

40: 55D-66.1

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

(Fair Housing--community residences)

NJSA: 40:55D-66.1

LAWS OF: 1997 CHAPTER: 321

BILL NO: A2773

SPONSOR(S): Carabello

DATE INTRODUCED: March 3, 1997

COMMITTEE: ASSEMBLY: Housing

SENATE: Community Affairs

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: June 5, 1997

SENATE: December 8, 1998

DATE OF APPROVAL: January 12, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

P.L. 1997, CHAPTER 321, *approved January 8, 1998*
Assembly, No. 2773

1 AN ACT concerning zoning and amending P.L.1978, c.159.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. Section 1 of P.L.1978, c.159 (C.40:55D-66.1) is amended to
7 read as follows:

8 1. Community residences for the developmentally disabled,
9 community shelters for victims of domestic violence, community
10 residences for the terminally ill and community residences for persons
11 with head injuries shall be a permitted use in all residential districts of
12 a municipality, and the requirements therefor shall be the same as for
13 single family dwelling units located within such districts[; provided,
14 however, that, in the case of a community residence for the
15 developmentally disabled, community shelter for victims of domestic
16 violence or community residence for persons with head injuries
17 housing more than six persons, excluding resident staff, a zoning
18 ordinance may require for the use or conversion to use of a dwelling
19 unit to such a community residence or shelter, a conditional use permit
20 in accordance with section 54 of the act to which this act is a
21 supplement (C.40:55D-67). Any requirements imposed for the
22 issuance of a conditional use permit shall be reasonably related to the
23 health, safety and welfare of the residents of the district; provided,
24 however, that a municipality may deny such a permit to any proposed
25 community residence for the developmentally disabled, community
26 shelter for victims of domestic violence or community residence for
27 persons with head injuries which would be located within 1500 feet of
28 an existing such residence or shelter; provided further, however, that
29 a municipality may deny the issuance of any additional such permits if
30 the number of persons, other than resident staff, resident at existing
31 such community residences or community shelters within the
32 municipality exceeds 50 persons, or 0.5% of the population of the
33 municipality, whichever is greater].

34 (cf: P.L.1993 ,c.329, s.7)

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. Section 2 of P.L.1978, c.159 (C.40:55D-66.2) is amended to
2 read as follows:

3 2. As used in this act: a. "community residence for the
4 developmentally disabled" means any community residential facility
5 licensed pursuant to P.L.1977, c.448 (C.30:11B-1 et seq.) providing
6 food, shelter and personal guidance, under such supervision as
7 required, to not more than 15 developmentally disabled or mentally ill
8 persons, who require assistance, temporarily or permanently, in order
9 to live in the community, and shall include, but not be limited to:
10 group homes, halfway houses, intermediate care facilities, supervised
11 apartment living arrangements, and hostels. Such a residence shall not
12 be considered a health care facility within the meaning of the "Health
13 Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et al.). In
14 the case of such a community residence housing mentally ill persons,
15 such residence shall have been approved for a purchase of service
16 contract or an affiliation agreement pursuant to such procedures as
17 shall be established by regulation of the Division of Mental Health and
18 Hospitals of the Department of Human Services. As used in this act,
19 "developmentally disabled person" means a person who is
20 developmentally disabled as defined in section 2 of P.L.1977, c.448
21 (C.30:11B-2), and "mentally ill person" means a person who is
22 afflicted with a mental illness as defined in R.S.30:4-23, but shall not
23 include a person who has been committed after having been found not
24 guilty of a criminal offense by reason of insanity or having been found
25 unfit to be tried on a criminal charge.

26 b. "Community shelter for victims of domestic violence" means any
27 shelter approved for a purchase of service contract and certified
28 pursuant to standards and procedures established by regulation of the
29 Department of Human Services pursuant to P.L.1979, c.337
30 (C.30:14-1 et seq.), providing food, shelter, medical care, legal
31 assistance, personal guidance, and other services to not more than 15
32 persons who have been victims of domestic violence, including any
33 children of such victims, who temporarily require shelter and
34 assistance in order to protect their physical or psychological welfare.

35 c. "Community residence for persons with head injuries" means a
36 community residential facility licensed pursuant to P.L.1977, c.448
37 (C.30:11B-1 et seq.) providing food, shelter and personal guidance,
38 under such supervision as required, to not more than 15 persons with
39 head injuries, who require assistance, temporarily or permanently, in
40 order to live in the community, and shall include, but not be limited to:
41 group homes, halfway houses, supervised apartment living
42 arrangements, and hostels. Such a residence shall not be considered
43 a health care facility within the meaning of the "Health Care Facilities
44 Planning Act," P.L.1971, c.136 (C.26:2H-1 et al.).

45 d. "Person with head injury" means a person who has sustained an
46 injury, illness or traumatic changes to the skull, the brain contents or

1 its coverings which results in a temporary or permanent
2 physiobiological decrease of mental, cognitive, behavioral, social or
3 physical functioning which causes partial or total disability.

4 e. "Community residence for the terminally ill" means any
5 community residential facility operated as a hospice program providing
6 food, shelter, personal guidance and health care services, under such
7 supervision as required, to not more than 15 terminally ill persons.
8 (cf: P.L. 1993, c.329, s.8)

9

10 3. This act shall take effect immediately.

11

12

13 STATEMENT

14

15 This bill provides that "community residences for the terminally ill,"
16 which is defined as residences providing hospice care and housing not
17 more than 15 persons, be an unconditional permitted use in all
18 municipalities. Under section 1 of P.L.1978, c.159, which is part of
19 the "Municipal Land Use Law," a municipality must permit under its
20 zoning scheme community residences for the developmentally disabled,
21 community shelters for victims of domestic violence, and community
22 residences for persons with head injuries, if those residences house no
23 more than six persons. One portion of the statute provides that a
24 municipality may impose conditions on or deny a zoning variance to
25 community residences for the developmentally disabled, community
26 shelters for victims of domestic violence, and community residences
27 for persons with head injuries if such a residence will house more than
28 six persons.

29 Two court decisions have invalidated this portion of the statute as
30 violating the federal "Fair Housing Amendments Act of 1988"; *The*
31 *ARC of New Jersey, Inc. v. State of New Jersey*, ___ F. Supp. _____
32 (D.N.J. 1996), 1996 WL 748224, and *Association for Advancement*
33 *of the Mentally Handicapped, Inc. v. City of Elizabeth*, 874 F.Supp.
34 614 (D.N.J. 1994). These decisions hold that the enabling statute
35 allowed disparate treatment of the handicapped.

36 Therefore, this bill amends the statute to comport with these
37 judicial judgments, and adds a new class of community residence for
38 hospice care, to those residences which shall be permitted uses in
39 residential zones.

40

41

42

43

44 Amends zoning enabling statute to comport with federal "FairHousing
45 Amendments Act of 1988;" adds certain community residences for
46 hospice care as permitted use.

1 its coverings which results in a temporary or permanent
2 physiobiological decrease of mental, cognitive, behavioral, social or
3 physical functioning which causes partial or total disability.

4 e. "Community residence for the terminally ill" means any
5 community residential facility operated as a hospice program providing
6 food, shelter, personal guidance and health care services, under such
7 supervision as required, to not more than 15 terminally ill persons.

8 (cf: P.L. 1993, c.329, s.8)

9

10 3. This act shall take effect immediately.

11

12

13

STATEMENT

14

15 This bill provides that "community residences for the terminally ill,"
16 which is defined as residences providing hospice care and housing not
17 more than 15 persons, be an unconditional permitted use in all
18 municipalities. Under section 1 of P.L.1978, c.159, which is part of
19 the "Municipal Land Use Law," a municipality must permit under its
20 zoning scheme community residences for the developmentally disabled,
21 community shelters for victims of domestic violence, and community
22 residences for persons with head injuries, if those residences house no
23 more than six persons. One portion of the statute provides that a
24 municipality may impose conditions on or deny a zoning variance to
25 community residences for the developmentally disabled, community
26 shelters for victims of domestic violence, and community residences
27 for persons with head injuries if such a residence will house more than
28 six persons.

29 Two court decisions have invalidated this portion of the statute as
30 violating the federal "Fair Housing Amendments Act of 1988"; *The*
31 *ARC of New Jersey, Inc. v. State of New Jersey*, ___ F. Supp. ____
32 (D.N.J. 1996), 1996 WL 748224, and *Association for Advancement*
33 *of the Mentally Handicapped, Inc. v. City of Elizabeth*, 874 F.Supp.
34 614 (D.N.J. 1994). These decisions hold that the enabling statute
35 allowed disparate treatment of the handicapped.

36 Therefore, this bill amends the statute to comport with these
37 judicial judgments, and adds a new class of community residence for
38 hospice care, to those residences which shall be permitted uses in
39 residential zones.

40

41

42

43

44 Amends zoning enabling statute to comport with federal "FairHousing
45 Amendments Act of 1988;" adds certain community residences for
46 hospice care as permitted use.

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2773

STATE OF NEW JERSEY

DATED: MAY 12, 1997

The Assembly Housing Committee reports favorably Assembly Bill No. 2773.

This bill provides that "community residences for the terminally ill," which is defined as residences providing hospice care and housing not more than 15 persons, be an unconditional permitted use in all municipalities. Under section 1 of P.L.1978, c.159, which is part of the "Municipal Land Use Law," a municipality must permit under its zoning scheme community residences for the developmentally disabled, community shelters for victims of domestic violence, and community residences for persons with head injuries, if those residences house no more than six persons. One portion of the statute provides that a municipality may impose conditions on or deny a zoning variance to community residences for the developmentally disabled, community shelters for victims of domestic violence, and community residences for persons with head injuries if such a residence will house more than six persons.

Two court decisions have invalidated this portion of the statute as violating the federal "Fair Housing Amendments Act of 1988"; *The ARC of New Jersey, Inc. v. State of New Jersey*, ___ F. Supp. ____ (D.N.J. 1996), 1996 WL 748224, and *Association for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth*, 874 F.Supp. 614 (D.N.J. 1994). These decisions hold that the enabling statute allowed disparate treatment of the handicapped. The bill, therefore, amends the statute to comport with these judicial judgments, and adds a new class of community residence for hospice care to those residences which will be permitted uses in residential zones.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2773

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1997

The Senate Community Affairs Committee reports favorably Assembly Bill No. 2773.

This bill would amend a provision of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), which authorizes municipalities to impose restrictions on the location of community residences for the developmentally disabled, community shelters for victims of domestic violence, and community residences for persons with head injuries, in order to comport with the requirements of the federal "Fair Housing Amendments Act of 1988." The bill would also add a new class, "community residences for the terminally ill," to those residences which are permitted uses in residential zones.

Under current law, section 1 of P.L.1978, c.159, a municipality may impose conditions on, or deny a zoning variance to, a community residence for the developmentally disabled, a community shelter for victims of domestic violence, or a community residence for persons with head injuries if such a shelter or residence would house more than six persons. Current law specifically allows a municipality to deny a conditional use permit for a proposed residence or shelter if the proposed residence or shelter would be located within 1500 feet of an existing residence or shelter; or if the total number of persons residing in residences and shelters exceeds 50 persons or 0.5% of the municipal population, whichever is greater.

These provisions have been found to be invalid as violative of the federal "Fair Housing Amendments Act of 1988" in two federal district court decisions, *The ARC of New Jersey, Inc. v. State of New Jersey*, 950 F. Supp. 637 (D.N.J. 1996), and *Association for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth*, 876 F.Supp. 614 (D.N.J. 1994), because the provisions impose restrictions on the housing of handicapped persons that are not imposed on the housing of others. The bill would end such disparate treatment of the handicapped.

This bill also provides that "community residences for the terminally ill," defined as residences providing hospice care and housing to not more than 15 persons, would be a permitted use in all residential districts of a municipality.

This bill is identical to Senate Bill No. 2213, also reported by the committee on December 11, 1997.