The following article was published in Fall 1995 – about six months after the decision in City of Edmonds, WA v. Oxford House, Inc. 514 US 725 (1995)

The Law & The Land:
The City of Edmonds Case

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Fair Housing Amendments Act

Congress passed the Fair Housing Act as part of the Civil Rights Act of 1968. Initially, the Act prohibited housing discrimination on the basis of "race, color, religion, or national origin."

In 1974, Congress added protection on the basis of gender, and in the FHAA, the Act was extended to prohibit discrimination on the basis of handicap or familial status (families with children). Local zoning ordinances are subject to these provisions.

The FHAA's definition of handicapped includes those with physical or mental disabilities, recovering alcoholics and drug addicts (coupled with nonuse), many elderly persons and persons infected with the Human Immunodeficiency Virus (HIV). Discrimination, meanwhile, includes the "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations are necessary to afford [handicapped persons an] equal opportunity to use and enjoy a dwelling." However, the FHAA exempts reasonable restrictions "regarding the maximum number of occupants permitted to occupy a dwelling." The meaning of this maximum occupancy exemption was at issue in Edmonds.

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Oxford House, Inc. is a nonprofit umbrella organization for 300 private, self-run, single-sex group homes for recovering alcoholics and drug addicts. Oxford House group homes are financially self-supporting, democratically governed, must be completely alcohol and drug-free, and are required to expel any resident caught using alcohol or drugs.

According to Oxford House, the homes need at least six residents in order to be financially self-sufficient and provide a supportive atmosphere for recovery. Oxford House Edmonds, in a typical single-family residential zone in Edmonds, Washington, supports 10 to 12 residents.

In the dispute between the City and Oxford House Edmonds, the trial court ruled that the zoning provision fit within the FHAA's maximum occupancy exemption. Thus, a violation was found.

The U.S. Court of Appeals for the Ninth Circuit reversed, finding the maximum occupancy exemption inapplicable. Because the Ninth Circuit differed with the Eleventh Circuit decision in *Elliott v. Athens*, the U.S. Supreme Court granted certiorari.

The Supreme Court Decision

The sole question before the Supreme Court was whether the City of Edmonds' definition of family falls within the FHAA's absolute exemption for maximum occupancy restrictions.

The Fair Housing Act's stated policy is "to provide, within constitutional limitations, for fair housing throughout the United States." In deciding the question before the Court, Justice Ginsburg, writing for the majority, noted that, as a remedial statute, the Act was to be afforded a "generous construction" and the maximum occupancy exemption narrowly construed "in order to preserve the primary operation of the [policy]."

The Court stated that the maximum occupancy exemption was enacted "against the backdrop of an evident distinction between municipal land use restrictions and maximum occupancy restrictions." Land use restrictions, typically found in zoning regulations, designate districts that permit compatible uses and exclude incompatible uses. Maximum occupancy restrictions, typically found in housing codes, limit the number of occupants per dwelling, usually in relation to living area or the number and type of rooms. These restrictions are designed to prevent overcrowding and "ordinarily apply uniformly to all residents of all dwelling units."

The Court concluded that a plain reading of the FHAA's maximum occupancy restriction "surely encompasses maximum occupancy restrictions" but "does not fit family composition rules typically tied to land use restrictions."

Put another way, the exemption clearly covers rules designed to prevent overcrowding of a dwelling but does not cover rules designed to preserve the family character of a neighborhood. As the Court puts it, because any number of related persons may live together, the City of Edmonds' family composition rule fails to answer the question of how many occupants may legally occupy a house.

The Significance of the Decision

Although decided on narrow grounds, Edmonds is an important victory for advocates for the rights of disabled persons - otherwise, municipalities could exclude congregate living arrangements from most residential neighborhoods.

Congress' paramount goal in enacting the FHAA was "to end the unnecessary exclusion of persons with handicaps from the American mainstream." The FHAA is intended to foster "the ability of [handicapped] individuals to live in the residence of their choice in the community."

According to the Oxford House's Supreme Court brief, the Edmonds single-family zoning ordinance excludes Oxford-House Edmonds from 97 percent of single-family rental housing in the city. A similar situation exists throughout the country. If the Supreme Court had ruled that typical single-family zoning ordinances were exempt from the FHAA, the exemption would have gutted the Act.

From another view, the Edmonds decision represents yet another federal intrusion into the once exclusively local province of planning and zoning.

Although the authors of this article believe the decision was a correct one, we do not believe that the plain language of the statute clearly and manifestly demonstrates Congress' intention to preempt the historically local province of land use. Rather, we find the statutory language ambiguous.

While the Edmonds decision is significant, it will not, as the City argued, "destroy the effectiveness and purpose of single-family zoning." Municipalities will still be able to maintain single-family zones. They will simply need to show some flexibility - by making reasonable accommodations - with housing for the handicapped.

Edmonds and other municipalities can continue to discriminate against other groups of people they deem undesirable, such as college students. For example, a group of six nuns would not be allowed to live together in Edmonds, unless, of course, they were all recovering substance abusers.

Unanswered Questions

Perhaps as important as what the Supreme Court decided in the Edmonds case is what it did not decide (see page 4). Two important points remain. First, a zoning ordinance generally may not, on its face, discriminate against the handicapped or other classes of persons protected under the Fair Housing Act. Second, a municipality may not apply a facially neutral zoning ordinance in a discriminatory manner or with discriminatory intent.

Conclusion

The Edmonds case is just the tip of the iceberg. The multitude of group home cases in federal and state courts testifies to widespread fear and prejudice against recovering alcoholics and substance abusers, HIV-infected individuals and the mentally ill, even though numerous studies suggest that these fears are groundless.

One can only hope that this issue will quickly work itself out in the courts, in Congress and at the local government level. As Judge Sarokin of the United States District Court for the District of New Jersey said so well in *Oxford House-Evergreen v. City of Plainfield:*

> There are few among us who do not have a friend or relative who has suffered the ravages of drugs or alcohol. They are persons who need our compassion and require our support. . . 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 the neighbors, and arrive at an accommodation which serves and enriches all who are involved in and affected by it.

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Questions the Edmonds Case did not Answer

What constitutes a reasonable accommodation?

The FHAA does not define the term; courts have, however, saying that it "does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve."

A few lower federal court cases provide an additional glimpse of meaning. For example, part of *United States v. City of Philadelphia* involved a group home for chronic substance abusers in a residential neighborhood. The court found that the City's refusal of the home's request to substitute a side yard for a rear yard requirement was a failure to make a reasonable accommodation.

Likewise, a federal district court in Louisiana has ruled that a request for a variance to allow an open internal passageway between the two sides of a duplex, thereby creating a single group home residence, was a request for a reasonable accommodation.

Very likely, the accommodation requested will simply be that a municipality modify, waive or make exceptions in its zoning rules to allow for the establishment of a group home.

For example, in *Oxford House, Inc. v. Town of Babylon*, the town's failure to exempt an Oxford House from the town's limit of four unrelated persons (the group home apparently housed five residents) constituted a failure to make a reasonable accommodation, and hence qualified as discrimination under the FHAA.

See Tsombanidis Case for a more recent [2001] and expansion description of reasonable accommodation.

Could an ordinance allowing group homes only in some zones, such as multi-family or higher density zones, constitute a reasonable accommodation?

Put another way, could a municipality exclude group homes from certain residential zones via a facially neutral single-family zoning ordinance, as the City of Edmonds attempted to do?

It appears highly unlikely that such a restriction constitutes a reasonable accommodation, considering that most single-family homes are located in single-family zones. In fact, one federal court cursorily rejected the notion.

May a municipality require a group home to apply for a special permit or conditional use under a facially neutral zoning ordinance?

The special permit process may be the best way for municipalities to make case-by-case reasonable accommodations. Churches and funeral homes are typical special permit uses. Developers of group homes fear, however, that public hearings may increase the chance of relapse for recovering addicts. While federal courts have been divided on this question, one appellate court has upheld the use of the special permit process.

May a municipality require a group home to apply for a variance under a facially neutral zoning ordinance?

A variance grants permission to violate the zoning ordinance. A person seeking to obtain a variance must typically demonstrate that the ordinance would impose an unnecessary hardship. A person seeking a special permit or conditional use, on the other hand, merely has to show compliance with the conditions of the ordinance.

The Seventh Circuit's decision in *Village of Palatine* would indicate that a municipality should be given a chance to make a reasonable accommodation through the variance process. However, federal district courts have disagreed on this question - for example, *Oxford House, Inc. v. City of St. Louis*, states that the variance process, including a public hearing, "stigmatizes recovering alcoholics and addicts, perpetuates their self-contempt, and increases the stress which can so easily trigger relapse."

What limit on the number of unrelated persons who may live together would not be discriminatory?

The Edmonds court hints that six may be a reasonable number. Determinations will most likely be made on a case-by-case basis. Municipalities can still enforce the maximum occupancy restrictions found in their housing codes.

Note: Since 1995 courts have permitted 8 to 15 depending on the size of the property. Oxford House tries to have two per room to combat loneliness and social isolation and obviously the size of the house determines how many can comfortable live in it.

Can a municipality impose separation requirements on group homes?

Yes, according to the United States Court of Appeals for the Eighth Circuit in *Familystyle of St. Paul, Inc. v. City of St. Paul*, which involved a residential treatment facility for the mentally ill. The court upheld laws requiring that group homes be located at least a quarter mile apart to guarantee that they are "in the community" rather than clustered.

The issue is far from settled, however. The Familystyle decision has recently come under criticism. Additionally, in *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*, a federal district court in Pennsylvania struck down a similar spacing requirement, rejecting the notion that integration of the handicapped adequately justifies validating a facially discriminatory ordinance. Several state attorney generals have also opined that their states' spacing requirements are unlawful.