

ALLEGHENY COUNTY HEALTH DEPARTMENT
ADMINISTRATIVE HEARINGS

Ronald Yocca,)		
)		
Appellant,)	In re:	828 Maple Avenue
)		Turtle Creek, PA 15145
vs.)		
)	Docket No.	ACHD-22-001
Allegheny County Health Department,)		
)		
Appellee.)		

BRIEF ON BEHALF OF RONALD YOCCA

AND NOW, comes the Appellant, Ronald Yocca, by and through counsel, Brian V. Gorman and Southwestern Pennsylvania Legal Aid, who submits this brief in support of Ronald Yocca.

FACTS AND PROCEDURAL HISTORY

The underlying facts are generally undisputed, and it is agreed that the core issue in dispute is whether the Fair Housing Act exempts My Brother’s House at 828 Maple Avenue in Turtle Creek (hereinafter “MBH”) from otherwise-applicable Health Department regulations. MBH is owned by Ronald Yocca’s (hereinafter “Yocca”) Rachel Estates, which rents the residence to the nonprofit of the same name, MBH, for which Yocca is the Executive Director. Hearing Transcript (H.T.) 12-13; 29-19-20; 38:9-11. MBH has up to six bedrooms, and four of those bedrooms are currently being used by a total of five residents. H.T. 13:2-11. The four bedrooms are outfitted to accommodate up to seven occupants. H.T. 68:15-22. It is undisputed that no health and safety regulations are being violated with respect to the available space in the residence, or its physical accommodations and features. H.T. 14:2-5; 74-75.

Yocca, who has been in recovery from drug dependence for over 36 years, ensures that all residents are in recovery from drug and/or alcohol dependence. H.T. 17:5-9; 23:24. He

personally screens each resident based on his experience and guidelines set by the Western Pennsylvania Association of Recovery Residences, which is associated with the Pennsylvania and National Associations of Recovery Residences. H.T. 18-20; 35:10-15. He also drug tests potential residents to confirm sobriety. H.T. 23:14-23. Residents are strictly prohibited from using alcohol or illegal drugs. H.T. 24:6-9.

House rules promote recovery and, where needed, enforce sobriety, and the residents “have the same goals. They are trying to stay clean. They support each other.” H.T. 17:23-25. Like any family home, lengths of residency can vary, but residents can stay for long or permanent periods, and “(s)ome of our guys have been with us for many years.” H.T. 18:10-11, 14-17. MBH is not a drug and alcohol treatment facility; rather, it is a home in a residential area and akin to a single-family residence. 22:10-15; 48:8-12. In addition to shared goals – most notably but not exclusively, sobriety – residents share chores, food, meals, entertainment, and community activities. H.T. 14-15; 29:8-18; 30-31. Residents contribute a monthly fee of \$450 to MBH for expenses. H.T. 31-32.

Yocca has not applied for a rooming or boarding (or “other”) application with the Health Department because “(i)t would pigeonhole us into being something we’re not.” H.T. 52:15-23. Christopher Zeiler, Environmental Health Supervisor for the Health Department, directed MBH to apply for a rooming house permit under a regulation pertaining to four or more unrelated cohabitants. H.T. 72:21-25. After a December 9, 2021 notice of Health Department violation, counsel submitted an appeal on January 7, 2022 on behalf of Yocca, seeking a reasonable accommodation from the regulations due to Fair Housing Act protections for disabled people, i.e., people in recovery from drug and/or alcohol dependence.

ARGUMENT

Whatever the Health Department's history of this regulation's applicability and enforcement, it bases its argument to apply the regulation to MBH on two faulty premises: that MBH is a rooming house, and that MBH should be treated differently than a family living in a home. The Health Department has admitted that a family – whether related by blood or marriage or other traditional (yet evolving) definitions of family – of four or more would not be subject to this regulation, and it would not be a rooming house, boarding house, etc. H.T. 71:12-18; 73:1-9. It also stated that the Health Department has the power to investigate whether houses are improperly operating as rooming houses or boarding houses, which protects the public from any house claiming or purporting to be a recovery residence but actually operating as a rooming or boarding house. H.T.71:6-11. The Health Department has advanced that it tempers its regulations in terms of costs and conveniences, and it limits its oversight to issues regarding health and safety – and its genuineness is undisputed – but, in addition to actual, unnecessary burdens this does impose on residences designed to advance a crucial individual and public cause, it cannot do so because it violates the Fair Housing Act.¹

MBH is a single-family dwelling

Before citing the Fair Housing Act and the reasonable accommodation sought, MBH will be established as a single-family dwelling, not a boarding or rooming house. When analyzing whether a residence is a single-family unit, the Pennsylvania Supreme Court has held that the focus should be “on whether the unit functions as a family unit, rather than on respective relationships that

¹ While all parties and witnesses involved share desires to promote health and safety in all respects, it cannot go unstated that the Health Department, with these efforts, disrupts the most prevalent and important health issue at hand – the epidemic of drug and alcohol dependence.

existed between the members of the unit,” and that “a group of individuals in a single household must not only function as a family within that household, but in addition, the composition of the group must be sufficiently stable and permanent so as not to be fairly characterized as purely transient.” *Albert v. Zoning Hearing Board of North Abington Township*, 854 A.2d 401, 410 (Pa. 2004), and *Slice of Life, LLC v. Hamilton Township Zoning Hearing Board*, 207 A.3d 886, 891 (Pa. 2019).

In a 2019 Commonwealth Court decision, the Court agreed with a drug and alcohol recovery residence similar to My Brother’s House that its proposed use fit the definition of a single-family dwelling:

“Turning to the instant case... the residents will have their own bedrooms, will share all other living spaces, responsibilities, and activities; and the residents are ‘expected to live together for a substantial period of time or even permanently.’ (Trial court op. at 2.) With regard to Cornerstone charging residents for expenses... the fact that Cornerstone will charge a fee also does not transform its use. Cornerstone maintains that it will charge ‘expenses as necessary.’ (R.R. at 14a.) The charging of expenses as necessary alone does not indicate a profit motive, and paying a fee appears to be akin to adult family members contributing to a household.

“With regard to the time that individuals will spend living in residence... Cornerstone explains that the residents will remain on the Property permanently or for a substantial period of time. Moreover, there is no indication that the residents will turn over on a regular basis, or that the purpose of the residents’ stay on the Property is only as long as necessary to get them on their feet. Contrarily... Cornerstone's application indicates that the residents here will not be required to leave the premises after a certain period of time, but will be allowed to remain on the Property for a substantial period of time or permanently. With regard to ‘oversight,’ ... there is no indication in the record that the oversight provided by Cornerstone will be anything more substantial than what the head of a household provides in a traditional family, or that Cornerstone will provide anything more than support or care.”

City of Clairton v. Zoning Hearing Board of City of Clairton, Pa., and Cornerstone Residence, Inc. at 914; appeal denied by Pa. Supreme Court June 3, 2022.

MBH’s residents are not transient and can permanently live at the home so long as they remain sober, with an arrangement similar to the Cornerstone Residence. Residents function as a

family unit, sharing common living areas, chores, food, meals, expenses, and a shared mission to live a productive, clean and sober lifestyle. In fact, no evidence indicates that MBH's residents function as anything other than a family, and they should therefore be classified as such.

The Fair Housing Act's applicability

The Fair Housing Act (FHA) prohibits discrimination against people with handicaps. *City of Edmonds v. Oxford House, Inc.*, 115 S.Ct. 1776 (1995). The FHA is to be broadly construed so as to effectuate the goal of eradicating housing discrimination against people with disabilities. *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1105 (3d Cir. 1996), citing *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972). The FHA was amended in 1988 to protect persons with disabilities to end the "unnecessary exclusion of persons with handicaps from the American mainstream." *Hovsons, Inc.* at 1105 (3d Cir. 1996). Those in recovery from alcoholism and drug dependence "are handicapped [and protected by the FHA], so long as they are not currently using illegal drugs." *City of Clairton v. Zoning Hearing Board of City of Clairton, Pa., and Cornerstone Residence, Inc.*, 246 A.3d 890, 910 (Pa. Cmwlth. 2021), citing *Lakeside Resort Enterprises, LP v. Board of Supervisors of Palmyra Township*, 455 F.3d 154, 156 (3d Cir. 2006).

Exempt from the Fair Housing Act are "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. 3607(b)(1). Only total occupancy limits, "*i.e.*, numerical ceilings that serve to prevent overcrowding in living quarters," are exempted from the FHA. *Id.* In this case, the Health Department misinterprets this statement to mean that it gives the Health Department license to set a low, flat numerical cap on recovery residences protected by the FHA and akin to families not subject to a low, flat cap. Instead, since local governmental bodies must treat recovery residences the same as families, the exemption from the FHA should pertain to occupancy limits regarding the number of

people who live in particular residences based on square footage, number of people in rooms, and other measurables related to safe maximum occupancy. In addition to disregarding the Supreme Court's treatment of recovery residents as the equivalent of families, the Health Department's interpretation would disregard wide varieties of homes' sizes, rooms, and accommodations in general, and it disregards the fact that MBH's five (and up to seven) residents safely and comfortably live in this home.

Though *City of Edmonds* pertained to land use restrictions, the Supreme Court distinguished commented that maximum occupancy restrictions “cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms.” *City of Edmonds* at 1781. Critically, such caps – even if a flat total number of occupants – such health and safety restrictions “ordinarily apply uniformly to *all* residents of *all* dwelling units (which would include families living in single-family residences).” *Id.* It cited, as a prime example, a permissible East Cleveland ordinance that tied “the maximum permissible occupancy of a dwelling to the habitable floor area.” *Id.*, citing *Moore v. East Cleveland*, 431 U.S. 494, 500 (1977).

The Allegheny County Health Department cannot single out and separate recovery residences from single-family residences occupied by traditional families. Its inability to do so under the law does not inhibit its abilities to enforce health and safety regulations, as it has several mechanisms at hand. If a complainant claims that a recovery residence is operating in a manner more befitting a business such as a halfway house or rehabilitation center, the Health Department can investigate and act. The Health Department may also impose any health and safety regulations on all dwellings, including single-family residences that include recovery residences, to ensure that a safe number of people are living in homes. Here, MBH is effectively a family, living in a family home, and they must be treated as such.

Reasonable accommodations pursuant to the Fair Housing Act

Discrimination covered by the FHA includes “a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling.” *City of Edmonds* at 1779; see also 42 U.S.C. 3604(f)(1)(A) and (f)(3)(B).² The FHA’s “reasonable accommodations” provision prohibits the enforcement of “zoning ordinances and local housing policies in a manner that denies people with disabilities access to housing on par with that of those who are not disabled.” *Hovsons, Inc.* at 1104. Under the Fair Housing Act, the purpose of reasonable accommodations is to facilitate the integration of persons with disabilities into all communities. *Sharpvisions v. Borough of Plum*, 475 F. Supp. 2d 514, 526 (W.D. Pa. 2007).

Housing discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. 3604(f)(3)(B). A requested accommodation must be “(1) reasonable and (2) necessary to (3) afford handicapped persons an equal opportunity to use and enjoy housing.” *Lapid-Laurel, L.L.C. v. Zoning Board of Adjustment of the Township of Scotch Plains*, 284 F.3d 442, 457 (3d Cir. 2002). Under Section 3604(f)(3)(B), the applicant bears the initial burden of showing that the requested accommodation is necessary to afford handicapped persons an equal opportunity to use and enjoy a dwelling, at which point the burden shifts to the municipality to show that the requested accommodation is unreasonable. *Id.* The applicant may demonstrate the need for residential housing through evidence that placement in small neighborhood-based homes serves a therapeutic purpose. *Dr. Gertrude A. Barber Center, Inc.*

² The parties in *City of Edmonds* stipulated that the recovery house residents “are recovering alcoholics and drug addicts and are handicapped persons within the meaning” of the FHA and therefore protected as a family. *Id.*

v. Peters Township, 273 F. Supp.2d 643, 653 (W.D. Pa. 2003), citing *Bryant Woods Inn., Inc. v. Howard County*, 124 F.3d 597, 604 (4th Cir. 1997). Evidence that disabled residents can make functional gains through residence in the community can also prove necessity of the requested accommodation. *Dr. Gertrude A. Barber Center, Inc.* at 653, citing *Lapid-Laurel, L.L.C.* at 448. “[The FHA] prohibits local governments from applying land use regulations in a manner that will exclude people with disabilities entirely from zoning neighborhoods, particularly residential neighborhoods, or that will give disabled people less opportunity to live in certain neighborhoods than people without disabilities.” *Lapid Laurel, L.L.C.* at 459-60.

Residents are entitled to live in housing in the neighborhood of their choice. *Dr. Gertrude A. Barber Center, Inc.* at 654. See also *Hovsons, Inc.* at 1105 and *ReMed Recovery Care Centers v. Township of Willistown*, 36 F.Supp.2d 676, 685 (E.D. Pa. 1999). Once the applicant establishes the need to occupy the residence and enjoy the same housing opportunity as anyone else, the FHA is to be interpreted broadly so as to effectuate the goal of integrating people with disabilities into the community, and neighbors' complaints or offers to live in other districts are insufficient justifications to defeat a necessary reasonable accommodation. *Dr. Gertrude A. Barber Center, Inc.* at 654. The *Lapid-Laurel, LLC* FHA reasonable accommodation burden-shifting analysis has been adopted and applied by the Pennsylvania Commonwealth Court. *Carunchio v. Swarthmore Borough Council*, 237 A.3d 1183, 1197 (Pa. Cmwlth. 2020).

The Health Department has challenged the reasonable and necessity of the reasonable accommodation assertion and request. First, it is reasonable because it is right and in accordance with prevalent law, the FHA. It is also reasonable because, whatever view the Health Department has about the burdens of regulations and compliance therewith, addressing unnecessary and inapplicable regulations – particularly where this home has had to unnecessarily respond to and

contend with multiple governmental bodies over a protracted period of time – is inherently, and actually, burdensome. It is reasonable to request that the government limits its oversight to the boundaries of the law and to spend one’s time on the noble pursuit that MBH follows.

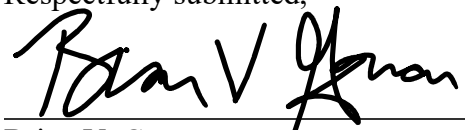
MBH itself demonstrates the need for recovery residences in single-family residential homes and communities. Its residents support each other in recovery – not just staying sober, but also providing accountability and improving their lives, while doing so together with people who are sharing the experience and know what each other are going through. The Substance Abuse and Mental Health Services Administration (SAMHSA) of the federal government endorses recovery residences as “a viable and cost-effective alternative to established recovery-oriented systems of care” which “can provide time and support as they learn how to sustain long-term recovery.” “Recovery Homes Help People in Early Recovery,” www.samhsa.gov. Particularly in this unprecedented time of drug and alcohol dependence and related deaths, recovery residences save lives and should be granted an accommodation to do so without unnecessary interference.

CONCLUSION

My Brother’s House consists of disabled people who are living as a family and must be granted a reasonable accommodation from the otherwise-applicable Health Department regulations, and therefore appellant Ronald Yocca has sufficiently proven the basis for this appeal to be granted.

Date: June 13, 2022

Respectfully submitted,



Brian V. Gorman
Attorney for Appellant