

Siting Group Homes for Developmentally Disabled Persons

Thomas P. Smith and Martin Jaffe

TABLE OF CONTENTS

Chapter 1. Introduction	1
Overview	1
Definitions	2
Chapter 2. A Review of Recent Literature	4
Community Residential Facilities and Their Residents	4
CRF Characteristics and Locations	8
Chapter 3. State and Local Policies.....	10
Problems With Local Zoning Policies.....	10
Local Regulatory Issues	10
Selected Sample of Local Zoning Regulations.....	13
Review of State Legislation	16
Chapter 4. The Legal Framework.....	21
Strategic Considerations.....	21
Tactical Considerations.....	26
Chapter 5. The Proper Zoning Treatment	29
Appropriate Locations for CRFs	29
Community Opposition	31
Zoning Compatibility	33
Chapter 6. Model Zoning and Fair Housing Provisions	36
Definitions.....	36
Locational Requirements	37
Special Permit Requirements	37
Local Planning and Fair Housing Policies.....	37
Annotated Bibliography.....	39

Governor's Planning Council
on Developmental Disabilities
Minnesota State Planning Agency
300 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155

**Governor's Planning Council
on Developmental Disabilities
Minnesota State Planning Agency
201 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101**

Chapter 1. Introduction

This Planning Advisory Service report examines the siting in residential neighborhoods of group homes for persons with developmental disabilities. The report examines the research literature, current zoning practices, and some recent legal developments. Finally, the report offers some model zoning provisions, with commentary, to better regulate group homes for developmentally disabled people. Other types of group homes, such as homes for foster children and for mentally ill individuals, and halfway houses for ex-convicts or substance abusers, are not addressed in this report.

The American Planning Association's research indicates that, in the past, local zoning codes have been used to discriminate against group homes for developmentally disabled persons. Exclusionary zoning codes have expressly barred group homes from single-family residential zones, even though these areas may be the most desirable and beneficial for group home residents. Some codes have used narrow and traditional definitions of "family" to exclude homes for developmentally disabled persons through limits on the number of unrelated individuals allowed in a single-family home. Occasionally, outdated local codes designate small group homes as institutions, hospitals, or nursing homes, thereby prohibiting them in some or all residential areas. Requirements for special or conditional use permits have also been used to restrict the location of group homes. Where planning commissions control the granting of such permits, they have, at times, based their denial of a group home permit on vague standards or community opposition. APA believes that exclusionary and discriminatory zoning barriers need to be removed. Local planning officials need to understand the housing needs of developmentally disabled persons, and they need to understand that fear and prejudice are unacceptable bases for local regulations.

APA's review of current zoning practices and examination of current research leads us to conclude that community residential facilities for developmentally disabled people ought to be treated as a form of conventional housing under zoning. Small group homes having similar characteristics (in terms of intensity of use and off-site impacts) to traditional single-family residences ought to be treated

in the same manner as single-family residences under zoning and allowed by right in single-family zoning districts. Large facilities sharing many of the same characteristics as multifamily housing should be considered a valid form of multifamily housing and allowed by right in multifamily or higher-density residential zones.

This is essentially the same conclusion reached by the American Bar Association in 1978 in the formulation of model state legislation to encourage the siting of group homes for developmentally disabled persons.¹ A survey of additional research has led us to the same conclusion reached by legal advocates almost a decade ago. Nevertheless, in spite of growing national trends toward deinstitutionalizing developmentally disabled individuals and adopting state laws preempting local siting approval of group homes, many communities still consider these group homes to be a special type of housing, demanding special types of review and siting approval. We do not believe this approach is justified or even constitutional in some cases.

OVERVIEW

The number of community residential facilities has grown dramatically in the last decade. A survey of small community residential facilities (for 15 or fewer residents) in 1972-74 identified 611 such facilities.² By 1977 this number had grown to 3,225, and by 1982 that number nearly doubled to 6,414.³

The zoning controversies that arise over group homes often pit one long-term resident of the community (a person with developmental disabilities) against another. Persons with developmental disabilities are part of every community. As children, they live, play, and go to school in

1. American Bar Association, "Zoning for Community Homes Serving Developmentally Disabled Persons," *Mental Disability Law Reporter* 20 (1978): 794-810.

2. Gail O'Connor, *Home Is a Good Place*, Monograph No. 2 (Washington, D.C.: American Association on Mental Deficiency, 1976).

3. Florence Hauber et al., "National Census of Residential Facilities: A1982 Profile of Facilities and Residents," *American Journal of Mental Deficiency* 89, No. 3 (1984): 236-45.



the community. When developmentally disabled persons grow older and gain skills or when their parents grow old, they often move out into the community into apartments, board and care residences, and group homes. According to a New York State study of 262 private, not-for-profit community residences that housed 2,040 developmentally disabled persons, over 36 percent of the residents had previously resided with parents, relatives, or a foster family.⁴ This statistic runs contrary to the common impression that all developmentally disabled persons moving into group homes come from state institutions; in fact, many come from families in the surrounding neighborhoods.

Many of the zoning controversies surrounding group home siting have also arisen as a result of the national movement to deinstitutionalize developmentally disabled persons. This movement gathered force in the late 1960s as advocates turned to community-based care as a desirable alternative to overcrowded state institutions. This movement was accelerated by several lawsuits that forced the closing of large institutions (such as the Willowbrook facility in New York and the Pennhurst State Hospital in Pennsylvania) and their substitution by community residential facilities. Several other lawsuits also attempted to give developmentally disabled persons a legal right to receive residential care in small, community-based facilities. The success of these efforts and the philosophy of "normalization," which are both examined in greater detail in the next chapter, are relevant to understanding why the siting of group homes has reached the prominence it has as a zoning issue.

4. Warren Zigman et al., "Characteristics of Community Residences for Developmentally Disabled Persons," LARP Technical Report 82-2, Institute for Basic Research on Developmental Disabilities, November 1982, 8.

DEFINITIONS

In order to effectively examine the regulation of community-based housing for developmentally disabled persons, we have established definitions for both the student population and the types of housing. "Growing facilities"; "group homes"; "residential care facilities"; "care facilities"; and other terms have been used in ordinances and state licensing and siting legislation to define community living arrangements for developmentally disabled persons. The term "community living" has also been proposed in pending federal legislation. Community and Family Living amendments to the Developmental Disabilities Act. "Mentally retarded," "mentally disabled," and other such descriptions have been used to define developmentally disabled people.

Community Residential Facilities

Mental disabilities researchers have settled on the term "community residential facility" (CRF) to describe supervised community-based living arrangements for persons with a developmental disability. This is the term used by the University of Minnesota's 1977 and 1982 census of residential facilities and in the American Association for Mental Deficiency's 1976 monograph on CRF.

For federal Medicaid funding purposes, the government uses "intermediate care facilities for the mentally retarded" to describe community facilities. The state's reimbursable residential programs for four or five students. The American Bar Association, in model legislation for CRFs, used "family home

5. Robert Bruininks et al., "National Survey of Community Residential Facilities: A Profile of Facilities and Residents in 1971," *Journal of Mental Deficiency* 84, No. 5 (1980): 470-78; Haul Census"; and O'Connor, *Home Is a Good Place*.

definitions section of its model statute, but titled the statute "An Act to Establish the Right to Locate Community Homes for Developmentally Disabled Persons in the Residential Neighborhoods of This State" without ever defining the term "community home." Researchers have consistently used "group home" to describe CRFs in their research reports.

To be consistent, this report will use community residential facility (CRF) to describe all community-based residential facilities for developmentally disabled people. CRFs housing eight residents or fewer will be called group homes. The definition of a CRF is a modification of the one adopted in the article, "National Census of Residential Facilities: A 1982 Profile of Facilities and Residents."

Any living quarter(s) which provides. . . seven days-a-week responsibility for room, board, and supervision of developmentally disabled people. . . with the exception of (a) single-family homes providing services to a relative; (b) nursing homes, boarding homes, and foster homes that are not formally state licensed or contracted as mental retardation service providers; and (c) independent living (apartment) programs that have no staff residing in the same facility.⁶

This definition is limited to those facilities that are state-licensed or that provide services to mentally retarded persons under contract and have supervisory staff residing or working shift assignments within the facility. Using this definition, the national census identified 15,633 such residential facilities as of June 30, 1982, housing a total of 278,095 residents, 243,669 of whom were mentally retarded. The results of this survey, by facility type, are set forth in Table 1.

Under this definition, group residences comprised 49 percent of the total number of facilities for developmentally disabled people and housed 84.2 percent of the total residents. The 1982 national census also found that 62 percent of the facilities were operated by proprietary organizations (including foster families), 31 percent by nonprofit entities, and 7 percent by governmental entities. The gov-

6. Hauber, "National Census," p. 236. The original definition required "24-hour, seven-days-a-week responsibility for room, board, and supervision of mentally retarded people

ernmental facilities, however, housed 53 percent of the residents.

Developmental Disabilities

The most recent federal Developmental Disabilities Act, PL. 98-527, Stat. 2662 (1984), defines a developmental disability as a severe, chronic disability that:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the person attains age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency;
5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are lifelong or of extended duration and are individually planned and coordinated.

The current definition refines a broader provision in an earlier federal statute, the Developmental Disabilities Act, 42 U.S.C. Paragraph 6001 *et seq.* (1976), which listed a number of different conditions that limited an individual's ability to function normally in society. Besides mental retardation, those conditions (which must have manifested themselves prior to age 18) included cerebral palsy, epilepsy, autism and other neurological conditions, and dyslexia. Some state legislation has substantially broadened the definition of the developmentally disabled population by adding other characteristics. It should also be noted that the limiting conditions in the most recent Developmental Disabilities Act are most closely associated with mental retardation. For all purposes, "mental retardation" can be used almost interchangeably with the statutory definition of developmental disability and will be so used in this report.

TABLE 1. NATIONAL SUMMARY DATA BY TYPE OF FACILITY, 1982

Type of Facility*	Facilities		Retarded Residents	
	N	Percentage	N	Percentage
Foster homes	6,587	42.1	17,147	7.0
Group residences:				
1 to 5 residents	2,448	15.7	8,456	3.5
6 to 15 residents	4,117	26.3	34,646	14.2
16 to 63 residents	655	4.2	19,814	8.1
64+ residents	449	2.9	142,420	58.4
Semi-independent living	306	2.0	2,870	1.2
Boarding homes	185	1.2	1,264	0.5
Personal care homes	583	3.7	4,070	1.7
Nursing homes	303	1.9	12,982	5.3

*Note: 100 percent of facilities responding.

Source: Florence Hauber et al., "National Census of Residential Facilities: A 1982 Profile of Facilities and Residents," *American Journal of Mental Deficiency* 89, No.3 (1984): 236.

Chapter 2. A Review of Recent Literature

This chapter examines some of the research literature about characteristics of CRFs and their placement in residential neighborhoods. The literature provides a useful starting point for considering how zoning provisions may be modified to encourage the siting of CRFs in appropriate residential districts.

COMMUNITY RESIDENTIAL FACILITIES AND THEIR RESIDENTS

Much of the recent research on community placement of persons with developmental disabilities into CRFs has been shaped by responses to the theory of "normalization" that now guides most programs to deinstitutionalize mentally retarded people. This is a complex area, and research has been somewhat contradictory in its findings.

Advocates of normalization maintain that developmentally disabled people are best able to achieve their potential as functioning members of society, to the extent of their limitations, by residing in environments providing maximum social contact and interaction; such settings should offer the normal conditions of everyday life. Associated with normalization theory is "habitation"—the provision of supportive services to enhance self-sufficiency and individual growth. Normalization theory assumes that the limitations of all retarded people can be modified regardless of their degree of impairment.⁷

Over the last 10 years, considerable research has examined whether normalization can be supported by data. Researchers have compared various types of CRFs to public institutional settings to see if community-based living arrangements have fulfilled their conceptual premises. Some of the literature raises issues about the off-site

impacts of such facilities and the type and nature of the interaction that CRF residents have with the surrounding community. These findings are summarized below.

Facility Size

The appropriate size of CRFs is an important consideration to planners concerned about regulating the location of group homes and other residential facilities for developmentally disabled persons in residential neighborhoods. Normalization assumes that the best facilities are those that offer the greatest opportunity for the mentally retarded resident to live a normal life; since small CRFs are more closely integrated into normal society than large public institutions, this type of housing should encourage interaction with and integration into the larger society.

The research literature over the past decade or so has debated this premise. About all that can be concluded from the literature is that small CRFs offer greater opportunities for meeting individual residents' needs than large public institutions and that the CRFs have a more "home-like" environment than the public facilities. Generally, CRFs have been found to encourage more resident autonomy and activities than large public institutions, a finding consistent with normalization theory.

An important recent study of individuals who moved from the Pennhurst School and State Hospital in Pennsylvania to CRFs shows that the adaptive behavior of developmentally disabled persons improved significantly and continued to improve within the community setting.⁸ The research indicates that individuals placed in the community were doing things more independently. The Pennhurst study compared the behavior of developmentally disabled persons during a two-year period within the institution with their behavior during a three-year period in CRFs. Only after the third year of data collection did the

7. Robert Bruininks et al., "Recent Growth and Status of Community Residential Alternatives," in *Deinstitutionalization and Community Adjustment of Mentally Retarded People*, Monograph No. 4, ed. R. Bruininks (Washington, D.C.: American Association on Mental Deficiency, 1981); Nirje, "A Scandinavian Visitor Looks at United States Institutions," in *Changing Patterns in Residential Services for the Mentally Retarded*, eds. R. Kugel and W. Wolfensberger (Washington, D.C.: President's Commission on Mental Retardation, 1969).

8. J. W. Conroy and V. J. Bradley, *The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis* (Philadelphia, Pa.: Temple University Developmental Disabilities Center, Human Services Research Institute, 1985), 105.



Baltimore Association of Retarded Citizens

a.-

In small group homes, staff members can give residents more individual attention than is possible in large institutions, and residents can enjoy a homelike atmosphere.

researchers find that the rapid rates of behavioral progress leveled off.

Other research literature indicates that considerations related to home size are much more complex and confusing than might be expected. A literature review by Sharon Landesman-Dwyer concluded that, "within a given type of residential setting, size per se is not related to quality of care." The author noted that:

[T]he findings are provocative insofar as they challenge the notion that all retarded people should or would prefer to live in very small homes or apartments. The matter of size should be related to client's age, past experiences, ability level, and current life situation. Courts and states are deciding prematurely that facilities that serve more than three people, or six people, or 10 people, etc., cannot provide habilitating and normalizing experiences. There simply are not enough data available to support these major policy decisions.⁹

This conclusion has special implications for local zoning restrictions of group home sitings. State legislation consistently has preempted restrictions to the siting of small residential facilities, generally those housing fewer than six or eight residents (although the long-term trend is toward small homes for four individuals and foster homes for one or two individuals). The concerns expressed by Landesman-Dwyer also appear in other research findings

related to facility size. For example, one study based on field observations found that small group homes (with 10 or fewer residents) often restrict resident interaction in the community and discourage residents from maintaining contacts with friends or acquaintances or inviting them to visit the facility.¹⁰ A second study examining the relationship between CRF size and the quality of residential care also found that institutional size, per se, is relatively unimportant as a factor, although CRFs with fewer than 20 residents were more "normalized" than homes serving more than 20 residents.¹¹ The author of this study also noted that small facilities may isolate residents from community life through the overprotective practices of supervisory staff.

Besides regulatory preferences for CRFs whose size and intensity of use mirror that of conventional households (regardless of how well they promote normalization), economic considerations may also affect the size of CRFs established in residential neighborhoods. The relationship between costs and facility size are still unclear. The funding programs of the states and the federal government may have some effect on determining the types of CRFs that

10. Sylvia Bercovici, "Qualitative Methods and Cultural Perspectives in the Study of Deinstitutionalization," in *Deinstitutionalization and Community Adjustment of Mentally Retarded People*, Monograph 4, ed. R. Bruininks (Washington, D.C.: American Association on Mental Deficiency, 1981).

11. George Baroff, "On 'Size' and the Quality of Residential Care: A Second Look," *Mental Retardation* 18, No. 3 (1980): 113-17.

9. Sharon Landesman-Dwyer, "Living in the Community," *American Journal of Mental Deficiency* 86, No. 3 (1981): 225.

are established. An unpublished 1980 report for the Health Care Financing Administration of the U.S. Department of Health and Human Services concluded:

Data on cost as it relates to size of facilities is generally not yet available. Size of a facility does have an impact on the dollars necessary to run the establishment. For example, in Colorado, group homes are no smaller than eight persons because, at current charge rates from the state rate-setting commission, revenues generated by eight clients are sufficient to maintain a fiscally sound operation. Fewer than eight residents for a prolonged period of time draws revenues below the break-even point. This raises issues of occupancy rates, waiting lists, and jeopardized fiscal solvency that must be considered in the administration of community residences. In some facilities, economies of scale can be achieved by squeezing more clients in, not an uncommon occurrence in those states where licensing of small group homes has not yet happened.¹²

These observations are significant because they seem to run counter to conventional wisdom that favors only the establishment of small facilities by right through preemptive state legislation and local zoning provisions. Ironically, in some cases, the CRFs that are being encouraged may be those that are the least economically viable under current reimbursement systems. These cost considerations suggest that a range of different sized CRFs and different types of housing opportunities should be considered by local zoning officials.

CRF Residents

Researchers commonly use the results of intelligent quotient (IQ) tests as a means of classifying persons with developmental disabilities. For zoning purposes, these results

are probably not useful as indicators of CRF resident characteristics and offer little guidance to planners in developing appropriate zoning guidelines for CRFs. What is probably more significant is the behavior and integrative skills of CRF residents, regardless of their abilities as measured by standardized IQ tests.

IQ classifications and behavioral characteristics may be important factors in determining who is admitted to which type of CRF after deinstitutionalization. A study by the American Association on Mental Deficiency identifies a resident's level of functioning, age, ability to participate in training programs, sex, and employment potential as the principal factors considered for placement eligibility.¹³ The 1982 census of facilities and residents also examined the adaptive behavior of CRF residents as part of its survey.¹⁴ The census results are summarized in Table 2.

These findings indicate that large facilities still bear most of the burden for caring for developmentally disabled persons with significant behavioral limitations. But these resident characteristics need not limit the extent of community interaction between CRF residents and the surrounding community or hamper efforts toward normalization. For example, researchers noted that previously institutionalized mentally retarded persons showed an increase in community awareness and access skills after one year in a CRF.¹⁵ Another study of 338 residents found that between 70 and 90 percent used community resources, such as restaurants, movies, churches, and barbershops, and that severely or profoundly retarded residents were just as likely to use these resources as the

13. O'Connor, *Home Is a Good Place*.

14. Hauber, "National Census," 236.

15. R. L. Schalock and R. S. Harper, "Independent Living and the Disabled: A Systematic Approach to Independent Living Training," in *Frontiers of Knowledge in Mental Retardation*, vol. 1, ed. Peter Mittler (Baltimore, Md.: University Park Press, 1981).

TABLE 2. BEHAVIORAL CHARACTERISTICS OF DEVELOPMENTALLY DISABLED PERSONS BY TYPE OF FACILITY, 1982 (PERCENT OF ALL FACILITY RESIDENTS)

Behavior	Type of Facility									U.S. total
	Foster home	Group residence (1-5)	Group residence (6-15)	Group residence (16-63)	Group residence (64+)	Semi-independent living	Boarding homes	Personal care homes	Nursing homes	
Cannot walk without assistance ^a	9.3%	7.5%	4.8%	13.5%	23.9%	3.6%	2.7%	5.4%	4.8%	18.9%
Cannot dress without assistance ^b	29.9	18.9	14.9	25.7	50.3	2.3	9.7	19.0	67.7	39.1
Cannot eat without assistance ^c	11.9	7.3	5.7	15.0	32.3	.5	3.5	6.6	50.3	23.8
Cannot understand the spoken word ^d	10.4	6.6	4.3	9.8	23.0	1.5	2.1	6.8	36.2	16.9
Cannot communicate verbally ^e	24.9	21.3	16.2	22.7	45.4	3.7	4.8	16.1	54.0	35.4
Are not toilet trained ^f	13.1	9.1	6.0	15.1	34.6	.1	3.9	6.5	49.0	25.3

^a 87.7% facilities reporting, representing 84.5% of all residents.

^b 87.5% facilities reporting, representing 82.8% of all residents.

^c 87.5% facilities reporting, representing 82.5% of all residents.

^d 87.4% facilities reporting, representing 78.5% of all residents.

^e 87.6% facilities reporting, representing 83.9% of all residents.

^f 87.5% facilities reporting, representing 83.2% of all residents.

Source: Florence Hauber et al., "National Census of Residential Facilities: A 1982 Profile of Facilities and Residents," *American Journal of Mental Deficiency* 89, No. 3 (1984): 237.

mildly or moderately retarded.¹⁶

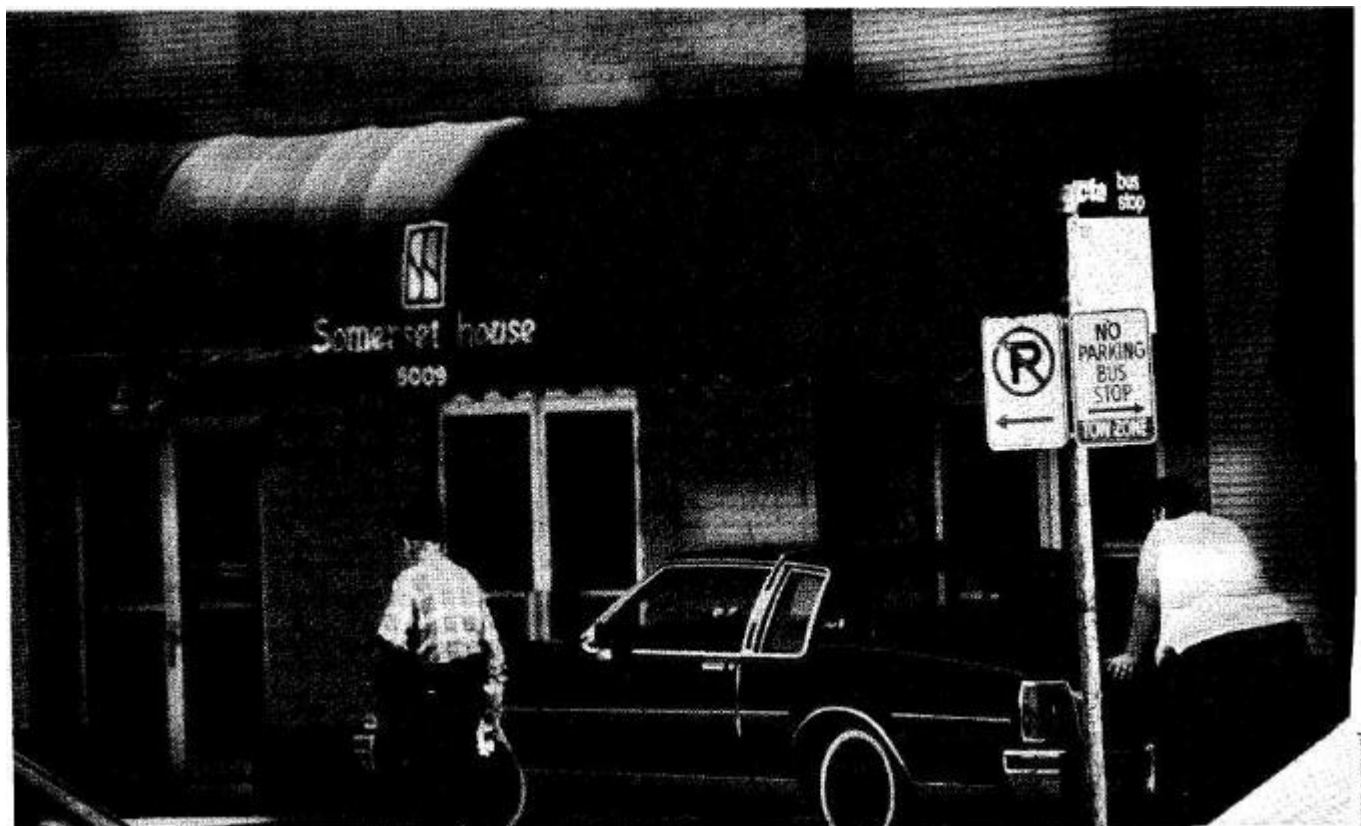
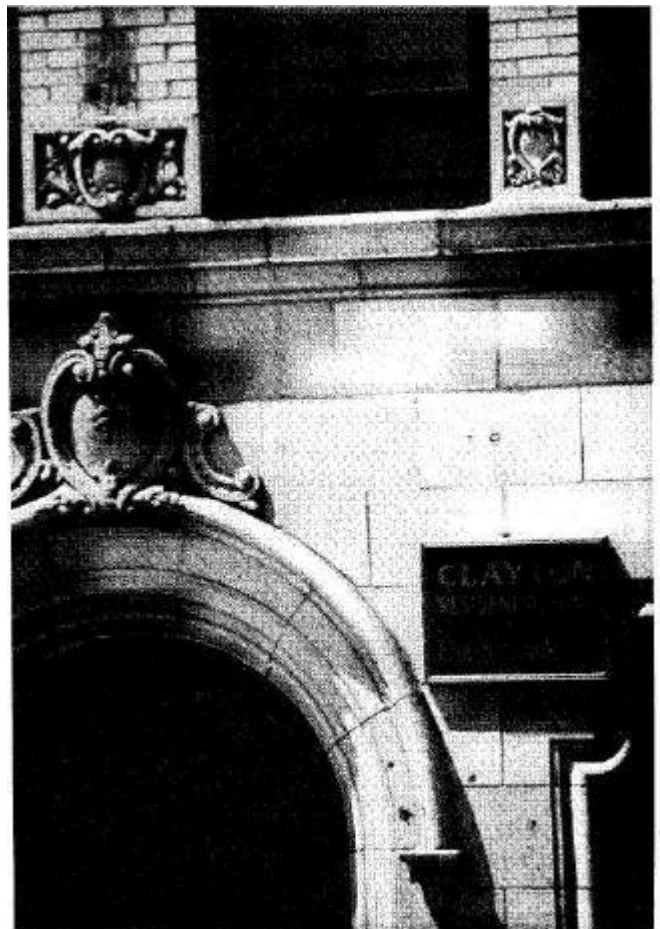
Much research literature was developed in the 1970s to support the theory of normalization and the process of deinstitutionalization as a means of achieving the objectives of personal development and community integration of developmentally disabled persons. These studies show that most CRF residents, no matter what size the facility, are better integrated into the community than residents of large public institutions, and they have more opportunities to show autonomy and personal responsibility than institutional residents. Research by Gollay and her associates indicated that 89 percent of the CRF residents had day placements and that almost all worked in the community (with 25 percent in competitive jobs and 75 percent in sheltered workshops).¹⁷ Other studies have shown that community placement contributed to growth in adaptive behavior by CRF residents.¹⁸ One study found that

16. Barry Wilier and James Intagliata, "Comparison of Family-Care and Group Homes as Alternatives to Institutions," *American Journal of Mental Deficiency* 86, No. 6 (1982): 588-95.

17. Elinor Gollay et al., *Coming Back: The Community Experiences of Deinstitutionalized Mentally Retarded People* (Cambridge, Mass.: Abt Books, 1978).

18. Richard Eyman et al., "Relationship Between Community Environments and Resident Changes in Adaptive Behavior: A Path Model," *American Journal of Mental Deficiency* 83, No. 4 (1979): 330-38.

In Chicago, large community residential facilities often locate in rehabilitated hotels, apartment buildings, and nursing homes.



30 percent of a sample of group home residents could manage their own leisure-time activities and transportation, either independently or with supervision, even though profoundly retarded individuals comprised 39 percent of that group.¹⁹ The factors that affect the success of community placement are still being debated within the developmental disabilities field. The research does show, however, that behavioral characteristics and the level of functioning of the CRF resident population clearly influence, but do not determine, a mentally retarded individual's ability to live within the community.

CRF CHARACTERISTICS AND LOCATIONS

Regardless of the number and type of residents living in a CRF, certain factors are important in a sponsor's decision to locate a facility within a specific area. The 1983 survey of group home sponsors by the U.S. General Accounting Office found that the single, most important siting factor was a safe neighborhood. Next in importance were neighborhood stability (with an annual resident turnover of 15 percent or less) and a high percentage of single-family residences within the neighborhood (to facilitate normalization processes).²⁰ Other important factors are proximity to public transportation, community support services, recreation, shopping, and other public amenities.

In a 1980 survey of 368 community residences in the state of New York, Janicki and Zigman found that approximately two-thirds of these residences occupied single-family dwellings; 21.7 percent occupied either two-family dwellings, duplexes, or apartments; and 15.3 percent occupied other types of buildings, such as converted convents and domiciliary care facilities.²¹ They also noted that 57.2 percent of the dwellings used as community residences were single-family homes built before 1940 (virtually identical to their representation—57 percent—in the state's housing stock). According to the New York survey, community residences "were mostly homes consisting of eight or more rooms, with four to six bedrooms, two or more bathrooms, a dining room, a living room, and a recreation room."²² Although the average community residence was relatively large (statewide, private single-family homes had a median of 5.2 rooms), the authors concluded that "the fact that two-thirds of the residences occupied dwellings that were previously single-family homes indicates that, relative to the neighborhood, the residences would be considered a typical size."²³

The Janicki and Zigman survey also found that the majority of the residences were located within urban areas

19. Christian Poliuka et al., "Selected Characteristics, Services, and Movement of Group Home Residents," *Mental Retardation* 17, No. 5 (1979): 227-30.

20. U.S. General Accounting Office, *An Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* (Washington, D.C.: U.S. GAO, 1983).

21. Matthew P. Janicki and Warren B. Zigman, "Physical and Environmental Design Characteristics of Community Residences," *Mental Retardation* 22, No. 6 (1984): 294-301.

22. Ibid.

23. Ibid.

close to commercial and recreational resources and health and emergency services. Two-thirds were located within a quarter of a mile of both a corner store and a bus stop or subway station. Over half were located within half a mile of a drugstore, pharmacy, or supermarket, and over half were located within one mile of a public park or fire station. The distance to hospitals was somewhat greater—over one-half were located within two miles of hospitals and other emergency medical services. The majority of the survey respondents (50.1 percent) indicated that their residences were located in what they termed middle-class areas; 42.5 percent were located in working-class areas; and 7.3 percent were located in upper-class areas.

These findings do not hold true for all facilities, however. Bercovici's 1981 study of deinstitutionalization in Los Angeles found that many board and care home residents had little contact with their community because they were isolated in poor neighborhoods with high crime rates. The homes were also isolated from stores and other neighborhood services.²⁴ Moreover, many of the mentally disabled residents were a racial minority in the immediate neighborhood, further stigmatizing them and opening them up to victimization. Bercovici attributes these site constraints to exclusionary zoning practices in the Los Angeles area that forced the facilities to locate in economically depressed neighborhoods.

On the other hand, according to a 1979 study of 53 retarded adults over a four-year period by Birenbaum and Re:

The period of personal exploration and the acquisition of new experiences that initially accompanied resettlement had given way to a prosaic routine of sleep, work, and at-home recreation of a passive nature; weekends were often reserved for visiting family or receiving visits. This picture of living is not too different from that of those who are not retarded but are marginally employed or mostly unemployed. The discretionary income available for people on public assistance limits outings or the appropriate apparel for enjoying public places in a respectable manner.²⁵

The concentration of CRFs in poorer, often less politically organized neighborhoods is one legacy of a decade of zoning practices that excluded CRFs from a range of different single-family and other residential settings. Presumably, the concentration of such facilities in certain geographic areas has the potential for undercutting normalization by no longer making the neighborhood a normal living environment. No evidence has appeared, however, to indicate what constitutes a "tipping point" at which the underlying character of the neighborhood is changed from a residential setting to a quasi-institutional one. The U.S. General Accounting Office's survey of group home sponsors and local officials found that, in 1983, over one-third of the group homes surveyed were located within two blocks of another CRF.

Yet, concentration of CRFs in certain economically depressed neighborhoods may not undercut habilitation

24. Bercovici, "Qualitative Methods and Cultural Perspectives."

25. Arnold Birenbaum and Mary Ann Re, "Resettling Mentally Retarded Adults in the Community—Almost Four Years Later," *American Journal of Mental Deficiency* 83, No. 4 (1979): 329.

efforts. One study found that these same neighborhoods might be good places to locate CRFs since they often offer affordable housing opportunities for sponsors, suitable employment opportunities for residents, and good access to transportation and recreational facilities.²⁶ This study, however, also noted that high crime rates posed a significant cloud in this otherwise sunny picture (a problem earlier identified as significant by CRF sponsors surveyed by the U.S. General Accounting Office and by Bercovici). The barriers posed by high crime areas to the normalization of mentally retarded CRF residents can hardly be discounted. The longitudinal study on community interaction of residents of a CRF by Birenbaum and Re in 1979 concluded that "community location and easy access to

transportation cannot, by themselves, produce greater participation in the community beyond the world of work. One can argue that deinstitutionalized mentally retarded adults are simply becoming like everyone else and have acquired attitudes towards travel that are appropriate for a 'dangerous community.'²⁷ The study authors also noted that "these travel patterns are often shared by other, nonretarded, city dwellers who feel vulnerable or are overly influenced by the mass media."

26. Jeffrey L. Davidson, "Balancing Required Resources and Opposition in Community-Based Treatment Center Neighborhoods," *Social Service Review* 56, No. 1 (1982): 55-71.

27. Birenbaum and Re, "Resettling Mentally Retarded Adults," 329.

Chapter 3. State and Local Policies

This chapter reviews current state and local laws related to zoning for group homes for developmentally disabled persons. It critically examines local zoning practices and features several examples of zoning ordinances adopted by local governments outside of those states with preemption statutes. State preemption statutes are also summarized. The survey of state laws builds on an earlier study, *Disabled Persons and the Law. State Legislative Issues*, by the American Bar Association (ABA). The ABA's 1978 study found 16 state preemption statutes; the summary here reports on 30 state statutes.

PROBLEMS WITH LOCAL ZONING POLICIES

Local planners and planning commissions must decide whether they want to be part of the problem or the solution when it comes to housing persons with developmental disabilities. Based on an APA survey conducted in November 1985, the attitudes and policies of local planning and zoning officials are still in a state of transition. In jurisdictions where state laws have required local governments to remove zoning barriers, local planners report that community acceptance of group homes has increased, and few, if any, problems occur. According to the APA survey, local planners believe that a uniform and overriding state zoning policy is the simplest method for overcoming restrictions to group home siting based on the prejudices of neighborhood and community residents.

Outside of those states that have preempted zoning controls for small group homes, the changes in local policies have not been significant. The vestiges of discriminatory and exclusionary practices still exist. Some antiquated zoning laws only make reference to housing for developmentally disabled persons in connection with "institutions" or "hospitals for imbeciles or the feebleminded." In other jurisdictions, local planners report that local politics rather than zoning policies determine the location of homes; in some cases, aldermen or city council members have special veto authority over the location of group homes. According to one survey respondent in a small Colorado town, an unwritten rule limits the number of

group homes to no more than one per council district. Many planners reported that neighborhood opposition was still a persuasive force in local zoning hearings. Planners reported that the sheer number of opponents rather than reasoned arguments can convince local planning commissions or city councils to deny necessary permits for group homes.

Planners have strong opinions about the need to liberalize zoning policies for group homes. Many planners in our survey reiterated the Supreme Court's warning in *City of Cleburne (Texas) vs. Cleburne Living Center*, 105 S. Ct 3249 (1985)—neighborhood prejudice cannot be the basis of local zoning decisions. In that case, the Court struck down the city's requirement that homes for retarded persons obtain special permission to locate in a residential zoning district. The city had allowed other similar residential uses (i.e., uses of the same density) by right in the district. Planners we surveyed agreed with the Supreme Court's conclusion that homes for developmentally disabled persons should be treated the same as other similar residential uses. (A discussion of the *Cleburne* case appears in Chapter 4.)

Some planners responding to our survey openly attacked exclusionary zoning restrictions for group homes. Leslie Halterman, planning director of Glenwood Springs, Colorado, said that many zoning ordinances are based on unreasonable prejudices and discrimination, and she sarcastically asked whether we need special housing regulations for "geniuses, Catholics, homosexuals, blacks, or Russians." Stephen Aradas, planning director of McHenry County, Illinois, remarked that developmentally disabled persons "already have all the obstacles they can handle without a community's zoning ordinance adding more." Several other planners commented that the best policy for small group homes would advocate open housing and equal zoning treatment with similar residential uses.

LOCAL REGULATORY ISSUES

Most of the more than 325 planners responding to APA's survey indicated that limiting the size of group homes was

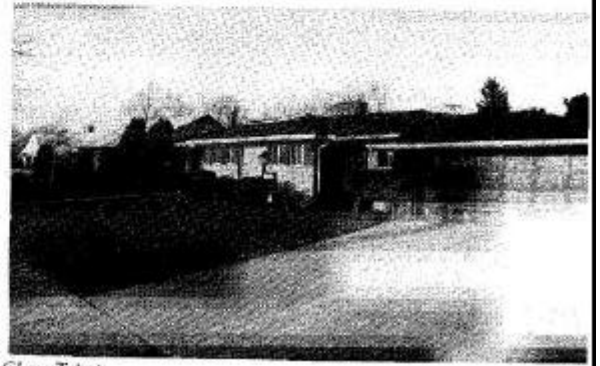


Glenn Triest



Steve Shay

These suburban group homes are indistinguishable from other houses in the same neighborhood.



Glenn Triest

the most important local consideration. Many of the survey respondents also indicated the need for dispersion requirements that specify separation distances between group homes for all types of service-dependent populations. Some planners indicated that it was also important for small group homes to maintain the appearance of a single-family home and that home operators should not alter a structure, thereby making it out of character with surrounding homes. Other planners cited the need for clear zoning definitions, tough state licensing requirements, state or local checks of group home operations, and reasonable controls for health and sanitation.

Based on the survey responses, we found that planners believed that the appropriate size of small group homes and the required separation distances between homes were the most controversial regulatory issues.

Appropriate Size of Group Homes

Most planners, especially in states with preemption legislation, believe that group homes of six to eight developmentally disabled persons should be allowed in any residential district. In the 30 states where local zoning discretion has been preempted, planners reported that there were few, if any, problems with small group homes in single-family residential neighborhoods. APA's survey clearly indicates that these planners think the size of group homes permitted as of right by their state law (most frequently eight or fewer residents) is acceptable and appropriate.

In some communities, however, local planners continue

to argue that small group homes for eight residents are more typical of boarding or rooming houses and should therefore be allowed only in two-family or multifamily zoning districts. Some planners contend that, because developmentally disabled people must pay for room and board, these homes should be distinguished from single-family homes. These same communities, however, apply no special regulations to large or extended families residing in single-family homes. In recent years, many of these communities have, in fact, adopted permissive zoning for accessory apartments, "granny flats," and small congregate housing facilities for the elderly in single-family residential districts.

Considerable experience in the 30 states that allow small group homes in single-family neighborhoods indicates that they are fully compatible with their surroundings and that they operate as households. Zoning administrators responding to our survey noted that small group homes typically have common kitchens, living rooms, and other facilities indistinguishable from single-family homes and clearly distinct from apartments and rooming houses.

Separation Requirements

None of the survey responses indicated a justification for requiring a specific separation distance between group homes for developmentally disabled persons—there has been no thorough or conclusive study to support given separation standards. Many communities have no such requirements; some require up to 5,000 feet between homes.

No suburban city or county sent any documentation to indicate that concentration of group homes was a problem. Some of the suburban and small-town planners, as well as planners from medium-size cities, however, believed that even small concentrations of group homes (three or four) could be a serious problem when clustered in several blocks of a single-family residential neighborhood. Regina, Saskatchewan, and Halifax, Nova Scotia—two medium-size cities—found small clusters of group homes in one or two neighborhoods; the cities then adopted separation requirements to prevent further clustering.

Other evidence indicates that concentration of group homes is not a problem. The experience of one small city, Las Vegas, New Mexico, indicates that group homes for developmentally disabled, mentally ill, and physically handicapped persons have been accepted. In Las Vegas (population 14,322), there are 158 housing units for special population groups, including 12 group homes of six or more residents. Local planner Philip Jaramillo reports that mentally retarded and mentally ill persons are well accepted and pose no problems. Jaramillo reports that many city residents had previously worked with the mentally ill persons who currently live in group homes when they were institutionalized in the nearby state facility (which employs about 800 city residents). Jaramillo believes that Las Vegas's experience is different from that of big cities because Las Vegas's neighborhoods do not have the social and economic problems of some inner-city neighborhoods.

Despite the experience of Las Vegas, every large city that responded to our survey—Baltimore, Chicago, Dayton, Miami, Minneapolis, and St. Paul—indicated some evidence of a need for zoning standards that require the dispersal of all types of group homes. This includes group homes for juvenile delinquents, developmentally disabled persons, alcoholics, chemically dependent individuals, mentally ill persons, and other service-dependent groups. Several planners indicated that a few central-city neighborhoods have become large "institutions" because of the concentration of group homes. Planners in Minneapolis reported that, in the early 1970s, certain declining inner-city neighborhoods were simply the path of least resistance for those wanting to open group homes. The Central and Powderhorn planning districts of Minneapolis have 70 group homes (including homes for juvenile delinquents; mentally retarded, mentally ill, and chemically dependent persons; alcoholics; and other service-dependent groups). The Central district includes 1,401 beds for service-dependent individuals; this figure represents more than seven percent of the district's total population, based on a 1984 survey. In planning district 7 of St. Paul, Minnesota, there are 21 group homes with a licensed capacity of 350 residents—most of these homes are located within a three-block area of the West 7th neighborhood. According to a 1979 survey conducted by the Miami Planning Department, two small census tracts (No. 36.02 and 27.01) have group homes with a licensed capacity of 1,037 beds, a figure that represents more than eight percent of the total population of these two tracts.

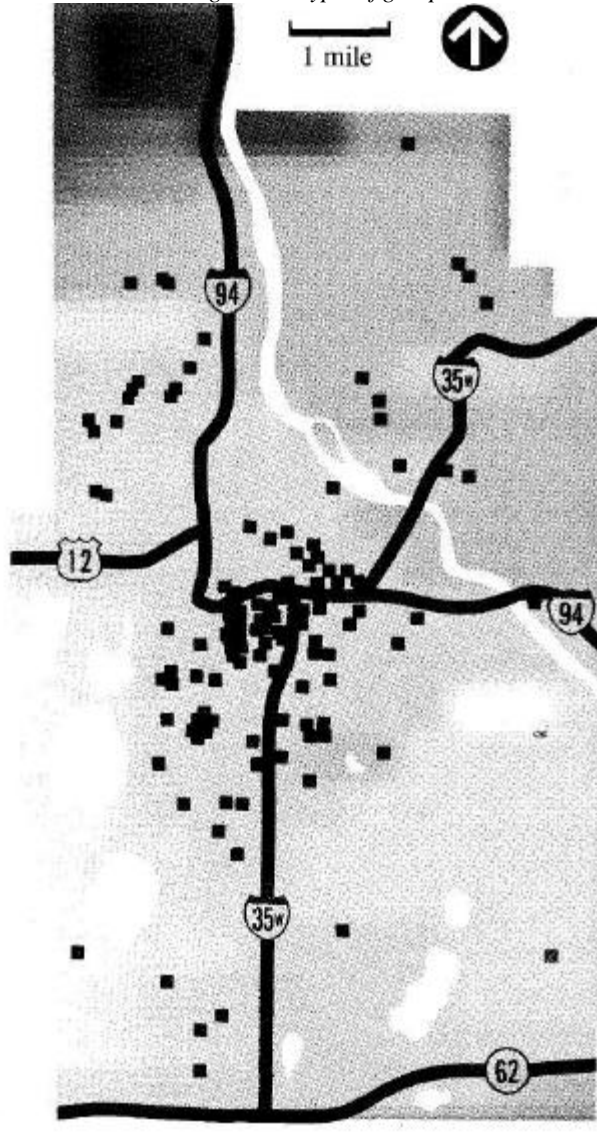
According to big city planners who responded to our survey, economic factors (e.g., the low cost of housing

and the availability of large, underused residences) pushed group homes into certain neighborhoods. But, in addition to market forces, neighborhood resistance also forced group homes into older, declining, inner-city neighborhoods. According to Michael Cronin, previously with the Minneapolis planning department and now in private business, "the developmentally disabled have moved from the back wards of state institutions to the back alleys of tough city neighborhoods." Most of the big-city planners responding to our survey concluded that the concentration of group homes is a major problem and that it runs contrary to the basic objectives of deinstitutionalization. Group home residents in neighborhoods with hundreds of other service-dependent residents cannot benefit from daily interactions with typical community residents. In some extreme situations, planners believe that significant concentrations of group homes can frustrate community redevelopment plans and discourage even small investors from improving properties in neighborhoods that appear dominated by group homes.

Requiring the dispersion of group homes raises difficult questions that remain to be answered. It is APA's belief, however, that the choice of locations for group homes for developmentally disabled persons ultimately should be left up to the operators. It makes little sense for planners to embrace dispersal requirements if they can result in discrimination against the retarded even when these requirements are recommended by care providers. Ostensibly, these measures are promoted to prevent the establishment of group home "ghettoes"—concentrations of facilities in certain locations that may interfere with the process of normalization and integration of the developmentally disabled individual into society. The anticoncentration position is deemed to be beneficial to the interests of developmentally disabled persons, but some harsh policies can result if it is carried to its logical conclusion. The harshness and unacceptability of these measures becomes apparent if one substitutes another group that has been subject to discrimination—blacks—for developmentally disabled persons in these anticoncentration provisions. What emerges is a zoning provision that, in order to prevent the deleterious effects of racial segregation, prohibits any black household from being sited within a specified distance from another black household. Although this measure might achieve racial integration, this is not a policy that comports with the individual liberties that are to be promoted by such regulations. The traditional response to segregation has been the adoption of fair housing ordinances that promote freedom of choice in selecting suitable housing in appropriate neighborhoods, and we believe that the same ideological stance should be taken to address housing discrimination against individuals with developmental disabilities. If group homes are allowed to locate in suitable residential districts by right, a mandatory dispersal requirement will not be necessary.

This position against anticoncentration provisions is controversial—group home sponsors have supported these provisions, and local planners have incorporated them in their ordinances as an act of enlightened public policy. This position, however, is the only one that is consistent with current practices that address housing discrimination

Past discrimination against all types of group homes has



Dennis McClendon

forced them into Minneapolis's older, central city neighborhoods. The city is now trying to disperse new facilities and prevent additional overconcentration.

by encouraging individual liberties and freedom of choice. This may mean that group home sponsors may deliberately choose to site their facilities in neighborhoods that already are saturated with group homes, but the wisdom of such judgments is reserved to the sponsors and the individuals who choose to house developmentally disabled persons in such facilities. It is only when local government decisions are discretionary, as with a special permit requirement, and open to expressions of community prejudice and "neighborhood rights" that anticoncentration provisions appear to be necessary as a response to housing discrimination. Allowing such facilities to locate in appropriate residential neighborhoods by right obviates many of the difficult issues associated with determining the best way to address such discrimination. Some planners have responded to an existing problem

of concentrated group homes with what appears to be the best intentions—by requiring them to be dispersed into neighborhoods in which the group home residents can interact with typical community residents. Nevertheless, there are serious problems with this approach. Operators of group homes may be denied access to housing by these regulations simply because of a home's location relative to other group homes. Furthermore, group home operators may be denied access to certain neighborhoods that have special advantages, such as good public transportation and proximity to shopping or social services. The most serious problem created by dispersion requirements, however, is the potential denial of civil rights to people with developmental disabilities. Dispersion requirements may create a stigma that attaches to group homes, which effectively means that these individuals cannot be accepted as others are.

SELECTED SAMPLE OF LOCAL ZONING REGULATIONS

A growing number of cities and towns outside of those states that have preempted local control are amending their zoning ordinances to allow small group homes for developmentally disabled people by right in any residential district. Many of these jurisdictions are also making it easier to establish intermediate-size homes. The case studies below summarize some of these local ordinances.

McHenry County, Illinois

According to McHenry County planning director Stephen E. Aradas, the county's zoning policies are intended to allow small group homes to blend into the neighborhood in which they are located. He says that "there is no need to call special attention to a group home for the developmentally disabled; the developmentally disabled are a part of our communities and should be treated as such without fuss and noise."

The McHenry County zoning code defines and allows for small group homes as follows:

Residential Alternative for the Developmentally Disabled, One to Six Residents. A community dwelling for no more than six developmentally disabled persons, in which the program's size and content is structured to meet the individual needs of the persons residing therein. This dwelling may also house such minimum staff persons as may be required to meet the standards of federal, state, or local agencies, if applicable.

Residential Alternative for the Developmentally Disabled, Seven or More Residents. A community dwelling for seven or more developmentally disabled persons, in which the program's size and content is structured to meet the needs of the persons residing therein. This dwelling may also house such minimum staff persons as may be required to meet the standards of federal, state, or local agencies, if applicable.

Districts Permitted. Smaller group homes (one to six residents) are permitted by right in all residential districts. The group homes of seven or more residents are permitted by conditional use permit in all residential districts.

Separation Requirement. None.

Conditional Use Standards for Group Homes of Seven or

More Residents. All applications for group homes of seven or more residents are reviewed on the basis of the following standards:

- That adequate utilities, access roads, drainage, and necessary facilities have been provided or are being provided.
- That adequate measures have been or will be taken to provide ingress and egress so designated as to minimize traffic congestion on the public streets.
- That the residential alternative program will be able to obtain and maintain any federal, state, or local licenses and/or certificates of accreditation that may be required by law for the type of program to be operated.
- That the residential alternative program will meet the off-street parking requirement of this ordinance. However, modifications may be allowed as per that section when residents are not able or not permitted to have driving privileges.
- That the residential alternative program residences will conform, to the extent possible, to the type and outward appearance of the residences in the area in which they are located. The provision shall in no way restrict the installation of any ramp or other special features required to serve handicapped residents.
- That, if the residential alternative program will have residents who may require medical consultation, such medical consultation will be made available whenever necessary. This provision shall in no way require constant, in-home, medical care.

Springfield, Illinois

The city of Springfield's zoning code refers to small group homes as "family care facilities" to avoid arguments that small groups of individuals with developmental disabilities living together do not constitute a family. The city adopted the zoning policy early in 1984. According to Susan Poludniak, senior planner, the city has had no problems with group homes in residential neighborhoods. Local planners believe that the city's code works well and does not create the problems associated with special permits and public hearings for small group homes. The Springfield zoning code includes the following definitions and provisions:

Family Care Facility. A facility providing shelter, counseling, and other rehabilitative services in a family-like environment to six or fewer residents and not more than two staff or supervisory personnel, not legally related to the facility operators or supervisors, who, by reason of mental or physical disability, chemical or alcohol dependency, or family or school adjustment problems, require a minimal level of supervision but do not require medical or nursing care or general supervision, and which is licensed and/or approved by the state of Illinois or by a state agency. A family care facility may include uses such as foster homes, halfway houses, community residential alternative facilities, or home individual programs.

Group Care Facility. A facility providing shelter, counseling, and other rehabilitative services in a family-like environment to more than six (6) but fewer than fifteen (15) residents and not more than three (3) staff or supervisory personnel not legally related to the facility operators or supervisors, who, by reason of mental or physical

disability, chemical or alcohol dependency, or family or school adjustment problems, require a minimal level of supervision but do not require medical or nursing care or general supervision, and which is licensed and/or approved by the state of Illinois or by a state agency.

Permitted Districts. Family care facilities are allowed by right in all residential districts and some commercial districts. Group care facilities are allowed by right in the city's R-4 and R-5 general residential district and all of the city's commercial districts.

Separation Requirement. No family care or group care facility may be located within a distance of 600 feet (recommended by state licensing rules), measured in any direction, from any other zoning lot upon which a facility is located. This standard is administered as part of the city's review of applications for state approvals.

Other Requirements. All family care and group care facilities must be licensed or approved by the state of Illinois or by the applicable state agency.

Cincinnati, Ohio

To make it easier to establish small group homes, the city of Cincinnati amended the zoning definition of family to include homes for developmentally disabled persons. The definition now states that a family may include "up to eight persons, other than foster parents and employees, living together in a foster home approved and regulated by the Board of Health of the Ohio Department of Mental Health and Mental Retardation."

Last year, in response to community concerns about the concentration of group homes in a few neighborhoods, the Cincinnati city council established a residential care facilities advisory committee to comment on applications for state licenses. The committee is authorized to comment on the appropriateness of the size of a home, its proposed staffing, and the facility's operational plan, and to contact neighborhood organizations to notify them and review their concerns. The advisory committee was not set up to prevent the opening of new group homes but, instead, to improve community relations between group home operators and neighborhood organizations.

Albemarle County, Virginia

Albemarle County, Virginia, adopted zoning allowing group homes for developmentally disabled individuals in December 1980. The county's zoning allows group homes by right in all residential districts. The number of residents is not limited by the zoning code, but fire and public health codes limit the number of permitted residents based on the size and type of facilities in the home. Joan Davenport, senior planner in the county, believes that "perhaps the least regulation is the best answer."

The Albemarle County zoning code includes the following definitions and provisions:

Home for Developmentally Disabled Persons. A building or group of buildings containing one (1) or more dwelling units designed and/or used for housing mentally retarded or otherwise developmentally disabled persons not related by blood or marriage.

Permitted Districts. Permitted by right in all residential districts. A special use permit is required for any home in the

county's rural district as required by the community's agricultural lands preservation plan.

Separation Requirements. None.

Other Requirements. The county fire code requirements govern the permitted occupancy of a home.

Richland, Washington

Richland, Washington, allows small group homes based on the zoning administrator's interpretation of the city's definition of family. The ordinance defines family as "one or more persons occupying a premise and living as a single nonprofit housekeeping unit." City staff have approved several small group homes (six to eight residents), and the city has awarded \$50,000 in Community Development Block Grant Funds for the purchase and rehabilitation of a single-family dwelling to serve as a group home. In issuing building permits for small group homes, city staff only considers whether plans for any expansion or remodeling will be consistent with the residential character of a dwelling. Single-family homes cannot be converted into boarding houses or rooming houses. In reviewing any building or remodeling plan, the zoning administrator does not permit homes to be substantially altered by breaking up the interior spaces into separate apartments.

Bellevue, Washington

Bellevue adopted zoning provisions for group homes in 1983. The code distinguishes among group homes on the basis of the number and type of residents. The city uses seven different classifications, but the code provisions are actually quite succinct. In addition to allowing group homes through the zoning code revisions, the city uses its Community Development Block Grant funds to support the acquisition of group homes.

The Bellevue, Washington, zoning code for group homes includes the following definitions and provisions:

Group Care Homes, Class I. State-licensed foster homes for children (not including nursing homes), homes for handicapped and physically disabled persons, and homes for those with developmental disabilities.

Group Care Homes, Class I, are subclassified as follows:

- A. Group Care Homes, Class I-A—a maximum of eight residents and two resident staff.
- B. Group Care Homes, Class I-B—a maximum of 12 residents and two resident staff.
- C. Group Care Homes, Class I-C—a maximum of 20 residents and four resident staff.

Permitted Districts. Small group homes (eight or fewer residents) for the developmentally disabled are permitted by right in all residential, downtown, and mixed-use districts. Intermediate-size group homes (maximum of 12 residents) for the developmentally disabled are permitted by right in the city's R-10, R-15, R-20, and R-30 urban residential districts, and the central business zoning districts, and by conditional use permits in two low-density office districts. Larger group homes (a maximum of 20 residents) are allowed by conditional use permits in urban residential zoning districts and two low-density office districts and are allowed by right in the several central business districts.

Separation Requirements. One thousand feet in any direc-

tion from any other group home (including homes for all service dependent groups) or detoxification center.

Other Requirements. When conditional use permits are required for intermediate or large group homes, the city planning commission must make findings relative to the following considerations:

- Whether the proposal is in accordance with the city's comprehensive plan;
- Whether the proposal will have a materially detrimental effect on the immediate vicinity or the community as a whole;
- Whether the proposal has merit and value to the community as a whole; and
- Whether conditions can mitigate any significant adverse impacts of the proposal.

Tacoma, Washington

Tacoma adopted zoning for group homes in October 1974. The city classifies group homes based on the number and type of residents. According to city planners, Tacoma has had very few problems with group homes for developmentally disabled persons, and, when problems do occur, they can be quickly corrected by contacting the supervisor of the home.

Tacoma's zoning code includes the following definitions and provisions:

Group Care Home, Class I. Any state, federal, or locally approved dwelling or place used as a foster home for children or adults (not including nursing homes) or as a home for the care or rehabilitation of dependent or predelinquent children, the physically handicapped or disabled, or those with developmental disabilities.

Group Care Home, Class II. Any state, federal, or locally approved dwelling or place used as a home for juvenile offenders; a halfway house providing residential care or rehabilitation for adult offenders in lieu of institutional sentencing; a halfway house providing residence for persons leaving correctional and mental institutions; and residential rehabilitation centers for alcohol and drug users. Detoxification shall be expressly prohibited in residential rehabilitation centers.

Permitted Districts. The Class I group care homes for eight or fewer residents are allowed by right in all residential districts. Class I group homes for 10 or fewer residents are allowed by right in the city's R-3 two-family district, and Class I group homes for a maximum of 20 residents are allowed by right in the R-4 multifamily district. Class I group homes for more than 20 residents are allowed by special use permit in the R-4 and R-5 multifamily residential districts. The city's hearings examiner may allow group homes in commercial districts by special permit if the proposal complies with the city's general criteria for special permit uses.

Class II group homes for eight or fewer residents are permitted by right in the city's R-3 two-family district, the planned residential development district, and the city's three multifamily zoning districts. Class II group homes of any size may be permitted by the city's hearing examiner in commercial and other nonresidential districts (with the exception of manufacturing districts) based on the examiner's findings relative to the standards below.

Separation Requirements. None.

Other Requirements. Applications for special permits required for some larger group homes are considered on the basis of the following standards:

1. There shall be a demonstrated need for the special use within the community at large, which shall not be contrary to the public interest.
2. The special use shall be consistent with the goals and policies of the land-use management plan and applicable ordinances of the city of Tacoma.
3. The hearings examiner shall find that the special use shall be located, planned, and developed in such a manner that the special use is not inconsistent with the health, safety, convenience, or general welfare of persons residing or working in the community. The examiner's findings shall be concerned with, but not limited to, the following:
 - a. The generation of noise, noxious or offensive emissions, or other nuisances that may be injurious or to the detriment of a significant portion of the community.
 - b. Availability of public services that may be necessary or desirable for the support of the special use. These may include, but shall not be limited to, availability of utilities, transportation systems, including vehicular, pedestrian, and public transportation systems, and education, police and fire facilities, and social and health services.
 - c. The adequacy of landscaping, screening, yard setbacks, open spaces, or other development characteristics necessary to mitigate the impact of the special use upon neighboring properties.

REVIEW OF STATE LEGISLATION

The placement of persons with developmental disabilities into small group homes in residential neighborhoods has become an issue of statewide concern. State legislatures have decided that local zoning boards often react to proposals for group homes with exclusionary zoning policies and discriminatory administrative decisions. In response, the states have acted to limit local discretion over the establishment of homes. The states have concluded that, if the group homes concept is to succeed, it must do so across an entire state and not be subject to the veto of a local zoning board. Uniform state requirements that supersede the parochial or exclusionary decisions of local authorities will open up desirable neighborhoods to developmentally disabled people and put the operators of group homes on equal footing with other homeowners within a community. If current trends continue, virtually every state will soon have such legislation.

In November 1985, APA surveyed the program directors of 50 state offices that administer programs for mentally retarded and developmentally disabled persons about state zoning laws affecting group homes.²⁸ According to the survey, 30 state legislatures have passed laws clearly preempting local zoning controls. Several other states (e.g., New York) have adopted complicated siting laws, many of which provide time limits and procedures

for opponents challenging a siting decision. These laws are not summarized here because they are inconsistent with the more common state legislation that tries to streamline group home siting by preempting local discretion and control. The preemptive state laws require local governments to grant persons who are developmentally disabled equal access to the benefits of all residential neighborhoods. The state statutes open up the most exclusive residential districts—single-family residential zones—to small group homes for individuals with developmental disabilities. Many of the state statutes also limit or void private restrictions in deeds, land contracts, or leases that would prohibit group homes from residential properties or subdivisions.

Table 3 summarizes the major provisions of state statutes that preempt local zoning controls. The discussion that follows is based on Table 3.

All of the state statutes in Table 3 open up all residential neighborhoods to small group homes, although some limit the concentration of these homes. These state statutes preempt local controls, such as limitations established by zoning definitions of family, restrictions on the use of single-family residences, and classification systems that may distinguish between group homes and other residences. Although the language of the state laws varies, these laws all override or supersede local control of small group homes for developmentally disabled persons.

The statutes passed in Iowa, Maryland, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, North Carolina, Texas, Virginia, West Virginia, and Wisconsin provide that small group homes (from six to 10 residents) are "permitted uses allowed by right in any residential district." This means that the operator of a group home can establish that home as a matter of right, without having to meet any special local conditions or standards. As long as a group home operator meets the requirements of the state law, he or she is not subject to local zoning controls (with the exception of the normal setbacks, parking, and other limitations required of all single-family homes). The Colorado and Montana statutes contain similar language to that described above, but they allow local governments to require conditional use permits for group home operators.

Connecticut, Delaware, Idaho, Indiana, Louisiana, Maine, Mississippi, Nevada, Tennessee, and Vermont require that a group home for individuals with developmental disabilities be treated just like any other single-family residence. The equal treatment, nondiscriminatory language of these state statutes opens up all single-family residential zones, which are typically a community's most exclusive zoning district. The language of these statutes also removes all local discretion in the review or approval of a proposed group home.

Legislation in Arizona, Rhode Island, and South Carolina takes another approach. It states that group home residents "must be considered a family" for the purposes of local zoning controls. Many local zoning ordinances limit the occupancy of single-family homes to nuclear families or a small number of unrelated individuals. By defining the residents of a group home as a family, the statutes of Arizona, Rhode Island, and South Carolina preempt local controls on the number of unrelated individuals sharing

28. This summary of state legislation is also based on a review of Marion Bates, *State Zoning Legislation: A Purview* (Madison, Wis.: Wisconsin Council on Developmental Disabilities, August 1985), and B. Sales et al., eds., *Disabled Persons and the Law: State Legislative Issues* (New York: Plenum Press, 1982).

TABLE 3. STATE PREEMPTION LEGISLATION ALLOWING GROUP HOMES FOR THE DEVELOPMENTALLY DISABLED IN SINGLE-FAMILY DISTRICTS

State	Statutory Reference/ Adoption Date	Type of Facility	Number of Residents (Excluding Staff)	Separation Requirements	Effect on Private Deed Restrictions	Other Provisions
Arizona	Arizona Revised Statutes—§36-581/ 1978	Residential facility	6 or fewer	1,200 feet	Preempts any restrictive covenant executed on or after December 1978.	Facilities serving seven or more are a permitted use in apartment districts, although conditional use permits may be required if required of structures of similar occupancy
California	California Health and Safety Code— Welfare and Institutions Code—§§1566 and 5115/1978	Residential facility	6 or fewer	300 feet unless waived locally	Preempts any restrictive covenant executed on or after January 1979.	—
Colorado	Colorado Statutes, Annotated— §§30-28-115 and 31-23-301		8 or fewer	None	—	Conditional use permits may be required unless such regulations would be tantamount to a prohibition of such homes.
Connecticut	Connecticut Statutes, Annotated Title 8, §3e./1979	Community residences	6 or fewer	1,000 feet unless waived locally.	—	Neighbors can petition state agency to revoke a license if the residence violates state laws or regulations.
Delaware	Delaware Code— Title 9, Ch. 26, 49, 68 and Title 22, Ch. 3/1980.	Residential facility	10 or fewer	5,000 feet	—	—
Hawaii	Hawaiian Revised Statutes; Public Act 272 of 1985	Adult residential care homes	5 or fewer	None	—	—
Idaho	Idaho Code— §67-6531/1979	Residential facility	8 or fewer	None	—	—
Indiana	Indiana Code—Ch. 16, §10.2.1/1979	Group home	8 or fewer	3,000 feet	Voids any private restriction in any transfer of property that prohibits group homes.	Does not preempt local regulations based on a plan adopted prior to May 1, 1981; plans must be approved by the state developmental disabilities residential facilities council.
Iowa	Code of Iowa— Ch. 11, §414.22/ 1983	Family home	8 or fewer	One-quarter mile	Voids any private restriction in any transfer of property that prohibits group homes.	—

Continued on p. 18

TABLE 3. CONTINUED

State	Statutory Reference/ Adoption Date	Type of Facility	Number of Residents (Excluding Staff)	Separation Requirements	Effect on Private Deed Restrictions	Other Provisions
Louisiana	Louisiana Revised Statutes—Ch. 28, §380/1983	Community home	6 or fewer	1,000 feet	—	—
Maryland	Maryland Annotated Code—Article 7-416b	Public or private group home	4 to 8	None	—	Cannot be subject to special permit procedures that differ from those required of single-family homes of similar density.
Michigan	Michigan Compiled Laws—§§125.583b, 125.286a and 125.216a/1976	State-licensed residential facility	6 or fewer	1,500 feet, except in Detroit, where it is 3,000 feet.	—	—
Minnesota	Minnesota Statutes, Annotated—§§462.357 and 245.812/1976	State-licensed residential facility	6 or fewer	1,320 feet and counties where residential facilities are concentrated must develop dispersal plans by January 1, 1985.	—	Residential facilities serving 7-16 persons shall be considered a permitted multifamily use. Special permits may be required to ensure proper maintenance and operation of these facilities.
Missouri	Revised Statutes of Missouri—§89.020/1985	Group home	8 or fewer	Local zoning boards may adopt reasonable dispersal standards	Preempts any restrictive covenant executed on or after September 1985.	Does not preempt zoning in unincorporated areas. Communities can control the exterior appearance of group homes.
Montana	Montana Code, Annotated—§76-2-401/1973	Community residential facility	8 or fewer	None	—	Conditional use permits may be required in order to maintain a home.
Nebraska	Nebraska Statutes—§18-1744/1980	Group home	4 to 8	1,200 feet, except in Omaha, where the standard is one-half mile.	—	Density standards apply that match the number of homes to city's or town's population.
Nevada	Nevada Revised Statute—§278.021/1983	Group home	6 or fewer	None	—	Towns may adopt zoning for commercially operated homes.
New Jersey	New Jersey Statutes—Ch. 159, §40.55D-66.1/1978	Community residences	6 or fewer	—	—	The total number of developmentally disabled persons limited to 50 or .5 percent of the municipal population, whichever is greater.
New Mexico	New Mexico House Bill 472/1977	Community residences	10 or fewer	None	—	Permissive, not mandatory.

North Carolina	General Statutes of North Carolina—§168-20/1981	Family care homes	6 or fewer	Local government may require one-half mile	Voids any private restriction in any property transfer that would prohibit a family care home.	—
North Dakota	North Dakota Century Code—Ch. 25, §16-14/1983	Group home	6 or fewer	None	—	Homes for eight or less must be a permitted use in residential districts other than single-family zones.
Ohio	Ohio Senate Bill No. 70	Family home	8 or fewer	None	—	The Ohio Supreme Court has ruled that state law cannot preempt local zoning authority.
Oregon	Oregon Revised Statute—§443.510/1983.	Residential home	5 or fewer	None	—	Cities and counties must adapt uniform zoning standards for residential facilities for 11 or fewer handicapped persons.
Rhode Island	Rhode Island General Law—§45-24-22/1977	Community residence	8 or fewer	None	Voids any restrictive covenant that prohibits community residences.	—
South Carolina	South Carolina Code—§6-7-830/1978	Group home	9 or fewer	Not permitted where state agency finds overconcentration.	—	Communities may object to a proposed site, propose a comparable site or structure and submit to binding arbitration by a locally established board.
Tennessee	Tennessee Code, Annotated—Title 13, Ch. 24, §101/1978	Group home	8 or fewer	None	—	Does not preempt local zoning of commercially operated versus nonprofit homes.
Texas	Vernon's Texas Annotated Civil Statutes—Article 1011N §/1985	Family home	6 or fewer	One-half mile	Preempts any private restrictions on any transfer of property on or after September 1, 1985.	—
Vermont	Vermont Statutes Annotated Ch. 24 §4409(d)	Community care or group home	6 or fewer	1,000 feet	—	—
West Virginia	West Virginia Statutes Ch. 27, Article 17, Sec. 2	Group residential facility	8 or fewer	No more than one per block face or within 1,200 feet	—	No local government may require a facility operator to apply for a special permit, special exception, or variance.
Wisconsin	Wisconsin Statutes—§46.03/1981	Community living arrangement	8 or fewer	2,500 feet	Voids any restrictive covenant that prohibits community living arrangements.	The total number of developmentally disabled persons is limited to 25 individuals or one percent of the municipal population whichever is greater. CLAs for 9 to 15 persons are permitted in any multifamily zone.

a household. By defining group home residents as families, these statutes also open up single-family residential neighborhoods to the operators of group homes.

Although the South Carolina statute declares that residents of small community homes are to be considered "natural families," the law does allow the local government to retain some authority over the location of group homes. Under the South Carolina statute, local jurisdictions may oppose a proposed location for a group home and propose an alternative site. If the community and proposed group home operator cannot agree on a site, a local siting board must be established to arbitrate the dispute. The local board must consist of one member selected by the group home operator, another by the local government, and another mutually agreed upon. The local board must come to a compromise solution within 90 days or the originally proposed site is automatically approved.

Group Home Size

As Table 3 indicates, just over half of the state preemption laws limit the number of residents of group homes in single-family residential neighborhoods to eight or fewer persons; nearly as common is a limit of six or fewer residents. The limit in Delaware and New Mexico is 10 residents and, in South Carolina, nine. All of the state statutes allow two additional residents who serve as staff, and some statutes make provision for other support staff. State legislative officials suggest that the limitation of six to eight residents appears to have been based on consideration of the appropriate staff-to-resident ratios, economic considerations related to operating a group home, and the greater political acceptability of small group homes in single-family neighborhoods.

Dispersion or Density Standards

The dispersion standards of the state statutes shown in Table 3 vary widely. These requirements are written so that they apply irrespective of the zoning district and as absolute minimum distances between group homes. Most of the state laws justify the dispersion requirements as an effort to prevent the overconcentration or cluster-

ing of facilities in one area or neighborhood. It is hard to comprehend, however, why group homes for developmentally disabled persons in Delaware cannot be located within a 5,000-foot radius of one another, while in Vermont, the limitation is only 1,000 feet, and, in Rhode Island, there is no such requirement.

Fifteen of these 30 states apply specific dispersion standards, and the Missouri state statute allows local governments to develop their own "reasonable" standards. Among the 15 state statutes with specific requirements, there are 10 different standards. The requirements range from 300 feet in Minnesota to 5,000 feet in Delaware. Although there is no meaningful average separation distance, seven states have separation standards between 750 and 1,500 feet.

A variation on the dispersion requirement is the application of density limits that prevent the number of group home residents in any one block, community, or neighborhood from reaching a certain level. The West Virginia statute limits group homes to no more than one per block "face"; that is, the two sides of each residential block. In New Jersey the number of group home residents is limited to 50 or one half of one percent of the municipality's population, whichever is greater. In Wisconsin, the limit is 25 persons or one percent of the population, whichever is greater. Minnesota requires metropolitan counties to establish dispersal plans, and the Nebraska state statute includes a complex formula that applies an arbitrary standard relating the number of permitted group homes to a community's population.

Preemption of Private Restrictions

Eight state statutes expressly void any restrictive covenant attached to a deed, land contract, lease, or other form of property transfer. The Indiana, Iowa, North Carolina, Rhode Island, and Wisconsin statutes void all existing covenants as a violation of public policy. The Arizona, California, and Missouri statutes are written to prevent any "future" covenants or deed restrictions. These three statutes are not retroactive, leaving in place restrictive covenants written before the passage of state legislation.

Chapter 4. The Legal Framework

In order to promote housing in the community for persons who are developmentally disabled, advocates have essentially adopted a two-tiered legal approach that can perhaps be understood best in terms of strategy and tactics. As an overriding strategic objective, advocates have attempted to establish explicit legal rights for developmentally disabled individuals for habilitation in the least restrictive settings. The corollary of this strategy, of course, is the elimination of the large public institutions that house individuals who can become integrated into society and replacement of these institutions by community living arrangements.

The tactics used to carry out this strategic objective involve legal action to encourage community placement. Some tactics are affirmative, such as lobbying state and federal officials to adopt new laws that encourage group homes and CRFs by providing increased funding and preempting local ordinances that limit residential facilities. Other measures are defensive, such as the lawsuits that challenge governmental and private restrictions used to impede the siting of CRFs and group homes in optimal neighborhoods. Both tactics will be discussed in this chapter.

STRATEGIC CONSIDERATIONS

Deinstitutionalization and community placement have proceeded along two related avenues. Advocates have attempted to enhance the rights of mentally disabled persons by relying on broadening constitutional guarantees. They have also promoted the adoption of legislation that directly provides these rights. Both strategic measures have met with only limited success in the courts. The court cases indicate that developmental disabilities law has only recently emerged as a special area of civil rights and public interest law.²⁹

The struggle to gain greater rights for developmentally disabled individuals is based on a number of issues, including the right to live in the community and the right to freedom from confinement. In essence, the legal move-

ment has attempted to achieve equal treatment between disabled and nondisabled citizens, to the greatest extent possible. All of these rights are germane to the examination of zoning issues involving CRF siting in residential neighborhoods.³⁰

Legislative Approaches

Considerable success has been achieved through efforts to enact federal and state legislation that gives rights to developmentally disabled individuals. Many of the state laws that require the licensing of CRFs and preempt local zoning restrictions for group homes are the fruits of this effort. Several federal laws that provide funding and access to services needed by developmentally disabled persons have also resulted. However, as discussed below in greater detail, it is unclear whether these laws have given rights to developmentally disabled individuals.

Several federal statutes have gone so far as to promote some of the rights that mental disability advocates have lobbied for. Section 504 of the Rehabilitation Act of 1972, 29 USC Sections 701 *et seq.* (1979 Supp.), provides the right of access (in terms of barrier-free environments) and certain rights to services for the disabled as part of the right to nondiscriminatory treatment in programs that receive federal funds. The federal Education for All Handicapped Children Act, 20 USC Section(s) 1412-14 (1976), gives all handicapped children rights to special education.

With the 1975 passage of the Developmentally Disabled Assistance and Bill of Rights Act, 42 USC Section 6001 *et seq.* (hereinafter DDA), advocates for mentally disabled persons believed that they had a strong vehicle to promote the rights of their clients. This law provides

29. S. Herr, "Rights of Disabled Persons: International Principles and American Experiences," *Columbia Human Rights Law Review* 12 (1980): 1. See also, S. Herr, *Rights and Advocacy for Retarded People* (Lexington, Mass.: D.C. Heath & Co., 1983).

30. Four major aspects of this legal movement were also noted by H. R. Turnbull III, "Rights for Developmentally Disabled Persons: A Perspective for the 80s," *University of Arkansas at Little Rock Law Journal* 4 (1981): 40. They were: (1) rights to services or substantive benefits; (2) rights not to be subject to discrimination; (3) rights gained through entitlement and eligibility legislation; and (4) rights to enforcement. A set of articles appeared in *Stanford Law Review* 31 (1979): 545, and a second in *University of Arkansas at Little Rock Law Journal* 4 (1981): 395-509, both of which are worth reading as background for many of the legal issues associated with community placement of the developmentally disabled beyond mere zoning restrictions.



Out of sight . . .



out of mind!

for a number of programs that give housing, care, training, habilitation, and legal services to developmentally disabled individuals. It also establishes "protection and advocacy" systems to provide for the enforcement and protection of human and legal rights of persons with developmental disabilities and provides for state planning councils for developmentally disabled citizens. However, only limited funds are available under DDA, most of which are used to plan, coordinate, and demonstrate new programmatic initiatives. Most of the \$15 billion currently being expended on state and local DDA programs nationwide are derived from federal entitlement programs (SSI, Social Security, Medicaid, etc.) and state appropriations. An important provision of DDA—the bill of rights section—has provided the greatest opportunities for promoting deinstitutionalization and normalization theory through community placement. This section is a statement

of congressional policies that favor habilitation of developmentally disabled individuals in the least restrictive setting. If these policies provide substantive rights to habilitation in CRFs, group home sponsors may have legislative grounds to challenge local zoning actions that bar their proposed facilities. The potential of DDA to provide substantive rights to developmentally disabled persons has not been met, however, as a result of protracted litigation involving the closure of one state institution, the Pennhurst State School and Hospital in Pennsylvania. Advocates for mentally disabled individuals brought suit to establish the rights of mentally retarded residents of Pennhurst in the mid-1970s and were successful in the lower and appellate federal courts in obtaining a remedial order requiring that the residents of the institution be habilitated in community settings. In 1981, however, the U.S. Supreme Court reversed the lower court action in

its decision, *Pennhurst State School and Hospital v. Halderman* (*Pennhurst I*), 451 U.S. 1 (1981).³¹ In *Pennhurst I*, the Court concluded that DDA was merely a funding statute adopted under congressional spending power and was not intended to provide substantive rights to developmentally disabled people. A state receiving funds under DDA, therefore, was not required to deinstitutionalize developmentally disabled citizens or to provide community-based services and living arrangements to promote habilitation in the least restrictive setting.

After its ruling, the Court remanded the case to see if the remedial order could be supported on grounds other than DDA. The trial court and Third Circuit Court again affirmed their earlier holdings, but under a state law similar to DDA; the case was again appealed to the U.S. Supreme Court. In *Pennhurst State School and Hospital v. Halderman* (*Pennhurst II*), 104 S.Ct. 900 (1984), the Court again reversed the lower courts, but this time on the grounds that the Eleventh Amendment prohibited federal courts from ordering state officials to conform their conduct to state law.³² As a result of these decisions, the U.S. Supreme Court essentially ruled that developmentally disabled individuals receive no substantive rights under DDA and that any rights that may arise under state developmental disabilities statutes cannot be enforced by the federal courts. *Pennhurst I* effectively foreclosed use of DDA as a vehicle for promoting deinstitutionalization as a legally enforceable right, while *Pennhurst II* foreclosed the federal courts from promoting the use of analogous state laws as a means of promoting community placement and habilitation as a substantive right.

Where does this litigation leave the legislative approach as a viable means of promoting rights for developmentally disabled persons? *Pennhurst I* and *II* certainly limit reliance on federal law and the federal courts, but they do not seem to affect rights that may be recognized by state courts in interpreting state laws. In Chapter 3, for example, many of the applicable state siting and licensing statutes were examined in terms of their effect on local zoning restrictions against CRFs and group homes. Many of these laws also contain bill of rights provisions or similar statements of state legislative policy that may be used to promote rights to deinstitutionalization and community placement. State constitutional provisions present yet another avenue for legal recourse. As noted by Boyd:

Each state has some type of statute that supports the constitutional and statutory rights found to have been violated by the operation of *Pennhurst*. Many state statutes establish a state law right to habilitation or treatment. Some speak to a state responsibility or policy to provide habilitation or treatment. Supplementing or complementing the

31. This decision received extensive commentary. See, e.g., Note, "Pennhurst State School and Hospital v. Halderman: Back to the Drawing Board for the Developmentally Disabled," *North Carolina Law Review* 60 (1982): 1,115; Boyd, "The Aftermath of the DD Act: Is There Life After Pennhurst?" *University of Arkansas at Little Rock Law Journal* 4 (1981): 448; and Baker, "Making the Most of Pennhurst's 'Clear State ment Rule,'" *Catholic University Law Review* (1982): 439.

32. The implications of *Pennhurst II* are more fully discussed in Note, "Pennhurst State School and Hospital v. Halderman: Federal Equity Jurisdiction Restricted by Eleventh Amendment Immunity," *Loyola University Law Journal* 16 (1984): 149.

state law right to habilitation, several states specifically require the provision of habilitative services in the least restrictive environment, and some specifically require an individual habilitation plan. Each of these statutes may be considered as an alternative means of securing habilitative services in the community for mentally retarded citizens.³³

The legal battles of the next decade are likely to be fought in smaller skirmishes in the state courts. Whether a consistent body of case law can be fashioned in such an incremental manner is an issue that will be resolved over the next few years. This may be a particularly strong position from which to promote deinstitutionalization, however, because such laws (with the exception of Ohio's) have largely survived legal challenge.³⁴ Unlike the U.S. Supreme Court's position with respect to public policy statements providing substantive rights to individuals with developmental disabilities, some state courts have found public policy to be a persuasive argument in overcoming zoning restrictions to CRFs and group homes. In the mid-1970s, for example, courts in New Jersey and Florida reached such conclusions based on broad state policies and in the absence of specific state CRF-siting legislation preempting local zoning.³⁵

These earlier cases, however, did not really address the interpretation of public policies that are legislatively promoted in state siting laws. An examination of lawsuits challenging preemptive legislation in New York suggests that such litigation is quite prevalent but has been effective only in delaying, not prohibiting, the siting of a CRF in a community where zoning provisions do not provide for these uses in residential zones.³⁶ The focus of most of these challenges, however, seems to be on administrative procedures, especially where state statutes provide for local notification and comment. Similar challenges have occurred in Michigan with similar results—the state laws have survived and have been found to preempt local zoning.³⁷ With the exception of Ohio's statute, such legisla-

33. Boyd, "The Aftermath of the DD Act," p. 465.

34. Such lawsuits have been surveyed in Note, "Group Homes and Deinstitutionalization: The Legislative Response to Exclusionary Zoning," *Vermont Law Review* 6 (1981): 509; Gailey, "Group Homes and Single-Family Zoning," *Zoning and Planning Law Reporter* 4 (1981): 97; and Hopperton, "A State Legislative Strategy for Ending Exclusionary Zoning of Community Homes," *Urban Law Annual* 19 (1980): 47. See, e.g., *Zubli v. Community Mainstreaming Assocs., Inc.*, 102 Misc.2d 230, 423 N.Y.S.2d 982 (1979); *Adams County Ass'n for Retarded Citizens, Inc. v. City of Westminster*, 196 Colo. 79, 580 P.2d 1246 (1978); *Los Angeles v. State Dep't of Health*, 63 Cal.App.3d 473, 133 Cal.Rptr. 771 (1976); *State ex rel. Thelen v. City of Missoula*, 168 Mont. 375, 543 P.2d 173 (1975). Ohio's statute was struck down as violative of municipal police power in *Garcia v. Siffrin Residential Ass'n*, 63 Ohio St.2d 259, 407 N.E. 2d 1369 (1980). This decision is discussed in greater detail in a casenote in *University of Cincinnati Law Review* 50 (1981): 423.

35. See *Berger v. State of New Jersey*, 71 N.W. 2065, 364 A.2d 993 (1976) and *City of Tempe Terrace v. Hillsborough Ass'n for Retarded Citizens, Inc.*, 322 So. 2d 571 Fla. App. (1975), *aff'd* 322 So. 2d 610 (Fla. 1976).

36. See Schonfeld, "Not in My Neighborhood: Legal Challenges to the Establishment of Community Residences for the Developmentally Disabled in New York State," *Fordham Urban Law Journal* 23 (1984-85): 281.

37. As in several lawsuits entitled *City of Livonia v. Dept. of Social Services*, 119 Mich. App. 806, 328 N.W.2d 1 (1982); 123 Mich. App. 1; 333 N.W.2d 1 (1983); *aff'd*, Mich. Sup. Ct. (Docket Nos. 70315, 70316, 71155, and 71377, decided Nov. 21, 1985).

tive policies have proven to be quite persuasive to state court judges, provided the administrative procedures set forth in the statutes are closely followed.

Constitutional Approaches

The strategy of deinstitutionalization and community placement can also be achieved by recourse to state and federal constitutional guarantees of rights. In the 1970s, advocates for mentally disabled persons succeeded in establishing a constitutional "right to treatment" in a number of cases.³⁸ These cases established a threshold right to habilitation, often with language promoting such habilitation in the least restrictive setting, but they did not go so far as to require community placement and habilitation in a CRF of all mentally retarded citizens.

Some of these efforts, however, had proven rather successful in closing large state facilities that were overcrowded and deemed by some federal courts to have violated the residents' constitutional right to liberty and rights guaranteed under the Eighth Amendment. Protracted litigation brought by the New York State Association for Retarded Children (NYSARC) against the Willowbrook facility in New York State, for example, resulted in most of that institution's developmentally disabled residents being placed in CRFs.³⁹ In a consent decree approved by the court, the facility was to house only 250 residents by 1987; the remaining 3,500 or so residents were to be relocated to community-based facilities.⁴⁰ A subsequent decree calls for the complete closure of the Willowbrook institution.

Another constitutional protection that advocates have used to force community acceptance of group homes is the equal protection clause of the Fourteenth Amendment. To better understand this approach, it is useful to know something about the protections offered by this constitutional provision. The equal protection clause states that "no state shall . . . deny to any person within its jurisdiction the equal protection of the laws," a constitutional mandate that essentially requires that all persons similarly situated should be treated alike. The scope and interpretation of this clause, however, is something that has been fashioned by court decisions, on a case-by-case basis. Three judicial tests have been developed as a result of various interpretations of governmental actions that affect different people differently. In most cases, the courts apply only a "rational basis" test in reviewing equal protection challenges to governmental restrictions; in other words, is the legislation creating a classification rationally related to legitimate state interests?

The impartiality of governmental decision making and legislation, however, is given a much closer look when

it has the greatest effect on persons that, as a group, have historically been discriminated against. For example, legislation that distinguishes between groups on the basis of race, age, or national origin is considered to be suspect by the courts, since there rarely are any legitimate governmental objectives to be furthered by singling out these groups for special treatment. Laws that specially impact these "suspect categories" of persons are presumed by the courts to be motivated by prejudice and not by reason, and the courts therefore apply a standard of review known as "strict scrutiny" in such cases. This standard also is applied when legislation affects the exercise of important, judicially recognized, fundamental rights protected by other provisions of the Constitution. Under strict scrutiny review, the burden of proof shifts to the governmental entity to justify the distinctions that are created by its legislation and to prove that the distinction was needed because of a compelling state interest. This is a very difficult burden to meet in most cases, although some U.S. Supreme Court decisions have softened its impact by requiring the showing of discriminatory intent as well as impact.

As a result of cases involving sex discrimination and differential treatment of illegitimate persons, the U.S. Supreme Court has also fashioned an intermediate level of review, called "heightened scrutiny." Recognizing that gender or legitimacy distinctions in legislation often reflect outmoded and prejudicial considerations by state and local legislators, the Court considers such groups to be "quasi-suspect" as a class and gives such laws a much closer look than mere rationality. Gender classifications violate the equal protection clause unless they are "substantially related to a sufficiently important governmental interest," while laws that distinguish on the basis of illegitimacy must be "substantially related to a legitimate state interest." In other words, the legislative classification will only be sustained if the governmental entity shows an important reason for making distinctions on the basis of gender or legitimacy.

Since these various levels of review were developed on a case-by-case basis, the lines between the different levels of judicial review are very often fuzzy. In fact, some justices currently on the Court believe that the distinction is artificial—some situations may not neatly fit into one or the other classes of judicial decision making. Most lawyers, however, have adopted this "tiered analysis" as a shorthand method of determining beforehand how closely a court is likely to examine a challenged legislative action and how much evidence must be collected to sustain a governmental decision.

Advocates for mentally disabled people quickly realized that a great deal of community opposition and the zoning denials that often reflected such opposition were motivated by prejudice and outmoded notions of mental retardation. Developmentally disabled persons could, as a group, be considered a class that historically has faced discrimination and prejudice based on these outmoded concepts. Advocates concluded that a higher level of scrutiny ought to be applied to laws that restricted this group and that mere rationality was not enough. A strategy developed to give developmentally disabled persons the same status under the equal protection clause as persons

38. Including *Welsch v. Likins*, 373 F. Supp. 487 (D.Minn. 1974), *aff'd in part, vacated and remanded in part*, 50 F.2d 1122 (8th Cir. 1977), and *Wyatt v. Stickney*, 344 F.Supp. 387 (M.D. Ala. 1972), *aff'd sub nom. Wyatt v. Adeholt*, 503 F.2d 1305 (5th Cir. 1974). As noted by Braddock, "Deinstitutionalization Trends of the Retarded: Trends in Public Policy," *Hospital and Community Psychiatry* 32, No. 9 (September 1981), at least 38 "right to habilitation" lawsuits were filed in 27 states between 1971-80.

39. As reported in *NYSARC v. Rockefeller*, 357 F.Supp. 752 (E.D.N.Y. 1973).

40. As reported in *NYSARC v. Carey*, 393 F.Supp. 715 (E.D.N.Y. 1975).



Fort Worth Star Telegram

Open house at the Cleburne group home.

discriminated against on the basis of their sex or legal status at birth. Laws that singled out individuals with developmental disabilities, therefore, should be given heightened scrutiny and should be struck down unless the government could show an important reason to justify treating community facilities for them differently from facilities for nonretarded persons.

The result of these efforts was the U.S. Supreme Court's recent decision in *City of Cleburne v. Cleburne Living Center*, 105 S.Ct. 3249 (1985), in which a group home sponsor challenged the special permit denial of the city of Cleburne, Texas, on equal protection grounds.⁴¹ The city had required a special annual permit for "hospitals for the feeble-minded." In this case, it denied the permit on the grounds that the proposed group home threatened nearby property owners and elderly residents of the neighborhood; students of a nearby school would harass the CRF residents; and the CRF was proposed in a 500-year floodplain. Also, according to the city, the size and intensity of use of the structure (housing 13 retarded residents plus staff) would be incompatible with the neighborhood, although apartment houses, boarding houses, hospitals, nursing homes, and other intensive uses were allowed by right in the same zoning district.

The U.S. District Court had previously determined that, if the residents of the group home were not retarded, the CRF would be allowed by right under the ordinance but that the city's reasons for denying the special use permit were adequate to meet equal protection standards under the mere rationality standard of review. The mentally retarded simply were not a quasi-suspect class under current U.S. Supreme Court doctrines. The U.S. Court of Appeals for the Fifth Circuit, however, reversed the lower

court after finding that heightened scrutiny should have been the proper standard of review used to adjudicate the city's special permit actions because the mentally retarded had suffered discrimination in the past, and, as such, they constituted a quasi-suspect class. The appeals court concluded that the zoning action was probably the result of deep-seated prejudice and that the city's denial of development approval, therefore, violated the equal protection clause because it furthered no important legitimate government interests.

The U.S. Supreme Court decided to hear the case in 1984 and subsequently reached an unusual decision concerning the equal protection rights of individuals who are mentally retarded. The Court reversed the Fifth Circuit's holding that developmentally disabled people constitute a quasi-suspect class. But it struck down Cleburne's zoning decision on the grounds of rationality after subjecting the city's actions to a heightened scrutiny standard of review. The Court rejected the quasi-suspect classification because developmentally disabled persons may, in fact, possess different abilities from the general population; the state had a legitimate reason for treating them differently. The Court noted that recent legislation on both the state and federal levels attempted to address the special needs of this group and, therefore, singled out this group for special treatment. Passage of such legislation indicated that mentally retarded individuals were not politically powerless. Finally, the Court said that, once it opened the doors to expanding the protection given this class, closing the door later against other classes of persons who claimed that they suffer some degree of prejudice by society would be difficult. It concluded that any legislation distinguishing between mentally retarded and nonretarded persons had to be only rationally related to a legitimate governmental interest to survive equal protection challenge.

41. J. Ellis and R. Luckasson, "Discrimination Against People with Mental Retardation: Comment on the Cleburne Decision," *Mental Retardation* 23 (1985): 249.

The Court then took the unusual action of applying heightened scrutiny by closely examining the reasons that the city gave to justify its zoning denial. The Court rejected the city's rationale that the denial addressed the fears of neighborhood residents: "... mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like." The Court rejected all of the other reasons given by the city to support its special permit requirement for the group home after determining that no other similar use permitted in the district would be affected by these considerations. The majority affirmed the portion of the Fifth Circuit's decision that had invalidated the zoning ordinance:

The short of it is that requiring the permit in this case appears to us to rest on an irrational prejudice against the mentally retarded, including those who would occupy the Featherstone facility and who would live under the closely supervised and highly regulated conditions expressly provided for by state and federal law.

Justices Stevens and Burger entered a concurring opinion, setting forth their position that tiered review was inappropriate and artificial but concluding that the majority reached the proper decision since the city's action was motivated by prejudice and not rationality. Justices Marshall, Brennan, and Blackmun dissented from the ruling, holding that mentally retarded persons constitute a quasi-suspect class requiring heightened scrutiny and that the Court had improperly applied only ordinary rational basis review to the case. All five of these justices, however, noted the "grotesque history" of society's treatment of mentally retarded persons.

The *Cleburne* decision merely highlighted doctrinal differences between the justices as to the proper standard of review to be employed in these equal protection challenges. All the justices—despite their status in majority, concurring, or dissenting opinions—ruled that community prejudice alone could not sustain the exercise of exclusionary zoning practices by municipalities. Advocates for

mentally disabled people ended up with a qualified success, succeeding in striking down local restrictions against community placement when such restrictions were motivated by prejudice and fear but not succeeding in gaining greater protections under the equal protection clause, which would result in heightened scrutiny being applied to such litigation.

TACTICAL CONSIDERATIONS

The lofty battles concerning legislative interpretation and constitutional doctrine fought in the federal courts have proven inconclusive in furthering the rights of developmentally disabled individuals to community placement in CRFs and group homes. The focus of an examination of the legal issues surrounding CRF siting in residential neighborhoods must shift to the often sharply fought zoning skirmishes being carried out in state courts. This state court litigation is a varied collection of holdings, some contradictory, that often concern community living arrangements for persons other than those that are

developmentally disabled. A large amount of the case law in New York concerning the definition of a family for zoning purposes arose from litigation involving foster children, not mentally retarded group home residents. Children supervised by resident adults mirror the characteristics of a biological family, and it may be a mistake to look at court decisions involving foster child group homes as automatically paving the way for group home CRFs for mentally retarded adults. Similar distinctions exist with respect to the well-developed body of case law applying to various residential facilities for the mentally ill, for persons with drug dependencies, and for facilities providing transitional support for prisoners or even for battered women.

By looking only at reported cases that involve group homes in residential settings, the number of cases becomes more manageable. In other ways, it becomes more finely grained; for example, an article on New York's *Padavan Law* cites 15 or so state court decisions challenging this statute or its application to a specific group home facility.⁴² A detailed look at these cases would probably be of little interest to planners outside of New York, but this volume of litigation in the short time that the statute has been in effect suggests that this legislation has been ineffective in solving the problems facing community placement of developmentally disabled people. In fact, the cases suggest that litigation has not been eliminated by the adoption of this state law; it has merely moved up a notch from controversies involving local officials to controversies involving state officials.

From a tactical perspective, advocates for mentally disabled people can choose among a range of options to challenge local zoning restrictions of group homes and CRFs. The most comprehensive approach is to avoid such controversies in the first place by exempting CRFs from local zoning authority through governmental immunity. Advocates can also choose to add group home resident households to the local zoning definition of family to allow their placement by right in single-family districts. This avoids the discretionary review and public hearings that a special permit would require.

Governmental Immunity

In the absence of explicit state siting legislation overriding local zoning, advocates have attempted to make CRFs exempt from zoning through claims that the facilities are regulated by state and federal laws to the extent that they should enjoy intergovernmental immunity. These efforts, however, have not proven successful in convincing state courts to ignore local zoning restrictions and to consider the CRFs as state facilities that are immune from local control. For example, these arguments were rejected by the highest courts in Maine and Georgia. The Maine supreme court held that state licensing did not show sufficient state involvement or a compelling need to preempt local zoning with respect to a group home for six developmentally disabled residents.⁴³ Georgia's highest

42. Schonfeld, " 'Not in My Neighborhood.' "

43. See *Penobscot Area Housing Development Corp. v. City of Brewer*, 434 A.2d 14 (Me. 1981).

court rejected a claim of governmental immunity for a group home on a "balancing of interests" test after finding the rationale to be too nebulous and judicially unmanageable when applied to a private facility, which the sponsors alleged was providing a governmental function under governmental funding.⁴⁴ The Georgia court also found no clear legislative expression that such immunity was intended.

The tactic of attempting to achieve governmental immunity for CRFs makes sense as one means of avoiding local zoning restrictions altogether in those states that recognize the doctrine. However, one troublesome issue that has not arisen in the mental retardation group home litigation is the extent to which such litigation hinges on whether the facility is serving a "governmental" or "proprietary" function. It must be noted that in two states with preemptive siting legislation, Nevada and Tennessee, the state legislatures themselves distinguished between facilities operated by governmental and/or nonprofit entities and proprietary facilities in doling out its zoning immunity—only noncommercial facilities are immune from local zoning restrictions. Since all facilities rely to some extent on federal and state reimbursement for services, such distinctions appear to make little sense from a zoning perspective. In either case, regardless of who owns and operates the facility, CRFs of similar sizes and similar resident characteristics are going to have similar impacts on the

surrounding community. In the absence of an explicit state statute that preempts local zoning, the fact that a state may issue a license for a group home may not result in a court finding of governmental immunity.

Expanding Zoning Definitions of Family

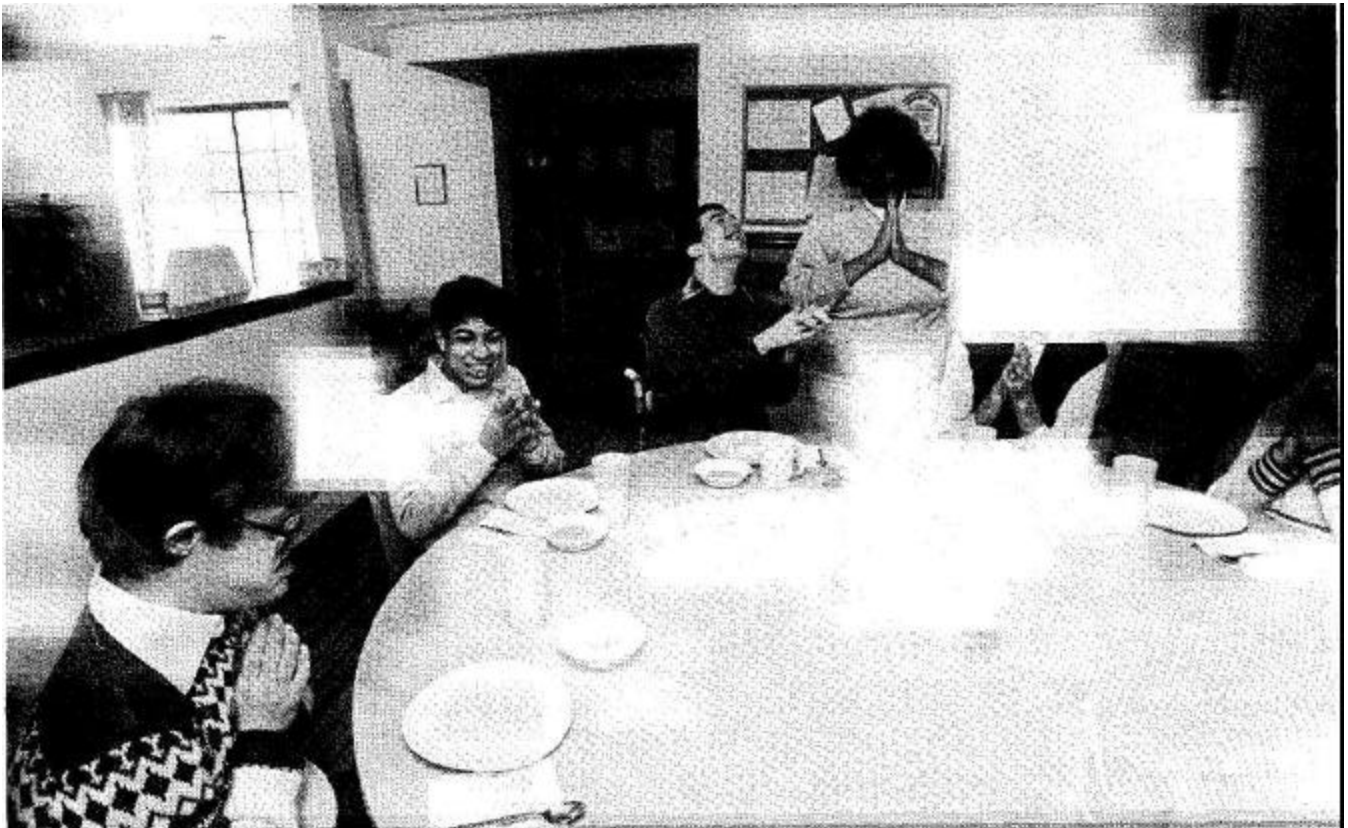
Many of the state preemptive statutes that explicitly override zoning restrictions on group home siting do so by legislatively declaring that residents are to be deemed a family for zoning purposes, thereby allowing the homes in a single-family zoning district. In the absence of such strong legislative declarations, advocates for mentally disabled persons have met with mixed results in attempting to convince state court judges that the group home or CRF household constitutes a legitimate family for zoning purposes.

Several points must be raised by way of background in order to discuss this tactic. The family definition issue emerged in the mid-1970s as a result of the U.S. Supreme Court's decision in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), in which the Court ruled that the village could restrict occupancy of a single-family house to persons related by blood or marriage—a biological family—in single-family areas in order to exclude six unrelated college students from occupying the building. The provision allowed only two unrelated persons to occupy a single-family dwelling as a household.

In reaching this decision, the Court applied a rational basis standard of equal protection review and found it was within the community's legitimate authority to limit

44. *Macon Ass'n for Retarded Citizens v. Macon-Bibb County Planning and Zoning Comm'n*, 314 S.E.2d 218 (Ga., 1984).

Group home residents function as a family, sharing meals, entertainment, and housework.



occupancy in order to preserve the character of the residential neighborhood. In an oft-cited passage, Justice Douglas noted:

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one under *Berman v. Parker*, 348 U.S. 26. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

In supporting the village's exclusionary action, the Court also noted: "The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds." Three years later, in *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), the Court cut back on its support of restrictive family definitions by striking down a zoning provision that prohibited a grandmother from living with her grandchildren in a single-family district, finding that policies preserving family values overrode the community's interests in restricting the makeup of such families through zoning.

Advocates have attempted to challenge definitions of family when they restrict group home siting. They claim that the developmentally disabled residents of a CRF constitute a functional family for zoning purposes and ought to be allowed by right in single-family neighborhoods. This argument also is raised with respect to private restrictive covenants that limit the use of a structure to "single-family residency" as well as with respect to the zoning restrictions that are the topic of this report.

Advocates have met with mixed results in the courts by adopting this tactic. Much of the optimism that appears in the literature is based on decisions favoring foster care group homes, where dependent children are supervised by foster parents in a single-family dwelling and are often considered to be families for zoning purposes. However, this living arrangement, as noted above, may not be directly transferable to CRFs for mentally retarded persons, especially if the group home houses only adults. Moreover, a CRF will have impacts on the community that differ in many respects from those anticipated by the U.S. Supreme Court in *Belle Terre* (involving college students). Where a facility is intended to promote normalization by providing a normal homelike atmosphere, a number of courts have found group home residents to be a functional family for purposes of zoning and, therefore, able to locate in residential neighborhoods by right as a legitimate single-family use.⁴⁵ State supreme courts in Colorado and Rhode Island have allowed group homes to locate in single-family neighborhoods by expanding the definition

of a family, regardless of whether the CRF was operated for a commercial purpose.⁴⁶ The issue of what constitutes a family has also been litigated in cases involving restrictive covenants in deeds. In two recent law review articles, the authors argue that challenges to restrictive deeds are especially significant with respect to local zoning controversies because such covenants are often narrowly interpreted by the courts and the rulings are directly applicable to controversies involving zoning issues.⁴⁷

Like the strategic struggles to provide developmentally disabled residents the right to treatment in community settings, the tactic of litigating against zoning definitions of family produces incremental change. But it is a cumbersome way of forging a consistent body of case law on a state-by-state basis. Moreover, it has not proven to be totally effective. The Maine supreme court, in *Penobscot Area Housing Development Corp. v. City of Brewer*, 434 A.2d 14 (Me. 1981), did not find the residents of a group home to be a functional family, since supervisory staff did not live in the residence and did not assume the functional role of parents. Similarly, courts in Alabama (*Civilians Care, Inc. v. Bd. of Adjustment*, 437 So.2d 549, Ala. App. 1983) and in Ohio (in its *Garcia* decision striking down state preemptive legislation) have found group home residents sharing meals not to be families but rather more akin to boarding house dwellers. In the *Civilians* ruling, the appeals court found the proprietary character of the facility to negate claims that the CRF functioned as a single-family dwelling.

Not yet addressed in the literature is the notion that the U.S. Supreme Court's recent *Cleburne* ruling may affect the long line of rulings arising from its earlier *Belle Terre* decision. *Belle Terre* based its holding on the promotion of family values by restricting residential occupancy patterns that would result in deleterious off-site impacts (such as parking, noise, and traffic). *Cleburne*, on the other hand, can be interpreted as subtly attacking these same values so highly prized by the Court in *Belle Terre* to the extent that they represent expressions of prejudice. In one sense, the preservation of "yards that are wide, people few, and motor vehicles restricted" may be the only legitimate zoning considerations inferred by the Court in *Cleburne* to be valid grounds of legitimate public regulation; all of the other statements of objectives promoted by *Belle Terre*, "family values, youth values, and the blessings of quiet seclusion" may only be reflections of community prejudice, impermissible under *Cleburne*. If this is the case, the zoning attacks on discretionary special permit approvals may, indeed, be limited only to these factors—issues that are addressed in greater detail in the next chapter of this report.

46. *Hessling v. City of Broomfield*, 193 Colo. 124, 563 P.2d 12 (1977); and *Mongony v. Bevilacqua*, 432 A.2d (R.I. 1981).

47. These cases are discussed in greater detail in Comment, "Can the Mentally Retarded Enjoy 'Yards That Are Wide'?" *Wayne Law Review* 28 (1982): 1349, an article that gave extensive inquiry into the ability of group homes to be barred from residential neighborhoods as a result of restrictive covenants. A similar article also focusing on this issue is Guernsey, "The Mentally Retarded and Private Restrictive Covenants," *William and Mary Law Review* 25 (1984): 421.

45. See, for example, *Tucker v. Special Children's Foundation*, 449 So.2d 45 (La.App. 1984)(interpreting state Mental Retardation Act); *Douglas County Resources, Inc. v. Daniel*, 280 S.E.2d 734 (Ga. 1981)(group home for mentally retarded adults constitutes a household); *Village of Freeport v. Ass'n for the Help of Retarded Children*, 94 Misc2d 1048, 406 N.Y.S.2d 221, *aff'd*, 60 A.D.2d 644, 400 N.Y.S.2d 724 (1977); *Oliver v. Zoning Commission*, 31 Conn.Supp. 197, 326 A.2d 841 (1974)(mentally retarded adults).

Chapter 5. The Proper Zoning Treatment

Although CRFs are allowed by right in many high-density residential districts and commercial zones, siting in low-density residential neighborhoods often requires a special permit in states that have not preempted local zoning restrictions. In many zoning ordinances, the proposal is reviewed against general criteria prior to local siting approval; these criteria often address such things as preservation of the character of the district, impact on property values, traffic impact, and other spillover effects. State zoning enabling legislation that authorizes this discretionary review and approval also typically requires that a public hearing be held. As was discussed in Chapter 4, advocates for mentally disabled people have had mixed results in attempting to site CRFs and group homes in some residential neighborhoods when subject to the special permit and hearing process. It is useful to examine the off-site effects of group homes and CRFs in order to determine whether they really pose any threats to the surrounding neighborhood. Three major concerns are discussed in this chapter: whether CRFs and group homes are appropriate residential uses in residential districts; the concerns voiced by neighbors opposing facility siting in their immediate area; and the off-site impacts arising from the intensity of use of the facility or community residence.

APPROPRIATE LOCATIONS FOR CRFs

From the perspective of the CRF resident or sponsor, the siting of group homes in single-family areas is something to be encouraged. From the perspective of many state legislators, the adoption of preemptive siting legislation making group homes valid residential uses or functional families for zoning purposes supports habilitation and normalization.

From a planning perspective, however, it is less clear whether these facilities (especially those housing more than eight or 10 persons) are an appropriate use in single-family residential areas. Unlike surrounding houses, group homes may have a higher density of residents. Does this difference in resident composition translate into differences

in off-site impacts on surrounding properties? Based on our examination of some of the research literature, we believe that these differences are largely benign. It is our opinion that CRFs and group homes may, in fact, have fewer impacts on the surrounding neighborhood than structures occupied by nondisabled individuals or a biological family. In order to examine this finding in greater detail, it is useful to distinguish between small and large CRFs in various residential settings.

Group Homes

Sponsors of small CRFs typically select an existing large house in a single-family residential neighborhood. As noted in one study:

Optimally, a CRF site should have the following characteristics: a pleasant and safe neighborhood, availability of transportation, proximity to places of employment, existence of programs meeting special needs, and low costs.⁴⁸

In short, the same characteristics that make a residential neighborhood desirable as a place to live for nondisabled persons make it desirable for CRF residents.

The predominant use of existing structures limits the density of a group home, however. In order to receive the limited funding available under DDA (compared to funds available from other sources), all states must establish state plans, provide individual habilitation plans for mentally retarded citizens, provide a "protection and advocacy" system to protect the rights of retarded persons, and conform to six minimum standards set forth in the statute. These congressional standards provide some safeguards for persons in residential facilities and, of greatest importance from a land-use perspective, require compliance with local fire and safety codes. In many states, these fire and safety codes limit the number of persons who can

48. Francis Moreau et al., "Physical and Social Integration of Developmentally Disabled Individuals into the Community," in *Integration of Developmentally Disabled Individuals into the Community*, eds. Angela Novak and Laird Heal (Baltimore, Md.: Paul M. Brookes, 1986), 92.

occupy a structure of a given size with a given number of bedrooms and thus serve as a check on overcrowding. The Life Safety Code of the National Fire Protection Association defines a "board and care" facility for up to 15 individuals as a residence, but facilities for over 15 residents are considered "institutions."

The existence of these codes is one reason to choose a given threshold in defining a group home. In a four-bedroom house, eight persons can often reside in the structure without violating these state regulatory requirements. This may be a somewhat greater number of persons than occupies the average four-bedroom house, but it does not make a group home an inappropriate residential use in a low-density, single-family neighborhood.

According to the U.S. Census of Housing for 1980, households of six or more persons represent 6.2 percent of the owner-occupied housing in the United States and 4.5 percent of renter-occupied housing. Even with a disparity in resident number, it would be hard to distinguish group homes from the significant number of homes occupied by large families. A group home also cannot truly be distinguished from conventional households on the basis of its services or reimbursement. Because a group home is intended to function as a single household, it does not have the characteristics of a boarding house (especially since, under our definition, full-time staff supervision of residents is required). It should also not be considered a commercial use merely because reimbursement is received by the sponsors (whether they are governmental, non-profit, or proprietary entities). An analogy would be the rental of a house; under almost all zoning ordinances this would not magically convert the structure to a commercial use, since it would still retain a residential function.

Large CRFs

The conversion of large structures (e.g., apartments, boarding houses) to residences for developmentally disabled people and supervisory staff members raises issues similar to those related to the conversion of single-family houses in single-family neighborhoods. Again, fire and safety codes would restrict total density, although the overall density of the CRF may be higher than that of sur-

rounding structures with similar characteristics. For zoning purposes, the structure still retains the residential character and use, consistent with its prior classification under zoning.

In the case of large CRFs, zoning ordinances do not control the density of residential facilities. Problems may arise when zoning ordinances establish guidelines based on dwelling units per acre, floor area ratios, or some other measurement that is not necessarily compatible with the operation of large CRFs. A CRF housing 15 disabled residents and supervisory staff may not contain separate dwelling units within the structure; meals, recreation, and training may be undertaken collectively in a common space. In essence, a CRF may function as a single household for residential and habilitation purposes.

One way to determine the location of a CRF in high-density residential districts is to divide the total number of CRF residents (including resident staff) by the average household size for that type of structure in the region. This may result in "household equivalency" for zoning density purposes and can determine whether the proposed facility conforms with the district's zoning standards, if the zoning ordinance uses a dwelling unit per acre density standard. Recent demographic multipliers in the fiscal impact assessment area provide some accurate guidance for making this density conversion. (See Table 4.)

The same reasoning should be applied to large residential structures that are prior nonconforming uses in low-density, single-family districts. Establishing a CRF in the building maintains the use of the structure. Moreover, it is difficult to be sympathetic with neighbors who oppose the siting since they purchased their housing with full knowledge of the nonconformity of the existing multi-family structure in their neighborhood. Such conversions may not result in any different off-site impacts than would occur as a result of the nonconforming use. In fact, a CRF may actually enhance the neighborhood by substituting a stable resident population on the site (if the nonconforming structure was a rental apartment building, for example) for a transient population. Moreover, because of the conventional, everyday patterns of life in such neighborhoods, establishing a CRF in the nonconform-

TABLE 4. NATIONAL DEMOGRAPHIC MULTIPLIERS FOR COMMON CONFIGURATIONS OF STANDARD HOUSING TYPES FOR TOTAL HOUSEHOLD SIZE
[For housing built during 1975-1980 and monitored in 1980]

Housing Type	Number of Bedrooms					(All BRs)
	1	2	3	4	5	
Single-Family Houses	—	2.390	3.225	4.006	4.861	3.312
Garden Apartments	1.409	2.138	3.262	—	—	1.965
Townhouses	1.670	2.040	2.694	—	—	2.377
High-Rise Homes	1.260	1.989	—	—	—	1.457
Mobile Homes	1.946	2.286	3.489	—	—	2.734
Duplex, Triplex, Quadplex	1.643	2.257	3.187	—	—	2.439

Source: Burchel, Listokin, and Dolphin, *The New Practitioner's Guide to Fiscal Impact Analysis* (New Brunswick, N.J.: Rutgers University Center for Urban Policy Research, 1985), Exhibit 12.

ing structure may offer unique opportunities for normalization not found in other high-density districts.

Complexities arise, however, with respect to large CRFs housing severely or profoundly retarded individuals with multiple handicaps or health disorders. Are these residential uses merely nursing homes, and are they providing medical care and support for the population in addition to habilitative services? This determination probably depends on the characteristics of facility residents (e.g., nonambulatory, incapable of independent living) and the level of service provided. Therefore, it is properly an administrative issue to be decided by the agency responsible for issuing certificates of occupancy. Whether it be the number of beds for incapacitated individuals in the facility or some other criterion, some administrative threshold should be established. If a CRF exceeds the threshold for residents needing medical services, it ought to be considered a nursing home and be regulated under applicable zoning provisions. If below the threshold, it should be considered a valid, higher-intensity, residential use and allowed by right in multifamily or high-density residential districts. The determination of the proper threshold is probably a land-use policy determination that should be considered under existing planning procedures. A survey of existing large facilities within the community and the types of services offered may prove useful in functionally classifying different types of CRFs for residents with different supportive needs, and the resulting data from the local survey may indicate appropriate threshold alternatives.

COMMUNITY OPPOSITION

One of the fundamental aspects of special permit review is the public hearing. It provides neighbors with a forum, and also enables CRF sponsors and others to promote their viewpoints. Although it offers opportunities for community education and discussion, it also has its limitations. When such hearings merely elicit expressions of community prejudice and fear about detrimental impacts, decision makers may be persuaded by the fervor and number of opponents and not necessarily by the merit of their testimony. In such cases, permit decisions may be based on political considerations and not on the dispassionate evaluation of a proposed CRF under specific review criteria set forth in the zoning ordinance.

Not basing a permit decision on these criteria or delaying a decision creates the potential for legal exposure and liability, and failure to follow the procedures set forth in the zoning ordinance undercuts the legitimacy of the public hearing itself. It is useful to examine the issues that are often raised by opponents of CRFs to see if their concerns are supported by evidence. If opposition is largely unfounded, serious questions may be raised about the propriety of subjecting group homes and CRFs to this process. If the facilities are relatively benign forms of residential land uses, planners ought to consider merely allowing these CRFs to be sited in appropriate residential districts by right. It must be noted that designating a group home or other CRF as a special or conditional use implies that the facility is presumed to be an appropriate land use within the district if off-site impacts are not

detrimental. The result of revising zoning standards to make CRFs a legitimate residential use in appropriate residential districts need not be antidemocratic, since neighbors typically don't vote on the appropriateness of conventional households moving into their neighborhoods. Essentially, all it means is that a CRF would be considered a valid and appropriate land use, the same as if it were occupied by a conventional household.

Fortunately for planners concerned about community opposition, a relatively good body of literature exists addressing the effects of group homes on a neighborhood. An early study by Knowles and Baba in 1973 for the Green Bay, Wisconsin, Plan Commission examined community attitudes towards a number of residential facilities serving a diverse population (including mentally retarded persons) and also explored the effects of group home siting on adjacent property values.⁴⁹ The study found that group homes made a negative impression on only about 20 percent of the immediate neighbors; that rate decreased rapidly after the first block away from the facility and, by the third block away, most neighborhood residents surveyed felt positively about it. Over 70 percent of neighbors surveyed generally approved of the group home. The researchers found that data was inconclusive with respect to the impact of group homes on housing values, but siting of a single group home appeared to have no significant effect on the number of homes being sold.

How people feel about a group home in their neighborhood in the abstract and how they feel once a group home has been sited appear to be somewhat different. An early study by Sigelman surveyed community attitudes towards mentally retarded persons and found that only 44.7 percent of the 665 adults surveyed favored the idea of homes for retarded adults in residential districts.⁵⁰ But Sigelman found positive attitudes associated with age (young people had more positive attitudes), ethnicity (blacks more positive than Anglos and Mexican-Americans), home ownership (renters more positive than homeowners), and with ideology (liberals more positive than others). She noted that many sponsors have decided to avoid opposition by merely moving in without telling neighbors, a strategy that she labels "Machiavellian," and which she concludes may be just as effective as public education in siting new CRFs.

Another study examined various siting strategies, classified as "low-profile" (slipping in without informing neighbors), "high-profile" (expanding community education efforts), and a "combination approach" (informing only a select few).⁵¹ The author concluded that community opposition usually declines after a facility is sited. A literature review of opposition to group homes by Sigel

49. Eric Knowles and Ronald Baba, "The Social Impact of Group Homes," prepared for the Green Bay Plan Commission, June 15, 1973 (unpublished).

50. Carol Sigelman, "A Macchiavelli for Planners: Community Attitudes and a Group Home Site," *Mental Retardation* 14, No. 1 (1976): 26-29.

51. Donald Weber, "Neighborhood Entry in Group Home Development," *Child Care* 57, No. 10 (1978): 627-42.

Did They Really Say That?

We are all aware of the common reasons people give for not wanting a group home on their street—deed restrictions, commercialization, decline in property values, and dangerousness. But people also give some peculiar reasons, such as the following:

Our road is too wide.
 Our road is too narrow.
 We don't have sidewalks.
 A schoolbus will have to come on our street.
 Our street is a deadend, and it's the last to be plowed in the winter. There are no street lights. It will add too much traffic to the neighborhood.
 It's too dangerous in the country with all the farm equipment.
 It's too dangerous in the city with all the traffic.
 We have small rattlesnakes. There's water nearby.
 We have quicksand a half-mile away. They'll get lost in the fields and woods. We have dangerous motorcycles and snowmobiles. We have dangerous railroad tracks here in town. We have dangerous railroad tracks here in the country. They might get hurt by our horses. We let our dogs run free.
 The residents of the group home may hurt my kids.
 The cruel kids in the neighborhood may hurt the group home residents.
 The house is located in the middle of the block.
 The house is on the corner.
 The house is on a cul-de-sac.
 The house (lot) is too small.
 The house (lot) is too big and expensive.

The house should be on the main road (more convenient to services).
 It's too close to the road (too dangerous).
 It's too far from the road (how can you plow out the driveway in the winter?).
 It's too expensive (a tax ripoff).
 It's not expensive enough (how can you hire adequate staff?).
 We have 100 children under the age of two in our subdivision.
 My children won't have anybody to play with.
 My kids won't be able to play outside.
 My husband and I argue over this issue, and it's causing us to get a divorce.
 I moved out in the country to get away from *everybody*.
 It's sadistic to put handicapped people in the community; they'll be prisoners in that home.
 Handicapped people would be better off in cities, so they can be close to services.
 Handicapped people would be better off in the country, so they can raise animals.
 It's an offensive and noxious use of the property.
 We already have too many licensed homes here.
 The retarded make funny noises.
 They stay up and scream all night.
 The problem is that the home is located in such a way that many neighbors can look into the backyard and see them.
 I believe in normalization but not group homes.
 Bottom Line: I'm not against the retarded, *but* this is not a good location for a group home.

Source: Association for Retarded Citizens, Macomb County, Michigan.

man, Spanhel, and Lorenzen in 1979 also concluded that opposition tends to decline over time once a CRF is established in a residential neighborhood.⁵² This study also carefully examined a number of community concerns voiced at public hearings (such as crime rates, property value declines, and changes in neighborhood character) and found that these concerns were not supported.

A study by Kastner, Repucci, and Pezzoli found that most people surveyed would not object to a group home on their block and that there was a strong relationship between experience with retarded persons and more positive attitudes towards them.⁵³ These same concerns appeared in a study by Willms surveying community attitudes towards group homes for mentally retarded indi-

viduals.⁵⁴ Willms, unlike other researchers, discovered that group home neighbors living a greater distance from the facility had more concerns than neighbors in proximity to the group home and also concluded that familiarity with retarded people was a significant factor in community acceptance of them. A low-profile siting strategy was therefore deemed to be the most effective means of establishing new CRFs in residential areas.

A 1982 study of managers of CRFs housing 14 or fewer residents raised some additional issues.⁵⁵ As in earlier studies, the researchers found that community acceptance of a CRF increased significantly after a group home was established and that indifference to it also increased, but

52. Carol Sigelman et al., "Community Reactions to Deinstitutionalization: Crime, Property Values, and Other Bugbears," *Journal of Rehabilitation* 45, No. 1 (1979): 53-55.

53. Laura Kastner et al., "Assessing Community Attitudes Toward Mentally Retarded Persons," *American Journal of Mental Deficiency* 84, No. 2 (1979): 137-44.

54. J. D. Willms, "Neighborhood Attitudes Toward Group Homes for Mentally Retarded Adults," in *Frontiers of Knowledge in Mental Retardation*, vol. 1, ed. Peter Mittler (Baltimore, Md.: University Park Press, 1981).

55. Robert Lubin et al., "Community Acceptance of Residential Programs for Developmentally Disabled Persons," *Applied Research in Mental Retardation* 3 (1982): 191-200.

that opposition to it decreased drastically. The operation of a CRF and the possibility of property devaluation and adverse effects on neighborhood character were also noted as causes of community opposition in this study. An interesting aspect of this research is that the strategy for responding to community opposition considered to be most successful was "meeting with neighbors" (by almost 20 percent of the respondents). Almost this same percentage of respondents (20.9 percent) also reported that this same strategy was *least* effective. The authors conclude that a low-profile approach seems justified since community attitudes are likely to change once a facility is sited.

A more recent study of community opposition to CRFs also concluded that the involvement of the community in the siting process was not associated with decreased opposition and that the client characteristics of a CRF were unrelated to the likelihood of encountering community opposition.⁵⁶ The study also found less community support for a CRF in neighborhoods that consisted primarily of homeowners and greater opposition in neighborhoods where the property values were relatively high. With respect to the low-profile approach, the study also notes that, "although the present data cannot be interpreted casually, they do suggest that public education efforts may have unintended negative consequences and may provoke rather than minimize opposition."⁵⁷

The results of this research suggest that the public opposition issue can be resolved (or at least be best addressed) by low-profile siting approaches. Discretionary siting approvals by local governments typically involve a public hearing—a forum for voicing public opposition as well as often ineffective responses to such opposition by CRF sponsors. In the end, neither opponents nor sponsors have managed to change each other's opinions about the desirability of the siting proposal. Only after a CRF is established does opposition decline and support (or distinterest) become the prevailing mood. Consistent with this pattern, the siting of CRFs by right in suitable residential districts, without opening up the process to neighborhood squabbles and emotional and often vocal expressions of community prejudice, seems not only warranted but probably the response most supported by research findings.

ZONING COMPATIBILITY

Many of the concerns voiced by neighbors opposed to group homes and CRFs are about the off-site impacts of the facilities on their property, their lifestyle, and on the character of their communities. This is actually an issue of zoning compatibility more than anything else and raises the important consideration of whether group homes and other CRFs are suitable residential uses that ought to be located in residential neighborhoods. Zoning, as a land-use control concept, is a tool that is particularly appropriate to address such concerns because it involves the concept of reciprocity of mutual advantage: everybody's right to use his or her property is restricted by police power

regulations, but everyone is also protected against adverse impacts generated by neighboring uses. The basic notion of dividing a community into different land-use zones in order to separate residential from commercial and industrial uses is one technique of promoting this public objective. The adoption of suitable development and use standards within each zone is another.

The off-site impacts of a CRF are largely a result of the interaction of its residents with the surrounding community. If such interaction is undesirable, it will be reflected in adverse consequences to the neighborhood, such as declining property values, increased crime, or increased likelihood of encountering deviancy. Additional noise and traffic resulting from the intensity of the use also raise valid zoning concerns.

Community Interaction

A variety of studies on community interaction (summarized in the bibliography) have some fairly important consequences for the development of suitable zoning standards for group homes and CRFs for developmentally disabled people.⁵⁸ The one thing that seems clear from the research is that there is very little interaction between CRF residents and the surrounding community. Group home residents made very little use of community resources, resulting in minimal service demands. There was also very little interaction with neighbors, suggesting that the fears of opponents to CRFs that they or their families will be exposed to deviancy are largely unfounded—most of the CRF residents engaged in most of their activities within the facility.

The statistics regarding social interaction, even the paucity of family visits, suggest that CRFs are not likely to be major traffic generators; the reliance on special vans or public transportation by residents to get to and from their special schools and sheltered workshops makes vehicular off-street parking standards almost a moot issue. The same standards applying to conventional residential uses of the same intensity should be more than ample to satisfy the needs of CRF residents and staff who drive.

In terms of off-site impacts based on community interaction, group homes and CRFs can probably safely be deemed to have—at most—the same impacts as conventional housing. Given this likelihood, it is little wonder that opposition to group homes and CRFs declines over time; they appear to be relatively invisible entities within their own neighborhoods.

It must also be noted that these activity patterns suggest why we have opposed anticoncentration requirements in both local zoning ordinances and state preemptive siting legislation. To some extent, if there is minimal interaction with the surrounding community, normalization is thwarted regardless of how many other residential care facilities are located in the same neighborhood.

Given the fact that a range of reasons may exist to site a facility in a neighborhood that already hosts one or

56. Marsha Seltzer, "Correlates of Community Opposition to Community Residences for Mentally Retarded Persons," *American Journal of Mental Deficiency* 89, No. 1 (1984): 1-8.

57. *Ibid.*

58. See, Landesman-Dwyer Stein, and Sackett, 1978; Birenbaum and Re 1979; Butler and Bjaanes, 1978; Birenbaum, 1980; Moreau, Novak, and Sigelman, 1980; Bell, Schoenrock, and Bensberg, 1981; Salzberg and Langford, 1981; Hill and Bruininks, 1981; Wilier and Intagliata, 1981; CNeil et al., 1981; Hill, Bruininks, and Lakin, 1983; Hill, Rotegard, and Bruininks, 1984; White et al. 1984; Mansell et al., 1984.

more CRFs, it makes sense to allow the group home or CRF sponsor to make a decision that will optimize normalization opportunities for the residents. If such choices are allowed by right, instead of by discretionary review and special use permits, overconcentration may eventually solve itself as a zoning and political issue in many communities.

Effects on Property Values

If group homes and CRFs are considered to have an adverse impact on a residential neighborhood, it has been argued that this perception will be mirrored in declines in property values of adjacent buildings.⁵⁹ People will simply pay less money to live in a less desirable location, and existing residents will attempt to sell their houses to move away from the undesirable land use. A report by Lauber and Bangs presented evidence that property values did not decline as a result of locating a CRF in a residential neighborhood.⁶⁰ In the 12 years since that report was published by the American Planning Association, more property value impact studies have been undertaken by researchers to examine this issue in more detail. Without exception, the findings presented 12 years ago are still valid today; no study has indicated a decline in neighboring property values as a result of siting a CRF in a residential neighborhood.⁶¹

Based on market and turnover data developed in these and other studies, group homes appear to be quite compatible with conventional residences and have no significant impact on neighboring property values or the rate of sales of nearby buildings. From a planner's perspective, this lack of impact certainly suggests a high degree of compatibility with surrounding residential uses, a conclusion that should be reflected in zoning guidelines adopted with respect to these facilities.

Crime and Nuisance Reports

Nuisance-like behavior and the threat of crime appeared as significant issues of community opposition in studies examined earlier in this chapter. A 1979 article by Mihira and Mihira on community reactions to deinstitutionalization cited several studies indicating few crimes resulted from having various group homes and their residents, including mentally retarded people, in the area.⁶² This article also cited studies indicating relatively few incidents that jeopardized members of the community at large (a category which included staff members and visiting family members). One study it cited used a sample of 400

59. Greenwich, Connecticut, for example, reduced the assessed valuation of houses located near group homes for former psychiatric patients when residents claimed that the group homes reduced their property values. The state, however, brought suit challenging these assessment practices. This litigation is still pending. See "Tax Cut for the Neighbors Prompts Suit," *Zoning News* (June 1985).

60. Daniel Lauber and Frank Bangs, Jr., *Zoning for Family and Group Care Facilities* (Chicago: ASPO, PAS Report No. 300, 1974).

61. For a summary of the most significant studies of group homes and property values, see *There Goes the Neighborhood* (White Plains, N.Y.: Community Residences Information Program, March 1986).

62. Lyly Mihira and Kazuo Mihira, "Jeopardy in Community Placement," *American Journal of Mental Deficiency* 79, No. 5 (1975): 538-44.

mentally retarded individuals and reported only 19 incidents in 1,252 encounters between community residents and mentally retarded individuals. The researchers also noted that studies indicated little community involvement or interaction with respect to CRF residents (an issue discussed in greater detail earlier in this chapter) and suggested that there were few opportunities for the mentally retarded people to harm community residents.

The research literature, unfortunately, is not as clear-cut as many advocates would suppose; it is, however, contradictory enough to pose problems about how it should be interpreted by planners and others with respect to zoning guidelines for group homes and CRFs. The study by Mihira and Mihira classified behavioral incidents according to whether they contained jeopardy to health and safety, general welfare, or the law. Most of the incidents (77 percent) involved jeopardy to health and safety, and most affected the CRF resident. Jeopardy to the general welfare occurred in only five percent of the incidents, with fellow residents put at risk in 12 percent of these instances. Legal jeopardy occurred in 18 percent of the reported incidents, and nine percent of these incidents were perceived to place the general public at risk (remembering that the "general public" included facility staff as well as visitors). The implications of these findings are explained by Butterfield in the following terms:

This survey. . . establishes that community-based placement does involve some risk to the health and safety of mentally retarded people and to the public. Whether these risks are greater than those associated with institutional placement is uncertain. How much greater risks would have to be to justify institutional instead of community placement is problematic. It is also uncertain whether these risk rates are greater than those that would be observed for intellectually average people of comparable ages. Nor will it be easy to decide whether institutional placement is justified if the community-based retarded are involved in more jeopardizing incidents than nonretarded people in the community.⁶³

One of these concerns, the comparison between maladaptive behavior among mentally retarded people in institutional and community settings, was examined in a 1977 study.⁶⁴ The researchers found that much higher rates of behavioral problems occurred in the institutions than in CRFs. The researchers found that the presence of serious behavioral problems (such as self-violence, violence to others, and damaging of property) was inversely correlated to the level of retardation of the subject, with profoundly retarded persons exhibiting more self-injurious behavior more often than moderately or mildly retarded people. The researchers note that it has traditionally been difficult to place and retain profoundly and severely retarded persons in community settings and that the prevalence of aggressive and dangerous behavior by these individuals will increase this difficulty, making it necessary to provide intensified individual attention and pro-

63. Earl C. Butterfield, "Institutionalization and Its Alternatives for Mentally Retarded People in the United States," *International Journal of Mental Health* 6, No. 1 (1977): 27-28.

64. Richard Eyman and Tom Call, "Maladaptive Behavior and Community Placement of Mentally Retarded Persons," *American Journal of Mental Deficiency* 82, No. 2 (1977): 137-44.

gramming by CRF staff.

A second issue raised by Butterfield, the relative prevalence of risks posed by the retarded when compared to risks posed by nonretarded people, has also been examined in some studies. A study of 436 offenders with IQs below 86 found that the percentage of retarded offenders in two northeastern states was found to be slightly higher than the percentage of mentally retarded persons in the general population.⁶⁵ The researcher concluded that social and legal variables were better predictors than intelligence and that mental retardation did not appear to be linked conceptually with criminality in the study. This appears to tally with the results of a study that indicated that between nine and 27 percent of offenders had IQs below 70, although this did not mean that they were more prone to criminal behavior than the general population.⁶⁶ This study found that retarded offenders were at a disadvantage in the court system and were more likely to be convicted, but less likely to be placed on probation or paroled,

65. Ann MacEachron, "Mentally Retarded Offenders: Prevalence and Characteristics," *American Journal of Mental Deficiency* 84, No. 2 (1979): 165-75.

than nonretarded offenders.

These studies indicate deviant behavior may be a problem for some deinstitutionalized mentally retarded CRF or group home residents, but not for all of them. The proper zoning response, given this contradictory evidence, is probably not to address it at all within local zoning, but to rely on state licensing provisions and federal reimbursement guidelines to ensure adequate staff-to-resident ratios and habilitative care to CRF residents. One cannot simply "zone out" individual behavior that offends or threatens neighbors. The typical response to a neighbor exhibiting deviant or antisocial behavior is to call the police, not the zoning administrator. This troublesome issue probably ought to be handled in a similar manner, with neighbor complaints resulting in punitive measures being handled through the legal system or administratively through transfer of the individual from a community facility back into an institutional one.

66. Miles Santamour and Bernadette West, "The Mentally Retarded Offender in the Social Context," *Amicus* 4 (1979): 23-28. See, also, James Ellis and Ruth Luckasson, "Mentally Retarded Criminal Defendants," *George Washington Law Review* 53 (March-May 1985): 414-93.

Chapter 6. Model Zoning and Fair Housing Provisions

Based on the body of research and litigation examined in the prior five chapters of this report, we developed model local zoning provisions that, in our opinion, properly regulate group homes and other CRFs for developmentally disabled individuals. These provisions address zoning definitions; permitted uses; the continuation of prior nonconforming uses; the relationship between state and federal supervisory requirements; and the concerns of neighbors hosting a CRF in their community.

DEFINITIONS

Consistent with many of the preemptive statutes addressing group home siting, we recommend that developmentally disabled people and the residential facilities that serve this population be defined in local ordinances.

Developmental Disability—A developmental disability shall be defined in this ordinance in the same manner that it is defined [by state law, codified at _____] [in the federal Developmentally Disabled Assistance Act, codified at _____]

Community Residential Facility (CRF)—a facility providing residential and habilitative services to persons with developmental disabilities (that is licensed by the state of _____)

Group Home for Developmentally Disabled Individuals—a community residential facility housing and providing habilitative services to [four to eight] or fewer persons, not including staff, and functioning as a single household under staff supervision.

These definitions are purposely left broad and inclusive. It is probably best that local ordinances be consistent with state law. Therefore, a community may wish to adopt the definition of developmental disability used in state licensing or funding statutes. Alternatively, the definition of developmental disability used by Congress may be adopted by reference so that outdated definitions are avoided and a consistent definition is developed at the national, state, and local levels of government. For exam-

ple, the DDA was amended in the late 1970s to redefine persons qualifying under this legislation, yet many states and communities (such as Chicago) still employ the earlier definition (that also includes autism, cerebral palsy, and epilepsy in addition to mental retardation as part of the definition).

The proposed definition of a community residential facility (CRF) is kept broad so that it is consistent with our concern that a range of community-based residential alternatives be available. It deliberately does not distinguish between facilities on the basis of the range of services provided within the facility and outside of it. This last consideration has been shown to raise legal issues with respect to determining whether such facilities constitute households or families for zoning purposes and is just as well avoided to lessen legal exposure and liability. The CRF must, first and foremost, only be residential and, secondarily, provide some opportunities for training or habilitation to meet this definition.

The licensing requirement in parentheses following this definition can be considered if communities are concerned about adequate supervision and operation of the CRF. Under DDA and analogous state legislation, specific guidelines exist to ensure that proper levels of services are provided to developmentally disabled residents; this need not be a concern of local officials, so we do not recommend the adoption of a local licensing requirement that merely duplicates regulation by higher units of government. The rights of the mentally retarded residents to enjoy adequate habilitative services in the least restrictive community-based setting should probably be promoted by recourse to existing legal mechanisms—i.e., state protection and advocacy programs and legal assistance as provided by the applicable legislation. There is no need for the community itself to become involved in these concerns by imposing yet another layer of administrative red tape in the guise of benevolent licensing and review requirements.

Group homes are defined as a special type of CRF that is limited in size, where residents are supervised by staff,

and which functions as a household. As such, the definition incorporates the same considerations mentioned in the CRF definition (including state licensing) with the proprietary, nonprofit, or governmental status of the facility being irrelevant for zoning purposes. The size of the resident population is left open to community discretion; it should be noted that four to eight developmentally disabled residents can nicely occupy a two- to four-bedroom house (with up to two persons per room), which is typical of detached housing commonly found in single-family districts.

LOCATIONAL REQUIREMENTS

- (a) Community residential facilities housing [nine to 15, or upper limit determined locally] developmentally disabled persons, not including staff, shall be allowed by right in all residential districts allowing multiple-family residential uses of the same equivalent density. Community residential facilities larger than those permitted above shall be treated equally with other high-density residential land uses permitted by this ordinance.
- (b) Group homes shall be permitted by right in all residential districts.
- (c) For purposes of this ordinance, the conversion of an existing residential structure to a community residential facility for developmentally disabled persons shall not be deemed a change of use or an abandonment or discontinuity of the prior use of the structure, if such structure constituted a prior nonconforming use under this zoning ordinance.

These provisions attempt to treat all CRFs as legitimate residential uses allowed by right in all appropriate residential districts. Large CRFs should be allowed by right in high-density residential districts, while group homes should be allowed in all residential neighborhoods, including those zoned for single-family use. The research literature surveyed in Chapter 5 indicates that these CRFs have similar—or even fewer—off-site impacts and service demands than conventional housing for nondisabled persons, and there is no rational basis to draw distinctions between them on the basis of resident characteristics alone. Moreover, this approach obviates the airing of community opposition that would be vented in public hearings if these facilities were allowed only by special permit.

The conversion and continuity of nonconforming uses provision is an attempt to maximize community-based residential habilitation in a variety of neighborhood settings, if the opportunity to purchase a large structure in a single-family or low-density residential district arises. This provision explicitly promotes normalization theory by giving the developmentally disabled CRF resident access to conventional single-family neighborhoods and their normalizing activities and resources. We take the position that the neighbors tolerated the prior nonconforming uses in their decision to purchase their homes and, therefore, cannot really complain if the nonconformity is continued in what is likely to be a less-intensive manner. This is a particularly significant provision if the pattern of establishing CRFs in large, old, multibedroom houses continues; the large house will continue to function as a residential use in the residential neighborhood.

It must be noted that these provisions do not contain a dispersion or anticoncentration requirement. If group homes are allowed by right in all residential districts, CRFs cannot be forced by neighborhood opposition into areas where community living alternatives (for developmentally disabled people as well as other dependent populations) are already concentrated. Communities may wish, however, to amend their certificates of occupancy and use application forms to require disclosure of the number of CRFs that exist within a specific radius from the proposed facility; this will force the sponsor to consider the effect of such concentration on normalization processes. The sponsor, however, may still choose to locate the facility in an area that already has some CRFs.

SPECIAL PERMIT REQUIREMENTS

Community residential facilities housing [nine to 15] developmentally disabled persons, not including staff, shall be allowed in single-family residential districts only by special permit subject to special use standards contained herein, unless the facility is converting an existing, nonconforming, residential structure to such a community residential facility use. (Community residential facilities serving 15 or fewer persons shall be deemed to be appropriate uses in such single-family districts, unless the local permitting authority determines, based on clear and convincing evidence, that deleterious impacts involving noise, traffic, safety, and property values will result from the establishment of the community residential facility in the single-family district.)

This provision attempts to address the problems of locating large CRFs in low-density residential districts. Essentially, because the CRF is treated as a legitimate residential use, it ought to follow the same rules as other residential uses under the zoning ordinance—high-density residential uses typically require special permits to site in low-density districts, and CRFs should logically be no exception (except if a continuation of a prior nonconforming use).

Given the normalization objectives of community placement, however, some communities may decide that CRFs, even if they house a few more people than is normal in surrounding single-family dwelling units, should be allowed in single-family districts. The provision in the parentheses presumes that a CRF housing 15 or fewer persons is an appropriate use in a low-density residential neighborhood unless the local planning commission or permit authority establishes a set of findings or a record that demonstrates otherwise.

LOCAL PLANNING AND FAIR HOUSING POLICIES

The last set of provisions that ought to be considered by local governments that want to amend their zoning ordinance in order to encourage the siting of CRFs in residential neighborhoods is a strong set of local policies supporting community-based alternatives for developmentally disabled people. The preamble to DDA—the statute's bill of rights provisions—provides a useful model to support the zoning amendments that are proposed here.

Although the courts may find that no rights have been fashioned by legislative pronouncements of policy by a

city council, town or village board, or county board of supervisors, such policies may be quite important in supporting the zoning provisions against legal challenges. Many state statutes also contain such hortatory language supporting the rights of developmentally disabled people to community placement and may also serve as suitable, consistent models for these local policy statements.

Although not part of a zoning ordinance, local governments may choose to adopt an amendment to their municipal code or fair housing statute that preempts private deed or lease restrictions that prohibit small group homes from single-family residential areas. Before adopting such a statute, local officials should consult with their municipal attorney and determine how they can enforce or

monitor compliance with such requirements. The model statute should read as follows:

Exclusion by Private Agreement Void—Any restriction, reservation, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property that permits residential use of property, but prohibits the use of such property as a group home for developmentally disabled persons, shall, to the extent of such prohibition, be void as against the public policy of this municipality and shall, to the extent of such prohibition, be given no legal or equitable force or effect. A group home for developmentally disabled persons means a community residential facility housing and providing habilitative services to [four to eight] or fewer persons, not including staff, and functioning as a single household under staff supervision.

Annotated Bibliography

An Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled. Washington, D.C.: United States General Accounting Office, 1983.

For this report, a number of zoning officials and mental retardation program directors were interviewed to assess the impact of zoning regulations on the establishment of group homes for developmentally disabled people. Results indicate that zoning and land-use requirements are not a major obstacle in the establishment of group homes in residential areas. Rather, inadequate funding and unsuitable locations and facilities were found to be the sources of most problems.

Appelbaum, Paul. "The Zoning Out of the Mentally Disabled." *Hospital and Community Psychiatry* 34, no. 5 (1983): 399-400.

Neighborhood resistance, based on unwarranted fears, sometimes prompts local officials to use zoning regulations to exclude group homes from single-family zones. The article finds, however, that the courts have increasingly supported the establishment of group homes. A number of relevant cases are cited. The author says that state legislatures may best be able to resolve the problem.

Baker, Bruce, Gary Seltzer, and Marsha Seltzer. *As Close As Possible: Community Residences for Retarded Adults.* Boston: Little/Brown, 1977.

For this book, 381 caretakers of community residential facilities were surveyed. The facilities were classified as group homes, protected environments, training programs, or semi-independent units. There were 132 small (serving 6-10 residents) group home facilities in the sample. The residents of these facilities were found to have a high degree of autonomy and responsibility, and 88 percent of the residents had jobs. These features, the authors conclude, are consistent with the principle of normalization.

Baroff, George. "On 'Size' and the Quality of Residential Care: A Second Look." *Mental Retardation* 18, no. 3 (1980): 113-17.

Current literature was reviewed to examine the relationship between the size of the facility and the quality of residential life. The literature indicates that there is some advantage to smaller homes. Residences of fewer than 10 persons are more "resident-oriented" in that they are more responsive to individual needs. Also, a location in residential neighborhoods gives residents the opportunity to participate in the community.

Bell, Nancy, Carol Schoenrock, and Gerard Bensberg. "Change Over Time in the Community: Findings of a

Longitudinal Study." In *Deinstitutionalization and Community Adjustment of Mentally Retarded People*, edited by Robert Bruininks. American Association on Mental Deficiency Monograph no. 4. Washington, D.C.: American Association on Mental Deficiency, 1981.

This study monitored the activities of 327 retarded individuals living in the community after having been released from a state institution. Subjects were interviewed every five months for 25 months to assess changes in the subject's community functioning. Out of the 24 activities studied, 15 were found not to change in frequency over time. Of the activities that were found to vary, basic skills and friendships increased, while community interaction activities, such as going to movies or church, decreased.

Bercovici, Sylvia. "Qualitative Methods and Cultural Perspectives in the Study of Deinstitutionalization." In *Deinstitutionalization and Community Adjustment of Mentally Retarded People*, edited by Robert Bruininks. American Association on Mental Deficiency Monograph no. 4. Washington, D.C.: American Association on Mental Deficiency, 1981.

A qualitative study of 10 groups homes was undertaken to determine the nature and extent of the residents' contact with the community. Observation revealed that most of the residents had very little contact with the community, and many lacked a familiarity with common aspects of community living. The study postulates two explanations: first, most of the homes were in commercial areas or economically depressed residential areas, where venturing from the home presented a real physical danger; second, most of the operators of the homes discouraged or did not permit the residents to go into the community.

Birenbaum, Arnold. "Social Adaptation of the Developmentally Disabled Adult in the Community." In *Urban Community Care for the Developmentally Disabled*, edited by Herbert Cohen and David Kligler. Springfield, 111.: Thomas Publishing, 1980.

Residents living in a large group home were studied four years after they had moved to the residence from a large institution to measure changes in their ability to adapt socially. After three years, residents reported participating in 7.4 community activities per week. In contrast, residents participated in only 3.1 activities after the fourth year. The article suggests that the residents settle into daily routines.

Birenbaum, Arnold, and Mary Ann Re. "Resettling Mentally Retarded Adults in the Community—Almost Four Years Later." *American Journal of Mental Deficiency* 83, no. 4 (1979): 323-29.

Sixty-three mentally retarded residents of a large group home were studied for four years after they had been released from a large state institution. After the third year, residents' participation in community activities decreased, suggesting that the residents had fallen into a pattern of sleep, work, and at-home recreation after having gone through an initial period of discovery and exploration in the community.

Breslin, Kevin, et al. *A Report on Land-Use Regulations Versus Community Homes for the Developmentally Disabled*. Chicago: Illinois Association for Retarded Citizens, 1980.

Land-use regulations at the state and local levels are discussed as they apply to group homes for developmentally disabled people. The report concludes that neighborhood residents' fears are due to a lack of familiarity with developmentally disabled persons and that local officials are often responsive to their objections. As a result, group homes may be excluded from neighborhoods through restrictive zoning, although research indicates that group homes do not adversely affect the neighborhood.

Breslin, Kevin, et al. *A Practical Guide to Zoning: Overcoming Barriers to Community Homes*. Chicago: Illinois Association for Retarded Citizens, 1980.

This guide is designed to help group home operators gain community acceptance, understand zoning regulations, select appropriate sites for group homes, and initiate local legislative change to permit the establishment of group homes.

Bruininks, Robert, Florence Hauber, and Mary Kudla. "National Survey of Community Residential Facilities: A Profile of Facilities and Residents in 1977." *American Journal of Mental Deficiency* 84, no. 5 (1980): 470-78.

A national survey was conducted to identify all community facilities in the United States that provided 24-hour, seven-day, room, board, and supervision for developmentally disabled individuals. There were 4,427 such facilities, serving almost 84,000 residents. Facility information was collected regarding ownership, size, geographic distribution, demographic information, resident movement, and costs. Over one-half of the facilities had opened between 1973 and 1977.

Bruininks, Robert, et al. "Recent Growth and Status of Community Residential Alternatives." In *Deinstitutionalization and Community Adjustment of Mentally Retarded People*, edited by Robert Bruininks. American Association on Mental Deficiency Monograph no. 4. Washington, D.C.: American Association on Mental Deficiency, 1981.

Based on a review of the literature, this article traces the community residential services movement from its theoretical beginnings to the current growth of community residential facilities. In addition, the article out-

lines the characteristics of the facilities and their residents. Finally, the major issues and problems related to community residential services are discussed.

Butler, Edgar, and Arn Bjaanes. "Activities and Use of Time by Retarded Persons in Community Care Facilities." In *Observing Behavior: Theory and Applications in Mental Retardation*, edited by Gene Sackett. Baltimore: University Park Press, 1978.

The authors examined how residents in 171 care facilities used their time. The research methods were interviews with the care providers of each facility and random observations. The results were related to a number of resident and facility characteristics. Results show that residents in small facilities have very little interaction with the environment outside the facility.

Columbatto, Joseph, et al. "Perspectives on Deinstitutionalization: A Survey of the Members of the National Association of Superintendents of Public Residential Facilities for the Mentally Retarded." *Education and Training of the Mentally Retarded* 17, no. 1 (1982): 6-11.

Members of NASPRFMR were surveyed concerning several issues related to deinstitutionalization. In addition to other findings, the study reports that 44 percent of the superintendents viewed the surrounding community as "indifferent," while 35 percent viewed the community as "somewhat hostile."

Conroy, J.W., and VJ. Bradley. *The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis*. Philadelphia: Temple University Developmental Disabilities Center, and Boston: Human Services Research Institute, 1985.

This important study was a five-year, in-depth review of the effects of the court-ordered deinstitutionalization of residents of the Pennhurst School and Hospital in Pennsylvania. The study: 1) measured the behavioral progress of residents in the institution and in the community in order to determine the impact of relocation on mentally retarded persons; 2) assessed the impact of deinstitutionalization on the families of retarded persons and on the communities in which they live; 3) compared the costs of providing services in the institution to those in community settings; 4) assessed the legal history of the *Pennhurst* case.

Davidson, Jeffrey L. "Balancing Required Resources and Neighborhood Opposition in Community-Based Treatment Center Neighborhoods." *Social Service Review* 56, no. 1 (1982): 55-71.

The study of 21 community-based treatment centers in New Castle County, Maryland, compared neighborhood and facility population characteristics. The author found that centers for adults tended to locate in neighborhoods that had adequate geographically based resources. Centers for children in low-resistance neighborhoods are much less likely to find the necessary

treatment resources nearby.

Dear, Michael. "Impact of Mental Health Facilities on Property Values." *Community Mental Health Journal* 13, no. 2 (1977): 150-7.

Sales transactions in neighborhoods surrounding 12 small mental health facilities were studied to determine effects on property values. In all but one case, the mean sales values of the neighborhood homes rose after the facility opened. However, because of the limitations of the data, these results are inconclusive.

Dolan, Lawrence, and Julian Wolpert. *Long-Term Neighborhood Property Impacts of Group Homes for Mentally Retarded Adults*. Princeton, N.J.: Woodrow Wilson School of Public and International Affairs, 1982.

The follow up to an earlier study (see Wolpert 1978), this study investigated the market price and turnover rates of properties near 32 group homes. Results indicated that: the long-term market value of nearby homes was not significantly affected; a higher rate of property turnover could not be attributed to the establishment of group homes; the group homes were not conspicuous; the group homes were generally well maintained; and additional group homes were not planned for neighborhoods with established group homes.

Edgerton, Robert. "Crime, Deviance, and Normalization: Reconsidered." In *Deinstitutionalization and Community Adjustment of Mentally Retarded People*, edited by Robert Bruininks. American Association on Mental Deficiency Monograph no. 4. Washington, DC: American Association on Mental Deficiency, 1981.

This study observed 48 mildly retarded citizens in order to understand how these individuals, who are considered capable of community adaptation, actually adapted to community life. Of the 48, 18 were found to be "model" citizens who had not engaged in any criminal or deviant acts. Twenty had committed minor deviant acts or victimless crimes, and 10 had committed more serious offenses. Over half had been victims themselves. The results suggest that criminality may be a problem for some mental retardates in the community, but it is not a problem for all of them.

Eyman, Richard, and Tom Call. "Maladaptive Behavior and Community Placement of Mentally Retarded Persons." *American Journal of Mental Deficiency* 82, no. 2 (1977): 137-44.

A sample of 6,870 retarded individuals was studied to determine the prevalence of maladaptive behavior. Results indicate that individuals residing in institutional settings were more likely to exhibit problem behavior than were individuals in community settings. Level of retardation also related strongly to behavior problems; profoundly retarded individuals exhibited more incidents of problem behavior than moderately or mildly retarded individuals.

Freedman, Ruth, Elinor Gollay, and Marty Wyngaarden. *Study of the Community Adjustment of Deinstitutionalized Mentally Retarded Persons*. Vol. 6. *Executive Summary*. Cambridge, Mass.: Abt Associates, 1976.

This is a summary of a study of 440 deinstitutionalized developmentally disabled individuals. The five previous volumes of the study contained a review of the deinstitutionalization literature, a profile of deinstitutionalization patterns, a case study of deinstitutionalization procedures, descriptive data on community experiences, and an analysis of factors associated with community adjustment. Among other results, the study found that 50 percent of the study group had job placements, and 40 percent had school placements. Individual activities, such as watching television, were found to be more common than group activities.

Gailey, J. Benjamin. "Group Homes and Single-Family Zoning." *Zoning and Planning Law Report* 4, no. 2 (1981): 97-102.

According to the article, local governments have used zoning regulations to prevent group homes from being established in single-family areas in response to neighborhood opposition. The courts have generally struck down these exclusionary measures, but their efforts do not provide an adequate solution to the problem. State legislatures have passed statutes to alleviate the problem. Both efforts are discussed.

Gollay, Elinor, Ruth Freedman, Marty Wyngaarden, and Norman Kurtz. *Coming Back: The Community Experiences of Deinstitutionalized Mentally Retarded People*. Cambridge, Mass.: Abt Books, 1978.

The authors studied 440 mentally retarded individuals released to the community from nine institutions to establish a profile of their characteristics, where they live, their work and school placements, their social activities, and their success adjusting to the community. Results show that most of them live in small group homes in residential areas. Eighty-nine percent had some type of day placement, and many of them participated in activities in the community. In general, the individuals adjusted well to community living; 77 percent of the individuals and 75 percent of their families reported that they were adjusting very well to community life.

Goodale, Tom, and Sherry Wickware. "Group Homes and Property Values in Residential Areas." *Plan Canada* 19, no. 2 (1979): 154-63.

Residential neighborhoods surrounding 38 group homes were analyzed to determine the group homes' impact on property values. Results indicate that neither the rate of sales transactions nor the selling prices of homes was adversely affected. The study finds no evidence to support the contention that property values and the marketability of homes are negatively affected by the establishment of a group home in a residential zone.

Hanley-Maxwell, Cheryl, and Laird Heal. "Legislative Constraints and Facilitations for Community Integration." In *Integration of Developmentally Disabled Individuals Into the Community*, edited by Angela Novak and Laird Heal. Baltimore: Paul M. Brookes, 1980.

In this article, federal, state, and local legislation concerning the community integration of developmentally disabled individuals is discussed. At the federal level, legislation has reflected the increasing awareness of the need for more and better community services for the mentally retarded. A review of state statutes and licensing requirements reveals that community living has been facilitated by the states through the provision of residential alternatives and that, at the same time, community living has been inhibited by the lack of emphasis on programmatic standards. At the local level, zoning regulations were found to inhibit community residences by excluding them from residential areas.

Hauber, Florence, et al. "National Census of Residential Facilities: A 1982 Profile of Facilities and Residents." *American Journal of Mental Deficiency* 89, no. 3 (1984): 236-45.

This update of an earlier survey identifies 15,633 residential facilities that provide room, board, and supervision for almost 280,000 developmentally disabled individuals. As in the earlier survey, information regarding the operator, size, geographic distribution, demographic characteristics, resident movement, and costs of the facilities was collected.

Heal, Laird, Carol Sigelman, and Harvey Smitzky. "Research on Community Residential Alternatives for the Mentally Retarded." In *International Review of Research in Mental Retardation*, vol. 9, edited by N. Ellis. New York: Academic Press, 1978.

This article reviews a variety of literature on residential alternatives for mentally retarded persons. The historical development and ideological roots of the movement are traced through the literature, and the current status of residential services is outlined. The relationship between various factors and the success of deinstitutionalization is also explored. The article concludes that current data support the contention that there are "cost-efficient, community-based, culturally normative alternatives to large, segregated, residential facilities."

Herr, Stanley S. *Rights and Advocacy for Retarded People*. Lexington, Mass.: Lexington Books, 1983.

This book explores some of the legal rights and policy safeguards that can prevent the residential segregation of mentally retarded people. It examines the legal history of segregated institutions and the public policies that are redirecting mental retardation services. The book examines the rights of retarded persons to the least restrictive modes of care; to appropriate individualized habilitation and education; and to community reintegration. It also discusses the need for an independent advocacy system for mentally disabled persons now liv-

ing in central facilities as well as those living in group homes.

Hill, Bradley, and Robert Bruininks. *Family, Leisure, and Social Activities of Mentally Retarded People in Residential Facilities*. Minneapolis, Minn.: University of Minnesota, Department of Psychoeducational Studies, 1981.

Information was collected concerning the family, leisure, and social activities of 2,271 residents in 236 residential facilities. Results indicate that residents are sometimes unable to participate in community activities because there is no one to accompany them and offer them general assistance in finding their way around. Less than 16 percent of the residents had regular social contact with nonhandicapped peers.

Hill, Bradley, Robert Bruininks, and Charlie K. Lakin. "Characteristics of Mentally Retarded Residents." In *Health and Social Work* 8, no. 2 (1983): 85-96.

This nationwide study of 236 residential facilities examines the physical and behavioral characteristics of 2,271 mentally retarded residents. Of this number, 24.9 percent of those in community facilities could make short routine trips into the community independently or with peers. Also, 18.7 percent could find their way around the community, and 7.1 percent were capable of living independently in the community. Only half of the residents were able to go beyond the home's yard without direct supervision.

Hill, Bradley, Lisa Rotegard, and Robert Bruininks. "The Quality of Life of Mentally Retarded People in Residential Care." *School Work* 29, no. 3 (1984): 275-81.

The authors studied the extent of family, social, and leisure activities of 2,271 residents in 236 residential facilities. Results indicate that most residents have little contact with the community or relationships outside the facility. Over 90 percent of the residents watched television or listened to the radio during their free time; fewer than half of them participated in community activities such as shopping or going to the movies. Eighty-three percent had no regular social contact with nonhandicapped peers, and 42 percent had no outside relationships.

Intagliata, James, Barry Wilier, and Frederick Cooley. "Cost Comparison of Institutional and Community-Based Alternatives for Mentally Retarded Persons." *Mental Retardation* 17 (1979): 154-56.

The cost of residential care, including room, board, attendant care, and personal items, is compared for a large state institution, family-care homes, group homes, and the homes of the natural family. The cost per resident per year was \$14,630 for the institution; \$9,255-\$11,000 for the group home; \$3,130 for family-care homes; and \$2,108 for the homes of the natural family.

Janicki, Matthew, Tadashi Mayeda, and William Epple.

"Availability of Group Homes for Persons With Mental Retardation in the United States." *Mental Retardation* 21, no. 2 (1983): 45-51.

Each of the 50 state agencies responsible for administering, certifying, or overseeing group homes for the developmentally disabled was contacted to determine the national scope of the group home program. The survey identified 6,302 group homes, serving at least 57,494 residents. The homes were classified by number of beds, age of the residents, and type of operator (governmental, not-for-profit, proprietary). Results suggest that the number of group homes is increasing dramatically.

Janicki, Matthew, and Warren B. Zigman. "Physical and Environmental Design Characteristics of Community Residences." *Mental Retardation* 22, no. 6 (1984): 294-301.

The size, type, and design of CRFs were compared to general housing stock. Neighborhood location was also studied. CRFs generally were found in population centers and were close to typical community, commercial, health, and recreational resources.

Kastner, Laura, M. Dickon Reppucci, and John Pezzoli. "Assessing Community Attitudes Toward Mentally Retarded Persons." *American Journal of Mental Deficiency* 84, no. 2 (1979): 137-44.

Residents near a house that was being considered as a group home were asked a series of questions regarding attitudes toward retarded individuals and community living. The results were compared to a control group to whom no threat was posed. In both the threat and control conditions, attitudes toward the retarded were generally favorable. Ninety percent of the control group and 81 percent of the threat group stated that they would not object to a group home on their block. The study also found a strong relationship between experience with retarded individuals and more positive attitudes towards them.

Landesman-Dwyer, Sharon. "Living in the Community." *American Journal of Mental Deficiency* 86, no. 3 (1981): 223-34.

This article reviews the literature concerning the relationship between various group home characteristics and the "success" of the program. Smaller programs were found to be not necessarily better. Also, urban settings were found to provide more opportunities to residents, although there is no evidence that rural settings segregate, isolate, or limit resident involvement in the community.

Landesman-Dwyer, Sharon, Judy Stein, and Gene Sackett. "A Behavioral and Ecological Study of Group Homes." In *Observing Behavior: Theory and Applications in Mental Retardation*, edited by Gene Sackett. Baltimore: University Park Press, 1978.

Residents in 20 group homes were observed on one weekday and one weekend day to determine their ac-

tivities. The results were related to resident and facility characteristics. The activity 'leaving the house' was recorded in nearly 3 percent of the observations. About one-third of these activities were accounted for by residents leaving for school or work, in which 98 percent of the residents participated. Other reasons for leaving the house included visiting friends or participating in community activities such as bowling or shopping.

Lauber, Daniel. *Toward a Sound Zoning Treatment of Group Homes for the Developmentally Disabled*. Evanston, 111.: Planning/Communications, 1985.

The report finds that group homes for developmentally disabled individuals are often excluded from single-family residential areas through zoning restrictions. Neighborhood opposition based on unwarranted fears is generally the reason for these restrictions. Because group homes operate most effectively in residential areas, the report recommends that zoning ordinances include provisions for group homes. First, group homes should be allowed in single-family areas. Second, measures should be taken to prevent group homes from clustering in one neighborhood. Third, provisions should be made to ensure proper operation of the homes. Finally, group homes should be prevented from concentrating in communities with permissive zoning regulations.

Lauber, Daniel, and Frank Bangs, Jr. *Zoning for Family and Group Care Facilities*. Planning Advisory Service Report No. 300. Chicago: American Society of Planning Officials, 1974.

The authors examine group homes serving a variety of populations and how these homes have been treated in court decisions and zoning regulations. Given the importance of the community location of these facilities, the report recommends that zoning regulations be amended to allow group homes in residential neighborhoods. Ordinances should establish parking, signage, and concentration regulations to ensure that all health and safety concerns are adequately addressed. Also, community education is recommended to dispel fears.

Lubin, Robert, et al. "Community Acceptance of Residential Programs for Developmentally Disabled Persons." *Applied Research in Mental Retardation* 3 (1982): 191-200.

Surveys were collected from 459 operators of small community residences to determine the nature and extent of community opposition. The authors found that opposition to the homes decreased after the homes opened. Fear that real estate values would be lowered was the most common cause of opposition, followed by the fear of adverse effects on the neighborhood character and the unwanted presence of undesirable individuals.

MacEachron, Ann. "Mentally Retarded Offenders: Prevalence and Characteristics." *American Journal of Mental Deficiency* 84, no. 2 (1979): 165-75.

In this study of 3,938 adult male offenders, the prevalence rate for mentally retarded adult male offenders was found to be only slightly higher than the prevalence rate of retarded adult males in the general population. The study concludes that there is not a link between criminality and retardation.

Mansell, Jim, et al. "Measuring the Activity of Severely and Profoundly Mentally Handicapped Adults in Ordinary Housing." *Behavior Research and Therapy* 22, no. 1 (1984): 23-29.

In this study, six subjects living in a four-bedroom home in a residential area were observed for five consecutive days. Observations revealed that the subjects spent an average of only 10 percent of their time away from the home.

Margolis, Jerome, and Thalia Charitonidis. "Public Relations to Housing for the Mentally Retarded." *Exceptional Children* 48, no. 1, (1981): 68-70.

In this study, 80 landlords advertising rooms for rent in local newspapers were asked whether they would object to an educable, mildly or moderately retarded person taking the apartment. Fifty-eight of them (72.5 percent) stated that they were willing to accept the retarded individual as a tenant.

Mihira, Lyly, and Kazuo Mihira. "Jeopardy in Community Placement." *American Journal of Mental Deficiency* 79, no. 5. (1975): 538-44.

Interviews were conducted with 109 operators of group home facilities to determine the nature and extent of incidents in which some type of jeopardy was present. Through the interviews, 1,252 incidents of problem behavior were identified, of which 203 involved jeopardy. Of these incidents, a large proportion (77 percent) were classified as health and safety hazards. Another 18 percent were identified as jeopardy in the eyes of the law. In almost 80 percent of all the incidents, the residents themselves were at risk.

Moreau, Francis, Angela Novak, and Carol Sigelman. "Physical and Social Integration of Developmentally Disabled Individuals into the Community." In *Integration of Developmentally Disabled Individuals into the Community*, edited by Angela Novak and Laird Heal. Baltimore: Paul M. Brookes, 1980.

This review of research on the physical and social integration of mentally retarded individuals reveals that residents of community facilities may have only minimal contact with the surrounding community. The studies reviewed suggest that residents are involved in some social activities and contacts in the community, but these are limited. Day-time employment and education programs are often "special" programs, which further isolate residents from community life. The article cites negative community attitudes as playing a role in the lack of acceptance of developmentally disabled individuals into the community.

O'Connor, Gail. *Home Is a Good Place*. American Association on Mental Deficiency Monograph no. 2. Washington, D.C.: American Association on Mental Deficiency, 1976.

In this study, 611 group homes were identified out of a nationwide survey of 3,325 community residential facilities. Of these, 105 were isolated as subjects for a study of the general characteristics of the facilities and their residents. Among other results, the study found that between 20 and 50 percent of the residents regularly participated in community activities.

O'Neill, John, et al. "Activity Patterns of Mentally Retarded Adults in Institutions and Communities: A Longitudinal Study." *Applied Research in Mental Retardation* 2 (1981): 367-79.

This study of 26 retarded individuals was designed to measure changes in activity patterns after the subjects had lived in the community for 2.5 years. All types of activities increased, although activities taking place in the home were found to increase more than activities taking place away from home.

Poliuka, Christian, et al. "Selected Characteristics, Services, and Movement of Group Home Residents." *Mental Retardation* 17, no. 5 (1979): 227-30.

Nearly 480 residents in 47 group homes were studied to examine selected client, facility, and service characteristics. Forty percent of those studied were capable of managing their own transportation or leisure time independently or with assistance. The results also show that few group home residents living in the community are returned to institutions.

Salzberg, Charles, and Cynthia Langford. "Community Integration of Mentally Retarded Adults Through Leisure Activity." *Mental Retardation* 19, no. 3 (1981): 127-31.

The literature reviewed in this article reveals that the community location of group homes does not translate into community interaction by the residents. Rather, the article suggests that most residents spend their days in a special school or workshop and their evenings at the home, isolated from the surrounding community. Structured leisure programs for the residents are suggested to integrate the residents into the community.

Sandier, Allen, and Kenneth S. Thurman. "Status of Community Placement Research: Effects on Retarded Citizens." *Education and Training of the Mentally Retarded* 16, no. 4 (1981): 245-51.

This article reviews recent research concerning community placement and its effects on retarded individuals. The review suggests that there is little empirical support for the contention that placement in community settings benefits retarded persons. Rather than being normalized, community-based group homes may function as "mini-institutions" in the community. The

authors conclude that more research is needed to isolate the variables that create a normalized environment.

Santamour, Miles, and Bernadette West. "The Mentally Retarded Offender in the Social Context." *Amicus* 4 (1979): 23-28.

A discussion of mentally retarded offenders in the criminal justice system is presented. According to the article, research suggests that between nine and 27 percent of offenders could be considered mentally retarded. However, this does not mean they are more prone to criminal behavior than are nonretarded individuals. Rather, retarded individuals are at a disadvantage in the courts because the justice system may not understand the nature of mental retardation and, therefore, may not treat them accordingly. Specifically, the article finds that retarded offenders are more likely to be convicted and less likely to be paroled or put on probation than non-retarded offenders.

Schalock, R.L., and R.S. Harper. "Independent Living and the Disabled: A Systematic Approach to Independent Living Training." In *Frontiers of Knowledge in Mental Retardation*, vol. 1, edited by Peter Mittler. Baltimore: University Park Press, 1981.

The authors studied 123 group home residents participating in an independent living skills training course to determine if their skills had increased after one year in the program. Results indicate that most community living skills increased, as did awareness and use of the community.

Seltzer, Marsha. "Correlates of Community Opposition to Community Residences for Mentally Retarded Persons." *American Journal of Mental Deficiency* 89, no. 1 (1984): 1-8.

Forty-three group homes were studied to determine sources of community opposition. Of this number, 21 encountered opposition and only eight received support from the community when the home opened. Those residences conducting community education programs prior to opening were more likely to encounter opposition. Client characteristics, on the other hand, were found to be unrelated to the probability of encountering opposition.

Seltzer, Marsha, and Gary Seltzer. "Community Living: Accommodations and Vocations." In *Research to Practice in Mental Retardation*, vol. 1, edited by Peter Mittler. Baltimore: University Park Press, 1977.

The authors categorized 381 group homes according to size, protectiveness, type of training program, and independence of residents. Among group homes serving six to 10 persons, residents had a fairly high level of functioning, and they were given more autonomy than residents of larger homes. Only 11 percent of the residents did not have educational or work programs, and 21 percent worked at competitive jobs.

Sigelman, Carol. "A Machiavelli for Planners: Commu-

nity Attitudes and Selection of a Group Home Site." *Mental Retardation* 14, no. 1 (1976): 26-29.

For this study, 665 adults were given a survey that included several items regarding the laws affecting the mentally retarded. Results indicate that fewer than half (44.7 percent) of those surveyed favored the idea of homes for the retarded in residential areas. Given the tenuous relationship between attitudes and actions, the article suggests that the most appropriate strategy for opening a group home may be to move in without informing the neighbors, thereby preventing them from mobilizing against the home.

Sigelman, Carol, Cynthia Spanhel, and Cathy Lorenzen. "Community Reactions to Deinstitutionalization: Crime, Property Values, and Other Bugbears." *Journal of Rehabilitation* 45, no. 1 (1979): 53-55.

This literature review indicates that there is no evidence that crime rates increase, property values decrease, or that neighborhood character is adversely affected due to the presence of a group home. Research suggests that opposition to group homes decreases as neighborhood residents become more familiar with the group home and its residents.

Weber, Donald. "Neighborhood Entry in Group Home Development." *Child Welfare* 57, no. 10 (1978): 627-42.

A summary of the variables associated with establishing and maintaining good community relations for group home operators is presented. Variables include neighborhood, client, sponsoring agency, and facility. Three strategies for entering neighborhoods are also presented: the "low-profile" approach, the "high-profile" approach, and a combination of the first two, "informing the select few." The article recommends that group home operators recognize the relevant variables prior to opening a home and select an appropriate entry strategy.

Wiener, Dirk, Ronald Anderson, and John Nietupski. "Impact of Community-Based Residential Facilities for Mentally Retarded Adults on Surrounding Properties Using Realtor Analysis Methods." *Education and Training of the Mentally Retarded* 17, no. 4 (1982): 278-82.

Property values of houses surrounding group homes were investigated using a comparable market analysis. In all cases, proximity to a group home did not have a detrimental effect on surrounding property values. The article states that these finds may be explained by the well-maintained appearance of the group homes.

White, Carolyn, et al. "Day Programs of Adults With Mental Retardation in Residential Facilities." *Mental Retardation* 22, no. 3 (1984): 121-27.

The daytime habilitative programs of 2,271 mentally retarded individuals in 236 residential facilities were examined. Results showed that 29.4 percent of the residents attended schools as a major day placement; 32.7 percent were in vocational training or work placements; and 20.1 percent had some type of day activity place-

ments. These percentages are higher than those of an institutionalized sample. However, 73 percent of those in schools were in special schools, and 80 percent of the vocational programs were in sheltered workshops, suggesting segregation from community life.

Wilier, Barry, and James Intagliata. "Social-Environmental Factors as Predictors of Adjustment of Deinstitutionalized Mentally Retarded Adults." *American Journal of Mental Deficiency* 86, no. 3 (1981): 252-59.

The authors studied 338 adults two to four years after they had been released from an institution to foster family care or community residences. The study was designed to isolate the characteristics that were statistically related to community adjustment. Individual characteristics and care-provider characteristics were found to be related to community living skills, and care-provider characteristics were found to be related to an individual's use of community resources. Provider over-protectiveness tended to limit the use of community resources and the attainment of living skills.

Wilier, Barry, and James Intagliata. "Comparison of Family-Care and Group Homes as Alternatives to Institutions." *American Journal of Mental Deficiency* 86, no. 6 (1982): 588-95.

The authors studied 338 subjects placed in the community from five institutions to compare residents' adaptation in two settings: family-care and group homes. Family-care residents were found to improve their maladaptive behavior, while group home residents improved their community living skills. Across both groups, 70 to 90 percent made use of community resources such as restaurants, movie theaters, and churches. Level of retardation did not influence the extent to which residents made use of the community.

Willms, J.D. "Neighborhood Attitudes Toward Group Homes for Mentally Retarded Adults." In *Frontiers of Knowledge in Mental Retardation*, vol. 1, edited by Peter Mittler. Baltimore: University Park Press, 1981.

Seventy-five adults residing in the vicinity of a medium-sized group home were surveyed to determine their attitudes, knowledge, and concerns about mental retardation and community residences. The study found that individuals with previous contact with retarded persons had fewer concerns over nuisance and safety issues than did those with no previous contact. Those who expressed concerns cited the operations of the home as the greatest, followed by concerns over safety

issues. The study suggests maintaining a low profile while establishing a group home.

Witkin, Gordon. "But Not In My Neighborhood." *Planning* 47, no. 5 (1981): 23-26.

The article provides a brief outline of the history of the group home movement and the conflicts it has faced with local zoning ordinances. Neighborhoods often resist the establishment of group homes because the residents are afraid that property values will decrease, crime will increase, traffic will increase, and the character of the neighborhood will be adversely affected. Although these fears are generally unfounded, local officials are able to exclude group homes from residential areas by considering them, for zoning purposes, the same as a hospital or nursing home. Enacting state legislation is cited as a method of overcoming local zoning barriers.

Wolpert, Julian. *Group Homes for the Mentally Retarded: An Investigation of Neighborhood Property Impacts*. Albany, New York: New York State Office of Mental Retardation and Developmental Disabilities, 1978.

Property values and real estate transactions were studied in 42 communities with group homes, and the results were compared to data from control communities. Results indicate that: there was no evidence of "saturation" of group homes in any one neighborhood; the group homes were consistent and compatible with neighboring structures and were generally better maintained; the function of the group home was not conspicuous; proximity to the group home did not affect the market value of other homes; neighboring homes did not decline in market value; and property turnover rates were not higher than in the control communities.

"Zoning for Community Homes Serving Developmentally Disabled Persons." *Mental Disability Law Reporter* 2, no. 20 (1978): 794-810.

This article recommends state legislation to prevent local officials from using zoning regulations to exclude group homes from residential districts. At the time of writing, 16 states had enacted legislation allowing group homes in residential areas as a permitted use. These statutes are reviewed. At the end of the article, a model statute is proposed that would facilitate the appropriate siting of group homes. The statute also provides for the establishment of a state licensing program to ensure proper care and habilitation of developmentally disabled individuals.