American Planning Association

Making Great Communities Happen

Policy Guide on Community Residences

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Municipalities and counties throughout the nation continue to use zoning to exclude community residences from the single-family residential districts despite 25 years of planning standards[1] and the vast majority of court decisions[2] that recognize community residences for people with disabilities as a residential use. Misconceptions about their nature and impacts abound although there is a wealth of scientific evidence that community residences for people with disabilities generate no adverse impacts on the surrounding community and function as residential uses. More recently the Fair Housing Amendments Act of 1988[3] prohibited zoning regulations of community residences that are based on unfounded myths and fears about the residents, and appeared to explicitly disallow the use of special use permits as the primary means of regulating community residences. Yet this misclassification and exclusion continues unabated throughout most of the nation.

During the 1970s and 1980s, every state, as well as the federal government, started to reshape its policies toward people with severe disabilities. States recognized that warehousing people with disabilities in institutions was not only extremely costly, but also ineffective. A large proportion of those who were institutionalized could live in much less restrictive environments such as a familylike environment in a house or apartment surrounded by other residential uses. They did not require the high level of care furnished by an institution. Overwhelming evidence showed that allowing individuals with disabilities to live in a familylike setting in the community in a community residence was not only much less expensive than consigning them to institutions, but also substantially more effective. In a familylike setting, people with disabilities could learn the life skills we teach our own children on a daily basis. Living in a community residence, namely a group home or halfway house, fosters normalization in which these individuals learn to lead as normal a life as possible. As the courts have noted time and again, community residences are the very opposite of an institution in terms of how they function and perform, and in terms of how they use the land. To achieve a familylike setting, these community residences need to be located in the same residential zoning districts as dwellings occupied by biological families.

Definitions

Because there is so much misunderstanding of this subject, it is essential to first define several terms.

Group Home

A dwelling unit occupied as a single housekeeping unit in a familylike environment by up to approximately 12 to 15 persons with disabilities plus support staff. Residents are supervised by a sponsoring entity or its staff which furnishes habilitative services to the group home residents. A group home is owned or operated under the auspices of a nonprofit association, private care provider, government agency, or other legal entity, other than the residents themselves or their parents or other individuals who are their legal guardians. Interrelationships between residents are an essential component of a group home. A group home imposes no time limit on how long an individual can reside in the group home. A group home is a relatively permanent living arrangement where tenancy is measured in years.

The group home constitutes a *family, a single housekeeping unit* where residents share responsibilities, meals, and recreational activities as in any family. The intention is for group home residents, like members of a biological family, to develop ties in the community. Like people without disabilities, these individuals attend schools, work, and may receive other support services in the community. The group home staff is specially trained to help the residents achieve the goals of independence, productivity, and integration into the community. Together, the staff and residents constitute a *functional family*.[4] The group home's staff teaches the residents with disabilities the same life activities taught in conventional homes. They learn personal hygiene; shopping cleaning, laundry, and recreational skills; how to handle money; how to take public transportation; how to use community facilities. They learn how to live as a family. *The group home fosters the very same family values our most exclusive residential zoning districts advance.*

The primary purpose of the group home is to provide a familylike setting with ongoing supervision and support for persons unable to live independently in the community. It is *not a clinic where treatment is the principal or essential service provided*. A treatment regime may be incorporated into the daily routine of persons with disabilities wherever they may live, whether with their families, in an institution, or in a group home. So, just like the person with a disability who lives with her family, the group home resident may have a daily habilitation regime to follow. *Any treatment received at home is incidental to the group home's primary purpose.*[5]

Residency in a group home is long term relatively permanent and measured in years, not months or weeks. There is no limit on how long an individual can live in a group home. A group home can house people with developmental disabilities (mental retardation, autism, etc.), mental illness, physical disabilities, or addiction to drugs or alcohol. When the residents have a drug or alcohol addiction, the group home is called a recovery home.

The number of individuals who live in a group home varies from just two or three to as many as 12 to 15, or in rare cases as many as 20. For people with developmental disabilities, it is felt that smaller homes are more productive. Group homes for people with mental illness tend to house six to 15 residents for both therapeutic and financial reasons. Group homes for the frail elderly can require as many as 20 residents to be financially and therapeutically sound. The maximum number of residents is determined by applying a jurisdictions housing code for residential uses to the property.

Some group home residents graduate from this type of community living arrangement to live on their own with only occasional visits from professional staff. Most, however, will live out their lives in a group home.

Recovery homes for people with drug or alcohol addictions are another type of group home. Occupants typically sign an annual lease and can live in a recovery home for years.

A singlefamily residential district is essential for most group homes to succeed, although for some, a multiplefamily district can work. Group home operators want to establish group homes in the same sort of pleasant, safe neighborhoods you and I strive to live in, for the same reasons we seek them.

Halfway house or recovery community

A temporary residential living arrangement for persons leaving an institutional setting and in need of a supportive living arrangement in order to readjust to living outside the institution. These are persons who are receiving therapy and counseling from support staff who are present when residents are present, for the following purposes: (a) to help them recuperate from the effects of drug or alcohol addiction (a disability); (b) to help them reenter society while housed under supervision while under the constraints of alternatives to imprisonment including, but not limited to, prerelease, work release, or probationary programs (not a disability); or (c) to help persons with family or school adjustment problems that require specialized attention and care in order to achieve personal independence (not a disability). Interrelationships between residents is an essential component of a halfway house. Residency is limited to a specific number of weeks or months.

People with drug or alcohol addictions often need to live in a halfway house as a transitional living arrangement before they can live more independently in the community or return to their homes. The key for them is to learn to abstain completely from using drugs or alcohol. Treatment usually consists of an initial withdrawal period followed by intensive counseling and support both through treatment programs and through residential living arrangements. Such community residences are based on the group home model with some significant differences with implications for proper zoning regulation.

The halfway house or recovery community helps people with drug or alcohol addictions readjust to a normal life before moving out on their own. A person with an addiction is admitted only after completing detoxification. The halfway house staff helps residents adjust to a drugfree lifestyle, learn how to take control of their lives, and learn how to live without drugs. Nearly all halfway houses place a limit, measured in months, how long someone can live there. Unlike a group home, the halfway house aims to place all its residents into independent living situations upon graduation. For both therapeutic and financial reasons, most halfway houses need 10 to 15 residents to be successful. Because the number of residents in a halfway house is greater than in a group home and their length of tenancy shorter, halfway houses more closely resemble multiplefamily housing than singlefamily residences, although, like group homes, they work best in singlefamily neighborhoods.[6]

Disability

A physical or mental impairment that substantially limits one or more of a persons major life activities, impairs their ability to live independently, or a record of having such an impairment, or being regarded as having such an impairment. Prison preparolees, for example, do not, as a class, fit this definition.

Most people with disabilities do not require a community residence to live in the community. More than 80 percent of them live with their families or on their own with some support services.[7] Still, in 1990 over 3.9 million Americans had disabilities so severe that they were prevented from working at a job or doing housework or they required assistance with daily tasks like getting in and out of bed, dressing, bathing, shopping, or light housework, or had a developmental disability, Alzheimers disease, or senility making many of them appropriate candidates to dwell in a community residence.[8]

This set of policy guidelines of the American Planning Association does not advocate for or against community residences, the broad term that includes group homes and halfway houses. It does not include hospices, emergency shelters, residences for victims of abuse, or other group living arrangements.[9] This policy guideline seeks to establish the maximum level of zoning regulation permissible for community residences for people with disabilities in accord with sound planning principles, the Fair Housing Amendments Act of 1988 (FHAA), and case law. These policy guidelines do not suggest that any community or state with less restrictive zoning provisions should make their zoning provisions more restrictive.

Exclusionary zoning practices

Limiting the number of unrelated individuals who can dwell together has been one of the most commonly used zoning techniques to exclude community residences from singlefamily districts.

The definition of family in most zoning codes allow no more than three, four, or five unrelated individuals to occupy a dwelling unit. Some allow no unrelated people to live together, even as roommates.[10] The U.S. Supreme Court upheld these restrictive definitions in *Village of Belle Terre v. Borass*[11]. Since most community residences need six or more residents to succeed therapeutically and financially, this restriction has effectively blocked most community residences from locating in the residential areas in which they need to locate.

Another common technique has been to require a special use permit for a community residence to locate in a residential district.[12] At a public hearing, an applicant must demonstrate that its proposed land use meets the criteria for granting a special use permit. In the case of community residences, neighbors commonly claim that the proposed community residence will reduce property values and introduce crime and congestion to the neighborhood. Many opponents assert that the

community residence is a business rather than a dwelling. In many allwhite communities, opposition is driven by a fear of racial integration, namely that group home residents and staff may be of African ancestry. All of these objections reflect false impressions of community residences and their occupants.

City officials quite often yield to objections by neighbors and reject the application of the community residence even when the applicant demonstrates it meets the criteria for awarding the special use permit. This was the scenario that led to the U.S. Supreme Courts 1985 decision in *City of Cleburne v. Cleburne Living Center* where the Court ruled the city had illegally denied the group homes special use permit based on the neighbors unfounded fears and myths about the group home and its residents.[13]

This technique is extremely effective at limiting the housing opportunities for people with disabilities who need a community residence to live in. When a special use permit is required, the buyer usually seeks to purchase the property with a clause that makes the sale contingent on receiving the special use permit. That sort of provision is quite common in the sale of commercial property, but extremely rare in the sale of owneroccupied residential property. Few homeowners can afford to sell their houses subject such a contingency clause. Most homeowners need the proceeds from the sale of their current house to buy a new one. Consequently, few homeowners are willing to sell to a group home operator who insists on this kind of contingency clause and few group home operators can afford to take the risk that their special use permit application will be denied and theyll be stuck with a house they cannot use as a group home.

In 1974 the American Society of Planning Officials (one of APAs predecessor organizations) surveyed 400 U.S. cities and found that the zoning ordinances of fewer than 25 percent provided specifically for community residences. Of those that mentioned group homes or halfway houses, the vast majority either prohibited them from singlefamily districts or required them to obtain a special use permit to locate in such residential zones.[14]

Ten years later, the zoning picture for community residences was still grim. The General Accounting Office found that 65.5 percent of the time local zoning ordinances or practices prevented or made it difficult for group homes for people with developmental disabilities to locate in the singlefamily districts their operators preferred.[15] Subsequent recent research prior to adoption of the Fair Housing Amendments Act of 1988 found that little had changed.[16]

Role of the Fair Housing Amendments Act of 1988

Rather than simply add people with disabilities to the list of protected classes under the Fair Housing Act, Congress added a new section to the act that declared discrimination includes:

a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.[17]

Much of the FHAA litigation has revolved around the issue of reasonable accommodation. Given this statutory language, it is hard to see how anybody can contend that the FHAA requires that community residences be treated the *exactly the same* as singlefamily residences. The statute requires only that a reasonable accommodation be made in a citys zoning ordinance to give people with disabilities an equal opportunity to use and enjoy a dwelling. This does not mean that they have a right to dwellings they cannot afford to buy or rent. It does not mean that a city must change its zoning to allow communes, boarding houses, or fraternities in its most exclusive singlefamily districts.

But this provision does mean that a city is required to bend its zoning rules to enable *members of the protected class,* many of whom need a community residence living arrangement to live outside an institution, to establish such residences in singlefamily and multiplefamily zoning districts. And it means that *a city cannot impose additional barriers to community residences for people with disabilities.*

Consequently, if a zoning ordinance defines family as any number of unrelated persons living together as a singlehousekeeping unit, the locality cannot impose any additional restrictions on community residences. A community residence which, of course, constitutes a singlehousekeeping unit with 12 unrelated residents complies with this definition of family.

However, if a zoning ordinance places a cap on the number of unrelated people who can dwell together, the FHAA requires the local ordinance to make a reasonable accommodation to enable community residences for people with disabilities to locate in every zoning district where residences are allowed. While the FHAA does not mention zoning or group homes, its legislative history provides a clear picture of what the FHAA sought to accomplish:

These new subsections would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such means as the enactment or imposition of health, safety or landuse requirements on congregate living arrangements among nonrelated persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities.

The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. *The Act is intended to prohibit the application of special requirements through landuse regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community*.[18] [emphasis added]

The legislative history goes on to suggest that restrictions on community residences that are based on fact, not fiction, may be legal. The paragraph that follows in the House Committee Report suggests that municipalities can impose rationallybased zoning regulations on community residences:

Another method of making housing unavailable has been the application or enforcement of otherwise neutral rules and regulations on health, safety, and landuse in a manner which discriminates against people with disabilities. Such discrimination *often results from false or overprotective assumptions* about the needs of handicapped people, as well as *unfounded fears of difficulties* about the problems that their tenancies may pose. These and similar practices would be prohibited.[19]

The FHAA essentially codified the majority opinion of the courts regarding community residences. For more than 20 years, the vast majority of court decisions involving attempts to locate community residences in singlefamily zoning districts found community residences to be akin to the traditional family[20] and constitute functional families that belong in singlefamily zones unlike fraternities and sororities, communes, and other loose, temporary group living arrangements.[21]

It is clear from court decisions under the FHAA that when a jurisdictions definition of family does not cap or limit the number of unrelated individuals who may occupy a dwelling unit the FHAA prohibits imposing additional zoning requirements on community residences for people with disabilities.[22]

Unlike capless communities, jurisdictions that place a limit on the number of unrelated persons who can live together, can regulate community residences to an extent. Court decisions strongly suggest that zoning restrictions on community residences can be legal if you can answer yes to all three of the following questions:

- Is the proposed zoning restriction intended to achieve a legitimate government purpose?
- Does the proposed zoning restriction actually achieve that legitimate government purpose?
- Is the proposed zoning restriction the least drastic means necessary to achieve that legitimate government purpose?

In *Bangerter v. Orem City Corporation,* the Tenth Circuit articulated these questions a bit differently. The court stated that [r]estrictions 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.[23]

Findings

1 Community residences are a residential use of land.

For zoning purposes, community residences are much closer in terms of land use to a residence ordinarily occupied by a conventional family than any other land use. The majority of courts have ruled that are a community residence is the opposite of an institution, boarding house, or a commercial use.

2 Community residences have no effect on the value of neighboring properties.

More than 50 studies have examined their impact on property values probably more than for any other small land use. Although they use a variety of methodologies, all researchers have discovered that group homes and halfway houses do *not* affect property values of even the house next door. They have no effect on how long it takes to sell neighboring property, including the house next door. They have learned that community residences are often the best maintained properties on the block. And they have ascertained that community residences function so much like a conventional family that most neighbors within one to two blocks of the home don't even know there is a group home or halfway house nearby.[24]

3 Community residences have no effect on neighborhood safety.

A handful of studies have also looked at whether community residences compromise neighborhood safety. The most thorough study, conducted for the State of Illinois, concluded that the residents of group homes are much less likely to commit a crime of any sort than the average resident of Illinois. It revealed a crime rate of 18 per 1,000 people living in group homes compared to 112 per 1,000 for the general population.[25]

4 Community residences do not generate adverse impacts on the surrounding community.

Other studies have found that group homes and halfway houses for persons with disabilities do not generate undue amounts of traffic, noise, parking demand, or any other adverse impacts.[26]

5 Community residences should be scattered throughout residential districts rather than concentrated in any single neighborhood or on a single block.

For a group home to enable its residents to achieve normalization and integration into the community, it should be located in a normal residential neighborhood. If several group homes were to locate next to one another, or be placed on the same block, the ability of the group homes to advance their residents' normalization would be compromised. Such clustering would create a *de facto* social service district in which many facets of an institutional atmosphere would be recreated and would change the character of the neighborhood.

Normalization and community integration require that persons with disabilities be absorbed into the neighborhood's social structure. The existing social structure of a neighborhood can accommodate no more than one or two group homes on a single block. Neighborhoods seem to have a limited absorption capacity for servicedependent people that should not be exceeded.[27] Social scientists note that this level exists, but they can't quite determine a precise level. Writing about servicedependent populations in general, Jennifer Wolch notes, At some level of concentration, a community may become saturated by services and populations and evolve into a servicedependent ghetto.[28]

According to one leading planning study, While it is difficult to precisely identify or explain, saturation is the point at which a community's existing social structure is unable to properly support additional residential care facilities [group homes]. Overconcentration is not a constant but varies according to a community's population density, socioeconomic level, quantity and quality of municipal services and other characteristics. There are no universally accepted criteria for determining how many group homes are appropriate for a given area.[29]

Nobody knows the precise absorption levels of different neighborhoods. However, the research strongly suggests that as the density of a neighborhood increases, so does its capacity to absorb people with disabilities into its social structure. Higher density neighborhoods presumably have a higher absorption level that could permit group homes to locate closer to one another than in lower density neighborhoods that have a lower absorption level.[30]

This research demonstrates there is a legitimate government interest to assure that group homes do not cluster. While the research on the impact of group homes makes it abundantly clear that group homes a block or more apart produce no negative impacts, there is concern that group homes located more closely together can generate adverse impacts on both the surrounding neighborhood and on the ability of the group homes to facilitate the normalization of their residents, which is, after all, their raison dtre.

6 Community residences should be licensed or certified to protect the welfare of their residents.

The individuals who occupy a community residence constitute a vulnerable population unable to fully care for themselves. Licensing helps ensure that the operator is qualified to furnish the requisite care and support services the group home residents need. It helps assure that staff is qualified and properly trained, and sets a minimum standard of care. The welfare of the residents of a community residence constitutes a legitimate government interest, narrowly tailored to the individuals who live in a group home, and whose benefits clearly outweigh whatever burden may result.

Policy Positions

Zoning is essentially performance oriented. When officials select the uses that are permitted as of right in each zoning district, they make the implicit assumption that these land uses belong in the district and do not generate adverse impacts on the surrounding properties. Special or conditional uses are those that belong in a district, but are known to produce adverse impacts under certain conditions unless precautions are taken. The extensive research on the impacts of community residences shows that they generate no adverse impacts on the surrounding neighborhood as long as they are licensed and not clustered on a block. There is no need to subject community residences to special use permit procedures because the licensing and spacing threshold issues are purely factual questions that can be determined administratively and do not require the extra scrutiny of a special use permit hearing.

General Policy Position

Based on sound planning and zoning principles, the American Planning Association recognizes that community residences for people with disabilities are residential uses that should be allowed as of right in all zoning districts where other residences are permitted uses. When the proposed community residence complies with the jurisdictions zoning code definition of family, no additional restrictions can be imposed. When the number of residents in the home exceeds the cap on the number of unrelated individuals set in the definition of family, the jurisdiction should amend its zoning code to make a reasonable accommodation to provide for community residences in all residential districts within the capacity of the jurisdiction to absorb additional community residences into its social structure.

Specific Policy Positions Supported by the American Planning Association and its chapters

POLICY 1: **A proposed community residence for people with disabilities that complies with the jurisdictions definition of family should be allowed as of right in all residential districts under the definition of family. (Additional) Zoning requirements that are more restrictive than those applicable to residential uses in the underlying district are not permitted**.

By adding people with disabilities to coverage of the Fair Housing Act, the Fair Housing Amendments Act of 1988 effectively prohibits placing additional zoning requirements on a community residence for people with disabilities that otherwise meets the zoning code requirements for other residential uses.

POLICY 2: **When a proposed group home for persons with disabilities does not comply with the jurisdictions definition of family, then the jurisdiction is required to make a reasonable accommodation in its zoning code to allow group homes for people with disabilities as of right in all residential districts if it meets these two requirements:**

1. That a rationally based spacing requirement be provided to avoid an undue concentration of community residences and
2. When the proposed group home or its operator must be licensed or certified by the appropriate state, national, regional, or local licensing or certification body.

If a proposed group home fails to meet both tests, then a zoning ordinance should allow the operator to apply for a special use permit.

The Fair Housing Amendments Act of 1988 requires jurisdictions to make a reasonable accommodation to enable community residences for people with disabilities to locate in residential districts. Such accommodations must be the least drastic necessary to actually achieve a legitimate government purpose. Based on sound planning principles and the extensive evidence found by studies on the impacts of community residences, the American Planning Association believes that this approach outlined here constitutes the *maximum* permissible degree of zoning restrictions.

A oneblock spacing distance appears to be long enough to assure that community residences achieve the normalization they seek for their residents and help preserve the residential character of a neighborhood. Concentrating or clustering several community residences on a block can recreate an institutional atmosphere exactly the opposite of what community residences seek to achieve.

Since the residents of a community residence are a vulnerable population, requiring licensing or certification helps assure their welfare and safety in the least intrusive manner.

Group homes include recovery homes for people with drug or alcohol addictions. Like other group homes, recovery homes are longterm residences that do not limit how long individuals may live there. They should not be confused with halfway houses for people with disabilities, including drug or alcohol addiction.

POLICY 3: **When a proposed halfway house for persons with disabilities does not comply with the jurisdiction's definition of family, then the jurisdiction is required to make a reasonable accommodation in its zoning code to allow halfway houses for people with disabilities as of right in all multiplefamily residential districts if the proposed halfway house meets these two requirements:**

1. That a rationally based spacing requirement be provided to avoid an undue concentration of community residences and
2. When the proposed group home or its operator must be licensed or certified by the appropriate state, national, regional, or local licensing or certification body.

If a proposed group home fails to meet both tests, then a zoning ordinance should allow the operator to apply for a special use permit.

From a zoning perspective, halfway houses perform more like multiplefamily housing than singlefamily housing. They don't emulate a family quite as closely as a group home does. They billet many more people. They place a limit on length of residency, unlike a group home which is a more permanent living arrangement akin to singlefamily housing.

POLICY 4: **Halfway houses should be allowed in all singlefamily zones by special use permit due to their multiplefamily characteristics that warrant the extra scrutiny provided by the special use permit or comparable review process when locating in a singlefamily district.**

On many occasions the operator of a halfway house may prefer to locate it in a singlefamily district. Halfway houses are not, per se, incompatible with singlefamily homes. However, the heightened scrutiny of a conditional use permit hearing is warranted to assure that a proposed halfway house will be compatible with the other land uses in a singlefamily district. The standards to apply are the same ones used for other special uses.

POLICY 5: **Local planners should, on an informal basis, seek to facilitate communication between the operators of proposed community residences and the surrounding community to help foster full integration of the residents of a community residence into the community. Planners should help neighbors learn how each proposed community residence emulates a family and how it serves as a residence that is properly located in a residential zone, not an institutional use that belongs outside residential districts. They should disseminate to neighbors and public officials the findings of the extensive research on the absence of adverse impacts of community residences on the surrounding community**.

Authority

1. *See* M. Jaffe and T. Smith, *Siting Group Homes for Developmentally Disabled Persons* (American Planning Association Planning Advisory Service Report No. 397 (1986); D. Lauber and F. Bangs, Jr., *Zoning for Family and Group Care Facilities* (American Society of Planning Officials PAS Rep. No. 300, 1974); and N. Williams, *American Land Planning Law* 12, 17, 25 (1988, Supp. 1994).

2. *See* N. Williams, *American Land Planning Law* 12, 17, 25 (1988, Supp. 1994).

3. Fair Housing Amendments Act of 1988, 42 U.S.C. 3604(f)(1) et. seq.

4. Gailey at 9798.

5. H. R. Turnbull, III, *CommunityBased Residences for Mentally Handicapped People* 12 (1980). Some courts have found this distinction to be crucial when determining that group homes function as families and are residential uses allowable in residential zoning districts.

6. Oxford House, which has been the subject of so much FHAA litigation falls somewhere between the group home and halfway house. Unlike the halfway house, Oxford House places no limit on the length of stay. Unlike a group home, or even halfway house, Oxford House has no staff. The residence is run by its officers who are elected periodically from among its residents. Unlike a group home, Oxford House needs 10 to 15 residents to function successfully, both therapeutically and financially. The courts have generally construed Oxford House to be a group home.

7. See D. Braddock, R. Hemp, L. Bachelder, G. Fujiura, *The State of the States in Developmental Disabilities* 8 (4th ed. 1994); Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000 et. seq.

8. Id. at 12.

9. This policy guideline focuses solely on the zoning treatment for group homes and halfway houses for people with disabilities, the two most common types of community residences. Other types of community residences may warrant zoning treatment different from that recommended here.

10 D. Lauber, Group Think, in *Planning* 11, at 12 (October 1995).

11. 416 U.S. 1 (1974).

12. Also known as a conditional use permit, the special use permit was designed to allow for extra scrutiny to be applied to land uses that belong in a zoning district, but that may generate adverse impacts unless certain conditions were observed. Robert Leary, *Zoning*, 439 William Goodman and Eric Fruend, eds., *Principles and Practices of Urban Planning* (International City Management Association, 1968).

13. 105 S. Ct. 3249 (1985).

14. D. Lauber and F. Bangs, Jr., *Zoning for Family and Group Care Facilities* 9 (American Society of Planning Officials PAS Rep. No. 300, 1974).

15. General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* 61 (1983). Several regional studies have also found that few municipal zoning ordinances provided for community residences. In 1983 it was found that only four of the 31 municipalities in the Seattle, Washington, area defined the term group home and that only three allowed them as a permitted use in even one residential district. Eighteen allowed them by special use permit in at least one zoning district, not necessarily residential, and 13 did not provide for them at M. RitzdorfBrozovsky, *Impact of Family Definitions in American Municipal Zoning Ordinances* 119, 214215 (1983) (unpublished dissertation, University of Washington). A California study found that not a single municipality in suburban San Francisco allowed group homes for more than five residents as a permitted use in residential districts; only one allowed group homes for five or less residents as a permitted use in all residential districts; two allowed them as a permitted use in some residential districts; nine allowed them as special uses in some residential districts; and seven did not allow group homes at all. Bay Area Social Planning Council, *Effect of Zoning Regulations on Residential Care Facilities in San Mateo County: Report and Recommendations of the Study Committee C7* (March 1970) . In New Yorks suburban Westchester County, only one of 33 communities allowed group homes as of right in residential districts. S. Hettinger, *A Place They Call Home: Planning for Residential Care Facilities* 33 (Westchester County Dept. of Planning 1983).

16. M. Jaffe and T. Smith, *Siting Group Homes for Developmentally Disabled Persons* (American Planning Association Planning Advisory Service Report No. 397 (1986).

17. 42 U.S.C. 3504(f)(3)(B).

18. H.R. Rep. No. 711, 100th Congress 2d Session, reprinted in 1988 U.S.C.C.A.N. 2173, (1988).

19. H.R. Rep. No. 711, 100th Congress 2d Session, reprinted in 1988 U.S.C.C.A.N. 2173, (1988) (emphasis added).

20. *City of White Plains v. Ferraioli,* 313 N.E.2d, 756, 758 (citation omitted).

21. Norman Williams has kept a running tally of these cases in his treatise, 2 Williams, American Land Planning Law 52.12 (1987, Supp. 1994). Over 90 judicial decisions involving community residences for people with disabilities and definitions of family and other zoning restrictions are cited there. Pre1988 decisions run three to one in favor of allowing community residences for people with disabilities in singlefamily districts despite restrictive definitions of family or requirements for a special use permit. This figure includes only those cases that involved community residences for people with disabilities, not other populations not subsequently covered by the 1988 amendments to the Fair Housing Act.

22. See, *Oxford HouseEvergreen v. City of Plainfield,* 769 F. Supp. 1329 (D.N.J. 1991) (since Oxford House complied with citys capless definition of family and there is no state license required to operate an Oxford House the city could not disallow the Oxford House from the singlefamily district in which it located); *Support Ministries for Persons with AIDs v. Village of Waterford,* New York, 808 F. Supp. 120 (N.D. N.Y. 1992) (city must issue the permits sought to establish home for persons with AIDS under definition of familyas opposed to boarding house); *Merritt v. City of Dayton,* No. C391448 (S.D. Ohio, April 7, 1994) (3,000foot spacing requirement struck down where home met definition of family); *Marbrunak, Inc. v. City of Stow, Ohio,* 1992 U.S. App. LEXIS 20455 (parents of four grown women with developmental disabilities established a family consortiumhouse as a permanent residence for their daughters with support staff in s singlefamily district; city sought to require special use permit as a boarding house and to require additional safety code requirements because the residences had developmental disabilities; court rules that the home complied with the citys capless definition of familyand, since no state license was required to operate it, the house must be treated the same as other residences.

23. 1995 WL 10478 (10th Cir. Utah).

24. For a comprehensive compilation of descriptions of over 50 of these studies, see Council of Planning Librarians, There Goes the Neighborhood: A Summary of Studies Addressing the Most Often Expressed Fears About the Effects of Group Homes on Neighborhoods in Which They Are Placed (CPL Bibliography No. 259, April 1990); M. Jaffe and T. Smith, *Siting Group Homes for Developmentally Disabled Persons* (Am. Plan. A. Plan. Advisory Serv. Rep. No. 397 (1986). See e.g., City of Lansing Planning Department, *Influence of Halfway Houses and Foster Care Facilities Upon Property Values* (monograph 1976) (found no negative impacts on selling price of houses near or adjacent to halfway houses for people with alcohol addictions, adult exoffenders, juvenile exoffenders).

25. Daniel Lauber, *Impacts on the Surrounding Neighborhood of Group Homes for Persons with Developmental Disabilities,* 15 Illinois Planning Council on Developmental Disabilities (1986).

26. Daniel Lauber, *Zoning for Family and Group Care Facilities* at 10.

27. Kurt Wehbring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill* 14 (no date) (mimeographed).

28. Jennifer Wolch, "Residential Location of the Service Dependent Poor," 70 *Annals of the Association of American Geographers*, at 330, 332 (Sept. 1982).

29. S. Hettinger, *A Place They Call Home: Planning for Residential Care Facilities* 43 (Westchester County Department of Planning 1983). See also D. Lauber, *Zoning for Family and Group Care Facilities* at 25.

30. Lauber, *Zoning for Family and Group Care Homes* at 25.