Three decades on, group home zoning still at issue

Community residences for people with disabilities—group homes, recovery communities, sober living homes, small halfway houses—remain a LULU (locally unwanted land use) that generates vigorous neighborhood opposition even 27 years after enactment of the Fair Housing Amendments Act of 1988, which made people with disabilities a protected class and required jurisdictions to make a "reasonable accommodation" in their zoning for community residences.

Much of the inertia arises from municipal attorneys catering to elected officials by insisting that the FHAA does not require community residences to be allowed as of right in residential districts and advocates who insist that the FHAA prohibits any restrictions on these community residences.

As usual, the truth rests between the two extremes.

Sorting it out

Case law and sound planning and zoning practices and principles provide clear guidance to bring zoning into FHAA compliance.

People with substantial disabilities often cannot live alone or with their biological families. They need support in a family-like setting to engage in the everyday life activities most of us take for granted.

The essential characteristic of all community residences is that they seek to emulate a biological family by providing as "normal" a living environment as possible and incorporating their residents into the social fabric of the surrounding community. Licensing protects this vulnerable population.

Extensive research and litigation over zoning for community residences tell us:

- They constitute a residential use.
- When not clustered together, more than 50 studies report they do not affect property values, property turnover rates, neighborhood safety, traffic, noise, or parking demand.
- To achieve normalization and community integration, community residences should be scattered throughout all residential districts rather than concentrated in any neighborhood.
- The FHAA requires local governments to make a "reasonable accommodation" in their zoning to enable people with disabilities to live in the dwelling of their choice.

Many advocates and judges do not understand the circumstances under which courts have invalidated licensing and spacing requirements between community residences:

- When a community residence fits within the zoning code's definition of "family," it must be treated the same as other families and cannot be excluded from the family definition. In the absence of such a definition or cap on the number of unrelated individuals that constitutes a family, jurisdictions must treat community residences for people with disabilities the same as any other group of unrelated individuals. When the definition of family places a cap on the number of unrelated individuals living as a single housekeeping unit and a community residence fits within that limit, it too must be treated like any other family. Any additional zoning requirements for community residences are facially discriminatory.
- When a jurisdiction fails to conduct a proper study that finds a need for spacing and licensing requirements before it adopts its zoning for community residences and when it fails to present expert testimony to justify these requirements.
- When local zoning provisions are not in accord with a state's sloppily written statute requiring local zoning to treat community residences the same as single-family homes. Community residences are sufficiently different from single-family homes to make it unwarranted to treat them identically when the number of occupants of a community residence exceeds the cap on unrelated people in the local definition of family.

But for therapeutic or financial reasons, many if not most community residences need to house more unrelated individuals with disabilities than a jurisdiction's definition of family allows.

That's when the FHAA's "reasonable accommodation" requirement kicks in. The case law collectively requires local zoning for community residences to use the least drastic means necessary to actually achieve intended legitimate government interests.

These interests include preventing clustering of community residences on a block (which undermines their ability to achieve their purposes and function properly, and could alter the residential character of the neighborhood), as well as licensing.

The bottom line is that a proposed community residence for more unrelated people than allowed under a family definition must be allowed as a permitted use in all zones where residential uses are sanctioned if the community residence is at least a typical block away from an existing community residence and has the proper state (or national) licensing or certification.

The heightened scrutiny of a special use permit is warranted when a proposed community residence would be located within this block-long spacing distance or if the state doesn't require licensing or certification. Otherwise requiring a special use permit flies in the face of the FHAA as well as sound planning and zoning principles.

As the conscience of our communities, planners must persuade elected officials to bring their zoning for community residences for people with disabilities into compliance with sound planning and zoning principles within the context of the Fair Housing Act.

— Daniel Lauber, AICP

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