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A Clarification of the Maximum Occupancy Restriction of the FHA - City of Emonds v. Oxford House, Inc.

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A CLARIFICATION OF THE MAXIMUM OCCUPANCY RESTRICTION OF THE FHA

City of Edmonds v. Oxford House, Inc.
115 S. Ct. 1776 (1995)

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"damnant quod nōn intelligunt"[1]

I. INTRODUCTION

In handing down *City of Edmonds v. Oxford House, Inc.* on May 15, 1995, the United States Supreme Court resolved a conflict between the Eleventh and Ninth Circuits concerning discrimination in zoning laws which limits the ability of handicapped individuals to live in a residence of their choice. The majority opinion decided that the traditional zoning definition of single family did not constitute a reasonable occupancy limitation pursuant to the exemption created by the Fair Housing Amendments Act.[2] The majority made clear that under the Fair Housing Act, a city may not use its zoning ordinances to prohibit establishment of group drug and alcohol recovery homes.

This Note will discuss the concerns of group homes and the neighborhoods and cities which are affected as well as the provisions of the Fair Housing Act [hereinafter "the FHA"], the Fair Housing Amendments Act [hereinafter "the FHAA"], and the exemptions to the Acts which apply to *Edmonds*. In addition, this Note will examine the history of the law regarding exclusionary zoning, treatment of the handicapped, and cases involving Oxford Houses. Finally, this Note will analyze the Supreme Court's interpretation of the occupancy limitation in *Edmonds* and discuss its implications.

II. GROUP HOMES FOR THE HANDICAPPED

Oxford Houses are drug recovery homes where recovering addicts and alcoholics live, share expenses and household work, and make decisions like a family.[3] Certain standards govern Oxford Houses: democratic administration, financial independence, strict drug prohibition, and peer assistance.[4]

Drug and alcohol recovery and rehabilitation depends to a great extent on the environment in which it occurs.[5] The houses seek to provide an atmosphere conducive to recovery — a stable, supportive, and drug- and alcohol-free environment.[6] The success of the program is directly related to the ability of the homes

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1. They condemn what they do not understand.
2. 42 U.S.C. § 3607(b) (1988).
3. Peter Carlson, *The Oxford House Experiment*, WASH. POST, Nov. 12, 1989, at W15.
4. *Id.*
5. Margaret Allison & Robert L. Hubbard, *Drug Abuse Treatment Process: A Review of the Literature*, 20 INT'L J. ADDICTIONS 1321, 1325-26 (1985).
6. G. ALAN MARLATT & JUDITH GORDON, RELAPSE PREVENTION 402 (1985).

to help the addict become a responsible member of a family and of society.[7] Studies have shown that a recovering addict in a group home was more likely to remain sober, gainfully employed, and involved in "socially acceptable" activities.[8] As a result, group homes such as Oxford Houses in single-family residential neighborhoods are effective.[9] By contrast, a return to a neighborhood like the one the addict came from can lead to renewed addiction.[10]

However, the establishment of an Oxford House or other group home in a neighborhood often causes conflict between the needs of the group homes and the concerns of the city and its single-family neighborhood residents. Typically, the city and its residents are concerned with preserving the integrity of their neighborhoods in single-family residential zones.[11] Neighbors fear that the presence of addicts in their neighborhoods will affect adversely the frequency of property resale, the value of their houses, and the safety of their families.[12] They also worry that the group home's more intense use, including additional traffic and noise, will bother surrounding residents.[13]

Although the residents have legitimate concerns, unfortunately, many of the objections are unfounded. Misconceptions about the group home's impact on the neighborhood most often are responsible for this misapprehension. In fact, the establishment of a group home has been demonstrated not to cause an effect on property value, frequency of resale, or neighborhood crime incidence.[14]

By attempting to preserve residential character of single-family residential neighborhoods, this type of zoning effectively excludes group homes. When a group home is established in a single-family residential zone, neighbors typically complain to their local city council and mayor. The residents ask their municipal governments to close group homes and sanction them for zoning ordinance violations.[15] Residents most often rely on maximum occupancy restrictions which generally allow a specific number of unrelated persons to occupy single-family residences.[16] To justify exclusion from single-family residential neighborhoods, cities attempt to provide an area for them in multi-family or commercial areas.[17] While this solution quiets complaints, it frustrates the group home resident's recovery and limits success of the group home since the proper environment is crucial.

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7. *Id.*

8. *Id.* at 404, 456.

9. Oxford House-C v. City of St. Louis, 843 F. Supp. 1556, 1578 (E.D. Mo. 1994), *rev'd*, 77 F.3d 249 (8th Cir. 1996).

10. Carlson, *supra* note 3, at W15. *See also Oxford House-C*, 843 F. Supp. at 1578 ("Plaintiffs showed that they face a substantial risk of relapse from the isolation of living alone, the stress of living with enabling or using family members, and the peer pressure inherent in returning to their old neighborhoods.")

11. Peter W. Salsich, Jr., *Group Homes, Shelters, and Congregate Housing: Deinstitutionalizing Policies and the NIMBY Syndrome*, 21 REAL PROP. PROB. & TR. J. 413 (1986).

12. *Id.*

13. *Id.*

14. Patricia Pollak, *Zoning Matters in a Kinder, Gentler Nation: Balancing Needs, Rights and Political Realities for Shared Residences for the Elderly*, 10 ST. LOUIS U. PUB. L. REV. 501 (1991).

15. Salsich, *supra* note 11, at 413.

16. *See* 42 U.S.C. § 3607(b) (1988).

17. Salsich, *supra* note 11, at 413.

III. THE FAIR HOUSING ACT AND THE FAIR HOUSING AMENDMENTS ACT

A thorough understanding of the Court's holding in *Edmonds* requires a basic introduction to the FHA and the FHAA as well as the exemptions that apply to the situation in *Edmonds*. Although courts have differed in their interpretation of the Act and its Amendments and exemptions, the following description provides an introduction to the provisions.

Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, prohibits discrimination based on race, color, religion, gender, or national origin.[18] Subsequently, Congress enacted the Fair Housing Amendments Act of 1988, which extended the same protection to the handicapped.[19]

The FHAA makes it unlawful "to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap."[20] Discrimination includes a "refusal to make reasonable accommodations in rules, policies, practices, or services" necessary to afford disabled individuals "equal opportunity to use and enjoy a dwelling."[21]

Congress relied primarily on the Rehabilitation Act of 1973[22] and intended for the laws to operate consistently.[23] The courts extended FHA protection to recovering drug addicts and alcoholics.[24] The legislative history also favors this application of the FHA.[25]

Even though the FHAA has protected housing for the handicapped, zoning regulation regarding the handicapped is not well defined.[26] The FHAA does not explicitly refer to zoning laws. However, the wording of the prohibition and the definition of discrimination indicate that the law was intended to apply to local zoning.[27] The House Committee Report suggests that the FHAA applies to zoning laws.[28] Nevertheless, local zoning laws often have deprived handicapped group home residents of potential housing available to those who are not handicapped.[29]

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18. 42 U.S.C. §§ 3601-3619 (1988 & Supp. V 1993). Gender was added as a protected class by the 1974 Amendments to the Fair Housing Act, Pub. L. No. 93-383, § 808(b)(1)-(3), 88 Stat. 729 (1974) (amending 42 U.S.C. §§ 3604-3606 (1988)).

19. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, Stat. 1619 (current version at 42 U.S.C. §§ 3601-3631 (1988 & Supp. V 1993)).

20. 42 U.S.C. § 3604(f)(1)-(2) (1988).

21. 42 U.S.C. § 3604(f)(3)(B) (1988).

22. 29 U.S.C. § 701 (1988 & Supp. V 1993).

23. H.R. REP. No. 711, 100th Cong., 2d Sess. 22 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2183 ("The Committee intends that the definition be interpreted consistent with regulations clarifying the meaning of the similar provision found in Section 504 of the Rehabilitation Act.").

24. United States v. Southern Management Corp., 955 F.2d 914 (4th Cir. 1992); Oxford House-Evergreen v. City of Plainfield, 769 F. Supp. 1329, 1342 (D.N.J. 1991).

25. The House Report explained that the definition of handicap includes "individuals who have recovered from an addition [sic] or are participating in a treatment program or a self-help group such as Narcotics Anonymous . . . . Depriving such individuals of housing, or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery." H.R. REP. No. 711, *supra* note 23, at 22.

26. *See* William D. McElyea, *The Fair Housing Act Amendments of 1988: Potential Impact on Zoning Practices Regarding Group Homes for the Handicapped*, 12 ZONING & PLAN. L. REP. 145 (1989).

27. 42 U.S.C. § 3604(f)(1), (f)(3)(B) (1988).

28. H.R. REP. No. 711, *supra* note 23, at 22.

29. McElyea, *supra* note 26, at 147.

To avoid interfering with local, state, and federal restrictions conceived to secure the safe occupancy of housing, the FHA permits governmental entities to adopt restrictions concerning the maximum number of residents allowed to occupy a residence.[30] The Act exempts "any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling."[31] Congress created the exemption to appease the concern that forbidding discrimination based on familial status would require landlords to rent small housing units to large families.[32]

The FHA attempts to provide handicapped persons with opportunities to live in desirable and beneficial residential surroundings. As such, the Act protects handicapped people, including recovering alcoholics and substance abusers, from discrimination and requires landlords and government entities to offer reasonable accommodations for achieving equal housing opportunities.

IV. FACTS AND PROCEDURAL HISTORY OF THE INSTANT CASE

When the dispute arose, the City of Edmonds, Washington, a suburb of Seattle, operated under a Community Development Code that set aside part of the city for single-family use only, and provided other districts for multiple family residences, commercial, light industrial, and other uses.[33] In the summer of 1990, Oxford House, Inc. established a group home for ten to twelve adults recovering from alcoholism and drug addiction in a neighborhood zoned for single family residences in Edmonds.[34] Neighbors filed complaints with the city's zoning officials, protesting the group home proposal.[35]

The city of Edmonds subsequently cited the owner of Oxford House and its representative.[36] The citations charged violations of Edmonds' zoning code which allowed only members of a family or a group of five or fewer unrelated people to occupy a single-family dwelling.[37] For these purposes, the code defined "family" as any number of people related by blood, adoption, or marriage, or a group of five or fewer unrelated persons.[38] Since more than five unrelated persons occupied the Oxford House, it violated the city code.[39]

In response to the city's action, Oxford House sought relief based on the city's failure to make reasonable accommodation as required under the FHAA.[40] The Department of Justice filed a separate action on the same grounds, and the cases were consolidated.[41] Subsequently, the city suspended its charges and took no further action as to its initial claim.[42] The city, however, concurrently sought a

30. 42. U.S.C. § 3607(b)(1) (1988).
31. *Id.*
32. Respondent's Brief at 14, City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776 (1995) (No. 94-23).
33. EDMONDS COMMUNITY DEV. CODE § 21.30.010 (1991).
34. City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776, 1779 (1995).
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id. See* EDMONDS COMMUNITY DEVELOPMENT CODE § 21.030.010 (1991).
39. City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776, 1779 (1995).
40. *Id.*
41. *Id.*
42. *Id.*

declaratory judgment in federal district court that its "family" provision was exempt from the FHA.[43]

A. United States District Court

The city sued Oxford House in the United States District Court for the Western District of Washington.[44] The city conceded for purposes of the litigation that the recovering alcoholics and drug addicts who resided in Oxford House qualified as handicapped persons within the meaning of the FHA.[45] However, it argued that its single-family restriction qualified under the exemption as a reasonable restriction regarding the number of occupants permitted to occupy a dwelling.[46]

The district court granted summary judgment in favor of the city.[47] Relying on a 1992 decision by a split Eleventh Circuit Court of Appeals panel in *Elliott v. City of Athens*,[48] the district court held that the "family" provision of the city's zoning code rule (ECDC Section 21.30.010) (the city's definition of single-family zoning) was exempt from the FHA as a reasonable occupancy limit under 42 U.S.C. § 3607(b)(1).[49] In *Elliott*, a zoning ordinance similar to the one in *Edmonds* was held to fall within the FHA exemption for reasonable maximum occupancy restrictions, even though it may have had a disparate impact on handicapped occupants desiring to live in group homes.[50]

B. Ninth Circuit Court of Appeals

Reversing, the Ninth Circuit Court of Appeals found the exemption inapplicable because the numerical restriction, covering only unrelated people, was not uniformly applied to "all occupants."[51]

The court found the exemption ambiguous as applied to the Edmonds ordinances and based its decision primarily on the legislative record before Congress.[52] The court ruled that, despite the statute's language, it was not clear that Congress intended the FHA to exempt Edmonds' zoning ordinance.[53] Instead, the FHAA's legislative history indicated that laws limiting occupancy were acceptable if they applied to all residents.[54] The Ninth Circuit found that the Edmonds ordinance did not restrict the size of all single-family homes, since

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43. *Id.* The city enacted a regulation allowing group homes as permitted uses in multi-family and commercial zones. *Id.* The city repealed portions of the Community Development Code which mandated a special use permit for group homes for the disabled in multi-family zones because of the possibility that such a permit went against the holding of City of Cleburne v. Cleburne Living Ctr., Inc. 473 U.S. 432, 435 (1985). *Id.*

44. City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776, 1779 (1995).

45. *Id.*

46. *Id.*

47. *Id.*

48. City of Edmonds v. Washington State Bldg. Code Council, 18 F.3d 802, 803 (9th Cir. 1994) (referring to Elliot v. City of Athens, 960 F.2d 975, 979-81 (11th Cir. 1992).

49. City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776, 1779 (1995).

50. *Elliot*, 960 F.2d at 979-81.

51. *Edmonds*, 18 F.3d at 807.

52. *Id.* at 804-805.

53. *Id.* at 804.

54. *Id.* at 805 (citing H.R. REP. No. 711, 100th Cong., 2d Sess. 22 (1988)).

traditional families could include an unlimited number of people.[55] In so holding, the Ninth Circuit explicitly rejected the district court's application of the Eleventh Circuit's ruling in *Elliott*.[56]

The court found that federal housing discrimination laws prohibited cities from using local zoning ordinances to exclude alcohol and drug rehabilitation homes from single-family residential neighborhoods.[57] Thus, the court concluded that the city's ordinance was not exempt from the FHAA because it did not apply to all occupants.[58]

V. HISTORY OF EXCLUSIONARY ZONING AND GROUP HOMES

A. FHAA's Exemption of Maximum Occupancy Regulations

In *Village of Euclid v. Ambler Realty Co.*, the United States Supreme Court held that zoning measures were valid unless "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."[59] The Court sustained under the police power of the state a zoning ordinance which limited, with some exceptions, the occupancy of single-family dwellings to traditional families or groups of not more than two unrelated persons.[60] The Court explained that "[a] nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."[61] The Court focused on the exclusion of industries and apartments from single-family areas in order to keep residential areas free from "disturbing noises," "increased traffic," and the hazard of "moving and parked automobiles" and to prevent "depriving children of the privilege of quiet and open spaces for play."[62] In doing so, the Court found legitimate a land-use project which preserved the family's need for "[a] quiet place where yards are wide, people few, and motor vehicles restricted."[63]

Since *Euclid* in 1926, the Court has been greatly deferential to the states in the area of zoning.[64] Many cases have respected local zoning ordinances designed to preserve the single-family residential neighborhood.[65] For example, in 1974, the Supreme Court in *Village of Belle Terre v. Boraas* upheld a local zoning ordinance definition of "family" as persons related by blood, marriage, or adoption, or no more than two unrelated persons living together.[66] Six college students

55. *Edmonds*, 18 F.3d at 805.
56. *Id.* at 806.
57. *Id.* at 807.
58. *Id.* at 806-07.
59. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 395 (1926).
60. *Id.* at 397.
61. *Id.* at 388.
62. *Id.* at 394.
63. Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974).
64. *See* Doe v. City of Butler, 892 F.2d 315, 318 (3d Cir. 1989) (noting that "[i]t has long been clear that zoning legislation is entitled to deference and respect.").
65. *Id. See also* Nectow v. City of Cambridge, 277 U.S. 183, 188 (1928); Schad v. Borough of Mount Ephraim, 452 U.S. 61, 68 (1981); Village of Belle Terre v. Boraas, 416 U.S. 1, 8 (1974).
66. *Belle Terre*, 416 U.S. at 2.

who were cited for violating the ordinance brought suit to have the ordinance declared unconstitutional under the Equal Protection Clause.[67] The students had rented a house in a single-family neighborhood.[68] The Court found the distinction between related and unrelated people rationally related to a legitimate interest in maintaining the single-family character of a neighborhood.[69]

Yet, the Court invalidated a zoning ordinance that defined "family" as only members of the nuclear family in *Moore v. City of East Cleveland*.[70] Unlike the ordinance in *Moore*, the zoning regulation in *Belle Terre* governed unrelated persons.[71]

In *Moore*, Inez Moore was convicted of violating a zoning ordinance by allowing her son and grandsons to live with her.[72] The Court held that the "freedom of personal choice in matters of marriage and family life" was a fundamental right protected by the Due Process Clause of the Fourteenth Amendment.[73] Since a fundamental right was at issue, the Court's usual deference to zoning laws was absent.[74] Instead, the Court scrutinized the "importance of the governmental interests and the extent to which they [were] served by the challenged regulation."[75]

Moore and *Belle Terre* indicate that placing occupancy limitations on unrelated but not on related persons is a valid method of controlling density.[76] While the restriction of family relationships violated constitutional rights, the exclusion of group homes thought to threaten single-family neighborhoods was upheld. The Courts of Appeal for the Third, Eighth, and Eleventh Circuits have followed this reasoning, to some extent.[77]

In *Doe v. City of Butler*, the Third Circuit concluded that a zoning regulation was rationally related to a legitimate state interest in controlling density and upheld the regulation even though it limited to six the number of unrelated persons in a residence while failing to limit the number of related persons.[78] The court rejected the argument that the zoning restriction was not related to density control because there were no limits placed on the occupancy of related persons.[79] The court maintained that "[i]f the absence of an occupancy limitation on the members of a family who can live together is bootstrapped into the argument that therefore there can be no occupancy limitation for unrelated persons living together, there could never be such an occupancy limitation and *Belle Terre* would be meaningless."[80]

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67. *Id.* at 2-3.
68. *Id.*
69. *Id.*
70. 431 U.S. 494 (1977).
71. *Id.* at 498.
72. *Id.* at 496-97.
73. *Id.* at 499. The appellant further alleged that the ordinance violated the Equal Protection Clause; however, the court did not address that argument. *Id.* at 496 n.3.
74. *Id.* at 499.
75. *Id.*
76. Elliot v. City of Athens, 960 F.2d 975, 980 (11th Cir. 1992).
77. *See* Doe v. City of Butler, 892 F.2d 315, 321 (3d Cir. 1989); Familystyle of St. Paul, Inc. v. City of St. Paul, 923 F.2d 91 (8th Cir. 1991); *Elliott*, 960 F.2d at 979.
78. *Doe*, 892 F.2d at 320.
79. *Id.* at 321.
80. *Id.*

Likewise, in *Familystyle of St. Paul, Inc. v. City of St. Paul*, the Eighth Circuit upheld an ordinance regulating group homes.[81] The City of St. Paul denied Familystyle special use permits to add three group homes for mentally ill patients under the existing state and local requirements.[82] Familystyle challenged the city and state provisions.[83] In rendering its decision, the court applied the rational basis standard,[84] relying on *City of Cleburne v. Cleburne Living Center, Inc.*[85] for the proposition that handicapped persons did not constitute a suspect class and therefore did not require the same degree of scrutiny.[86] The court upheld the ordinance, concluding that the government's interest in deinstitutionalization rebutted any discrimination caused by the housing requirement.[87]

A more recent decision in this line of cases is the significant ruling by the Eleventh Circuit Court of Appeals in *Elliott v. City of Athens*.[88] In *Elliott*, the City of Athens, relying on a local ordinance which allowed no more than four unrelated individuals in a residence, refused to allow a group home for twelve recovering alcoholics to live in two separate houses.[89] For the house to function economically, more than eleven residents were necessary.[90]

The Eleventh Circuit found the ordinance "reasonable" under the FHAA exemption for "maximum number of occupants."[91] According to the court, the city had a legitimate interest in controlling density, traffic, and noise.[92] Previously, however, the planning department had determined that the group home would not burden municipal services such as transportation, water, and waste disposal.[93] Yet this department recommended denial of the permit because allowing the group home to operate would establish a "negative precedent" and would "constitute spot zoning."[94]

The dissent in *Elliott* disagreed with the majority's finding of reasonableness and equal application to all persons as required by statute.[95] Responding to the majority's assertion that Congress was merely citing instances of reasonable occupancy restriction,[96] the dissent argued that the exemptions in the ordinance

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81. *Familystyle of St. Paul*, 923 F.2d at 95.
82. *Id.* at 92.
83. *Id.*
84. *Id.*
85. 473 U.S. 432 (1985).
86. Familystyle of St. Paul, Inc. v. City of St. Paul, 923 F.2d 91, 94 (8th Cir. 1991).
87. *Id.*
88. 960 F.2d 975 (11th Cir. 1992).
89. *Id.* at 976.
90. *Id.* at 981.
91. *Id.* at 980. *See also* 42 U.S.C. § 3607(b)(1) (1988) (providing that "[n]othing in this subchapter limits the applicability of any reasonable local, State, or Federal restriction regarding the maximum number of occupants permitted to occupy a dwelling.").
92. *Elliot*, 960 F.2d at 983.
93. *Id.* at 977. The alleged purpose of the ordinance was the prevention of overcrowded neighborhoods near the university without unduly limiting families. *Id.* at 976-77. The city claimed that the restriction on unrelated people most effectively maintained the residential atmosphere of the neighborhood. *Id.*
94. *Id.* at 977. Instead of being based on legitimate local interests, the restriction on occupancy was grounded in the refusal to create a special exception and reasonably accommodate the handicapped. *Id.* This basis for refusal violates the FHAA.
95. *Id.* at 985 (Kravitch, J., dissenting).
96. *Id.* at 980 (citing H.R. REP. No. 711, 100th Cong., 2d Sess. 22 (1988)).

concerned family status and would be upheld if applied to all occupants.[97] The Athens ordinance applied only to unrelated occupants.[98]

Even though the availability of other zones was not a permissible basis for exclusion,[99] the majority based its decision in part on the availability of other zones in Athens for group homes.[100] According to the court, the FHAA does not mandate providing housing "wherever they desire."[101]

The dissent pointed out that under the FHA, a failure to make reasonable accommodations constitutes discrimination and a disparate impact analysis may not be appropriate.[102] According to the dissent, preferential treatment is required for handicapped persons.[103] Handicapped persons must show discrimination, or the failure to make reasonable accommodation to provide them equal access to housing.[104]

Following *Elliott*, courts generally either have followed the Eleventh Circuit's interpretation of the exemption or have shown similar deference to local regulation. However, these decisions have differed in their beliefs for a group home's need to maintain a minimum number of residents. This conflict reflected the lack of and need for a uniform approach to the issue.

B. Handicapped Status Under the FHA

The United States Supreme Court afforded greater protection for handicapped persons under the Rehabilitation Act of 1973 in *Alexander v. Choate*.[105] In *Alexander*, the Court held that Tennessee's decrease in the number of inpatient hospital days qualifying for Medicaid payment did not violate § 504 of the Rehabilitation Act of 1973 even though it had a substantial effect on the handicapped.[106] The Court rejected the state's argument that § 504 only applies to intentional discrimination against handicapped persons.[107] Instead, the Court said that "discrimination against the handicapped is primarily the result of apathetic attitudes rather than affirmative animus."[108] The Court found that the Rehabilitation Act did not prohibit only actions with discriminatory intent.[109]

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97. *Id.* (citing H.R. REP. NO. 711, 100th Cong., 2d Sess. 22, 31 (1988)). The House Report states that "Section 6(d) amends Section 807 to make additional exemptions relating to the familial status provisions. . . . A number of jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit. Reasonable limitations by governments would be allowed to continue, as long as they were applied to all occupants, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status." H.R. REP. NO. 711, 100th Cong., 2d Sess. 22, 31 (1988).

98. Elliot v. City of Athens, 960 F.2d 975, 986 (11th Cir. 1992).

99. *Id.* at 982.

100. *Id.* at 983.

101. *Id.*

102. *Id.* at 987.

103. *Id.*

104. *Id.*

105. 469 U.S. 287 (1985).

106. *Id.* at 306.

107. *Id.* at 294.

108. *Id.* at 296.

109. *Id.* at 296-97.

The Fourth Circuit concluded that rehabilitated addicts should be included in the handicap definition under the FHAA in *United States v. Southern Management Corp.*[110] In *Southern Management*, [111] the United States sued SMC under the FHAA for refusing to rent to a drug rehabilitation service provider, arguing that the refusal to rent to the provider illegally discriminated against the handicapped.[112] SMC claimed that the FHAA did not apply to the provider's clients, "recovering addicts," since they were not handicapped within the meaning of the FHAA and were specifically excepted from the statute.[113] The statute specifically excluded "current, illegal use of or addiction to a controlled substance" from the definition of handicap.[114] Based on its interpretation of the legislative history of the FHAA and the applicable portions of the Rehabilitation Act,[115] the court decided that a "rehabilitated addict" came within the legislation.[116] The court construed the FHAA consistently with the Rehabilitation Act.[117] This construction meant that participation in a rehabilitation program together with cessation of drug use brought an individual within the handicap definition.[118] The court held that the clients were handicapped and that their access to housing was restricted by the refusal to rent to the provider.[119]

In *Cleburne*, the Supreme Court refused to find the handicapped a suspect class but upheld the invalidation of a use permit restriction for the operation of a group home for the mentally retarded.[120] The Cleburne Living Center, a not-for-profit Texas corporation, sought to lease a house in Cleburne for a group home for the mentally retarded.[121] The home at issue was located in an area zoned for apartments where many multi-family uses were permitted, including hospitals, nursing homes, and homes for convalescents or elderly other than the mentally impaired or alcoholics or drug addicts.[122] The city board classified the group home as a hospital for the "feeble-minded" and required the Center to apply for a special-use permit.[123] When the Center's application was denied, the Center filed suit, alleging that the zoning ordinance discriminated against people with mental retardation.[124] The United States District Court for the Northern District of Texas upheld the ordinance.[125] On appeal, the Fifth Circuit Court of Appeals invalidated the use permit restriction,[126] reasoning that the mentally retarded constituted a quasi-suspect class and therefore were entitled to a heightened level of scrutiny.[127]

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110. 955 F.2d 914 (4th Cir. 1992).
111. *Id.* at 914-15.
112. *Id.* at 916.
113. *Id.* at 917.
114. 42 U.S.C. § 3602(h)(3) (1988).
115. 29 U.S.C. § 706(8)(c) (1991).
116. United States v. Southern Management Corp., 955 F.2d 914, 922 (4th Cir. 1992).
117. *Id.*
118. *Id.*
119. *Id.* at 919.
120. City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432 (1985).
121. *Id.* at 435.
122. *Id.* at 436 n.3.
123. *Id.* at 436-37.
124. *Id.* at 437.
125. *Id.*
126. *Id.* at 437-38.
127. *Id.*

The Supreme Court refused to apply a heightened level of scrutiny,[128] nevertheless, it struck down the ordinance under the rational basis test.[129] The majority found that "mere negative attitudes, or fear, unsubstantiated by factors which [were] properly cognizable in a zoning proceeding [were] not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like."[130]

C. Oxford House Cases

A series of Oxford House cases have made clear that federal courts generally find recovery home residents a protected class under the FHAA. For example, *Oxford House-Evergreen v. City of Plainfield*, concerned a zoning dispute over a maximum occupancy restriction based on a "functional definition of family."[131] An Oxford House in the City of Plainfield allowed nine men rather than six, as permitted by the zoning law, to reside in its home for recovering drug addicts and alcoholics.[132] The city subsequently limited occupancy to six current residents and banned any additional occupants.[133] The Plainfield Zoning Board decided that the residents did not meet the "permanent" or "domestic" requirements of the Plainfield Zoning Code necessary to qualify as a family.[134]

The residents then appealed the order based on their inability to sustain the house economically with only six residents.[135] The court decided that the city's actions discriminated against the plaintiffs by separating them from non-handicapped persons, thus showing discrimination in violation of the FHAA.[136] In addition, the court found the family definition discriminatory because recovering alcoholics and addicts might never be considered "stable" or "permanent" by complaining neighbors and municipalities.[137] The court found that the irreparable injury of eviction would outweigh any harm to the defendants.[138] In addition, the public interest in recovery efforts supported this decision.[139]

Similarly, in *Oxford House, Inc. v. Township of Cherry Hill*, a township's refusal to issue a certificate of occupancy to an Oxford House based on the definition of family in the zoning ordinance was found to discriminate unfairly against the residents of a group home.[140] In *Cherry Hill*, the court enjoined a township from preventing the occupation of an Oxford House.[141]

The court held that the definition of "family" under the ordinance unfairly discriminated against unrelated handicapped people occupying rental property

128. *Id.* at 442.
129. *Id.* at 450.
130. *Id.* at 448.
131. Oxford House-Evergreen v. City of Plainfield, 769 F. Supp. 1329, 1332-33 (D.N.J. 1991).
132. *Id.* at 1334 n.3, 1334.
133. *Id.* at 1333.
134. *Id.*
135. *Id.* at 1334.
136. *Id.* at 1344.
137. *Id.*
138. *Id.* at 1345.
139. *Id.* at 1345-46.
140. Oxford House-Evergreen v. City of Plainfield, 799 F. Supp 450, 455, 461 (D.N.J. 1992).
141. *Id.* at 465.

together by imposing stricter requirements on them than on related people.[142] According to the court, the residents of the Oxford House could suffer substantial harm if they were not allowed to occupy the group home.[143]

Numerical restrictions on occupancy have also been challenged as having a disparate impact on handicapped residents. In *Oxford House-C v. City of St. Louis*, an eight-resident limitation was held to be exclusionary since Oxford Houses usually require more than eight residents to operate viably, both financially and therapeutically.[144] Although the city had a legitimate interest in preserving the neighborhood's residential character, it gave no reasonable basis for the restriction and stated no legitimate interest that supported allowing eight residents, but not more.[145] The court concluded that the ordinance was unnecessary for the preservation of residential character.[146] Instead, the court found the restriction to be artificial and the ordinance to be irrational.[147] Because the court found that the group homes were denied permits out of community angst,[148] it decided that the city's enforcement was discriminatory.[149]

However, in *Oxford House, Inc. v. City of Virginia Beach*, a city ordinance permitting four or fewer unrelated residents in a dwelling and requiring a special-use permit for a residence for recovering alcoholics and drug abusers was found not to violate the FHAA.[150] While the court concluded that the FHAA protected persons with handicaps from discrimination, it held that the FHAA did not prohibit zoning officials from inquiring into housing for handicapped persons.[151] In rejecting an argument based on *Elliott*, the court cited legislative history supporting the validity of the maximum occupancy limitation exemption only if applied uniformly to all individuals, related and unrelated.[152] Because the ordinance applied only to unrelated persons, it was not exempt from the FHAA, according to the court.[153]

The Oxford House cases establish that arbitrary classification by municipalities in group home cases will not be upheld. In the Oxford House cases, regulations governing traditional group homes often are not supported by legitimate government interests. While courts generally support government interests in neighborhood character and protection, they look closely at the way these policies are implemented. Where a regulation is based on discriminatory or non-legitimate motives, a court generally will invalidate it.

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142. *Id.* at 461.
143. *Id.* at 463.
144. Oxford House-C v. City of St. Louis, 843 F. Supp. 1556, 1579 (E.D. Mo. 1994).
145. *Id.* at 1579-80.
146. *Id.* at 1580.
147. *Id.*
148. *Id.* at 1576.
149. *Id.* at 1577.
150. Oxford House, Inc. v. City of Virginia Beach, 825 F. Supp. 1251, 1254 (E.D. Va. 1993).
151. *Id.* at 1264-65.
152. *Id.* at 1261.
153. *Id.* at 1254.

VI. THE INSTANT CASE

The Supreme Court granted the City of Edmonds' petition for a writ of certiorari to resolve the conflict between the Ninth and Eleventh Circuits concerning the scope of the exemption.[154]

A. Oxford House and the Department of Justice Argument

Oxford House and the Department of Justice argued that the city's zoning plan violated the FHAA because the group home of ten to twelve recovering drug addicts and alcoholics was excluded from the single-family zone.[155] The zoning system was allegedly discriminatory because single-family residences were limited to five unrelated adult disabled persons while an unlimited number of related family members could reside together as long as the residence met Uniform Housing Code square footage standards.[156] Thus, reading the FHA as exempting single-family zoning would have undermined the FHA's goal of providing fair housing for handicapped persons.[157]

Oxford House and the Department of Justice argued that the court of appeals correctly held that the city's rule was not a reasonable restriction of the maximum number of occupants allowed to occupy a residence under 42 U.S.C. § 3607(b)(1) and was not exempt under the Fair Housing Act.[158] According to them, the legislative history, language, and purposes of the maximum occupancy exemption revealed the exemption's application to maximum occupancy limitations on the number of possible occupants for health and safety reasons.[159] The city's ordinance restricted only the number of unrelated persons.[160] It regulated not the number of persons who could occupy a residence, but the "biological and legal relationships" of single-family neighborhood residents.[161] Those rules control the character of zoned areas, according to the respondents, not maximum occupancy limitations.[162] In so regulating, family composition rules create a "family" atmosphere in a neighborhood.[163] Only maximum occupancy restrictions are exempted, not family-composition rules, they argued.[164]

In addition, they argued that the city failed to make "reasonable accommodation."[165] According to them, under the provisions of 42 U.S.C. § 3604(f)(3)(B), the city discriminated against the residents of Oxford House by refusing to allow

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154. The Eleventh Circuit Court of Appeals in *Elliot v. City of Athens* concluded that a similar definition of family was exempt under the same code. 960 F.2d 975 (11th Cir. 1992). The decision of the Ninth Circuit in *City of Edmonds v. Oxford House, Inc.* conflicted with the decision of the Eleventh Circuit. 115 S. Ct. 1776 (1995).

155. Petitioner's Brief on the Merits at 6, City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776 (1995) (No. 94-23).

156. *Id.*

157. Respondent's Brief at 15, *Edmonds* (No. 94-23).

158. *Id.* at 14.

159. *Id.*

160. *Id.*

161. *Id.* at 17-18.

162. *Id.* at 18.

163. *Id.* at 14.

164. *Id.* at 18.

165. City of Edmonds v. Oxford House, Inc. 115 S. Ct. 1776, 1779 (1995).

them to live as a group of eight to twelve in the single-family area.[166] The city's regulation did not explicitly come under the maximum occupancy exemption because it allowed an unlimited number of related residents in a single-family zone.[167]

The reasonable accommodation provision meant that the city had to make a reasonable effort to provide for the group living needs of handicapped persons, regardless of how non-handicapped were treated.[168] A restriction is "reasonable" under the exemption only if it applies uniformly and is reasonably related to the interest in preventing overcrowded residences for health and safety reasons.[169] Since the city's ordinance did not advance either one of these goals, they argued that it was not "reasonable" under the exemption.[170]

Further, a city must provide accommodation where the handicapped person chooses, because the FHAA was enacted to enable handicapped persons "to live in the residence of their choice in the community."[171] Citing *Plainfield*,[172] the government contended that the city could not refuse handicapped persons reasonable accommodation in one part of the city on the basis that other suitable areas were available.[173]

B. The City's Argument

The city argued that Edmonds' single-family zoning definition was exempt from FHA coverage as a reasonable occupancy restriction.[174] The city relied on decisions of the United States Supreme Court which recognized the sanctity of the family, especially concerning single-family residences.[175] These decisions established that a city may use its police powers in zoning to provide the family protection within the community.[176] Such protection has survived Supreme Court scrutiny and been upheld as reasonable.[177] According to the city, allowing group homes such as the one at issue in this case to locate in single-family neighborhoods would have destroyed traditional Euclidian zoning.[178]

The city argued that the occupancy exemption applied to the city for three reasons.[179] First, the history of single-family zoning had allowed single-family zoning as a reasonable limitation regarding the maximum number of occupants

166. *Id.*
167. *Id.* at 1782-83.
168. *Id.* at 1779.
169. *Id.* at 1781.
170. *Id.*
171. H.R. REP. NO. 711, *supra* note 23, at 22.
172. Oxford House-Evergreen v. City of Plainfield, 769 F. Supp. 1329, 1344 (D.N.J. 1991).
173. Reply Brief for the United States at 35, City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776 (1995) (No. 94-23).
174. City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776, 1782 (1995). The FHAA exemption for reasonable local occupancy is 42 U.S.C. § 3607(b)(1) (1988).
175. Petitioner's Brief on the Merits at 7, 9-10, *Edmonds* (No. 94-23).
176. *Id.* at 9.
177. *Id.* at 10.
178. *Id.* at 11.
179. *Id.* at 7, 11-22.

allowed to reside in a dwelling.[180] Here, the city relied on *Euclid*.[181] Second, the plain meaning doctrine bolstered the argument for single-family zoning being a reasonable occupancy limit.[182] The city's definition of family followed exactly the language approved by the Supreme Court in *Belle Terre*.[183] The legislation extended single-family zone protection to the extended family following *Moore*.[184] Third, the legislative history of the FHAA indicated that the legislature's intent was the provision of fair housing opportunities for disabled persons, not permission to disregard traditional zoning regulation.[185] The FHAA prohibited a city from establishing special requirements applicable only to the disabled based upon their disability in violation of the precepts set forth in *Cleburne*[186] and did not overrule single-family zoning by implication alone.[187]

Further, the city claimed that reasonable accommodation for group homes for handicapped persons was made available in non-single-family zones.[188]

C. The Supreme Court Holding

By a six-three vote, the Supreme Court affirmed the holding of the Ninth Circuit.[189] Writing for the majority, Justice Ginsburg framed the issue as "whether Edmonds' family composition rule qualifies as a 'restrictio[n] regarding the maximum number of occupants permitted to occupy a dwelling' within the meaning of the FHA's absolute exemption" under § 3607(b)(1).[190]

In concluding that the city could not rely on its zoning restriction to regulate Oxford House, the Court pointed to the distinction between municipal land use restrictions and maximum occupancy restrictions: "Land use restrictions designate 'districts in which only compatible uses are allowed and incompatible uses are excluded' . . . . These restrictions typically categorize uses as single-family residential, multiple-family residential, commercial, or industrial."[191] By contrast, maximum occupancy restrictions limit the number of occupants in a dwelling in order to protect health and safety by preventing housing overcrowding.[192]

Ginsburg reasoned that the exemption in § 3607 was intended to encompass only a governmental unit's efforts to protect the public health, safety, and welfare; it did not permit the government to discriminate in order to preserve the family character of a neighborhood.[193] She concluded that

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180. *Id.* at 11.
181. *Id.* (citing Euclid v. Amber Realty Co., 272 U.S. 365 (1926)).
182. Petitioner's Brief on the Merits at 7, 15-18, *Edmonds* (no. 94-23).
183. *Id.* at 8. (citing Village of Belle Terre v. Boraas, 416 U.S. 1 (1974)).
184. Petitioner's Brief on the Merits at 8, *Edmonds* (no. 94-23) (citing Moore v. City of East Cleveland, 431 U.S. 494 (1977)).
185. *Id.* at 17-22.
186. *Id.* at 20-21 (referring to City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432 (1985)).
187. *Id.*
188. *Id.* at 28.
189. City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776, 1783 (1995).
190. *Id.* at 1780.
191. *Id.*
192. *Id.* at 1781.
193. *Id.* at 1781-83.

> rules that cap the total number of occupants in order to prevent over-crowding of a dwelling "plainly and unmistakably". . . fall within § 3607(b)(1)'s absolute exemption from the FHA's governance; rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain, do not.[194]

The Court held that Edmonds' zoning code provision which described who may compose a family was not a maximum occupancy restriction exempt from the FHA under § 3607(b)(1), the exemption for "reasonable local . . . restrictions regarding the maximum number of occupants permitted to occupy a dwelling."[195] Therefore, Edmonds could not rely on its zoning ordinance to regulate Oxford House since the zoning provisions invoked against Oxford House were typical use restrictions and family composition rules which restrict residences to families.[196]

Finally, the Court noted that its decision was limited to the precise question before it and did not answer the broader question of whether the city's regulation constituted bias, in violation of the FHA.[197] The lower court was left to decide whether the city's actions against Oxford House were prohibited as discriminatory under the FHA in §§ 3604(f)(1)(A) and (f)(3)(B).[198]

Justice Thomas dissented,[199] maintaining that the majority failed to "give effect to the plain language of the statute."[200] In keeping with the premise in *Gregory v. Ashcroft*,[201] Thomas would not have given the exemption the narrow construction that the majority did.[202] Instead, he would have allowed the police powers of the states wide discretion since zoning has traditionally been reserved to states.[203] According to Thomas, the ordinance constituted a maximum occupancy restriction because it imposed restrictions on the maximum number of occupants of a residence.[204] As such, Thomas would have upheld the restriction as an exemption under the FHA and reversed the holding of the Ninth Circuit.[205]

VII. ANALYSIS

The *Edmonds* decision offers greater protection under the FHAA for the rights of disabled persons in group homes. The decision provides further clarification that, under the FHA, a city may not use zoning restrictions to prohibit establishment of group drug and alcohol rehabilitation homes in areas zoned for single-family residences. Even though the Supreme Court recognized the right to maintain residential neighborhoods and broad zoning plans under *Euclid*, zoning power must not exceed constitutional boundaries.

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194. *Id.* at 1782.
195. *Id.* at 1783. (Thomas, J., dissenting).
196. *Id.* at 1782.
197. *Id.* at 1783.
198. *Id.*
199. Justices Scalia and Kennedy joined Justice Thomas's dissent. *Id.*
200. *Id.*
201. 501 U.S. 452, 456-70 (1991).
202. City of Edmonds v. Oxford House, Inc., 115 S. Ct. 1776, 1785 (1995).
203. *Id.* at 1786.
204. *Id.* at 1784, 1788.
205. *Id.* at 1785.

Since *Euclid*,[206] the Supreme Court and lower courts have accorded broad deference to local regulation of zoning that does not infringe on fundamental rights. Many cases have enforced zoning ordinances which regulated the type, not the number, of residents insofar as the ordinances mandate stable, single-group arrangements.[207]

Edmonds recognizes the right of communities to preserve residential neighborhoods under an overall zoning scheme. This decision maintains the residential character of single-family neighborhoods while at the same time providing fair housing opportunities to recovering addicts. Although the amended FHA and successful cases by group recovery homes have curbed municipalities' exclusion of these homes, these decisions do not substantially restrict legitimate local concerns.

Most importantly, the decision protects the constitutional rights of recovering addicts and alcoholics to fair housing for rehabilitation. The FHAA expanded the boundaries for the zoning of group homes, from the traditional deference given to municipal zoning authorities. For group homes, such as Oxford Houses, the FHAA has been invaluable in challenging exclusionary regulation of group homes. The statute prohibits restrictions which municipalities use to exclude group homes. As a result of *Edmonds*, courts likely will more closely scrutinize zoning ordinances such as the one at issue in this decision.

Edmonds upholds the anti-discrimination policies of the FHA regarding the handicapped. *Edmonds* makes clear that, under the FHA, a city may not use zoning ordinances to prohibit the establishment of group drug and alcohol recovery homes in areas zoned for single-family residences. Courts interpret the definition of "handicapped" to include recovering addicts as a protected class under the FHAA and are therefore a protected class under the FHAA.[208] Although the Supreme Court did not extend suspect class status to the handicapped in *Cleburne*,[209] the FHA provided more protection for their housing needs. The broad meaning of discriminatory intent under the FHA prohibits discriminatory zoning regulation. Protection in housing for the handicapped has been challenged in *Oxford House* and other cases and upheld.

Under *Edmonds*, a zoning code definition of the term "family" which includes an unlimited number of related persons or five or fewer unrelated persons is not a maximum occupancy restriction exempt from the FHA. Instead, the FHA applies only to occupancy limits such as numerical limits which prevent overcrowded residences, such as for health and safety reasons. The legislative history of the FHA indicates an intention not to exempt restrictions on unrelated residents. In fact, the preface to the exemption indicates its intention to exempt family-status restrictions. Lack of reference to unrelated individuals shows that they were not intended to be covered by the exemptions. Thus, the decision appropriately separates health regulations from lifestyle choices.

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206. Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

207. *See, e.g.*, Village of Belle Terre v. Boraas, 416 U.S. 1 (1974).

208. United States v. Southern Management Corp., 955 F.2d 914 (4th Cir. 1992); Oxford House-Evergreen v. City of Plainfield, 769 F. Supp. 1329 (D.N.J. 1991).

209. City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432 (1985).

This decision is significant because many zoning ordinances have an unrelated-persons definition of family. Some are unlimited in number. However, a majority of regulations limit the number of unrelated persons who can make up a "family." *Edmonds* indicates that such numerical definitions will be scrutinized for discrimination and will be found discriminatory if they have a disparate impact on housing opportunities for handicapped persons.

Further, the Supreme Court has made clear that a city cannot offer substitute areas for housing in multi-family and commercial zones in order to exclude group homes from single-family residential neighborhoods. The rejection of the *Elliott*[210] decision by the Supreme Court in *Edmonds* established that zoning laws should not deprive recovering addicts of fair housing. Ruling that the exemption applied in *Edmonds* would have meant that municipal governments could apply facially neutral zoning to restrict housing opportunities for handicapped persons under the FHA. This ruling could have eliminated the FHA's protection for similar group homes throughout the United States.

However, changes are needed in maximum occupancy restriction regulations. Despite the ostensible purposes of the maximum occupancy restrictions, these restrictions limit a handicapped person's choice of residences and, therefore, do not uphold the policies of the FHAA. In group homes, the residents are financially independent. A minimum number of residents is needed to afford higher rents in decent areas and for economic viability once established.[211]

In the future, city, state, and federal governments could clarify this area of the law to protect recovering addicts in group homes and prevent exclusionary zoning. Modified local zoning ordinances would supplant state and national legislation. State governments could also amend their statutes. In addition, Congress could further amend the FHA to clarify that maximum occupancy restrictions are limited to health and safety reasons. Without this legislation, group recovery homes will continue to provoke local zoning ordinances which try to evade disparate impact and reasonable accommodation protection under the FHA to maintain traditional zoning patterns.

Changes in the law would also decrease federal court litigation. Over the years, cases between group homes and cities have largely centered on the conflict between federal law and local zoning ordinances. The federal courts have been called on to hear issues of traditional state concern with the federal courts, rather than community boards, deciding zoning matters.

VIII. CONCLUSION

The purpose of the FHAA is to remove barriers that limit the ability of persons to live in the residence of their choice in the community. By declining to find the maximum occupancy limitation exempt under the FHA, *Edmonds* proscribes the unlawful discrimination of facially neutral laws which limit housing opportunities for handicapped persons. Overcoming community barriers to establishing

210. Elliot v. City of Athens, 960 F.2d 975 (11th Cir. 1992).
211. Oxford House-C v. City of St. Louis, 843 F. Supp. 1556, 1571 (E.D. Mo. 1994).

recovery homes such as this will help reduce drug and alcohol abuse and also combat HIV and other associated problems. Not only does this decision afford greater opportunities for recovering drug addicts and alcoholics, but it should also provide more protection for homes for the elderly, homeless, mentally retarded, and mentally ill. Thus, following *Edmonds*, cities in the future will find it harder to exclude disfavored groups from single-family neighborhoods.