight unrelated persons who due to advanced age, handicap, impairment due to chronic illness or status as a minor unable to live with parent or guardian, and who reside together in a family type environment as a single~~

~~housekeeping unit. Administrative approval shall be given providing the following conditions are present:~~

The Director of Community Development shall give administrative approval to family care facilities, as a permitted use, provided that the following conditions are present:

1. No other family or group care facility is located within 300 feet.
  2. ~~The family care facility provides off street parking for any vehicles owned or operated by its residents or staff.~~
  3. ~~The structure meets the requirements of all applicable building, fire, and health codes.~~
  4. ~~No off street parking is provided in required front or rear yards.~~
  5. ~~That the proposed use complies with all requirements and standards applicable for a conditional use under other sections of this Ordinance.~~
2. The operator is licensed or certified by the appropriate state agency.
  3. The facility has paid professional support staff, provided by a sponsoring agency.
  4. The facility complies with the zoning regulations for the district in which the site is located.

~~In the alternative, the Plan Commission may recommend and the Village Board may grant such conditional use in the absence of such conditions if they find that not granting such conditional use constitutes a violation of any applicable State or Federal Statute.~~

The Director shall rescind any approval if the above conditions are not met.

#### B. Conditional Use Approval of Group Care Facilities

~~The Plan Commission may recommend and the Village may grant a conditional use permitting group care facilities to be located. Group care facilities are conditional uses in any zoning district where occupancy of a dwelling by a family is permitted providing that such group care facility is occupied by persons who due to advanced age, handicap, impairment due to chronic illness or status as a minor unable to live with parent or guardian, and who reside together in a single housekeeping unit. The procedures, and process for considering such conditional uses and shall be subject to the same procedures and process as for considering all other such conditional uses as all other conditional uses. Approval of such conditional uses shall be given only when each of the following conditions are present:~~

Approval of such conditional uses shall be given only when each of the following conditions are present:

1. No other family or group care facility is located within 300 feet.
- ~~2. The group care facility provides off street parking for any vehicles owned or operated by its residents or staff.~~
- ~~3. The structure meets the requirements of all applicable building, fire, and health codes.~~
- ~~4. No off street parking is provided in required front or rear yards.~~
- ~~5. That the proposed use complies with all the requirements and standards applicable for a conditional use under other sections of this Ordinance.~~

~~In the alternative, the Plan Commission may recommend and the Village Board may grant such conditional use in the absence of such conditions if they find that not granting such conditional use constitutes a violation of any applicable State or Federal statute.~~

2. The proposed use complies with all of the requirements and standards applicable for a conditional use under this Chapter 155.
3. The facility complies with the zoning regulations for the district in which the site is located.

The Director of Community Development shall grant administrative approval to any group care facility for which a conditional use has been granted and which is operated in conformance with any conditions and stipulation contained in the Conditional Use Ordinance.

## **SECTION 155.602 OFF-STREET PARKING**

### **SCHEDULE OF OFF-STREET PARKING REQUIREMENTS**

| <b>USE</b>                       | <b>PARKING REQUIREMENTS</b>      |
|----------------------------------|----------------------------------|
| <b><i>RESIDENTIAL</i></b>        |                                  |
| Single Family Detached Dwellings | Two (2) Spaces per dwelling unit |

|  |  |
|--|--|
| Attached Single-Family Dwellings<br>Two or less bedrooms or dens<br>Three or more bedrooms or dens | Two spaces per dwelling unit<br>One space per bedroom or den (minimum three spaces per unit)   |
| Multiple-Family Dwellings:<br>One and two bedrooms;<br>Three or more bedrooms                      | One & one-half (1.5) spaces per dwelling unit<br>Two(2) parking spaces per dwelling unit   |
| Fraternities and Dormitories   | Plus one (1) space per manager, employee   |
| <u>Group Care Facility</u>   | <u>One (1) space per resident and staff, licensed to drive</u>   |
| Rooming House  | Two spaces (2) plus one (1) space for each room for rent   |
| Hotel/Motel  | One (1) space per guest room plus one (1) space per employee on peak shift   |
| Hotel/Convention Hall  | As determined and required by the Director of Community Development based upon an individualized study of the facility by a professional traffic and parking consultant. |
| Convalescent Home/Nursing Home   | One (1) space per guest room plus one (1) space per employee on peak shift   |
| Elderly Housing  | One (1) space per four (4) units plus one space (1) per employee   |

**SECTION 155.802: DEFINITIONS**

**FAMILY CARE FACILITY** is a non-medical facility for housing of no more than eight (8) unrelated persons (~~inclusive of resident staff~~) who, due to advanced age, handicap, pregnancy, ~~impairment due to chronic illness~~, or status as a minor unable to live with parents or guardian, require assistance and/or supervision, and who reside together as a single housekeeping unit, plus paid professional support staff provided by a sponsoring agency. Excluded from the definition of family care facilities are homes in which non-handicapped residents are persons convicted by a court of competent jurisdiction of the manufacture or distribution of controlled substances ~~or persons whose disability arises from the current use or addiction to a controlled substance~~ (as this

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term is used in the United States Code and Illinois Statutes) or currently illegally using, or addicted to, controlled substances and homes where residents tenancy would constitute a direct threat to the health and safety of other individuals or would result in substantial physical damage to the property of others.

**GROUP CARE FACILITY** is a residential facility which is the same as Family Care Facility except that it may house nine to fifteen persons. the operator is not licensed or certified by the appropriate state agency, or the facility is not supervised by paid professional support staff provided by a sponsoring agency, or, whether licensed and/or supervised or not, the facility has nine (9) or more persons plus staff.

**HANDICAPPED PERSON** is a person who is handicapped pursuant to the provisions of the Fair Housing Act of 1988 or the Illinois Human Rights Act, and any subsequent amendments thereof.

### **FINDINGS AND RECOMMENDATIONS**

Based on the above considerations, the Inter-Departmental Review Committee recommends that the Plan Commission make the following motion recommending **approval** of the request as proposed:

Based on the submitted petition and the testimony presented, the proposed text amendment to the Zoning Ordinance plan **does comply** with the Standards required by the Zoning Ordinance. Therefore, I move that the Plan Commission to the Corporate Authorities **approval** of the text amendments described in PC 03-43.

Inter-Departmental Review Group Report Approved By:

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David A. Hulseberg, AICP  
Director of Community Development

DAH:WJH



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**Exhibit A**  
**Village Counsel Opinion Relative to Family and Group Care Facilities**

See attached pages.

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December 10, 2011

Mr. David Hulseberg  
Director of Community Development  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148-3931

**Re: Supplement - Proposed Changes to Village Zoning Code Regarding Family and Group Care Facilities**

Dear Dave:

This is a supplement to my previous correspondence proposing changes to the Village's Zoning Code regarding family and group care facilities. The following are some additional recommended changes, which were reviewed with Bill Heniff.

We previously recommended deleting the exception for "persons whose disability arises from the current use or addiction to a controlled substance" in the definition of "Family Care Facility," Section 155.802 of the Zoning Code, because it applies under the Federal Fair Housing Act (the "FHA"), 42 U.S.C. 3601, but not the Illinois Human Rights Act, 775 ILCS 5/1-101 (the "HRA"). However, the exception for "illegal use of or addiction to a controlled substance" does apply to non-handicapped persons under the HRA, and we recommend including it as such. Similarly, the exception for "homes in which residents are persons convicted by a court of competent jurisdiction of the manufacture or distribution of controlled substances (as this term is used in the United States Code and Illinois Statutes)" can be applied to non-handicapped persons under the HRA and should also be included as such. Further, the exception "where residents constitute a direct threat to the health and safety of other individuals or the (substantial physical damage to) property of others" applies generally under the HRA, and that provision should be included in the definition.

The FHA prohibits discrimination based upon familial status, which specifically includes "any person who is pregnant." Therefore, we recommend amending the definition of "Family Care Facility" to include "pregnancy" as a covered category. " Impairment due to chronic illness" can be deleted, as it is included in the definition of "handicap."

Therefore, the definition of "Family Care Facility" should read as follows:

FAMILY CARE FACILITY is a non-medical facility for housing no more than eight (8) unrelated persons who, due to advanced age, handicap, ~~impairment due to chronic illness~~, pregnancy or status as a minor unable to live with parents or guardian, require assistance and/or supervision, and who reside together as a single housekeeping unit, plus paid professional support staff provided by a sponsoring agency. Excluded from the definition of family care facilities are homes in which non-handicapped residents are persons convicted by a court of competent jurisdiction of the manufacture or distribution

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of controlled substances (as this term is used in the United States Code and Illinois Statutes) or currently illegally using, or addicted to, controlled substances, and homes where resident tenancy would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others.

The HRA establishes a civil rights violation for "refus(ing) to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such (handicapped) person equal opportunity to use and enjoy a dwelling."775 ILCS 5/3-102.1. This provision is similar to Section 3604(f) of the FHA, 42 U.S.C. 3604(f), which applies more broadly to race, color, religion, sex, handicap, familial status or national origin. Therefore, since the HRA applies to a municipality's zoning actions related to handicapped persons, and the definitions of "handicap" in those Acts differ, we recommend that the definition of "Handicapped Person" in Section 155.802 of the Zoning Code, be amended to reference the HRA, to read as follows:

HANDICAPPED PERSON is a person who is handicapped pursuant to the provisions of the Fair Housing Act of 1988 or the Illinois Human Rights Act, and any subsequent amendments thereof.

Initially, we recommended deleting references to parking requirements for Group and Family Care Facilities to defer to present parking regulations. While that is appropriate for Family Care Facilities, standards should be provided for Group Care Facilities, which allow nine (9) or more residents plus staff. The facility's needs can be accommodated through a variation during the conditional use approval process. The proposed standard for Group Care Facilities is "One (1) space per resident and staff, licensed to drive."

Enclosed is the revised ordinance for review by the Plan Commission at its January 26, 2004, meeting. Please contact me if you would like to further discuss this matter.

Very truly yours,

KLEIN, THORPE & JENKINS, LTD.

George A. Wagner

Enclosure

cc: William Heniff, Senior Planner  
Thomas Bayer, Village Attorney

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