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LOCAL REGULATION OF THE SITING
OF COMMUNITY RESIDENTIAL FACILITIES
FOR THE MENTALLY DISABLED

BY

David A. Rinaldo

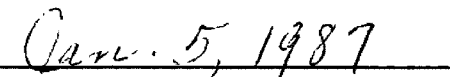
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INTRODUCTION

Community residential facility is a broad term that describes a relatively new type of land use which is being established at a rapid rate throughout the country. Generally, a community residential facility, or group home, houses a number of unrelated persons in a single structure or building for the purpose of providing health or rehabilitation treatment in a family and community setting. Group homes are not clusters of apartments; rather, the entire population of the facility lives as any other family would, with shared bathrooms, kitchens, and dining facilities.

The largest group home population in the United States is the mentally disabled. Other groups can be considered as populations of community residential facilities such as foster children, juvenile delinquents, drug addicts, and other persons not able to live independently in "normal" residential situations. However, for the purposes of this paper, only group homes for the mentally disabled will be considered due to the emergence of this type of housing and the subsequent increasing impacts on community planning and zoning.

The movement to community residential facilities for the mentally disabled is increasing due to two major

factors: cost and the effectiveness of care and treatment. Costs for group home care have been found to be up to one half the cost of traditional institutional care. More importantly, health and sociology professionals are finding that large institutions have not been effective in providing care or fostering functional social skills. Community residential facilities are seen as an ideal transitional element from the institutional end of the care system to complete "recovery" and reintegration into society. Others assert that even if a mentally disabled person is unable to achieve independent living skills, such a person is nonetheless entitled to decent, humane housing opportunities.

As the movement to community residential facilities has progressively gained acceptance by many states, which usually provide the funding for the care of the mentally disabled, the result has been a decreasing emphasis on large institutions and an increase in the establishment of group homes in communities. This trend has created a problem for local land use planners since the community residential facility is not a traditional use considered by many local zoning laws and comprehensive plans. Advocates stress that group homes should be allowed in all residential zoning districts due to both the benefits derived from such locations and the "family" nature of the facilities.

However, the majority of zoning ordinances do not specifically recognize group homes as a single-family

residential use. The definition of "family" in local laws typically excludes living arrangements or households other than those of the traditional family. Some ordinances do permit a certain number of unrelated persons, usually between two to five, to constitute a family, but this number is inadequate for group homes which typically house six to sixteen people.

In addition, there usually is stiff opposition to the establishment of community residential facilities from neighborhood groups. Local residents become concerned about safety, increased traffic, unattractive or "odd" behavior, and decline in property values. Frequently, the neighborhoods with the most political clout (and these tend to be single-family areas) are the most successful in blocking the establishment of a community residence. This has led to a pattern of group home locations in less affluent, older, multiple-family dwelling neighborhoods, much to the chagrin of nearby residents and group home sponsors.

Some states have addressed this problem by enacting legislation which specifies group homes as being single-family dwellings which are exempt from local zoning requirements that classify them as institutional or multiple-family dwelling uses. Much of this legislation also allows localities to adopt further zoning guidelines which will assist in siting group homes while maintaining the residential nature of host neighborhoods.

The impetus from state legislation and court decisions on the siting of group homes is limited if it is not supported by guidelines at the local level. Host communities need to first align their existing ordinances to accommodate state mandates. Beyond this, local regulation can further assure proper siting of these facilities so as to not disrupt neighborhoods and to provide an appropriate residential environment for the mentally disabled. Proper local guidelines can help diffuse political and neighborhood opposition by imposing relevant development standards on both a city-wide and site specific basis.

The development of local regulatory guidelines for the siting of community residential facilities for the mentally disabled requires an understanding of this new type of land use and its implications on local planning and zoning initiatives. This paper will present a history of group homes as well as current trends on siting procedures resulting from legislation and court decisions. In addition, current research on the effects of group homes on neighborhoods will be examined in order to better determine proper regulatory techniques. This material will be summarized and recommendations will be presented for local regulation of the siting of community residential facilities for the mentally disabled.

CHAPTER I

THE NATURE OF COMMUNITY RESIDENTIAL FACILITIES

The Movement to Community Residential Facilities

Until the early 1900s, mentally disabled persons were typically housed in large institutions located far from major population centers. They were different from the sick and criminal persons in that while both were major dependents of society, recovery of mentally disabled persons was not deemed possible. Thus, there was a perceived need for a special environment which would isolate the mentally disabled from society, a perception exacerbated by their readily apparent low physical and mental capabilities. Paternalism pervaded the history of American mental retardation care, conferring an inferior status upon the mentally deficient. These factors made them the most exploitable of all dependent groups.¹

The prevailing societal attitudes therefore dictated how the mentally disabled were to be treated. In the late 1800s, the country was experiencing tensions caused by

¹Peter L. Tyor and Leland V. Bell, Caring for the Retarded in America: A History (Westport, Conn.: Greenwood Press, 1984), p. 154.

industrialization, labor unrest, dramatic urban growth and war. A common reaction to these problems was to isolate and segregate the probable causes; unfortunately, the mentally disabled were identified through purportedly scientific studies as being one of these probable causes. They were thought to be the main cause of crime, prostitution, degeneracy, and other social problems. The mentally disabled were, therefore, quarantined from the community by being placed in large institutions. The community viewed them as a threatening menace and demanded their permanent removal to a facility physically and psychologically distant from the everyday social world.²

Changes from this point of view came about gradually due to a number of factors. Institutions were becoming crowded and authorities were pressured to make more space available. As alternatives, state institutions began experimenting with releasing inmates into carefully selected community environments, particularly those involving supervised farm and domestic work. In addition, citizens began requesting that young retarded children be allowed to leave institutions to join families in the community. This form of adoption proved very successful in that it both relieved overcrowding in institutions and provided an unexpectedly healthful and nurturing environment for the mentally disabled child. Another innovation of the early 1900s, the outpatient clinic,

²Ibid., p. 155.

provided a mechanism whereby the mentally retarded person could live in a community setting and still receive the necessary professional services.

The special class in public schools also became a major force in the deinstitutionalization of mentally disabled persons. Along with the parole system and the outpatient clinic, it represented a nationwide agency for the training and care for deficient persons in the community. At first, special classes developed slowly and were located chiefly in eastern and midwestern cities; by 1930, there was an estimated national enrollment of over fifty thousand students.³ This program shared the goal of traditional education to develop the potential of each individual to fullest capacity. Probably the most important elements of the early special class were citizenship instruction and job training for the unskilled labor market.

New studies also contributed to the movement to community residential services. For example, a report of the Surgeon General of the Army, "Defects Found in Drafted Men," published in 1920, confirmed the growing belief that feeble-mindedness was much more prevalent than had been realized.⁴ It had been assumed that four persons per one thousand were mentally deficient, but the Surgeon General's report indicated twelve per one thousand. Additional studies in the 1920s suggested even higher figures.

³Ibid., p. 127. ⁴Ibid., p. 124.

Community supervision was increasingly looked to as an answer as it would not be possible to institutionalize all mentally deficient people. More important, the evidence suggested that many mentally retarded persons did not require or need incarceration; they lived, largely undetected, in society, performing useful, menial tasks.

In the 1930s, investigators began revealing evidence that environment was the most important element in shaping the conduct of the retarded. Behavioral scientists found that the institutionalized individual learns to adjust to the mores of society in false and slavish ways in that he merely adapts to the subculture found within his particular institution.⁵ The behavior patterns he develops to cope with the institution's way of life merely increases his dependency and further removes him from the mainstream of society. Additional studies showed that the environment of the institution affected IQ development in a negative manner.⁶ Mentally retarded children placed in a stimulating, community setting were found to have increased mean intelligence as opposed to those placed in an institutional setting.

The cumulative effect of both the need to reduce overcrowding in institutions and studies indicating the negative impacts of such facilities on mentally disabled

⁵Daniel Lauber and Frank S. Bangs, Jr., "Zoning for Family and Group Care Facilities," Planning Advisory Service Report No. 300 (March 1974), p. 3.

⁶Tyor and Bell, p. 130.

persons contributed to increased community care efforts. In addition, substantial savings were being realized by providing such care. Studies on both construction and care costs have shown community residential care to be roughly half that of traditional mental institutions.⁷ By the 1960s, community residential care for the mentally disabled had become so commonplace among the states that the federal government began to assume a role beginning with President Kennedy's Federal Joint Commission on Mental Illness and Health. This commission recommended that no more state hospitals of over 1,000 beds be built and that the goal of modern treatment for the mentally ill is:

. . . "to enable the patient to maintain himself in the community in a normal manner. To do so, it is necessary (1) to save the patient from the debilitating effects of institutionalization; (2) if the patient requires hospitalization, to return him to home and community as soon as possible; and (3) thereafter to maintain him in the community as long as possible."⁸

A policy thus set, state and federal resources were targeted for implementation. From 1974 to 1984, the number of community residential facilities for the mentally disabled increased from 700 to 6,000.⁹ During the same period, the number of mentally disabled persons in large state institutions decreased 32 percent from 174,000 to 119,335. Several states have completed closures of one or more state institutions since 1980, with additional closures moving forward in at least six states. As a

⁷Lauber and Bangs, p. 3. ⁸Ibid., pp. 3-4.

⁹Daniel Lauber, "Mainstreaming Group Homes," Planning 51 (December 1985): 14.

result of these policies, the individuals remaining in public institutions are rapidly becoming limited to just the more severely handicapped.

The New York State system of services for mentally disabled persons has experienced the same shift from institutional care to community residential based care. However, the magnitude of this reconfiguration has been more dramatic in New York State as compared with the United States. During the period from 1973 to 1983 New York State has experienced a 41 percent decrease in the number of individuals in state-owned developmental centers from 20,062 to 11,869. During this same period there has been a 979 percent increase in the residential capacity of community residences from 905 to 8861 beds.¹⁰

The movement from institutions to community residential facilities appears to be a permanent situation. The New York State Office of Mental Retardation and Developmental Disabilities is guided by one definitive objective, that of:

. . . "continuing the process of deinstitutionalization until that process becomes a by-product of a concomitant process: the complete redirection of the state's mental disabilities system from an emphasis on large developmental centers to smaller and more efficient community care residential settings."¹¹

¹⁰New York, Health Systems Agency of Western New York, 1985-1986 Health Systems Plan (September 1985), p. 4.

¹¹New York State Office of Mental Retardation and Developmental Disabilities, 1984-1987 Comprehensive Plan for Services to Persons with Mental Retardation and Developmental Disabilities in New York State, 1984, p. 137.

The establishment of such facilities is expected to continue for many years to come due to both the existing need and the need created yearly by new advances in community residential care.

Definition and Description

The United States Congress defines "mentally disabled" as a severe, chronic, and permanent disability due to a mental and/or physical impairment, manifested before age twenty-two, that results in substantial functional limitations in at least three of the following major life activities: self-care, language, learning, mobility, capacity for independent living, economic self-sufficiency, and self-direction.¹² The term "mentally retarded" is sometimes used interchangeably with the broader term "mentally disabled." In addition, a "mentally ill" person differs from a mentally disabled person in that mental illness is not a chronic or permanent condition and it may be manifested at any age. The goal of treatment for mentally ill persons is a complete cure and discharge, whereas treatment for mentally disabled persons involves training for competence in the aforementioned major life activities.

Community residential facilities, or group homes, are designed to allow mentally disabled persons to live in a normalized and homelike setting, with the goal that each resident will be given an opportunity to function to his or

¹²Lauber, "Mainstreaming Group Homes," p. 14.

her maximum potential in society. Group homes typically house six to sixteen residents with a live-in professional staff which functions as surrogate parents. The staff provides supervision and teaches the skills necessary for independent living such as meal preparation, monitoring of medical needs, personal financial management, personal hygiene, and recreation. All medical services, employment, vocational training, and other programs that may be required are provided at different locations other than the group home. In this respect, daily activities in a community residence are similar to those in any home.

Besides the desired location in a residential area, group homes need to be in close proximity to recreational facilities, public transportation, churches, schools, and shopping centers so that residents can function as independently as possible. It is also common for the group home sponsoring agency to provide a transportation service utilizing vans and small buses.

A 1983 United States General Accounting Office (GAO) nationwide survey of group homes for the mentally disabled found the residents to be nearly equally divided between male and female.¹³ The survey also reported about half of the residents to be between nineteen and thirty-five years of age. Persons of ages thirty-six through sixty-five

¹³United States General Accounting Office, An Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled, 1983, p. 11.

comprised twenty-five percent of group home populations. Adolescents, persons between fifteen and ten years old, made up twelve percent of the population. Children under fourteen years of age comprised ten percent of the population, and those over sixty-five years of age accounted for four percent of the population.

The GAO survey also found that about sixty-five percent of all group homes in metropolitan areas were located in urban-outlying or suburban areas, five percent in rural areas, and thirty percent in downtown urban center areas. Approximately eighty-six percent of the group homes were located in residential zones, with forty-four and forty-two percent in single-family and multifamily zones, respectively.¹⁴

Most group homes for the mentally disabled were single family, detached houses according to the GAO survey. Approximately thirteen percent of group homes were duplex, triplex, or four-family dwellings; and eleven percent were apartments. Regardless of the type of building housing the mentally disabled, the structures surrounding group homes were generally characteristic of a residential neighborhood as eighty-seven percent of the structures within one-quarter mile were single family (sixty percent) or multifamily (twenty-seven percent) residences.¹⁵

The overriding concern for sponsoring agencies, local governments, and neighbors regarding the function and

¹⁴Ibid., p. 2. ¹⁵Ibid., p. 8.

location of group homes is that such facilities always maintain appearances similar to other residences in the area, and that the activities remain confined to those which are characteristic of any other family, despite the unique individuals which comprise group home "families."

Public Attitudes Toward
Community Residential Facilities

Despite the good intentions of sponsoring agencies and the apparent benefits to mentally disabled persons in the establishment of community residential facilities, the general public typically is uncertain or fearful when a group home is planned for their neighborhood. Members of the "host" neighborhood typically object to anticipated negative effects on the residential character of the area including a decline in property values, poor maintenance of the facility, increase in traffic, odd or unusual behavior of the residents, and the safety of the neighborhood. Most opposition is aimed at the potential side effects of a group home rather than at the provision of services to mentally disabled persons.

It should not be assumed, however, that all residents will be opposed to a group home planned for their neighborhood. Quite often it is a small, vocal, and highly visible group that will provide most of the opposition. Many people simply view group homes as a necessary service that must be tolerated in the community.

A 1978 survey of attitudes on the establishment of group homes in Toronto provides an interesting profile of

community views.¹⁶ When asked to assess the potential impact of a community mental health facility, almost one-third of the respondents anticipated little or no effect, while another twenty-seven percent viewed a facility positively. On the other hand, approximately one-quarter of the respondents thought that such a facility would have a negative impact. It is interesting to note that of those finding such a facility undesirable, one-third of the respondents were not actually willing to initiate action as the result of the introduction of a group home.

The Toronto survey also gathered data from respondents which concerned their awareness of the existence of a community mental health facility in their neighborhood. The data showed that the persons unaware of a group home tended to have a negative view of the potential effects. On the other hand, those aware of group homes indicated that their actual experiences with the mentally disabled residents resulted in less negative perceptions. The only exception concerned the impact on property values where the responses for the aware group were only marginally more negative than for those unaware.

Fearful or uncertain attitudes towards the establishment of a group home do not appear to be shared by all residents of host neighborhoods, and these attitudes

¹⁶Michael Dear, S. Martin Taylor, and G. B. Hall, "External Effects of Mental Health Facilities," Annals of the Association of American Geographers 70, 3 (September 1980): 347.

may be fostered simply by an ignorance of the service to be provided or the character of the facility's residents. As shown in the Toronto study, only a small percentage of residents anticipated negative effects of a hypothetical facility, with the majority being either neutral or supportive. However, the assumption that public education prior to the establishment of group homes will reduce the ignorance or bias has been refuted by a recent Boston University Study.¹⁷ The study found that residences that conducted public education were found to encounter a greater degree of opposition from the community than residences that did not. The time at which the community is made aware of a planned group home is also important regarding the degree of opposition. Specifically, if the community becomes aware of the residence shortly before it opens, community opposition is very likely. In contrast, opposition is less likely when the community becomes aware either after the residence begins operations or more than six months before it opens. This has also been the case in other cities nationwide where group homes established without public hearings or education programs resulted in less opposition from the community.

As for the actual effects of group homes on neighborhoods, the evidence indicates that the common

¹⁷Marsha M. Seltzer, "Correlates of Community Opposition to Community Residences for Mentally Retarded Persons," American Journal of Mental Deficiency 89, 1 (1984): 1-8.

reasons for opposition are largely unsubstantiated. Once a facility is sited, the success or failure with regard to the neighborhood rests primarily with the sponsoring agency. It is in the agency's best interest to maintain a group home that blends in well with the neighborhood for the purposes of both allaying neighbor fears and providing an optimum environment for the care of the group home residents.

The data available from nationwide studies concerning the effect of community residential facilities on property values overwhelmingly indicate that no significant negative effect has been realized.¹⁸ These property value studies typically measure both market prices and turnover rates for properties both near a group home and in selected control sites. A study by Princeton University on group homes in New York State found that the proximity of neighboring properties to a group home does not significantly affect either their market values or their rates of turn over either in the short run or in the long run.¹⁹

With regard to unusual behavior by the mentally disabled, group home residents are carefully screened by sponsoring agencies to ensure that clients are likely to

¹⁸Lisa Linowes, "The Effect of Group Care Facilities on Property Values," Planning Advisory Service Report No. 83-11 (November 1983), p. 1.

¹⁹Lawrence W. Dolan and Julian Wolpert, "Long Term Neighborhood Property Impacts of Group Homes for Mentally Retarded People," Woodrow Wilson School Discussion Paper Series, Princeton University, 1982, p.2.

adapt well to a community situation. The mentally disabled will always have physical characteristics that make "normal" people uneasy; but, in general, most people have experienced the mentally ill at one time or another since they often live with their families in all types of neighborhoods. In addition, safety should not be an issue as numerous studies indicate that the mentally disabled are not, as a group, more likely to engage in violent or antisocial behavior than other persons.²⁰

Moreover, group homes tend to be inconspicuous parts of their neighborhoods. Sponsoring agencies go to great lengths to minimize any outward indicators of a group home's existence including not allowing signs, providing adequate off-street parking, and reducing the visibility of staff and residents where possible.

Given the apparent minimal effects of group homes on neighborhoods as well as the seemingly inherent opposition they arouse, the burden of properly siting these facilities falls on two groups. The first is a consortium of sponsoring agencies and advocates for the mentally disabled along with state governments which must provide the mechanisms for establishing group homes in localities. State legislation, policy, and funding continue to be the driving forces in this effort. The second group is composed of local officials and neighborhood

²⁰Lauber and Bangs, p. 8.

representatives which must physically, and politically, accommodate community residential facilities for the mentally disabled.

CHAPTER II
LEGISLATIVE AND JUDICIAL FACTORS IN
SITING COMMUNITY RESIDENTIAL
FACILITIES

Current Zoning Treatment

When a community residential facility is proposed for a neighborhood, local governmental agencies are caught in the middle by attempting to comply with state legislation concerning community care on the one hand while trying to respond to community fears on the other. On such occasions, given the bureaucratic tendency to avoid difficult, controversial decisions, localities tend to look for existing ordinances or precedents which might deal with their situation. Typically the zoning ordinance is the first source of refuge for deciding the neighborhood location of a proposed group home. The zoning ordinance is a form of land-use control implemented by local governments to prescribe the types of facilities that may be located and the activities that may be conducted in designated areas. Zoning is adopted pursuant to state enabling legislation with the purpose of protecting property values, the environment, and the character of neighborhoods; it would seem ideally suited to address the group home problem.

However, since community residential facilities are a relatively recent phenomenon, they are seldom defined or specifically provided for in zoning ordinances. An American Planning Association survey found only twenty-one percent of the respondent communities specifically providing for community residential facilities for the mentally disabled.¹

In the absence of specific provisions, communities have typically treated group homes as the uses which they seem to resemble such as boarding or rooming houses, medical facilities, or business enterprises. This zoning treatment is contrary to the basic purpose of a community residential facility for the mentally disabled which, despite similarities to these uses, strives to establish a home-like atmosphere for its residents. Group homes do not resemble boarding or rooming houses because activities are not separated and services are provided for the group as a whole. Any extensive medical services are provided off-site. Moreover, group homes can rarely be considered business or commercial uses as they are typically owned and operated by the state or by not-for-profit corporations.

When community residential facilities are addressed in zoning ordinances, they are allowed more often in multiple-family and commercial districts than in other districts. The American Planning Association survey reported that more than two-thirds of the municipal

¹Lauber and Bangs, p. 11.

zoning ordinances excluded group homes from single-family districts, while more than forty percent allowed them in commercial districts.² More of the surveyed communities also allowed group homes as of right in multiple-family districts than in single-family zones.

The multiple family and commercial districts are, however, the most common zones for boarding and rooming houses, dormitories, small medical facilities, and other health related businesses such as nursing homes. So, although some communities do provide for group homes in their ordinances, they still do not accept the purported family nature of the facility by not allowing them in the most restricted zoning district, the single-family zone. This has resulted in action in the form of court decisions and subsequent state legislation concerning the ability of a locality to define what constitutes a "family" in local zoning ordinances.

Definition of Family

Single-family residential districts have been the cornerstone of the zoning process throughout the history of zoning in this country. Some will argue that single-family districts were the main impetus for zoning legislation due to the influence wielded and the stability sought by residents of these areas. The United States Supreme Court

²Ibid., p. 13.

has upheld single family zoning as early as 1924.³ Before the 1960s, zoning ordinances either included a very loose definition of "family" such as "a single housekeeping unit" or they did not include any definition at all.

This began to change in the 1960s. With all of the social unrest associated with this period, communities felt threatened by changing lifestyles and began amending their zoning ordinances to define the family more restrictively. Zoning thus became a tool to keep new lifestyles out of the community. By the 1970s, a typical definition of family included persons related by blood or marriage and/or a specified number of unrelated persons living together as a single housekeeping unit.

In 1974 the U.S. Supreme Court provided some guidance on this issue in Village of Belle Terre v. Boraas. In this decision, the Supreme Court sustained a zoning ordinance which restricted village land use to single-family dwellings and defined a "family" as "one or more persons related by blood, adoption or marriage or two unrelated persons living and cooking together as a single housekeeping unit, exclusive of household servants."⁴ Challenging the ordinance was a property owner and her six college student tenants. The plaintiffs argued that the ordinance violated the fundamental right to travel,

³Edith M. Netter, "Zoning and the New Family," Journal of the American Planning Association 49,2 (April 1983): 173.

⁴416 U.S. 1 (1974)

privacy, and association. However, the court determined that preserving the quiet, family oriented character of the village was a permissible governmental objective, and that the blood-adoption-marriage limitation was rationally related to the accomplishment of that objective. Justice Douglas in the majority opinion wrote that "a quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs."⁵

The Belle Terre decision provided localities with the precedent for going beyond guaranteeing residential character and stability in their zoning ordinances; attempts at the regulation of living arrangements had now been upheld by the Supreme Court.

One exception to this trend was the 1966 Illinois State Supreme Court decision in Village of Des Plaines v. Trottner.⁶ In this case, four unrelated men sharing a leased house successfully challenged an ordinance which limited single-family occupancy to persons related by blood, adoption or marriage. The court decided that the ordinance penetrated too deeply into the privacy of the housekeeping unit. The decision was specifically premised on the absence of state legislation enabling the locality to make a zoning classification based on relationship by blood or marriage. In response to the decision, the

⁵416 U.S. at 9. ⁶216 N.E. 2d 116 (1966)

Illinois legislature amended the statute to permit communities to define family according to consanguinity.⁷

Despite the Trottner decision, courts continue to follow the Belle Terre precedent of excluding unrelated groups from single-family districts. There has been an exception to this trend, however, at the state court level where recent cases involving group care facilities have invalidated overly restrictive definitions of family when an unrelated group has the qualities of stability and hierarchical structure similar to that of a family.

In City of White Plains v. Ferraioli, the New York Court of Appeals, subsequent to Belle Terre, upheld the right of a married couple caring for ten foster children to locate in a single-family zoning district.⁸ The court stated that "zoning is intended to control types of housing and living and not the genetic or intimate internal family relations of human beings," and that the most a municipality can require is "the generic character of a family unit as a relatively permanent household."

A New Jersey Supreme Court ruling in Berger v. State upheld the right of a group home for eight to twelve mentally handicapped preschool children to locate in a zoning district reserved for families related by blood, adoption, or marriage.⁹ Despite acknowledging the goals of

⁷Netter, p. 174.

⁸357 N.Y.S. 2d 449 (1974)

⁹71 N.J. 206 (1976)

family zoning set forth in the Belle Terre decision, the court ruled that zoning exclusively by kinship to achieve those goals is not permissible and that local governments in New Jersey must allow a reasonable number of persons who constitute a family in a generic sense to reside in a single-family zoning district without the requirement that they be related.

Similar state court decisions creating exceptions for group care facilities have been handed down in Colorado and California. When state courts create the group home exception, they typically do so in the context of homes for the mentally disabled, mentally retarded, or foster care homes. Courts appear to be somewhat reluctant to characterize as families group homes that do not fall within these categories.¹⁰

Despite this trend at the state level, those cases involving federal constitutional questions are likely to be decided according to the Belle Terre guidelines. In April of 1984, the U.S. Supreme Court let stand a zoning law that restricted child foster care homes from areas zoned for single-family dwellings. The Supreme Court's refusal to hear the case allowed the Indiana Court of Appeals decision to stand in Metropolitan Development Commission of Marion County v. The Villages Inc.¹¹ In this case, the sponsoring organization argued that the exclusion of foster families

¹⁰Netter, p. 174

¹¹464 N.E. 2d 367 (1984)

from single-family districts violated the rights of association, privacy, and family integrity of foster parents. The state appeals court refused to address these constitutional questions. Instead, the court rejected the argument that the group home residents constituted a family for the purposes of zoning and concluded that the foster care home therefore did not constitute a permissible single-family dwelling. The appeals court cited the Supreme Court Belle Terre decision in upholding the authority of a locality to limit the number of unrelated persons living together.

The Indiana Appeals Court also concluded that if one group or constituency was to be given "extraconstitutional" rights or privileges, that these should come from the federal, state, and local legislatures rather than from the courts. Given the decidedly dichotomous nature of state versus federal court decisions on the community residential facility question, state legislatures are beginning to recognize the need for new legislation mandating special treatment in the siting of group homes.

State Preemption of Local Zoning Requirements

The need for state legislative guidance on the question of siting group homes was further illustrated in the 1985 U.S. Supreme Court decision in City of Cleburne v. Cleburne Living Center.¹² In this case, the Supreme Court

¹²105 S. Ct. 3249 (1985)

invalidated a Cleburne, Texas zoning decision that blocked a group home for the mentally retarded from a neighborhood where boarding houses, hospitals, and nursing homes were allowed by right. The court invalidated the zoning permit decision, not the zoning ordinance. The court held that the permit decision was motivated primarily by the fact that residents of the home would be mentally retarded persons and thus violated the equal protection clause of the United States Constitution. However, the Supreme Court rejected the Federal Appeals Court conclusion that the mentally handicapped should be given special status under the constitution's equal protection clause. The majority opinion held that decisions about how to treat the mentally disabled are "very much a task for legislators guided by qualified professionals and not by the perhaps ill-informed opinions of the judiciary."¹³

State legislatures indeed have begun addressing the community residential facility siting question through legislation. Many of these statutes were necessary so that state policy on the mentally disabled could actually be implemented in localities; after all, state governments fund many group homes directly. Not-for-profit group home sponsors have also lobbied heavily at the state level for legislative relief due to the understandable political unwillingness at the local level to take action.

¹³105 S. Ct. at 3256.

State legislation aiding in the siting of group homes typically involves the preemption of local zoning ordinances to allow certain group care facilities in residential zones. These statutes typically define the type of group home and population to be served as well as any further regulations a locality may be allowed to impose in the siting process. State licensing of group homes is also a common requirement for preemption eligibility. Some states also specify a minimum distance that must separate community residential facilities due to concerns for the clustering or overconcentration of group homes in a certain area.

A 1985 American Planning Association survey found twenty-eight states to have zoning preemption legislation which allowed certain types of group homes in single-family residential zoning districts.¹⁴ This legislation can be very restrictive such as the Delaware statute which preempts zoning for residential facilities for the mentally disabled only and has a 5,000 foot separation requirement. On the other hand, the Montana preemption legislation is less restrictive in that residential facilities for the mentally disabled, juvenile delinquents, alcoholics, and substance abusers are all allowed in single-family residential districts and no separation distance is required.

¹⁴American Planning Association, "Zoning News," January 1986, p.2.

This trend toward state zoning preemption legislation has not stopped attempts at blocking the establishment of group homes, as many of these situations continue to be resolved in state courts. The courts, however, have tended to view favorably the concept of state preemption of local zoning laws.

In City of Baltimore v. State Department of Health and Mental Hygiene the Maryland Supreme Court held that "a municipality may not exercise zoning jurisdiction over state owned and used property unless the state has subjected itself to the authority of the municipality."¹⁵ In this case, the state had issued a permit authorizing the use of a house by a family and six teenage girls, who were described by the court as "children in need of supervision." The court ruled that the permit could not be revoked by the local zoning board of appeals. A similar ruling by the New Jersey Supreme Court in Berger v. State upheld state preemption legislation and allowed a group home for twelve mentally handicapped persons to locate in a single family residential zone.¹⁶

New York State has enacted Section 41.34 of the Mental Hygiene Law which provides that community residences for the mentally disabled shall be deemed "family units" for the purposes of local laws and ordinances. In both Zubli v Community Mainstreaming Associates and Village of Old Field v. Introne, New York State Courts have held that

¹⁵Netter, p. 178. ¹⁶71 N.J. 206 (1976)

the Mental Hygiene preemption law is a valid exercise of legislative authority, and that the law evidences an overriding state concern for the welfare of the residents of the homes.¹⁷

New York State courts have gone even further in upholding the preemption statute as evidenced in Crane Neck Association v. N.Y. City/Long Island County Services Group.¹⁸ In this case, a sponsoring agency sought to locate a home for retarded adults in a neighborhood where all the lots contained restrictive covenants against uses other than single-family uses. Aside from the family nature of the proposed group home, the New York State Court of Appeals held that even if the use of the property violates the restrictive covenant, that covenant cannot be equitably enforced because to do so would contravene a long-standing public policy favoring the establishment of such residences for the mentally disabled. The Court reasoned that the state legislature did not want to erase the impediment resulting from single-family requirements in local laws while leaving the same intact in private deed restrictions.

State preemption laws appear to be effective in facilitating group home siting. A 1983 survey by the United States General Accounting office found that in

¹⁷423 N.Y.S. 2d 982 (1979) and 430 N.Y.S. 2d 192 (1980)

¹⁸472 N.Y.S. 2d 901 (1984)

states without preemptive zoning laws, a greater proportion of facilities for the mentally disabled had urban center locations (sixty-one percent), while in states with preemptive zoning laws the proportion was thirty-seven percent.¹⁹ Conversely, in states without preemptive laws a much lower percentage of group homes were located in the suburbs (seven percent) than in states with such laws (thirty-six percent). The GAO also surveyed the locations of group homes in states with preemptive zoning laws before and after their laws were passed and found that the proportion of homes located in urban center areas decreased from twenty-six to six percent.

Separation Standards and Overconcentration

One item agreed upon by many involved in the siting of community residential facilities for the mentally disabled (sponsoring agencies, mental health care professionals, state legislators, local government officials, and neighborhood groups) is the need to disperse these facilities throughout the community rather than concentrating them in certain neighborhoods. Those involved in advocating and providing community residential care see an overconcentration of group homes as counterproductive to the basic aim of deinstitutionalization. The mentally disabled in a group home situation should live in a "normal" residential community where the general public can

¹⁹General Accounting Office, p. 18.

serve as behavior models. An overconcentration of these facilities may inadvertently recreate an institutional atmosphere whereby the mentally disabled person encounters other service-dependent populations more frequently. Mental health professionals are also wary of changing the character of residential neighborhoods as a result of clustering group homes.

Local government officials and neighborhood groups are also generally supportive of group home dispersal. Politically it is advantageous to point out to proposed host neighborhoods that it is a goal to disperse community residential facilities throughout the community and that once a "fair share" is met, no other facilities will be forthcoming. Neighborhood groups and property owners are supportive of dispersal so that their neighborhoods will not become a "dumping ground" for additional group homes.

Given these concerns, a number of states have added separation requirements to their zoning preemption legislation for community residential facilities for the mentally disabled. A 1985 survey by the American Planning Association showed that of the twenty-eight states with preemptive zoning laws, thirteen had instituted separation requirements.²⁰ These separation standards range from 1,000 feet in Vermont to 5,000 feet in Delaware. Other

²⁰The twenty-eight states with preemptive zoning laws are Arizona, California, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon,

state laws allow the locality to adopt "reasonable" separation standards in the absence of state mandated standards. Some legislation simply states that group homes will not be permitted in areas where overconcentration exists. This is the case in New York and South Carolina.

This concern for the dispersal of group homes seems to be warranted according to a 1983 survey by the General Accounting Office.²¹ The study found that twenty-six percent of the group homes for the mentally disabled surveyed were located within two blocks of another group home. The GAO report also concluded that a disproportionately high number of group homes locate in poor neighborhoods because political opposition to them is typically weak there compared to the well-organized, more affluent neighborhoods. It was a recommendation in the report that better planning at the local level, particularly through dispersal requirements, would minimize clustering and better serve both the mentally disabled and host neighborhoods.

It is clear, then, given the propensity of state legislatures and various courts to cultivate and enforce a receptiveness for community residences in localities, that

Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin. The thirteen states with separation requirements are Arizona, Connecticut, Delaware, Indiana, Iowa, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, Texas, Vermont, and Wisconsin. American Planning Association, "Zoning News," p. 2.

²¹General Accounting Office, p. 19.

local land-use planning agencies must proceed cautiously in attempting to regulate the siting of these facilities.

CHAPTER III

REGULATING THE SITING OF COMMUNITY RESIDENTIAL FACILITIES

Need for Regulation

Regulation of the siting of community residential facilities is needed at the local level for a number of reasons. Included among these is state preemption legislation which specifies that localities must adopt density and spacing requirements for group homes.¹ A density requirement in this case ordinarily means that the population of mentally disabled persons in community residential facilities in a municipality or neighborhood should be proportional to the population of mentally disabled persons statewide.

Other states such as New York and South Carolina have legislation which specifies that an overconcentration of community residential facilities is not permitted, with the burden of avoiding this situation left to either sponsoring agencies or local governments. In these cases, it probably would be better for the local government to adopt regulations as there may be a number of sponsoring agencies which may not be familiar with local development patterns.

¹American Planning Association, "Zoning News," p. 2.

A few communities have begun to develop their own group home regulations, such as Evanston, Illinois; Eugene, Oregon; and the communities in Westchester County, New York.²

The need for local regulation for the siting of community residential facilities is the greatest in the twenty-two states which do not have any zoning preemption legislation for group homes as well as in the eight states that have preemption regulations but do not specify any particular siting requirements.³ In these states, the potential exists for abuses in the siting of group homes through exclusionary zoning and through the clustering of group homes in less desirable areas.

States with zoning preemption legislation for group homes which include siting requirements may also find that some local regulation may be desirable. A 1983 General Accounting Office report found that even in states with specific zoning preemption legislation, group home sponsors had to satisfy local land-use practices and operating

²Community Residences Information Services Program, "Dispersion Guidelines for Community Residences in Westchester County," May 1985, p. 3.

³The twenty-two states which do not have zoning preemption legislation for group homes are Alabama, Alaska, Arkansas, Colorado, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, Ohio, Oklahoma, Pennsylvania, South Dakota, Utah, Washington, West Virginia, and Wyoming. The eight states with preemption legislation but without siting requirements include California, Hawaii, Idaho, Maryland, New Mexico, Oregon, Rhode Island, and Tennessee. General Accounting Office, p. 24.

requirements.⁴ This acquiescence by sponsors is related to their goal of establishing group homes as smoothly as possible. The more a group home site is fought out in public hearings, the press, and in the courts, the less it is likely that the neighborhood will prove to be a good environment for the mentally disabled. In this sense, the locality has an advantage in establishing group home siting requirements.

In addition, given the inevitability of the establishment of group homes in many communities, local siting requirements are perceived by sponsoring agencies as tantamount to local "acceptance" of these facilities. These agencies are generally willing to assist in the formulation of, and the compliance with, local guidelines so long as it enhances their own interests.

Local politicians also find siting guidelines to be helpful in their dealings with the group home issue. The proposed introduction of a community residence into a neighborhood can be political dynamite for a city councilperson who is apt to be under considerable pressure to block its establishment. However, local siting guidelines reduce this pressure ideally by specifying areas to be considered for future group homes, establishing limits on neighborhood group home populations, and requiring proper site design. Thus, the formalizing of the siting process on a community-wide basis assures, to a

⁴Ibid, p. 5.

great extent, an equitable distribution of group homes free of political maneuvering.

This need for local regulation was a recommendation of the 1983 General Accounting office study of zoning and land-use issues affecting the establishment of group homes.⁵ The report concluded that many states and communities had not adequately planned for these facilities; thirty-four percent of the metropolitan areas surveyed did not specifically consider or provide for group homes. In addition, only seventeen percent of the zoning jurisdictions surveyed imposed distance or density requirements on group homes to prevent clustering. The GAO report found that additional planning is needed at the local level because of both the projected need for additional group homes and because of the possible adverse effects on communities and group home clients if the homes are extensively clustered or sponsors are forced to locate in undesirable areas because of restrictive land-use policies and practices.

Different Treatment for Other Types
of Group Homes

Local governments should treat group homes for other service dependent populations differently than group homes for the mentally disabled. Even though proposals to establish group homes for the mentally disabled often generate community opposition, the general public tends to

⁵Ibid, p. 27.

think of the mentally disabled more favorably than other group home populations. The mentally disabled are typically viewed as victims and not responsible for their condition.

Conversely, other service dependent populations which may occupy group homes (the mentally ill, criminal offenders, drug addicts, and alcoholics) are viewed less favorably by the public.⁶ This perception is shared by elected officials, and often by the judiciary, which provide the legal mechanisms for the placement of these types of group homes in the community.

While there is evidence that group homes for other service dependent populations may fit in well with a neighborhood with regard to appearance, other effects are largely unknown.⁷ Much of the research on group homes involves the mentally disabled, while other types of community residential facilities have received less attention. One major area of concern is the effect on neighborhood crime. Studies have shown that the mentally disabled are not more likely to engage in violent or antisocial behavior than other persons. The criminal tendencies of other service-dependent populations of group homes is less well-documented. The findings of several court cases reveal that this lack of evidence is sufficient grounds for denying the establishment of this type of

⁶Lauber and Bangs, p. 21.

⁷General Accounting Office, p. 16.

facility if the people in the neighborhood find it objectionable.⁸

The nature of group homes for other service-dependent populations is also quite different from those for the mentally disabled. The mentally disabled tend to live in group homes on a permanent basis, with little or no annual turnover. They remain in the home unless they advance enough to live completely on their own. Conversely, group homes for other populations are generally short-term, transitional domiciles. For example, group homes for the mentally ill experience nearly a 100 percent annual turnover, and the average residency for juveniles in group homes is five to twelve months.⁹

In addition, residents of group homes for other service dependent populations may receive their treatment programs on site, while the mentally disabled receive their treatments at service agencies away from the home. These other group homes may significantly increase neighborhood traffic should the residents be allowed to operate their own automobiles. Group homes for the mentally disabled seldom produce an increase in traffic as the residents typically do not drive automobiles.

For these reasons group homes for the mentally disabled are more residential in nature and therefore merit special consideration in local planning and zoning. More

⁸Lauber and Bangs, p. 8.

⁹General Accounting Office, p. 19.

research needs to be completed on other service dependent group homes before they may be given the same treatment.

Methods of Regulation

Local regulation of group home siting should involve four general areas of concern, three of which can be directly implemented and administered by the local government through planning and zoning.

The first provision should be the recognition that group homes for the mentally disabled, being residential in nature, are appropriate in all residential zoning districts. Given state legislation and court decisions on the subject, it is very difficult to vary from this premise. Central to this argument is the nature of a group home with the residents functioning as would any other family in a residential zoning district. Underlying this concept of the trend toward community care for the mentally disabled is the general understanding that regardless of any convenience to the surrounding society, this special population is morally, if not legally, entitled to normal cultural opportunities, surroundings, experiences, risks, and associations.¹⁰

Even though community residential facilities should be allowed in all residential zoning districts, this does not mean that they necessarily function best in all areas.

¹⁰Center on Human Policy, Syracuse University, The Community Imperative: A Refutation of All Arguments in Support of Institutionalizing Anybody because of Mental Retardation, 1979, p. 12.

A Boston University study found that there was less community support for group homes in neighborhoods where the residents were primarily homeowners.¹¹ Also, opposition was found to be greater in cases where the residential property values were higher. The study also found that there are both strategic and substantive benefits to locating community residences in lower income areas. These areas generally afford better access to resources such as public transportation, shopping facilities, and recreational activities; and, they tend to generate less opposition than higher income neighborhoods.

Despite their attractiveness, findings such as those discussed in the preceding passages should not be allowed to affect the way communities plan and zone group homes. Decisions regarding neighborhood choice, within a spectrum of choices, remains the responsibility of the sponsoring agency which must have the interest of its client population as top priority in a location decision.

A second regulatory consideration should be the proper licensing of group homes. As a service-dependent population, the mentally disabled need to be assured that a group home setting meets adequate safety, sanitation, and program standards. The licensing burden, however, should not rest with the local government, but rather with an organization more familiar with the mentally disabled, preferably a state agency. The relationship to zoning

¹¹Seltzer, p. 7.

provisions should simply be that a group home is a permitted use in any residential district as long as it is properly licensed.

The third component of group home siting regulation should involve the recognition that these facilities should conform to the greatest extent possible to existing site-specific zoning regulations such as minimum lot area, parking requirements and sign controls. Special consideration needs to be given to these topics in the zoning ordinances. It may be that for these items a proposed group home should be subjected to a special-use permit review. If this is the case, the zoning ordinance should include reasonably objective relevant standards so as to reduce the influence of fear, prejudice, and political pressure on decisions about group homes.¹²

Fourth, because the successful functioning of a group home depends on locating in a "normal" neighborhood, zoning regulations should help assure that the neighborhood remains residential in character. Group homes should not be allowed to cluster in one area or neighborhood; such clustering minimizes the chances for a normalized setting for group home clients and also exacerbates neighboring property owner fears about property value decline, unusual behavior of clients, poor property maintenance, and increased traffic. Therefore, the zoning ordinance should provide for dispersal or spacing by specifying a minimum

¹²Lauber, p. 18.

distance which must exist between group homes for the mentally disabled. A density requirement should also be incorporated in the zoning ordinance to establish an upper limit on the proportion of total population in a designated geographical area that can live in group homes for the mentally disabled.

Neighborhoods as the Basis for Regulation

In examining regulatory techniques for the proper community-wide siting of group homes for the mentally disabled, it will be assumed that the primary impact of such facilities will be focused on the neighborhood. Therefore, regulatory goals should include the minimum disruption of neighborhood continuity with respect to the concentration of facilities, the size and appearance of facilities, and the daily function of facilities relative to the neighborhood norm.

Neighborhoods generally connote a level of association or spatial proximity among their residents to a much greater degree than that which is found in larger political subdivisions such as states, cities, counties, villages, or towns. While there are certainly state-wide or city-wide issues affecting and unifying their various populations, it is probably only at the neighborhood level that the impact, whether real or imagined, of a group home will be perceived.

Choosing the neighborhood as the basic spatial unit for determining group home siting standards has some

inherent definitional problems. Everyone has their own concept of a neighborhood. Every individual in every household will have a different idea concerning what constitutes his or her neighborhood. However, this unique, personal scale is not applicable, nor practical, when evaluating neighborhood units across a particular political jurisdiction for the purpose of instituting a program, a local regulation, or a plan. Neighborhood delineation by a governing body must be undertaken from a more comprehensive view.

The neighborhood as the impact area for a group home may be defined in many ways. For some, it is merely the small cluster of houses nearby one's own house. Herbert Gans in his study community of Levittown, New Jersey found that most people knew or visited other residents up to a maximum distance of three to four houses away in each direction, and therefore the "functional neighborhood" in Levittown consisted of a cluster of only ten to twelve houses at a maximum.¹³ The residents of Levittown most often visited those neighbors on either side or directly across the street, and it was therefore theorized that neighborhoods are formed according to certain unknown laws governing spatial clustering.

Unfortunately, the functional neighborhood is probably too small an area on which to base a dispersal

¹³Herbert J. Gans, The Levittowners (New York: Random House, 1967), p. 156.

plan for group homes for the mentally disabled. It is probable that group homes separated by a distance of the diameter of one "functional neighborhood" (six to seven residential lots) would produce an overconcentration of facilities.

Two similar studies in Philadelphia and Milwaukee tested the hypothesis that neighborhoods have physical diameters.¹⁴ Philadelphia residents who were asked to delineate the area they really knew usually limited themselves to a small zone, seldom exceeding two or three blocks, surrounding their own house. One quarter of the respondents in the Milwaukee study considered a neighborhood to be an area no larger than one block, or 300 feet; one-half considered it to be no more than seven blocks.

Neighborhoods can also be defined by simple spatial criteria. One example would be the limits of a convenient walking distance to various services such as local shopping centers, churches, or schools. In this sense, a neighborhood is somewhat amorphous; its size is determined by the demand for such services. This elevates the definition beyond visiting or familiarity with other persons to a sharing of nearby services.

Others would argue that with the advent of the automobile spatial determinants of a "neighborhood" are

¹⁴Christopher Alexander et al., A Pattern Language (New York: Oxford University Press, 1977), p. 82.

much less important than they were two or three generations ago. Perhaps it is no longer proximity that matters as much as the "mutuality of interest" that drives people to maintain personal relationships.¹⁵ From this point of view, the whole city can be a neighborhood even if each person only selects a few points of familiarity from it. Neighborhoods today may only be relevant for children, as they are limited to a small territory for play and association. Children also share the neighborhood school as a basis for natural social interaction.

Given the almost certain opposition to the establishment of community residential facilities for the mentally disabled, it may be that the definition of neighborhood in this case may only be a common location in a single residential real estate market area. This neighborhood unit is probably very important as the concern over the decline of property values is most frequently cited as a reason for opposition to the establishment of a group home.¹⁶ This market area is the smallest unit beyond the individual structure or block as determined by real estate brokers, appraisers, and lenders. Criteria for such an area typically includes market data and cost estimates. These are determined by a myriad of factors including

¹⁵Barry Wellman, "Who Needs Neighborhoods?" in Roland L. Warren, ed., New Perspectives on the American Community: A Book of Readings (Chicago: Rand McNally Publishing Co., 1977) p. 218.

¹⁶General Accounting Office, p. 10.

location, zoning, lot size, building type, and adequacy of utilities and services.

Another kind of neighborhood relevant to the group home question is the unit or area which may have been formed to facilitate some type of political organization such as voting districts, wards, and school district boundaries. Residents often form such organizations to gain control over local conditions by influencing some broader government agency, such as a city council. Studies on the dimensions of the political neighborhoods have indicated a wide range of population sizes. In order to have a voice in the political decision-making process, the population should not exceed 5,000 to 7,000 persons according to studies in Chicago and Columbus, Ohio.¹⁷ However, other evidence suggests that a population as low as 500 persons is the optimum size for neighborhood inhabitants to organize into a meaningful political unit which would be able to reach a consensus on neighborhood issues.¹⁸

Should a local government desire to define a neighborhood on a statistical basis, the United States Bureau of the Census recommends a population of at least 1,000 in order for profile statistics to be produced from their sample data.¹⁹ The Bureau defines a neighborhood as

¹⁷Alexander et al., p. 72.

¹⁸Ibid, p. 81.

¹⁹United States Bureau of the Census, Neighborhood Statistics Program (Washington, D.C., 1983) p. 5.

a "recognized subarea of a census tract" which may include school districts, areas bounded by notable physical boundaries such as rivers, lakes or major highways, or any other area for which customized data is required.

Whatever neighborhood area is used as the basis for the regulation of the siting of community residential facilities for the mentally disabled, it is clear that it must be chosen from some rational basis. The 1985 Supreme Court ruling in the Cleburne, Texas case established this need for a rational basis due to the increased judicial scrutiny given to group home cases. A group home siting question must be decided based on sound planning and zoning principles as would any other proposed land use.

Controls to Prevent Overconcentration

Neighborhood theorists have provided principles for determining the distances needed between group homes based on what actually constitutes a neighborhood. But as the group home is a somewhat "different" residential use, it probably should not be assumed that for any definition of a neighborhood, a single group home is the maximum number of group homes that may be accommodated before an overconcentration occurs.

Conversely, the point at which an overconcentration of community residential facilities occurs is very difficult to measure quantitatively. What is agreed upon by health care and planning professionals is that, at some point, the proportion of mentally disabled residents of a

neighborhood may become so visible that it seems to create an institutional atmosphere; it exceeds the ability of the neighborhood to absorb the mentally disabled population into its social structure; and it alters the character of the neighborhood.²⁰ The assertion here is that, from an assemblage of theories and studies on the subject, a separation distance may be determined for the purpose of incorporation into local planning and zoning regulations for group home siting. However, this separation distance will have to be determined by local government officials and planners so as to best fit the circumstances of their specific community. No single solution for defining neighborhoods exists which will work for all American cities.

The most common studies to date on the effect of group home siting in a neighborhood involves its impact on property values as this is a vital concern to neighboring property owners. It may be assumed that effects on property values may serve as a proxy for the spatial measurement of impacts of the introduction of a group home on a neighborhood.

One such study concerning the effects on property values was undertaken in 1980 in the Columbus, Ohio area.²¹

²⁰Lauber and Bangs, p. 25.

²¹Christopher A. Wagner and Christine M. Mitchell, "Group Homes and Property Values: A Second Look," Metropolitan Human Services Commission, Columbus, Ohio, 1980, pp. 4-6.

This study proposed to analyze both the time on the market and the sales price as a percentage of list price for residential property transactions within a one-mile radius of six group homes for the mentally disabled. This analysis involved property transactions both before and after the establishment of the group homes. In almost all instances, the study found no statistically significant difference in the before and after measures for the two indicators of value. Of the properties that did show a significant difference for the two indicators of value, the time on the market decreased and the property value went up relative to the list price. As such, no determination could be made on the possible negative effects based on distance from the group homes.

Another study concerning the impacts involved in siting group homes was undertaken by Princeton University in 1978 and again in 1982.²² For each of the study years, fifty-two group homes in New York State were analyzed to test the effect of proximity to the group homes on property value changes and property turnover rates. The research area involved a two-block radius surrounding each of the group homes as well as a control area and two-block radius with characteristics similar to each of the group home areas. The study concluded that group homes did not have a significant impact on property values or on turnover rates of neighboring properties as compared with the control

²²Dolan and Wolpert, pp. 8-10.

areas. Again, no effect was measured relative to the distance of a property from a group home.

Similar studies in Washington, D.C., Lansing, Michigan and Ottawa, Canada revealed no significant effects of group homes on surrounding property values.²³ However, all of these studies were conducted in relation to group homes that stood alone; that is, no clusters or potentially saturated areas of group homes were considered. While pointing out the apparent innocuous nature of group homes, these studies fail to examine the spatial relationships that may result from the siting of group homes.

Other studies on this topic have attempted to measure a different indicator of the effect of the siting of a group home in a neighborhood, that of the perceptions of neighboring residents. A 1980 study in the Toronto, Canada area surveyed persons aware of community residential facilities for the purpose of determining their impressions of the group homes.²⁴ The study utilized three distance zones to measure the extent of the externality field of group homes: seven to twelve blocks, two to six blocks, and within one block. An externality field is a distance measurement of the nonuser perceptions of the unanticipated side-effects of the facility in question. The study found a clear distance-decay effect in resident attitudes towards the facilities. Specifically, within one block of any

²³Linowes, p. 4.

²⁴Dear, Taylor and Hall, pp. 346-348.

given group home 23.4 percent of the residents found the facility to be undesirable; at a distance of two to six blocks, 10.6 percent of the residents rated it undesirable; and at seven to twelve blocks only 4.2 percent of the residents viewed the facility unfavorably.

Another study undertaken in Green Bay, Wisconsin evaluated neighbors awarenesses of five group homes based on their proximity to the group homes.²⁵ The study involved interviewing neighbors within three 400-foot-long blocks of the group homes. The results showed a general pattern whereby about one half of the residents living on the same block knew the group home existed. The percentage of people aware of the group home then decreased the further away they lived. On the second block away from the home, 54.4 percent did not know the home existed. By the third block, 70.1 percent were unaware of the group home located within 1,200 feet of their residences.

The Green Bay study also evaluated the perceptions of the group homes by those neighbors aware of them. Only 18.4 percent of neighbors who lived within one block of a group home disapproved of it. Of those living on the second block, 7.3 percent disapproved, and none of the neighbors on the third block disapproved.

²⁵Eric Knowles and Ronald Baba, "Social Impact of Group Homes: A Study of Small Residential Service Programs in Residential Areas," Green Bay, Wisconsin Planning Commission, 1973, pp. 8-11.

These studies do provide a basis for distance separation of group homes. It may be assumed that measurements of distance derived from both neighbor's awareness of group homes and their approval of group homes are indicators of the impact of group homes on neighborhoods. These distances are also probably quite conservative given the considerable amount of evidence indicating no distance effect from group homes on surrounding property values. This assumption on awareness and approval distances by neighbors of group homes is probably also valid given the myriad of neighborhood definitions and theories. Perhaps it is only a person's awareness or perception of a neighborhood feature which determines his or her image about the neighborhood.

Given the results of the Toronto and Green Bay studies described above, it appears that a spacing requirement of 1,500 feet would be adequate for local regulation purposes. A spacing requirement less than this could adversely affect a neighborhood by introducing more group homes than the neighborhood can adequately absorb and also may reduce the opportunities for the mentally disabled to live in a "normal" neighborhood should their numbers become proportionately too large. Conversely, a spacing requirement beyond this distance may not fare well if challenged in the courts. This is particularly true given the Supreme Court's ruling in the Clerburne case requiring a rational basis for any local regulation of group homes.

A density requirement is a second component needed to prevent the overconcentration of community residential facilities for the mentally disabled. This requirement establishes a cap on the proportion of total population in a geographic area or neighborhood that can live in group homes. The 1983 General Accounting Office study concluded that a requirement of this type should accompany separation requirements in local planning and zoning provisions for group homes.²⁶

The density requirement furthers the goal of spreading group homes throughout the neighborhoods of a city in a manner which cannot be accomplished by separation requirements alone. While the separation requirement is intended to reduce any possible adverse effects on both the neighboring residents and the group home populations, the density requirement is a more comprehensive tool to distribute the mentally disabled throughout the locality relative to their total population. This requirement is useful to neighborhoods and local representatives in that once the cap has been reached, no additional group homes may be established in the area. This is important to prevent the possibility of the entire mentally disabled population in a community to be located in a single neighborhood. Even at a suggested spacing distance, a neighborhood could become overconcentrated with group homes without a density requirement. The density requirement is

²⁶General Accounting Office, p. 27.

also a useful tool to aid sponsoring agencies in their site selection process. These sponsoring agencies need to know which neighborhoods are candidates for future group home sites in addition to the spacing requirement within the neighborhood.

Census tracts or similar geographic areas for which population data is available would be appropriate areas to use for implementing the density requirement. Planning departments frequently have neighborhoods delineated for other projects which may also be suitable. Political delineations and school districts are other possibilities.

Some attempts have been made to estimate what might be an appropriate proportion between the number of mentally disabled requiring group homes and the size of the general population. The American Planning Association suggested three percent.²⁷ Westchester County, New York, recommended a limit of two percent.²⁸ However, it is recommended that the locality first determine whether or not the figure has already been set by the state. Many states have already established estimates on current demand as well as projections.

This combination of separation and density requirements in local planning and zoning provisions should effectively prevent the overconcentration of group homes

²⁷American Planning Association, "Zoning News," p. 3.

²⁸Community Residences Information Services Program, Westchester County, New York, p. 5.

for the mentally disabled. Implementation of these requirements varies depending upon local statutes and state enabling legislation. In all likelihood, the separation requirement can be incorporated into the zoning ordinance, as it is a fixed standard. The density requirement may need to be incorporated into the comprehensive plan for the locality, given changes in population and the need for monitoring and updating by local officials.

Site Specific Requirements

In addition to the dispersal of community residential facilities, local planning and zoning provisions should address site specific issues which may determine the impact of such a facility on a neighborhood. Group homes should be expected to generally conform to the development standards of adjacent residential uses so as not to draw attention to the facility.

The 1983 General Accounting Office study found that of the group homes surveyed, only twenty-five percent had features that distinguished them from the surrounding neighborhood.²⁹ Such features included signs, extra parking facilities, extra entrances, or fire escapes which were noticeable to the public. Of these features, only signage and parking are usually addressed in zoning ordinances, while the others usually fall under the jurisdiction of building or life safety codes.

²⁹General Accounting Office, p. 11.

Because the mentally disabled are rarely able to drive, group homes will not generate an inordinate demand for parking.³⁰ Consequently, off-street parking requirements should be no different than those imposed for conventional families. Existing sign regulations for residential areas, which typically allow only small identification signs, should be adequate for group homes. Group home sponsors would be well advised to use no identification sign at all in order to maximize their anonymity.

Minimum lot size and setback regulations of a zoning ordinance should also be adhered to in the development of a group home. Conformance with provisions such as maximum lot coverage and setback requirements is important for any group home for the purpose blending in with the surrounding residential environment. Group home sponsors typically are required to meet minimum floor area requirements imposed by state licensing agencies which far exceed local housing and building code requirements. As such, no local floor area provisions are generally needed. This combination of needing to meet mandated floor area requirements as well as area and bulk regulations of a zoning ordinance constitutes a substantial burden for the sponsoring agency as it attempts to find an existing structure that will meet all of the criteria. This is particularly true if the group home is for a large number of people. However, the

³⁰Lauber and Bangs, p. 25.

locality should not be willing to compromise on these issues as it forces the sponsoring agency into a quality, in-depth site selection process. Should the sponsoring agency have the resources to build a new facility, adherence to standard residential development regulations will reduce the possibility of a group home being built which looks like an institutional facility. Studies on this topic have shown that larger group homes in the lowest density single-family zoning districts offer excellent sites for group homes.³¹

There may be instances when the locality may want to subject group homes to further scrutiny under the zoning ordinance. Typically, this would involve proposed group homes with populations in the ten to sixteen person range. These large homes may require additional bus or van transportation services or additional employees. This may necessitate a review of potential increased traffic or off-street parking problems. Additional off-street parking may also be required for visiting family members and friends. In these cases, the locality should subject the group home to a conditional use procedure whereby the home is permitted to exist only if it meets standards which will either alleviate or mitigate the problems. When the conditional use process is enacted, the locality must be very careful to provide an objective set of requirements so

³¹Lauber and Bangs, p. 23.

that the influence of fear, prejudice, and political pressure is absent from the review process.

CHAPTER IV

SUMMARY AND CONCLUSIONS

Community residential facilities for the mentally disabled continue to be established at a rapid rate across the United States. This trend is requiring elected officials, the courts, and neighboring property owners to accommodate these facilities in communities despite fears, prejudices, and objections. A proper understanding of group homes and their effects will assist in this accommodation and lead to proper local regulatory techniques.

The return of the mentally disabled to the community has been a slow process, beginning with the realization that this population had been mistreated for years. Institutionalization was the norm until the early 1900s when it was found to have a detrimental effect on the mentally disabled. Housing and treatment of this population was found to be much more effective in a "normalized" community and residential setting.

Health care professionals have found the community residence or group home to be most effective in meeting the needs of the mentally disabled population. Besides being much less expensive than the institution, the group home

differs from the former treatment norm by attempting to provide a community setting whereby the residents live as any other family would with shared kitchen, bath, and dining facilities. The group home concept also requires that the facility emulate a single family residence in both appearance and function so that it may be located in a residential zoning district with a minimum of disruption to neighboring property owners. Group home sponsors seek these residential locations so that the mentally disabled residents may have increased opportunities to come in contact with "normal" people rather than other service dependent populations, as was the case with institutions.

Despite the underlying theories, much of the public and many elected officials fear that group homes will cause a decrease in property values, an increase in traffic and crime, and will generally have a detrimental effect on neighborhoods. While many profess to believe that the mentally disabled have a right to live in their community, few people want such a facility in their neighborhood. Citizens are also fearful that if one group home moves in, an influx of group homes will inevitably follow.

These objections and fears by neighbors and elected officials are not supported by research on the topic. Group homes have been found to have little effect on property values and in general blend in well with existing residences. The mentally disabled in the community are also not more likely to engage in violence or antisocial

behavior than the general population. However, health care and sociology professionals contend that the ability of a group home to function effectively is threatened if other group homes are located nearby. Such a clustering of group homes could create an institutional atmosphere and alter the residential character of the neighborhood which is essential to the successful functioning of a group home.

Most communities, however, have not acknowledged the available evidence on group homes and continue to treat them in zoning ordinances as commercial uses or boarding houses. This deficiency causes problems at the local level for both group home sponsors and for elected officials faced with the siting of such facilities. The sponsors experience difficulty in finding adequate sites for the homes and elected officials face the wrath of fearful, ignorant property owners.

A partial solution to this situation has come from state courts which have generally ruled in favor of group homes based on the generic nature of the proposed family. The United States Supreme Court has ruled less favorably for group homes, but has called for more thorough legislation based on the available evidence. Accordingly, states have begun legislating in favor of the establishment of group homes by preempting local zoning provisions which are overly restrictive or exclusionary.

State legislation often fails to address local siting issues such as the need to prevent concentrations of group

homes and site specific development standards. These uniquely local issues are best dealt with through local planning and zoning provisions. Local policy on group homes also makes the issue more palatable for elected officials and provides standards which group home sponsors must follow.

Proposed here are basic planning and zoning provisions for group homes which should be adopted at the local level. Group homes should be allowed in all residential zoning districts providing that they are properly licensed and meet spacing and density or dispersal requirements. Group homes should also conform to the development standards of the existing residential districts. The standards presented here are based on the best available research on the group home issue and are intended to strike a balance between the needs of group homes and the concern of citizens. A community which adopts similar guidelines will probably find the siting process more acceptable and will have as a result better functioning community residential facilities for the mentally disabled.

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