

## **N.D.A.G. Letter to Snyder (Dec. 9, 1987)**

December 9, 1987

Mr. David A. Snyder, M.A.  
Director, North Central Human  
Service Center  
400 22nd Avenue N.W.  
Minot, ND 58701

Dear Mr. Snyder:

Thank you for your letter of November 12, 1987. By that letter, you described your efforts to establish a group home for mentally ill persons in a part of Minot zoned for single-family, residential use. You indicated that your request for a special use permit to allow eight adults to live in this residence had been denied by the city council. You then asked whether or not mentally ill clients are included under the definition of "developmentally disabled persons" for the purpose of establishing the proposed group home as a permitted use pursuant to N.D.C.C. § 25-16-14.

N.D.C.C. § 25-16-14 contains two subsections. The first subsection defines the terms "developmentally disabled person" and "group home." The second subsection makes a group home serving six or fewer developmentally disabled persons a permitted use in a single-family or equivalent density residential zone and makes a group home serving eight or fewer developmentally disabled persons a Permitted use in any other residentially zoned area.

At the outset, inasmuch as Minot's R-1 zoning ordinance describes a single-family or equivalent density residential zone, subsection 2 of section 25-16-14 would not make a facility serving eight persons, whatever their condition, a permitted use (unless the city grants a variance). Only if the number of persons served is six or fewer could this law have any effect on an area so zoned.

Subsection 1 of N.D.C.C. § 25-16-14 includes the following provision:

- a. "Developmentally disabled person" means a person with a severe, chronic disability which:

- (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (2) Is manifested before the person attains age twenty-two;
- (3) Is likely to continue indefinitely;
- (4) Results in substantial functional limitations in three or more of the following areas of major life activity:
  - (a) Self-care;
  - (b) Receptive and expressive language;
  - (c) Learning;
  - (d) Mobility;
  - (e) Self-direction;
  - (f) Capacity for independent living; and
  - (g) Economic sufficiency; and
- (5) Reflects the person's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are lifelong or extended duration and are individually planned and coordinated.

This definition does not comport with any accepted definition of mental illness of which I am aware. However, that is not to say that no mentally ill person may fall within the definition. Developmentally disabled persons are not, by virtue of that disability, invariably free of mental illness. Likewise, some mental illnesses have an early onset, are chronic, and impose very severe functional limitations on the mentally ill person. Such persons are not excluded from the definition of developmentally disabled person, and group homes providing services to such mentally and developmentally disabled persons are within the definition of "group home," which is a part of subsection 1 of N.D.C.C. § 25-16-14.

In answer to your specific question, a licensed group home serving six or fewer mentally ill persons is a permitted use in a single-family or equivalent density residential zone provided that at least one of those mentally ill persons is also developmentally disabled. A licensed group home serving eight or fewer mentally ill persons is a permitted use in any other area zoned for residential use if at least one of the residents is also a developmentally disabled person.

Sincerely,

Nicholas J. Spaeth

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