

IN THE SUPREME COURT OF OHIO

GEORGE SYRIANOUDIS dba  
REDEMPTION HOUSE

Appellant

vs.

ZONING BOARD OF APPEALS,  
ELLSWORTH TOWNSHIP, OHIO

Appellee

Case No. 10-0002

On Appeal from the Mahoning  
County Court of Appeals, Seventh  
Appellate District

Court of Appeals  
Case No. 2008 MA 00191

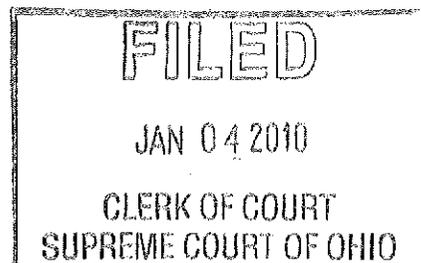
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MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT  
GEORGE SYRIANOUDIS dba REDEMPTION HOUSE

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***EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION***

The case presents important issues of public and great general interest regarding the authority of administrative agencies and the standard of review for their decisions. This case involves Appellant George Syrianoudis, who operates Redemption Inc. and his attempts to remodel the basement in his home in order to install drywall, wall partitions, doors and a drop ceiling. In order to perform this remodeling, George Syrianoudis was instructed to submit an Application for Zoning Permit and Certificate of Occupancy to the Office of Zoning Inspector for Ellsworth Township. The Ellsworth Office of the Zoning Inspector denied the application noting that "a group home for up to ten adjudicated juveniles is not a permitted use in a residential R-1 district, Section VI, Ellsworth Township Zoning Resolution."

Throughout this case, the controlling case law was ignored and the decision of the Ellsworth Zoning Inspector denying the Appellant a zoning permit and certificate of occupancy was upheld. The Ellsworth Township Zoning Board of Appeals, the trial court and the Seventh District Court of Appeals has the responsibility to, in a reasonable manner, apply the law. Instead, the Ellsworth Township Zoning Board of Appeals, the trial court and the appellate court manipulated the definitions of "family," and "single-family dwelling" with their own preconceived notions and prejudices of what kind of "family" should live in an "R-1 district."

If permitted to stand, the decision of the Court of Appeals would severely undermine the rights of all citizens, particularly property owners, to seek redress from a particular application of an ordinance, statute or bureaucratic policy by an administrator. The present decision eliminates the credibility, effectiveness and relevance of that process when those responsible for reviewing the decisions merely ignore the law and approve the decision.

This case is of public and great general interest because the Seventh District's decision misinterprets existing case law with respect to the fact that zoning regulations are to be strictly construed against the authority seeking to prohibit the proposed use as a violation of the zoning code. By improperly construing the case law and ignoring the evidence submitted, the Seventh District has altered Ohio's longstanding law concerning ordinances which impose restrictions upon the use of private property and has now created confusion and conflict. With such consequences, this is a case of public and great general interest. This Court should take this opportunity to reaffirm *Saunders v. Clark County Zoning Dept.* (1981), 66 Ohio St.2d 259, 421 N.E.2d 152.

Upon appeal, the Seventh District erroneously held that Redemption House did not provide any evidence to support a finding that the juveniles in the home would operate as a single housekeeping unit. In making this determination, the Seventh District's decision is legally flawed and internally inconsistent. In its decision, the Seventh District specifically acknowledged George Syrianoudis testified repeatedly that the children at Redemption House would live together as a "single family unit," and that Redemption House offered family, group, and individual counseling; group home; tutoring; support groups; and parent support. Moreover, George Syrianoudis testified that there would be a consistent mother and father figure at the home. Yet, the Seventh District ignored its own initial finding and further ignored the testimony of George Syrianoudis when it held, no evidence was presented to support a finding that the juveniles in the group home would operate as a single housekeeping unit.

The holding by the Seventh District is inconsistent with the holding in *Saunders v. Clark County Zoning Dept.* (1981), 66 Ohio St.2d 259, 421 N.E.2d 152, that a family unit, which performs the social function of child-rearing, regardless of its relationship or composition or

whether it includes foster children as well as natural children, is constitutionally protected against governmental intrusion not supported by a compelling governmental interest. With the Seventh District's illogical decision, as it stands now, in all civil cases throughout Ohio, there will be inconsistent and conflicting precedent with respect to interpreting zoning regulations and applying the definitions of "family" and "single family unit" to the zoning regulations. If the Seventh District is allowed to create its own interpretation of zoning regulations that is inconsistent with Ohio case law, it will deprive litigants of their rights. To allow the Seventh District to ignore the precedent of this Court invites confusion and chaos. It is clear that the legal conflicts and confusion in the Seventh District's jurisprudence requires guidance and clarification from this Court. This Court should accept jurisdiction in order to correct the miscarriage of justice that has occurred as a result of the decision of the Seventh District.

#### **STATEMENT OF CASE AND THE FACTS**

Appellant George Syrianoudis doing business as Redemption House (hereinafter "Redemption House") is the owner of the real estate and premises located at 11780 Western Reserve Road, Ellsworth Township, Mahoning County, Ohio. The premise is located in an R-1 Residential District pursuant to the Ellsworth Township Zoning Resolutions. On June 8, 2006, Redemption House submitted an Application for Zoning Permit And Certificate of Occupancy ("Application") to the Ellsworth Zoning Inspector. The purpose of the Application was to request the proper authorization in order to remodel the basement of the property located at 1178 Western Reserve Road. *Id.* (Tr. pg. 13) The remodeling project would include installing drywall, wall partitions, doors and a drop ceiling. Upon completion of the remodeling project, the basement would contain four separate rooms which Redemption House referred to in the

drawing submitted with the Application as a laundry room, utility & storage room, classroom, and office.

On October 2, 2006, the Ellsworth Zoning Inspector denied Redemption House's Application. In essence, the Zoning Inspector rejected the Application based on the belief that Redemption House's proposed use of the property is not a permitted use in a Residential R-1 District. Redemption House properly appealed the decision of the Zoning Inspector to the Appellee, Ellsworth Township Zoning Board of Appeals (hereinafter the "Board"). On November 30, 2006, the Board held a public hearing on the appeal. At the November 30, 2006 hearing, evidence in the form of testimony and exhibits were presented. On December 6, 2006, at the meeting of the Board, a vote was held in which four of the five members of the Board voted to uphold the decision of the Zoning Inspector. On December 27, 2006, the Board issued its Findings of Fact and Decision in which it upheld the decision of the Ellsworth Zoning Inspector, finding that the Redemption House's proposed use of the property is not a permitted use in the Residential R-1 District, Section VI of the Zoning Resolution. In its decision, the Board erroneously decided that Redemption House's use of the property is not a permitted use under the Residential R-1 District Section VI, Ellsworth Township Zoning Resolution.

On January 17, 2007, Redemption House filed its administrative appeal of the Board's decision with the Mahoning County Court of Common Pleas. On August 12, 2008, the Court of Common Pleas entered a judgment affirming the decision of the Board and denying appellant's zoning permit and certificate of occupancy. The judgment entry was filed on August 12, 2008, however it was not mailed to counsel until September 17, 2008. On September 23, 2008, Redemption House filed a notice of appeal of the decision of the trial court to the Seventh District Court of Appeals challenging the trial court's ruling in affirming the decision of the

Board and denying Redemption House's Application for Zoning Permit And Certificate of Occupancy.

In Redemption House's appeal, the Seventh District erroneously concluded that Redemption House failed to present any evidence that the residents of Redemption House function as a "single housekeeping unit" as defined by the Ordinance. This conclusion was inconsistent with the entirety of the evidence presented for review. Unfortunately, the Seventh District failed to consider the entire November 30, 2006 public hearing. In doing so, the Seventh District has effectively redefined the requirements for a single family dwelling. Without guidance from this Court, the Seventh District's erroneous decision will leave Ohio with unreliable precedent. This untenable decision of the Seventh District warrants review and clarification by this Court. In support of its position on these issues, the Appellant presents the following argument.

### **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

**Proposition of Law No. I. Zoning regulations are to be strictly construed against the authority or persons seeking to prohibit the proposed use as a violation of the zoning code.**

In the case at bar, the following Ellsworth Township Zoning Resolutions are at issue:

“Section VI. Residential R-1 Districts

“A. Permitted Buildings, Structures, and uses in Residential R-1 Districts:

(a) After obtaining a valid zoning certificate in accordance with the provisions of these regulations, the following uses are permitted.

1. “One (1) single family dwelling with an attached private garage and/or detached private garage, and accessory buildings exclusive of house trailer/mobile homes, which are strictly prohibited.

The following definitions, as set forth in the Ellsworth Township Zoning Resolutions, are pertinent in interpreting the permitted uses in Residential R-1 Districts.

“Dwelling, One Family: A detached building designed for or occupies exclusively by one family.

Family: One (1) or more persons occupying a dwelling unit and living as a single housekeeping unit.”

This Court has made it very clear that zoning regulations are to be strictly construed against the authority or persons seeking to prohibit the proposed use as a violation of the zoning code. *Saunders v. Clark Cty. Zoning Dept.* (1981), 66 Ohio St.2d 259, 421 N.E.2d 152. Statutory ordinances which impose restrictions upon the use of private property will be strictly construed and their scope cannot be extended to include limitations not clearly prescribed therein. *State ex rel Spiccia v. Abate* (1965), 2 Ohio St.2d 129, 207 N.E.2d 234. Any ambiguity must be construed against the zoning resolution because it is an exercise of police power that constricts property rights. *Liberty Savings Bank v. Kettering* (1995), 101 Ohio App.3d 446, 655 N.E.2d 1322.

In its decision, the Seventh District erroneously held that Redemption House did not provide any evidence to support a finding that the juveniles in the home would operate as a single housekeeping unit. Redemption House filed the Application to conduct a remodeling project in the basement of the house located at 11780 Western Reserve Road, Ellsworth Township, Mahoning County, Ohio. (11/30/06 Tr. Pg. 13-14) Redemption House was not applying to be a group home. (*Id.* At 13) The testimony elicited at the November 30, 2006, hearing focused on the use of the home located at 11780 Western Reserve Road, Ellsworth Township, Mahoning County, Ohio. When questioned about Redemption House, George Syrianoudis testified as follows:

“Redemption House is a home for boys age 12 to 17 not necessarily delinquent. ... They could have been abused by their parents, and these are the types of boys we want to help, boys that have been abused, boys that have been thrown to the curb, so to speak, not given a chance in live. We want to give those boys a chance in life. ... We’re here just to operate as a **single-family unit, single housekeeping unit.**” (Emphasis added) (11/30/06 Tr. Pg. 14-15)

The home is designed as a single family unit. (*Id.* at 15) The boys will have a mother and father figure at the Redemption House. (*Id.* at 21) They will be living as a single family unit. (*Id.* at 15) “It’s a family. It’s a family unit. This is not a business. This is a family.” (*Id.* at 28-29) Even though Redemption House did not apply for a use Application, a review of the evidence illustrates that Redemption House is a permitted use under Section VI. Residential R-1 District, Ellsworth Township Zoning Resolutions.

Since its beginning, Redemption House has been faced with opposition from surrounding property owners. The position of such property owners can be succinctly stated as "not in my back yard." The property owners’ fight has been taken up by the Ellsworth Zoning Inspector. The Ellsworth Zoning Inspector forced Redemption House to submit a zoning permit and certificate of occupancy in order to remodel a basement. The Ellsworth Township Zoning Board of Appeals, the trial court and the Seventh District Court of Appeals have assisted by embarking upon a path which involves a deliberate attempt to thwart Redemption House’s noble cause from going forward.

In *Saunders v. Clark County Zoning Dept.* (1981), 66 Ohio St.2d 259, 421 N.E.2d 152, the Ohio Supreme Court held that a group home for delinquent boys unrelated by affinity and consanguinity was permissible in a single-family district under a county zoning resolution that defined a "family" as two or more persons living together as a single housekeeping unit. In the opinion, the Ohio Supreme Court firmly stated:

The definition of "family" in this resolution is a broad one. In our view, any resolution seeking to define this term narrowly would unconstitutionally intrude upon an individual's right to choose the family living arrangement best suited to him and his loved ones (citation omitted). Those loved ones can just as easily be foster children as natural children for parents with compassion... A family unit, which performs the social function of child-rearing, regardless of its relationship or composition or whether it includes foster children as well as natural children, is constitutionally protected against governmental intrusion not supported by a compelling governmental interest (citations omitted).

In *Saunders*, this Court considered among other things, the fact that the children in the home would receive counseling, recreational and social services which were not usually provided to other children. The Court also specifically addressed the fact that control and supervision of the home would be provided by paid staff members. In considering the aforementioned factors this Court stated: "These facts are totally irrelevant and immaterial. They shed more heat than light on the issue before us, namely, the correct determination of the meaning of the definition of "family" in the resolution. The definitions of "family," "dwelling unit" and "single-family dwelling" must be carefully studied without encrusting them with the barnacles of one's own notions and prejudices of what kind of "family" should live in an "R-1 suburban residence district." *Id.* at 264-265, 421 N.E.2d 152, 156 – 157. This Court ruled a broad definition is mandated by the zoning resolutions, fundamental principles of zoning law, and immutable constitutional principles guaranteeing the right of every American to live with his family free from official harassment. *Id.*

In opposition to this Court's prior ruling, the Seventh District narrowly defined the term family and single family unit. The Seventh District ignored evidence which demonstrated that Redemption House would perform the social function of child-rearing. The Seventh District applied a strict definition of "single housekeeping unit" and ignored the evidence submitted to

support Redemption House's argument that the juveniles would maintain the residence as a single house-keeping unit.

The case *sub judice* is indistinguishable from *Saunders*. Just as in *Saunders*, Redemption House will be a house for delinquent boys unrelated by affinity and consanguinity operating as a single family unit. In *Saunders*, the zoning ordinance defined family as "two or more persons living together as a single housekeeping unit." The Ellsworth Township Zoning Resolutions define family as "one or more persons occupying a dwelling unit and living as a single housekeeping unit." Redemption House just like in *Saunders*, the children in the home will receive counseling, recreational and social services which are not usually provided to other children and supervision of the home will be provided by paid staff members.

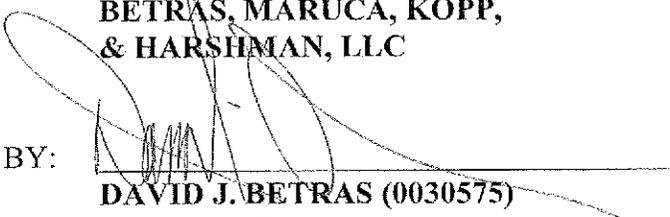
In affirming the decision of the Board, the trial court and the Seventh District Court of Appeals is encrusting the definitions of "family," and "single-family dwelling" with the barnacles of their own notions and prejudices of what kind of "family" should live in an "R-1 district." Redemption House's use of the property is a permitted use under the Residential R-1. Through its decision, the Seventh District Court of Appeals has narrowly defined the term "family". Moreover the Seventh District has upheld the Ellsworth Township's unconstitutional intrusion upon an individual's right to choose the family living arrangement best suited to him and his loved ones. Pursuant to this Court's holding in *Saunders*, a broad definition of family is mandated by the zoning resolutions, fundamental principles of zoning law, and the immutable constitutional principles guaranteeing the right of every American to live with his family free from official harassment. The Seventh District Court failed in its duty.

**CONCLUSION**

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,

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& HARSHMAN, LLC**

BY: 

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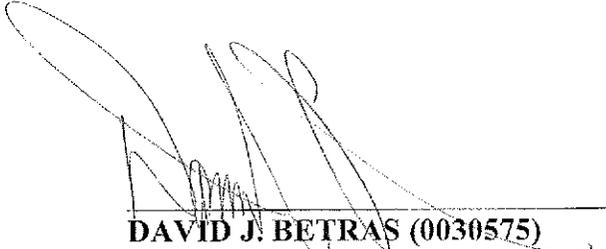
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**CERTIFICATE OF SERVICE**

A copy of the foregoing has been sent by Regular U.S. Mail this 31<sup>st</sup> day of December, 2009, to, Mark S. Finamore, Attorney for Appellee, 258 Seneca Ave. NE, Warren, OH 44481, and Scott R. Cochran, Attorney for Movants, 19 E. Front St., Youngstown, OH 44503.

  
**DAVID J. BETRAS (0030575)**

**Daniel P. Osman (0074260)**

**Attorney for Appellant**

STATE OF OHIO ) IN THE COURT OF APPEALS OF OHIO  
MAHONING COUNTY ) SS: SEVENTH DISTRICT

GEORGE SYRIANOUDIS, )  
dba REDEMPTION HOUSE, ) CASE NO. 08 MA 191  
PLAINTIFF-APPELLANT, )  
- VS - ) JUDGMENT ENTRY  
ZONING BOARD OF APPEALS )  
ELLSWORTH TOWNSHIP, OHIO, )  
DEFENDANT-APPELLEE. )

For the reasons stated in the opinion rendered herein, Appellant's sole assignment of error is meritless. It is the final judgment and order of this Court that the judgment of the Common Pleas Court, Mahoning County, Ohio, is affirmed. Costs taxed against Appellant.

*Mary DeGenaro*  
\_\_\_\_\_  
*Joseph W. ...*  
\_\_\_\_\_  
*Cy ...*  
\_\_\_\_\_  
JUDGES.

CLERK OF COURT  
MAHONING COUNTY, OHIO  
NOV 20 2009  
FILED  
ANTHONY ...



DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, the briefs of the parties and appellee-intervenors, and their oral arguments before this Court. Appellant, George Syrianoudis dba Redemption House, appeals the August 12, 2008 decision of the Mahoning County Court of Common Pleas, which affirmed the decision of the Ellsworth Township Zoning Board of Appeals ("ZBA") denying Appellant's application for a zoning permit and certificate of occupancy.

{¶2} Syrianoudis argues that the decision of the trial court was not supported by a preponderance of reliable, probative and substantial evidence as a matter of law. Specifically, Syrianoudis argues that the trial court erred in holding that multiple residents living in a group-home environment did not qualify as a "family" for purposes of the Ellsworth Township Zoning Ordinance ("Ordinance"). However, a board of zoning appeals cannot consider whether the proposed use qualifies as a single family when the applicant has failed to present any evidence that the residents function as a "single housekeeping unit" as defined by the Ordinance. The trial court did not err as a matter of law by affirming the decision of the ZBA. Accordingly, the decision of the trial court is affirmed.

#### Facts and Procedural History

{¶3} George Syrianoudis operates the for-profit corporation, Redemption, Inc. He started the Redemption House at a dwelling located in an R-1 residentially zoned district within Ellsworth Township. On June 8, 2006, Syrianoudis submitted an Application for Zoning Permit and Certificate of Occupancy to the Office of the Zoning Inspector for Ellsworth Township. Syrianoudis submitted the application as part of his preparations for remodeling the basement of the Redemption House to partition four separate rooms: a laundry room, utility and storage room, classroom, and office. Syrianoudis's application indicated that the house would be used for a group home.

{¶4} Legal counsel for the Township responded to Syrianoudis's application on June 29, 2006, with further inquiry into the nature and function of the group home. Subsequent to Syrianoudis's reply, the Ellsworth Office of the Zoning Inspector issued a

denial of the application on October 2, 2006, noting that "a group home for up to ten adjudicated juveniles is not a permitted use in a residential R-1 district, Section VI, Ellsworth Township Zoning Resolution." Syrianoudis appealed the decision to the ZBA on October 10, 2006.

{15} On November 30, 2006, the ZBA held a hearing, at which Syrianoudis and Zoning Inspector Dudek testified. Syrianoudis testified that the Redemption House is run by the for-profit corporation, Redemption, Inc., which is licensed as a group home with the Ohio Department of Job and Family Services, and that neither he nor anyone at Redemption, Inc. is licensed as a foster parent for any of the juveniles. Syrianoudis further testified that the purpose of the Redemption House is to "rehabilitate our residents so that they can successfully return to their families and communities. We will offer a wide range of services to accomplish this purpose including on-site individual, group, and family counseling, as well as an on-site internet-based school." Syrianoudis stated repeatedly during the hearing that the children would live together as a "single family unit," but did not elaborate. He otherwise provided descriptions of upstanding public figures who had lived in group homes, in order to stress their benefit to society. Syrianoudis testified that the children are to stay at the Redemption House for an undetermined length of time, "depend[ing] on how well they do," and that changes in a child's placement would be determined by the Children's Services Agency. When asked if he or his corporation would have "any type" of legal custody over the juveniles, Syrianoudis answered in the affirmative but did not explain what the legal relationship would be and between whom. Syrianoudis testified that the Redemption House structure is "designed as a single family unit."

{16} Inspector Dudek provided a statement that the absence of any adult permanently residing in the house with the juveniles, the rotating presence of group home workers, as well as the substantial and highly individualized needs of the residents, indicated that the home was operating as multiple housekeeping units, thus the residents were not living as a single housekeeping unit. In addition to her statement, Inspector Dudek submitted documentary evidence to the ZBA, including a pamphlet advertising the

Redemption House's services.

{117} The pamphlet indicates that the Redemption House is a log cabin on a 2.5 acre lot. It lists "Populations Served" as males between the ages of thirteen and eighteen years old with emotional, behavioral, or family issues. The "Services Offered" include "Case Management; Diagnostic Assessment; Family, Group, and Individual Counseling; Group Home; Psychiatric Services; Computer Based, State Regulated, Onsite School through ECOT; Tutoring by Licensed SBH/LD Teacher; Support Groups; Respite Services; Parent Support; Vocational Services; Violence Interruption/Prevention." The pamphlet further lists the ways in which it will improve the physical, intellectual, emotional and spiritual well-being of the population served.

{118} On December 27, 2006, the ZBA issued Findings of Fact and Decision, affirming the decision of the Zoning Inspector. The ZBA noted that the dwelling floor plan now includes "a classroom and office to be used as a business for profit," and that the owner is using the dwelling as a business for profit, which "could only be permitted as an accessory use home occupation." The ZBA further noted that the "use and activities" of the staff and the residents do not constitute a single housekeeping unit: "living as a single housekeeping unit necessarily implies and requires some degree or continuity of personal relationships, interaction and cooperation of supervisors, staff, employees and adjudicated juvenile residents. The highly transient occupancy of the premises by the adult supervisors, staff, employees and adjudicated juvenile residents; the varying severity of behavioral and emotional problems of the adjudicated juvenile residents; and their individualized treatment and educational needs does not constitute living as a single housekeeping unit as we interpret the meaning and intent of the zoning resolution."

{119} On January 17, 2007, Syrianoudis appealed the decision of the ZBA to the Mahoning County Court of Common Pleas. The trial court granted leave to intervene to certain resident neighbors to the Redemption House, Jane Buffone, William Johns and Patricia Johns ("Intervenors"). Syrianoudis filed a transcript of the ZBA hearing on August 30, 2007 and the trial court had all parties brief the issues in lieu of holding a merits hearing.

{¶10} On August 12, 2008, the trial court issued a judgment entry, holding that the decision of the ZBA was "not unconstitutional, illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable and probative evidence on the whole record." The trial court did not address the finding of the ZBA that Syrianoudis was using the structure as a business for profit. Rather than holding whether the Redemption House constituted a residential versus business use, the trial court decided the case on the narrower issue of whether the Redemption House constituted a single family dwelling. The trial court decided that the residents were not integrated enough "to constitute a single family within the ordinary and usual understanding as to the functions for which single families exist." The trial court further found that the children were placed at the home under separate contracts with various agencies, were transients because placements were "six (6) months to one (1) year and perhaps more," that the dwelling was significantly remodeled to be a group home, and that the "rules of conduct for the children in the home will not be family house rules, as that is ordinarily and usually understood in referring to single family homes, but instead will be guided by a book which is mandated by the Ohio Department of Jobs and Family Services." From these findings, the trial court concluded that the group home was not a permitted use for a Residential R-1 District per the Ellsworth Township Zoning Ordinance, and affirmed the decision of the ZBA.

{¶11} The trial court issued its August 12, 2008 decision to the parties on September 16, 2008, and Syrianoudis filed a Notice of Appeal on September 23, 2008. This court granted leave to Appellees-Intervenors to file a brief. The matter has been briefed by Syrianoudis, the ZBA and Intervenors.

Appellate Review of Administrative Appeals

{¶12} In his sole assignment of error, Syrianoudis argues:

{¶13} "The Trial Court erred in affirming the decision of the Board and denying Redemption House's Application for Zoning Permit and Certificate of Occupancy."

{¶14} Syrianoudis asserts that a group home constitutes a single housekeeping unit and thus a family, pursuant to the language of the Ordinance. Syrianoudis argues

that the trial court did not strictly construe the language of the Ordinance against the ZBA, in contravention of *Saunders v. Clark Cty. Zoning Dept.* (1981), 66 Ohio St.2d 259, 20 O.O.3d 244, 421 N.E.2d 152; and *Fliotsos v. City of Youngstown* (Jan. 5, 1983), 7th Dist. No. 81-CA-123. The ZBA and Intervenors counter that the trial court correctly construed the language of the Ordinance: the group home should not be considered a single-family dwelling unit because no one caretaker will reside full-time with the juveniles. The ZBA and Intervenors contend that the absence of a resident parent, foster parent, or guardian for the children factually distinguishes the case at hand from *Saunders* and *Fliotsos*.

{¶15} A trial court reviews the decision of the ZBA to determine whether the decision was "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record." R.C. 2506.04. The administrative decision is presumed to be valid, and the burden of proving its invalidity rests upon the contesting party. *Solid Rock Ministries Internatl. v. Monroe Bd. of Zoning Appeals* (2000), 138 Ohio App.3d 46, 50, 740 N.E.2d 320.

{¶16} Pursuant to R.C. 2506.04, an appellate court's review of an administrative appeal is even more limited in scope. *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 147, 2000-Ohio-493, 735 N.E.2d 433. The appellate court is only to review the decision of the trial court on questions of law, and is not to weigh the evidence. *Id.* "It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court. \* \* \* The fact that the court of appeals, or this court, might have arrived at a different conclusion than the administrative agency is immaterial. Appellate courts must not substitute their judgment for those of an administrative agency or a trial court absent the approved criteria for doing so." *Id.*, quoting *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 261, 533 N.E.2d 264. Thus, absent an error as a matter of law, this court must not disturb the judgment of the trial court.

#### Ordinance Provisions at Issue

{¶17} The parties do not dispute any of the facts involved in this case, and only

disagree as to whether the facts qualify the group home as a permitted use in a Residential R-1 District, pursuant to the language of the Ordinance. The applicable sections of the Ordinance state as follows:

{¶18} "Section II Definitions

{¶19} \* \* \*

{¶20} "Dwelling, One Family: A detached building designed for or occupied exclusively by one family.

{¶21} \* \* \*

{¶22} "Family: One (1) or more persons occupying a dwelling unit and living as a single housekeeping unit.

{¶23} \* \* \*

{¶24} "Section VI. Residential R-1 Districts

{¶25} "A. Permitted Buildings, Structures, and uses in Residential R-1 Districts:

{¶26} (a) A After obtaining a valid zoning certificate in accordance with the provisions of these regulations, the following uses are permitted.

{¶27} "1. One (1) single family dwelling \* \* \*.

{¶28} The Ordinance divides Ellsworth Township into agricultural, residential, business, industrial, water reservoir, and planned unit development districts. The Ordinance provides for four different types of residential districts, including R-1 single family residential and R-3 multiple family residential. The Ordinance provides special off-street parking regulations for things such as "Private Clubs, Fraternities, Boarding and Lodging Houses," and "Sanitariums, Convalescent Homes and Children's Homes," but does not provide a definition or any further reference for those terms.

#### Single Housekeeping Unit Analysis

{¶29} In various cases where the term "single housekeeping unit" is at issue, the question whether unrelated people being provided a room, meals and services from a licensed group or foster home constitutes a single housekeeping unit, is decided based on the unique facts of each case. However, courts have consistently focused on two rationales in order to find favorably for the applicant: 1) a unifying resident-guardian

relationship, or 2) a unifying communal living relationship. Neither rationale applies here.

{¶30} The first rationale is that a person residing in the house is asserting his right to care for his natural or foster family in the way he sees fit. See *Saunders*, supra (holding that a foster home for delinquent juveniles constituted a single housekeeping unit for the purposes of the Clark County Zoning Resolution where the applicants were the licensed foster parents of the juveniles, and all parties lived together in the applicants' residence); *Fliotsos*, supra (holding that an applicant raising five mentally retarded children in her home constituted a family for the purposes of the Youngstown Zoning Ordinance). This rationale does not apply in the present case because Syrianoudis is not asserting his or another resident guardian's right to care for their family regardless of the relationships between the family members. *Saunders* and *Fliotsos* are distinguishable because the protesting parties were asserting their rights as foster parents to maintain their household. As residential foster parents, the parties in *Saunders* and *Fliotsos* were the main unifying factors creating a single housekeeping unit, maintaining a household through their resident-guardian relationship with all of their residents. Despite the limited record in this case, the circumstances of the Redemption House appear not to have that same unifying factor; the record is devoid of any such evidence. Specifically, Syrianoudis testified that neither he nor any of the adults were licensed as foster parents. He merely stated there would be some type of legal custody over the juveniles but offered no further testimony.

{¶31} Turning to the second rationale, we must determine whether the residents of a house operate or maintain that house in any sort of communal fashion. See *City of Westerville v. Kuehnert* (1988), 50 Ohio App.3d 77, 80, 553 N.E.2d 1085; *Freedom Twp. Bd. of Zoning Appeals v. Portage Cty. Bd. of Mental Retardation and Developmental Disabilities* (1984), 16 Ohio App.3d 387, 390-391, 16 OBR 456, 476 N.E.2d 360; *Concerned Citizens of Timberchase v. Morris Constr. Co.* (Dec. 28, 1983), 1st Dist. Nos. C-830180, C-830261, C-830302; *Beres v. Hope Homes, Inc.* (1983), 6 Ohio App.3d 71, 73-74, 6 OBR 539, 453 N.E.2d 1119. See, also, 1990 Ohio Atty.Gen.Ops. No. 90-080.

{¶32} For example, in *Concerned Citizens of Timberchase*, the Morris

Construction Company and Human Services Collaborative, Inc., sought to use a house in a single-family residential zone as a "family home" residential facility for six mentally retarded females. Like the ordinance in this case, the Hamilton County Zoning Ordinance defined "family" as "a single housekeeping unit." *Id.* at \*4. The First District pointed to the many facts in the record before the Hamilton County Zoning Board which supported the conclusion that the residents would live as a single housekeeping unit, such as that "they will share in marketing, meal preparation and serving, cleaning, laundering, and other household chores" and that they will learn "how to adapt to intimate group living." *Id.* at \*2.

{¶33} We cannot consider whether this second rationale applies here because the record does not contain any evidence that the residents of the Redemption House will maintain the household in a communal fashion. Instead of the juveniles living together to share the dwelling as a single housekeeping unit, the limited information in the record indicates that the juveniles are placed at the Redemption House on an individual basis, to receive individualized treatment. There was no evidence on the record that the residents would communally perform things like household decision-making, household tasks, or even the cooking or eating of communal meals. While there was a bold statement from Syrianoudis that this would be a "single dwelling unit," there is no evidence in the record to support the contention that the house is, in fact, a single dwelling unit with a single, communal kitchen and laundry facility. Instead, the evidence provided to the trial court and ZBA indicated that the children will be provided with room, board, and a variety of educational and mental health services, which appears to make the day-to-day functioning of the dwelling no different than that of a boarding school, rehabilitation clinic, or institutional children's home. This record reflects the use of the building is merely institutional, and thus differentiates this case from *Saunders* and the above cited cases.

{¶34} Finally, testimony regarding successful adults who were raised in a group home setting sheds no light on whether the children will be living at Redemption House in a communal fashion. Individuals living in a communal not separate fashion is what is contemplated by "single housekeeping unit" in the Ordinance, rather than the trial court's

definition of "single family within the ordinary and usual understanding as to the functions for which single families exist." Ultimately, Syrianooudis merely stating that the children would be living as "a single housekeeping unit" does not make it so.

{¶35} The case at hand is distinguishable from the foster-parent scenario in *Saunders*. Based on this record the trial court reasonably found that the residents of the Redemption House were not living as a single housekeeping unit: There is no adult authority residing at the Redemption House acting in loco parentis to a group of children. Further, there is no evidence that the children will participate in day to day communal activities, such as housekeeping and cooking, as a unit. The minimal evidence provided indicated that the use of the dwelling was for the provision of individualized transitional treatment services.

{¶36} With no evidence presented to support a finding that the juveniles in the group home would operate as a single housekeeping unit apart from Syrianooudis's iteration of the legal conclusion, we cannot disturb the trial court's finding that the preponderance of the evidence showed that the Redemption House did not qualify as an R-1 single family dwelling. Keeping in mind that our review of the trial court's decision is extremely limited in scope, and based on the record as presented, we find that the trial court's decision that the Redemption House was not a single housekeeping unit was not contrary to law. Syrianooudis's sole assignment of error is meritless. Accordingly, the judgment of the trial court is affirmed.

Vukovich, P.J. , *concur*s.

Waite, J. , *concur*s.

APPROVED:

  
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JUDGE MARY DeGENARO