

SENATE, No. 2213

STATE OF NEW JERSEY

INTRODUCED JUNE 19, 1997

By Senator MARTIN

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 to
17 not 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*, 950 F. Supp. 637
32 (D.N.J. 1996), and *Association for Advancement of the Mentally*
33 *Handicapped, Inc. v. City of Elizabeth*, 876 F.Supp. 614 (D.N.J.
34 1994). These decisions hold that the enabling statute allowed
35 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 "Fair Housing
45 Amendments Act of 1988;" adds certain community residences for
46 hospice care as permitted use.