The following information was provided by the Public for the Plan Commission's discussion on Community Residences.

Failor, Craig

From: Daniel Lauber <dan@grouphomes.law>
Sent: Monday, September 11, 2017 11:38 AM
To: Failor, Craig
Subject: Re: Proposed Oak Park Zoning Ordinance and Group Homes

Craig,

I finally got a chance to look at this memo in depth. I very much appreciate you sharing it with me. Unfortunately, the consultant's memo isn't responsive to the concerns I raised and its proposal is not in keeping with Oak Park's goals and objectives, and certainly not with the intention of establishing and maintaining the inclusive community that Tammie advances.

This is very complex area that does not lend itself to inadequately informed decisions.

What is proposed in that memo runs afoul of the Fair Housing Act in several ways, including:

1. The definition of "community residence" is more than a bit inadequate. It needs to make it clear that a community residence emulates a biological family and seeks to achieve normalization and community integration of its residents. The definition we used in Delray Beach is state of the art:

> A community residence is a residential living arrangement for up to ten unrelated individuals with disabilities living as a single functional family in a single dwelling unit who are in need of the mutual support furnished by other residents of the community residence as well as the support services, if any, provided by the staff of the community residence. Residents may be self-governing or supervised by a sponsoring entity or its staff, which provides habilitative or rehabilitative services, related to the residents' disabilities. A community residence seeks to emulate a biological family to normalize its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter in a family–like environment; treatment is incidental as in any home. Supportive inter-relationships between residents are an essential component. A community residence shall be considered a residential use of property for purposes of all zoning, building, and property maintenance codes. The term does not include any other group living arrangement for unrelated individuals who are not disabled nor residential facilities for prison pre–parolees or sex offenders.

Now a jurisdiction can, and should, set a cap on the maximum number of occupants allowed as of right based on how the ability to emulate a biological family. As best I've been able to determine over the years, once you get beyond 10 or 12 people, emulating a biological family is hard to do and the home operates more like a mini-institution. Cities I've worked with having been setting the cap at 10 or 12 and establishing an objective "reasonable accommodation" process in which the applicant has the burden to demonstrate that it will be able to successfully emulate a biological family. This reasonable accommodation process can be administrative (preferred) or public. The language needed to properly establish a reasonable accommodation process and the standards for evaluating applications is pretty nuanced. This is different than a special use permit. I can send you appropriate language if you wish.

So the definition of "community residence" in a jurisdiction with a cap of four unrelateds in its definition of "family" should include language along these lines (when you place a cap of 10 residents allowed as of right):

> A "community residence" occupied by five to ten unrelated individuals with disabilities can be a "family community residence" or a "transitional community residence." The owner or operator of a community residence may apply for an administrative reasonable accommodation to house more than 10 residents in accord with the standards and procedures established in [cross reference to the section in the zoning code on "reasonable accommodation"].

The zoning ordinance then needs to include the following definitions:

> A family community residence is a relatively permanent living arrangement for fice to ten unrelated people with disabilities with no limit on how long a resident may live in the home. The length of tenancy is measured in years. Oxford House is a family community residence.
>
> A transitional community residence is a temporary living arrangement for five to ten unrelated people with disabilities with a limit on length of tenancy that is measured in weeks or months, not years.

Keep in mind that any group of four or fewer people is a "family" under the village's zoning definition of "family" and must receive the same zoning treatment as any other group of four or fewer unrelated individuals living together as a single housekeeping unit. Consequently any zoning provision that requires a community residence to be licensed, etc. or that imposes a spacing distance is **not** applicable to community residences that fit within that cap of four (live-in staff counts toward the cap of four; shift staff do not count because they don't live there). Similarly, even if a community residence for four or fewer is a transitional community residence, zoning would have to it treat the same as any family even though a jurisdiction can require a special use permit for transitional community residences (that exceed four residents) to locate in single-family districts. It's the case law that requires this -- we all have to learn to live with it. As the material I previously sent you explains, the courts routinely disallow spacing distances and licensing requirements when the number of occupants of a community residence falls within the cap on unrelateds in the zoning code's definition of "family" or there is no limit on the number of unrelateds (either due to absence of a cap in the definition of "family" or the absence of a definition of "family" altogether).

I'd urge great caution in the blanket exclusion of "residential care facilities" from the definition of "family." In some states, assisted living can include very small groups of unrelated people that fit within the four person cap on unrelateds in Oak Park's zoning. I strongly advise staff to research this because such assisted living arrangements need to be treated the same as any other family. It's no different than if you had a biological family of four in which one member required assisted living support -- would the village really seek to prohibit such living arrangements? That would almost certainly fly in the face of the Fair Housing Act.

2. It is inappropriate and without foundation to divide a jurisdiction's zoning treatment of community residences based on the number of occupants. I started out with that approach in 1974 (you might call it Beta Version 0.8), but the law and understanding of community residences have evolved quite a bit since then (I'm up to at least Release Version 5.0). A jurisdiction's zoning can treat community residences differently in terms of similarity to permanent as opposed to more transient housing, not on the number of residents. The Delray Beach report I sent you provides a pretty thorough explanation of the distinction between family community residences and transitional community residences (and see the definitions above).

Consequently, a jurisdiction can require a special use permit for **transitional community residences** (5-10 residents, in our ongoing example) in single-family districts, but must allow them as of right in multiple family districts (including PUDs and mixed use where multiple family residences are allowed) as long as it meets the spacing and licensing requirements. **Family community residences** (5-10 occupants) must be allowed as of right in *all* residential districts (indeed, in any zoning district where residences are allowed including PUDs,

mixed use, etc). Special use permit standards must be narrowly crafted based on the reason a special use permit is required (i.e., located within the spacing distance; State of Illinois doesn't require a license, certification, or accreditation; and when a special use permit is required in a single-family district) -- in other words the standards are not necessarily the same for all three circumstances under which a special use permit is required.

3. The proposal continues to miss the point about the spacing distance and licensing requirements. The Delray Beach report explains much of this. I can't think of any way to justify a 1,000 foot *radius* spacing distance -- the longest justifiable distance is a typical block of 660 feet. A jurisdiction can justify a 1,000 foot spacing distance, even 1,250 feet, if it is measured along the pedestrian right of way from the proposed community residence to the closest existing community residence, but *not* as a radius. Administratively speaking, using a radius is more precise and much easier to administer. Which way of measuring -- and hence the length of the spacing distance -- is a policy decision that warrants thoughtful discussion among staff and elected officials.

4. Off-street parking requirements need to be narrowly tailored to the actual demand a specific community residence will generate. Group homes for people with developmental disabilities require off-street overnight parking only for overnight staff -- residents don't operate a vehicle. Sober homes and recovery communities generate much more parking demand since residents can drive and can have a vehicle on premise. Group homes for people with mental illness and those for some physical disabilities can fall in between. This is explained in the Delray Beach study I sent you. The language can be a bit nuanced. Here's the language we used in Delray Beach, which was appropriate for Delray Beach.

> Community Residences: Shall provide off-street parking for the greater of (a) the number of off–street spaces required under this code for the type of dwelling unit (single family, duplex, multi-family, etc.) in which the community residence is located, or (b) 0.5 off-street spaces for each staff member on a shift and/or live-in basis plus, when residents are allowed to maintain a motor vehicle on premises, the maximum number of occupants that is permissible under this land development regulation and the city's building and property maintenance codes. Off-street spaces may be provided on the premises or at an off-site location other than a street or alley.

Keep in mind that the total number of occupants of any community residence is governed by the same building or property maintenance code provision to prevent overcrowding that applies to *all* residences. That's usually a formula along the lines of a minimum of 70 sq ft of bedroom space (excluding closets) for the first occupant of the bedroom plus 50 sq ft for each additional occupant of the bedroom (some codes use 70 rather than 50). So if an operator sought to house 9 people in a dwelling unit large enough for just 6, she would be limited to just 6 residents (the Supreme Court ruled this way in 1996 in *Edmonds*).

The video at the bottom of http://grouphomes.law essentially offers a 75-minute short course on zoning for community residences (taking into account that it had to deal with Nevada's since repealed state laws on community residences and the art and science of zoning for community residences has evolved a bit since then).

Illinois is one of 11 states without any statewide zoning for community residences for people with disabilities, although some of the state licenses do establish a spacing distance between group homes under the same licensing. But when such group homes fit within the cap on the number of unrelateds in the definition of "family" zoning cannot enforce those spacing distances from licensing. Only the licensing agency can.

While I will literally be laid up following my Sept 14 hip replacement (assuming it's not postponed again). I should be pretty functional again sometime in October if you'd like to continue this discussion. Any jurisdiction would be very imprudent to rush into any further revisions to its provisions for community residences absent

adequate study and a full understanding of the principles and case law that govern such zoning.

In summary, the proposals in the consultant's memo solve very little, open up some Pandora's boxes, and leave Oak Park vulnerable to legal challenge while not fulfilling the village's long-established commitment against housing discrimination.

I hope this information is helpful.

Please reply now simply to confirm you received this email. Thanks very much.

On 9/7/2017 11:44 AM, Failor, Craig wrote:

> Hi Dan,
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> This is a memorandum prepared by our consultant regarding Community Residences and Family. Can you take a look to see if we have captured the key issues?
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> **Thanks.**
> Craig
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> ---
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> **From:** Daniel Lauber [mailto:dan@grouphomes.law]
> **Sent:** Tuesday, September 05, 2017 3:38 PM
> **To:** Failor, Craig
> **Cc:** Tammie Grossman; Stephanides, Paul
> **Subject:** Re: Proposed Oak Park Zoning Ordinance and Group Homes
>
> Craig,
>
> Thanks for the heads up and for calling today. I have a feeling that I did not make myself clear enough. So let me spell it out a bit more precisely.
>
> Now I personally have no problem with Oak Park not establishing a cap on the number of unrelated people who can occupy a dwelling unit as a single housekeeping unit. Philosophically that's fine with me. The problem with not establishing a cap rests with the case law under the Fair Housing Act. Collectively, the court decisions make it very clear that the absence of such a cap on unrelated prohibits the jurisdiction from establishing any additional requirements on a group of people with disabilities that it does not impose on all other unrelated people living together. (And when a jurisdiction does have a cap on unrelateds, any community residence for people with disabilities that fits within that cap cannot be subject to any regulation, like requiring a license, not applicable to all other families that fit within the cap on unrelateds.)
>
> **The bottom line is:** As long as a jurisdiction does set *not* a cap on the number of unrelated individuals who can occupy a dwelling unit, that jurisdiction *cannot* impose any additional requirements on a group of people with disabilities -- like requiring a license. Pure and simple -- pretty darned well-established by the case law.

Consequently, the new proposed definition of "community residence" (see below) runs afoul of the Fair Housing Act by limiting community residences to those that are "licensed, certified, or accredited for specialized residential care." A license, certification, or accreditation is not available for many types of recovery communities or sober homes and I've never heard of a license, etc. available for homeless shelters. (Also note that homelessness is not a disability and a reasonable accommodation is not required for homeless shelters. Also note that homeless shelters can take many forms, from a single family house occupied by one or more families to an apartment building or commercial building. They cannot be rationally treated identically under zoning.)

I can picture the village telling the operator of a group home, say for people with eating disorders; a sober home for which there is no license, certification, or accreditation available; or an Oxford House that it cannot locate in Oak Park because it doesn't have a state license, certification, or accreditation -- even though none of those is required by the State of Illinois. I cannot think of any way for the village to win that lawsuit.

> Community Residence. A residence licensed, certified, or accredited for specialized residential care for: 1) care of persons in need of personal services or assistance essential for activities of daily living; 2) care of persons in transition or in need of supervision; or 3) the protection of the individual. (Community residences include facilities for drug and alcohol rehabilitation, though it does not include medical care for detoxification or treatment), and those transitioning from homeless status. Community residences does not include facilities for adults or minors who have been institutionalized for criminal conduct and require a group setting to facilitate transition into society.

This proposed definition appears to be based on very good intentions and not sound planning and zoning theory, principles, or practice.

It is also very possible that this blanket exclusion of the community residences for adults or minors who have been institutionalized for criminal conduct *may* violate the Fair Housing Act, depending on how the village interprets this imprecise language. Most of the residents of sober homes have been jailed for criminal conduct (usually drug or alcohol related). While a village certainly can exclude halfway houses that are an alternative to jail or prison, they can't simply exclude people because they have a criminal past.

This issue is too complex and nuanced to be handled the way staff proposes, both substantively and procedurally. The professionally responsible approach would be to conduct adequate research on these questions *before* adopting any zoning amendments regarding community residences for people with disabilities. I think that the failure to specify "people with disabilities" in the definition of "community residences" reflects the need to conduct adequate research on the proper zoning approach to take.

Thanks again for your time and consideration. I hope that staff will have the prudence to reconsider the position it expressed in our phone call today.

On 9/5/2017 9:39 AM, Failor, Craig wrote:

> Dan,

After review of your email, staff is requesting changes to the Zoning Ordinance. Please review the first item on the Village Board's agenda regarding motions for change.

Thanks.
Craig

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Maximum Restrictions Local Zoning Can Place on Community Residences for People With Disabilities

People with substantial disabilities often need to live where they receive staff support to engage in the everyday life activities most of us take for granted. These sorts of living arrangements — group homes, halfway houses, and recovery communities — fall under the broad rubric "community residence." Their primary use is as a residence or a home like yours and mine, not a treatment center nor an institution.

One of the essential characteristics of community residences is that they seek to emulate a family. The staff function as parents, doing the same things our parents did for us and we do for our children. The residents with disabilities are in the role of the siblings, being taught or retaught the same life skills and social behaviors our parents taught us and we try to teach our children.

Community residences seek to achieve "normalization" of their residents and incorporate them into the social fabric of the surrounding community. Most are licensed by the state to assure that residents receive proper support and care.

Guiding Principles

- Community residences are a residential use of land.
- As long as they are not clustered together on a block, community residences have no effect on the value of neighboring properties as found by more than 70 scientific studies.
- Community residences have no effect on neighborhood safety as found by every scientific study.
- Other studies have found that group homes and halfway houses for persons with disabilities do not generate undue amounts of traffic, noise, parking demand, or any other adverse impacts.
- To achieve their goals of normalization and community integration, community residences should be scattered throughout all residential districts rather than concentrated in any single neighborhood or on a single block.
- The Fair Housing Amendments Act of 1988 requires local government to make a "reasonable accommodation" in their laws and policies to enable people with disabilities to live in the community of their choice — which means allowing community residences for those who need to live in one with minimal restrictions.

Maximum Zoning Restrictions on Community Residences

Zoning provisions can be less restrictive than those reported here. These provisions are the most restrictive that comply with the Fair Housing Act.

Nearly every city, village, and town has a zoning ordinance that defines a "family" or "household" that can occupy a dwelling unit. These definitions allow related people to occupy a home as well as a specified number of unrelated people, usually 3, 4, or 5 unrelated individuals.

When a proposed community residence for people with disabilities complies with a jurisdiction's definition of "family," it must be allowed as of right (a permitted use) in all residential districts under the definition of "family." So if the zoning definition of "family" allows up to 5 unrelated people to live together, then a community residence for up to 5 people with disabilities complies with that definition and must be allowed without any additional zoning restrictions everywhere a family can reside. Any additional zoning requirement placed on such a home would be discriminatory on its face.

The requirement to make a "reasonable accommodation" kicks in when a proposed community residence for people with disabilities would house more unrelated people than the zoning code's definition of "family" allows. So if an operator wished to open a group home for 7 people with disabilities when the definition of "family" caps the number of related residents at 5, the city would have to make a "reasonable accommodation" to allow this group home for 7 residents.

Collectively, court decisions suggest that any reasonable accommodation must meet three tests:

- The proposed zoning restriction must be intended to achieve a legitimate government purpose
- The proposed zoning restriction must actually achieve that legitimate government purpose
- The proposed zoning restriction must be the least drastic means necessary to

achieve that legitimate government purpose

The maximum zoning restrictions described below enable community residences to locate in all residential zoning districts through the least drastic regulation needed to accomplish the legitimate government interests of preventing clustering of several community residences on a block (which undermines the ability of community residences to achieve their purposes and function properly and can alter the residential character of a neighborhood), as well as protecting the residents of the community residences from improper or incompetent care and from abuse. They are narrowly tailored to the needs of the residents with disabilities to provide greater benefits than any burden that might be placed upon the residents with disabilities.

A proposed community residence that houses more unrelated people than allowed under a town's definition of "family" should be allowed as a permitted use in all residential zoning districts if it:

- Is located more than 660 linear feet from property line to property line or 660 linear feet along the shortest legal pedestrian path from the proposed home to an existing community residence, whichever is shortest, and
- Is eligible for or has received the appropriate license or certification from the state, the local county, local city, or federal government.

If a proposed community residence would be located within this 660 linear foot spacing distance (the length of a typical block) or if a license or certification is not required for it, then the heightened scrutiny of a special or conditional use permit is warranted. Note that if a license or certification is denied, the proposed community residence is not allowed at all, even by special use permit.

It may be legal to require a special use permit in single–family districts for community residences that limit the length of residency, i..e. halfway houses. A city cannot, however, treat community residences for people with certain disabilities differently than other disabilities.

Regulating the number of occupants of a community residence

According to a 1995 U.S. Supreme Court decision, the proper vehicle for regulating how many people can live in a community residence is through a village's building code or property maintenance code applicable to all residences. In its 1995 decision in Edmonds v. Oxford House, 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995), the Court ruled that housing codes that "ordinarily apply uniformly to all residents of all dwelling units ... to protect health and safety by preventing dwelling overcrowding" are legal and apply to all housing, including community residences for people with disabilities. It also found that zoning ordinance restrictions that focus on the "composition of households rather than on the total number of occupants living quarters can contain" are subject to the Fair Housing Act. Ibid. at 1782.

Consequently, the provisions of a town's building or property maintenance code that determine how many people can live in a dwelling apply to community residences, which by definition, are dwellings. Generally these codes regulate occupancy by the number of square feet in each bedroom based on health and safety standards applicable to all people. They usually require 70 square feet of liveable space for the first occupant of a bedroom and an additional 50 square feet for each additional occupant of a bedroom. So if two people share a bedroom, the bedroom must be at least 120 square feet in size, like 10 x 12 feet.

A zoning ordinance, however, can set a rational limit on the total number of people who live in a community residence based on emulating a family. Experts generally believe that a community residence with up to 12 residents can emulate a family. But it is very unlikely that the home with more than 12 residents can effectively emulate a family. It's pretty clear that a "home" for 16 or 20 people is a mini–institution and not a community residence.

Further reading

Visit http://www.grouphomes.law to access a key law review article that explains these limitations on zoning, research on the impacts of community residences on the surrounding neighborhood, and a video workshop on zoning for community residences.

1. ADD: Def. of family. (5 or 6 unrelated)
2. Permitted: based on def. of Family (unrelated)
3. Permitted: 660 lin. ft distance if more than def of family. (? up to 15 persons)
4. SP. USE: within 660 lin. ft and over def. of Family.

PARKING: BASED ON STRUCTURE TYPE

Q What defines "Comm. Res."?

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Case Law on Community Residences and Zoning Code Definition of "Family"

The courts have consistently found that a zoning code is discriminatory on its face if it fails to treat community residences for people with disabilities the same as other families. The courts look at the jurisdiction's zoning code definition of "family" (alternatively, "household") as well as the absence of a definition of "family.".

- So if a city's zoning code definition of "family" allows **any number of unrelated individuals to live together as a single housekeeping unit** — there is no cap on unrelateds — community residences for people with disabilities must be treated the same as any other family and it is facially discriminatory for the city to exclude them from any zoning district where residences are allowed or to require spacing between community residences or even require a license.
- When a definition of "family" establishes **a cap on the number of unrelated people living together** as a single housekeeping unit, community residences that fit within that cap must be treated the same as any other family and it is facially discriminatory for the city to exclude them from any zoning district where residences are allowed or to require spacing between community residences or even require a license. The Fair Housing Act's reasonable accommodation requirement kicks in for community residences that house more unrelated people than the cap in the definition of "family." So if the cap is five people, then a city cannot require spacing or licensing for community residences with five or fewer occupants and must allow community residences for up to five people as of right in all zoning districts where residences of any type are permitted uses.
- When a city's **zoning code does not define "family,"** community residences for people with disabilities must be allowed as of right where ever residences are permitted uses and the zoning code cannot impose any zoning restrictions like spacing or a licensing requirement on community residences for people with disabilities because, doing so, would treat them differently than other groups of unrelated people living together — facial discrimination once again.

Below is a list of *some* of the court decisions that illustrate these principles. More recent cases are rare because this rule of law is so well–established.

The *Chicago Heights* decision offers the clearest explanation that a community residence for people with disabilities that complies with the cap on the number of unrelated individuals allowed to dwell together under a city's zoning code definition of "family" constitutes a family, not a community residence, and must be treated the same as any other family. No spacing, licensing, or other requirement *not* imposed on all other residences can be imposed on such a living arrangement.

United States of America v. City of Chicago Heights, No. 99 C 4461, Memorandum Opinion By District Judge James Holderman, issued March 20, 2001. Chicago Heights' zoning code allows up to five unrelated people to live together as a "family." The court ruled that the city erred when it classified a

house in which five people with developmental disabilities lived as a “community residence.” The existing house was a single–family residence occupied by a family, not a community residence because the number of occupants complied with the maximum number of unrelated people allowed to live together as a “family.”

Among the many other court decisions that arrived at the same conclusions are:

- ***Easter Seals Society of New Jersey and “John Does” v. Township of North Bergen***, 798 F. Supp. 228 (D.N.J. 1992) (North Bergen’s zoning code did not define “family” at all leading to the invalidation of the township’s zoning provisions for group homes)
- ***Children’s Alliance v. City of Bellevue,*** 950 F.Supp. 1491 (W.D. Wash. 1997)
- ***Oxford House–Evergreen v. City of Plainfield,*** 769 F. Supp. 1329, 134146 (D.N.J. 1991) (invalidating the City's attempt to preclude an Oxford House from a single–family district)
- ***Support Ministries for Persons with AIDS v. Village of Waterford***, 808 F. Supp. 120, 136·38 (N.D.N.Y. 1992) (requiring city to issue the permits sought to establish home for persons with AIDS under definition of "family" as opposed to boarding house)
- ***Merritt v. City of Dayton***, No. C·3·91·448 (S.D. Ohio Apr. 7, 1994) (rejecting a 3,000–foot spacing requirement where home met definition of “family”).
- ***Oxford House v. City of Virginia Beach***, 825 F. Supp. 1251, 1264 (E.D. Va. 1993)
- ***Oxford House v. Township of Cherry Hill***, 799 F. Supp. 450,462 n. 25 (D.N.J. 1992)

Example of:
Jurisdiction does not have a definition of "family"
.
Building codes can violate FHA
.
A jurisdiction can behave so badly that court may issue decision that prevents other jurisdictions from regulating group homes

Easter Seals Society of New Jersey and "John Does" v. Township of North Bergen, 798 F. Supp. 228 (D.N.J. 1992). Easter Seals sought to establish a group home (at least it sounds like a group home from the decision; it is a bit unclear if this is really a halfway house or a group home) for up to eight people with developmental disabilities who also had mental illness and/or drug or alcohol addictions (but were not current users of an illegal substance). The Township has no definition of "family" in its zoning ordinance. The state could not license a home until necessary renovations are done and the township refused to issue a building permit for the renovations. The township invoked BOCA code provisions that treat group homes as institutional uses as the reason to deny the request (building officials said that the use was not permitted in residential districts) despite a New Jersey statute that requires group homes for people with developmental disabilities be treated as a residential use for zoning purposes. Easter Seals attempted to appeal the decision, but received the run–a–round from the township.

Twenty days after Easter Seals' last appearance before the zoning board, the board of commissioners amended the zoning ordinance to require a conditional use permit for group homes for the "developmentally disabled." Among the new requirements was special fencing as well as unique requirements for insurance coverage and other onerous provisions.

The court reported that "Courts have broadly interpreted the [Fair Housing Amendments] Act's clear prohibition of "all practices which [make unavailable or deny] a dwelling on prohibited grounds," including land use restrictions." The extraordinarily explicit statements by town officials, the unfair treatment by the zoning board, and the town inexplicable classification of the residence as an institutional use all strongly suggested to the court "official open and explicit discrimination against plaintiffs based on their handicapped status." The circumstances under which the board adopted new zoning for group homes and the onerous requirements it imposed were only the final salvo of the town's discriminatory behavior. The town failed to make reasonable accommodations in it zoning as required by the Fair Housing Act. Injunctive relief was granted.

What it means. The behavior of elected and appointed officials is probative in determining intentional discrimination.

Impact of not having a definition of "family" in the zoning code

The absence of a definition of "family" in the zoning code effectively invalidates any zoning requirements on group homes for people with disabilities that are not also applied to all other groups of unrelated people living together.

A municipality should not rely on outdated building codes to determine how it should treat group homes. Even BOCA building codes can violate the Fair Housing Act. I spoke with the building department in the summer of 1995 and discovered that local officials still believe that they must impose institutional requirements on group homes. They seem to have learned nothing from this case.

This is yet another example of how recalcitrant governments that seek to prohibit group housing for people with disabilities may, in time, cost all municipalities the ability to zone for group homes.