

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

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

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

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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)

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10 3. This act shall take effect immediately.

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### STATEMENT

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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.

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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.