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COUNCIL MEMORANDUM NO. 96-72

From: Duane Dvorak, City Planner

Date: July 17, 1996

Subject: Additional information relating to Proposed Ordinance No. 96-29, the Wasilla Revised Development Code and Zoning Map.

The purpose of this memo is to address a number of issue relating to Ordinance No. 92-29. Gordon Lewis, the planning consultant on the development code rewrite project, has submitted some revised language and background information for the Council's consideration. This additional information is related primarily to the issue of group homes that was discussed at the last Council public hearing. The Planning Commission adopted Commission Resolution 96-18, establishing a fee schedule to accompany the new development code and establishing a list of review agencies. Several property owners have requested rezones for areas around the City, as Council considers the adoption of a new zoning map to accompany the new development code provisions.

Group Homes

Planning Consultant, Gordon Lewis, has submitted revised definitions of the terms "Family", "Group Home" and "Institutional Home". Draft language is also presented that would establish specific criteria for group home developments, in addition to the general criteria that all permitted uses must meet. This is in response to public testimony and council discussion at the last public hearing before the Council. In addition, the consultant has provided some background information that is primarily related to the issue of group homes, particularly those established for individuals with disabilities.

Councilmember Chappel has also submitted some background information in the form of a Zoning and Planning Law Report, dated July-August 1995. Staff has a copy of the Supreme Court decision *City of Edmonds v. Oxford House, Inc,* upon which the zoning report is based, if the Council or public are interested in reading the actual decision.

Staff, the Planning Consultant, and the City Attorney are prepared to offer other options should the Council believe that changes to the draft are warranted. Some clear direction from the Council on this issue would be helpful in drafting new language in a timely fashion, so that the adoption of the Wasilla Revised Development Code is not unnecessarily delayed.

FEE SCHEDULE and REVIEW AGENCY LIST

Staff has attached a copy of Planning Commission Resolution 96-18, establishing a fee schedule and list of review agencies to accompany the proposed development code draft. The revised development code calls for these items to be adopted by resolution so it is necessary to have this done either before or concurrently with the adoption of the development code ordinance.

The fee schedule adopted by the Commission is based on the existing fee schedule of the current development code. The Commission agreed with staff's recommendation that it was best to stick with the existing fee schedule, since it is hard to anticipate the amount of effort to administer permits and other services required by the code. After 6 months or a year of experience with the new code, staff believes that a revised fee schedule should be considered to more closely reflect the amount of effort expended to administer the development code.

The list of review agencies is also based upon current Planning Office procedures, that were originally established by the Borough staff. The Wasilla Soil and Water Conservation District was added to the list by the Commission.

Staff recommends that, at a minimum, the Council should confirm the fee schedule and review agency list by motion. In the alternative, the Council may want to direct staff to prepare a Council Resolution, particularly regarding the fee schedule. A fee schedule resolution could be prepared and presented at the Council's next regular meeting.

REZONE REQUESTS

Staff has had numerous requests for information in the past two weeks regarding the potential impact of adopting the Wasilla Revised Development Code and Zoning Map. The Commission's recommendation for the zoning map was based primarily upon the City's current zoning pattern with very few changes. Most City lands were designated by the Commission for the Public zone and one area of private land was designated Commercial along the south Knik-Goose Bay Road.

Staff has had several requests for rezones around the City. The reasons for the requests vary as does the location and scope of each inquiry. While it is possible that the Council can amend the zoning map prior to adopting the rezone ordinance, time does not allow staff to complete an analysis of each request as would normally be the case for rezones. In addition, there is not adequate time to notify each property owner by mail of requests that may affect their area as part of this process.

Staff respectfully suggests that individual requests for rezone can be specifically authorized by the Council, by motion, and referred to the Planning Commission and staff for review. In the alternative, the Council may wish to authorize a suitable period of time in which any property owner or neighborhood group may petition for a rezone and have the fee waived. The fee for a rezone request is normally $500.00.

In terms of implementing this ordinance, staff needs to develop new forms and administrative procedures. If staff is overwhelmed with rezone requests, it may be worth considering a an effective date for the new zoning ordinance beyond the current construction season. This would allow the Commission and staff to begin analyzing the impact of individual rezone requests while preparing to administer the new provisions of an adopted development code and zoning map. If the new development code is effective upon adoption, rezones and other requests of the moment may be delayed while the Commission and staff are learning to work with the new ordinance requirements. An effective date of November 1, 1996, for example, would allow the implementation to occur during the off-season so that any glitches or problems could be worked out when the demand for permit reviews and other administrative duties are traditionally at a lower level. Each rezone that is recommended by the Planning Commission will come back eventually to the City Council as an ordinance change. This will require some additional effort by the Council, beyond simply adopting the Wasilla Revised Development Code and Zoning Map.

Information submitted by planning consultant, Gordon Lewis

The following changes are in response to the testimony given at the public hearing on the new development code.

These are the existing definitions that divide what looks like a house into three different things that get different treatment in the ordinance.

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39. Family means one person, or two or more persons related by blood, marriage, or adoption. The term includes a group of **eight persons or less** who are unrelated by blood, marriage, or adoption, any of which are living together as an independent housekeeping unit.

43. Group Home means a use of a residential dwelling(s) or any living unit or accessory buildings thereof, designed, used or intended for use as long term human habitation in a home-like family setting. The principal use of which is to serve as a dwelling for assisted living for **eight people or less** who seek rehabilitation or recovery from any long-term illness, physical, mental, or other infirmity or disability.

52. Institutional Home means a use of a residential dwelling(s) or any living unit or accessory buildings thereof, designed, used or intended for use as relatively permanent human habitation in a home-like family setting. The principal use of which is to serve as a dwelling for assisted living for **more than eight people** who seek rehabilitation or recovery from any long-term illness, physical, mental, legal or other infirmity or disability. The term includes limited care facilities for the elderly, homes for children, sanitariums, nursing homes, living quarters for people with long term illness and transitional homes for criminals.

We can not strictly regulate a Group Home. The city must provide a reasonable accommodation. The initial level of review should be administrative not at the Planning Commission level. It is permissible to have Planning Commission review of an "Institutional Home." Wasilla can regulate "criminals" and could also ratchet down the number of people that qualify as a family to four unrelated people. This would change the magic number used as a trigger in the ordinance from eight to four. The definitions would then look like this:

39. Family means one person, or two or more persons related by blood, marriage, or adoption. The term includes a group of **four persons or less** who are unrelated by blood, marriage, or adoption, any of which are living together as an independent housekeeping unit.

43. Group Home means a use of a residential dwelling(s) or any living unit or accessory buildings thereof, designed, used or intended for use as long term human habitation in a home-like family setting. The principal use of which is to serve as a dwelling for assisted living for **four people or less** who seek rehabilitation or recovery from any long-term illness, physical, mental, or other infirmity or disability.

52. Institutional Home means a use of a residential dwelling(s) or any living unit or accessory buildings thereof, designed, used or intended for use as relatively permanent human habitation in a home-like family setting. The principal use of which is to serve as a dwelling for assisted living for **more than four people** who seek rehabilitation or recovery from any long-term illness, physical, mental, legal or other infirmity or disability. The term includes limited care facilities for the elderly, homes for children, sanitariums, nursing homes and living quarters for people with long term illness. A residential dwelling(s) or any living unit or accessory buildings thereof that serves as temporary home for **two or more** criminals is also an institutional home.

We can also add some special approval criteria for Group Homes (Institutional Homes already have special criteria). The changes would encourage Group Homes to locate in the commercial zone. This should encourage them to locate within walking distance to needed facilities such as grocery stores. The approval criteria would be inserted as a new J in section 16.43.510 on page 30.

J. Group Home. Group homes are encouraged to locate in the commercial zone. A group home in any residential zone must be separated from any other group home by 600 feet or one per subdivision block. Whichever standard results in the lesser density shall be applied. There is no separation requirement for group homes located in a commercial district.

ZONING AND PLANNING LAW REPORT

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CITY OF EDMONDS V. OXFORD HOUSE, INC.: A SUPREME COURT VICTORY FOR GROUP HOMES FOR THE HANDICAPPED

by Matthew J. Cholewa and Dwight H. Merriam, A.I.C.P.

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- **The Decision in *Edmonds***
- **Is the Court's Decision Significant?**
- **Questions Left Unanswered**

(The Supreme Court's recent decision in City of Edmonds v. Oxford House, Inc. *resolved a split between the Ninth and Eleventh Circuits regarding interpretation of an important exemption contained in the Fair Housing Amendments Act. This exemption permits reasonable local, state, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. In* City of Edmonds, *a local zoning ordinance was challenged as discriminatory against group homes for the handicapped, and the Court ruled in a 6-3 decision that the city's restrictions were not exempt under the Fair Housing Act.)*

Introduction

Although a few speed bumps may still remain, the United States Supreme Court's recent decision in *City of Edmonds v. Oxford House, Inc.*, 115 S. Ct. 1776 (1995), has paved the way for the establishment of group homes for the handicapped in traditional single-family residential zones. On May 15, 1995, in a six to three decision, the Court ruled that a zoning ordinance limiting the number of unrelated persons who may live together in a single residence but not limiting the number of related persons (we call such an ordinance a "typical single-family zoning ordinance")[1] is not exempt from the Fair Housing Act's edict that municipalities make "reasonable accommodations" for handicapped housing. The decision is an important victory for handicapped persons who need to live in congregate living arrangements—a contrary ruling would have allowed municipalities to exclude such group homes from most residential neighborhoods. In addition, the decision reveals the ease with which this particular Supreme Court, at least at this time, will find that Congress intended to regulate an area of law historically reserved to the states.[2]

The Fair Housing Amendments Act

Congress passed the Fair Housing Act as Title VIII of the Civil Rights Act of 1968.[3] Initially, the Act prohib-

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ited certain discrimination on the basis of "race, color, religion, or national origin." In 1974, the Act was amended to add protection on the basis of gender,[4] and in the Fair Housing Amendments Act (the "FHAA"),[5] Congress extended the Act to prohibit discrimination on the basis of handicap or familial status (families with children).

The FHAA defines a "handicap" fairly broadly as—

> (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
> (2) a record of having such an impairment, or
> (3) being regarded as having such an impairment,
>
> but such term does not include current, illegal use of or addiction to a controlled substance.[6]

Handicapped persons under the FHAA include persons with physical disabilities, mentally retarded and mentally ill persons, recovering alcoholics and drug addicts (coupled with nonuse of alcohol or drugs), many elderly persons, and persons infected with Human Immunodeficiency Virus (HIV).[7]

The FHAA provides protections for handicapped persons not extended to the other protected classes. Discrimination is prohibited in the "terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap."[8] Discrimination is defined to include the "refusal to make *reasonable accommodations* in rules, policies, practices, or services, when such accommodations are necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling."[9]

This "reasonable accommodation" requirement governs the actions of municipalities acting through their planning and zoning process by imposing a requirement on municipalities to make reasonable accommodations for the handicapped in their local zoning ordinances and in the decisions of their zoning authorities.[10] However, the FHAA exempts from its ambit "reasonable local, State, or Federal restrictions regarding the *maximum number of occupants* permitted to occupy a dwelling."[11] It is the meaning of this "maximum occupancy" exemption that was at issue in *Edmonds*.

A prima facie case of discrimination under the FHAA can be established in one of two ways: by showing that the action in question was a result of intentional discrimination against a class of persons protected by the Act, or by showing that an action has a discriminatory effect or impact upon a protected class, even if the municipality had no intention to discriminate.[12] To prove intentional discrimination, the evidence need only show that illegal discrimination was a factor, not the only factor, in a municipality's action.[13] Furthermore, if an official act is performed in order to appease a private party's discriminatory viewpoint, the official act is tainted with discriminatory intent, even if the decision maker is personally agnostic on the matter.[14] Thus, the FHAA goes beyond enforcing nondiscrimination to imposing a duty of reasonable accommodation on municipalities; then it goes even further, placing municipalities in the role of anti-discrimination "watchdog."

Edmonds' Factual and Procedural Background

Oxford House, Inc. is a nonprofit umbrella organization for over 300 private, self-run, single-sex group homes for recovering alcoholics or drug addicts.[15] Oxford House group homes are financially self-supporting, democratically governed, completely alcohol- and drug-free, and required to expel any resident caught using alcohol or drugs. A single relapse by a resident brings automatic, immediate expulsion. According to Oxford House and to the Ninth Circuit's decision in *Edmonds*, in order to be financially self-sufficient, provide a supportive atmosphere for recovery, and meet federal requirements under the federal Anti-Drug Abuse Act[16] for state start-up loans, the homes must have at least six residents.[17] "Fewer individuals would have a negative impact on the ability of a house to maintain a core group throughout [transition periods] and would surely jeopardize their success and existence."[18] Although Oxford House residents who abide by the rules may stay as long as they wish, the average length of stay at an Oxford House is about thirteen months.

Oxford House established a group home in Edmonds, Washington for ten to twelve recovering alcoholics and drug addicts. The group home, called Oxford House-Edmonds, is located in a neighborhood zoned for single-family residences. The city's zoning code defines a family as "an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption or marriage."[19] Oxford House-Edmonds, which houses more than five unrelated adults, does not conform to this definition.

Following Oxford House policy, Oxford House-Edmonds opened without seeking an amendment to this definition or a variance from the City of Edmonds.[20] After the city issued criminal citations to the owner and a resident of the house for violation of the zoning code, Oxford House-Edmonds requested that the city make a "reasonable accommodation" by permitting it to remain in the single-family dwelling it had leased. The city denied this request, but passed an ordinance permitting group homes in multifamily and general commercial zones.[21]

The City of Edmonds filed a declaratory judgment action in the United States District Court for the Western District of Washington seeking a ruling that the single-family zoning provision does not violate the FHAA.

Oxford House counterclaimed, charging that the city violated the FHAA by failing to make a reasonable accommodation for Oxford House-Edmonds. The United States filed a separate action on the same grounds, and the two cases were consolidated.[22] The trial court ruled that the zoning provision was exempt from the FHAA because it fit within the exemption in Section 3607(b)(1) of the Act for "reasonable . . . restrictions regarding the maximum *number of occupants permitted to occupy a dwelling.*"[23] The United States Court of Appeals for the Ninth Circuit reversed, holding the Section 3607(b)(1) exemption to be inapplicable. Because the Ninth Circuit's decision conflicted with the Eleventh Circuit's decision in *Elliott v. Athens*, 960 F.2d 975 (1992), the United States Supreme Court granted certiorari.[24]

The Supreme Court's 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 "'restrictions regarding the maximum number of occupants permitted to occupy a dwelling.' 42 U.S.C. § 3607(b)(1)."[25]

The Fair Housing Act's stated policy is "to provide, within constitutional limitations, for fair housing throughout the United States."[26] In deciding the question before the Court, Justice Ginsburg, writing for the majority, noted that, as a remedial statute, the Fair Housing Act was to be afforded a "generous construction" and that Section 3607(b)(1), an exception to the Act's stated policy, was to be narrowly construed "in order to preserve the primary operation of the [policy]."[27]

Key to the Court's decision in *Edmonds* was its statement that Section 3607(b)(1)'s maximum occupancy exemption was enacted "against the backdrop of an evident distinction between municipal land use restrictions and maximum occupancy restrictions."[28] Land use restrictions, typically found in zoning regulations, designate zoning districts in which compatible uses are permitted and incompatible uses are excluded.[29] 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.[30] Maximum occupancy restrictions, whose purpose is to prevent overcrowding, "ordinarily apply uniformly to *all* residents of *all* dwelling units."[31] The Court concluded that a plain reading of Section 3607(b)(1)—"restrictions regarding the maximum number of occupants permitted to occupy a dwelling"—"surely encompasses maximum occupancy restrictions . . . [b]ut . . . does not fit family composition rules typically tied to land use restrictions."[32] 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.[33] 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: "What is the maximum number of occupants permitted to occupy a house?"[34]

Justice Thomas, writing for the dissent, argued that the Court's decision failed to give effect to the plain language of Section 3607(b)(1), which exempts "*any* reasonable—restrictions *regarding* the maximum number of occupants permitted to occupy a dwelling."[35] The City of Edmonds' zoning code limits to five the maximum number of persons permitted to occupy a dwelling with an exception for traditional families. According to the dissent, the exemption in Section 3607(b)(1) "sweeps broadly to exempt *any* restrictions *regarding* such maximum number" and therefore encompasses the Edmonds ordinance.[36]

In addition, Justice Thomas also argues that the majority erred in construing the Section 3607(b)(1) exemption narrowly. "The power of Congress to legislate in areas traditionally regulated by the States is an extraordinary power in a federalist system, and a power that we must assume Congress does not exercise lightly."[37] When Congress intends to preempt state or local regulation of an area such as land use—an area traditionally and peculiarly within the province of the states—Congress should make its intention "clear and manifest,"[38] and therefore, the exemption contained in Section 3607(b)(1) should not be narrowly construed.

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The Significance of the Decision

At first glance, *Edmonds* looks like the ho-hum decision of this term. All the Court decided in *Edmonds* was whether a typical single-family zoning ordinance fell within the maximum occupancy exemption contained in Section 3607 of the Fair Housing Act. The decision and the dissent were purely based upon statutory construction, and there is nothing revolutionary about the concept that a federal statute preempts inconsistent municipal ordinances.

The narrowness of the Supreme Court's decision, however, belies its significance. The decision is an important victory for advocates for the rights of disabled persons—a contrary ruling would have allowed municipalities to exclude congregate living arrangements from most residential neighborhoods. In addition, the *Edmonds* decision reveals the ease with which the Supreme Court, when interpreting legislation, will find that Congress intended to regulate an area of law historically reserved to the states.[39]

The Fair Housing Act's stated policy is "to provide, within constitutional limitations, for fair housing throughout the United States."[40] The paramount goal of the FHAA, as stated in the House Committee report on the FHAA (the "House Report"), is "to end the unnecessary exclusion of persons with handicaps from the American mainstream."[41] The House Report states that the FHAA is intended to foster "the ability of [handicapped] individuals to live in the residence of their choice in the community."[42] In its Supreme Court brief, Oxford House averred that the Edmonds single-family zoning ordinance has the effect of excluding Oxford-House Edmonds from 97 percent of the single-family rental housing in the City of Edmonds, and the situation is similar 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 intrusion by the federal government into the formerly exclusively local province of planning and zoning. Although the authors of this article believe that the decision was a correct one, we also do not believe that the statutory language clearly and manifestly demonstrates Congress's intention to preempt the historically local province of land use. Rather, we agree with the Ninth Circuit's opinion that the statutory language is ambiguous,[43] and find it curious that the majority based its opinion on a plain reading of the statute.[44]

Although the decision is significant, the *Edmonds* decision will not, as the City argued, "overturn Euclidian zoning" and "destroy the effectiveness and purpose of single-family zoning."[45] Municipalities will still be able to maintain single-family zones. They will simply need to show some flexibility—by making "reasonable accommodations"—regarding housing for the handicapped. Edmonds and other municipalities will still be free to discriminate against most other groups of people whom 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. Doesn't seem right, does it?

Questions Left Unanswered

The sole question decided by the Supreme Court in *Edmonds* was an extremely narrow one: whether the City of Edmonds' definition of family falls within the FHAA's absolute exemption for "restrictions regarding the maximum number of occupants permitted to occupy a dwelling." The Court did not decide whether the City's definition of family, as applied to Oxford House-Edmonds, violated the FHAA's prohibitions against discrimination[46] and, unfortunately, provided no guidance as to how far municipalities will have to bend in order to satisfy their duty of "reasonable accommodation." The question municipal officials will have following the *Edmonds* decision is: "When a group home for the handicapped wishes to locate in my town, what can and can't we do?" Unfortunately, at this point there is not a single, easy answer. There are a few obvious answers to the question of "what can't we do?," but there is little guidance to those asking, "What can we do?"

a. What you definitely can't do.

Generally, a zoning ordinance may not, on its face, discriminate against the handicapped (and other classes of persons protected under the Fair Housing Act).[47] Second, a municipality may not intentionally discriminate against the handicapped in its application of a zoning ordinance, regardless of whether the zoning ordinance in question is facially neutral.[48] In this light, the following discussion assumes, unless otherwise stated, any ordinances discussed are not discriminatory on their face and are not being applied in a discriminatory manner.

For a fairly comprehensive, and somewhat egregious, example of things that a municipality clearly may not do in response to a proposed group home for handicapped persons, see the 1992 decision in *Support Ministries for Persons with Aids, Inc. v. Village of Waterford*,[49] which involved the proposed placement of a group home for persons with AIDS in the Town of Waterford, New York. Among the obvious mistakes made by town officials were the following: the members of the Board of Trustees (the "board"), the town's legislative body, unanimously declared their opposition to the opening of the "AIDS building"; the board went into executive session to determine how to change the village's zoning laws so as to prevent the opening of the group home and later changed the laws accordingly; the mayor proposed holding an unprecedented referendum on the establishment of the group home; board members testified against the group home

at a meeting of the Zoning Board of Appeals; town officials admitted that public opposition played a role in their decision; and the board purposely appointed to village offices, including the ZBA, people who were obviously opposed to the group home. It is not surprising that the district court awarded the plaintiffs damages.[50]

The *Support Ministries* case suggests that much of the difficulty many people have with the placement of group homes in residential neighborhoods has little to do with the proposition that group homes destroy the residential nature of single-family zones, but rather, has to do with the FHA's definition of "handicapped." The placement of a group home for six to twelve "traditionally" physically handicapped persons in a residential neighborhood simply does not engender the same vocal community opposition and fear as does the placement of a group home for a comparable number of recovering alcoholics and drug addicts. The likely reason why many local governments don't welcome the latter group has to do with people's fears of certain types of handicapped persons and their lack of sympathy for the plight of such persons—just the type of mind set the FHAA was trying to counter. The following quote of the mayor of Waterford, New York, taken from the *Support Ministries* case, is, unfortunately, not atypical:

> My biggest fear is these [persons with AIDS] are drug users, alcohol people. They come out of rehabilitation centers. They're homeless people. . . . These are drug abusers, alcohol people, homeless people that they want to bring to a village of 2,500 people a half a block from a school. A block from two playgrounds. No, I really don't want to see them in my village.[51]

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

For example, is an ordinance valid when it is consistently applied to all persons, handicapped and nonhandicapped, but requires a special permit if more than five unrelated persons wish to occupy a residence? In one sense, the special permit/conditional use process, under which the conditions required for permission to establish a group home (for any group of persons, handicapped or nonhandicapped) are specified in the zoning ordinance, may be the best way for a municipality to make case-by-case "reasonable accommodations." Churches and funeral homes are typical special permit uses—acceptable on some lots with conditions, and not acceptable on other lots under any condition. Developers of group homes, however, claim that public hearings stigmatize recovering alcoholics and addicts and increase the chance of a resident's relapse. One federal appellate court has considered the issue

United States v. Village of Palatine, Illinois[52] involved an Oxford House located in a single family zoning district. The zoning ordinance allowed group homes in the district through a facially neutral "special use" process including public notice and a public hearing. In accordance with Oxford House, Inc.'s stated policy not to seek prior zoning approval before or after moving into a neighborhood, the organizers of the Oxford House in Palatine did not seek special use approval. The Village of Palatine filed a complaint in state court against the Oxford House seeking, among other things, to limit the residence's occupancy to three unrelated persons, pursuant to the village's definition of "family." The United States filed suit against the village in federal court, and obtained an injunction against the village's enforcement of its zoning ordinance against the Oxford House.[53]

On appeal, the Oxford House argued that requiring the residents of the Oxford House to undergo a public hearing would subject them to a "firestorm of vocal opposition within the neighborhood,"[54] thereby stigmatizing the residents and increasing a chance of relapse. The Seventh Circuit decided that any potential burden on the Oxford House residents was outweighed by the village's interest in considering public input while applying a facially neutral law, but that it must be applied in a nondiscriminatory manner. The court rejected the argument that, as a rule, public hearings are detrimental to the handicapped.[55]

In a concurring opinion, Judge Daniel Manion opined that any potential stigma or stress the residents of an Oxford House may suffer as a result of a public hearing or by facing potential displacement is in fact the Oxford House's own doing, because the Oxford House consciously chooses to move into a neighborhood without seeking prior zoning approval. "[H]ad the Oxford House not disregarded the law in the first place, there would be no residents illegally living in the house who could be stigmatized."[56]

Federal district courts outside the Seventh Circuit disagree on the impact of a special permit process on group homes for the handicapped. In *Oxford House, Inc. v. City of Virginia Beach*[57] the court ruled that "plaintiffs can claim no legally cognizable right under the Fair Housing Act to be exempt from the permit application process simply because of the *public nature* of that process."[58] In contrast, the court in *Stewart B. McKinney Foundation, Inc. v. Town Plan & Zoning Commission*,[59] ruled that "to allow the Town to impose a facially neutral requirement that has the effect of holding handicapped people up to public scrutiny in a way that non-handicapped people are not is to violate the purpose of Title VIII."[60]

The Seventh Circuit in *Village of Palatine* stated that if the plaintiffs could demonstrate that resort to the special use procedure would be "manifestly futile," they need not submit themselves to the process.[61] Thus, if a court

were to find it proper to require a group home to apply for a special permit or a variance under a facially neutral ordinance, and the group home is unable to demonstrate that resort to such a process would be "manifestly futile," it is likely that the court would require the group home first to exhaust the administrative process before being allowed to claim that the municipality failed to provide a reasonable accommodation.[62]

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

A variance differs from a special permit or conditional use in that a variance is permission to violate the zoning ordinance. A person seeking to obtain a variance is typically called upon to demonstrate that application of the ordinance would impose an unnecessary hardship due to unique circumstances. On the other hand, when seeking a special permit or conditional use, only compliance with the conditions specified in the ordinance need be shown.[63]

The Seventh Circuit's decision in *Village of Palatine*, by extension, would indicate that a municipality should be given a chance to make a reasonable accommodation through the variance process. However, federal district courts outside the Seventh Circuit disagree on this question. In *Oxford House, Inc. v. City of Virginia Beach*, the court approved the use of the variance process, stating that "[r]equests to grant . . . variances from occupancy restrictions . . . might be reasonable or unreasonable depending on numerous factors."[64] Similarly, *Oxford House, Inc. v. City of Albany*[65] ruled that a city should have a chance to make a reasonable accommodation through the variance process.[66] However, *Oxford House, Inc. v. City of St. Louis*[67] stated 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,"[68] and *Oxford House, Inc. v. Township of Cherry Hill*[69] rejected the idea that requiring the handicapped to apply for a variance could constitute a "reasonable accommodation."[70]

e. If limiting the number of unrelated persons that may live together to five is found to be discriminatory, what number would not be discriminatory?

Certainly a municipality could not be required to permit an unlimited number of persons to live together in a single-family zone. The *Edmonds* court hints that perhaps six is a reasonable number. Another court indicated that the group home in question required nine residents to be viable.[71] In all likelihood, such a determination will be made on a case-by-case basis. Furthermore, municipalities can still enforce the maximum occupancy restrictions found in their housing codes.

f. Can a municipality impose separation requirements on group homes?

This question was answered in the affirmative by the United States Court of Appeals for the Eighth Circuit in *Familystyle of St. Paul, Inc. v. City of St. Paul*,[72] which involved a residential treatment facility for the mentally ill. In *Familystyle*, the court, using an equal protection analysis, upheld state and local laws requiring a new group home to be located at least one-quarter mile from any existing group home, unless the new group home obtained a special use permit. While acknowledging that the state and local spacing requirements *on their face* limit housing choices for the handicapped, the court concluded that the government's interest in promoting noninstitutional living arrangements for the handicapped effectively rebutted any discriminatory effect of the laws.[73] The court noted that the spacing requirement guarantees that residential treatment facilities will be "in the community," rather than in a clustering of group homes that in reality is nothing more than a large institution.[74]

In *Horizon House Developmental Services, Inc. v. Township of Upper Southampton*,[75] a federal district court in Pennsylvania struck down a similar spacing requirement. It rejected the notion that promoting integration of the handicapped provides adequate justification under the FHAA to validate a facially discriminatory ordinance.[76] Several state attorney generals have also opined that spacing requirements in their respective states are unlawful.[77]

g. What about public safety concerns?

Although no case has been found upholding discrimination against the handicapped based on public safety concerns, the FHAA apparently would allow such discrimination in certain circumstances. The Tenth Circuit, in *Bangerter v. Orem City Corp.*,[78] noted that discrimination rooted in public safety concerns is expressly allowed by Section 3604(f)(9) of the FHAA: "[N]othing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others."[79] It should be kept in mind, however, that exceptions to the FHAA's prohibitions against discrimination will be narrowly construed,[80] and courts have routinely dismissed public safety-based concerns about group homes as being without merit.

h. What would constitute a "reasonable accommodation" on the part of a municipality?

The FHAA does not define "reasonable accommodation," a concept Congress drew from Section 504 of the Rehabilitation Act of 1973.[81] In the context of the FHAA, a "reasonable accommodation" has been defined in the case law as one that "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."[82]

The basic purpose of single-family zoning ordinances has been addressed by the Supreme Court. In *Edmonds*, the Court stated that "reserving land for single-family

residences preserves the character of neighborhoods, securing zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."[83] Similarly, according to the Supreme Court's decision in *Village of Euclid v. Ambler Realty Co.*,[84] the purpose of a single-family zone is to preserve "the residential character of the neighborhood and its desirability as a place of detached residences."[85] As most requested accommodations would not impose undue hardships or financial or administrative burdens on a municipality, a requested accommodation would likely be deemed reasonable if it did not undermine the above-stated purposes.

A few lower federal court cases provide a glimpse of the meaning of "reasonable accommodation." *United States v. City of Philadelphia*,[86] 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.[87] 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."[88] In *Majors v. Housing Authority of the County of DeKalb, Georgia*,[89] decided under the Rehabilitation Act of 1973, a mentally disabled resident of a housing project whose disability caused her to require the companionship of her pet poodle Sparky, sought a waiver of a "no pet" rule. The Fifth Circuit ruled that the Housing Authority could easily have made an exception for the narrow group of mentally disabled persons who require a dog's companionship.[90]

Very likely, the requested accommodation will simply be for a municipality to 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*,[91] 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 discrimination, under the FHAA.

Conclusion

Like most social and legal problems, there are no easy answers to this problem of finding a "reasonable accommodation" for group homes for the disabled. The definition of handicap sweeps so broadly, as perhaps it should, that conflicts between the preservation of other values, such as those of family, are necessarily going to conflict with the objectives of our larger society to provide equal housing opportunities and access for many types of disadvantaged persons.

Part of the solution is educational. We see nothing in the case law and little in the literature that would suggest the need to educate the uninformed about these many types of disabled persons and how they will readily fit in our single-family neighborhoods. More needs to be done in educating the American mainstream as to how the family has changed and how family values today have evolved to include and embrace a wide variety of household types far beyond the extended families of the earlier part of this century and the "Ozzie and Harriet" nuclear family of the middle part of the century.

Indeed, there will be some losses on both sides because part of finding a "reasonable accommodation" will be a "zero sum" game, with a winner on one side and a loser on the other. But only a small part of reasonable accommodations need to be this way. Through thoughtful regulation based on open discussion, and with forthright disclosure of hidden agendas we can achieve the type of physical community which may facilitate the social community many of us are seeking.

As Learned Hand said in a speech to the Board of Regents at the University of the State of New York on October 24, 1952: "that community is already in the process of dissolution where each man begins to eye his neighbor as a possible enemy."

NOTES

[1] The City of Edmonds' zoning code contains a fairly typical definition of family: "an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption or marriage." Edmonds Community Development Code § 21.30.010 (*cited in Edmonds*, 115 S. Ct. 1776, 1779 (1995)).

[2] *Edmonds* and other split decisions this term, especially the 5-4 decisions, reveal a Court that is difficult to characterize. *See, e.g., United States v. Lopez*, 115 S. Ct. 1624 (1995) (invalidating, on Commerce Clause grounds, the "Gun Free School Zones Act of 1990"); *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, — S. Ct. —, 63 U.S.L.W. 4665 (June 27, 1995).

[3] Fair Housing Act, Pub. L. No. 90-284, 82 Stat. 81 (1968).

[4] Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633, 729 (1974).

[5] Pub. L. No. 100-430, 102 Stat. 619 (1988).

[6] 42 U.S.C. § 3602(h).

[7] *Id. See also* 24 C.F.R. § 100.201(b); *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 804 (9th Cir. 1994); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F. Supp. 450, 458-60 (D.N.J. 1992); *Stewart B. McKinney Found., Inc. v. Town Plan & Zoning Comm'n*, 790 F. Supp. 1197, 1209-10 (D. Conn. 1992).

[8] 42 U.S.C. § 3604(f)(2).

[9] 42 U.S.C. § 3604(f)(3)(B) (emphasis added).

[10] *See, e.g.*, 42 U.S.C. § 3610(g)(2)(C) (enforcement mechanism regarding "the legality of any State or local zoning or other land use law or ordinance"); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 (E.D.N.Y. 1993).

[11] 42 U.S.C. § 3607(b)(1) (emphasis added).

[12] *Stewart B. McKinney Found., Inc. v. Town Plan & Zoning Comm'n*, 790 F. Supp. 1197, 1210-11 (D. Conn. 1992).

[13] *Id.*

[14] *Support Ministries for Persons with Aids, Inc. v. Village of Waterford*, 808 F. Supp. 120, 134-35 (N.D.N.Y. 1992).

[15] Unless otherwise noted, this description is taken from Ox-

ford House, Inc.'s Supreme Court Brief.

[16] 42 U.S.C. § 300x-25.

[17] *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 803 (9th Cir. 1994).

[18] Oxford House, Inc.'s Supreme Court Brief.

[19] *Edmonds*, 115 S. Ct. 1776, 1779 (1995) (*citing* Edmonds Community Development Code § 21.30.010).

[20] *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 803 (9th Cir. 1994).

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] 115 S. Ct. at 1780.

[25] *Id.*

[26] *Id.* (*quoting* 42 U.S.C. § 3601).

[27] *Id.* (*quoting Commissioner v. Clark*, 489 U.S. 726, 739 (1989)).

[28] *Id.*

[29] *Id.* (*citing* D. Mandelker, *Land Use Law* § 416, pp. 113-14 (3d ed. 1993)).

[30] *Id.* at 1781 (*citing, e.g.*, Uniform Housing Code § 503(b)).

[31] *Id.* (emphasis in original).

[32] *Id.*

[33] *Id.* at 1782.

[34] *Id.*

[35] *Id.* at 1783 (Thomas, J., dissenting) (emphasis added).

[36] *Id.* at 1784 (Thomas, J., dissenting).

[37] *Id.* at 1786 (internal quotations omitted) (Thomas, J., dissenting).

[38] *Id.* (internal quotations omitted) (Thomas, J., dissenting).

[39] *But see United States v. Lopez*, 115 S. Ct. 1624 (1995) (Gun-Free School Zones Act exceeds Congress's authority under the Commerce Clause).

[40] *Edmonds*, 115 S. Ct. at 1780 (*quoting* 42 U.S.C. § 3601).

[41] H.R. Rep. No. 711, 100th Cong. 2d Sess. (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, at 18.

[42] *Id.* at 18, 24.

[43] *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 805 (9th Cir. 1994).

[44] Apparently important to the court's decision is a single word contained in Section 3607's maximum occupancy exemption: the word "the." Quoting the exemption, the Court stated that the Edmonds ordinance did not "prescribe '*the* maximum number of occupants' a dwelling unit may house." *Edmonds*, 115 S. Ct. at 1779 (emphasis in original).

[45] *Id.* at 1783.

[46] *Id.* at 1780 n.4.

[47] *See Horizon House Developmental Servs., Inc. v. Township of Upper Southampton*, 804 F. Supp. 683, 693 (E.D. Pa. 1992), *aff'd*, 995 F.2d 217 (3d Cir. 1993).

[48] *See, e.g., Stewart B. McKinney Found., Inc. v. Town Plan & Zoning Comm'n*, 790 F. Supp. 1197, 1209-16 (D. Conn. 1992).

[49] 808 F. Supp. 120 (N.D.N.Y 1992).

[50] Actual and punitive damages are allowed for violations of the Fair Housing Act. 42 U.S.C. § 3613(c)(1). The court in *Support Ministries* awarded compensatory damages. The question of punitive damages was scheduled as the subject of future briefing. 808 F. Supp. at 139-41.

[51] 808 F. Supp. at 125-26. Consider also the remarks of Senator Jesse Helms (R-N.C.), who wants to reduce the level of federal spending for victims of AIDS because it is their "deliberate, disgusting, revolting conduct" that is responsible for their plight. "Helms Puts the Brakes to a Bill Financing AIDS Treatment," *New York Times*, July 5, 1995, § A, p. 12. "We've got to have some common sense," adds Senator Helms, "about a disease transmitted by people deliberately engaging in unnatural acts." *Id.*

[52] 37 F.3d 1230 (7th Cir. 1994).

[53] *Id.* at 1232-33.

[54] *Id.* at 1233.

[55] *Id.* at 1234.

[56] *Id.* at 1234-35 (Manion, J., concurring).

[57] 825 F. Supp. 1251 (E.D. Va. 1993).

[58] *Id.* at 1262-63.

[59] 790 F. Supp. 1197 (D. Conn. 1992).

[60] *Id.* at 1220. See also *Oxford House, Inc. v. City of St. Louis*, 843 F. Supp. 1556 (E.D. Mo. 1994) (public nature of variance process stigmatizes recovering alcoholics and addicts and increases chance of relapse).

[61] 37 F.3d 1230, 1234 (7th Cir. 1994) (*citing City of St. Louis*, 843 F. Supp. at 1570, 1582 (where the city routinely denied applications for variances or conditional uses if the neighbors opposed the application)).

[62] *See Oxford House, Inc. v. City of Virginia Beach*, 825 F. Supp. 1251, 1261-62 (E.D. Va. 1993) ("[U]ntil plaintiffs are denied a conditional use permit . . . plaintiffs' claims . . . [for] failure to make reasonable accommodation, are not ripe for adjudication").

[63] Irving J. Sloan, *Regulating Land Use: The Law of Zoning* 49-52 (1988).

[64] 825 F. Supp. at 1261.

[65] 819 F. Supp. 1168 (N.D.N.Y. 1993).

[66] *Id.* at 1177-78.

[67] 843 F. Supp. 1556 (E.D. Mo. 1994).

[68] *Id.* at 1581-82.

[69] 799 F. Supp. 450 (D.N.J. 1992).

[70] *Id.* at 462 n.25.

[71] *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1331 (D.N.J. 1991).

[72] 923 F.2d 91 (8th Cir. 1991).

[73] *Id.* at 94. In so doing, the court declined to apply heightened scrutiny because the handicapped are not a "suspect class." *Id.* (*citing City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446 (1975)). This application of an Equal Protection analysis to a class of persons protected by a federal statute was criticized by the Tenth Circuit in *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1503 (1995)).

[74] *Id.*

[75] 804 F. Supp. 683 (E.D. Pa. 1992), *aff'd*, 995 F.2d 217 (3d Cir. 1993).

[76] *Id.* at 693-700.

[77] *Id.* at 694 & n.4 (*citing* opinions of Maryland, Delaware, Kansas, and North Carolina attorneys general).

[78] 46 F.3d 1491, 1503 (1995).

[79] 42 U.S.C. § 3604(f)(9) (*cited in Bangerter*, 46 F.3d at 1503).

[80] *Bangerter*, 46 F.3d at 1503.

[81] 29 U.S.C. §§ 701-94.

[82] *E.g., Oxford House, Inc. v. City of Albany*, 819 F. Supp. 1179, 1186 (E.D.N.Y. 1993).

[83] *Edmonds*, 115 S. Ct. at 1781 (*quoting Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974)).

[84] 272 U.S. 365 (1926).

[85] *Id.* at 394.

[86] 838 F. Supp. 223 (E.D. Pa. 1993), *aff'd*, 30 F.3d 1488 (3d Cir. 1994).

[87] *Id.* at 228-29.

[88] *Parish of Jefferson v. Allied Health Care, Inc.*, 1992 WL 142574, *2 (E.D. La. 1992).

[89] 652 F.2d 454 (5th Cir. 1981).

[90] *Id.* at 457-58.

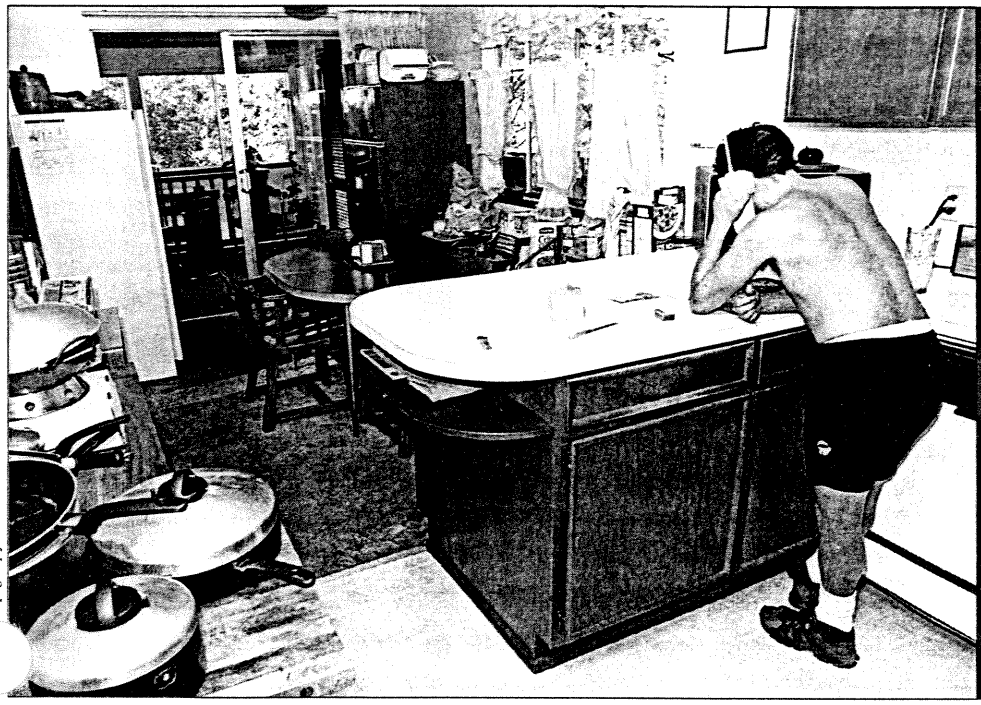
[91] 819 F. Supp. 1179 (E.D.N.Y. 1993).

Planning, October 1995, American Planning Association

Group Think

A recent Supreme Court ruling should make local governments reconsider their community residence regulations

By Daniel Lauber, AICP



The Oxford House in Edmonds, Washington, has been operating as a community residence since 1990—in violation of the city's zoning code. That code may not survive in the wake of a recent U.S. Supreme Court decision holding that the city cannot use its zoning definition of "family" to exclude group homes from residential areas. A lower court will decide whether the city has violated the federal Fair Housing Amendments Act.

is page by Jim Davidson

It's a rare day in May that the U.S. Supreme Court hears a zoning case, especially one about laws governing group homes. The Court's May 15 decision in *City of Edmonds v. Washington State Building Code Council* was the first such decision in 10 years. In its ruling, the Court brought into question the definition of "family" used in most zoning codes.

Many observers thought the battle over allowing group homes in residential districts was won with the 1985 decision in *City of Cleburne v. Cleburne Living Center*. The Supreme Court ruled then that the city had illegally denied the group home a special use permit to locate in a residential neighborhood and that decision makers could not base zoning choices on unfounded fears about group homes or their residents.

I wrote at the time (in "Mainstreaming Group Homes," December 1985) that the *Cleburne* decision "should change the way ost zoning ordinances treat group homes" nd "force local officials to confront the popular misconceptions about group homes and their residents that so frequently lead to stiff neighborhood opposition." I was wrong.

Cities throughout the country have continued to exclude community residences from single-family districts. The usual tactics are to adopt a definition of family that limits the number of unrelated individuals who can live together and to require a special use permit to locate in residential districts.

Advocates of community residences thought such exclusionary practices would cease in 1988, when Congress passed the Fair Housing Amendments Act, which requires communities to "make reasonable accommodations" in their regulations to enable people with disabilities to live in the community. The amendments appear to prohibit the use of special use permits and other land-use restrictions that, in the words of a House Judiciary Committee report, "have the effect of limiting the ability of [people with disabilities] to live in the residence of their choice in the community."

Seven years later, local governments are still trying to keep community residences out of single-family zones. Although 40 states have adopted statewide zoning regulations for group homes, their statutes cover only a small segment of the population protected by the FHAA, typically the elderly or people with developmental disabilities or mental illness. The state laws still allow local zoning codes to exclude group homes, halfway houses, and hospices for people with drug or alcohol addictions, HIV, or physical disabilities.

The *Edmonds* case

Most of the suits brought under the FHAA have focused on what constitutes a "reasonable accommodation." But that was not the issue before the Supreme Court in the *Edmonds* case.

Edmonds, a Seattle suburb, had been trying to shut down a residence occupied by Oxford House since 1990. Oxford House is a national organization that runs hundreds of group homes for recovering alcoholics and drug addicts. Each place typically houses 10 to 12 adults of the same sex. Residents may stay as long as they like, but they must run the house like a family—without staff. In 1990, the Edmonds zoning ordinance allowed no community residences whatsoever. After Oxford House moved into a single-family zone, the city amended its zoning

code to allow such residences only in ifamily districts.

. along the city claimed that Oxford House violated the zoning code's definition of family, which allowed no more than five unrelated individuals to live together in single-family districts. The city said its definition was exempt from the FHAA because it was one of the "reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling" that are outside the purview of the fair housing act.

Yet, as Brian Blaesser and I noted in APA's amicus brief in support of Oxford House, the act's legislative history makes it clear that Congress was referring to housing codes, which regulate the number of occupants in *all* dwelling units, based on health and safety concerns; it was not referring to a zoning code's definition of family, which merely regulates family composition. That point was noted by Justice Ruth Bader Ginsburg, who wrote the majority opinion in the *Edmonds* case.

The Court sent the case back for trial to decide whether the city's actions against Oxford House violated the FHAA and what reasonable accommodation would be required. A trial date has not yet been set.

It is vital that professionals who write zoning codes note how the Court arrived at its decision. Despite the city's attempt to keep the Court from considering the law's legislative history, the Court in fact relied on that history for its interpretation.

Sorting it out

At first glance, the growing number of lower court FHAA decisions on community residences seem contradictory. Some allow no special regulations, while others approve local licensing and spacing requirements. Most have invalidated requirements for special use permits; one has not. Everything falls into place, however, when the cases are divided into those involving a cap on the number of unrelated occupants and those that do not.

Decades ago, most zoning ordinances allowed any number of unrelated people to live together as long as they functioned as a single housekeeping unit. In the 1960s and '70s, many jurisdictions, often reacting to the perceived threat of communes, redefined "family" in their zoning codes to allow no more than four or five unrelated people to dwell together—or even none at all. The Supreme Court upheld these caps in *Village of Belle Terre v. Borass* in 1974.

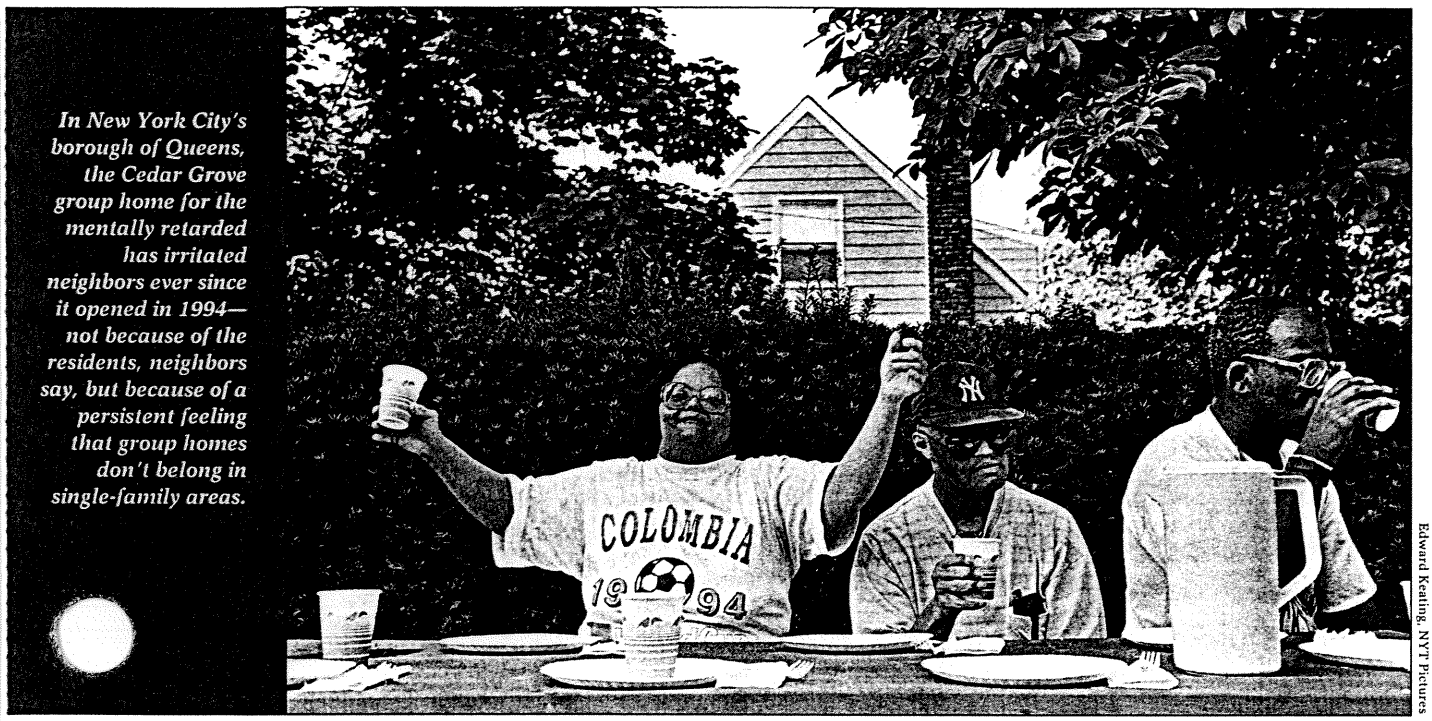
In their interpretations of the fair housing law, the courts are saying that, in communities without a cap, no additional zoning requirements may be imposed on community residences unless they also apply to all "families." That means no special use permits or spacing and licensing requirements for community residences in residential districts. Community residences must be permitted as of right in all residential districts.

The picture isn't as clear in communities with a cap. Most rulings strongly suggest that a jurisdiction cannot regulate community residences that comply with its definition of family. Generally, the courts have ruled that cities should make a reasonable accommodation in their zoning codes to enable the community residence to locate in all residential zoning districts—even if the number of occupants exceeds the cap. No court decision has ruled that capped zoning is illegal.

Lessons

Several principles have begun to emerge for cities with family caps. First, a city can accommodate community residences by simply not enforcing its definition of family. The courts agree that a reasonable accommodation is one that does not impose an undue burden on the city—and more than 50 studies show that community residences generate no adverse impacts on single-family districts if they are licensed and not clustered on a block. However, requiring a special use permit for group homes to locate in single-family districts is *not* a reasonable accommodation. The FHAA's legislative history, which guided the Supreme Court in the *Edmonds* case, expressly states that the law is intended to prohibit special use permits for group homes. Except for a bizarre 1994 decision by the Seventh Circuit U.S. Court of Appeals in *U.S. v. Village of Palatine*, the courts agree on this point.

Second, the court decisions strongly suggest that zoning restrictions on com-



In New York City's borough of Queens, the Cedar Grove group home for the mentally retarded has irritated neighbors ever since it opened in 1994—not because of the residents, neighbors say, but because of a persistent feeling that group homes don't belong in single-family areas.

Edward Keating, NYT Pictures

munity residences may be legal if the answer to all three of these questions is yes: Is the restriction intended to achieve a legitimate government purpose? Does it actually achieve that purpose? And is it the least drastic way to do so?

In Utah earlier this year, the 10th Circuit U.S. Court of Appeals said this a bit differently in *Bangerter v. Orem City Corporation*: "Restrictions that are narrowly tailored to the particular individuals affected could be acceptable under the FHAA if the benefits to the handicapped in their housing opportunities clearly outweigh whatever burden may result to them." That means, for instance, that cities that allow group homes as of right may require the residences—or their operators—to be licensed, since licensing helps prevent abuse of the vulnerable people who live there.

Ordinances may also require community residences to be located at least a block apart to help assure that two central purposes of a community residence—normalization and community integration—will not be hindered. Based on the research on community residences, it is hard to imagine any reason to impose a spacing distance greater than a typical city or suburban block, usually 660 feet.

Special cases

A special use permit should be available as a back up when a proposed group home does not meet an ordinance's licensing and spacing requirements. A group home denied a required state license would, of course, be ineligible for the special use permit. But in states that don't require licensing, permitting is a time to address questions usually resolved by licensing. Licensing assures that the group home operator and the staff are properly trained and meet minimum standards of care.

The scrutiny of a special use permit also is warranted when a group home seeks to locate within a block of another community residence. Spacing requirements have been upheld in several cases, including *Familystyle of St. Paul v. City of St. Paul,* where a group home operator had clustered 21 group homes housing 119 mentally ill individuals in a one-and-one-half block area.

Finally, special use permits may be warranted for halfway houses seeking to locate in single-family zones. They are less family-like than group homes, tenancy is less permanent, and they generally house many more people. But halfway houses should be allowed as of right in all multiple-family zones if they meet the licensing and spacing criteria.

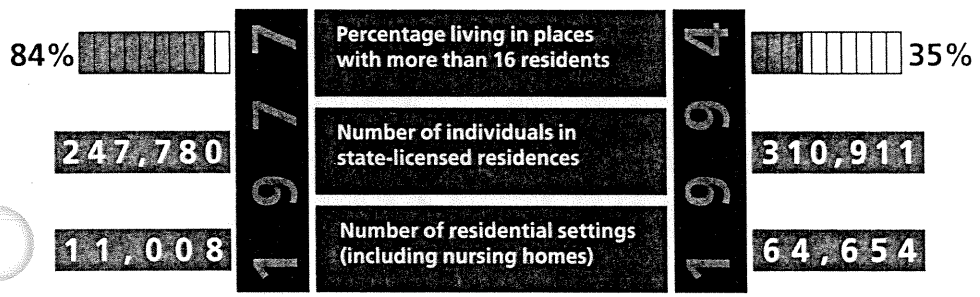
To survive a court challenge, any community that imposes a spacing or licensing requirement must lay a foundation for it with a legislative history that includes expert testimony establishing a rational and factual basis for the requirements.

Group residences are subject to the same housing code requirements as other residences, with limits on the number of occupants based on the number of square feet in each bedroom. But if public officials feel compelled to limit the number of people who can live in a community residence, they should use the zoning code to set a ceiling somewhere between 12 and 15. Beyond that range, the setting becomes institutional. Be aware that the courts have generally taken into account the number of residents needed for a community residence to succeed financially and therapeutically.

Will local and state governments adjust their zoning regulations to accommodate community residences in accord with the FHAA? After being so wrong about the Supreme Court's 1985 decision, I'm not going to make any predictions. But if they want to avoid being on the losing end of countless lawsuits, they would do well to change their ways.

Daniel Lauber, AICP, is president of Planning/Communications in River Forest, Illinois, and a former president of both APA and AICP. He has served as attorney or expert witness in numerous community residence zoning cases.

Figures compiled by the Research and Training Center on Community Living at the University of Minnesota document the nationwide trend to provide homelike settings for the mentally retarded and developmentally disabled. The center's report, Residential Services for Persons with Developmental Disabilities, *was published in June.*



Definitions

The term **community residence** includes a whole continuum of living arrangements for people with disabilities who are unable to live more independently. The most common is the **group home**, which offers a relatively permanent, family-like setting.

A less permanent and slightly less family-like living arrangement, the **halfway house** or **recovery community**, helps people recovering from drug or alcohol addictions adjust to a drug-free lifestyle. Nearly all halfway houses limit length of stay. Most halfway houses need 10 to 15 residents to succeed.

Resources

For a copy of APA's amicus curiae brief before the U.S. Supreme Court in the *Edmonds* case, contact Steve Cochran in APA's Washington office, 202-872-0611.

The legislative history of the Fair Housing Amendments Act of 1988 is contained in the *House Report No. 711, 100th Congress, Second Session,* reprinted on page 2173 of the *United States Code Congressional and Administrative News* (1988).

Summaries of studies on the impact of community residences appear in *The Effects of Group Homes on Neighboring Property* (1988), from the Mental Health Law Project, Suite 1212, 1101 15th St., N.W., Washington, DC 20005; 202-467-5730; $4 including postage.

A thorough discussion of group home zoning under the FHAA appears in the *Community Residence Location Planning Act Compliance Guidebook* (1990), available free from the Illinois Planning Council on Developmental Disabilities, 830 Spring St., Springfield, IL 62704; 217-782-9696.

APA sells two 20-minute videotapes about group homes. Order from APA's Planners Bookstore in Chicago: 312-431-9100; $19.95 each, $32 for both, plus $4.50 postage.

Submitted by Gordon Lewis Planning Consultant

[redacted]anning Commissioners Journal Article

Creating Vital Communities: Planning for Our Aging Society by Deborah A. Howe

[redacted]

[From Issue 7 of the PCJ, November/December 1992]

All of us experience the process of aging as individuals. We tiptoe through the house so as not to disturb our grandmother who is living in the dining room. A stroke-paralyzed father means a desperate search to find adequate nursing care. The neighbor needs assistance getting up her steps since she hurt herself in a fall. And our own physical limitations begin to affect our lives.

Most people approach these challenges with a survivalist attitude, taking one day at a time. What we fail to do is compile our collective experiences in order to take a hard look at why aging is so often frustrating and heartbreaking. If we did, we would discover that **many of the difficulties we face are caused by a built environment that poses innumerable obstacles to the continued independence of older adults**.

As individuals, we have a vested interest in eliminating these obstacles. As a society, our interest is just as compelling. Consider the following:

- One in eight Americans is above the age of 65. Within thirty years it will be almost one in five.
- The fastest growing age group are 85 and older -- 48 percent of those in this age group need functional assistance in daily living -- compared to 14 percent in the 65 to 74 age range.
- Only one in twenty adults 65 and older live in nursing homes and other institutions.
- In 1980, 39 percent of those 65 and older lived in the suburbs -- this represented an increase from 26 percent in 1960.

Sidebar: "Our Aging Population"

[redacted]

The aging of our society is occurring at a dramatic rate, and has major implications for planning. Average life expectancy in the United States has increased from 47 years in 1900, to 69.6 years in 1950, to 74.7 years in 1983.

As the chart below shows, the number of persons 65 years and older is expected to rapidly grow over the coming decades. More detailed information is contained in a useful pamphlet, A Profile of Older Americans - 1991, available from the American Association of Retired Persons, AARP Fulfillment, 601 E Street NW, Washington, DC 20049.

[Title of bar graph: Number of persons 65+ : 1900 to 2030.
Caption at bottom of graph: Note that increments in years on the vertical scale are uneven. Based on data from U.S. Bureau of the Census. Copyright 1992, American Association of Retired Persons. Reprinted with permission.]

The implications of these trends are profound. The proportional increase in older Americans will place considerable stress on family members, friends and neighbors who take on a care-giving role, but often need to balance this responsibility with their own careers and child rearing. It is not clear who will take care of the many seniors who cannot rely on this kind of assistance. Distant relatives will probably be called into service as will social service agencies. With fewer workers paying into the social security system, resources will be strapped.

Suburbs are notoriously dependent on the automobile for mobility. This combined with a preponderance of single family residences suggests that many older adults will have a difficult time adjusting to the aging process. In fact, older adults face a bleak future unless we begin reshaping our communities to be supportive of continued independence and well-being.

The Challenge for Planners

Planning for our aging society requires an understanding of the physical changes associated with the aging process and how these changes affect a person's ability to negotiate the built environment. For example, as one becomes older, the lens of the eye becomes less flexible. This loss of elasticity reduces the ability to see objects close at hand. In addition, increased sensitivity to glare can make it virtually impossible for an older person to see the steps in high gloss surfaces typical of shopping mall floors. Night driving is particularly difficult due to dim light, shadows, and glare. All of our other senses-- as well as our general physical capabilities -- are also affected by the aging process.

Perhaps the greatest challenge to planners is the fact that people are affected by aging in a variety of ways. Many very old people are quite capable of strenuous physical activity: witness an 87-year old I know who still goes mountain climbing! Others feel the physical changes of growing old at an earlier age, experiencing a variety of symptoms. The bottom line is that the environment must be designed in ways that accommodate people with a wide range of capabilities. In responding to one recognized need, it is also important to avoid creating problems for people with different limitations. For example, while a ramp may be essential for some to get into a building, the same ramp may present a problem to a person using a walker. For that

person, a series of steps deep enough for the walker is a better solution.

Emphasis also needs to be placed on the idea of developing linkages. **A "partially" accessible environment may well be totally inaccessible if key linkages are missing.** For example, a state of the art bathroom facility in a senior center will be of little value if a person in a wheelchair cannot get into the building because of a gravel-topped parking lot. In order to identify linkages, it is necessary to put oneself in the place of a person who will use the environment. One must be able to "see" the bumps in the sidewalk, feel the heaviness of the door, and understand the difficulty reading the bus schedule.

Planning for an aging society also involves reexamining some important aspects, such as housing and transportation, from the perspective of the older adult. See Sidebar, "Older Adults & Planning."

Housing

It is widely believed that when people need an increased level of care the best solution is to have them move out of their house and into a facility where they can receive this care. The reality, however, is that older people prefer to stay put. They'd rather "age in place" than go through the trauma and expense of a move.

Remaining in a traditional single family house can be hard, however, because of the difficulties and cost of maintenance, as well as the physical barriers for those with limited mobility and strength. The creation of accessory apartments and the provision of shared housing are two ways of making use of excess space and generating income and/or services in lieu of rent. *[Editor's Note: For more on accessory apartments, see Patrick Hare's article "Accessory Apartments for Today's Communities" in Issue 1 of the Journal. For more on shared housing, see Patricia Pollak's article " 'Family' Definitions & Shared Housing" in Issue 2 of the Journal].*

But perhaps even more important is ensuring that houses are designed -- in the first place -- so that they can be used by those with physical limitations. This means doing things like minimizing the use of steps, incorporating reinforcement in bathroom walls to accommodate future installation of grab bars, allowing for a bedroom and full bath on the first floor, and making doorways wide enough for wheel chairs.

Older people who must move are often constrained by the lack of housing alternatives within their community. When such housing is found, it is frequently located on "left over" land at the edge of town, far from the services that seniors need and desire. **Senior housing should be sited in the heart of a community within walking distance of stores, medical facilities, and other services such as libraries, banks, and senior centers.** See Sidebar, "Adapting Schools & Historic Buildings for Senior Housing."

The character of the neighborhood should be considered, with specific attention to the crime rate and noise. Site planning should address the needs of an older population. Pathways should be made with non-slip and non-glare materials and

ramps should be provided when the grade is greater than five percent (though the ramps themselves should have less than a five percent grade). Supplemental ground level lighting will increase visibility on pathways and steps. Benches should be placed at right angles so that people are not forced to turn uncomfortably in order to carry on a conversation.

Senior housing projects are often built for specific target groups such as those with limited medical needs. Experience has shown that people are reluctant to move as their needs change. As a consequence, many of these projects are facing expensive adaptations. This indicates that the aging in place phenomenon is not limited to single family housing. Thus, it is also important to incorporate the notion of flexibility in special needs housing. This might take the form of designating a certain area for expanded parking to accommodate a potential increase in the number of professional caregivers and ensuring that the design of the building and its grounds can be modified for wheelchair users.

Transportation

Mobility is critical to the continued independence of older adults. Most are dependent on the automobile, and are reluctant to use public transit for a variety of reasons, including poor scheduling, uncomfortable and unsafe transit stops, and difficulties in carrying large items aboard. Some older people simply cannot sit for the duration of a transit run.

We are faced with the reality that despite planners' best efforts, most older people will continue to rely on their cars. Recognizing this, it is important to find ways to make driving safer. This includes repainting edgelines, improving signage through increased luminance, reducing visual clutter, and better identifying cross streets. Increased use of left turn lanes would also help many older drivers, given their slower reaction times. Similarly, enlarging sight distance triangles at intersections improves visibility, thereby giving older drivers more time to make a decision when to turn into the cross street.

Decreased reliance on the car would be encouraged if there were a mix of land uses in a neighborhood. Just as important is the adequacy of the overall pedestrian system. This involves issues of safety and comfort. Older people need benches with backs and arms and space underneath to position the feet to help in getting up. Clean bathroom facilities and adequate lighting are also important. Pathways should be shaded and protected from excessive wind and cracks in the pavement repaired. Crosswalk signals should provide enough time for a safe crossing. Wide streets and highways can be provided with pedestrian refuge areas in the median. *[Editor's Note: Richard Untermann discussed ways of improving our streets for pedestrians in his article, "Taming the Automobile," in Issue 1 of the Journal].*

Making It Happen

Communities that are committed to addressing the needs of older people quickly realize that there need to be a significant number of changes in order to create a more supportive physical environment. It is impossible to make all these changes at once. What is needed is an incremental approach that takes advantage of opportunities as they arise.

Land use changes and development proposals that require permits are an appropriate time to require age-sensitive plan modifications. Public improvements can be directed toward removing barriers and providing amenities. Education can be an important means for convincing land owners to make improvements on their own initiative, while consumers need educational opportunities to help them make informed choices as they address problems of aging in themselves or as caregivers.

Summing Up:

Planning for an aging society means planning for people. It means recognizing the diversity within our population and facilitating the development of a built environment that accommodates rather than confronts this diversity. **Keeping in mind the needs of older Americans will help create vital communities that are good places in which to live and grow old.**

Deborah Howe is an Associate Professor at Portland State University. Deborah has a longstanding interest in and involvement with aging issues. She is also co-editor of an upcoming book on the Oregon planning system titled "Planning the Oregon Way: A Twenty Year Evaluation." According to Deborah, the book might even interest those of us who do not live in Oregon. Before joining the faculty at Portland State in 1985, Deborah worked as a planner for Dutchess County, New York.

Additional Sidebars to Article:

Older Adults & Planning

There is no better way to ensure that the concerns of older adults are met -- and that local plans reflect their needs and perspectives -- than by having them actively participate in the local planning process. This will require scheduling meetings during the day so that night time travel can be avoided and choosing locations that are accessible.

Sturdy chairs with arm rests and an adequately functioning sound system are a must. Handouts should be legible. Meetings should be limited in length to 1 1/2 to 2 hours with breaks or explicit freedom to move about during the meeting. An orientation to the facility should be included in the opening remarks. Of perhaps greatest importance is a relevant, interesting agenda that addresses issues that are of concern to seniors. More ideas are set out in the resource paper, The Participation of Older Adults in Public Meetings. See the Resources sidebar for information on ordering this paper.

Some communities have made strong efforts to involve older people. For example, the master plan for the Kensington-Wheaton area of Maryland contains a subsection focused on planning issues of especial interest to older residents, such as: improving pedestrian transportation (better walk signals; walking paths separated from bike paths); encouraging more senior housing; and

dealing with aging in single-family homes. The plan is available by contacting Dave Hudgel at: (301) 495-4610 (there is a $ charge).

Editor's Note:
Adapting Schools & Historic Buildings for Senior Housing

It is also worth noting that many older historic buildings, as well as unneeded school buildings, can be converted into senior housing. One of the benefits is that these buildings are often located in central areas, within walking distance of the kind of services Deborah Howe mentions. Retrofitting these buildings also makes sense in terms of historic preservation -- and can be less expensive than building new high-rise housing.

For two good short articles, see "Old Buildings Come Alive," by Larry McNickle and Beverly Deacon (giving examples of historic preservation and senior housing) and Kirk Noyes' "Surplus Schools Can Serve the Community." Both articles can be found in *Aging Magazine*, No. 356 (1987), a publication of the United States Dept. of Health & Human Services.

Thanksgiving Dinner on the Moon
by Perry Norton

My community is clearly in that "greying" category of suburban towns. We have one senior housing facility (near "downtown") but many more seniors, such as ourselves, are long term empty nesters, living in houses which could easily be converted to two-family -- and the first floor easily remodeled to remove barriers. Having a second family in the house would increase the security of the premises and, of great importance, provide a rental income that would go a long way to meet property taxes. Like many people we're in that tenuous position of having fixed incomes, in the face of rising costs. A no win situation.

The chances of our being allowed to convert our property to a two-family home are as remote as having next Thanksgiving Dinner on the Moon. What we have in this town is a "perception" barrier. It's almost a myth. It is certainly a deeply engrained image of single-family detached -- period.

I'm getting carried away here. The point is that we have a community that is not committed to addressing the needs of old people. So while I say Amen to all of Professor Howe's points, we're not at that essential plateau upon which to build the new day. Alas.

[Editor's Note: Perry Norton, who authored the "Insights" column in the Journal's November/December 1991 issue, will -- from time to time -- provide you with his perspectives].

Resources:

A series of resource papers for planners covering a wide range of aging issues is available from the Institute on Aging, Portland State University, P.O. Box 751, Portland, OR 97207; (503) 725-3952 ($15 cost). Among the topics covered are: the demographics of aging; physical changes with age; aging and single-family residences; site planning; transportation and mobility; and the participation of older adults in public meetings. The Institute on Aging also has available for rental or purchase a short videotape titled "Livable Environments for Older People: New Challenges for the Planning Profession." The video provides an overview of the aging process and how people adapt to the environment; demographic changes; and the implications of aging for housing and development.

Two useful publications that can provide you with more detailed information on how housing can be designed to maximize its adaptability are: Adaptable Housing, available for $4 from HUD User, 1-800-245-2691, and The Accessible Housing Design File, published by Van Nostrand Reinhold, 1-800-926-2665 ($45 cost). Both of these publications were prepared by Barrier Free Environments, Inc., a private consulting firm based in Raleigh, North Carolina, that focuses on issues involving accessible building design. They can be reached at: (919) 782-7823.

For detailed information on improving mobility and safety for older drivers, a good resource is Transportation in an Aging Society, Volume 1 (Special Report 218), a 1988 report by the Transportation Research Board (part of the National Academy of Science). It can be ordered by calling the Board at: (202) 334-2936 ($18 cost).

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Submitted by Gordon Lewis, Planning Consultant

Planning Commissioners Journal Article

The Effective Planning Commissioner:
Is Your Community Being Invaded by NIMBYs?
by Elaine Cogan

[From Issue 23 of the PCJ, Summer 1996]

NIMBYs (Not in my Backyard). They're either coming to your community or already there -- the self-annointed protectors of (check one or more) their neighborhoods, the community, the public good, or their own self-interest. Many areas suffer from the added infestation of **NIMEYs** -- timid public officials who are heard to say, usually privately, "Not in my Election Year." Faced with a potentially controversial issue such as multi-family housing, what's a conscientious planning commission to do? First, try not to panic. Second, consider these strategies.

Move decisively to defuse fiction, gossip, and innuendo. Be aware of issues that may inflame your particular community and take the initiative to provide the facts frankly and clearly before the ugly rumors get around. Why is the planning board considering multi-family housing? Is there really a need? Just who are "those people" who will live there? What will the development look like?

In most cases, when the facts are known, people will find that the likely inhabitants are not the terrible creatures they may have envisioned, but friends and neighbors more like themselves who cannot afford or do not want single residences. Fears about what the project will look like can be allayed by good renderings or sketches. This assumes, of course, that you have a supportable project.

Know the opposition. Who are the leaders? What are their concerns? Are they the traditional naysayers to all planning or people opposed just to this project? By knowing who they are and what they want you can seek possible areas of mutual agreement and isolate the few issues on which there are truly opposite views.

Be frank and open at all times. Many good projects go down in blazing defeat because the proponents are so frightened of the opposition that they fall into the trap of holding closed-door meetings or making "secret" deals. As a planning commission, it is especially inappropriate to engage in such behind-the-scenes maneuvering.

Make sure all reports and notices are in easy-to-understand words and phrases. Citizens are rightly suspicious of technical reports heavily laden with jargon only a planner or engineer can understand. Likewise, too many notices of public meetings or actions meet all the legal qualifications but do not describe the issues simply and clearly. Put them to the citizen-on-the-street test. Would you have understood them before you became such an involved planning commissioner? Would your mother-in-law understand them now? And provide translations if you have non-English speaking populations.

Offer various opportunities for public input and comment. Relatively few people are comfortable making speeches or giving oral testimony. Moreover, meetings can easily deteriorate into shouting matches if that is the only avenue by which people can express themselves. Design your public meetings creatively so that participants can look at exhibits; talk in small groups to each other, staff, and planning commissioners; and provide written comment. Avoid any opportunity for a few to grandstand.

Keep a perspective. After a barrage of angry phone calls and letters, it may seem that the project is opposed by everyone in the community. This is seldom the case and more often, the work of a vocal and clever minority. In the case of multi-family housing, there should be many people who will support a well-conceived plan. Some may be influenced by the idea of fairness, others by the need for diversity. Singles ... empty-nesters ... business people. If you provide adequate information to a broad spectrum of the citizenry, leaders willing to look at all sides of the issue are likely to emerge.

Be willing to compromise. Opponents are seldom all wrong. Perhaps the scale of development really is not appropriate for the neighborhood, or it may cause an unwanted level of traffic congestion. Find ways to meet reasonable objections and you not only are likely to have a better final project, but you will isolate the few true NIMBYs who are never satisfied.

Reach your final decision fairly and stick with it. If you have followed a reasonable and open process, there may still be people who disagree with your final determination, but they will know how you got there and respect you for it. They can always appeal your decision, but neither planning nor the planning commission will have been tarnished by the process.

Elaine Cogan, a partner in Cogan Owens Cogan planning and communications consultants in Portland, Oregon, has designed and facilitated hundreds of community decision-making processes on controversial issues. She shares some of her secrets in her book, Successful Public Meetings, available at bookstores and from the American Planning Association. Elaine's column, "The Effective Planning Commissioner," appears in each issue of the PCJ. Take a look at a list of all of Elaine's past columns for the PCJ.

Sidebars:

On-Line Comments:

"Ms. Cogan's article addresses one side of the issue. My experience has been that staff and commissioners do not or can not take the time to fully investigate the impact that changing the density or character of an area has on the two most important, yet related, issues all communities face: quality of life and protection of investment. Whether it is commercial development, multi-family or road construction, they must consider the consequences of creating an atmosphere of distrust. I have seen local neighborhoods go from residential to trailer park without due consideration to schools, traffic, noise or crime. ...

A long range plan is a very useful tool when it is well conceived and followed. It must be public knowledge in the community. Citizens need an opportunity to adjust to a new view. I believe the attitude of "not in my backyard" indicates a city policy poorly publicized and poorly implemented. Isn't the definition of "planning" to determine the course of the future? If that is true, then drastically changing, without warning, the way the citizens live and work means somebody failed to plan."

Lisabeth Banks, Gallatin, TN

"Nice article and good tips. An added thought is that planning staffers are sometimes so professionally tuned that they use jargon or planning terms that are red flags to those who fear the worst. "Multi-family housing" is an example. The staff of one southern city that is a client of mine was experiencing a most unexpected level of NIMBY for a proposed multi-family development. In listening to their woes, I asked about the scale of it, how multi- is it? Duplexes, they answered. You are kidding. You have been calling them multi-family? Er, yes. Do you know the images 'multi-family' sends? Er, ...guess we never thought about it.' "

Mary C. Means, Alexandria, VA

Some Observations on NIMBY-ism by Perry Norton

Elaine Cogan regularly (thank goodness) taps on the blackboard, patiently calling to our attention a matter of concern to all who must wrestle with decisions affecting the use of land, and the built environment. In this issue she addresses a major problem of communications, caught up by that colorful word, NIMBY.

There is a slant to her observations, to which I, as a planner with nearly 50 years of experience, subscribe -- to wit, that opposition to the proposals of planners (professionals and commissioners alike) is largely a function of our failure to establish effective communications. As planners, we are not self-serving -- our concerns are for the long range good of the whole community. That, at least, is the "meat and potatoes" diet on which I was fed as I went through a professional planning degree program and then to work in the planning field.

But it may be worth noting that "nimbyism" is a useful coinage for an ancient verity -- that people are suspicious of change.

People prefer the known to the unknown, because they know how to respond to the known. And in many ways we're all "NIMBYs." We all prefer the familiar to the new, especially when changes are proposed that come close to our personal thresholds. Many nimbyites will protest that what is proposed is, indeed, a good idea. Our community needs housing, they will agree, for all sorts of special and critical purposes, but why choose "our" place, which is stable? Why not do "it" over there? It is exactly this "yes, but" twist that often proves to be most frustrating.

My own counsel would be: spend more time asking than telling. Get more people involved in looking at and articulating a "problem" -- feeling it, wanting to do something about it. We don't know all the answers.

Retired planner and teacher Perry Norton periodically provides his observations on articles appearing in the Planning Commissioners Journal.

Editor's Note:
That's Some LULU: Going BANANAs About NIMBYs

While Elaine Cogan focuses on NIMBYs, don't forget its siblings: LULUs and BANANAs. So that you're current with planning jargon, LULU stands for "locally unwanted land use," while BANANA stands for "build abolutely nothing anywhere near anyone." So feel free to spice up your conversation when you get tired of talking about NIMBYs!

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