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Mayor's
(Carries)

FROM: OFFICE OF THE CITY ATTORNEY
TO: Mayor Dominique Thornton
DATE: September 25, 1998
RE: Community Group Home
Cranberry Estates

In accordance with your direction, I have researched the issue whether Connecticut General Statutes §19a- 507b's prohibition on the total capacity of all community residences for the mentally ill not exceeding one-tenth of the one percent of the population of a municipality includes community residences for the mentally retarded. It does not appear that C.G.S. §19a-507b includes community residences for the mentally retarded. I have reached this conclusion based upon the following analysis.

Connecticut General Statutes §8-3e, as amended, concerns the regulation of community residences for the mentally retarded. The statute provides that "[n]o zoning regulation shall treat any community residence which houses six or fewer mentally retarded persons and necessary staff persons and which is licensed under the provisions of section 17a-227 in a manner different from any single family residence."

Connecticut General Statutes §17a-227, as amended, sets out the requirements for the licensing and regulation of residential facilities for mentally retarded and autistic persons. Neither C.G.S. §17a-227, as amended, nor C.G.S. §8-3a, as amended, define "mentally retarded" or "autistic" persons but appear to use the terms as having their commonly understood medical definitions.

Accordingly, by the clear and unambiguous language of C.G.S. §8-3e, community residence for six or less mentally retarded individuals and necessary staff are permitted in the City's RPZ, R-15, R-30, R-45, R-60, R-1, M and MX zones. Zoning Code of the City of Middletown, Art. VI.

The statutes do, however, contain a limitation on community residences for mentally retarded persons. C.G.S. §8-3f, as amended, provides that "[n]o community residence established pursuant to section 8-3e shall be established within one thousand feet of any other such community residence without the approval of the body exercising zoning powers within the municipality in which such residence is proposed to be established." Therefore, this prohibition is the only restriction which a municipality can place upon community residences for six or less mentally retarded individuals and necessary staff.

Connecticut General Statutes §8-3g concerns the regulation of community residences for mentally ill adults. This section provides that “[n]o zoning regulation adopted pursuant to this chapter or any special act shall prohibit any community residence in any area which zoned to allow structures containing two or more dwelling units.” C.G.S. §8-3g(a), as amended, (emphasis added).

C.G.S. §8-3g does not use the term “mentally ill adult” within the body of the statute, only in the section title. However, Connecticut General Statutes §19a-507a also concerns community residences for mentally ill adults and provides as follows:

As used in section 8-3g and sections 19a-507a to 19a-507d, inclusive, as amended by this act: (1) “Mentally ill adult” means any adult who has a mental or emotional condition which has substantial adverse effects on his ability to function and who requires care and treatment but shall not mean any adult who is dangerous to himself or herself or others, as defined in section 17a-495, or who is an alcohol-dependant person or a drug-dependent person, as defined in section 17a-680, or who has been placed in any community-based residential home by order of the Superior Court or has been released to any community-based residential home by the Department of Correction or any person found not competent to stand trial for any crime pursuant to section 54-56d or committed pursuant to sections 17a-580 to 17a-602, inclusive. . . .

(3) “community residence” means a facility which houses the staff of such facility and eight or fewer mentally ill adults which is licensed by the Commissioner of Public Health and which provides supervised, structured group living activities and psychosocial rehabilitation and other support services to mentally ill adults discharged from a state operated or licensed facility or referred by a licensed physician specializing in psychiatry or licensed psychologist.

C.G.S. 19a-507a, as amended (emphasis added).

Significantly, “mentally ill adult” is not defined to include either “mentally retarded” or “autistic” persons.

Therefore, community residences for eight or less mentally ill adults and staff are permitted in the City’s RPZ, M, MX and TD (by Special Exception) zones. Zoning Code of the City of Middletown, Art. VI.

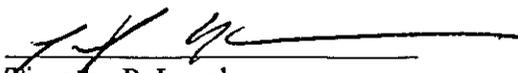
Additionally, the City has established a Substance Abuse/Mental Health Floating Zone (SMH Zone) which permits group homes and community residential treatment facilities. Zoning Code of the City of Middletown, Art. II, §39c. However, this section appears to regulate group homes for alcohol or drug dependent individuals, which persons are excluded from the statutory definition of mentally ill adults. See C.G.S. 19a-507a, supra.

As with community residences for six or fewer mentally retarded persons, the statutes provide that a community residence for eight or fewer mentally ill adults cannot be established within one thousand feet of another such residence. C.S.G. §19a-507b (a), as amended. This section also provides that “[i]f more than one community residence is proposed to be established in any municipality, the total capacity of all community residences in the municipality in which such residence is proposed to be established shall not exceed one-tenth of one percent of the population of such municipality.” Id.

It does not appear that the legislature intended to include community residences for mentally retarded persons within this one-tenth of one percent prohibition. “Mentally retarded persons” and “mentally ill adults” are treated differently by two separate statutes. The statute governing community residences for “mentally retarded persons” allows such residences for six or fewer persons in single-family residence zones. C.G.S. §8-3e, as amended. The statute regulating community residences for “mentally ill adults” limits community residences for eight or fewer individuals to multi-family residence zones. C.G.S. §8-3g(a) and §19a-507a (3), as amended. By separate statute, the legislature has placed the one thousand feet separation restriction on both types of community residences. C.G.S. §8-3f, as amended (mentally retarded persons) and §19a-507, as amended (mentally ill adults).

Community residences for “mentally ill adults” have the further restriction of having a total capacity which does not exceed one-tenth of one percent of a municipality’s population. C.G.S. §19a-507b, as amended. This restriction is not placed upon community residences for “mentally retarded persons.”

Should you wish to discuss this matter or need anything further in this regard, please do not hesitate to contact me.


Timothy P. Lynch

TPL/kt

cc: Trina A. Solecki,
City Attorney