

PROBLEM STATEMENT

The location of religious, philanthropic and eleemosynary uses has long been a topic for debate among planning and zoning administrators. Early ordinances permitted these uses throughout communities since they satisfied localized needs and were in support of the community's health, welfare and safety. With time and the changing nature of our cities these uses were found to present certain nuisance features which questioned their presence within residential neighborhoods. Churches once serving their immediate neighborhoods are now attracting their former congregation from the suburbs. This phenomenon has produced an array of incompatible conditions. Likewise clubs, clinics, associations, hospitals, schools (private and public) because of changing conditions have created similar circumstances.

With a changing post-war society the need to provide a variety of public and semi-public services heretofore unknown began to quickly make their presence. Of the many new facilities that have emerged included are: the child care center, elderly day center, social services centers, free clinics, counselling centers for families, specialized private schools, halfway houses, homes for unwed mothers, and residential rehabilitation centers for drug and alcohol abusers.

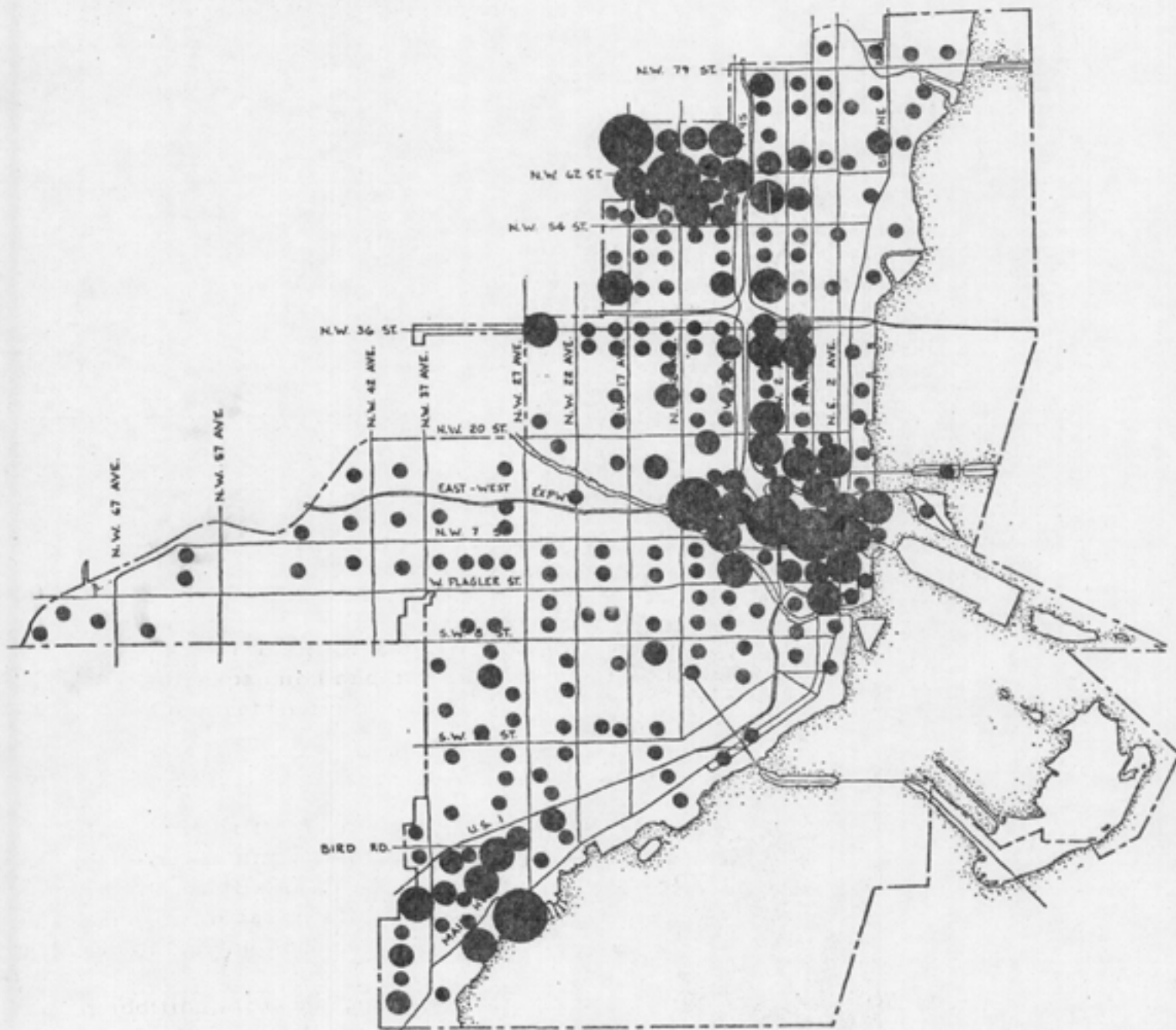
In recent years psychiatrists and social workers have found that a successful rehabilitation effort must stress the preservation of individual dignity. The location of facilities designed to achieve this objective has been deemed most appropriate in residential neighborhoods. It is here that the individual can live and associate with local residents and assume responsibility, become an active citizen and undergo a healthy transition during his rehabilitation.

Today, nearly all Substance Abuse Residential facilities are located in residential neighborhoods in Miami. In most instances they have operated within the context of being good neighbors, alleviating any cause for complaint by neighboring residents.

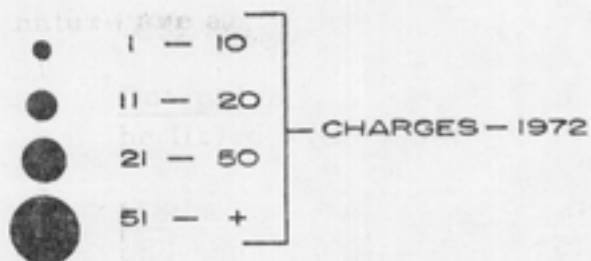
On November 21, 1973, Village South, a residential substance abuse center appealed the adverse decision of the City Planning and Zoning Board to the City Commission to permit their location in the R-2 and R-3 district under Article IV, Section 36, General Provisions of the Zoning Ordinance. The City Commission following an extensive hearing on this matter referred it to the City Administration for evaluation and recommendation. During the past two months the Planning Department with the aid of an Advisory Committee on Substance Abuse met on several occasions to define the problem of location and pursue a course of action to provide for their future location.

SUMMARY OF FINDINGS

- Twenty-one substance abuse centers are located within the City of Miami.
- Seven of these facilities function as residential establishments housing approximately one hundred fifty (150) occupants.
- The remaining fourteen facilities provide non-residential functions including outpatient care, methadone maintenance, detoxification and compound functions including education, referral and administration.
- Geographically the bulk of these establishments are located in the City's north and northeastern neighborhoods.
- With little exception, existing facilities are found in high substance abuse areas.
- Residential facilities are located principally in older residences ranging in size from 6000 square feet to 1½ acres.
- Residential facilities house as few as 11 occupants to as many as 63 occupants.
- The average residential facility has an occupancy of approximately 25 residents.
- Research activities reveal that zoning provisions of other major cities generally treat these (residential facilities) as Special Exceptions or Conditional Uses.
- Florida law provides appreciable literature governing their operation and licensing.
- Residential centers appear to be good neighbors in view of minimal complaints from neighborhood residents.
- Exclusion of residential centers from certain zoning districts can serve to preclude services to portions of the substance abuse population.
- The need for public awareness and support suggests requiring a hearing process for all future centers (residential).

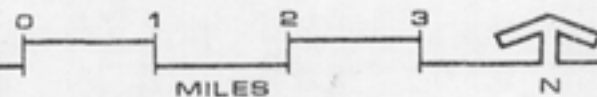


DRUG ARRESTS



DRUG REHABILITATION CENTERS ZONING STUDY

CITY OF MIAMI PLANNING DEPARTMENT • DEC., 1973



- Preemption of residential centers in low density areas and requiring their location in multiple residential districts appears restrictive from several standpoints.
 - a) Higher property costs associated with multiple residential zoning properties.
 - b) Preemption from neighborhoods needing facilities.
 - c) Restricted residential living environments in multiple districts.
- The need for site development standards to govern residential substance abuse facilities appears essential to both the neighborhood and facility occupants' wellbeing.
- The Conditional Use provisions of the Ordinance appear to provide the most viable alternative for arriving at appropriateness.
- The need to retain existing residential substance abuse facilities and to provide the professional rehabilitation community the necessary latitude for expansion and new facility establishment will require revision to the Comprehensive Zoning Ordinance.

RECOMMENDATIONS

The Planning Department and the Advisory Committee on Substance Abuse Centers recommend that Residential Substance Abuse Facilities designed to provide a satisfactory living environment to its occupants be permitted upon Conditional Use in all zoning districts excluding those districts for wholesale, manufacturing and industrial activities.

In addition, it is recommended that a hearing and screening process be provided to afford community residents an opportunity to understand the nature, function and extent of services provided and to assure safeguards to both the occupant and the community.

Provisions for other functional types of facilities which are non-residential in nature are as follows:

Out-patient Facilities are deemed appropriate in all C-districts and should be listed as a permitted use and as a conditional use in the R-4 district.

Methadone Maintenance Facilities are deemed appropriate in all C-districts and should be listed as a permitted use and as a conditional use in the R-4 district.

Hotline Facilities are deemed appropriate in the R-CA, R-C, and all C-districts and should be listed as a permitted use.

Education and Information Facilities are deemed appropriate in all C-districts.

The specific amendments recommended are as follows:

Amend Article II, Definitions, by defining separately each Substance Abuse Center by type corresponding to the language contained in the Florida Statutes. A listing of definitions is provided in the Appendix.

Amend Article IV, General Provisions, Section 36 - Public and Semi-Public Buildings or Uses.

4. Residential therapeutic facilities may be permitted in all zoning classifications (excluding C-4, C-5, I-1, I-2, W-I) as a Conditional Use. All residential therapeutic facilities prior to their consideration for Conditional Use approval shall be reviewed by the Advisory Committee on Substance Abuse Centers, who may convene a public hearing in the area in which the use is proposed. The Advisory Committee shall submit its findings to the Zoning Board as supporting evidence to determine the appropriateness of the proposed facility. The Committee's findings in addition shall provide minimal standards and safeguards designed to mutually satisfy the needs of the community and the intended facility resident. Standards shall include but not be limited to the following considerations: SITE SIZE, YARD AREAS, PARKING, OPEN SPACE, LANDSCAPING, PROXIMITY TO SUPPORT SERVICES, AND INGRESS AND EGRESS, and other factors that may have a bearing upon the appropriateness of such a facility.

Proposed standards for Residential Substance Abuse facilities: (These standards should be adopted by reference since changing conditions may dictate later additions, revisions or modifications.)

In R-1 and R-2 zones -

<u>Area standards</u>	6000 sq. ft. - first 5 occupants
	12000 sq. ft. - 5-10 occupants
	18000 sq. ft. - 10-20 occupants
	24000 sq. ft. - 20 or more occupants

In R-3, R-4, R-5, R-C, C-1, C-2 zones

minimum area - 10,000 sq. ft.

Yard areas

In R-1 and R-2 zones

rear 20 feet
side 10 feet
front 20 feet

In R-3, R-4, R-5, R-C, C-1, C-2 zones

rear 20 feet
side min. 10 feet or 15% lot width
front 20 feet

Parking

1 space for each staff member and 1 space for each 4 occupants. Waiver of occupant parking may be permitted based upon the following factors:

- *proximity to mass transit
- *proximity to employment area
- *proximity to community facilities
- auto ownership and visitation policy

Open Space

50 sq. ft. of open space shall be provided for each occupant. Facilities within *proximity of public parks and open space may be excepted from this provision.

Landscaping

1 shade tree for each 1000 sq. ft. of yard area shall be provided. Where this provision is not met at the inception of the facility's establishment other provisions for attaining shade in open space areas where site occupants may be afforded satisfactory outdoor spaces to pursue leisure time activities may be considered.

Proximity to support services - Residential substance abuse facilities should be located in *proximity to support services where auto and travel time is reduced for the following essential services:

- convenience shopping
- medical and health facilities
- cultural and educational facilities
- entertainment
- employment
- park and open space

* Proximity is defined as being no more than 1000 feet from the subject facility.

Ingress and Egress Drives for ingress and egress shall be restricted to no more than one drive for each 50 feet of frontage.

ANALYSIS OF EXISTING CONDITIONS

The Planning Department with the aid of the Advisory Committee conducted a survey of substance abuse facilities during the month of January 1974. Approximately twenty-one facilities or centers were in existence.

The location of these facilities were found to be principally in older, transitional neighborhoods in northwest and Central Miami. The desire for proximity to residential areas has caused most of those in existence to situate within residential areas. Fourteen are located in R-districts, of which three are in low density districts, with the remaining seven located in C-districts. All of the facilities are located adjacent to residential areas or in proximity to them.

In order to gain greater insight into what conditions and/or problems associated with location, a sample survey was conducted. Each of the sampled facilities were observed in the field to gain an impression of their relative impact on the area in which they are located.

Land Use Relationships

The major land use problems associated with these facilities and particularly the residential types were determined to be:

1. Inadequate site area - Several facilities were found to have inadequate site area as a result of original deficiencies. This matter is viewed to be one of serious concern as it affects the wellbeing of the occupant.
2. Unsatisfactory Location - Poor location is another apparent problem of several facilities. To appropriately support the optimum functioning of these facilities and their occupants certain critical location standards should be adhered to. These include:

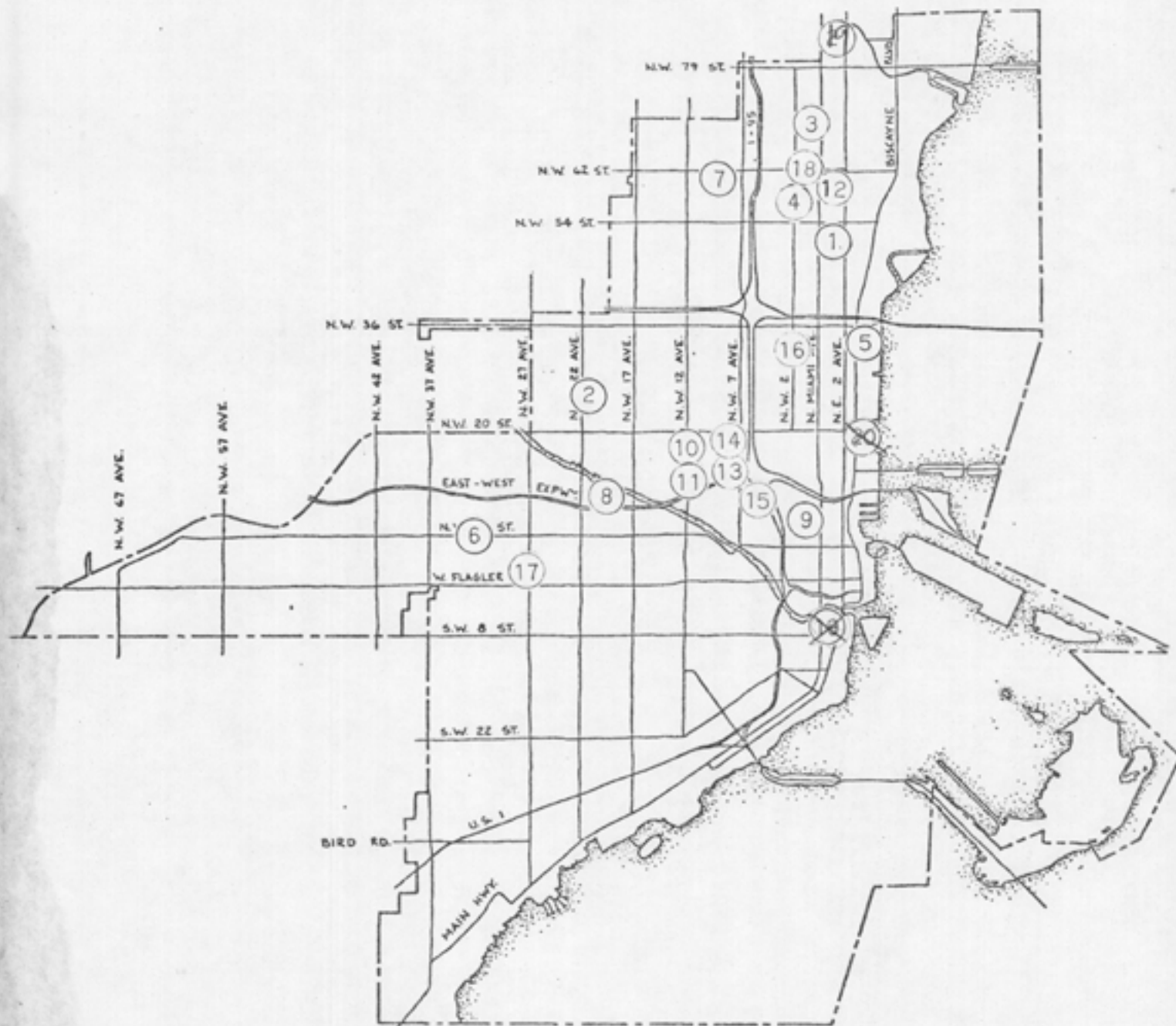
- proximity to employment
- proximity to schools
- proximity to open space
- proximity to transit

Many of the facilities are located in transitional or declining neighborhoods whose image does not afford an optimum atmosphere to persons undergoing rehabilitation.

TABLE 1

DRUG REHABILITATION CENTERS SURVEY

Map Indicator	Name	Functional Type	Zoning District	Permitted Use
1	Concept House I	<u>Residential</u>	R-3	C-1 (R-4 Cond.)
2.	Switchboard of Miami	Hotline	R-2	R-CA
3.	Spectrum	Outpatient	C-2	R-CA
4.	Spectrum-Chase	<u>Residential</u>	R-3	C-1 (R-4 Cond.)
5.	Spectrum-Dade	<u>Residential</u>	R-3	C-1 (R-4 Cond.)
6.	St. Luke's	Methadone	R-4	R-CA, R-C (R-4 Cond.)
7.	Turning Point	Outpatient	R-3	R-CA, R-C (R-4 Cond.)
8.	Dodge Hospital	Detox.	R-4	C-1 (R-4 Cond.)
9.	Black Cross	Educational	C-2	R-CA
10.	Veterans' Admin.	<u>Residential</u>	R-C	C-1 (R-4 Cond.)
11.	Veterans' Admin.	Methadone	R-C	C-1 (R-4 Cond.)
12.	Village South	<u>Res. -Outpatient</u>	R-2, R-3	C-1 (R-4 Cond.)
13.	Jackson	Methadone	R-3	C-1 (R-4 Cond.)
14.	Jackson	Res - Detox Detox. - Res.	R-3	C-1 (R-4 Cond.)
15.	Central	Methadone	C-2	R-CA
16.	LaCasa Abierta	Outpatient	C-2	R-CA
17.	Encuentro	Outpatient	C-4	R-CA
18.	Model Cities	Educational	R-2	R-CA
19.	Genesis II	<u>Residential</u>	R-CB	C-1 (R-4 Cond.)
20.	Concept II	<u>Residential</u>	C-4	C-1 (R-4 Cond.)
19.	Unity House	Outpatient	C-1	C-1 (R-4 Cond.)



LOCATION MAP

DRUG REHABILITATION CENTERS ZONING STUDY



3. Inadequate Parking - While many facilities were found to be free of this problem, the Department feels that there exists sufficient evidence to warrant the adoption of minimum parking standards.

There are at present, two major types of public controls over the establishment of substance abuse facilities: Non-Zoning and Zoning Controls:

Non-Zoning Controls

Substance abuse centers, being places of public assembly, are regulated by the City Fire Code, Housing Ordinance and legislation provided by the State of Florida.

The rehabilitation of substance abusers in the State of Florida has received substantial legislative action. Major legislation enacted, providing for their function, include Chapter 397 of the Florida Statutes "Rehabilitation of Drug Dependents."

The purpose and content of Chapter 397, "Rehabilitation of Drug Dependents" is to encourage the fullest possible exploration of ways by which the true facts concerning drug abuse and dependence may be made known generally and to provide a comprehensive program of human research for drug dependents in rehabilitation centers and after care programs. The Act requires licensing of each center with annual renewal mandatory. To satisfy facilitating as broad a program for providing these services the legislation makes reference to several principal facilities to carry out these services. In general these facilities are referred to as "DATE centers" or Drug Abuse Treatment and Education centers. They include:

- Residential Rehabilitation Centers are live-in facilities operating twenty-four hours a day, seven days a week, staffed by professional and para-professional persons offering therapeutic programs for drug dependent persons.
- Educational information center is an information center facility offering education and information to drug dependent persons, their families, and the general community.
- Communications center or rap house is a program oriented toward youth with the goal of prevention of drug dependency. Such a center may make referrals to appropriate treatment facilities.
- Methadone maintenance program is the scheduled administration of methadone under the investigative new drug permit issued by the FDA and the U. S. Justice Department in a program providing supportive rehabilitation services such as counseling, therapy and vocational rehabilitation.

Zoning Controls

The requirements specified by State legislation, while exacting and comprehensive as to operation and performance, provide no standards for site requirements, off-street parking, or neighborhood location. Because of local circumstances, provision for the proper control of these facilities is viewed as being best obtained under local zoning ordinances.

Zoning can regulate Substance Abuse Facilities within a community. Principally zoning can regulate: location, density and intensity of use, effects on adjacent properties and parking. The City of Miami Comprehensive Zoning Ordinance provides within certain zoning classifications hospitals, clinics, convalescent homes, nursing homes, medical facilities and institutions for the aged, indigent and infirm. Classifications allowing for the above mentioned facilities as a permitted use (excluding clinics which are permitted in the RC-A district) include the following commercial districts: C-1, C-2 and C-3. Upon conditional use the ordinance provides for their locating in the R-4 district following appropriate public hearing and the establishment of appropriate conditions.

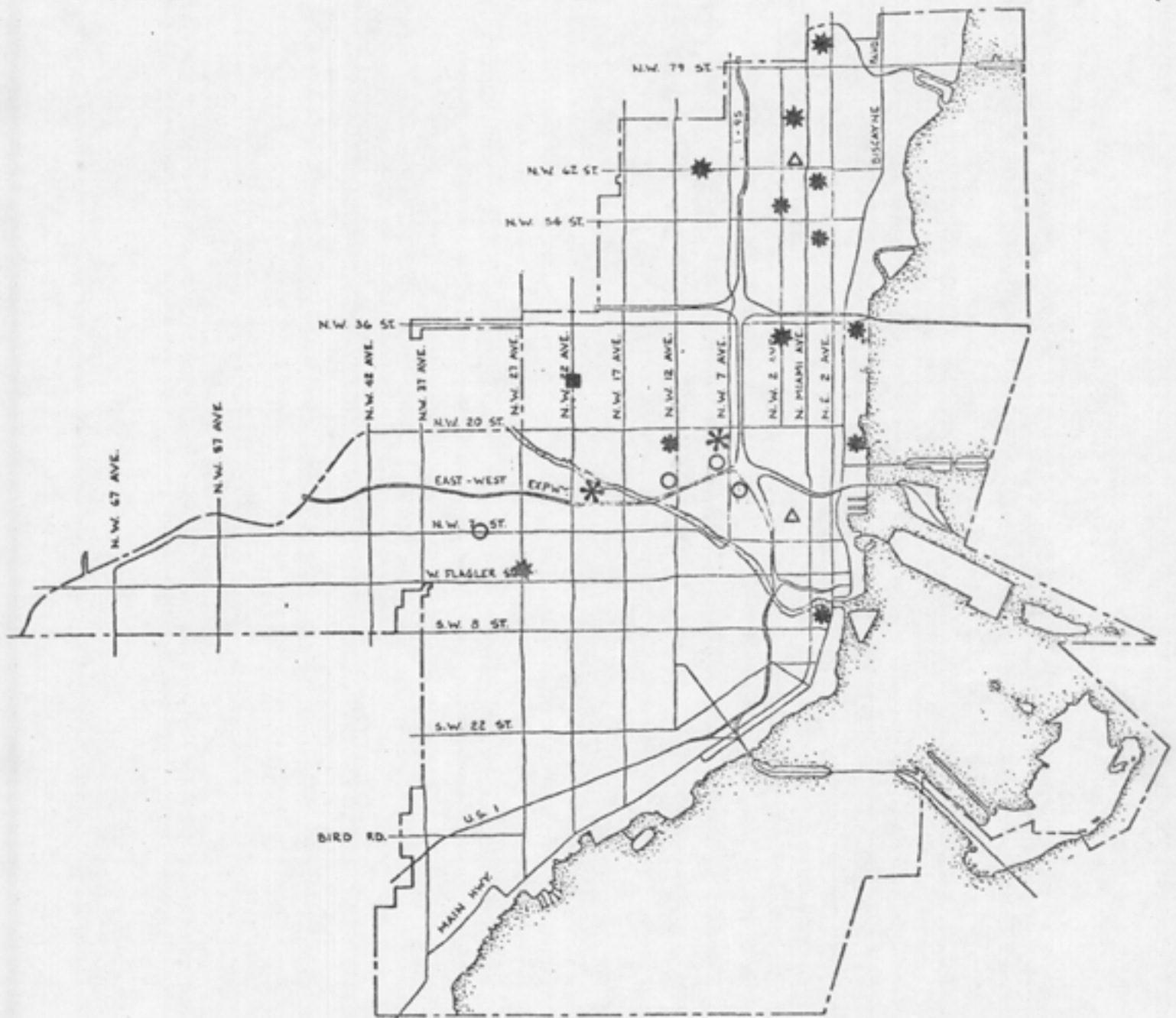
A survey of existing residential facilities providing rehabilitation to the substance abuser reveals, that all existing facilities are located within districts in which the use is permitted only upon Conditional Use, which has not been provided or are located in a district which does not permit their establishment. Several out-patient facilities and educational and hotline facilities are not in compliance with the provisions of the ordinance.

Location

The location of Substance Abuse Facilities can be restricted to certain zoning districts. At present, the Zoning Ordinance allows these uses in R-4 (on condition) and C-districts of the City.

In the opinion of the Planning Department and Advisory Board, facilities providing residential rehabilitation care belong in residential districts. These activities are members of that group of facilities which are intimately associated with home life. Occupants demand open space, sunlight and air, quiet surroundings, freedom from heavy vehicular traffic, an environment of serenity and safety and in proximity to their families, friends, jobs and cultural pursuits.

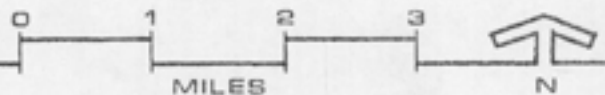
It must be recognized, of course, that there are certain features of these facilities that require careful attention in terms of their relationship to adjoining residential areas. Two major features attendant with the location of Substance Abuse Centers in the residential neighborhood are: noise and parking. Unless both of these factors are controlled, the image and effectiveness of the facility can and will produce serious hardships to neighboring residents.



FUNCTIONAL TYPE

- * RESIDENTIAL (REHABILITATION)
- ★ OUT PATIENT
- ✱ DETOXIFICATION
- METHADONE MAINTENANCE
- HOTLINE
- △ EDUCATIONAL

DRUG REHABILITATION CENTERS ZONING STUDY



With regard to the recommendations covering location, a distinction should be made between residential and non-residential. The latter, in effect, is a commercial activity which should be located in a like district. It is recommended that residential facilities be prohibited in the industrial districts because of the deviation in compatibility with uses found in these districts, especially those which may contribute to the occupant's physical harm or affect his image and self-worth.

Intensity of Use

The intensity of use of land can be controlled in the Zoning Ordinance by regulating occupant density. Density is controlled by three factors: lot area, usable open space, and facility capacity. At present, the Zoning Ordinance directly controls only the minimum lot area and this corresponds with the district's controls.

It is recommended that controls over occupant density be specifically stated in the form of lot area and open space especially in low density districts.

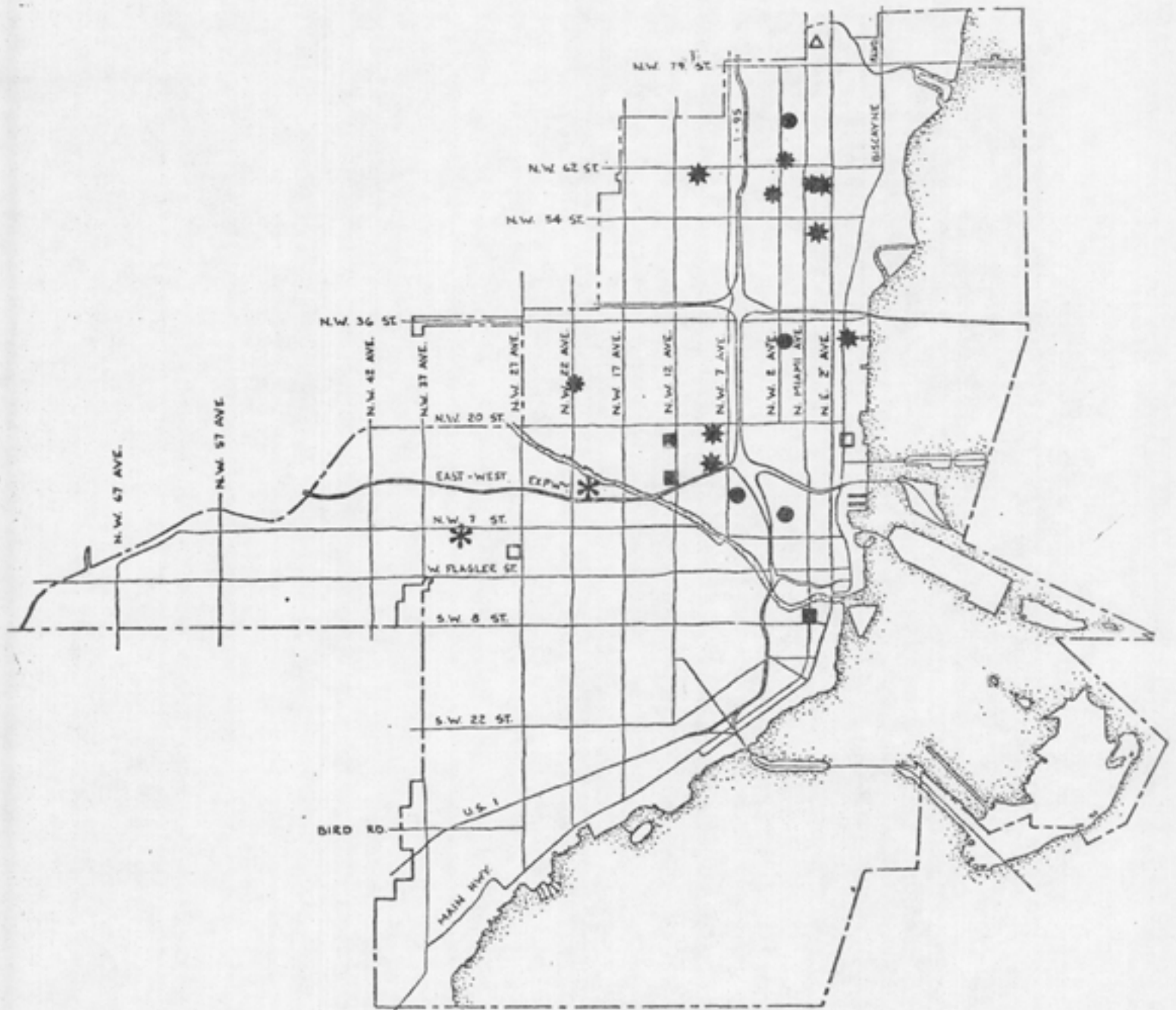
Effects on Adjacent Properties

While the aforementioned areas of control, location, and intensity of uses are regulated because of effects on adjacent properties, the more direct form of control is through the inclusion of buffer devices. The Planning Department believes this form of control, employing yard requirements to offset sound levels or through the requirement that a wall be provided where existing building locations make the yard requirements prohibitive.

Parking

Parking regulations associated with these facilities are observed as being important. In view of the average facility size, 25 occupants and staff size (4), parking standards should correspond with the occupant/staff demand. Provisions for waiving parking where circumstances exist may warrant such action and should be considered; however, available space should be retained in open space should future needs arise.

In summary, the kinds of controls contained in the aforementioned recommendations will serve to lessen the annoyance features of these facilities and enable them to assume their rightful place in the neighborhood where, under the controls outlined, a satisfactory environment for rehabilitation without harm to the community may result.

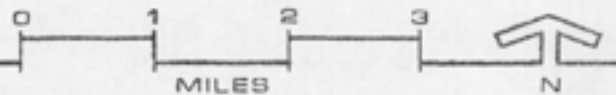


ZONING

- * R-2
- * R-3
- * R-4
- R-C/R-C-B
- △ C-1
- C-2
- C-4

DRUG REHABILITATION CENTERS ZONING STUDY

-16-



APPENDIX

DRUG ABUSE TREATMENT & EDUCATIONAL CENTER FUNCTIONAL TYPES

RESIDENTIAL DRUG ABUSE TREATMENT CENTER

Description

A residential treatment center is a live-in facility which provides a 24 hour therapeutic regime for the treatment of drug dependent persons. This involves a therapeutic environment staffed by professionals and trained ex-addicts and paraprofessionals supervised by professionals.

METHADONE MAINTENANCE PROGRAMS

Description

A methadone program is one that utilizes methadone as a tool in the rehabilitation process of the opiate addict. It provides the ancillary services of individual counseling, group counseling, vocational training and placement, alternative pursuits, and other appropriate approaches that are aimed at affecting positive life styles changes in the opiate addict.

HOT LINE

Description

A hot line is a telephone service that provides information and referral to individuals for a variety of personal problems, including information about drugs, drug treatment facilities and emergency treatment centers.

EDUCATIONAL PROGRAMS

Description

Drug education should develop attitudes toward life and toward one's self that makes drug dependency unnecessary. The subordinate goal is to indicate consequences and alternatives to drug use, as well as provide drug-specific information to youth, to the general public and to the families of drug dependent persons so they may gain better understanding of the drug culture and of the specific problems involved.

OUTPATIENT SERVICES

Description

Outpatient care is service provided to clients who are seen periodically at specified times in a therapeutic setting.

RAP HOUSES

Description

A rap house is a youth-oriented program acting primarily as a reception center for drug involved young people. It relies on the supportive service of peer involvement through "rap" sessions. It provides referral to other social service and medical agencies. The facility may be a storefront, house or building located within the social setting of the population served.



Comprehensive Health Planning Council of South Florida

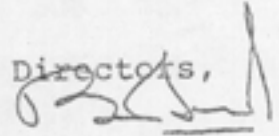
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TO: Mayor Maurice Ferre, Commissioners, City Manager Paul Andrews and Special Drug Abuse Rehabilitation Zoning Committee of the City of Miami, County Manager Ray Goode and Commissioners of Metropolitan Dade County.

FROM: Health Planning Council Board of Directors, Bernardo Benes, Ph.D., President 

RE: Health Planning Council Board position relative to the zoning of drug abuse rehabilitation facilities.

On December 17, 1973, the Health Planning Council Board of Directors adopted a position relative to the location of residential drug abuse treatment facilities in Dade County. The position taken by the Board is as follows:

The Health Planning Council supports the premise that residential drug abuse facilities which house licensed rehabilitation programs conforming to applicable safety and health laws be permitted by right in all apartment, rooming houses or more liberal zoning districts and in other residential or more restrictive zones by approval following a public hearing.

I hope that this position is taken into consideration in any deliberations or reports you may have regarding this matter.

Thank you.

COVENANTS
HOME FOR MENTALLY RETARDED24 ZD 271
CALIFORNIA

The plaintiffs sought to enforce a protective covenant restricting the use of lots in a subdivision to single-family residential purposes. They claimed defendant violated this restriction by operating a home for the mentally retarded. The defendant claimed that her lot was not bound by the restriction because it was not mentioned in her deed, that her actions did not violate the covenant, and that the restriction was not enforceable because it was contrary to public policy. The defendant showed that no more than six persons were cared for in her home at one time, that she received financial consideration from the state for maintenance of the home, that she was duly licensed by the state, and that she was never informed of the restriction now being imposed upon her when she purchased her home.

The court rejected all three of her contentions and permanently enjoined further operation of the family-care home. She had constructive notice of the restriction because it had been included in the original conveyance of her property and failure to note it in the conveyance to her was not of any consequence. The court concluded that evidence defendant was licensed by the state, was paid for the care of each handicapped resident, and had two paid employees in her home indicated that a business enterprise was being carried on. A business is the "antonym" of residential purposes and, the court continued, even a regular boarding house would violate the restriction. As to the defendant's last contention concerning public policy, the court noted that the state had declared that it is the

established "statewide policy that the use of property for the care of six or fewer mentally disordered or otherwise handicapped persons is a residential use of such property for the purposes of zoning." Welfare and Institutions Code §5115. The court found that this statement of policy only worked to protect such an operation from the arbitrary exclusion by a municipality through its zoning regulations and concluded: "[S]uch an artificial and arbitrary attempt by the state at redefinition of terms cannot impair private contractual and property rights."

Seaton v. Clifford, Court of Appeal of California, Second District, Division 2 [intermediate court], Decided March 15, 1972, 100 Cal.Rptr. 779

Editorial Comment: Signalling a counterattack against those who would erode private property rights, the *Seaton* court characterized defendant's argument that the statutory protection of group homes for the handicapped necessarily applied to restrictive covenants as well as zoning ordinances as an "artificial and arbitrary" attempt at the redefinition of the term "residential." One could argue that the label "arbitrary and artificial" applies with equal force to the court's own interpretation of the term "residential."

Assuming that covenants restricting land to residential uses have the same purpose as similar zoning regulations, i.e., the protection of dwellings from incompatible uses, a group home for less than six mentally retarded adults arguably has few "indicia" of a non-residential use (which is a better antonym for "residential" than "business"). The group home that was the subject of the *Seaton* case apparently looked like other single-family houses in Montalvo Heights. There was no evidence that it was a source of environmental pollution or that it generated excessive noise, light, traffic, or parked cars. Nor does the court mention evidence

that the handicapped residents had become a nuisance to their neighbors. Moreover, the court's emphasis on the transiency of the group home's residents seems misplaced in light of the record. The "indicia" of a "business" use relied on by the court—state licensing, employees, and income—could also be applied to a couple with a full-time maid who received compensation for the care of foster children.

This arbitrary and artificial definition of the term "residential" appears to bear little relation to any demonstrable externalities the group home may have imposed on its neighbors. The danger is that such distinctions have the force to exclude, no less than the most blatant snob zoning. Courts should be more wary of recognizing a property right to exclude a particular land use where the unspoken motive may be to exclude a certain kind of resident.

In addition to these problems about the way in which the *Seaton* court interpreted the private covenant, there are also broader implications arising from gratuitous remarks about conflicts between public regulation and private rights derived from covenants. The court seems to be saying that if the state clearly enunciated a legislative policy that group homes could not be excluded by operation of private covenants, then such legislation would be unconstitutional in light of the restriction against impairment of contracts. The court indicates that exercise of the eminent domain power, and not policy power regulation, would be appropriate to implement the group home policy, although it does not say exactly what the state would have to condemn. For a discussion of these broader issues, see Berger, "Conflicts Between Zoning Ordinances and Restrictive Covenants: A Problem in Land-Use Policy," 43 *Nebraska Law Review* 449 (1964); and Comment, "The Effect of Private Restrictive Covenants on the Exercise of Public Powers of Zoning and Eminent Domain," 1963 *Wisconsin Law Review* 321.

NUISANCE
HALFWAY HOUSE

24 ZD 269
ARKANSAS

A "halfway house" was established in a mixed business and residential area to help recently released and soon to be released convicts readjust to society. It was intended to function as a "step between actual incarceration and full return to society." Persons convicted of sex-, drug-, or alcohol-related crimes were purportedly to be barred from participation in the house. Neighboring property owners shut down the "halfway house" by obtaining a court injunction against its operation, claiming it was a private nuisance. On appeal this claim was sustained, since there was sufficient evidence the house had diminished property values, the residents had a "real and reasonable fear and apprehension for their safety" in that a "sex offender" resided there, and an incident had occurred which involved the use of alcohol.

The appeals court distinguished this case from the Connecticut case of *Nicholson v. Connecticut Halfway House*, 218 A.2d 383 (Conn. 1966). In the present case the halfway house caused measurable and substantial injury to nearby residents, while in the Connecticut case "there was only apprehension of decrease in property values and no evidence of any decrease in values of nearby property from the proposed use of the property."

Arkansas Release Guidance Foundation v. Needler, Supreme Court of Arkansas [highest court], Decided March 20, 1972, 477 S.W.2d 821

Editorial Comment: This opinion is unfortunate for two reasons: first, it is bad law. Second, that bad law throws another legal obstacle in the path of a movement away

acceptance of this evidence in Arkansas cases enjoining funeral parlors as private nuisances. No matter how well established the notion may be in Arkansas that funeral parlors are tantamount to a nuisance per se, its application to the halfway house seems inapt. Funeral parlors are clearly a non-residential use, and the accoutrements of the

from institutional treatment of various social and physical disabilities. Those who advocate this trend reject the total separation of persons having such disabilities from "normal" society and emphasize treatment and rehabilitation within the community in which these persons must eventually learn to function. The trend manifests itself in the establishment of halfway houses, group homes, foster homes, and the like.

The zoning of the Foundation's property was not an issue; apparently the use was permitted in the mixed residential and commercial district in question. In an earlier case, *Arkansas Release Guidance Foundation v. Hummel*, 435 S.W.2d 774 (Ark. 1969)[reported at 21 ZD 114], the Foundation lost because it failed to prove it was a "philanthropic" use permitted by the zoning ordinance. Here, however, the neighbors brought a private nuisance action against the halfway house.

The court enjoined what was essentially another residential use because its neighbors felt that the kind of people who lived there would be a nuisance. The only evidence the neighbors offered to show that the use and enjoyment of their property had been impaired was a loss of property value. Would the Arkansas court receive as favorably a suit to enjoin the sale of a home to a black family on the grounds that neighboring property values were diminished?

Beyond actual harm, the court—unlike its brethren in Connecticut—was ready to give credence to the plaintiffs' unsubstantiated fears that the halfway house residents would commit crimes. The court finds precedent for the

undertaker's trade are admittedly offensive to the sensibilities of many. But a halfway house and its inhabitants are not such known quantities. If ex-convicts are to be treated as nuisances because of what others believe, rightly or wrongly, about them, where can they live?

NURSING HOME

24 ZD 203
PENNSYLVANIA

City issued a building permit for the construction of an addition to an existing home for the aged. Area residents seeking to stop the expansion claimed the extension was "in reality a separate building which, under the city zoning ordinance, requires a separate lot." Despite the fact that the original plans filed for the project were for separate buildings, the court held that this was merely an expansion of an existing building and not a separate building:

[T]he existing structure and the proposed wing are to

be physically connected to each other, have internal access by hallways, share many common facilities, as well as a common fire alarm system. . . . [S]uch "ready access from one part of the structure to another" . . . is an extension and not a separate building. . . .

Stack v. Episcopal Residence, Inc., Commonwealth Court of Pennsylvania [intermediate court], Decided January 10, 1972, 285 A.2d 925

**EXCLUSIONARY PRACTICES
DRUG TREATMENT CENTER**

**24 ZD 305
NEW YORK**

A hospital sponsored a methadone treatment clinic for drug addicts in the city's downtown business district. The zoning ordinance did not allow either hospital or clinics in this district. After it opened, the commissioner of buildings notified the owner of the store housing the methadone clinic that this operation violated the zoning laws. The notice was ignored, and the city then commenced a criminal prosecution against the owner-landlord and the managing agent.

The defendants argued the ordinance was unconstitutional because no zone expressly provided for a clinic, and the clinic was similar to other uses permitted in the district. Examining the second contention, the court rejected the argument that a methadone clinic was similar to a research laboratory, medical or dental offices, or facilities devoted to scientific purposes.

Noting that the city could "create attractive and cohesive

central business districts" under its zoning laws, the court found that within the immediate vicinity of the clinic there were located an urban renewal project, a bus terminal, a railroad station, a retail shopping area, and the streets of the area were heavily congested during the day. Based on the city's police power and the geographical location, the court ruled that the exclusion of hospitals from the central business district was not unreasonable or arbitrary.

Though no section of the zoning ordinance expressly provided for clinics, the court said clinics were permitted in any district which allowed hospitals, since clinics were an accessory use. Finding the methadone center which treated drug addicts as part of a hospital operation, the court held the clinic violated the zoning laws.

People ex rel. D'Iorio v. Alfa Realty Co., City Court of Mount Vernon [trial court], Decided March 29, 1972, 330 N.Y.S.2d 403

**PUBLIC FACILITY
Drug Treatment Center**

**24 ZD 394
NEW JERSEY**

The state department of health announced its plan to purchase a building previously used for a parochial school to be used as a treatment center for drug addicts. The property in question was located in an area zoned for residential use and "the surrounding neighborhood is made up of primarily one- or two-family residences, medical offices, a church, a synagogue, and two elementary schools." The plaintiff brought this action to enjoin establishment of the treatment center on the grounds that the state department of health lacked authority to operate such a center and that the department was in violation of the local zoning regulations. Finding that the department had such authority, the court held that the state health department was also immune from local zoning control. Applying the rule in *Rutgers, State University v. Piluso*, 286 A.2d 697 (N.J. 1972)[reported at 24 ZD 157], that immunity from local land-use regulation depends upon legislative intent, the court found that:

Considering the extent of the present-day state-wide drug problem and the policy consideration which

surrounded the enactment of [the drug control act], together with all other pertinent factors, we conclude that the legislature intended to cloak the department with immunity from such local control.

However, such immunity is not absolute and the court will consider whether it has been exercised in an arbitrary or unreasonable manner. Here, there was some evidence that the department completely disregarded the needs and desires of the local governmental body and its citizens. Thus, the court remanded the case for reconsideration of the reasonableness or arbitrariness of the department's selection of the land in question. It noted that the burden is upon the plaintiffs to prove that the department acted in an arbitrary and unreasonable manner.

Long Branch Division of United Civic and Taxpayers Organization v. Cowan, Superior Court of New Jersey, Appellate Division [intermediate court], Decided May 30, 1972, 291 A.2d 381

GROUP HOME

- Challenge to location of home for students alienated from their parents in expensive single family residential district rejected because special permit issued in conformity with ordinance and statute (Mass.), 418
- Operation of private residence as group home for mentally retarded violated covenant restricting use of property for single-family purposes (Cal. App.), 271
- Ordinance preventing rental of seasonal seashore dwellings to groups of unrelated adults was invalid (N.J.), 6

Ordinance which prohibited families of more than five unrelated persons from residing in single family residence was valid (N.Y. trial), 145

Prior action contesting validity of certificate of occupancy for drug rehabilitation center did not bar action by adjacent property owners for damages allegedly caused by violation of zoning ordinance (Tex. App.), 494

HALFWAY HOUSE

Halfway house for ex-convicts enjoined on grounds it constituted private nuisance (Ark.), 269

RESIDENTIAL USES
Therapeutic Homes for Emotionally
Disturbed Children

Residences used for the housing and caring of emotionally disturbed children were not permitted as of right in a single-family residential district since such use did not come within the definition of family under the zoning ordinance. Such uses might be allowed in such districts upon site approval, or upon obtaining of a special permit or variance from the board of adjustment.

Browndale International, Ltd. v. Board of Adjustment for County of Dane, Supreme Court of Wisconsin [highest court], Decided June 18, 1973, 208 N.W.2d 121

The plaintiff proposed to lease six homes on a 182-acre parcel of property for the housing, care, and treatment of emotionally disturbed children. The houses were grouped together as a colony on one portion of the property and would be run by a professional staff. The county supervisor had determined that the proposed use would constitute single-family dwellings within the meaning of the county zoning ordinance. The board of adjustment reversed this, but it was in turn reversed by the trial court which held that the proposed homes would be single-family dwellings if no more than five children lived in any one of them. Upon appeal to the state supreme court, it was held that the proposed homes would not constitute single-family dwellings and were not permitted as of right on the proposed site. The opinion was written by Justice Beilfuss.

The proposed home sites were located in an A-1 agricultural district which permitted single-family detached dwellings as of right. Other uses were permitted upon first obtaining site approval. The zoning ordinance defined a single-family dwelling as a "building designed for and occupied exclusively as a residence for one family." It further defined family as "any number of individuals related by blood or marriage, or not to exceed five (5) persons not so related, living together on the premises as a single housekeeping unit, including any domestic servants."

The proposed homes were designed to treat and care for emotionally disturbed children who were either neglected, dependent, or delinquent and placed in the homes by the courts. These 'therapeutic homes' would contain from four to eight children and be run by a professional staff of house parents, social workers, and others. The homes were to be licensed under a child welfare agency but were not operated as foster homes or as a large institution. Upon appeal to this court two essential issues were raised. First, what was the nature of the scope of review by a court of the board of adjustment's decision. Second, was the proposed use a single-family use as defined in the county zoning ordinance.

On the scope of review, the supreme court concluded that plaintiffs' contention that review was limited only to the question of whether the board's decision was within its jurisdiction and not based on an error of law was incorrect. The reviewing court has the discretion to hear additional

testimony or other evidence and to make additional findings of fact and conclusions of law. The court noted that the nature of review had been changed by statute to allow a reviewing court to go outside the administrative body's record to consider additional evidence. Thus, even though the supreme court reversed the trial court's decision on other grounds, it held that the trial court "did not err by taking additional evidence and basing its findings of fact and conclusions of law, at least in part, upon such evidence."

Next, the court noted that the issue before it in interpreting the meaning of a zoning ordinance was a matter of law and that it was not bound by the trial court's interpretation. "The question then is whether these therapeutic homes are single-family dwellings within the meaning of the ordinance." The court concluded that they were not. They were not to be occupied "exclusively as a residence." Their basic purpose was as a commercial enterprise. "The use of the premises is not even principally for residential living purposes. Rather, its primary use is to provide care and treatment for emotionally disturbed children." The court was influenced by the fact that a professional staff was hired and that rehabilitative activities were to be carried on at the sites. The court noted:

The therapeutic home 'arrangement' is substantially different than a group of priests, nurses, school teachers, students or others who acquire premises to use as a residence for a group.

The proposed use was felt to defeat the intent of the zoning ordinance and ignore the express words "occupied exclusively as a residence for one family."

The court found that there were other means of establishing such uses in the county. "It cannot be reasonably said that the board is attempting to thwart this method of care and treatment for emotionally disturbed children. The board has expressed no objection to the therapeutic home idea but only justifiably refused to interpret the therapeutic home as a single-family dwelling—especially in light of Browndale's commercial attempt to colonize six homes in one site area under the guise of designating them as single-family dwellings."

The court also concluded that it was not a denial of equal protection of the laws to permit foster homes as a single-family dwelling while not permitting therapeutic homes as such. The residential character of the foster home does not depend upon the foster child, but has already been determined to be such even without the foster child. The parent, not the home, is the licensed body. With the therapeutic home, it is the home, not the parent, that is licensed.

Thus, the court affirmed the original decision of the board of adjustment which had held that the proposed homes were not single-family dwellings. It reversed the decision of the trial court and remanded the case back to the board pursuant to that body's original decision.

25 ZD 240

NEW YORK

HALFWAY HOUSE
Allowed by Special Exception

The plaintiff, a nonprofit corporation, operated two halfway houses for mentally restored persons. One of the premises was in an R-3 district and the other was in an R-2 district. It obtained a special exception for the house located in the R-2 zone by a vote of four-to-two of the board of zoning appeals. Its application for a similar special exception for the house in the R-3 zone was denied by a two-to-two vote of the board. It then instituted this action for judicial review of the board's action.

The court found that the proposed use was allowed in the R-3 zone as a convalescent home by special exception to be granted by the board "if it is found that such use will not be injurious to the contiguous or surrounding property and that the spirit of the ordinance shall be observed and substantial justice done." A special exception is to be granted if the conditions set out in the ordinance are found to exist, i.e., lack of injury to contiguous and surrounding property. The board members voting to refuse the permit failed to make findings along these lines which were supportable by the evidence; their opposition was apparently to any location of this type of use in the district at all. The legislative body had determined the basic compatibility by allowing for a special exception and that determination is not to be ignored by the board. The court held that the "proposed use is lawful and the findings which resulted in the denial of the application are without support in the evidence, are erroneous and arbitrary and are annulled." It directed that the plaintiff be issued a special exception for operation of a halfway house for the mentally restored in the R-3 district.

East House Corp. v. Riker, Supreme Court, Monroe County [trial court], Decided January 11, 1973, 339 N.Y.S.2d 511

25 ZD 241

NEW YORK

GROUP HOME
Prohibited in One-Family Residential District

The city brought this action to enjoin the defendants from using a one-family residence located in a single-family residential district as a group home pursuant to a state social services law. The court held that the proposed group home was not a permitted use in the city's one-family residential district, but stayed enforcement of its judgment "pending application by defendants to the Zoning Board of Appeals of the City of White Plains within a specified time for a special permit in accordance with the city's zoning ordinance."

A dissenting justice stated:

I am in complete agreement with appellants' contention that if the definition of 'family' contained in the zoning ordinance of the respondent City of White Plains is not construed as including a 'group family' as that term is defined in subdivision 17 of section 371 of the Social Services Law and a 'foster parent' as those words are defined in subdivision 19 (id.), the zoning ordinance would be void for invidious discrimination.

He felt that simply relegating the applicant to seek a special permit was not sufficient protection for the overriding state interest in providing for abandoned or neglected children. However, he also took the position that:

I believe that in view of the elaborate and comprehensive provisions contained in the Social Services Law the state has fully preempted the field, leaving no room (except for very limited police powers) to the local communities to restrict the areas, within their geographical boundaries, where group homes may be located.

The dissenting justice would have dismissed the action against the defendants to enjoin their use of the house in question as a group home.

City of White Plains v. Ferraioli, Supreme Court of New York, Appellate Division, Second Department [intermediate court], Decided December 18, 1972, 339 N.Y.S.2d 27