Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 869
CASE NO. 97-15 (I)*
(TEXT AMENDMENTS – COMMUNITY BASED RESIDENTIAL FACILITIES, CBRFs)
FEBRUARY 8, 1999

The Zoning Commission for the District of Columbia initiated this case in response to a petition from the District of Columbia Office of Planning (OP), the U.S. Department of Justice (DOJ), the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) and the Campaign for New Community (CNC), to amend the text of the District of Columbia Municipal Regulations, Title 11, Zoning (DCMR). Amendments to the text of the Zoning Regulations are authorized pursuant to the Zoning Act[Act of June 20, 1938, Stat. 797, as amended, D.C. Code Ann. Sections 5-413-1981].

The Department of Justice determined that the District of Columbia's Zoning Regulations violated the Fair Housing Act of 1988 (FHAA) and the Americans with Disabilities Act (ADA) because they do not provide equal housing opportunity for handicapped persons in multifamily zones. The Zoning Regulations define group homes for handicapped persons as community based residential facilities (CBRFs). As such, they are subject to special spacing and size limits, and requires approval of the Board of Zoning Adjustment. These same requirements do not apply to multifamily housing facilities not specifically designated to serve handicapped persons.

The proposed amendments pertain to zoning and other regulations governing housing for handicapped individuals by updating the rules regarding CBRFs with the intent of eliminating any inconsistencies between the Zoning Regulations and the FHAA and the ADA.

At its regular public meeting of October 23, 1997, the Zoning Commission authorized the scheduling of a public hearing on the petition. Accordingly, the hearing in this case was properly noticed for March 5, 1998 and was conducted in accordance with provisions of 11 DCMR 3021.

Public hearings were held on March 5, March 23, and April 6, 1998.

***NUNC PRO TUNC to April 30, 1999**

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At those sessions, the Commission heard the presentation of the Office of Planning (OP), the Office of Corporation Counsel (OCC), Advisory Neighborhood Commissions (ANCs) 2A, 4A and 5B, CNC, representatives from law firms, various community groups and interested citizens in support and in opposition to the proposed amendments.

At the May 11, 1998, regular meeting , the Commission discussed the case as a proposed action item, as well as a letter dated May 5, 1998, from Councilmember Sharon Ambrose (Ward 6) requesting that the record be reopened for more testimony.

The Commission determined that: (1) the case was not ripe for decision, because of a concern that the community's potential input had not been fully reflected in the hearing to date (given the broad reach of the proposed amendments and the limited amount of community testimony); (2) the fact that the Commission's options and flexibility in the case had not been fully explored; (3) some vital information germane to a decision had not been presented; (4) the case might benefit from an expanded scope to include the Campaign for New Community proposal to clarify and add definitions to relieve the Zoning Administrator of case by case decisions, and; (5) to allow the two new Commission members the opportunity to participate. The Commission requested OP to further study the case to determine how the it should proceed.

At the June 8, 1998 regular meeting of the Zoning Commission, OP summarized its report, dated June 2, 1998, which identified the following options: OP stated that the Commission could; (1) essentially start all over by re-advertising an expanded case with new hearing dates; (2) add more hearing dates to the existing case inviting previous witnesses to return to testify if they wanted to do so; (3) open the record for a limited length of time, making specific requests for written responses on specific issues or to fill specific gaps in the record; or, (4) decide the case on the basis of the existing record and have the new members reading the record.

At that meeting the Commission decided to rehear the case, essentially starting anew and broading it by advertising in the alternative the Fair Housing component of the original 1996 petition by the CNC and various churches (Case No. 96-8 was filed on 08-14-96 and withdrawn on 03-03-98 in order to file separate Religious Freedom and Fair Housing components). As previously noted, this action was taken by the Commission because of a concern that the community's potential input had not been fully reflected in the hearings to date and the fact the Commission's options and flexibility in the case had not been fully explored. In addition, the Commission was concerned that some vital information germane to a decision had not been presented, and that the case might benefit from an expanded scope to include the CNC proposal to clarify and add definitions to relieve the Zoning Administrator of case by case decisions. Finally, the composition of the Commission had changed and a new hearing date would allow the Commission the opportunity to fully participate in the process.

Accordingly, the hearing in the case was properly noticed for September 24, 1998 and conducted in accordance with provisions of 11 DCMR 3021.

At that hearing session, the Commission heard the presentations of OP, OCC, CNC, ANCs 2F, 3C and the single member district 2A05, the Michigan Park Citizens Association, the American Retirement Communities, the Federation of Citizens Association and the Capitol Hill Restoration Society.

The Office of Planning's testimony presented at the hearing can be summarized as follows:

- The DOJ proposal (other than the "reasonable accommodation" portion) would only apply in multi-family zone districts and only to facilities for the handicapped (generally CRFs and substance abusers' homes for people in treatment, although other types of CBRFs could, on an individual basis, house handicapped populations). The existing provisions in the regulations, which apply to CBRFs, would continue to apply in single-family zone districts and to facilities for the non-handicapped. In addition, existing building codes would continue to apply, as would licensing where it is currently required.

- "Reasonable accommodation" applies in any zone district, with the intent of providing a process for handicapped persons to apply, on a case-by-case basis, for those essential administrative adjustments to the zoning regulations that are necessary to enable them to be able to live in a given facility just as non-handicapped persons could live in a similar building in the same zone district.

The OCC testified that the original proposal put forth by OP and the OCC as part of the agreement with DOJ is one that was worked out in lieu of litigation threatened by the DOJ in accordance with the Fair Housing Act.

The CNC's testimony is included, but not limited to the following points:

- We believe that the stipulated agreement between the Department of Justice and the District is an absolute bare minimum position, representing a floor for compliance with the Fair Housing Amendments Act in the R-4 and R-5 zone district. We also support the DOJ's procedure for "reasonable accommodation."

- We recommend redefining "family" as "household," consistent with the U.S. Census and reflective of the fact that the majority of living arrangements in the District today are non-family households.

- We recommend a limit of 15 persons, living together as a household because their disabilities, in a single-family zone district, with no size limit for a religious community, the court decision which applies to

Oxford House facilities and the fact that the District's housing stock includes large houses which could easily accommodate larger groups. While "reasonable accommodation" could solve this problem, leaving so much to an administrative mechanism is not ideal. It should be noted that many providers limit their populations to six persons for programmatic reasons.

Additionally, CNC recommended the elimination of the 1) "CRF" category, 2) Substance Abuse Home category but the retention of all of the "Health Care Facility," "Youth Residential Care Homes" Adult Rehabilitation Home and Youth Rehabilitation Home" subcategories, 3) Renaming of "Emergency Shelter" to be Temporary Congregate Housing," and 4) the creation of a new (combined) category of "Rooming and Boarding House" to include "Single Room Occupancy (SRO)" facilities.

The Advisory Neighborhood Commission's testimony revolved around public safety and quality of life issues which need to be addressed before a group home is located in a community. In particular, the ANCs are concerned that an over concentration of CBRFs in the community could alter its residential character, impede revitalization of commercial areas, perpetuate existing blight, exacerbate current public safety concerns and negatively impact the quality of life. The ANCs urged the Commission to regulate the number of recovering substance abusers in a group home, to prevent the unrestricted conversion to CBRF use and to consider the density and proximity issues.

The ANCs opposed the broad proposal of CNC. They believe the definition of a family should be maintained, including the existing limit of six unrelated persons, while the reference to 15 for religious community should be eliminated. Additionally, the "reasonable accommodation" process should take the form of the existing special exception process. They further opposed the "matter-of-right" aspect being proposed for CBRFs, but supported and equal distribution of such facilities throughout the District.

The individuals and civic groups in support of the proposal's testimony is included, but not limited to the following points:

- Supported changing the regulations to provide fewer restrictions on CBRFs, making them similar to other matter-of-right residential uses.

- Supported reducing the matter-of-right standard for religious communities to coincide with the number for unrelated persons living together and creating a special exception for religious communities over that size.

- Supported adding a provision to include ancillary services as a matter-of-right, but not restrict them to non-profit organizations and that you restudy the non-profit restrictions on the "clinic for humans" provisions of the regulations should be restudied.

The individuals, groups and civic associations in opposition to the proposal's testimony is included, but not limited to the following points:

- The Federation of Citizens Associations (FCA) has taken a unanimous position against the plan for CBRFs that is before the Zoning Commission. Particular concerns with the DOJ proposal include proposed spacing requirements are necessary for community stability and for healthy groups. Further, FCA believes that the "reasonable accommodation" eliminates all zoning and licensing rules, making it a discretionary matter. That DOJ prefers this mechanism is wholly unacceptable. FCA concerns with the CNC proposal include the definitions between families and households; lowering the limit for a religious community to six rather than raise the CRF "household" limit to 15, and the timelines (15 days,) for "reasonable accommodation" are much more demanding than normal times for seeking approvals or reviews from DCRA.

The opponents recommended the following:

- Lower the limit for a religious community to six;
- Assure facility neutral rules for accommodating special exceptions for religious communities and CRFs alike;
- Distinguish clearly between half-way houses, transient facilities and CRFs; and
- Be aware that advocates for the non-disabled will someday seek those same standards you are adopting for the disabled.

At the close of the hearing, the Commission left the record open for 33 days for the additional submissions such as the ANC resolution and research /commentary of "15 person definition of household."

At its regular monthly meeting on November 9, 1998, the Commission received and discussed various post-hearing comments submitted by public hearing participants as well as OP's issue checklist and recommendations.

By memorandum dated November 5, 1998, OP summarized the hearing testimony and indicated that it hoped that the hearing process would provide some clue toward the ultimate resolution of this case. It further stated that the general position represented by DOJ, CNC and the housing and program providers remain far apart from the position represented, essentially by the community. OP believes that the hearing process did not provide any indication of a middle ground or way to bridge the gap that remains.

The Commission determined that the hearing process did not resolve a great deal of the issues before them, recognized it has not completed its work on CBRFs, and would continue to study and hold a series of work sessions regarding CBRFs. The Commission stated it would interpret that which is before the Commission on a very narrow basis, only dealing with issues that would satisfy DOJ's mandate to insure that the regulations would conform to the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act at this time.

A notice of Proposed Rulemaking was published in the December 4, 1998 edition of the D.C. Register and referred to the National Capital Planning Commission (NCPC) for appropriate comments. As a result of both the publication and referral, the Commission received comments from CNC, Lindsley Williams and NCPC. CNC urged the Zoning Commission to adopt the proposed rules with minor changes and indicated that it would be happy to work with the Office of Planning, or participate in work sessions with the Commission or its designees, to assure that the further reforms be completed as soon as possible.

In a report dated December 3, 1998, NCPC indicated that the proposed amendments would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission believes that the proposed text amendments included herein will provide a workable mechanism to implement and achieve the objectives of the Fair Housing Amendment Act of 1988 and the Americans with Disabilities Act. Furthermore, the Commission believes that its decision to approve the text amendments set forth in this order is in the best interests of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the following amendments to the Zoning Regulations:

A. Title 11 DCMR Chapter 2, Section 201, USES AS A MATTER OF RIGHT (R-1), subsection 201.1 is amended by:

1. **Adding a new paragraph (o) to read as follows:**

   201.1(o) In addition to other uses permitted in this section, a community based residential facility for occupancy by handicapped persons shall be permitted as a matter of right; Provided, that the determination of handicapped facility shall be made according to the reasonable accommodation process and criteria set forth in 14 DCMR 111 et seq.

(Section 802 of the FHAA defines handicap as follows);

(h) "Handicap" means, with respect to a person-

(1) A physical mental impairment which substantially limits one or more of such person's major life activities.
(2) A record of having such an impairment, or being regarded as having such an impairment, but such terms does nor include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)).

2. Renumber existing Paragraphs 201.1(o) and 201.1(p) to 201.1(p) and 201.1(q), respectively.

B. Title 11 DCMR Chapter 3, Section 330, R-4 DISTRICTS: GENERAL PROVISIONS, subsection 330 is amended by:

1. Adding a new Subsection 330.5 (i) to read as follows:

330.5(i) The following uses shall be permitted as a matter of right in an R-4 district: . . .

(i) Community based residential facility; Provided, that notwithstanding any provision in this title to the contrary, the Zoning Administrator has determined that such community based facility, which otherwise complies with the zoning requirements of this title that are of general and uniform applicability to all matter of right uses in an R-4 District, is intended to be operated as housing for the handicapped as that term is defined under Section 3602 (h) of the Fair Housing Act, as amended, 42 U.S.C. Section 3601 et seq. (1955).

(Section 802 of the FHAA defines handicap as follows:

(h) "Handicap" means, with respect to a person-

(1) A physical mental impairment which substantially limits one or more of such person's major life activities.
(2) A record of having such an impairment, or being regarded as having such an impairment, but such terms does not include current, illegal use of or addiction to a

controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)).

Vote of the Commission taken at its regular meeting on November 9, 1998: 3-2 (Angel F. Clarens, Herbert M. Franklin and Jerrily R. Kress, to approve as modified, John G. Parsons and Anthony J. Hood, opposed)

This order was adopted by the Zoning Commission at its meeting on February 8, 1999 by a vote of 4-1(Angel F. Clarens, and John G. Parsons to adopt as amended, Jerrily R.Kress and Herbert M. Franklin to adopt by absentee votes, Anthony J. Hood, opposed).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on APR 30 1999

ANGEL F. CLARENS
Chairman
Zoning Commission

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