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NOTE

CITY OF EDMONDS v. OXFORD HOUSE, INC.: OPENING DOORS TO HOUSING FOR HANDICAPPED PERSONS

I. INTRODUCTION

In City of Edmonds v. Oxford House, Inc.,1 the United States Supreme Court held that the Fair Housing Act's (hereinafter the "FHA") broad exemption for local maximum occupancy restrictions did not apply to the City's single family zoning restrictions.2 Although the City's ordinance did not qualify for exemption from the FHA, the Supreme Court held that the District Court would have to consider whether the City discriminated against Oxford House residents.3 Specifi-

1. ___ U.S. ___, 115 S. Ct. 1776 (1995) (per Ginsburg, J., Thomas, J. dissenting). Oxford House opened a home for 10 to 12 unrelated recovering drug addicts and alcoholics in a single-family residence. The City enforced its zoning code which prohibits more than 5 unrelated persons from living together in a single-family residence. Oxford House requested that the City make a reasonable accommodation pursuant to the FHA. The City refused and sued Oxford House seeking a declaratory judgment that the zoning ordinance qualified for exemption from the FHA as a "local . . . restriction regarding the maximum number of occupants permitted to occupy a dwelling." Id. at 1778-1779.

2. 42 U.S.C. § 3607(b)(1) (Cum. Supp. 1995). Congress originally enacted the Fair Housing Act of 1968 to prohibit discrimination on the basis of race, color, religion or national origin in housing. The FHA was later expanded to prohibit discrimination on the basis of sex (1974), see Edmonds, 115 S. Ct. at 1778 (citing Housing and Community Development Act of 1974, § 808(B), 88 Stat 729) and on the basis of handicap and familial status (1988), see id. (citing 42 U.S.C. §§ 3602(h), (k)). In finding that the ordinance did not qualify for exemption from the FHA, the Court held that a city cannot pass an ordinance which restricts maximum occupancy on any basis other than person per square foot or per bedroom. Id. at 1782-83.

3. Id. at 1779, 1783.
ly, the Court remanded to the District Court for further consideration of the claims by Oxford House that the City must make a "reasonable accommodation."4

The Edmonds decision is important for two reasons. First it will help handicapped persons attain greater access to housing.5 Specifically, the decision marks the first time the Court has struck down a local zoning ordinance because it failed to qualify for the broad exemption from the FHA's anti-discrimination provisions for local ordinances.6 Although it took seven years for a case to reach the Court which allowed it to enforce the legislative intent, the Edmonds decision provides a clear message that the Court plans to follow the Congressional intent7 to pronounce a national commitment to prohibit exclusions of handicapped persons from the American mainstream on the basis of stereotypes and ignorance.8

Second, the Edmonds decision will significantly affect how future zoning ordinances are drafted because the Court approved density guidelines and not family composition rules.9 For although handicapped persons may not fall within the traditional concept of family, they nevertheless deserve a fami-

4. Id. at 1783.
5. See infra notes 182-185 and accompanying text for further discussion of the effect on access to housing and curbing discrimination.
6. See Elliott v. City of Athens, 960 F.2d 975 (11th Cir. 1992), cert. denied, 113 S. Ct. 376 (1992) (Athens' ordinance, permitting a maximum of four unrelated persons to live together in a single residence, qualified for exemption from the FHA for "local maximum occupancy restrictions").
9. Here the author is using "density" to refer to restrictions based on the number of people allowed by floor area or by space, like per square foot or per bedroom for example. In contrast, "maximum occupancy" refers to maximum caps placed on the total number of persons permitted per dwelling; an ordinance placing a maximum of five persons per house is an example. Edmonds, 115 S. Ct. at 1781-82 n.8.
ly-like environment. Therefore, Edmonds will discourage strict application of existing ordinances that adversely impact the rights of handicapped persons. ¹⁰

Specifically, the Court’s remand permits the District Court to explore whether a “reasonable accommodation,” as provided for in the FHA, is appropriate since the parties did not litigate the issue in the lower courts.¹¹ That decision may extend protection under the FHA to other Oxford House residents and others similarly situated throughout the country. After the District Court’s decision on remand, groups similar to the Oxford House may reap the benefits of the Court’s “reasonable accommodations” interpretation.¹²

This note will begin with an examination of the Edmond Court’s reasoning, and follow with a brief discussion of Oxford House and the FHA. Next, the important role Oxford House has played in challenging discriminatory housing practices will be summarized. This note will then examine the Congressional intent behind the FHA, concluding with a brief exploration of the national impact this decision may have on handicapped persons and local ordinances.

II. BACKGROUND

The rights of handicapped persons are protected through various means. Two main protectors of those rights are Oxford House, a private organization, and the FHA, legislation enacted by Congress.

A. OXFORD HOUSE: THE NATIONAL MODEL FOR DRUG AND ALCOHOL ADDICT RECOVERY PROGRAMS CHALLENGES DISCRIMINATORY CITY ORDINANCES

Oxford House, a private organization, has been at the

¹⁰. See infra note 195 and accompanying text for further discussion of the decision’s effect on application of ordinances to handicapped persons.
¹¹. Edmonds, 115 S. Ct. at 1783.
¹². See infra notes 197-201 and accompanying text for further discussion of the “reasonable accommodations” issue.
forefront of the struggle to establish the housing rights of handicapped persons. Oxford House began challenging discriminatory city ordinances shortly after Congress extended protection to handicapped persons in 1988. In 1990, Oxford House was involved in its first litigation, challenging a city ordinance which they claimed violated the Fair Housing Act.

1. What is an “Oxford House?”

Oxford House is a not-for-profit organization serving as the umbrella organization for a national network of approximately four hundred individual Oxford Houses. Oxford House Inc. was formed in 1975 in the Washington, D.C. area by a former Capitol Hill lawyer and recovering alcoholic.
Oxford House establishes group homes for recovering alcoholics and other substance abusers.\textsuperscript{18}

Oxford House establishes group homes in “clean, drug-free, single family neighborhoods that will provide the occupants with a sense of pride and self worth.”\textsuperscript{19} It prefers to locate homes in larger single family houses because they provide the desired family atmosphere.\textsuperscript{20} The location of the houses in single-family residential neighborhoods has proven crucial to “an individual’s recovery by promoting self-esteem, creating an incentive not to relapse and avoiding the temptations that the presence of drug-trafficking can create.”\textsuperscript{21} Access to public transportation is important because most residents do not own cars.\textsuperscript{22} In addition, access to Alcoholics Anonymous and Narcotics Anonymous meetings is important to residents in recovery.\textsuperscript{23} Generally, eight to fifteen residents reside in Oxford Houses. This range represents the number of residents which make the homes economically and therapeutically viable.\textsuperscript{24}

Oxford Houses do not provide drug rehabilitation programs or treatment, health care, or social services.\textsuperscript{25} Before entering an Oxford House, persons must complete residential drug treatment programs.\textsuperscript{26} Each resident is required to work and contribute to the democratic running of the house.\textsuperscript{27} The three requirements of an Oxford Home are: (1) democratic self-government in which the residents make all decisions to run the house; (2) economic self-sufficiency in that the residents must support themselves without government assistance; and

\textit{empted from Zoning Rules, WASH. POST, Sept. 7, 1995, at C3.}
\textsuperscript{18} Township of Cherry Hill, 799 F. Supp. at 452.
\textsuperscript{19} Id. at 453.
\textsuperscript{20} City of St. Louis, 843 F. Supp. at 1564.
\textsuperscript{21} Township of Cherry Hill, 799 F. Supp. at 453 (emphasis added).
\textsuperscript{22} City of St. Louis, 843 F. Supp. at 1564.
\textsuperscript{23} Id.
\textsuperscript{24} Id. at 1571. However, in City of Virginia Beach, 825 F. Supp. at 1255 n.1, the court discussed that the main obstacle to that Oxford House was financial, but treated the complaint in the light most favorable to Oxford House because the City of Virginia Beach had filed a motion to dismiss. Therefore the court found that the complaint alleged that therapeutic value suffered when the number of residents was restricted to four. Id.
\textsuperscript{25} Township of Cherry Hill, 799 F. Supp. at 452.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
(3) zero drug tolerance. 28 A resident who uses drugs or alcohol, even once, is automatically expelled from the house. 29

2. Oxford House: Congressional Model for Drug and Alcohol Abuse Programs

Congress formally recognized the Oxford House model in 1988 when President Reagan signed legislation to nationally expand use of the Oxford House model. 30 Under this legislation, states receiving at least $100,000 from federal block grant funds for alcohol abuse, drug abuse, and mental health services must make loans available to recovering alcoholics and drug addicts wishing to live in a group home based on the Oxford House model. 31 In many states Oxford House maintains a contractual relationship with state health departments to provide "revolving" loan funds. 32

B. THE FAIR HOUSING ACT

While Oxford House has led the legal challenge to housing discrimination, Congress has also been a key player in enacting anti-discrimination legislation for handicapped persons. 33 Initially, Congress enacted the Fair Housing Act in 1968 to prohibit discrimination in housing. 34 Twenty years later, Con-
gress amended the FHA to extend protection to handicapped persons. At that time, Congress also exempted local maximum occupancy restrictions from the FHA’s anti-discrimination protection.

1. “Handicapped” Persons Receive Protection Under the FHA

The 1988 amendments to the FHA extended protection to “handicapped” persons. The amendments did not specifically list covered disabilities. Therefore, courts must look to the legislative history behind the amendments to discern what Congress meant by “handicapped.” This legislative record shows, first, that Congress sought to protect a broad class of handicapped persons and, secondly, to proffer a public policy
against discrimination in housing that had the effect of excluding handicapped persons from everyday life.\(^{41}\)

Although Congress did not list specific disabilities under its definition of “handicapped,”\(^{42}\) the House Report discloses that Congress did intend the FHA protections to apply to persons with a record of drug use or addiction,\(^{43}\) except current users of illegal drugs, as long as they otherwise qualified as “handicapped” by their actual impairment or by the perception of their impairment.\(^{44}\) Specifically, Congress did not intend to exclude persons who have recovered from an addiction or are participating in a treatment program or self-help group.\(^{46}\) The House Report also stated that as with other disabled persons (cancer or tuberculosis patients), former drug-dependent persons do not pose a threat to a dwelling or its inhabitants simply on the basis of status.\(^{46}\)

Besides defining “handicapped,” the legislative history more importantly discloses the Congressional desire to curb housing discrimination and extinguish public attitudes fueling that discrimination.\(^{47}\) Congress intended the 1988 Amend-

\(^{41}\) Id.

\(^{42}\) Id.

\(^{43}\) Id. at 22. This specific group of persons is mentioned because it is the handicap the group of residents living in the Edmonds Oxford House shared. Edmonds, 115 S. Ct. at 1779.

\(^{44}\) House Report, supra note 7, at 22. Indeed, parties to FHA litigation usually agree that recovering drug addicts and alcoholics qualify for protection under the FHA as “handicapped” persons. Edmonds, 115 S. Ct. at 1779. Cf Township of Cherry Hill, 799 F. Supp. at 459-460 (where the court required proof not only of the residents' status as alcoholics or drug addicts, but also preliminary proof that their addiction impacted a major life function) and Borough of Audubon, 797 F. Supp. at 358 (where the City agreed that the residents were alcoholics and addicts, but challenged the fact that they were substantially limited in their major life activities). An individual perceived as being a drug user is covered under the Amendments if he can demonstrate that he is seen as having an impairment and that he is not currently using illegal drugs. House Report, supra note 7, at 22.

\(^{45}\) Id. The Report stated that depriving those persons of housing “would constitute irrational discrimination that may seriously jeopardize their continued recovery.” Id. Although the report does not refer to any specific instances or proof of such a statement, the author believes the phrase “jeopardizing recovery” foreshadows case law in which the Courts of Appeal cite Oxford House assertions about the therapeutic viability of its group homes. See, e.g., City of Virginia Beach, 825 F. Supp. at 1255 n.1 and City of St. Louis, 843 F. Supp. at 1564 n.2.

\(^{46}\) House Report, supra note 7, at 22.

\(^{47}\) Id. at 18.
ments to clearly pronounce a national commitment to end exclusion of handicapped persons from mainstream life. 48 In addition, the House Report shows that Congress condemned "unfounded speculations" and "generalized perceptions about disabilities." 49 Although the House Report stated that discrimination against handicapped persons based on prejudice and stereotyping were clearly prohibited, this strong anti-discrimination policy was absent from the text of the 1988 amendments. 50

The House Report also indicates Congress' belief that prohibiting discrimination would alter the stereotypes that have excluded handicapped persons from everyday life. 51 Furthermore, the Report demonstrates that Congress appreciated that handicapped persons have been denied housing because of misperceptions, ignorance, and outright prejudice. 52 Finally, the House Report states that Congress intended the amendments to reach two situations in which handicapped persons experienced discrimination, namely denying services to handicapped persons on the basis of status and excluding congregate living arrangements of persons with handicaps. 53

48. Id.
49. Id. The report mentioned several examples of handicapped persons who had been discriminated against in housing and deplored such discrimination. Wheelchair users, visually and hearing impaired persons, mentally retarded persons, and people with AIDS or who test positive for the AIDS virus were cited as actual groups who had been discriminated against in housing because of prejudice and aversion. Id.
52. Id. Specifically, handicapped persons have been denied housing "because they make non-handicapped people uncomfortable." Id.
53. Id. at 23. It appears the Supreme Court uses the language from the House Report to find the Edmonds ordinance does not qualify for exemption from the FHA as a "reasonable local ordinance." However, the remainder of the report discussing this subsection seems to limit it to facilities and services other than basic housing, like parking, cleaning services and other benefits made available to the non-handicapped tenants, residents, and owners. Id. at 23-24.
2. Local Maximum Occupancy Restrictions are Exempt from FHA

As well as extending the FHA to handicapped persons, Congress has exempted reasonable local density ordinances from the anti-discrimination provisions of the FHA. Again, the legislative history found in the House Report defines what Congress intended to exempt from the FHA. Although the report indicates that Congress recognized that local governments have the authority to protect safety and health and to regulate land use, this authority has sometimes been used to restrict the rights of individuals with handicaps to live in certain communities. Further, the House Report explains that Congress intended this exemption to apply to limits placed on "the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit." Such restrictions may of course continue provided they apply to all occupants, and do not "discriminate on the basis of . . . handicap."

Congress, however, clearly intended to prohibit from exemption local ordinances that amounted to "health, safety or land-use requirements on congregate living arrangements" of unrelated persons with disabilities. Since these requirements are not placed on traditional families or other groups of unrelated people, Congress recognized that these requirements may discriminate against persons with disabilities. Further,

54. 42 U.S.C. § 3607(b)(1) (Cumm. Supp. 1995). "Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." Id.
55. Id.
57. House Report, supra note 7, at 24 (citing City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985)). There, the Supreme Court overturned the City's requirement that a group home for mentally retarded persons secure a special use permit. Id.
59. Id.
60. Id. at 24. "This has been accomplished by such means as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related 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 person with disabilities." Id.
61. Id.
the House Report details Congress’ intent to prohibit discrimination against handicapped persons in zoning decisions and practices, land-use regulations, covenants, and permit procedures that effectively prevent handicapped individuals from living in a selected residence in the community. Congress stated that even the application of otherwise neutral rules which had the effect of discriminating against handicapped persons would amount to discrimination prohibited by the FHA.

The House Report provides valuable insight into Congress’ intent behind the 1988 amendments that extended protection to handicapped persons. It states that exclusion of handicapped persons through invidious discrimination and procedural hurdles would not be tolerated. In addition, Congress narrowly defined the new exemption from the FHA for local maximum occupancy restrictions. Congress balanced local government’s interest in regulating land use with the desire to prohibit discrimination against handicapped persons.

C. OXFORD HOUSE CASES: THE INTERACTION BETWEEN THE FHA AND OXFORD HOUSE

The FHA anti-discrimination protection covers handicapped persons, including former alcoholics and drug addicts. Even so, Oxford House and other group home advocates have faced major obstacles in protecting their clients.

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63. *Id. (citing City of Cleburne, 473 U.S. 435 (1985)). In Cleburne the city's stated reasons were a 500 year flood plain, the location of the house across the street from a school which would result in taunting of the house's residents, and fear of lowered property values. Again the Court rejected all of these stated reasons as based on irrational fears. Id. “Such discrimination often results from false or over-protective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose.” *House Report, supra* note 7, at 24.
64. *See supra* notes 40-63 and accompanying text for further discussion of the legislative intent behind the FHA.
65. *House Report, supra* note 7, at 24 (stating that, for example, special use permits would not be tolerated).
against housing discrimination. Complex procedures and invidious discrimination have decreased the effectiveness of such programs and legislation. In several cities, ordinances have required group homes to apply for a variance or a conditional use permit. In other cities, residents have faced invidious discrimination by city officials.

City ordinances often require a variance and/or a public hearing in order to permit the group home to operate in a single-family district. In United States v. Borough of Audubon, the City of Audubon required the property owners of an Oxford House to either request a variance to use the home as a boarding house or evict the Oxford House residents. In Oxford House v. City of St. Louis, a group home of nine or more could operate in a single-family district only if it obtained a variance. In Oxford House v. Township of Cherry Hill,

68. Witness all the suits filed by or on behalf of Oxford House since 1988, see supra note 15 for a list of suits involving Oxford Houses since 1988 and see infra notes 71-74, 107-108 discussing specific cases of invidious discrimination and special procedures.

69. See infra notes 91-93 and accompanying text for examples of zoning requirements placed on group homes.

70. See Borough of Audubon, 797 F. Supp. 353.

71. City of St. Louis, 843 F. Supp. at 1566-67. The City Zoning Administrator of the City of St. Louis testified “that he ‘wouldn’t want them living next door to him.’ His fears ‘included common, stereotypical fears such as safety, transiency, and a negative effect on property values.' Authors comment: while this discrimination would be less offensive and actionable if it came from a neighbor of the house, it is much more offensive coming from a city official. Id.

72. Id. at 1568. The City of St. Louis requested Oxford House to apply for a variance under the City’s zoning ordinances. “Oxford House took the position that it should not be required to participate in variance or conditional use applications.” Id.

On the other hand, the Township of Cherry Hill required applicants who did not meet the ordinance’s definition of “family” to apply for a variance. The variance involved public hearings, “at which the group members must present testimony establishing they meet the vague standard of [the ordinance].” Township of Cherry Hill, 799 F. Supp. at 455.

73. 797 F. Supp. at 356.

74. Id. The house, a three-story, six-bedroom structure, was located in an area zoned for single-family residences. Prior to its use as an Oxford House, Audubon issued a resolution permitting the residence to be used as a duplex and this use had never been objected to by neighbors or the City. Id. at 355. The property owners did not request a variance and did not evict the residents. Audubon issued weekly citations to the owners whose prosecution was stayed pending the outcome of the federal court case. Id. at 356-57.

75. City of St. Louis, 843 F. Supp. at 1568-69. However, a variance for a group home of more than eight people was impossible to acquire. The zoning
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Hill, the township presented a similar requirement that the property owners request a variance from the ordinance. Unlike other city ordinances that numerically restrict unrelated persons, Cherry Hill’s ordinance imposed a “permanency and stability” standard on groups of unrelated persons which was not imposed on persons related by blood or marriage. In order to obtain a variance, the residents had to testify at a public hearing that they met this undefined standard. The Township ruled that Oxford House could not operate in any of the five residential zones. Therefore, the Township effectively prohibited Oxford House from operating a group home in any single-family residential district and thereby discriminated against the residents as handicapped persons.

Procedural requirements such as conditional or special use permits imposed on group homes also discriminate against handicapped persons. In Oxford House-C v. City of St. Louis, the City required a conditional use permit for the Oxford House to operate in a multi-family district. And in Oxford

scheme provided that the City should not grant variances for “uses” that are not allowed by right or conditionally. Since a group home was not allowed either conditionally or by right in a single family district, a variance would be impossible to obtain. Clearly, the Oxford Houses, even though they never applied for a variance, would have been denied a variance by the City. Id. at 1568-70.

76. Township of Cherry Hill, 799 F. Supp. at 455.

77. Id.

78. Id. In addition, the “standard is never imposed on groups related by blood or marriage because they are automatically found to meet the definition of ‘family’ regardless of their particular circumstances.” Id. In n.7 the court made specific findings in which the Director of Community Development admitted he could not think of a single incident in which a group of related people were denied a certificate on the basis of their failure to meet the definition of family or the “permanency or stability” standard. Id.


80. Id. at 456.

81. See id.

82. See infra notes 102-104 and accompanying text for examples of discriminatory procedural requirements.

83. City of St. Louis, 843 F. Supp. at 1568. The City ordinance permitted a group home of nine or more residents as a matter of right only in the central business district and a memorial district. Id. The court found the ordinance did not qualify as an exemption from the FHA because “it simply restricts the maximum number of certain types of occupants.” Id. at 1574. The court noted the decision in Elliott, 960 F.2d 975, but found its reasoning unpersuasive. City of St. Louis, 843 F. Supp. at 1574. The court found the City violated the FHA, granted the permanent injunction, and awarded attorneys’ fees. Id. at 1584.
House v. City of Virginia Beach, a city ordinance required Oxford House to apply for a conditional use permit for a group home of more than four unrelated individuals in a single-family district. Although Oxford House argued in City of St. Louis and City of Virginia Beach that requiring a conditional use permit and the resulting public hearing violated the FHA (because other groups of unrelated persons were not subjected to this procedure), the courts required Oxford House to follow the application procedure and subject the residents to a public hearing. In several cases in which residents faced invidious discrimination by city officials, this discrimination was found to violate the FHA. In Oxford House-C v. City of St. Louis, the court expressed that it was not surprised to find discrimination by officials “given . . . that none of the City housing inspectors or building or zoning officials . . . have ever received any training regarding discrimination in housing practices.” The zoning administrator testified that he “wouldn’t want them living next door to him.”

The background behind the recent Edmonds decision involves understanding the Oxford House model and the Congressional intent behind the FHA. First, Congress extended

84. City of Virginia Beach, 825 F. Supp. at 1254. The City's ordinance defined “family” to include groups of no more than four people unrelated by blood or marriage. Id. (citing VA. BEACH CODE ZONING ORDINANCE § 111).
85. City of St. Louis, 843 F. Supp. at 1568-70; City of Virginia Beach, 825 F. Supp. at 1260. In City of Virginia Beach, Oxford House claimed that its residents would be exposed to “unwanted public scrutiny in the course of the required zoning hearings.” In fact, the court held that because Oxford House had not applied for and been denied a conditional use permit, its claim of discrimination was “unripe.” Id.
86. See Borough of Audubon, 797 F. Supp 353, discussed supra at notes 73-74 and City of St. Louis, 843 F. Supp. 1556, discussed supra at notes 71-72 and accompanying text for further discussion of discrimination by officials.
87. Borough of Audubon, 797 F. Supp. at 362-363. There the court found that the Mayor's statement that “there is nothing more that I would like to do than to just come in and just tell these people you have until noon to get out of town” and his recommendation “to the municipal prosecutor that he should seek the most severe monetary penalty to establish an effective deterrent to this ongoing activity” amounted to discriminatory animus. Id. at 360. In Audubon the court awarded a permanent injunction to prevent future interference with the Oxford House or other group living arrangements and $10,000.00 in civil penalties. Id. at 362.
88. City of St. Louis, 843 F. Supp. at 1568 n.8.
89. Id. at 1567.
90. The author notes that the Oxford House cases discussed supra in notes 67-
The FHA's anti-discrimination protection to handicapped persons in 1988. Second, Congress exempted local maximum occupancy restrictions. Therefore, the legislative history shows that Congress intended this provision to exempt only local restrictions that applied to all occupants. Nonetheless, many city ordinances limited occupancy of unrelated persons without restricting related persons. These ordinances have the effect of discriminating against handicapped persons. In addition, city officials continue to discriminate against handicapped persons in their application of the ordinances. Even in the face of this continued discrimination, several years passed before Oxford House's litigation reached the Supreme Court.

III. FACTS AND PROCEDURAL HISTORY

In the summer of 1990, Oxford House Inc. (hereinafter "Oxford House") opened a group home for ten to twelve recovering drug and alcohol addicts in the City of Edmonds, Washington (hereinafter "the City"). Although the residents were unrelated, the home opened in a neighborhood zoned for single family residences. Subsequently, the City issued criminal citations, charging that Oxford House had violated the City's zoning code because the group home housed more than

89 and accompanying text serve to illustrate actual discrimination handicapped persons faced in waging the battle against discriminatory ordinances and practices.

91. See supra notes 37-53 and accompanying text for further discussion of Congress' extension of protection to handicapped persons.

92. See supra notes 54-63 and accompanying text for further discussion of Congress's extension of the FHA's anti-discrimination provisions.

93. See supra note 60 and accompanying text illustrating Congress' goal of uniform application of the exemption for local density ordinances.

94. See supra notes 67-89 and accompanying text providing examples of city ordinances and discriminatory application of city ordinances.

95. See supra notes 72-81 and accompanying text for examples of ordinances that in their application discriminate against handicapped persons.

96. See supra notes 72-81 and accompanying text for examples of ordinances that in their application discriminate against handicapped persons.

97. See supra note 8 and accompanying text for explanation of the time between Congress enacting the 1988 amendments and the Edmonds decision.


99. Id.

100. Id. The City issued criminal citations to a resident and the owner of the house. The owner of the house was later removed as a party. Id.
five unrelated individuals. In response, Oxford House asserted that the group home needed to have eight to twelve residents to be financially and therapeutically viable. Although the City refused to allow the group home to remain in a single-family residential area, the City passed an ordinance permitting group homes in multifamily and general commercial zones.

The City then sued Oxford House in the United States District Court for the Western District of Washington for a declaratory judgment. The City sought a declaration that the zoning ordinance qualified for exemption from the FHA as "reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling."

Oxford House counterclaimed under the FHA, charging that the City failed to make a "reasonable accommodation" when it prevented the group home from remaining in a single-family residential zone. Oxford House asserted that the City ordinance discriminated against handicapped persons in a manner prohibited by the Fair Housing Act Amendments of 1988. Oxford House claimed that under the Act, a refusal

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101. Id. (citing Edmonds Community Development Code (ECDC) § 21.30.010). The City's zoning code requires that the occupants of a single-family dwelling unit must comprise a "family." The code defined "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." Edmonds, 115 S. Ct. at 1779. The City suspended prosecution for the criminal citations until resolution of the subsequent litigation. Id.

102. Id.

103. Id.

104. Id.


106. Id. at 1779.

107. Id. Congress originally enacted the Fair Housing Act of 1968 to prohibit discrimination on the basis of race, color, religion or national origin in housing. The FHA was later expanded to prohibit discrimination on the basis of sex (1974), see id. at 1778 (citing Housing and Community Development Act of 1974, § 808(B), 88 Stat 729), and the basis of handicap and familial status (1988), see id. (citing 42 U.S.C. §§ 3602 (h), (k)). The parties stipulated for this litigation that the residents of the group home were within the Act's definition of handicapped persons. Id. at 1779. Under the Act, "handicap means, with respect to a person 1) a physical or mental impairment which substantially limits one or more of such person's
to make a "reasonable accommodation" qualified as prohibited discrimination. The United States filed a separate suit raising the same claim as Oxford House, and the two cases were consolidated.

The District Court granted the City's summary judgment motion, finding that the ordinance qualified under the FHA's broad exemption for local ordinances that address maximum occupancy standards. The District Court held that: (1) the exemption applied to the five unrelated person limitation in the ordinance; and (2) permitting the exemption was reasonable as a matter of law.

On appeal, the Ninth Circuit reversed, holding the FHA's "absolute exemption inapplicable." The Ninth Circuit remanded for further consideration of the claims raised by Oxford House and the United States.

The Supreme Court granted certiorari because the Ninth and Eleventh Circuits were in conflict. After consideration,

major life activities, 2) a record of having such an impairment, or 3) being regarded as having such an impairment, but such terms do not include current, illegal use of or addiction to a controlled substance." 42 U.S.C. § 3602(h) (Cumm. Supp. 1995).

108. Edmonds, 115 S. Ct. at 1779. Section 3604(f)(3)(B) states "For purposes of this subsection, discrimination includes . . . (B) 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." 42 U.S.C. § 3604(f)(3)(B) (Cumm. Supp. 1995).


110. Id. The District Court held that the City's ordinance "defining 'family' is exempt . . . as a 'reasonable . . . restrictio[n] regarding the maximum number of occupants permitted to occupy a dwelling.'" Id.

111. Id.

112. Id. The Ninth Circuit focused on the legislative intent behind the FHA protections for handicapped persons. Specifically, the court noted "Congress intended the FHAA [the 1988 amendments] to protect the right of handicapped persons to live in the residence of their choice in the community. [citation omitted] The FHAA was to 'end the unnecessary exclusion of person with handicaps from the American mainstream.'" City of Edmonds v. Wash. State Bldg. Code Council 18 F.3d 802, at 806 (9th Cir. 1994).

113. Edmonds, 115 S. Ct. at 1779. Specifically, Oxford House claimed the City refusal's to make "a reasonable accommodation" constituted a violation of the FHA. Id.

114. Id. at 1780; Elliott v. City of Athens, 960 F.2d 975 (11th Cir. 1992). In Elliott the city ordinance restricted to four the number of unrelated persons who
the Supreme Court held that the City’s ordinance did not qualify for exemption from the FHA. However, the Court remanded to the Ninth Circuit to consider Oxford House’s counterclaim that the City had wrongfully discriminated under the FHA by refusing to make a reasonable accommodation.

IV. COURT’S ANALYSIS

A. JUSTICE GINSBURG’S MAJORITY OPINION

Justice Ginsburg’s majority opinion began by differentiating land use restrictions from maximum occupancy restrictions. According to Justice Ginsburg, land use restrictions are enacted to locate sites having compatible uses close together within districts, and maximum occupancy restrictions are enacted to protect public health and safety by limiting overcrowding. Since the FHA exempts local restrictions regarding maximum occupancy of a dwelling, the majority noted that a city’s zoning ordinance may or may not qualify for exemption. The Court closely examined the legislative history of the FHA 1988 Amendments which created the exemption for local maximum occupancy restrictions. The Court found that Congress intended to protect maximum occupancy restrictions not tied to family composition rules and not devised to protect the character of a neighborhood by focusing on household composition.

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115. Edmonds, 115 S. Ct. at 1783.
116. Id.
118. Id. at 1780. “Land use restrictions designate ‘districts in which only compatible uses are allowed and incompatible uses are excluded.’ [citation] These restrictions typically categorize uses as single-family residential, multiple-family residential, commercial, or industrial.” Id. at 1781.
119. Id. at 1781. “Maximum occupancy restrictions . . . cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms. [citation] These restrictions ordinarily apply uniformly to all residents of all dwelling units. Id. (emphasis in original).
120. Edmonds, 115 S. Ct. at 1780-81.
121. Id. at 1782.
123. Edmonds, 115 S. Ct. at 1781-82.
124. Id. See especially id. at 1782 n.8.

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In its analysis, the Court first noted that Congress cast section 3607(b)(1) of the FHA within the already evolving distinction between land use restrictions and maximum occupancy restrictions. Land use restrictions typically divide a city into districts in which compatible uses of land are permitted and incompatible uses of land are prohibited. The Court recognized that cities have further restricted land use within residential districts to single-family and multiple-family use. The Court found that when drawing these further restrictions, a city must necessarily define the term "family." By reserving land for single-family residences, the Court noted that cities seek to secure "zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."

On the other hand, the Court reasoned that maximum occupancy restrictions seek to limit the number of occupants per dwelling in relation to the available floor space and the number and type of rooms. The Court stressed that these restrictions typically apply to "all residents of all dwellings" in the designated area. Finally, the Court recognized that maximum occupancy restrictions are enacted to protect health and safety by preventing overcrowding.

After clarifying the distinction between land use restrictions and maximum occupancy restrictions, the majority

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125. The provision which exempts reasonable local restrictions from the FHA.
126. Edmonds, 115 S. Ct. at 1780.
127. Id. See Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), the first case in which the Court upheld land use restrictions as constitutional. Although the land use restrictions were challenged as "takings" under the 5th Amendment, the case still stands for the proposition that a city may restrict land use by district which is known as "Euclidean zoning." Id. The Court noted that generally a city will separate competing land uses to prevent problems often characterized as the "pig in the parlor instead of the barnyard." Edmonds, 115 S. Ct. at 1781 (citing Euclid v. Ambler, 272 U.S. at 388).
128. Edmonds, 115 S. Ct. at 1781 As the Court said in Edmonds, "[t]o limit land use to single-family residences, a municipality must define the term 'family,' thus family composition rules are an essential component of single-family residential use restrictions." Id.
129. Id. (citing Village of Belle Terre v. Boraas, 416 U.S. 1 (1974)).
130. Edmonds, 115 S. Ct. at 1781.
131. Id. (emphasis in original).
132. Id.
turned to the language of the exemption provision. The Court found that the language encompassed maximum occupancy restrictions but did not cover family composition rules that are typically tied to land use restrictions. The majority reasoned that rules that "plainly and unmistakably" cap the total number of occupants in order to prevent overcrowding qualify under the FHA's broad exemption. However, the Court stated that rules focusing on household composition rather than on total number of occupants are not exempt from the FHA.

The Court reasoned that the provisions of the City's ordinance at issue were classic examples of a use restriction coupled with a family composition rule. The main provision invoked against Oxford House limited use to single-family residences. Furthermore, a second provision in the ordinance limited the number of occupants to a dwelling based on floor area. The City argued that the third provision, the family composition rule, qualified for the FHA exemption as a maximum occupancy restriction because it limited the number of unrelated persons who may live in a single-family dwelling to five. The majority rejected the City's argument because the family composition rule did not answer the question "[w]hat is the maximum number of occupants permitted to occupy a house?"

134. Edmonds, 115 S. Ct. at 1781-82. "In sum, rules that cap the total number of occupants in order to prevent overcrowding of a dwelling 'plainly and unmistakably,' [citation omitted] fall within § 3607(b)(1)'s absolute exemption from the FHA's governance; rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain, do not." Id. at 1782.
135. Id.
136. Id. (citing ECDC § 16.20.010 which provides that the sole "Permitted Primary Use[es]" in a single-family residential zone is "[s]ingle-family dwelling units.") Id.
137. Edmonds, 115 S. Ct. at 1782 (citing ECDC § 19.10.000, adopting the Uniform Housing Code § 503(b) (1988)). Here the provision provided that each unit have one room with a minimum of 120 square feet floor area. Other rooms must have a minimum of 70 square feet. In addition where two or more people occupy a room, the floor area shall be increased at the rate of 50 square feet for each occupant in excess of two. Id.
138. Id. (citing ECDC § 21.30.010) (emphasis added).
139. Id.
In conclusion, the Court held that the ordinance was not exempt under the FHA because it restricted the total number of unrelated occupants without also restricting the number of related occupants to occupy a house. However, the Court held only that the City's provision did not qualify for the FHA exemption, merely affirming the Ninth Circuit's ruling in the case. On remand, the Court instructed the District Court to determine whether the FHA's anti-discrimination provisions, requiring a "reasonable accommodation," applied and what the City should have done to "accommodate" the Oxford House under the FHA.

B. JUSTICE THOMAS' DISSENTING OPINION

Justice Thomas' dissent, joined by Justices Scalia and Kennedy, contained two main points. First, Thomas analyzed the "plain language" of the FHA exemption provision to find that the ordinance qualified for exemption. Second, Thomas criticized the majority for reading the statute too narrowly.

Using "plain language," Thomas focused on the exemption provision's use of the words "any," "restrict," and "regard." The exemption does not contain qualifying language requiring "absolute" or "unqualified" maximum occupancy restrictions as found by the majority. Thomas emphasized Congress' choice of broad terms in signalling exempt categories and restrictions. From this, Thomas reasoned that the ordinance was eligible for exemption because it was a "restriction" addressing occupancy density.

140. Id. at 1782-83.
141. Edmonds, 115 S. Ct. at 1783.
142. Id.
143. Id. at 1783-88.
144. Id. at 1783-85.
146. Id. at 1783-85.
147. Edmonds, 115 S. Ct. at 1784.
148. Id.
149. Id. "[T]he rule that 'no house . . . shall have more than five occupants' . . . readily qualifies as a 'restriction[s] regarding the maximum number of occupants permitted to occupy a dwelling.'" Id.
Thomas further used his "plain language" approach to criticize the majority for framing the issue around the number of occupants permitted to occupy a house. Thomas felt that the ordinance need not establish an absolute maximum number of occupants because the exemption applied to restrictions "regarding" maximum occupancy. By analyzing the language, Justice Thomas found that the ordinance qualified for exemption from the FHA.

Secondly, Thomas argued that the majority read the statute too narrowly and negated the FHA's broad policy. Thomas reasoned that Congress sought to effectuate the policy of fair housing by the language it used in the statute. Narrowly reading that language, he argued, frustrated the purpose of the statute. In addition, Thomas asserted that land use regulation was an area left to the states to the exclusion of Congress. Therefore, under the United States' federalist structure of government, if Congress regulates that area, its intention to preempt the states should be clearly stated.

150. Edmonds, 115 S. Ct. at 1784 (criticizing the majority for posing the wrong question in relation to the statute, citing the majority opinion at 1782).
151. Id. "To take advantage of the exemption, a local, state, or federal law need not impose a restriction establishing an absolute maximum number of occupants; under § 3607(b)(1), it is necessary only that such law impose a restriction "regarding" the maximum number of occupants." Id. (emphasis in original, citing the majority opinion at 1782). (Emphasis added to text.)
152. Thomas mentioned synonyms of "regard," specifically "concern," "relate to," or "bear on" to make his point that to be exempted, the ordinance did not have to establish an absolute maximum number of occupants. Id.
153. Id. at 1785. Thomas stated the Ninth Circuit's decision should be reversed. Edmonds, 115 S. Ct. at 1785.
154. Id.
155. Id. The stated policy is "to provide for fair housing throughout the United States." Id. (citing 42 U.S.C. § 3601).
156. Id.
158. Id. at 1786. Thomas argued that the majority's opinion ignored precedent where the Court held the Age Discrimination in Employment Act did not apply to state judges because Congress had not intended it be applied to state employees. Id. (citing Gregory v. Ashcroft, 501 U.S. 452 (1991) where the Court held that the Age Discrimination in Employment Act did not protect state court judges although the Act "broadly prohibits" age discrimination). Thomas' reasoning rested on the federalist structure of our government which requires Congress to clearly indicate it is preemiting state power in areas that are traditionally left to the states to regulate. Edmonds, 115 S. Ct at 1785-86.
159. Id. The court in Edmonds stated:
While reading the statute narrowly may be appropriate in other areas, construing the exemption narrowly in the area of land use was unreasonable.\textsuperscript{160}

As part of his criticism of the majority's narrow reading, Thomas discussed the majority's use of the two terms, "maximum occupancy restrictions" and "family composition rules."\textsuperscript{161} Thomas dismissed the categories as fictions.\textsuperscript{162} He found that "maximum occupancy restrictions" failed to encompass all the types of restrictions exempted from the FHA.\textsuperscript{163} As an example, he argued that the plain language of the statute does not mention available floor space or the number and type of rooms.\textsuperscript{164} Thomas reasoned that the language of the statute does not require the restrictions to apply to all residents of all dwelling units.\textsuperscript{165} In addition, the statute does not require restrictions to protect health and safety by preventing overcrowding.\textsuperscript{166} Although Thomas conceded that the statutory language encompasses "maximum occupancy restrictions," the statutory language does not necessarily exclude the City's ordinance as claimed by the majority.\textsuperscript{167} Thomas found that the majority's distinction between pure maximum occupancy and land use restrictions was irrelevant to the issue presented by the City's ordinance.\textsuperscript{168}

\textsuperscript{160} Edmonds, 115 S. Ct. at 1786. Thomas focused on the concept of federalism which is at the core of our government. \textit{Id.}
\textsuperscript{161} \textit{Id.} at 1786-88.
\textsuperscript{162} \textit{Id.} at 1786 ("zoning rules simply invented by the majority.").
\textsuperscript{163} \textit{Id.} at 1787 (citing 42 U.S.C. § 3607(b)(1)).
\textsuperscript{164} \textit{Edmonds}, 115 S. Ct. at 1787.
\textsuperscript{165} \textit{Id.} (emphasis in original).
\textsuperscript{166} \textit{Id.}
\textsuperscript{167} \textit{Id.}
\textsuperscript{168} \textit{Id.} "In other words, although the majority's discussion will no doubt provide guidance in future cases, it is completely irrelevant to the question presented in this case." \textit{Edmonds}, 115. S. Ct. at 1787.
In a similar argument, Justice Thomas criticized the majority's use of "family composition rules" as an invented category of zoning restrictions. Thomas found that the majority opinion "hinged" on its classification of the City's ordinance as a "family composition rule." This criticism rested on the fact that the majority opinion said "virtually nothing about this crucial category." Concluding, Thomas returned to the "plain language" of the statute to support his position that the FHA's exemption for local restrictions encompasses "any" zoning restriction as long as it "regards the maximum number of occupants." Thomas noted that the statute does not contain qualifying language as to the purpose of the exemption. Again, Thomas found that the language of the exemption does not require "absolute" maximum occupancy restrictions. These two grounds supported the dissent's finding that the majority misinterpreted the language of the statute.

V. CRITIQUE

The Edmonds decision is important for several reasons. First, the decision takes a step towards curbing invidious discrimination and helping handicapped persons to attain greater access to housing. Second, the decision is important because it will affect how future state and local zoning ordinances are written, discouraging strict application of current ordinances that would adversely impact the rights of handicapped persons.
The Edmonds decision, however, does not discuss two important issues. First, the Court did not address the "reasonable accommodations" counter-claim raised by Oxford House. Second, the Court neglected to indicate the extent of the impact that the majority’s "narrow reading" approach would have on future FHA litigation.

A. THE IMPORTANCE OF THE EDMONDS DECISION

First, the Edmonds decision is important because it significantly helps handicapped persons to attain greater access to housing. Oxford House residents benefit because cities will no longer be able to regulate group living situations by defining what constitutes a "family" or by limiting occupancy in another prohibited way. Thus, Oxford House residents will have greater access to housing because occupancy limits, in the form of now-illegal ordinances, will be removed. Similarly, other persons recognized as "handicapped" under the FHA definition will also achieve greater access to housing.

Exempted from Zoning Rules, WASH. POST, September 7, 1995, at C3 (lawsuit on behalf of Oxford Houses challenging the District of Columbia’s characterization of the group homes as "rooming houses," yet allowing the homes to operate during the pending litigation; settlement negotiations began shortly after the Court’s decision in Edmonds).

179. Edmonds 115 S. Ct. at 1783. The Court did not address the "reasonable accommodations" claim because the parties did not litigate it in the lower court. Id. (stating the Court only addressed the threshold question of whether the City’s ordinance qualified for exemption and that the lower court must now decide whether the City’s actions constituted a "failure to make reasonable accommodations" as provided in the anti-discrimination provision of the FHA).

180. Edmonds, 115 S. Ct. at 1780 (the majority found this case was an instance where the exception to a general policy is read narrowly to preserve the primary operation of the policy). Author’s note: See the case generally because the majority never indicated when the "narrow reading" approach would be used in the future. Id.

181. Id.

182. James G. Sotos, In Narrow Ruling, Court Rejects Limit on Group Home, CHICAGO DAILY L. BULL, May 18, 1995, at 6 (summarizing the Edmonds decision as concluding the city could not rely on its zoning restriction to regulate the Oxford House).

183. United States v. City of Taylor, Michigan, 872 F. Supp. 423 (E.D. Mich. 1995) (holding the City violated the FHA when it characterized a home for elderly handicapped persons as “multiple family,” it discriminated against the residents); c.f. Elliott v. City of Athens, Georgia, 960 F.2d 975 (11th Cir. 1992) (after Edmonds, the City in Elliott would likely be unable to successfully argue their ordinance was exempt; therefore the residents of the home, which was not mod-
In addition to expanding access to housing for handicapped persons, the Edmonds decision will curb invidious discrimination. In the past, this discrimination has surfaced as stereotypical attitudes based on fear and ignorance, manifesting as concern over lowered property values and unequal application of zoning laws. However, the majority's utilization of legislative history, including a thorough discussion of the specific discrimination Congress sought to prohibit, suggests that invidious discrimination will now be less tolerated.

Second, the Edmonds decision is important because it will affect how future state and local ordinances are written. In Edmonds, the Court found that ordinances should be written to impose restrictions based on density, such as persons-per-bedroom or persons-per-square-foot and should not be based on family-composition rules. Therefore, an

ed as an Oxford House group home, would now be protected).

184. See supra notes 86-89 and accompanying text for examples of invidious discrimination. See also Edmonds, 115 S. Ct. at 1782 (stating that rules that fasten on family composition instead of total number of occupants do not qualify for exemption from the FHA).

185. See supra notes 86-89 and accompanying text.

186. See supra notes 72-85 and accompanying text. See also City of Taylor, 872 F. Supp. at 433 (criticizing the City's strict application of its zoning ordinance to a home for elderly handicapped persons on the basis that the "for-profit" home did not fall under the definition of "family;" the City discriminated against the home because it is the only one the "for-profit" status has been used against); and Adriana Colindres, City Desk News, PEORIA J. STAR, September 11, 1993, at A6 (discussing a proposed change to the City of East Peoria's zoning code that would require group homes for people with disabilities be built at least 660 to 1500 feet apart).


188. House Report, supra note 7, at 24 (examples of this discrimination include imposing local ordinances on congregate living arrangements of unrelated persons with disabilities or enforcing otherwise neutral rules in a way that discriminates against handicapped persons).

189. See supra note 177 and accompanying text addressing the impact on construction of future ordinances. See Jim Gogek, A Bad Way to Tackle our Social Problems, SAN DIEGO UNION & TRIB., November 24, 1995, at B7 (criticizing the City Council's decision to discriminate against the mentally ill and recovering drug addicts by the Council retaining power to keep group homes out of neighborhoods that do not want them, in direct violation of the FHA).

190. House Report, supra note 7, at 31 (stating reasonable limits on the number of occupants based on a minimum number of square feet in the unit would be allowed to continue as long as they were applied equally).

191. See also Edmonds, 115 S. Ct. at 1782 n.8 (quoting the House Report, supra note 7, approving limits based on a minimum number of square feet in the unit...
ordinance will no longer be neutral if it discriminates against handicapped persons living in group homes. Furthermore, 
Edmonds aids handicapped persons because it discourages strict application of current ordinances, by finding that the exemption provision was intended to allow for restrictions that apply to all occupants and limit occupancy on the basis of person per square foot.

B. UNRESOLVED ISSUES

Although handicapped persons will benefit in terms of greater access and curtailed discrimination, the opinion failed to adequately analyze Oxford House's "reasonable accommodations" claim raised by Oxford House. The "reasonable accommodations" claim was not reached because the parties only presented the threshold "exemption" question and did not litigate the "reasonable accommodations" claim in the lower court.

The FHA provides that discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary or the sleeping areas of the unit). See supra note 9 and accompanying text for further definition of density restrictions.

192. The author fears, however, that the density limits could be placed so low as to have the effect of discriminating against group homes that may have higher density living arrangements in terms of persons-per-bedroom.

193. See Paul Duggan, Group-Home Operator, District Settle Lawsuit; Program Exempted from Zoning Rules, WASH. POST, September 7, 1995, at C3 (lawsuit on behalf of Oxford Houses challenging the District of Columbia's characterization of the group homes as "rooming houses," yet allowing the homes to operate during the pending litigation; settlement negotiations began shortly after the Court's decision in Edmonds).

194. Edmonds 115 S. Ct. at 1782 (rules that fasten on the composition of households rather than the total number of occupants a residence can contain do not qualify for exemption from the FHA).

195. Id. at 1783 (stating the decision only addressed the threshold question of whether the ordinance was exempt from the FHA; on remand, the lower court must decide whether the City's actions violated the FHA prohibitions against discrimination).

196. Id. See also City of Edmonds v. Wash. State Bldg Code Council, 18 F.3d 802, 803-04, (9th Cir. 1994) (the 9th Circuit's decision in Edmonds) (stating that after granting the City's summary judgment motion, compliance with the substantive requirements of the FHA is not at issue because the district court did not reach that question).
to afford such person equal opportunity to use and enjoy a dwelling.” Because a court’s interpretation of “reasonable accommodations” necessarily involves a fact-intensive survey, the Supreme Court remanded to the lower courts for consideration of whether an accommodation would be appropriate.

In addition to leaving the “reasonable accommodations” issue unresolved, the majority did not indicate just how far their “narrow reading” of FHA exemptions would extend. Specifically, Justice Ginsburg’s word choice creates ambiguity as to whether the Court will utilize the approach in the future. Ginsburg stated that “this case was an instance” where an exemption to the FHA’s general anti-discrimination policy “is sensibly read ‘narrowly’” to promote the goals of the FHA.

This language suggests two meanings with very different impacts on potential FHA litigation. On the one hand, the Court could be holding that the factual scenario implicated by this Oxford House presents an isolated instance worthy of reading an exemption from the FHA narrowly. On the other hand, the Court could be announcing a new general standard, mandating in all instances a narrow reading of exemptions to the general anti-discrimination policy of the FHA. Ginsburg’s use of the words “instance” and “sensibly” make it unclear whether the Court will use this “narrow reading” approach in the next case challenging a discriminatory ordinance or practice. Therefore, the impact of the Edmonds decision on

198. City of Edmonds v. Wash. State Bld’g Code Council, 18 F.3d 802, 807 (9th Cir. 1994) (the 9th Circuit’s decision in Edmonds). “Many factors must be weighed to determine whether reasonable accommodation under [the FHA] was achieved.” Id.
199. Edmonds at 1783, affirming the Ninth Circuit’s remand “for further consideration of the claims asserted by Oxford House and the United States.” Id.
200. Id. at 1780, 1782.
201. See infra notes 202-204 and accompanying text for discussion of Justice Ginsburg’s choice of language and the impact of the decision on future litigation.
202. Id. at 1780.
203. Id. at 1780.
204. Id.
future FHA litigation remains unknown in the absence of a clear message from the Court.

VI. CONCLUSION

In *City of Edmonds v. Oxford House, Inc.*, the United States Supreme Court held that the City's ordinance did not qualify for the Fair Housing Act's exemption for local maximum occupancy restrictions.\textsuperscript{205} The *Edmonds* decision marks the first time that the Court has invalidated an ordinance because it did not meet the requirements for the exemption provision.\textsuperscript{206} Consequently, the *Edmonds* decision marks an important turning point for handicapped persons in achieving greater access to housing. However, because the Court did not address the “reasonable accommodations” claim raised by Oxford House, the impact of *Edmonds* upon future FHA litigation ultimately remains unclear since the majority failed to clearly announce whether its “narrow reading” approach would apply in subsequent cases.

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\textsuperscript{206} Id. at 1780-83.

\textsuperscript{207} Golden Gate University, School of Law, Class of 1997. Thank you Mark, Wendy, Rob and Professor Andersson for your time and patience with me while I was writing this article.