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File TAC-1996-001.9

Name: Text Amendment - Group Homes

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DOCUMENT DESCRIPTION:

X	OK in my backyard – BY Marjorie Beggs – San Francisco Study Center	X	Zoning Discrimination Against Group Homes Under the Fair Housing Act – Daniel R. Mandelker
X	Single-Family Zoning and Alternative Residential Uses and Living Arrangements	X	State Statutes – Personal Care Boarding Homes
X	Regulation of Residential Care Facilities: A Local	X	Community Residence Location Planning Act Compliance Guidebook – May 1990
X	Zoning News – 7/95	X	Siting Group Homes for Developmentally Disabled Persons – Martin Jaffe/Thomas P. Smith
X	Fed Rules on Housing for Handicapped Affect Local Governments – by Geoff Wilson	X	For Planning and Zoning Professionals - The Zoning Report – 12/21/84
X	Fair Housing Amendments Affect Local Zoning – Kristine M. Williams	X	Notes to file – 4/3/96
X	The Truth about Neighborhood Fear – Emily Palacios	X X	Correspondence
X	Group Home Review – City of Fort Collins	X	State Statutes regarding Hospitals – Health Facilities
X	Group Think – Daniel Lauber	X	Newspaper Articles - Power of Single-Family Laws Undercut

Kathy Portner

STAFF REVIEW

FILE: TAC 96-1.9

DATE: April 1996

DRAFT
for review

REQUEST: Text Amendment - Housing for the Developmentally Disabled

APPLICANT: City of Grand Junction

STAFF: Kristen Ashbeck

STAFF ANALYSIS:

The Federal Fair Housing Amendments Act of 1988, effective on March 12, 1989 extend fair housing protection to individuals with physical, developmental, or mental disabilities and families with children, and therefore prohibit any action which would discourage or obstruct the residential choices of children or the disabled in a community, neighborhood, or development. Restrictive definitions of family and zoning regulations which single out residential group homes for special regulatory action not applied to typical single family residential arrangements may be in violation of these amendments. In addition, the State of Colorado has adopted legislation allowing for group homes that house 8 persons or less (excluding staff) for the developmentally disabled in single family zone districts (CRS 30-28-115 and 31-23-301).

Presently, the Grand Junction Zoning and Development Code does not adequately address these legal concerns regarding residential facilities for the developmentally disabled. With the recent increase in inquiries for location of these residential uses, and the apparent need in the community for such residential/care arrangements, it has become evident that more specific guidance should be provided in the Code with which applicants and staff can work and review proposals for siting such facilities within the community.

In order to do so, it is necessary to review and add to or delete the definitions currently found in the Code to better correlate with the intent of the State and Federal fair housing regulation and to clarify the distinctions between group homes and other residential facilities. It is also necessary to update section 4-3-4, Use/Zone Matrix, to reflect the allowance of such uses within residential zone districts.

Staff's interpretation of the fair housing legislation and subsequent case law is that group homes must be allowed uses with all residential zone districts (single and multifamily). However, spacing requirements and a minor review process for such facilities in order to determine such may be required by a community.

To: KRISTENA (Kristen Ashbeck)
Cc: Kathy Portner, Larry Timm, Dan Wilson
From: John Shaver
Subject: Re: Group Homes Text Amendment
Date: 5/15/96 Time: 5:28PM

Originated by: KRISTENA @ CITYHALL on 5/15/96 8:23AM
Replied by: JOHNS @ CITYHALL on 5/15/96 5:28PM

Kristen,

This message is written in response to your request that I review the proposed group home text amendment. Generally the amendment looks good particularly the deletion of some of confusing definitions and the addition of clearer ones, however, I'm not sure that the proposed changes go far enough. Let me set the stage with some background and then you Larry, Kathy and I can decide if we need or want the changes to go further.

The Colorado legislature has found that group homes involve a matter of statewide concern and has established that a state licensed group home for up to eight developmentally disabled persons is a residential use of property for zoning purposes. There is a similar statute for group homes housing the elderly and mentally ill. The legislature has also specifically given local zoning authorities the express right to impose regulations on these homes so long as the regulation does not result in exclusion of group homes from residential zones. Homes may be required to comply with height, setback, area, lot coverage and external signage. Local regulation may also prohibit the conducting of ministerial activities of any private or public organization or agency ... or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in a particular zone district.

The size and configuration of a lot clearly is a permissible consideration. Lot coverage is set forth as a permissible consideration and consequently an application may reasonably be denied if a lot is too small to adequately accommodate the number of persons that the home is intended to serve. If the topography of the lot is incompatible with the proposed use the application may be denied.

Area is also specifically a legitimate consideration. The term is not defined by the statute but it likely means the size of the home. State regulations require at least 80 square feet of floor area for a single bedroom and 60 square feet per bed for a two bed room exclusive of space occupied by closets, lockers, wardrobes of any kind, vestibules and toilet rooms. The group home must also provide a designated dining space that can seat all residents and staff at the same time and a recreation area that is separate from the dining room. The regulations do not define a minimally sufficient recreation area.

At least one local government that I am aware of, the City of Broomfield, has adopted a requirement that group homes must provide at least 400 square feet of finished interior space for each resident. The same or other regulations could be adopted by us.

The group home statutes state as a goal the lessening of congestion in the streets and roads. Our regulations could likely address legitimate concerns about traffic.

RE
HOUSEHOLD
GROUP

Regulations could be written to require a review (periodic or otherwise) of health inspection reports to determine if homes are adequately managed.

The statute provides that other factors may be considered in group home siting decisions. The law provides that protecting the tax base and securing economy in government expenditures as well as the adequate provision of schools may be considered.

The Federal Fair Housing Act Amendments of 1988 extend equal protection under federal law to handicapped persons who are defined to include persons with a physical or mental impairment which substantially limits one or more of a person's major life activities. The Act prohibits discrimination in the sale or rental of housing because of physical or mental handicap, however, it states that nothing in the Act limits the applicability of any reasonable local, state or federal restrictions regarding the number of occupants permitted to occupy a dwelling. The Act specifically recognizes only the limited right of a municipality to regulate the number of occupants in a dwelling for handicapped persons. The manifest intent of the Act is to ensure that the protected classes of persons have appropriate housing available to them within all residential areas. It is not intended to require municipalities to allow unreasonable use of residential property. Federal law recognizes the ability of local government to reasonably regulate land use so long as such regulation does not prohibit housing within a residential district.

Since you are proposing some amendments to the Code in this area it may be worth considering adopting some additional or different local controls. Please consider what if any other changes ought to be made.

Should you have any questions or if you'd like to meet to discuss this matter further, please let me know.

jps



Colorado Coalition for the Homeless

2100 Broadway
Denver, Colorado 80205
(303) 293-2217
FAX (303) 293-2309

Kristen A —
John Shover —

May 21, 1996

Dear Mr. Timm,

Large parts of the general public still believe they have (or should have) a right to determine who will live next door. This belief runs contrary to fair housing law and traditional property rights. Community meetings and public hearings regularly become the forum for attacks on housing proposals based on the stereotypes of people who live in affordable housing and for expression of anger and frustration at the local government.

There are many kinds of affordable housing - supportive housing, special needs housing such as group homes or elder homes, transitional housing, single room occupancy housing. There is often opposition to such housing, and the opposition is sometimes loud, sometimes valid. It frequently delays or blocks approval for this much needed housing.

Opposition may be based on fears and prejudice and is often discriminatory. Yet one's neighborhood is the extension of one's home, and often residents distrust government land use plans and affordable housing development. The issue arises not only in urban areas, but also in suburban and rural areas.

The statewide Inclusive Communities Task Force was formed to address these concerns and to reach out to neighborhood groups across the state and discuss the need and desirability of neighborhoods becoming inclusive. Members of the Task Force are available to discuss forming inclusive neighborhoods.

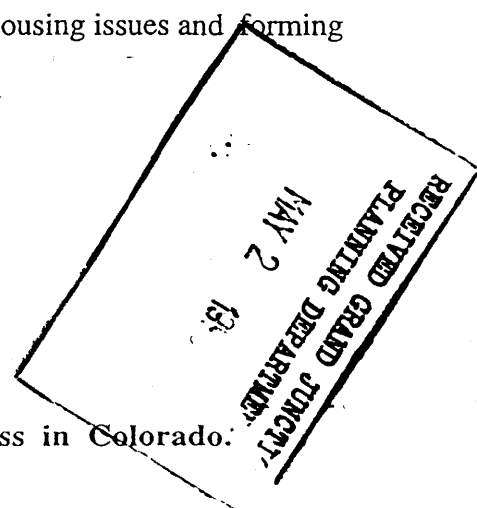
Additionally the Task Force is examining community ordinances for compliance with the Fair Housing Act. The Task Force is concerned that individuals with disabilities are unable to access necessary housing, such as supportive or special needs housing, because of zoning ordinances that are discriminatory.

As your community discusses this complex issue, Colorado Coalition for the Homeless, together with the Inclusive Communities Task Force, asks that your community consider the following: Who are the people who would be served by affordable housing? What neighborhood concerns are valid? Where are people who are poor, disabled, or elderly to live?

As a member of the Task Force, I am available to discuss fair housing issues and forming inclusive communities. I look forward to hearing from you.

Sincerely,

Teresa Vaughn, Esq.
Fair Housing Coordinator



. . . Working to eliminate homelessness in Colorado.

DUFFORD, WALDECK, MILBURN & KROHN, L.L.P.

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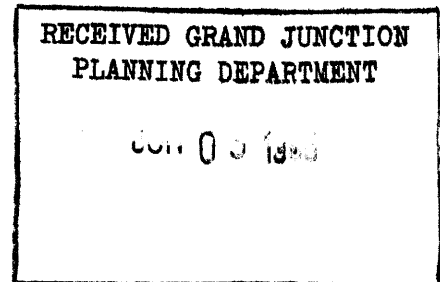
D.J. DUFFORD
OF COUNSEL

WILLIAM G. WALDECK
OF COUNSEL

NATHAN A. KEEVER
FLINT B. OGLE
MICHAEL C. SANTO

May 31, 1996

John Shaver
Assistant City Attorney
250 N. 5th Street
Grand Junction, CO 81501



Re: Asset Sober Living Home

Dear John:

Thank you for providing me with a copy of Patti King's May 6, 1996 response to your April 29, 1996 letter. You have informed me that a follow-up letter was sent to A.S.E.T., and that when you receive a response to that letter you will provide me with a copy of both the letter and the response.

I agree that as a rehabilitation center for recovering alcoholics, the Sober Living Home is entitled to the protections of the Fair Housing Act of 1988 ("FHA"). However, the FHA does not exempt group home operators from complying with generally applicable zoning code provisions that require operators to apply for a conditional use permit. See Oxford House, Inc. v. City of Virginia Beach, 825 F.Supp. 1251 (1993) (attached for your convenience).

In Oxford House, the operator of several homes for recovering alcoholics argued that the FHA exempted them from complying with the City's conditional use permit application processes, in part because the process might cause them harm by exposing their residents and operation to public scrutiny. The Court held that "the plaintiffs can claim no legally cognizable right under the Fair Housing Act to be exempt from the permit application process." Id. at 1263. In reaching that conclusion, the Court in Oxford House states:

The Fair Housing Act protects handicapped individuals from discrimination. It does not, and plaintiffs point to no provision of the statute suggesting otherwise, insulate such individuals from legitimate inquiries designed to

John Shaver
May 31, 1996
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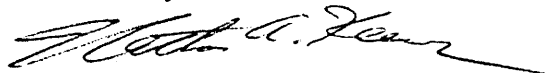
enable local authorities to make informed decisions on zoning issues, such as whether, or on what terms, to grant conditional use permits. More particularly, by requiring "reasonable accommodations in rules, policies, practices or services" if necessary to afford handicapped persons "an equal opportunity to use and enjoy a dwelling," the Fair Housing Act contemplates that municipalities will engage in informed decision making respecting application of their zoning ordinances. Congress is presumed to have known that public hearings are procedural prerequisites for zoning variances or conditional uses; and, if Congress had intended to exempt handicapped persons from participation in the usual procedural requirements of the zoning process, it could have done so expressly.

Id. at 1262. The Court also addresses several other issues that are relevant to the current situation, so I would encourage you to read the entire opinion.

The excerpts provided by Ms. King are dated February 16, 1989, less than one year after the FHA went into effect. Many of the conclusions reached by the unidentified author of these excerpts are inconsistent with the case law that has interpreted the FHA over the past seven years.

I will again state that it is our contention that the best long-term solution to this situation is for A.S.E.T. Clinic, Inc. to go through the conditional use permit hearing process, preferably voluntarily, but if necessary following a citation from the City or by court order. A public hearing will give everyone an opportunity to be heard and allow the City to make an informed decision.

Sincerely,



Nathan A. Keever

cc:
Larry Timm
Director of Community Development
250 N. 5th Street
Grand Junction, CO 81502



Colorado Coalition for the Homeless

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Denver, Colorado 80205
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August 20, 1996

Dear Ms. Portner,

Recently I have written you regarding our concerns on group home or "special use" ordinances. These ordinances may unintentionally result in housing discrimination against people with disabilities. Again, group home ordinances which contain the following provisions may be discriminatory.

Please review your city's ordinance for the following:

1. Does the ordinance restrict group homes from being placed in residential neighborhoods? Or only in certain neighborhoods?
2. Does the ordinance require a conditional use permit?
3. Does the ordinance require neighborhood notification and hearings?
4. Does the ordinance require spacing and density requirements?

Often these requirements violate the Fair Housing Amendments Act. Such requirements treat people with disabilities differently than other individuals seeking housing. These requirements limit the housing choice of people with disabilities.

If your jurisdiction has prepared the Analysis to Impediments of Fair Housing as part of the Consolidated Plan, perhaps you could send me a copy of the pages that addresses housing for minorities and people with disabilities. Frequently, these are the very people that have low incomes and cannot afford housing. In turn, developing housing for these people runs into neighborhood resistance. We are very interested in your jurisdiction's solutions to meeting these housing needs.

Thank you for your efforts.

Sincerely,

Teresa Vaughn, Esq.
Fair Housing Coordinator

