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February 7, 2018

To: F.H.R.E. LLC

Re: Fox Hill Residential Facility without  
a Zoning Amendment and Town Permits

### QUESTION

**Can Fox Hill be used as a residential alcohol and other substance abuse residential treatment facility without a zoning ordinance amendment or any other Town of Camden permits?**

### ANSWER

**Yes, for up to 8 persons**

### DISCUSSION

#### Maine Law:

In 1997 the Maine Community Living statute was repealed and rewritten to conform to the Federal Fair Housing Act. A copy of the current Maine statute, *30-A M.R.S.A. 4357-A*, is attached.

There is no Maine case law concerning the statute.

Prior to 1997 this statute only addressed the housing needs of mentally handicapped and developmentally disabled persons. It also provided for local

municipal permits, set hearing and density standards. It had provisions that allowed municipalities to deny applications for community living arrangements.

The Legislature in 1997 rewrote the statute to specifically benefit all “handicap” persons as defined in the Federal Fair Housing Act at 42 USC Section 3602. That definition at 3602(h) as applied by the courts includes individuals recovering from drug or alcohol addiction so long as they are not currently engaged in alcohol or drug use. (See 42 USCA Section 3602(h) and note 21, a copy of which is attached) This legislative intent is clear in the summary statement describing the legislation in the original Legislative Document and in the Committee Amendment. (See 118<sup>th</sup> Legislature, First Special Session, L.D. 943) This legislation also repealed all of the former provisions that gave municipalities a permitting role in the locating of these facilities when there would be 8 or fewer persons being treated in the residential facility.

As a result of this legislation, a Fox Hill residential facility for up to 8 recovering alcohol addicts must be treated by the Town of Camden as if it were a single family dwelling in the Coastal Residential District (CR) in the zoning ordinance at Article VII, Section 5. Here the ordinance permits single family houses without use permits so long as it is on a lot of 40,000 sq. ft., has 150 feet of road frontage, property line set back of 25 feet and 30 feet between principal buildings. Fox Hill exceeds all of the standards.

The only Town of Camden permits needed are building permits for construction and /or renovations. These are based only on building codes.

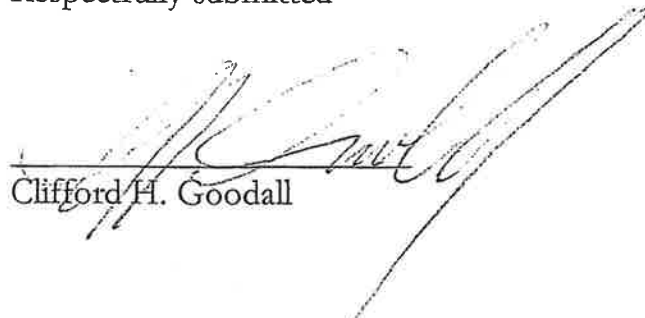
USE OF THE BUILDINGS:

The multiple buildings at Fox Hill constitute the facility. The Borden Cottage could not be used for 8 persons and another building for an additional 3 or 4. Since they would all be using other shared services and building the maximum number could not exceed 8 no matter where the bedrooms may be located.

TIME LINE

When an 8 person facility could open is dependent only on completion of renovations by F. H.R.E and McLean getting its DHHS license and staffing.

Respectfully submitted

  
Clifford H. Goodall

§ 4357. Repealed. Laws 1997, c. 442, § 1

§ 4357-A. Community living arrangements

1. **Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Community living arrangement" means a housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.

B. "Disability" has the same meaning as the term "handicap" in the federal Fair Housing Act, 42 United States Code, Section 3602.

2. **Single-family use.** In order to implement the policy of this State that persons with disabilities are not excluded by municipal zoning ordinances from the benefits of normal residential surroundings, a community living arrangement is deemed a single-family use of property for the purposes of zoning. 1997, c. 442, § 2.

H. d. S.

L.D. 943

DATE: *May 19, 1997*

(Filing No. S- 263)

STATE AND LOCAL GOVERNMENT

Reported by: *Majority*

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE  
SENATE  
118TH LEGISLATURE  
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S.P. 292, L.D. 943, Bill, "An Act to Amend the Law Governing Municipal Zoning with Respect to Community Living Arrangements"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 30-A MRSA §4357, as enacted by PL 1989, c. 104, Pt. A, §45 and Pt. C, §10, is repealed.

Sec. 2. 30-A MRSA §4357-A is enacted to read:

§4357-A. Community living arrangements

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Community living arrangement" means a housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.

B. "Disability" has the same meaning as the term "handicap" in the federal Fair Housing Act, 42 United States Code, Section 3602.

2. Single-family use. In order to implement the policy of this State that persons with disabilities are not excluded by municipal zoning ordinances from the benefits of normal residential surroundings, a community living arrangement is deemed a single-family use of property for the purposes of zoning.

**COMMITTEE AMENDMENT**

R. of S.

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Sec. 3. 36 MRSA §652, sub-§1, ¶C, as amended by PL 1995, c. 560, Pt. K, §82 and affected by §83, is further amended by amending subparagraph (6), division (b), subdivision (i) to read:

(i) Property used as a nonprofit nursing home, boarding home or boarding care facility licensed by the Department of Human Services pursuant to Title 22, chapter 1665 or a community living ~~facility~~ arrangement as defined in Title 30-A, section 4357, ~~subsection--2,--paragraph--B~~ 4357-A or any property owned by a nonprofit organization licensed or funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide services to or for the benefit of persons with mental illness or mental retardation;'

Further amend the bill by inserting at the end before the summary the following:

**FISCAL NOTE**

The Department of Mental Health, Mental Retardation and Substance Abuse Services will realize some minor savings in legal costs from these changes in the zoning process for community living arrangements.'

**SUMMARY**

The amendment replaces the bill. It strikes the current law regarding municipal ordinances and community living arrangements in order to repeal provisions that violate federal law and to rewrite and clarify the remaining provisions. The amendment continues the requirement that municipalities consider community living arrangements to be single-family uses of property for purposes of zoning. It also corrects a cross-reference to the repealed and rewritten section.

The amendment also adds a fiscal note to the bill.

Authority. C.A.6 (Ohio) 1985, 758 F.2d 1086. Civil Rights ⇨ 1082; Health ⇨ 392

In the abstract, there is no constitutional or statutory right for individual citizens to have housing meeting a particular standard, nor is there a concomitant duty on part of public entities to provide housing; however, no municipality may act in a manner which frustrates the policy under this chapter to provide, within constitutional limitations, for fair housing throughout the United States. *Smith v. Town of Clarkton, N.C.*, C.A.4 (N.C.) 1982, 682 F.2d 1055. Municipal Corporations ⇨ 717.5(1)

There is no constitutional guarantee of access to dwelling of a particular quality, and there is no constitutional or statutory duty to provide low income housing. *Acevedo v. Nassau County, New York*, C.A.2 (N.Y.) 1974, 500 F.2d 1078. Civil Rights ⇨ 1075; Civil Rights ⇨ 1082

There is no federally protected right to low-income public housing. *Schmidt v. Boston Housing Authority*, D.C.Mass. 1981, 505 F.Supp. 988. Civil Rights ⇨ 1082

City had obligation to provide housing for those displaced by public action. *Stingley v. City of Lincoln Park*, E.D.Mich.1977, 429 F.Supp. 1379. Municipal Corporations ⇨ 717.5(1)

#### 11. Sexual harassment

Sexual harassment is actionable under Fair Housing Act. *Williams v. Poretzky Management, Inc.*, D.Md.1996, 955 F.Supp. 490. Civil Rights ⇨ 1086

#### 12. Weight and conclusiveness of administrative interpretations

Consistent administrative construction of this chapter is entitled to great weight. *Trafficante v. Metropolitan Life Ins. Co.*, U.S.Cal.1972, 93 S.Ct. 364, 409 U.S. 205, 34 L.Ed.2d 415. Statutes ⇨ 219(1)

### § 3602. Definitions

As used in this subchapter—

(a) "Secretary" means the Secretary of Housing and Urban Development.

(b) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) "Family" includes a single individual.

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) "Discriminatory housing practice" means an act that is unlawful under section 3604, 3605, 3606, or 3617 of this title.

(g) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

## Note 20

"handicapped" within meaning of Federal Fair Housing Act (FHA), despite contention that adult care facility proposed for such persons would only accept HIV infected persons who were able to care for themselves. *Support Ministries for Persons With AIDS, Inc. v. Village of Waterford, N.Y.*, N.D.N.Y.1992, 808 F.Supp. 120. Civil Rights ⇨ 1024

Persons with Acquired Immune Deficiency Syndrome (AIDS) are persons with "handicap" for purposes of Fair Housing Act prohibition against discrimination in sale or rental of dwelling because of handicap. *Baxter v. City of Belleville, Ill.*, S.D.Ill.1989, 720 F.Supp. 720. See, also, *Association of Relatives and Friends of AIDS Patients (A.F.A.P.S.) v. Regulations and Permits Admin. or Administracion de Reglamentos y Permisos (A.R.P.E.)*, D.Puerto Rico 1990, 740 F.Supp. 95. Civil Rights ⇨ 1024

21. — Alcoholism and drug addiction, handicap

Clients of provider of drug rehabilitation service met the general definition of persons under "handicap" in Fair Housing Act for purpose of determining whether defendant's refusal to rent apartments to the provider for use in treatment program constituted prohibited discrimination. *U.S. v. Southern Management Corp.*, C.A.4 (Va.) 1992, 955 F.2d 914. Civil Rights ⇨ 1022

Recovering alcoholics and drug addicts suffered "handicap," and thus had standing to bring action alleging that city's restrictions on placement of substance abuse treatment facilities violated Fair Housing Act (FHA), where recovering individuals were not engaged in current drug or alcohol use, had because of their addiction been unable to perform major life activities, and intended to return to facilities if they relapsed. *Jeffrey O. v. City of Boca Raton*, S.D.Fla.2007, 511 F.Supp.2d 1339. Civil Rights ⇨ 1022; Civil Rights ⇨ 1331(3)

Genuine issue of fact as to whether residents of housing units for individuals recovering from alcohol and/or drug addictions had a record of an impairment that limited their ability to work, care for themselves, including but not limited to keeping a roof over their head, and, thus, were disabled within meaning of ADA and Fair Housing Act (FHA), precluded summary judgment on residents' claim that city ordinance banning persons re-

covering from drug and/or alcohol addiction from residing in any residential neighborhood within city violated these statutes. *Jeffrey O. v. City of Boca Raton*, S.D.Fla.2007, 511 F.Supp.2d 1328. Federal Civil Procedure ⇨ 2491.5

Residents and prospective residents of group home for recovering alcoholics and drug addicts were persons with a "handicap" within meaning of the Fair Housing Act (FHA). *Tsombanidis v. City of West Haven, D.Conn.2001*, 180 F.Supp.2d 262, affirmed in part, reversed in part 352 F.3d 565.

Individuals recovering from drug or alcohol addiction are "handicapped" under the Fair Housing Act (FHA). *Corporation of Episcopal Church in Utah v. West Valley City*, D.Utah 2000, 119 F.Supp.2d 1215. Civil Rights ⇨ 1022

Recovering drug abuser was "handicapped," under Fair Housing Act, even though Act had exclusion for current drug users and abuser allegedly took cocaine four months after complaint was filed; handicapped status was measured at time allegedly discriminatory housing acts occurred, at which time there was no evidence that abuser was using any drugs. *Fowler v. Borough of Westville*, D.N.J.2000, 97 F.Supp.2d 602. Civil Rights ⇨ 1022

Group home residents impaired by drug or alcohol dependency were not handicapped under Fair Housing Act (FHA), as FHA's definition of "handicapped" explicitly excluded current substance abuse. *Children's Alliance v. City of Bellevue*, W.D.Wash.1997, 950 F.Supp. 1491. Civil Rights ⇨ 1022

Alcoholism or drug addiction, excluding current drug use, are impairments under the Fair Housing Act (FHA), which defines "handicap" as including impairments which substantially limit major life activities, not including current drug use. *Oxford House, Inc. v. Township of Cherry Hill*, D.N.J.1992, 799 F.Supp. 450. Civil Rights ⇨ 1022

Municipality violated provisions of Fair Housing Act prohibiting discrimination on basis of handicap when it took actions to prevent house from being used as residential group home for recovering alcoholics and drug users. *U.S. v. Borough of Audubon, N.J.*, D.N.J.1991, 797 F.Supp. 353, affirmed 968 F.2d 14. Civil Rights ⇨ 1022



CHAPTER 45—FAIR HOUSING

SUBCHAPTER I—GENERALLY

§ 3602. Definitions

Notes of Decisions

2. — Alcohol and drug treatment facilities, dwelling

Proposed rehabilitation center for individuals recovering from alcoholism and substance abuse, which was located in single-family residence in

residential area, was "dwelling" within meaning of Fair Housing Act (FHA). *Caron Foundation of Florida, Inc. v. City of Delray Beach*, S.D.Fla. 2012, 2012 WL 2249263. Civil Rights ⇌ 1022; Civil Rights ⇌ 1075