

# HOUSING JUSTICE

National Housing Law Project

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## Court Overturns Zoning Board's Refusal to Approve Proposed Domestic Violence Shelter

An appellate court recently found that a local zoning board imposed overly restrictive conditions on a nonprofit seeking to build a domestic violence shelter for 12 families. The case, *180 Turning Lives Around, Inc. v. Zoning Board of Adjustment*, 2012 WL 4009102 (N.J. Super. Ct. App. Div. Sept. 13, 2012), addressed a proposal to build a 13,457-square-foot shelter in Middleton, New Jersey. In finding that the zoning board failed to consider the unmet need that the shelter would serve, the court noted that domestic violence shelters are "inherently beneficial." The opinion may be helpful for advocates who are seeking to build domestic violence shelters or transitional housing but are facing community or municipal opposition.

### Background

180 Turning Lives Around is a nonprofit that provides a variety of services to survivors of domestic and sexual violence, including crisis support, counseling, and advocacy. The agency purchased a lot to build a domestic violence shelter for 12 families. The proposed shelter included 12 family-size bedrooms capable of housing up to 42 residents, and a basement with features such as offices, meeting areas, a dining room, a kitchen, an art room, and a computer room.

The nonprofit filed an application with the city zoning board, which held public hearings on the proposal. The nonprofit sought a zoning variance,

or exception, because the proposal did not include a locally required 50-foot buffer area between the shelter and adjoining residential property. A buffer is a tract of undeveloped land that typically uses landscaping to separate two areas. The agency's architect testified that the proposed shelter incorporated design elements that would give the structure a residential character. A traffic engineer testified that the proposed shelter would not generate a significant increase in traffic.

A citizen's group opposed the proposed shelter. A planner testified that the proposed shelter was not inherently beneficial, and characterized it as "a transient residential facility." He also testified that the shelter was "out of character with the neighborhood." Other attendees raised concerns regarding safety, traffic, noise, diminished property values, and general aesthetics.

The zoning board denied the application, stating that the nonprofit failed to prove that the shelter would not be a substantial detriment to the public good. The board stated that a shelter in a residential area should not exceed 15 residents, while the project sought to serve 12 families. The board also found that the project was "akin to a hotel or motel" and was accompanied by traffic and security concerns.

### Trial Court's Decision

The nonprofit filed a complaint in state court challenging the board's denial of its application. The trial judge held that the proposed use as a domestic violence shelter was "in the upper category of beneficial uses," and that the board was

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required to identify the detrimental effect that would result from the project. Because the board failed to properly weigh “the positive and negative criteria,” the court reversed the denial and directed the board to identify reasonable conditions that could be imposed in order to allow the proposed shelter to proceed.

After the trial court’s opinion, the nonprofit revised its proposal and resubmitted it to the board. In response to safety concerns, the nonprofit added a perimeter fence. However, the nonprofit refused to reduce the width of the building in order to implement the required 50-foot buffer. In response, the zoning board imposed several conditions that the nonprofit would be required to meet before the board would approve the shelter. One of the conditions required the nonprofit to submit revised plans reducing the shelter width by 21 feet and providing the 50-foot buffer. The shelter again filed a state court complaint to challenge the board’s decision, and a trial court held that the board’s requirement of a 50-foot buffer was unreasonable. The board appealed the trial court’s decision, arguing that its refusal to approve the project was not arbitrary.

### **The Appellate Court’s Decision**

The appellate court first examined whether the nonprofit established “special reasons” for receiving a variance. The court noted that a domestic violence shelter, by its nature, is considered “inherently beneficial.” It cited a New Jersey statute requiring municipalities to treat “community shelters for victims of domestic violence” as single-family dwelling units that are permitted in residential areas. The court acknowledged that the statute’s definition of a community shelter is limited to shelters providing services to 15 people or fewer. However, despite the size of the proposed shelter, the court found that the public interest made the shelter compelling and beneficial, justifying a variance from the 50-foot buffer requirement.

The appellate court next examined the potential detrimental effects of granting the variance. It

### **More Information**

The court’s opinion is available at [www.njlawarchive.com/20120913111012792870198/](http://www.njlawarchive.com/20120913111012792870198/)

found that in denying the variance, the zoning board ignored the significant community need that the shelter would serve. Specifically, the nonprofit’s director stated that existing shelters were turning away almost twice as many families as they were able to serve. Further, the zoning board ignored the residential design of the shelter and the fact that the zone at issue already included a variety of commercial structures. The court also noted that the proposed structure was actually smaller than what was permitted in the zone, and that it blended aspects of commercial and residential uses. Additionally, no expert testimony supported the board’s concerns that the shelter would result in increased traffic and noise.

In addressing the shelter’s failure to conform to the 50-foot buffer requirement, the court noted that the nonprofit tried to address this shortcoming by using enhanced landscaping, fenced screens, and locating the delivery area to the corner of the property farthest away from the residential zone. As a result, the court found no evidence of a negative impact that would arise from granting an exception to the buffer requirement. Accordingly, the court found that the board’s denial of the zoning variance was arbitrary and unreasonable, and that the trial court correctly granted the variance after finding no substantial detrimental effect.

### **Conclusion**

The court’s opinion helps address the common misconception that domestic violence shelters may somehow disrupt the character of residential neighborhoods, or that shelters are akin to hotels or motels. The decision also demonstrates that, in considering a plan to build a shelter, a zoning board’s or community members’ generalized concerns regarding traffic, noise, or security should not automatically outweigh the vital public purpose that domestic violence shelters serve. ■

## Court Rejects Argument that Shelter Residents Are Not Covered by the Fair Housing Act

A federal court recently held that a homeless shelter in the District of Columbia is a “dwelling” that is covered by the Fair Housing Act (FHA). In *Boykin v. Gray*, 2012 WL 4713012 (D.D.C. Oct. 4, 2012), the court rejected the District’s argument that the (FHA) does not apply to emergency housing facilities. The court’s holding serves as a reminder that shelters and transitional housing programs should review their policies and practices to ensure compliance with the FHA.

### Background

Former residents of La Casa, an emergency shelter for homeless individuals, filed an action against the District of Columbia after the District closed the shelter. The District said that La Casa’s closure was part of its efforts to expand its permanent supportive housing program. However, the residents argued that the District used the permanent supportive housing program as an excuse for closing shelters in predominantly white areas. The residents filed an FHA action alleging that the District systematically removed disabled and minority individuals from areas inhabited by “affluent, white populations.”

### The Court’s Analysis

Under the FHA, it is unlawful to make unavailable or deny a “dwelling” to any person because of race, color, religion, sex, familial status, national origin, or disability. A “dwelling” is “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.”

The District argued that emergency shelters are not “dwellings” covered by the FHA, and that the residents’ claims should be dismissed. The District argued that these shelters constitute “transient” housing similar to hotels. However, the court noted that under a local law, the facilities offered

shelter without time limits, and that the residents attested to their regular stay at La Casa. This undermined the District’s argument that La Casa was not intended for long-term stays.

The District argued that other courts have held that shelters are not “dwellings” under the FHA. However, the court noted that the District cited only one court conclusively holding that the FHA did not apply to an emergency shelter. In that case, the court relied partly on the fact that the shelter limited stays to 17 consecutive nights. Additionally, several other courts have applied the FHA to shelters. Absent further evidence demonstrating that La Casa was not a “dwelling” under the FHA, the court refused to find that the law did not apply to La Casa. Future proceedings will address whether the District’s closing of La Casa violated the FHA.

### Conclusion

While *Boykin v. Gray* does not specifically address domestic violence shelters, its holding is an important reminder that shelters and transitional housing programs can be covered by the Fair Housing Act. Emergency and transitional housing providers should ensure that their programs do not have the effect of discriminating on the basis of an applicant’s or resident’s race, color, religion, sex, familial status, national origin, or disability. ■

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