Rational and Legal Local Zoning Under the Fair Housing Act for Community Residences for People With Disabilities

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www.lorman.com - July 2019

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Rational and Legal Local Zoning Under the Fair Housing Act for Community Residences for People With Disabilities

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

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

Community residences seek to achieve "normalization" of their residents and incorporate them into the social fabric of the surrounding community. States license most, but not all community residences to assure that residents receive proper support and care.

Guiding Principles

- Community residences are a residential use of land.
- As long as they are not clustered together on a block, community residences have no effect on the value of neighboring properties as found by more than 50 scientific studies.
- Unclustered, licensed community residences have no effect on neighborhood safety as found by every scientific study.
- Other studies have found that unclustered group homes, sober homes, and small halfway houses for persons with disabilities do not generate undue amounts of traffic, noise, parking demand, or any other adverse impacts.
- To achieve their core goals of normalization and community integration, community residences should be scattered throughout all residential districts rather than concentrated in any neighborhood or clustered on any block.
- The Fair Housing Amendments Act of 1988 requires local government to make a "reasonable accommodation" in their laws and policies to enable people with disabilities to live in the community of their choice — which means allowing community residences, with minimal necessary restrictions, for those who need to live in one.

Rational and Legal Zoning Protections for Community Residences

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

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

When a proposed community residence for people with disabilities complies with a jurisdiction's definition of "family," it must be allowed as of right (a permitted use) in all residential districts under the definition of "family." So if the zoning definition of "family" allows up to 4 unrelated people to live together, then a community residence for up to 4 people with disabilities complies with that definition and *must be allowed everywhere a family can reside without any additional* zoning *restrictions.* Any additional zoning requirement placed on such a home would be discriminatory on its face. A jurisdiction that excludes community residences for people with disabilities from its zoning code definition of "family" is blatantly engaged in facial discrimination under the Fair Housing Act.

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

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

The requirement to make a "reasonable accommodation" kicks in when a proposed community residence for people with disabilities would house more unrelated people than the zoning code's definition of "family" allows. So if an operator wished to open a group home for 7 people with disabilities when the definition of "family" caps the number of related residents at 4, the city would have to make a "reasonable accommodation" to allow this group home for 7 residents.

While the case law is extremely fact–specific, court decisions collectively suggest that any reasonable accommodation must meet these three tests:

- The proposed zoning provision must be *intended to achieve a legitimate government interest*
- The proposed zoning provision must *actually achieve that legitimate government interest*
- The proposed zoning provision must be the *least drastic means necessary to achieve that legitimate government interest*

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

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

- **Is located more than 660 linear feet from the property line of the proposed home to the nearest property line of the closest existing community residence, and**
- **Is eligible for or has received the appropriate license or certification from the state, the local county, local city, or federal government.**

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

It may be legal to require a special use permit in single–family districts for community residences that are relatively transient, limiting the length of residency to a few weeks or months, i,.e. halfway houses. A city cannot, however, treat community residences for people with certain disabilities differently than those for other disabilities. A city cannot pick and choose which are disabilities allowed in a community residence.

Regulating the number of occupants of a community residence

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

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

A zoning ordinance, however, can set a rational limit on the total number of people who live in a community residence based on emulating a family. A community residence with 10 to 12 residents likely can emulate a family. But it is very unlikely that the home with, say, 15 residents can actually emulate a family. An administrative reasonable accommodation process should be established to give operators the opportunity to show whether such a home could emulate a family.

Further reading

This document is just a summary. It doesn't even address zoning for recovery communities. This area of law is extremely nuanced and complex. Please visit http://www.grouphomes.law to see a key law review article that explains these limitations on zoning, research on the impacts of community residences on the surrounding neighborhood, and much more.

Consult with a qualified attorney and city planner. This document does *not* constitute legal advice.
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Differences Between Community Residences, Institutional Uses, and Rooming or Boarding Houses			
Characteristic	**Community Residence for People With Disabilities**	**Institutional Uses** (Includes Nursing Homes)	**Rooming or Boarding House**
Proper Environment	Residential Home–like	Institutional Hospital–like	Residential Hotel–like
Appropriate Zoning Districts	Single–family residential Multiple–family in limited instances	Commercial, medical, institutional	Multiple–family residential
Relationship of Residents	Single housekeeping unit emulating a biological family Sibling–like relationships essential Bonding between residents highly desirable	Relationships not planned nor essential Incidental friendships may develop	No dependency on other residents Incidental friendships may develop Relationships not planned nor essential
Supervision	Staff in the role of the parents; officers in self–governed homes in role of parents	Total staff supervision	Landlord–tenant relationship
Values Fostered	Family values	None	None
Purpose	Achieve normalization and community integration Habilitation or rehabilitation	No effort to achieve normalization or community integration	No effort to achieve normalization, community integration, habilitation or rehabilitation
Relationship to Neighbors On the Block	Interaction with nondisabled neighbors is an essential component of normalization and community integration; neighbors without disabilities serve as role models to foster normalization and community integration	Interaction with neighbors not facilitated; use is largely self–contained. Neighbors have no role related to the occupants of the institutional use	Interaction with neighbors is hit or miss
Residential Integration	Integration with the surrounding community is essential in contrast to the segregation of living in an institution surrounded by people with the same disability	Essentially segregated from the surrounding community such that immediate neighbors are people with the same disability	Not applicable

Differences Between Community Residences, Institutional Uses, and Rooming or Boarding Houses			
Characteristic	**Community Residence for People With Disabilities**	**Institutional Uses** (Includes Nursing Homes)	**Rooming or Boarding House**
Primary Functions	Emulate a biological family Provides support in a family–like residential setting; residents dependent on each other like in a biological family Share family and household tasks Educate residents in areas in which parents normally educate their children: Personal health and hygiene Eating habits Dressing/clothing care Household duties and chores House maintenance House safety Developing social and interpersonal skills Developing shopping skills Developing public behavior skills Developing recreational skills Using public transportation Use and value of money Using public facilities (stores, restaurants, theaters, recreational facilities, banks)	Provide medical treatment and institutional care No family–like living; not a residential nature No family tasks; patients are cared for No educational role	Lodging for unrelated individuals Residents are completely independent of each other Residents do not share household tasks; each boarder functions as an individual; no attempt to emulate a biological family No educational role

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