

The Law Is On Your Side: Housing for People with Behavioral Health Needs

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Big Picture Objectives for Successful Siting

- Identifying local and state land use and zoning regulations and practices impacting your type of housing and location
- Understanding what is legal and what is not within local zoning
- Managing community concerns/opposition
- Understanding your legal rights to site your housing development/program

Siting Influences

- The Law – federal and state legal protections; municipal land use & zoning
- Elected Officials – city, county & state
- Community/Neighborhood Stakeholders
- Housing Planning – state & federal requirements

The Moving Parts

- ❑ Your program – staff/board/future residents
- ❑ Local Government – multiple departments
- ❑ Elected Officials – city council, county sups, state representatives
- ❑ State licensing
- ❑ Neighbors
- ❑ Neighborhood groups, associations, advisory

Overview: Municipal Land Use & Zoning Constraints To Siting Housing for Individuals with Disabilities

- Discriminatory land use/zoning regulations (under one or more legal theories);
- Practice Impediments (unwritten, high likelihood of being illegal/arbitrary);
- Planning approval/entitlement process bias or procedural irregularities.

Discriminatory Land Use and Zoning Provisions

- Singling out housing for unrelated individuals with disabilities & treating it differently than families;
- Imposing numerical restrictions on unrelated individuals residing together vs. related;
- Requiring a conditional use permit (CUP) for state licensed facilities for 7 or more residents;
- Requiring a CUP for all types of housing for individuals with disabilities, citywide.

Discriminatory Land Use and Zoning Provisions & Practices

- Mischaracterizing group homes for individuals with disabilities as “boarding housings” to prohibit siting and use in residential zones;
- Use definitions that distinguish between physical and mental health
- Spacing requirements
- Neighborhood notification/outreach requirements
- Failing to enact and/or administer legal reasonable accommodation procedures

Planning Approval/Decision-Making Concerns

- ❑ The land use & zoning process must be free from discrimination
 - ❑ Those running the public hearing must be neutral
 - ❑ Treat all equally in time allowed to speak
 - ❑ Keep control of the hearing
- ❑ Planning Decision must be unbiased
 - ❑ Determination must articulate the basis of the decision
 - ❑ Conditions imposed must be based on evidence for the need to impose restrictions, additional requirements
 - ❑ Conditions cannot be imposed based on perceptions, myths or stereotypes about people with disabilities
 - ❑ Decision cannot be based on biased testimony of public or others

Siting Strategies - Objectives

- Respond to legitimate concerns of community;
- Maintain respect for the rights of current & prospective residents;
- Neutralize opposition;
- Advance a variety of housing opportunities for individuals with disabilities in the community.

The Five W's Analysis

- Who is “the community?”
- What are the concerns?
- When do you begin communications?
- Where (and how) do you begin to engage with the defined community?
- Why does this matter if we have the legal right to site & develop in this location?

Who Is “The Community?”

- Individual neighbors
- Neighborhood councils
- Other neighborhood associations/groups
- Religious centers & organizations
- Schools
- Businesses
- Groups outside the neighborhood
- Elected officials – city and county
- Intermeddlers

What Are the Concerns About the Housing You Are Building?

- Crime, safety, density (parking), property values
- Erode residential nature of neighborhood
- Bad for the business community
- Bad experience currently or in the past
- Stigma - bias
- Lack of information and rumors
- Generalized anger/disappointment about how local government treats the neighborhood
 - Developer is making a profit off the neighborhood
 - Fair share

When Do You Begin Communications?

- Evaluate based on thorough initial research on the community/neighborhood
- Timing may depend on the size, location & type of project (rehab vs. new construction)
- Entitlement process time
- May depend on elected official(s)' position
- Get and stay ahead of the rumors
- Neighborhood Council factor

Where (and how) Do You Begin to Engage with the Defined Community?

- There is no legal requirement for community engagement or outreach
- Be proactive with an offer to meet
- Maintain control & limits on the # of meetings
- Location is important
- Neighborhood Council dynamic
- Who Is Doing the Talking?

Why Does This Matter If We Have the Legal Right to Site & Develop in this Location?

- Political Influence may delay or stop your project
- Public funding & private financing may be impacted/jeopardized
- Further acceptance or neutrality and avoid potential harm to building residents
- Track record of organization

Project Description

- Provide objective information about the use and operations
- Limit disclosure to protect privacy rights
- Speak to the concerns of the majority
- Minimize objections beyond the scope
- Isolate the problematic/unreasonable concerns

Elected Officials & The Political Process

- Develop a relationship in advance
- Research in advance
- First one in the door
- Clear, concise & consistent project description
- Credibility
- Outreach commitment & limits
- Ongoing communication
- Local government may be liable for discriminatory animus of its elected officials

Six Steps To Building Community Support*

- Step 1: Assessment & Planning
- Step 2: Political Strategy
- Step 3: Building Active Community Support
- Step 4: Dealing with Community Concerns
- Step 5: Legal Strategy
- Step 6: Public Relations Strategy

*nonprofithousing.org

Reasonable Accommodation

Local governments have an affirmative duty to be flexible in the application of land use & zoning regulations, rules and procedures or may need to waive a rule if it is necessary for equal access to housing for people with disabilities.

The availability of reasonable accommodation does not cure an intentionally discriminatory ordinance provision.

Reasonable Accommodation vs. CUP

Reasonable

Accommodation

- looks at the needs of the individual
- avoids public process
- not based on aesthetics
- includes burden analysis

Conditional Use Permit

- general welfare standard
- doesn't look at need for access to housing
- public process for input
- wrong standard for civil rights matter

Reasonable Accommodation Examples:

(Conditional Use Permit Not Required)

- Using a second unit for housing program activities
- Waiving project development design elements for accessibility features
- Parking reductions
- Permitting a residential use in a commercial zone
- Increasing occupancy in state licensed facility

Fair Housing Act - Discriminatory Conduct

- Prohibited conduct: coercion, intimidation, threats and interference with rights granted by fair housing laws;
- No showing of force required for liability;
- Prohibited conduct directed toward individuals with disabilities, those providing housing for individuals with disabilities;
- Law is applied *broadly* to reach all practices that have the effect of interfering with rights;
- Conduct vs. speech (protected by 1st Amendment).

Lessons Learned

- Persevere to prevail
- Reasonableness goes a long way
- Maintain a committed team
- Project a positive public persona
- Communicate a simple straightforward message for support
- Take notes/document all communications