

Rational and Legal Local Zoning Under the Fair Housing Act for 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.

Rational and Legal Zoning Protections for Community Residences

Zoning provisions can be less demanding than those reported here, but they may run the risk of enabling counter-productive clustering and concentrations.

Nearly every city, village, town, and county 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. It is pretty blatant facial discrimination to exclude from the definition of “family” community residences for people with disabilities that fit within the cap on unrelateds.

A jurisdiction without a cap on the number of unrelated people in a dwelling unit must allow community residences for people with disabilities of as right the same as any other “family” — requiring a license or a spacing distance would be discriminatory on its face.

A jurisdiction that does not define “family” or “household” in its zoning code also must allow community residences for people with disabilities of as right the same as any other group of unrelated people — requiring a license or a spacing distance would be facially discriminatory.

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 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.