

VILLAGE OF ELM GROVE

13600 Juneau Boulevard
Elm Grove, WI 53122

LEGISLATIVE COMMITTEE

Wednesday, October 17, 2018 * 6:00 PM * Parkview Room

AGENDA

1. Bring meeting to order and roll call

2. Review and act on minutes

Documents:

[LC092018md.pdf](#)

3. Review and act on Chapter 335-21.1 - Rm-2 Multiple Family

Documents:

[memo to Legis Comm re explanation of proposed changes to draft recommended at 09 20 18 mtg 10 10 18_.pdf](#)

[335-21.1 Rm-2 Multiple Family - creation draft 092018.pdf](#)

[335-21.1 Rm-2 Multiple Family HdIM Proposed Revisions 10-2-18.pdf](#)

4. Other Business

5. Adjourn

Any person who has a qualifying disability as defined by the Americans with Disabilities Act who requires that the meeting or materials for the meeting has to be in an accessible location or format must contact the Village Clerk, Mary S. Stredni, at 262-782-6700 or 13600 Juneau Boulevard by 3:00 PM Friday prior to the meeting so that any necessary arrangements can be made to accommodate your request.

NOTICE: It is possible that members of, and possibly a quorum of, other governmental bodies of the Village may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to in the above notice.

**VILLAGE OF ELM GROVE
LEGISLATIVE COMMITTEE MINUTES
Thursday, September 20, 2018**

Present: Chairman Domaszek- via phone, Trustee Haas and Angie Jodie. President Palmer excused.
David De Angelis Village Manager, Mary Stredni Village Clerk, and Village Attorney Hector de la Mora.

1. Call meeting to order
Chairman Domaszek brought the meeting to order at 7:10 p.m. Mary S Stredni took the roll.
2. Minutes
Haas and Jodie moved and seconded to approve the August 22, 2018 minutes. Motion carried.
3. Review and act on creation of Rm-2 Multiple-Family Residential District
Committee reviewed the amendments to the original draft made by Haas.
First paragraph - consensus to change from age of 55 years to age of 62 years and change the 'Section' reference to the correct reference.
Change Independent Senior Living facilities to Independent Senior Living Dwellings throughout.
Remove references to servant's quarters throughout.
C (2) Densities for PDO – change to 38 dwelling units
E (1) (d) add – The building height of detached garages shall not exceed 24 feet.
E (3) No dwelling unit shall contain less than 700 square feet in living area.

Discussion regarding the need to add the definition of – Independent Senior Living Dwellings under definitions in code.

Trustee Haas moved to approve the creation of §335-21.1 Rm-2 Multiple-Family Residential District with the amendments and with the correct reference to Section of the Housing for Older Persons Act of 1995 as attached. Jodie seconded. Motion carried.
4. Other business
Chairman Domaszek inquired as to a roof that is in disrepair in the Village and questioned whether some stronger enforcement could be put in the Code. He will discuss the topic further with Village Manager at a later date.
5. Adjourn
Haas and Jodie moved and seconded to adjourn at 8:16 p.m. Motion carried.

Respectfully submitted,

Mary S Stredni
Village Clerk

LEGAL MEMORANDUM
ATTORNEY-CLIENT PRIVILEGED

TO: Legislative Committee, Village of Elm Grove

FROM: von Briesen & Roper, s.c.
By: Hector de la Mora

DATE: October 10, 2018

RE: Explanation of Proposed Changes to Draft Recommended
at the September 20, 2018 Meeting

At the conclusion of the last meeting of the Legislative Committee, I was requested to research and insert the appropriate citation for the federal legislation that would legally bar anyone under the age of 62 years from occupying/living in a residential unit within an Rm-2 Residential District.

Under the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, hereafter “ACT”) as amended by the Housing for Older Persons Act of 1995 (“HOPA”) there is only one absolute exemption from the ACT’s prohibition against discrimination because of *familial status*¹.

In other words, *familial status* forms of housing discrimination do not apply in any respect to housing intended for, or solely occupied by persons 62 years of age or older.

However, the owner of housing that qualifies under this exemption is not compelled to continue exclusive occupancy by individuals who are 62 years of age or older within that housing. Aside from losing possible tax advantages/credits (which I did not research) the only legal exposure that an owner faces who ceases to limit occupancy to only persons who are 62 years of age or older is *familial status* discrimination liability, should it occur.

Consequently, I felt that the Village might be in a better position to police and enforce the adherence to exclusive occupancy by individuals who are 62 years of age or older through a *conditional use* form of zoning as opposed to a *permissible use* that could be renewed periodically every several years. Copy of my proposed changes is attached.

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¹ The Federal Fair Housing act, with some exceptions, prohibits discrimination [refusing to rent to tenants or treating them differently] in housing against families with children under 18 years of age. This includes situations where children might live with a biological parent, stepparent, foster parent, grandparent, or other adult who has legal custody of them. And if a child is living with someone whom a parent or legal custodian has designated in writing, then such a household is also protected against *familial status* discrimination. In addition, the marital status of adult tenants is irrelevant. Tenants who are pregnant or in the process of adopting a child, are also protected.

§335-21.1 Rm-2 Multiple-Family Residential District.

The Rm-2 Residential District contains multiple-family residential development for Independent Senior Living Dwellings in which all residents are over the age of 62 years as defined by Section ___ of the Housing for Older Persons Act of 1995 (Pub.L.104-76, 109 Stat. 787, approved December 28, 1995). Such Independent Senior Living Dwellings must be served by municipal sanitary sewers and municipal water.

A. Permitted principal uses.

1. Multiple-family Independent Senior Living Dwellings with densities not to exceed 16 dwelling units per net acre.
2. Essential services

B. Permitted accessory uses.

Accessory structures and uses customarily incident to the above uses, including private garages when located on the same lot and not involving the conduct of a business; provided, however, that no principal structure shall be erected unless a garage with a minimum of one parking space per dwelling unit is erected simultaneously with the principal structure; and carports shall not be permitted in such district. Each required indoor parking space shall be a minimum of 240 square feet in area. Every garage so erected for a two-family dwelling shall be directly connected with the main structure, either by common wall, portico, porch or similar connection, roofed over, said roof to be connected to the roof or walls of the main structure. The Plan Commission may allow the required garage for a multifamily development containing three or more dwelling units to be a detached structure.

C. Conditional uses.

1. Utility substations.
2. Multiple-family Independent Senior Living Dwellings as part of a Residential Planned Development Overlay District project under §335-30. Densities of up to 38 dwelling units per net acre may potentially be granted subject to the adjustments provided for in §335-30F (3) and (4).
3. Home Occupations.
4. Driveways, patios, walkways or other hardscape constructed using a permeable surface to exceed the allowable percentage of maximum impervious surface area as defined within this chapter.

D. Lot area and width.

1. Lots shall not be less than one acre (43,560 square feet) in area.
2. Lots shall not be less than 120 feet in width at the front building line.

E. Building height and area.

1. Height
 - a. The building height for principal structures (including any part thereof) shall not exceed 36 feet; provided, however, that the building height for a principal structure may be increased by one foot for every two feet added to all side yard and the rear setback requirements for the district in which the structure is located. A maximum of five feet of additional building height may be added under this subsection.

- b. For principal structures having exposed foundations on the side or rear yards, the vertical height at that location shall not exceed 46 feet; provided, however, that the vertical height at that location may be increased by one foot for every two feet added to all side and rear setback requirements of the district up to a maximum of five feet of additional vertical height.
 - c. The building height of accessory structures, other than garages, shall not exceed 10 feet.
 - d. The building height of detached garages shall not exceed 24 feet.
2. No multiple-family structure shall be less than 3,500 square feet in area, excluding the garage area.
 3. No dwelling unit shall contain less than 700 square feet in living area.

F. Yards

1. There shall be a minimum building setback of 25 feet from each abutting street right-of-way.
2. There shall be a minimum side yard building setback of 20 feet.
3. There shall be a rear yard building setback of not less than 25 feet.

G. The maximum building footprint area shall be 30% of the lot area.

H. The maximum impervious surface shall be 65% of the lot area.

§335-21.1 Rm-2 Multiple-Family Residential District.

The Rm-2 Residential District contains multiple-family residential development for Independent Senior Living Dwellings in which all residents are over the age of 62 years as defined by Section ___ of the Housing for Older Persons Act of 1995 (Pub.L.104-76, 109 Stat. 787, approved December 28, 1995).²⁴ CFR §100.303, as amended from time to time.¹ Such Independent Senior Living Dwellings must be served by municipal sanitary sewers and municipal water.

A. Permitted principal uses.

1. Multiple-family Independent Senior Living Dwellings with densities not to exceed 16 dwelling units per net acre.
2. Essential services

B. Permitted accessory uses.

Accessory structures and uses customarily incident to the above uses, including private garages when located on the same lot and not involving the conduct of a business; provided, however, that no principal structure shall be erected unless a garage with a minimum of one parking space per dwelling unit is erected simultaneously with the principal structure; and carports shall not be permitted in such district. Each required indoor parking space shall be a minimum of 240 square feet in area. Every garage so erected for a two-family dwelling shall be directly connected with the main structure, either by common wall, portico, porch or similar connection, roofed over, said roof to be connected to the roof or walls of the main structure. The Plan Commission may allow the required garage for a multifamily development containing three or more dwelling units to be a detached structure.

¹ CFR § 100.303 62 or Over Housing.

(a) The provisions regarding [familial status](#) in this part shall not apply to housing intended for, and solely occupied by, [persons](#) 62 years of age or older. Housing satisfies the requirements of this section even though:

(1) There are [persons](#) residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are [persons](#) 62 years of age or older;

(2) There are unoccupied units, provided that such units are reserved for occupancy by [persons](#) 62 years of age or over;

(3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of [paragraph \(a\)](#) of this section:

Example (1):

John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its “62 or over” exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the “55 or over” exemption in [§ 100.304](#).

Example (2):

The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the “62 or over” exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave for Blueberry Hill to qualify for the “62 or over” exemption.

C. Conditional uses.

1. Multiple-family Independent Senior Living Dwellings with densities not to exceed 16 dwelling units per net acre subject to (a.) the delivery to the village of verifiable affidavits executed by the owner(s) of all dwellings subject to this zoning that all persons residing therein are 62 years of age or older on each anniversary of the granting of this conditional zoning and; (b.) the tendering of fees for all the village's cost of verifying the information submitted.
2. Utility substations.
3. Multiple-family Independent Senior Living Dwellings as part of a Residential Planned Development Overlay District project under §335-30 and subject to the affidavit and fee requirements of §335-21.1 Rm-2 (B.) 1.. Densities. Densities of up to 38 dwelling units per net acre may potentially be granted subject to the adjustments provided for in §335-30F (3) and (4).
4. Home Occupations.
5. Driveways, patios, walkways or other hardscape constructed using a permeable surface to exceed the allowable percentage of maximum impervious surface area as defined within this chapter.
6. Accessory uses. Accessory structures and uses customarily incident to the above uses, including private garages when located on the same lot and not involving the conduct of a business; provided, however, that no principal structure shall be erected unless a garage with a minimum of one parking space per dwelling unit is erected simultaneously with the principal structure; and carports shall not be permitted in such district. Each required indoor parking space shall be a minimum of 240 square feet in area. Every garage so erected for a two-family dwelling shall be directly connected with the main structure, either by common wall, portico, porch or similar connection, roofed over, said roof to be connected to the roof or walls of the main structure. The Plan Commission may allow the required garage for a multifamily development containing three or more dwelling units to be a detached structure.

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