

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



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Office of the Director

MEMORANDUM

DATE: August 31, 2007

TO: District of Columbia Zoning Commission

FROM: Jennifer Steingasser, Deputy Director *JS*
Office of Planning

CASE NO.: ZC 07-24

SUBJECT: **Setdown and Prehearing Report: Text Amendment to Eliminate the Certificate of Occupancy Requirement for CBRFs Housing Six or Less Persons with Disabilities) – Emergency Action Requested**

RECOMMENDATION

The Office of Planning recommends that the Zoning Commission adopt the following text amendments on an emergency basis and that the matter be set down for hearing.

The Office of Planning also requests that the Commission authorize the issuance of a Notice of Proposed Rulemaking for the text and that the Commission allow the immediate advertisement of the text. This will allow for full consideration of the proposed rule within the 120-day length of the emergency.

The Office of Planning has coordinated this proposal with the District of Columbia Office of Attorney General.

PROPOSAL

The text amendment would eliminate the requirement that a certificate of occupancy ("C of O") be obtained for community based residential facilities ("CBRF") intended to house six or fewer unrelated persons with disabilities. At present, the Zoning Regulations require C of Os for all uses except one-family dwellings. A "one-family dwelling" is defined as "a dwelling used exclusively as a residence for one (1) family", 11 DCMR 199.1. A family is defined to include six or fewer unrelated persons. *Id.*

ZONING COMMISSION
District of Columbia
CASE NO. 07-24
EXHIBIT NO. 1
CASE NO. 07-24
EXHIBIT NO. 1

unrelated persons (whether disabled or not) constitute a “family” and may occupy a dwelling without first obtaining a C of O. However, if such individuals require one or more persons to live with them to provide “treatment, rehabilitation, assistance, or supervision in their daily living”, their dwelling would meet the definition of a community based residential facility and a C of O must be obtained. Thus, whether or not six unrelated persons must obtain a C of O for a dwelling depends solely upon whether the group needs an additional resident to provide the assistance needed for them to live in a non-institutional setting.

JUSTIFICATION FOR EMERGENCY ACTION

The United States Department of Justice filed a law suit in the United States District Court for the District of Columbia alleging that the District of Columbia has violated the Fair Housing Act by imposing a precondition to the occupancy of a residential dwelling that only applies to persons with disabilities. On June 29, 2007, the United States filed a motion for declaratory judgment and injunctive relief against the District of Columbia, which seeks to enjoin enforcement of the C of O requirement in the circumstances discussed above and to have the court maintain jurisdiction over the this aspect of the Zoning Regulation for five years.

The Office of the Attorney General for the District of Columbia believes that it would be in the best interests of the District of Columbia to avoid the issuance of such an injunction. At this juncture, the Zoning Commission has the ability to amend its regulations in a narrow fashion to address the illegality alleged. There is no guarantee that a court order would be similarly circumscribed. OAG believes that the adoption of this amendment on an emergency basis might dissuade the judge from issuing an injunction, but that setting down the application for hearing would not suffice.

The elimination of the certificate of occupancy requirement for these smaller CBRFs will not leave their target populations at risk. Neither the building code nor the Fair Housing Act requires the installation of accessibility devices in one-family dwellings. In any event, most of these facilities are operated under licenses or contracts issued by District agencies. These agencies are in the best position to determine whether adherence to particular construction requirements is needed to ensure the safety and welfare of the residents of their facilities.

PROPOSED TEXT AMENDMENT:

Title 11 of the District of Columbia Municipal Regulations, ZONING, Chapter 32, ADMINISTRATION AND ENFORCEMENT, § 3203,1 is amended to read as follows (new language is shown in bolded text, deleted language is shown in strikethrough):

3203.1 Except as provided in §§ 3203.7, 3203.8, 3203.9, **or the second sentence of this subsection**, no person shall use any structure, land, or part of any structure or land for any purpose ~~other than a one-family dwelling~~ until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR. **The requirements of this subsection shall not apply to:**

- (a) **A one-family dwelling; or**
- (b) **A community based residential facility to be occupied by six or fewer persons with a handicap plus resident supervisors, as permitted by right in residence and commercial districts pursuant 11 DCMR §§ 201.1 (o) and 330/5 (i).**

COMPREHENSIVE PLAN

The proposed text is not inconsistent with the city-wide element, **Health Facilities and Services** theme of the Comprehensive Plan, which calls for “[C]oordination to Better Serve Special Needs Residents Design and coordinate health and human services to ensure the maximum degree of independence for senior citizens, the disabled, and the physically and mentally handicapped (CSF-2.1.3), as well as the specific Rock Creek West element which reads: Encourage the development of small-scale community-based residential facilities on scattered sites within the Planning Area, and social service counseling and referral facilities on the commercial corridors. Additional group homes and community based residential facilities should be accommodated, provided that such facilities are consistent with the area’s low-density character. Local religious institutions should be encouraged to host small shelters to provide for the homeless, taking into consideration issues of liability, security, and adequacy of facilities. 2309.11

RECOMMENDATION

The Office of Planning has consulted with the Office of Attorney general on the proposed language and recommends that the Zoning Commission set the proposed text amendment down for public hearing and requests that the amendment be adopted on an emergency basis.