

Oxford House, Inc.

1010 Wayne Avenue, Suite 400
Silver Spring, Maryland 20910

Oxford House and Zoning – A Legal Memorandum October 10, 2007

How Oxford Houses Work

Oxford House, Inc. is the 501(c)(3) nonprofit umbrella organization for all the individual Oxford Houses.¹ Each Oxford House™ must receive a charter from Oxford House, Inc. to operate as and call itself an Oxford House. To receive a charter a group must be made up of at least six recovering men or women. Oxford House, Inc. does not charter co-ed houses.

Oxford House™ is a self-run, self-supported recovery home concept and standardized system of operation that served as the model for the self-run, self-supported group recovery homes authorized for start-up loans under §2036 of the Anti-Drug Abuse Act of 1988, PL 100-690. Many, but not all, Oxford Houses have been started with a start-up loan from a state recovery home revolving loan fund.²

Oxford House, Inc. [hereinafter referred to OHI] has the exclusive authority to charter individual Oxford Houses. Any group of six or more recovering individuals of the same sex can request an Oxford House™ charter. OHI grants a charter if the group has six or more individuals in recovery and agrees to meet the three basic conditions of the charter. The three basic conditions are:

- The group must be democratically self-run following the standard system of operation set forth in the Oxford House™ Manual[®].
- The group must be financially self-supporting by paying equal shares of household expenses in a timely manner, and
- The group must immediately expel any resident who returns to using alcohol or drugs inside or outside of the house.

Initially, the charter is granted on a conditional basis and each house has about six months to demonstrate that the group understands the concept and system of operation. OHI collects information from the new Oxford House™ to measure whether the group

¹ Oxford House, Inc. is a nonprofit umbrella organization incorporated in Delaware. It has its principal place of business at 1010 Wayne Avenue, Suite 400, Silver Spring, Maryland 20910 and is recognized by IRS as qualifying under §501(c)(3) of the U.S. Internal Revenue Code.

² Beginning in 1989, many states established a self-run, self-supported recovery home start-up loan fund as required under PL 100-690, the Federal Anti-Drug Abuse Act of 1988. Beginning in 2000, the mandate of PL 100-690 was changed to make such loans permissive. Many states still have such loan funds. Whether or not such loan funds exist, the criteria of 42 USC 300 x-25 still applies to self-help group recovery homes established as Oxford Houses.

understands the system of operations. If the group qualifies, OHI permits the group to apply for a permanent charter that also has the three basic conditions noted above.

All Oxford Houses are *rented*. Practical economic barriers preclude seeking a zoning variance prior to rental. Finding a landlord willing to rent a house to a group of recovering individuals is difficult but it would become impossible if the landlord had to keep his or her property available while the group sought approval of a zoning variance *before* moving in. Therefore, a group wanting to start an Oxford House™ behaves in the household rental market just like an ordinary family. It finds an available, suitable house and rents it, paying the first month's rent and security deposit to a willing landlord.

OHI By-laws preclude OHI or its chartered houses from owning residential property because, from its inception in 1975, there was concern that property ownership would divert the organization from its primary focus on recovery from alcoholism and drug addiction.³ The non-accumulation of any real estate assets or other wealth has made a large contribution to the success of Oxford House over the last 32 years. Many groups – whether made up of recovering individuals or not – face all kinds of disputes and selfish infighting when property, money or wealth is at stake. Oxford House deliberately avoids that temptation.

Since recovering alcoholics and drug addicts, wanting an Oxford House™ charter, know that only rental property qualifies, they are forced to find a suitable house to rent if they want to establish an Oxford House™. The first month's rent and security deposit are usually covered by the small [up to \$4,000] start-up loan available from the State Revolving Loan Fund where they are available. The group must then quickly fill the house so that the weekly share of household expenses required from each resident can be accumulated fast enough to pay the next month's rent and other household expenses.⁴ The system of operation for each self-run, self-supported recovery house depends upon the election of five officers and a weekly house meeting to decide issues and follow the procedures necessary to keep a house functioning well. While OHI will charter houses

³ In 1975, the Oxford House model drew extensively from the experience of Alcoholics Anonymous that had been founded forty years earlier. Great debates had taken place among early AA members about the wisdom of owning anything. The fear was that recovering alcoholics would get into fights over money and property leading to individual relapse and a weakening of its overall program. At about the time OHI was established there was also a national scandal involving SYNANON, a therapeutic community for recovering heroin addicts. The founders of that program became involved in a dispute over ownership of property and businesses. Both of these factors influenced the early OHI decisions and subsequent success of the program has affirmed the policy precluding ownership by the organization of property.

⁴ Nationally the average weekly household expense per resident is about \$87. Currently the average in Maryland Oxford Houses is \$88 with a range among houses of \$75 to \$120. The weekly household share is the same for every resident of the house and covers all the household expenses – rent the group pays the landlord, utility bills and general household supplies. Each resident provides his own food and cooks his own meals. The group as a whole fixes the weekly equal share of expenses depending on the operational costs to maintain the house but OHI helps them establish an amount at a level that will cover household expenses within a framework that encourages the group to have two beds per sleeping area. This latter consideration discourages isolation and loneliness, which both contribute to recidivism.

that have at least six residents, experience has shown that houses with eight to twelve residents work best. The average number of residents per house nationally is 8.2.

Each Oxford House™ has a separate FEIN tax identification number and a separate bank account. The houses operate autonomously but must follow the procedures of the Oxford House™ Manual[©] and adhere to the charter conditions. There are no dues or fees to OHI by individual houses⁵ but by having a charter or conditional charter the houses are assured the technical assistance and support by OHI. In this regard, OHI has defended the civil rights of every Oxford House™. The residents of such self-run, self-supported recovery homes as Oxford House™ are a protected class under the Federal Fair Housing Act [FFHA]⁶ and the American with Disabilities Act [ADA]⁷. Often defense of the civil rights of an Oxford House has resulted in litigation. A fair body of case law has developed with respect to Oxford Houses and application of the Federal Fair Housing Act and the Americans with Disabilities Act.

Discussion of General Legal Issues

The lead case is *City of Edmonds, WA v. Oxford House, Inc.* 514 U.S. 725 [1995]. In that case, the United States Supreme Court granted certiorari because of a conflict between Federal Circuit Courts of Appeal with respect to the application of the Federal Fair Housing Act to Oxford House™ and a similar home for individuals recovering from alcoholism and drug addiction.

The court wrote:

The Ninth Circuit's decision conflicts with an Eleventh Circuit decision declaring exempt under §3607(b)(1) a family definition provision similar to the Edmonds prescription. See *Elliott v. Athens*, 960 F. 2d 975 [1992] We granted certiorari to resolve the conflict, 513 U.S. 959 [1994], and we now affirm the Ninth Circuit's judgment. 514 U.S. 725, 727

The 1995 Supreme Court's decision in the *Edmonds Case* resolved the threshold question of whether Oxford House™ residents fall within the protection of the Federal Fair Housing Act as described in the following syllabus of the reported decision:

Held: Edmonds' zoning code definition of the term "family" is not a maximum occupancy restriction exempt from the FHA under § 3607(b)(1). Pp. 731–738.

- (a) Congress enacted § 3607(b)(1) against the backdrop of an evident distinction between municipal land-use restrictions and maximum occupancy restrictions. Land-use restrictions designate districts—*e.g.*, commercial or single-family residential—in which only compatible uses are allowed and incompatible uses are excluded. Reserving land for single-family residences preserves

⁵ However, most Oxford Houses make voluntary monthly contributions to OHI to help support the national operations

⁶ 42 U.S.C. § 3604 *et. seq.* (2000)

⁷ 42 U.S.C. §12132 *et. seq.* (2000)

the character of neighborhoods as family residential communities. To limit land use to single-family residences, a municipality must define the term “family”; thus family composition rules are an essential component of single-family use restrictions. Maximum occupancy restrictions, in contradistinction, cap the number of occupants per dwelling, typically on the basis of available floor space or rooms. Their purpose is to protect health and safety by preventing dwelling overcrowding. Section 3607(b)(1)’s language—“restrictions regarding the maximum number of occupants permitted to occupy a dwelling”—surely encompasses maximum occupancy restrictions, and does not fit family composition rules typically tied to land-use restrictions. Pp. 732–735.

- (b) The zoning provisions Edmonds invoked against Oxford House, ECDC §§ 16.20.010 and 21.30.010, are classic examples of a use restriction and complementing family composition rule. These provisions do not cap the number of people who may live in a dwelling: So long as they are related by “genetics, adoption, or marriage,” any number of people can live in a house. A separate ECDC provision—§19.10.000—caps the number of occupants a dwelling may house, based on floor area, and is thus a prototypical maximum occupancy restriction. In short, the City’s family definition rule, ECDC § 21.30.010, describes family living, not living space per occupant. Defining family primarily by biological and legal relationships, the rule also accommodates another group association: Five or fewer unrelated people are allowed to live together as though they were family. But this accommodation cannot convert Edmonds’ family values preserver into a maximum occupancy restriction. Edmonds’ contention that subjecting single-family zoning to FHA scrutiny will overturn Euclidian zoning and destroy the effectiveness and purpose of single-family zoning both ignores the limited scope of the issue before this Court and exaggerates the force of the FHA’s antidiscrimination provisions, which require only “reasonable” accommodations. Since only a threshold question is presented in this case, it remains for the lower courts to decide whether Edmonds’ actions violate the FHA’s prohibitions against discrimination. Pp. 735–738. 18 F. 3d 802, affirmed.

514 U.S. 775 (1995)

Application of the Law

In its original form, the federal Fair Housing Act prohibited discrimination in housing transactions on the basis of race, color, religion and national origin. The Fair Housing Act Amendments of 1988 changed the enforcement scheme and added handicap and familial status to the types of discrimination that the statute prohibits. The law applies to “dwellings,” including any building occupied or intended for occupancy as a residence and any vacant land sold or leased for the construction of such a building.⁸ Under the statute the prohibitions include: refusal to sell, rent or negotiate for housing, or otherwise make housing unavailable; adopting burdensome procedures or delaying tactics; making statements indicating racial or other prohibited preferences; racial steering; *exclusionary zoning and land-use restrictions*; mortgage and insurance redlining; and discriminatory appraisals.⁹ [Italics added]

While the original Fair Housing Act had limited reach and scope, the 1988 amendments provided three methods of enforcement: (1) an aggrieved person, or the HUD [U.S. Department of Housing and Urban Development] acting on its own, may file

⁸ Robert G. Schwemm, HOUSING DISCRIMINATION LAW AND LITIGATION note 3 at 92 (2001) 42 U.S.C. §§ 3602(b), 3603-3606, 3617 (1988)

⁹ 42 U.S.C. § 3604 (a)(b) (2000); Schwemm, *supra* note 3 at 13-2; Schwemm, *supra* note 3 at 13-2.

a complaint with HUD within one year of the alleged practice;¹⁰ (2) an aggrieved party may file an action in federal or state court within two years of an alleged discriminatory act without filing a prior administrative complaint,¹¹ and (3) the U. S. Attorney General may bring a federal suit in cases of a “pattern or practice” of resistance to the rights granted by Title VIII or when denial of these rights raises an issue of “general public importance.”¹² Each enforcement mechanism is a separate and independent proceeding.¹³

HUD has adopted an extensive set of regulations to implement the federal Fair Housing Act Amendment of 1988. [Codified at title 24 CFR] Part 100 of the regulations describe the conduct that is unlawful. Part 103 sets forth procedures for HUD investigations of administrative complaints. Part 180 sets out procedures for administrative proceedings.¹⁴

The U.S. Supreme Court set out important judicial guidance on interpreting the original federal Fair Housing Act in 1972 in the case *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972). In that case, the court approved standing for current tenants in a large apartment complex to sue their landlord for discrimination against minority applicants, and established four tenets of statutory construction: (1) the statute should be construed broadly; (2) integration is an important goal of Title VIII; (3) courts may, in appropriate cases, rely on case law under Title VII of the Civil Rights Act to help interpret Title VIII; and (4) HUD interpretations of Title VIII are entitled to substantial weight.¹⁵ These broad guidelines continue to be applied to the amended Federal Fair Housing Act. See *City of Edmonds, WA v. Oxford House, Inc., ET AL.* 514 U.S. 725 (1995)

The terms “handicap,” “handicapped” and “disability” are used interchangeably. The statute defines handicap to mean “(1) physical or mental impairment which substantially limits one or more of such person’s major life activities ... or (3) being regarded as having such impairment, but such term does not include, illegal use of or addiction of a controlled substance.¹⁶ When a treatment provider attempted to rent several apartments for recovering substance abusers, the Fourth Circuit Court of Appeals

¹⁰ 42 U.S.C. § 3610; Schwemm, *supra* note 3, at 4-8.

¹¹ 42 U.S.C. 3613; Schwemm, *supra* note 3, at 25-6.

¹² 42 U.S.C. §3614; Schwemm, *supra* note 3, at 4-9.

¹³ Schwemm, *supra* note 3, at 23-2.

¹⁴ Crystal B. Ashley, AN INTRODUCTION TO FAIR HOUSING LAW, National Center on Poverty Law, 111 N. Wabash Ave., Suite 500, Chicago, IL 60602, p. 131.

¹⁵ Schwemm, *supra* note 3 at 7-2 to 7-5.

¹⁶ 42 U.S.C. § 3602(h) (2000)

found that persons in recovery from drug addiction were “handicapped” and therefore within a class protected under the statute.¹⁷ More recently, the same circuit found that the Baltimore Port Authority was in violation of the both the FHA and ADA when it refused to rent a berthing space to a group to operate a former navy hospital ship as a residential education facility for women recovering from substance abuse.¹⁸

The resolution of the issue of whether recovering alcoholics and drug addicts are protected under the FHA rests both on common sense and the direct legislative history of the 1988 Amendments. Indeed, the U.S. House Report recognizes that “individuals who have a record of drug use or addiction but who are not currently using illegal drugs would continue to be protected if they fall under the definition of handicap ... like any other person with a disability such as cancer.”¹⁹

H. Westley Clark, M.D., J.D., M.P.H., CAS, FASAM, the federal Director Center for Substance Abuse Treatment in both the Clinton and Bush Administrations has addressed the specific role of Oxford House™ in dealing with alcoholism and drug addiction. He wrote in 1999:

Recovery from the disease of alcoholism or other drug addiction is often plagued by relapse – which is simply the use of alcohol or other addictive drugs following a period of abstinence. For those addicted to alcohol or other drugs, a relapse can trigger a return to uncontrolled drug use. The self-run, self-supported recovery house provides many recovering individuals effective relapse prevention because of (1) the support gained from living with other individuals coping with the same problem and (2) the knowledge that any use of alcohol or drugs will result in immediate expulsion.

Fourteen years ago a group of recovering individuals adapted the self-help principles of AA and NA to group – supported living by establishing the first Oxford House™. The Anti-Drug Abuse Act of 1988 based the self-run, self-supported recovery home provision on the Oxford House™ experience. It offers a simple, cost-effective way to provide an opportunity for recovering individuals to live in a supportive environment that is free of substance abuse.²⁰

At times, court decisions related to the application of zoning laws to Oxford House™ have reflected the frustrating nature of treating alcoholism and drug addiction. For example, 1991 a federal court intervened when a state court was attempting to limit the number of individuals who could live in an Oxford House™. Federal District Court

¹⁷ *United States v. Southern Management, Inc.* 955 F. 2d 914 (4th Cir. 1992)

¹⁸ *Project Life, Inc. v. Glendening* 2002 WL 2012545 (4th Cir. Sept. 4, 2002), affirmed 139 F. Supp. 2d 703

¹⁹ H.R. Rept. No. 711, 100th Cong., 2d Sess 22 (1988)

²⁰ SELF-RUN, SELF-SUPPORTED HOUSES FOR MORE EFFECTIVE RECOVERY FROM ALCOHOL AND DRUG ADDICTION, Technical Assistance Publication (TAP) Series, U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, DHHS Publication No. (SMA) o2-3700; Printed 1989, 1990, 1992, 1993, 1999, 2002. Note: Clark uses “Fourteen years ago” in the second quoted paragraph. Today he would use “Thirty-two years ago.” The first Oxford House started in Silver Spring, Maryland in 1975.

Judge Sarokin granted a preliminary injunction against a state court ruling that limited the number of unrelated individuals that could live in an Oxford House™ established in Plainfield, New Jersey.

In his opinion he wrote:

The plaintiffs in this matter seek relief, which will permit them to maintain a residence for recovering addicts of drugs and alcohol, pending further hearings and a determination in state court proceedings. The plaintiffs are part of a nationally recognized program, which, through peer pressure and strict conditions of abstinence, successfully maintains freedom from addiction and improves the lives and opportunities of its participants. For its success, however, it requires a minimum number of members at each location. The defendants have established a maximum, which forecloses the viability of the endeavor and will require vacation of the subject premises absent intervention by this court.

There are few among us who do not have a friend or relative who has suffered the ravages of drugs and alcohol. They are persons who need our compassion and require our support. To evict these plaintiffs from their premises and deny them an opportunity for a full and fair hearing condemns their efforts and violates applicable law.

The defendants have limited the use of said premises to six persons; the plaintiffs require nine in order to be viable. The municipality can survive having three plaintiffs from their premises and deny them the opportunity for a full and fair hearing condemns their efforts and violates applicable law.

The intervention of this court is for a limited purpose and for a limited duration. In the interim, plaintiffs should be permitted to follow their path to rehabilitation and be encouraged in their efforts. In so doing, the harm to the City is minimal; the irreparable harm to plaintiffs is avoided. *However, what this matter truly needs is not judicial action, whether it be state or federal, but for the parties to search their consciences, recognize the needs and hopes of the plaintiffs and the concerns and fears of neighbors, and arrive at an accommodation which serves and enriches all who are involved and affected by it.* Italics added.²¹

Judge Sarokin's findings and dicta succinctly underscores a policy that has enabled Oxford House™ to expand from a few houses in the Washington, DC area in 1988 to a national network of more than 1,200 houses. Almost all Oxford Houses are located in areas zoned for or consisting of single-family residences. The goal of Oxford House™ being a "good neighbor in a good neighborhood" has been a hallmark of the organization since several men in the first Oxford House™ in Silver Spring, Maryland rented a second house in 1976 in Northwest Washington, D.C. The third Oxford House™ – located at 3765 Northampton Street, N.W. just off Connecticut Avenue near Chevy Chase Circle – has been in continual existence since it opened in 1977.

For the most part, whenever an issue has arisen, local zoning authorities have made a reasonable accommodation in local ordinances to permit groups of six to twelve individuals recovering from alcoholism and drug addiction to live together as a family in

²¹ *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1197 (D.N.J. 1991).

an environment supportive of sobriety without relapse. For its part, OHI has attempted to avoid litigation or filing of HUD complaints.

The Typical Oxford House

Oxford House™ residents are encouraged to rent single-family dwellings located in good neighborhoods. This means Oxford Houses are usually located in areas zoned for single-family dwellings. The Oxford House website has a list of all Oxford Houses. It is at www.oxfordhouse.org.²²

Oxford Houses are not substance abuse centers, halfway houses, shelters nor community care facilities. There is no treatment, counseling, therapy, or any type of health care services provided. There is no house manager, paid staff or other type of institutional personnel involved in the supervision or management of the house. The residents make all decisions relating to the functioning of the Oxford House™ democratically. An Oxford House™ manages its own finances and has its own bank account. There is no random testing for alcohol or drug use, or are there any rules relating to curfews. Oxford Houses are not halfway house, nor are they a substitute for halfway houses.

Oxford House™ residents are considered to be the "functional equivalent" of a family for several reasons. First, all the residents have access to the entire house. Second, all the residents participate equally in the housekeeping functions of the house, *i.e.*, house chores, house finances. Each resident, however, is responsible for his own food and cooking. Third, the emotional and mutual support and bonding given each Oxford House™ resident in support of his or her recovery from drug addiction and alcoholism is the equivalent of the type of love and support received in a traditional family. Finally, the living arrangement is not based on a profit motive.

The final factor in determining that Oxford House™ residents are the "functional equivalent" of a family is the fact that there are no limits as to how long a resident can stay in Oxford House™. Conceivably, an individual can stay in Oxford House™ a lifetime if he or she does not relapse into drug and/or alcohol use, fail to pay his or her rent on time, or engage in disruptive behavior. The average length of residence is about 11 months but some individuals may stay much longer.

All residents of Oxford House™ are considered "handicapped" under the 1988 amendments to the Federal Fair Housing Act. See 42 U.S.C. 3600 *et. Seq.* Recovering addicts and alcoholics are specifically included within the definition of "handicapped individual." See 42 U.S.C. 3602(h) and 24 C.F.R. 100.201(a)(2). See also *City of*

²² Sometimes OHI learns of groups of recovering individuals who are living together, holding themselves out as an Oxford House and even following the practices and procedures used in a chartered Oxford House but have not technically become an Oxford House because they have not requested or received a charter from Oxford House, Inc. When OHI discovers such groups they are asked to either apply for a charter or cease claiming their affiliation with Oxford House. Any group of recovering individuals must have a charter from Oxford House, Inc. – the 501(c)(3) umbrella organization – before it can legitimately call itself an Oxford House™.

Edmonds v. Oxford House, Inc. 514 U.S. 725 (1995). The Fair Housing Act was amended to include handicapped individuals within its parameters, and to guarantee the ability of these individuals to live in the residence of their choice within the community. See *Oxford House - Evergreen v. City of Plainfield*, supra. (Noting that residents of an Oxford House™ in Plainfield, New Jersey "are part of a nationally recognized program which, through peer pressure and strict conditions of abstinence, successfully maintains freedom from addiction and improves the lives and opportunities of its participants.") *Oxford House, Inc. v. Township of Cherry Hill*, 799 F. Supp. 450, 454 (D.N.J. 1992)

As recovering alcoholics and addicts who cannot presently live independently or with their natural families, plaintiffs are individuals with handicaps within the meaning of the Fair Housing Act. *City of Plainfield*. at 1342.²³

Section 3604 of the Federal Fair Housing Act provides that it shall be unlawful:

- (f)(1) To discriminate in the sale or rental, or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap...
- (2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in such dwelling, because of handicap ...
- (3) For purposes of this subsection, discrimination includes ...
 - (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to allow such person equal opportunity to use and enjoy a dwelling ...

Subsection 3604(f)(1)'s use of the phrase "otherwise make unavailable or deny," as well as the legislative history, makes clear that the section applies not only to sellers or landlords, but also to more sophisticated methods of denying housing such as enforcing zoning or other land use laws which have the effect of denying housing. See House Report, at 2185 ("The Committee intends that the prohibition against discrimination against those with handicaps to apply to zoning decisions and practices."). See also *United States v. City of Black Jack*, 508 F. 2d 1179, 1183-84 (8th Cir. 1974) cert. denied, 442 U.S. 1042 (1975); *In re Malone*, 592 F. Supp. 1135 (E.D. Mo. 1984), *aff'd without op.* 794 F. 2d 680 (8th Cir. 1986) in addition to the specific Oxford House cases noted above.

As members of a protected class under the Federal Fair Housing Act, the issue of whether the residents of Oxford House™ are in violation of the local zoning ordinances is not relevant to the question of federal law. *United States v. Borough of Audubon*, 797 F. Supp. 353, *aff'd* 968 F.2d 14 (3d Cir. 1992). Thus, any allegation that Oxford House has violated a local zoning ordinance does not abrogate its rights in claiming discrimination under the Federal Fair Housing Act. It is well established that the Federal Fair Housing Act prohibits discriminatory land use decision by municipalities, when such decision are "ostensibly authorized by local ordinance." *Oxford House - Evergreen v.*

²³With respect to individuals with disabilities, violation of the Fair Housing Act may be shown by intentional discrimination, discriminatory effect, or a failure to reasonably accommodate. *Oxford House - Evergreen v. City of Plainfield* at 1343; *Oxford House - C v. City of St. Louis*, 843 F. Supp. 1556 (E.D. Mo. 1994); *Carson v. Rochester Housing Authority*, 748 F. Supp 1002, 1007 (W.D. N.Y. 1990).

City of Plainfield, supra. (on motion for preliminary injunction: city's enforcement of zoning ordinance so as to prevent operation of local Oxford House™ in area zoned for single family residences violated the Federal Fair Housing Act); *Association of Relative and Friends of AIDS patients v. Regulation and Permits Administration*, 740 F.Supp. 95 (D.P.R. 1990) (The case involved a government agency's denial of a land use permit to permit the opening of an AIDS hospice and thereby violated Fair Housing Act.); *Baxter v. City of Belleville*, 720 F.SUPP. 720), S.D. Ill 1989) (on motion for preliminary injunction: city's refusal to issue special use permit under zoning law to develop to remodel building into residence for persons with AIDS violated Fair Housing Act). See also 42 U.S.C. Section 3615 ("any law of a State, a political subdivision, or other jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid [under the Fair Housing Act]").

In addition, for purposes of this section, 42 U.S.C. 3604(f)(3)(B) defines discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such [handicapped] person equal opportunity to use and enjoy a dwelling."

The legislative history of the Fair Housing Amendments Act of 1988 ("House Judiciary Report") is explicit as to the effect of the amendments on state and local land use practices, regulations or decisions which would have the effect of discriminating against individuals with handicaps. The amendments prohibit the discriminatory enforcement of land use law to segregate living arrangements among non-related persons with disabilities, such as Oxford House™, when these requirements are not imposed on families.

[Section 804(f)] would also apply to state or local land use and health and safety laws, regulations, practices or decisions, which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been sued to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of unrelated people, these requirements have the effect of discriminating against persons with disabilities.

House Report, p. 24 (footnote omitted).

Based on this clear expression of legislative intent, the courts have enjoined the application and enforcement of zoning and health and safety regulations, which have a discriminatory impact on group homes for persons with disabilities. *Oxford House - C v. City of St. Louis*, 853 F. Supp at 1573; *City of Plainfield*, 769 F. Supp. at 1343-44; *Township of Cherry Hill*, 799 F. Supp. at 462; *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp 1179 (E.D.N.Y. 1993); *Marbrunak, Inc. v. City of Stowe*, 974 F.2d 43 (6th Cir. 1992); *A.F.A.P.S. v. Regulations & Permits Admin.*, supra at 106-07.

As recovering alcoholics and addicts who cannot presently be living independently on their own or with their natural families, Oxford House™ residents are

individuals with handicaps within the meaning of the Fair Housing Act. *City of Edmonds, WA v. Oxford House, Inc.* 514 U. S. 725 (1995); *Oxford House-C v. City of St. Louis*, 77 F.3d 249 (8th Cir. 1996); *United States v. Village of Palatine*, 37 F.3d 1230 (7th Cir. 1994); *United States v. Village of Audubon*, 797 F. Supp. 353, aff'd without opinion, 968 F.2d 14 (3d Cir. 1992); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179 (E.D.N.Y. 1993); *Oxford House v. Township of Cherry Hill*, 799 F. Supp. 450 (D.N.J. 1992); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1197 (D.N.J. 1991).

Federal Judge Gerard L. Goettel in *Tsombanidis, and Oxford House, Inc. v. City of West Haven, Connecticut* 180 F. Supp. 262 (Ct. 2001), in his decision following an eight day trial, made it clear that residents of the Oxford House fall within the protections afforded by the Federal Fair Housing Act Amendments [FHAA]:

The FHAA and Title II of the ADA, and the regulations promulgated there under, prohibit housing discrimination by governmental entities against handicapped persons or persons with disabilities. See 42 U.S.C. § 3604(f)(1) and (f) (3)(B) and 42 U.S. C. §12132. Both the FHAA and Title II of the ADA have been interpreted to apply to municipal zoning regulations, practices, or decisions that subject persons with handicaps or disabilities to discrimination based upon their handicap or disability. See: *Forest City Daly Housing, Inc. v. Town of North Hempstead*, 175 F.3d 144, 151 (2d Cir. 1999); *Innovative Health Sys. Inc. v. City of White Plains*, 117 F. 3d 37, 45-46 (2d Cir. 1997) *Connecticut Hosp. V. City of New London*, 129 F. Supp. 2d 123, 135 (D. Conn. 2001) The legal analyses under both statutes are essentially the same and, thus, we will consider them together.

There is no dispute in this case that the John Doe plaintiffs, as non-abusing, recovering alcoholics and drug addicts are members of a protected class under the FHAA and ADA. 43 U.S.S. § 3602(h); 24 C.F. R. § 100.201(a)(2); 42 U.S.C. § 12210 (b)(1) and (2). As “aggrieved persons” and persons with a “handicap,” plaintiffs are entitled to the protections of the FHAA, 42 U.S.C. § 3602(h) and (i), and, as “qualified individuals with disabilities,” they are protected by the ADA. 42 U.S. C. § 12131(2); See *Connecticut Hosp.*, 129 F. Supp. 2d at 125. Additionally, plaintiff Beverly Tsombanidis, as landlord of the property by OH-JH [Oxford House-Jones Hill], and OHI [Oxford House, Inc.], as the umbrella organization for all Oxford Houses and the advocacy group for plaintiffs, have standing to pursue these claims against defendants.

Following the Supreme Court’s decision in *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995), there can be no question that the City’s Zoning Regulations and Property Maintenance Code are covered by the FHAA. The issue before the Court in *City of Edmonds* was whether the definition of “family” in the City of Edmonds’ zoning code qualified for the FHAA’s exemption from coverage for “any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.” 42 U.S.C. §3607(b)(1). The City of Edmonds’ zoning provision at issue governed areas zoned for single-family dwelling units and defined “family” as “persons [without regard to number] related by genetics, adoption or marriage, or a group of five or fewer [unrelated] persons.” (*Edmonds Community Development Code* § 21.30.010 [1991]). Thus except for the number of occupants, the City of Edmonds’ zoning provision was virtually identical to the zoning provision at issue in this case.

In the same case, the Court summed up the reasons for protection of Oxford House™ residents by treating them the same as a single family:

The discriminatory impact of the City’s classifying Oxford House-Jones Hill as a boarding or rooming house is undeniable. Oxford House-Jones Hill will not be able to operate in a single-

family zone district in the city; Oxford House-Jones Hill residents, unlike a family with seven related members, will not be able to live in any neighborhood with single-family zoning; and recovering alcoholics and drug addicts will not be able to avail themselves of an Oxford House group home in a residential setting in order to enhance their chances of making a full recovery. As recovering alcoholics and drug addicts, the John Doe plaintiffs need to live in a safe, supportive, and drug-and alcohol-free living environment during their recovery period.

Therefore, the question is whether or not a reasonable accommodation treating Oxford House residents the same as families would create an unwarranted burden on a particular town or city. OHI does not believe it would – particularly since many of the homes have been operating in residential areas of cities for years without any inconvenience to their neighbors. Oxford Houses are in fact good neighbors and prove it year after year all over the United States.



The author thanks the following attorney for his contributions to this memorandum:

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