Testimony in Opposition of LD 109
An Act to Improve Safety for Individuals Living in Recovery Residences

January 30, 2023

Dear Senator Beebe-Center, Representative Salisbury, and honorable members of the Joint Standing Committee on Criminal Justice and Public Safety,

My name is Courtney Gary-Allen. I am the Organizing Director of the Maine Recovery Advocacy Project (ME-RAP). I have extensive expertise in recovery policy and have helped to propose, write, and pass countless pieces of legislation on matters relating to criminal justice reform, recovery housing, and increasing access to treatment, prevention, and harm reduction services in Maine. I am here today to testify in opposition to LD 109: An Act to Improve Safety for Individuals Living in Recovery Residences.

As this public hearing progresses, you will hear from Ron Springel, Executive Director of the Maine Association of Recovery Residences, Amanda Ricci who has been working to open a recovery residence in Farmington, from Scott Pardy, an operator working miracles in Bangor who will share his experience with the state fire marshal's office in 2019, Brittany Reichman and Madison Weymouth, MARR inspectors who will detail their stringent fire safety guidelines, MARR board president Alison Webb, author of Recovery Allies, who will share more details about the organization's mission, and from countless other recovery housing operators, recovery housing residents, the greater recovery community, and our allies.

My part in this conversation is to help your committee understand how we got to this point and what LD 109 does.

LD 109 seeks to repeal Sec. 1. 25 MRSA §2452, sub-§4, which classifies recovery residences that are certified by national standards, house no more than 2 people per bedroom, 6 people per bathroom, and follow all other applicable housing codes as a single-family home for the purposes of fire code. This section of the law was proposed by then-Representative Justin Fecteau during the 129th Legislative Session and passed unanimously by the Criminal Justice and Public Safety Committee, flew through the House and Senate, and was signed into law by Governor Janet Mills.

I know this because this law was one of the very first pieces of legislation I ever worked on. At the time, I was the Executive Director of James' Place, a small non-profit recovery residence in Augusta, Maine.

Testimony in Opposition of LD 109
An Act to Improve Safety for Individuals Living in Recovery Residences

As background, on November 2nd of 2018, I received communications from the Augusta Code Enforcement Office that James' Place would be categorized "into the definition of a lodging or rooming house found within the 2009 NFPA 101, *Life Safety Code,* section 26.1.1.1."

This section of the code defines a Lodging of Rooming House as "a building that provides sleeping accommodations for 16 or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants." The officer required James' Place to house "no more than 3 outsiders", install a sprinkler system, or face him in court.

I knew these to be discriminatory practices because recovery housing is protected by the Federal Fair Housing Act, and the Americans with Disabilities Act but I was not willing to risk my guests being evicted from their homes. Instead, we enlisted Rep. Justin Fecteau and vowed to bring it to the legislative session.

During the public hearing on LD 353, then Assistant State Fire Marshal, Richard McCarthy, testified neither for nor against the bill and confirmed that "recovery houses and their residents have protection under the Americans with Disabilities Act as a protected class". In his testimony, he states that the issue of if these protections extend to fire and building codes were reviewed by a member of the Maine State Attorney General's Office and that the decision was as follows:

> **A failure on the part of the State of Maine to make reasonable accommodations, namely non-enforcement of the sprinkler rules, would likely be found to violate the Fair-Housing Act and the Americans with Disabilities Act.**

The Maine Attorney General's Office advised allowing recovery residences to operate without sprinkle systems that would be otherwise required by law.

This is a long-standing legal opinion, first discussed in a 1993 decision by Maryland's then-Attorney General Joseph Curran, Jr. whose opinion was that:

> **The Federal Fair Housing Amendments Act prohibits enforcement of fire safety code requirements in a small private group home for the mentally ill if the requirements are neither imposed on single-family dwellings nor tailored to the unique and specific needs and abilities of the home's residents.**

Testimony in Opposition of LD 109
An Act to Improve Safety for Individuals Living in Recovery Residences

These findings continue in caselaw, including in Brockton Fire Department vs. St Mary Broad Street, LLC, Tsombandis vs. City of West Haven CT, and Oxford house versus H. "Butch" Browning. The bottom line is that for better or worse, the State cannot impose excessive fire code regulations on recovery houses.

During today's hearing, you will hear countless testimonies about the dire impacts of repealing Sec. 1. 25 MRSA §2452, sub-§4 could have on the recovery housing community in Maine, namely the closure of countless houses, which is a valid and important concern in the middle of a housing and overdose crisis. And to be clear, in the State of Maine, not a single person has died in a house fire while living in a recovery residence, yet in 2022 we are expected to lose over 650 people to overdoses.

That being said, I specifically think it's important to underscore that if you repeal this section of the law, you will be opening the State of Maine to a lawsuit for a violation of the Americans with Disabilities Act and the Federal Fair Housing Act.

Thank you for your time. I am happy to answer any questions. I will also be available to you during the work session on the bill.

Sincerely,
Courtney Gary-Allen
Organizing Director, ME-RAP
courtney@recoveryvoices.com
(207) 593-6251

APPROVED
JUNE 18, 2019
BY GOVERNOR

CHAPTER
358
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

H.P. 279 - L.D. 353

An Act Regarding the Safety of Recovery Residences

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 25 MRSA §2452, sub-§4 is enacted to read:

4. Exception. Notwithstanding chapter 314 and Title 10, chapter 1103, a recovery residence must be treated as a residence for a family if the recovery residence meets the following requirements:

A. The recovery residence must be certified based on criteria developed by a nationally recognized organization that supports persons recovering from substance use disorder;

B. The recovery residence must have no more than 2 residents per bedroom;

C. The recovery residence must have at least one full bathroom for every 6 residents;

D. The recovery residence must meet the requirements of all adopted building codes and sections 2464 and 2468 applicable to a one-family or 2-family residence with regard to smoke detectors, carbon monoxide detectors and fire extinguishers; and

E. If the recovery residence is located in a multiunit apartment building, the recovery residence must meet all state and local code requirements for the type of building in which the recovery residence is located.

For the purposes of this subsection, "recovery residence" means a shared living residence for persons recovering from substance use disorder that is focused on peer support, provides to its residents an environment free of alcohol and illegal drugs and assists its residents by connecting the residents to support services or resources in the community that are available to persons recovering from substance use disorder.

HOUSE OF REPRESENTATIVES
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April 26, 2019

Testimony in Support of LD 353: An Act To Classify Recovery Residences as One-family Dwellings for the Purposes of the Fire Code

Good morning Senator Deschambault, Representative Warren, and my esteemed colleagues on the Joint Standing Committee on Criminal Justice and Public Safety. I am Representative Justin Fecteau. I am a German teacher currently on leave from Maranacook Community High School in Readfield to serve the fine people of District 86, which is West and North Augusta.

I am proud to support our recovery community. I am sure I don't need to tell anyone on this committee how much substance abuse has affected our state - or how many times we have tried searching for the right answers and have come back with nothing.

We are blessed with a ready and willing group of recovery leaders in our state. They are opening up recovery residences and getting our friends, family, and neighbors back on track. In my area, we have a non-profit called James' Place and they are doing exactly that; and with the evidence-based guidance from organizations like the Maine Association for Recovery Residences (MARR), the safe and reputable establishments can be clearly identified.

But they've reached out to me for some help. Access to safe and effective recovery housing is not equitable in our state. That's why I submitted LD 353: An Act To Classify Recovery Residences as One-Family Dwellings for the Purposes of the Fire Code.

I want to be clear. I have no interest in diminishing public safety or reverse-discriminating against our neighbors recovering from substance use by providing them living spaces that are less safe from those who are not recovering. I am trying to recognize these alcohol and illegal substance free homes as single family homes.

These residents live together, shop together, cook together, go to meetings together, and are all active in the community and with employment and post-secondary education. If we were to allow these families to be burdened with tens-of-thousands of dollars worth of sprinkler systems they would never open - and they may never find their way back to normal.

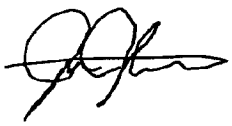
This bill restricts these residences to a house, lists the number of people that can live within each of these single family residences, and applies a smoke detector and fire extinguisher code that is beyond the requirements of a normal single family home. Furthermore, it provides a sound definition of a "recovery residence" to keep them all honest.

It is my understanding there will be groups to address subsection 4b of my bill. Apparently the number 6 should read "6 occupants per sink, toilet, and shower." The way it was briefed to me, it may be an important provision the committee considers. It may actually prevent some unsafe practices happening in some recovery residences throughout the state that don't have the National Association of Recovery Residences certification. I looked through the list this past weekend and it's quite thorough and extensive.

While I'd love to be able to answer all of your questions, I have brought plenty of back up to help us through this process.

I sincerely appreciate your time. Thank you.

Respectfully,



Rep. Justin Fecteau

TESTIMONY OF RICHARD MCCARTHY
DEPARTMENT OF PUBLIC SAFETY
OFFICE OF STATE FIRE MARSHAL

(Neither for Nor Against) L.D. 353

"An Act to CLASSIFY RECOVERY HOUSES AS ONE AND TWO FAMILY DWELLINGS"

Presented by: ***Representative Fecteau***

BEFORE THE JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

Hearing Date: Friday, April 26st , 2019 at 9:00 AM in Room 436, State House

Good morning Senator Deschambault, Representative Warren, and members of the Joint Standing Committee on Criminal Justice and Public Safety.

My name is Richard McCarthy and I am the Assistant State Fire Marshal Inspections and Prevention Division for The Office of the State Fire Marshal. I am here today representing the Department of Public Safety and the Office of State Fire Marshal to testify neither for nor against this bill.

A single family home as defined within State adopted Life safety Codes is a "dwelling unit that is occupied by members of a single family with not more than three outsiders if any in rented rooms". Since there is no definition of family within the Code it is left up to the Authority Having Jurisdiction (AHJ) to interpret whether the occupants of a home are to be considered a single family. If a building does not qualify as single family the next level would be rooming and lodging where up to 16 people in rented rooms. Placing Sober Houses in this category would require more restrictive Fire Safety measures to be added to the building such as sprinklers and fire alarms.

Our office inspects substance abuse recovery facilities that are licensed by DHHS, these facilities by statute are considered small residential care facilities if housing under 16 residents. This Bill if it passes will create 2 distinct levels of protection for the residents of recovery facilities, licensed facilities providing a higher level of Fire safety and unlicensed providing what would be required for your home.

. Recovery Houses and their residents have protection under the Americans with Disabilities Act as a protected class as to not prohibit or restrict where these recovery houses are located. It is less clear whether this protection extends to the Fire and Building Codes. This issue was reviewed by a member of the Maine State Attorney General's Office and the decision was as follows." A failure on the part of the State of Maine to make reasonable accommodation, namely non-enforcement of the sprinkler rules, would

likely be found to violate the Fair-Housing Act and the Americans with Disabilities Act. Our office was advised to allow these substance recovery homes to operate without the sprinklers that would be otherwise be required by law.

I. I would be happy to answer any questions you may have at this time or during the work session.

April 26th, 2019

Good morning Senator Deschambault, Representative Warren and other distinguished members of the Criminal Justice and Public Safety Committee,

My name is Courtney Allen. I am the Founder and Executive Director of James' Place; a nonprofit recovery residence here in Augusta and a certified alcohol and drug counselor. I serve on the committee for Maine Association of Recovery Residences and as Chapter Leader for Young People in Recovery. I am here today to testify in favor of LD 353; An Act to Classify a Small Recovery Residence as a Single-Family Home for the purpose of Fire Code.

On November 2nd of 2018, I received communication from the Augusta Code Enforcement Office that James' Place would be categorized "into the definition of a lodging or Rooming house found within the 2009 NFPA 101, *Life Safety Code,* section 26.1.1.1." This section of the code defines a Lodging of Rooming House as "a building that provides sleeping accommodations for 16 or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individuals occupants." The officer required James' Place to house "no more than 3 outsiders" or face him in court.

I knew these to be discriminatory practices because recovery housing is protected by the Federal Fair Housing Act, the American with Disabilities Act and the precedent created by Oxford house versus H. "Butch" Browning but I was not willing to chance my guests being evicted from their home. Because of these discriminatory practices I was forced to open the houses as single occupancy rooms and vowed to bring it to this legislative session.

Operating a recovery residence with only three people living in it has presented many challenges. We operate as a low-barrier, low-cost house. What that means is that 72% of our guests in 2018 received either a scholarship from James' Place, a church or general assistance to pay for their first week of rent. It means that when someone comes to us without the ability to pay, we do not turn them away. It is not economically viable to continue operating this way – we have no paid staff members and barley keep the doors open month to month.

There is no governmental funding being directed towards recovery housing, yet. Grant writing takes exactly what we do not have; time. There are more than 1 person dying a day on the streets of Maine and I have a 20-person waitlist. That is 20 people that tonight will sleep in subpar environment for their recoveries. That is 20 people who tonight I will go to bed worried about. This bill will double our ability to get people off the streets and into safe housing, as well as create a precedent going forward for recovery houses across the state.

Beyond financial hardships, single occupancy rooms present serious safety concerned in the population we are serving. In the state of Maine, not a single person has died in a house fire while living in a recovery residence, yet overall 418 people died last year as a result of overdose. Substance Use Disorder is a chronic relapsing condition and the reason recovery housing works is because of the added accountability between house mates.

On the ground, single occupancy rooms mean that a guest could resume use in their room and be dead before anyone finds them. James' Place mission is to provide safe housing to people seeking recovery. I cannot fulfill this mission when I am forced to house people in single occupancy rooms.

Recovery housing works as a viable solution to curbing substance use in Maine. At the time of intake, a person averages a recovery capital score of 111.36. After only 30 days at James' Place that score jumps to 138.93 – averaging a 27.57 increase.

The people who live at James' Place are not only working, going to school or volunteering, remain sober and becoming a part of their communities – they are statistically different than the person who first moved in. By passing this bill, the committee will be putting an end to the misunderstandings between recovery residences and fire code officials and granting state wide permission to continue our work. And in a state where so many people are dying, we must continue.

I want to thank the committee for your time and I am willing to answer any questions.

Sincerely,

Courtney Allen

Testimony of Ronald D. Springel, MD

IN FAVOR OF

LD 353 AN ACT TO CLASSIFY A SMALL RECOVERY RESIDENCE AS A SINGLE FAMILY HOME FOR THE PURPOSES OF THE FIRE CODE

Some notes from our conversation. I forgot to mention GA... talk with GA and clamp down on that. Journey House is the operator in Sanford. Other than them extemporizing to the City Council for half an hour at a City Council meeting and accosting me on the street the morning after the five-building-fire last October, they have supposedly set up 2-4 sober houses in Sanford. They have requested GA funds on an individual basis. One person has received GA funds as I learned last week. They are not Oxford House, and expect that they will "cave" to the license requirement. Do whatever you can to keep them away, but in the end there is nothing you can do to keep them away.

Check out how many Oxford House operations there are in Portland. Eventually they will move farther afield.

The rationale behind the license is also to get ahead of the State. There is enough gobbledygook on this topic taking place at the State, to potentially result in something bad because the bottom line is they don't need permission to operate. Oxford House has proceeded with a model where they set up as a family of people two have a disability. (Drug abuse and recovery is not a disability according to the Federal Law; alcoholism is.) I expect that the State would create a carve-out disability related to opioid addiction.
The license I propose is specific to Sanford. Sanford defines a family including a "group home." Group homes are disability housing for 8 or fewer people.
Where municipalities have run afoul of the Federal Laws regarding family and people with disabilities is equitable application and discrimination. If a group home wants to operate in a single family zone they may and there is nothing the BOA can do to prevent that other than bring on a lawsuit and lose. Here is some serious reading on the matter.

This email makes clear the contempt applied to recovery houses when it comes to federal protections by city officials. The "license" proposal is just one way towns and cities try to exclude recovery residences. Another is through the code enforcers – they fail to treat a house as a single family home, instead classifying it as a "boarding house" or "group home", therefore requiring it to install fire doors, expensive sprinkler systems and other equipment. Since the cost is prohibitive to almost all residence operators, they must move on to another town without these types of discriminatory practices. Federal court rulings, both in Louisiana and Connecticut, have affirmed that recovery residences operate as families, not individual boarding residents and they are entitled to the protections of both the Americans With Disabilities Act and the Fair Housing Act.

MARR urges OUGHT TO PASS on LD 353.

For the record, we wish to thank the Office of the State Fire Marshall for their stance on this bill and understanding that many more Mainers are at risk of dying from drug poisoning than from fire hazards in certified recovery residences. Attested and submitted: Ronald D. Springel, MD, Maine Association of Recovery Residences, April 26, 2019

Testimony of Ronald D. Springel, MD

IN FAVOR OF

LD 353 AN ACT TO CLASSIFY A SMALL RECOVERY RESIDENCE AS A SINGLE FAMILY HOME FOR THE PURPOSES OF THE FIRE CODE

Senator Deschambault and Representative Warren and other distinguished members of Criminal Jutice and Public Safety Committee, my name is Dr. Ron Springel and I am a resident of Cape Elizabeth. I am here today as a representative of the Maine Association of Recovery Residences (MARR), a Maine non-profit. MARR is the Maine state affiliate of the National Alliance of Recovery Residences – a group that has developed a national certification program for recovery residences (RR). To date we have certified 26 recovery residence in Maine and are working to certify many more. Separately, I publish and edit the Maine Recovery Residence Directory, a free resource listing all 100 currently know recovery residences in Maine and identifying those that have received certification at the standard of the National Alliance of Recovery Residences (NARR).

My background includes not only being trained as a physician in Emergency Medicine but also working in the field of Addiction Medicine. I have appended some work experience relevant to this testimony at the end of this written document.

Since recovery residences began proliferating in the 1980s' largely under the "Oxford House" model, they have been met with a variety of challenges to their successful operation. Families that desperately seek services for their loved ones at the same time complain, "not in my backyard!" Discrimination against this protected group has been rampant in our own state, OFTEN BY PAID GOVERNMENT EMPLOYEES.

The following is part of an email exchange obtained through a Freedom of Information Act (FOIA) request. I attest to its authenticity as a true original and unedited copy. I have extracted this section and erased identifiers regarding the author's name, position and affiliation. It was part of an email conversation between the City of Sanford and another Maine municipality. It references a phone call that took place between the entities. Highlighting is mine.

PLEASE GO TO NEXT PAGE

Fire codes and recovery housing

Summary of recent findings, legal opinions and court rulings, and index to source documents

January 2021
updated April 2021

Fire codes and recovery housing

Document index and summary

January 2021
updated April 2021

This document is an index to a family of related material related to the permissible application of state and local fire codes to residential dwellings – primarily single family residences occupied by households of recovering individuals.

Source documents are available online in a Google Docs folder, and links are included in the descriptions below.

Life Safety Code 2021 revision

The International Fire Protection Association maintains the *Life Safety Code*, referenced by most local governments in writing and modifying their own fire codes. A proposed 2021 revision supports the intent to treat households of unrelated persons that operate as families in accordance with the regulations applicable to single family dwellings.

References:

Current version of the code

Proposed language related to shared housing

Maryland Attorney General's opinion on fire codes and shared housing

This ruling was an important element in recent discussions in Maryland about appropriate requirements for sober home providers.

Reference: opinion

Maryland agreement letter – Kim Savage

This memorializes the decision by the Maryland fire marshal that shared occupancy of single family dwellings by recovering individuals operating as single households are exempt from fire inspection requirements and that occupancy is to be treated in the same manner as occupancy by a natural family.

Reference: letter

Case law - Brockton MA federal court decision

Finding in this 2016 case in favor of the defendant recovery residence operator was that the Massachusetts Zoning Act prohibits discrimination against disabled persons in the enforcement of local laws including zoning, health and safety codes, notwithstanding the existence of the state's "sprinkler law" covering boarding/rooming houses.

Reference: Brockton Fire Department vs. St. Mary Broad Street LLC

Case law – Connecticut and Louisiana federal court decisions

Findings in both cases were that recovery residence households operating as the equivalent of natural families, i.e. as single households, must be treated in the same way a family would be treated. The Louisiana case specifically addresses the fire code issue while the Connecticut case addresses a wider range of regulatory issues.

References:

Tsombandis vs. City of West Haven CT

Oxford House vs. Browning (Louisiana)

State enforcement action - California Department of Housing and Community Development

Fair housing protections under California state law roughly parallel federal protections. Nevertheless several cities have enacted zoning and related ordinances that discriminate against recovery residences in various ways. In March 2021 the state issued a cease-and-desist order to the City of Encinitas directing them to rescind their ordinance completely. The order addresses several significant violations of both state and federal law. Fire codes are addressed but most violations cited relate to other aspects of the city's regulations.

Reference: City of Encinitas Notice of Violation

Supplementary material on fair housing and current oversight of recovery housing

The documents below don't bear exclusively on the fire code issue, but include important background information of federal fair housing law and on the preferred framework for recovery housing oversight in light of that body of law.

The first item, a joint statement from HUD and DOJ, is one we recommend to anyone in state or local government seeking to understand the requirements under the Fair Housing Act, Americans With Disabilities Act and related federal regulations. The second item is a guide co-produced by the National Council for Behavioral Health and NARR almost three years ago. It includes recommendations for state oversight of recovery housing systems, and also contains a summary table of major regulatory features of representative states as of publication date (March 2018).

References:

Joint statement, HUD and U.S Department of Justice

Building Recovery: State Policy Guide for Supporting Recovery Housing

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

OXFORD HOUSE, INC., ET AL. CIVIL ACTION

VERSUS

H. "BUTCH" BROWNING NO.: 15-00282-BAJ-EWD

RULING AND ORDER

Before the Court are **Plaintiffs' Motion for Partial Summary Judgment (Doc. 59)** and the **Motion for Partial Summary Judgment (Doc. 55)** filed by Defendant H. "Butch" Browning, in his official capacity as the State Fire Marshal of the Louisiana Office of the State Fire Marshal. Plaintiffs, in their Motion, seek summary judgment on their reasonable accommodation claims under the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act (collectively, "Fair Housing Act"), 42 U.S.C. ch. 45; the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008 (collectively, "ADA"), 42 U.S.C. ch. 126; and the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. ch. 16. Defendant filed memoranda in opposition to the Motion, (*see* Docs. 78, 79),[1] and Plaintiffs filed a reply memorandum in support of

[1] The Court notes that there is a *single* Defendant in this case: H. "Butch" Browning, whom Plaintiffs have sued in his official capacity as the State Fire Marshal of the Louisiana Office of the State Fire Marshal. *See* Doc. 29 at ¶ 9. Defendant filed two distinct memoranda – drafted by different attorneys – in opposition to Plaintiffs' Motion. *See* Docs. 78, 79. This practice violates this Court's Local Rule 7(f) – which requires "each respondent" to "file *a* response" to a motion, M.D. La. LR 7(f) (emphasis added) – and in effect circumvents the page limitations imposed by Local Rule 7(g), *see* M.D. La. LR 7(g). This practice also resulted in the submission of two distinct statements of material facts as to which Defendant contends there are genuine issues to be tried. *See* Docs. 78-5, 79-1. Although the Court, for the purposes of Plaintiffs' Motion, considered both memoranda and statements of material

the Motion, (*see* Doc. 94). Defendant, in his Motion, seeks summary judgment on Plaintiffs' reasonable accommodation claim under the Rehabilitation Act. Plaintiffs filed a memorandum in opposition to the Motion, (*see* Doc. 80); Defendant filed a reply memorandum in support of the Motion, (*see* Doc. 86); and Plaintiffs filed a surreply memorandum in further opposition to the Motion, (*see* Doc. 102). On June 12, 2017, the Court held oral argument on the Motions. For the reasons explained herein, **Plaintiffs' Motion for Partial Summary Judgment (Doc. 59)** is **GRANTED**, and Defendant's **Motion for Partial Summary Judgment (Doc. 55)** is **DENIED**.

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facts submitted by Defendant, Defendant is cautioned that in the future, the Court will strike from the record any such duplicative pleadings.

I. BACKGROUND[2]

A. The Oxford House Model

Plaintiff Oxford House, Inc. ("Oxford House, Inc." or "Corporation"), is a 501(c)(3) corporation that provides organizational support to persons attempting to establish group homes for individuals recovering from alcoholism or drug addiction. The first of these group homes – referred to as "Oxford Houses" – was established in

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[2] Plaintiffs, in connection with their Motion, filed a Statement of Material Facts as to Which There Is No Genuine Issue to Be Tried (Doc. 59-2), outlining 174 paragraphs of facts that Plaintiffs assert as undisputed. Defendant submitted two distinct statements of material facts as to which Defendant contends there are genuine issues to be tried. *See* Docs. 78-5, 79-1. As stated previously, this practice is improper, but for the purposes of Plaintiffs' Motion, the Court considered both statements of material facts submitted by Defendant.

The first of these statements submitted by Defendant addresses each of the paragraphs in Plaintiffs' statement, asserting whether Defendant "controverts" the particular fact, *see, e.g.*, Doc. 78-5 at ¶ 1, or whether the fact is "uncontroverted," *see, e.g., id.* at ¶ 2. Defendant controverted nearly all of the paragraphs in Plaintiffs' statement, reasoning – nearly each time – that the paragraph "attempts to restate, summarize[,] and/or paraphrase testimony of a witness who may be called to testify at trial," *e.g., id.* at ¶ 2, or that the paragraph "references a written document, [which] provides the best evidence of its contents," *e.g., id.* at ¶ 4. These assertions are patently insufficient to aver that a fact is genuinely in dispute. *See* Fed. R. Civ. P. 56(c)(1)(B) ("A party asserting that a fact . . . is genuinely disputed *must support* the assertion by (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing . . . that an adverse party cannot produce admissible evidence to support the fact." (emphasis added)).

The second of these statements submitted by Defendant provides twenty-seven facts that Defendant apparently asserts as undisputed; these facts are supported by citations to exhibits that were submitted by Defendant. *See* Doc. 79-1. Some of these facts, however, are materially identical to facts that Plaintiffs assert as undisputed. *Compare, e.g., id.* at ¶ 1 ("In 2014, the [Louisiana Office of the State Fire Marshal] received a citizen complaint concerning Oxford Houses in Lake Charles, L[ouisiana]."), *with* Doc. 59-2 at ¶ 70 ("In January 2014, the Louisiana Office of the State Fire Marshal received a citizen complaint about houses in Lake Charles being used as 'halfway[-]type facilities.'").

Therefore, the vast majority of the facts that Plaintiffs assert as undisputed in their Statement of Material Facts as to Which There Is No Genuine Issue to Be Tried (Doc. 59-2) are considered by the Court as undisputed for the purposes of Plaintiffs' Motion, either due to Defendant's failure to properly support its assertion that the facts are genuinely disputed or Defendant's apparent agreement that various facts are undisputed. *See* Fed. R. Civ. P. 56(c). If the Court has determined that Defendant has *properly* disputed a particular fact that is recounted in this section, the Court will indicate the existence of the dispute in the corresponding footnote and will include a record citation to the exhibits submitted by the parties.

1976. Since that time, and due to congressional recognition of the effectiveness of Oxford Houses, Oxford House, Inc., has entered into contracts with a majority of states – including the State of Louisiana – to establish and maintain Oxford Houses. States do not provide any direct funding to individual Oxford Houses; states merely provide funding to subsidize the salaries of persons who facilitate the establishment of Oxford Houses within the state. At the time that Plaintiffs filed this Motion, 106 Oxford Houses were operating in Louisiana, including six in the Lake Charles area. In total, over 700 individuals resided in Oxford Houses in Louisiana at that time, but many more individuals sought to reside in those homes: in 2016, Oxford Houses in Louisiana received four applications for every vacancy. Oxford House residents in Louisiana – 20% of whom come directly from homelessness and 16% of whom come directly from incarceration, commitment in a mental health facility, or residency in a halfway house – tend to stay in an Oxford House for an average of eleven months.

In order to reside in an Oxford House, an individual must be in recovery from alcoholism or drug addiction. The existing residents of a particular Oxford House vote to accept or deny the application of an individual seeking to reside in the home. An applicant who is currently using drugs or alcohol is disqualified from admission to an Oxford House, and any existing residents who relapse into drug or alcohol use are required to vacate the home.

Oxford House, Inc., provides no direct financial assistance to individual Oxford Houses; each individual Oxford House must be financially self-reliant. Nor does Oxford House, Inc., own property. Rather, the mission of Oxford House, Inc., is to

encourage groups of individuals who are recovering from alcoholism or drug addiction to lease homes, live together, affiliate with the Corporation's network, and utilize the Oxford House model. The Corporation endeavors to establish Oxford Houses in single-family homes located in residential neighborhoods, ideally with common areas that are large enough to accommodate all of the residents of the home during "house meetings" and informal gatherings. Oxford Houses typically are established in homes with four bedrooms, and residents customarily share bedrooms. In order for residents to fulfill both the responsibilities for the continued functioning of the home and the mission of the home to foster its residents' recovery, Oxford Houses must lodge at least six individuals. Five residents are charged with officer positions, entrusted with particular responsibilities and duties.

B. The Beneficial Effects of the Oxford House Model

The Oxford House model aims to facilitate the development of relationships among residents that resemble familial bonds. This aim is accomplished through the layout of homes and the lodging in a single-family home of several individuals who are all recovering from alcoholism or drug addiction: residents can avoid feelings of isolation and loneliness – which have been shown to contribute to relapse – by sharing bedrooms and by having the ability to congregate and socialize in communal living spaces. Oxford Houses provide stable housing for individuals recovering from alcoholism or drug addiction, and the communal living arrangement encourages residents to hold each other accountable for their actions in order to prevent relapse.

For example, Plaintiff Dana Daniel ("Daniel") – who has suffered from an addiction to opioids for her entire adult life, detrimentally affecting her finances, personal and familial relationships, and housing situation – has described the Oxford House model as providing a "safe place . . . to go" for persons recovering from alcoholism or drug addiction.[3] Daniel, who has resided at multiple Oxford Houses, explained that the presence of "other people . . . that are striving to . . . have healthy lives and recover . . . h[e]ld[] [her] accountable" and provided her with "guidance."[4] Daniel also credited the responsibilities conferred by the elected officer positions with promoting her sense of accountability to others. "You learn responsibility," stated Daniel.[5]

Additionally, the Oxford House model aids residents in repairing relationships that have been negatively affected by their alcoholism or drug addictions. Courtney Catanese ("Catanese") – who, at the time of Plaintiffs' Motion, had maintained sobriety for a one-year period since moving into Oxford Houses – described her recent success in attempting to repair the familial relationships that she had damaged during the period of her addiction.[6]

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[3] Doc. 59-7 at p. 15, l. 22.

[4] *Id.* at p. 15, ll. 23-25; *id.* at p. 16, l. 2.

[5] *Id.* at p. 70, ll. 21-22.

[6] Doc. 59-6 at ¶ 7.

The effectiveness of the Oxford House model in preventing an individual's relapse into drug and alcohol use has been confirmed by an academic study.[7] In a longitudinal study, researchers observed 897 Oxford House residents who resided in 219 Oxford Houses nationwide over the course of a year. Researchers found that the relapse rate for these Oxford House residents was 13.5%. The finding that over 86% of the observed Oxford House residents retained their sobriety throughout the study represents an outcome that is at least four times greater than normal outcomes following traditional detoxification and addiction treatment.

C. Oxford House West Hale

In 2012, an Oxford House was established in a house located at 236 West Hale Street in Lake Charles, Louisiana ("Oxford House West Hale"). The house is owned by Plaintiffs David and Janet Miller (collectively, "the Millers"), who lease the property to the residents for $1500 per month.

The house is a one-story, single-family home and is located in a residential neighborhood. The house has four bedrooms, two bathrooms, a living and dining area, a kitchen, and a garage. Each of the bedrooms either features a window or an exterior door, and the living and dining area, as well as the garage, has an exterior door. The house contains connected smoke detectors and fire extinguishers, but it does not have a sprinkler system, a fire alarm system, or single-station smoke alarms that are powered by the house's electrical infrastructure.

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[7] *See* Leonard A. Jason et al., *The Need for Substance Abuse After-Care: Longitudinal Analysis of Oxford House*, 32 Addictive Behavs. 803 (2007).

Oxford House West Hale operates as an all-female Oxford House. Due to the house's layout, a maximum of seven women may reside in the home. Catanese, at the time of Plaintiffs' Motion, resided at Oxford House West Hale and served as its "President." Daniel previously resided at Oxford House West Hale from December 2014 to May 2015.

In addition to holding weekly "house meetings" to discuss the management of the house, the residents of Oxford House West Hale socialize with each other on a daily basis, both inside and outside of the house. The residents often congregate on the house's patio, discussing their efforts to recover from their addictions and to remain sober. Residents also accompany each other to meetings of the local chapters of Alcoholics Anonymous and Narcotics Anonymous, at which the residents present to those in attendance the availability of Oxford Houses as an option for those seeking to retain their sobriety. Apart from these recovery- and house-management-related interactions, residents dine with each other in nearby restaurants and see movies together. Residents of Oxford House West Hale "become very close" with each other,[8] and they maintain some of these tight-knit relationships even after leaving the house. "We . . . know all of each other's personal details, . . . and we hold each other accountable," stated Catanese.[9]

Each resident at Oxford House West Hale pays $125 per week to reside in the house. Both Daniel and Catanese have stated that they could not afford a higher

[8] Doc. 59-6 at ¶ 11.

[9] *Id.*

weekly payment, and Catanese has stated that the other residents of the house likewise could not afford a higher weekly payment, based on her knowledge that each of the residents of the house was at least one week behind on her respective payments. The funds from such payments are used to satisfy monthly obligations, such as rent and utilities bills, and to purchase basic household supplies. The remainder of the funds are placed in a reserve, to be used in the event of vacancies or emergencies. At the time of Plaintiffs' Motion, Oxford House West Hale's bank account had a balance of $682.37, and the house had no alternative access to funding. Additionally, Oxford House West Hale was not financially stable at the time of Plaintiffs' Motion, which was at least in part due to recent vacancies that had arisen; four residents must be lodged in the house and making payments in order for Oxford House West Hale to exhibit financial stability.

D. Louisiana Office of the State Fire Marshal

The Louisiana Office of the State Fire Marshal ("Fire Marshal") is an agency of the State of Louisiana, organized within the Department of Public Safety and Corrections. H. "Butch" Browning ("Fire Marshal Browning") serves as the State Fire Marshal. The Fire Marshal, as a result of a grant from the United States Department of Housing and Urban Development, is a recipient of federal funding. The Fire Marshal is statutorily tasked with enforcing and promulgating rules and regulations with which structures in the state must comply,[10] although the Fire Marshal does not

[10] *See* La. Rev. Stat. § 40:1578.6(A).

have the statutory authority to inspect "one- or two-family dwellings . . . for the purpose of reducing or eliminating fire hazards."[11]

By statute, the State of Louisiana utilizes the provisions of the Life Safety Code as the minimum standards of fire safety with which all structures must comply, and the Fire Marshal is statutorily charged to enforce those provisions.[12] The Life Safety Code, sometimes referred to as "NFPA 101," is published by the National Fire Protection Association. At all times relevant to this action, the Fire Marshal utilized the 2012 edition of the Life Safety Code.[13]

The provisions of the Life Safety Code prescribe requirements with which structures must comply to ensure fire safety. The requirements applicable to a structure depend primarily on that structure's "occupancy type," such as "one- or two-family dwelling," "lodging or rooming house," or "residential board and care facility." In general, the Life Safety Code prescribes the least onerous requirements on one- and two-family dwellings, with the requirements becoming more exacting as the number of occupants in and the public access to a structure increases.

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[11] *Id.* § 40:1563(B)(4).

[12] *See id.* § 40:1578.6(A).

[13] *See* Life Safety Code (Nat'l Fire Prot. Ass'n 2012).

E. Citizen Complaint

In January 2014, the Fire Marshal received a citizen complaint regarding various houses in Lake Charles, which the citizen alleged were operating as "halfway[-]type facilities." Oxford House West Hale was one of the houses referenced in the complaint.

On March 10, 2014, Deputy Roddy Dauzat ("Deputy Dauzat"), along with other Fire Marshal employees, arrived at the house located at 3711 Swanee Street ("3711 Swanee") in Lake Charles – which had been included in the citizen complaint – to inspect the residence. An Oxford House had been established at 3711 Swanee, and during the course of the inspection, Deputy Dauzat was placed in contact with Paul Malloy ("Malloy"), the Chief Executive Officer of Oxford House, Inc. Malloy advised Deputy Dauzat that 3711 Swanee was a one-family dwelling, not a lodging or rooming house, and that the Fire Marshal thus had no authority to inspect the residence. Further, Malloy asserted that the current configuration of 3711 Swanee was protected under the Fair Housing Act, and later that day, Malloy sent a legal memorandum to the Fire Marshal to support that position. Deputy Dauzat thereafter ceased the inspection, and the scheduled inspections of the other Oxford Houses in the Lake Charles area were postponed, pending a review by the Fire Marshal of its authority to inspect the residences.

In October 2014, Fire Marshal Browning and Malloy held a teleconference to discuss matters related to the Fire Marshal's desire to inspect the Oxford Houses in Lake Charles. Following that teleconference, Fire Marshal Browning informed

Malloy via email that the Fire Marshal held the position that the Oxford Houses may be properly classified as lodging or rooming houses or residential board and care facilities, and therefore the Fire Marshal had the statutory authority to inspect the structures.

F. "Reasonable Accommodation Request" of January 12, 2015

On January 12, 2015, Steven G. Polin ("Polin") – General Counsel of Oxford House, Inc. – sent a letter to Fire Marshal Browning. The letter – which is thirteen-pages long and is replete with legal citations – contained the words "Reasonable Accommodation Request" in the subject line, and Polin stated that he was "making a reasonable accommodation request pursuant to the . . . Fair Housing Act, 42 U.S.C. [§] 3604(f)(3)(B)."[14] Specifically, Polin requested that the Fire Marshal "waive . . . the limitations of the maximum number of unrelated persons who can reside together as a family under the . . . [L]ife [S]afety [C]ode . . . and treat the use of Oxford House as the functional equivalent of a family . . . and the use of the property as a single[-] family use."[15] In support of the contention that the residents of Oxford Houses should be treated as the "functional equivalent of a family," Polin stated:

> First, all the residents have access to the entire house. Second, all the residents participate equally in the housekeeping functions of the house . . . . Third is the quality of the relationship among the residents. The emotional and mutual support and bonding [of] Oxford House residents in support of their recovery from drug addiction and alcoholism is the equivalent of the type of love and support received in a traditional family. Finally, the living arrangement is not based upon a profit motive. It is necessary that that the proposed Oxford House be able to have a minimum of six (6) residents in order for the residents to ameliorate the effects of the diseases of alcoholism and drug

[14] Doc. 59-21 at p. 1.

[15] *Id.*

> addiction. . . . By living with other persons who are in recovery, the residents should never have to face an alcoholic's or addict's deadliest enemy: loneliness and isolation.[16]

A response to this letter was never received by any representative of Oxford House, Inc. On March 24, 2015, Fire Marshal Browning made the determination that the Fire Marshal should proceed with the inspection process of the Oxford Houses. The Fire Marshal did not provide notice to any persons associated with Oxford House, Inc., regarding the resumption of the inspection process.

G. Fire Marshal's Inspection of Oxford House West Hale

On April 28, 2015, Fire Marshal employees inspected Oxford House West Hale. Based on the information obtained from the inspection, the Fire Marshal determined that the structure's occupancy type was a lodging or rooming house, due to the residency of six unrelated persons in the house. The Fire Marshal then ordered the Millers to reduce the number of unrelated occupants in the house to three within twenty-four hours and to submit a plan to the Fire Marshal to change the occupancy type of the house from a one-family dwelling to a lodging or rooming house.

Plaintiffs thereafter initiated this action on May 1, 2015.

H. "Reasonable Accommodation Request/Plan Review" of October 9, 2015

On May 5, 2015, the Fire Marshal advised Polin that it did not have a formal process for reviewing requests for reasonable accommodations; rather, the Fire Marshal only considers "plan review" applications, the purpose of which are to change the occupancy type of a structure.

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[16] *Id.* at p. 4.

On October 9, 2015, Polin sent a letter on behalf of Oxford House West Hale to Mindy Nunez Duffourc, who was representing the Fire Marshal. The letter contained the words "Reasonable Accommodation Request/Plan Review" in the subject line, and Polin stated that he was "request[ing] that the . . . Fire Marshal make a reasonable accommodation pursuant to the . . . Fair Housing Act, 42 U.S.C. [§] 3604(f)(3)(B)."[17] In particular, Polin requested that the Fire Marshal "waive the limitations of the maximum number of unrelated persons who can reside together as a family under the . . . [L]ife [S]afety [C]ode" and "treat the use of Oxford House as the functional equivalent of a family . . . and the use of the property as a single[-]family use."[18] In addition to incorporating the information contained in his letter dated January 12, 2015, Polin attached to the letter a copy of the *Oxford House Manual*, the lease agreement between the Millers and Oxford House West Hale, and a floor plan of the structure.[19]

After reviewing the "Reasonable Accommodation Request/Plan Review," on November 3, 2015, the Fire Marshal sent to the Millers a "Building Rehabilitation" letter. The letter stated that the Fire Marshal had reviewed Polin's correspondence as a request to change the occupancy type of the Oxford House West Hale structure from a one- or two-family dwelling to a lodging or rooming house. This letter also stated the various deficiencies – such as the lack of an automatic sprinkler system, a

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[17] Doc. 59-25 at p. 5.

[18] *Id.*

[19] *See id.* at pp. 5-61.

fire alarm system, and single-station smoke alarms powered by the building's electrical system – that the Millers were required to ameliorate in order to comply with the requirements that the Life Safety Code prescribes for lodging or rooming houses. Additionally, the letter stated that the structure could not be occupied by any persons until the various deficiencies were corrected.

Plaintiffs assert that the Fire Marshal's response to their requests was a refusal of an accommodation that is reasonable as a matter of law, in violation of the Fair Housing Act, the ADA, and the Rehabilitation Act.

II. LEGAL STANDARD

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record [–] including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, [and] interrogatory answers" – or by averring that an adverse party cannot produce admissible evidence to support the presence of a genuine dispute. Fed. R. Civ. P. 56(c)(1).

"[W]hen a properly supported motion for summary judgment is made, the adverse party must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (internal quotation marks and footnote omitted). "This burden is not satisfied with some metaphysical

doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (internal quotation marks and citations omitted). In determining whether the movant is entitled to summary judgment, the Court "view[s] facts in the light most favorable to the non-movant and draw[s] all reasonable inferences in her favor." *Coleman v. Hous. Indep. Sch. Dist.*, 113 F.3d 528, 533 (5th Cir. 1997).

In sum, summary judgment is appropriate if, "after adequate time for discovery and upon motion, [the non-movant] fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

III. DISCUSSION

The residents of Oxford House West Hale are individuals whose lives have been devastated by the effects of alcoholism and drug addiction. They seek to live together in a single-family home – in which they can provide mutual support to one another – to further their recovery, stave off the always-imminent threat of relapse, and regain their dignity.

Defendant repeatedly argues that by requiring the residents of Oxford House West Hale to install extensive and costly fire safety features in order to remain in their home, "Plaintiffs are being treated no different from any other group of seven unrelated individuals who want to live in a house, wherever that house may be located." (Doc. 79 at p. 10). Because of their struggles with alcoholism and drug addiction, however, these individuals *are* different, and by imposing upon Defendant the obligation to make reasonable accommodations for such persons, the law *requires* Defendant to treat these individuals differently.

A. Analysis of Reasonable Accommodation Claims Under the Fair Housing Act, the ADA, and the Rehabilitation Act

"The purpose of the [Fair Housing Amendments] Act was to prohibit discrimination in the national housing market for handicapped individuals," *Groome Res. Ltd. v. Par. of Jefferson*, 234 F.3d 192, 200-01 (5th Cir. 2000) (footnote omitted), thereby bringing handicapped individuals within the Fair Housing Act's "broad and inclusive compass" to eliminate housing discrimination in the United States, *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995). Similarly, the ADA – as well as the Rehabilitation Act, which is "interpreted *in pari materia*" with the ADA –

"is a broad mandate of comprehensive character and sweeping purpose intended to eliminate discrimination against disabled individuals . . . and to integrate them into the economic and social mainstream of American life." *Frame v. City of Arlington*, 657 F.3d 215, 223 (5th Cir. 2011) (quoting *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001)) (internal quotation marks omitted).

Pursuant to the Fair Housing Act, unlawful discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Additionally, "both the ADA and the Rehabilitation Act impose upon public entities an affirmative obligation to make reasonable accommodations for disabled individuals." *Bennett-Nelson v. La. Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005). "Because '[t]he relevant portions of the [Fair Housing Act], [the] ADA, and . . . the Rehabilitation Act offer the same guarantee that a covered entity . . . must provide reasonable accommodations . . . to people with disabilities,' 'analysis of a reasonable accommodation claim under the three statutes is treated the same.'" *Logan v. Matveevski*, 57 F. Supp. 3d 234, 253 (S.D.N.Y. 2014) (quoting *Sinisgallo v. Town of Islip Hous. Auth.*, 865 F. Supp. 2d 307, 337 (E.D.N.Y. 2012)) (alteration in original); *see also Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 573 n.4 (2d Cir. 2003) ("Due to the similarities between the [Fair Housing Act and the ADA], we interpret them in tandem."); *Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 561 (7th Cir. 2003) ("As a preliminary matter[,] the requirements for showing

failure to reasonably accommodate are the same under the ADA and the [Fair Housing Act,] so we can treat these issues as one."); *Vinson v. Thomas*, 288 F.3d 1145, 1152 n.7 (9th Cir. 2002) ("[T]here is no significant difference in the analysis of rights and obligations created by the [ADA and the Rehabilitation Act]."); *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 334 (2d Cir. 1995) ("We believe that in enacting the anti-discrimination provisions of the [Fair Housing Amendments Act], Congress relied on the standard of reasonable accommodation developed under section 504 of the Rehabilitation Act . . . .").

Although subtle textual nuances of the Rehabilitation Act distinguish it from the other statutes, these nuances do not affect the Court's ability to treat Plaintiffs' reasonable accommodation claims under the Fair Housing Act, the ADA, and the Rehabilitation Act as a single claim for purposes of analysis, nor do those nuances defeat Plaintiffs' reasonable accommodation claim under the Rehabilitation Act. For example, the ADA and the Rehabilitation Act contain differing causation standards for a plaintiff to prevail on a disability-based discrimination claim: the Rehabilitation Act employs a sole-causation standard, while the ADA does *not* require that "discrimination . . . be the sole reason' for the exclusion or denial of benefits to the plaintiff." *Bennett-Nelson*, 431 F.3d at 454 (quoting *Soledad v. U.S. Dep't of Treasury*, 304 F.3d 500, 503-04 (5th Cir. 2002)). The sole-causation standard of the Rehabilitation Act, however, is not relevant to the analysis of a reasonable accommodation claim under that statute. *See id.* at 454-55 ("Where a defendant fails

to meet [the] affirmative obligation [to make reasonable accommodations for disabled individuals], the *cause* of that failure is *irrelevant*." (emphasis added)).

As an additional example, the prohibition of discriminatory treatment under the Rehabilitation Act applies only to "any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). "Program or activity" is defined by the statute as "all the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance funds." *Id.* § 794(b)(1)(A). Therefore, if Defendant receives any type of federal funding, this nuance of the Rehabilitation Act likewise does not disturb the Court's analysis of Plaintiffs' reasonable accommodation claims under the Fair Housing Act, the ADA, and the Rehabilitation Act as a single claim, nor would Plaintiffs' reasonable accommodation claim under the Rehabilitation Act be defeated.

Defendant asserts in his Motion that he is entitled to summary judgment on Plaintiffs' reasonable accommodation claim under the Rehabilitation Act because (1) Plaintiffs cannot demonstrate that they were subjected to discrimination *solely* because of their alleged disabilities and (2) Plaintiffs cannot prove any connection between the alleged discrimination and a federally funded program.[20] Because

[20] Defendant, in his reply memorandum in support of his Motion, additionally argued that (1) Plaintiffs cannot establish intentional discrimination under the Rehabilitation Act, (2) Plaintiffs' reasonable accommodation claim under the Rehabilitation Act must be dismissed because their request for an "accommodation" was not reasonable as a matter of law, and (3) Plaintiffs failed to establish a disparate impact claim under the Rehabilitation Act. *See* Doc. 86. Because these arguments were raised by Defendant for the first time in his reply memorandum, the Court will not consider these new arguments. *See John Deere Co. v. Am. Nat'l Bank, Stafford*, 809 F.2d 1190, 1192 (5th Cir. 1987); *Elwakin v. Target Media Partners Operating Co.*, 901 F. Supp. 2d 730, 745 (E.D. La. 2012).

Defendant has based his arguments on an apparent misapprehension of the law applicable to Plaintiffs' claim, Defendant is not entitled to summary judgment on Plaintiffs' reasonable accommodation claim under the Rehabilitation Act.

Defendant argues that he is entitled to summary judgment because "[P]laintiffs cannot show that the alleged discriminatory act, a failure to waive provisions, was based *solely* upon their alleged disability,"[21] as Defendant asserts is required for Plaintiffs to prevail on their reasonable accommodation claim under the Rehabilitation Act. (Doc. 55-1 at p. 7). As stated above, the sole-causation standard is "irrelevant" to Plaintiffs' reasonable accommodation claim under the Rehabilitation Act. *Bennett-Nelson*, 431 F.3d at 454-55. Therefore, because Defendant has cited an inapplicable legal standard in support of his assertion that he is entitled to judgment as a matter of law, Defendant has failed to satisfy his burden under Federal Rule of Civil Procedure 56. *See* Fed. R. Civ. P. 56(a) ("The [C]ourt shall grant summary judgment if the movant *shows* that . . . the movant is entitled to judgment as a matter of law." (emphasis added)).

Although it is undisputed that the Fire Marshal receives federal funding, (*see* Doc. 80-1 at p. 3), Defendant argues that he is entitled to summary judgment on Plaintiffs' reasonable accommodation claim under the Rehabilitation Act because the federal funding is "used exclusively to implement and manage a Federal

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[21] Defendant asserts that Plaintiffs "failed to (1) utilize the [Fire Marshal]'s appeal process or (2) propose an equivalence whereby other safety measures could be used to meet the requisite safety standards of the [Life Safety Code]." Doc. 55-1 at p. 8. Defendant contends that these "failures" demonstrate that Defendant's refusal to make an "accommodation" was not *solely* based on Plaintiffs' disabilities. *See id.*

Manufactured Housing Program and an Information Management System," neither of which relate to the alleged discrimination against Plaintiffs, (Doc. 55-1 at p. 12). Defendant avers that Plaintiffs must demonstrate a relation between those two particular programs and the alleged discrimination to state a claim under the Rehabilitation Act.

This argument is based on law that has been overturned by Congress's passage of the Civil Rights Restoration Act of 1987 ("Civil Rights Restoration Act"), Pub. L. No. 100-259, § 4, 102 Stat. 28, 29-30 (1988) (codified at 29 U.S.C. § 794(b)).[22] *See Haybarger v. Lawrence Cty. Adult Prob. & Parole*, 551 F.3d 193, 199-200 (3d Cir. 2008). The Rehabilitation Act's prohibition of discriminatory treatment, by the clear wording of the statute, applies to "*all of the operations of*" the Fire Marshal, which clearly is a "department, agency, special purpose district, or other instrumentality of

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[22] "Program or activity" is defined by the text of the Rehabilitation Act as "all the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance funds." 29 U.S.C. § 794(b)(1)(A). Congress promulgated this definition of "program or activity" in section 4 of the Civil Rights Restoration Act. *See* 102 Stat. at 29-30. The relevant Senate Report states that Congress promulgated this definition of "program or activity" explicitly to "overturn the Supreme Court's 1984 decision in *Grove City College v. Bell*, 465 U.S. 555 [(1984)]," which "severely narrow[ed] the application of coverage of . . . Section 504 of the Rehabilitation Act of 1973." S. Rep. No. 100-64, at 2 (1987).

The holding in *Grove City* required a plaintiff – to state a claim under Title IX of the Education Amendments of 1972, 20 U.S.C. ch. 38 – to demonstrate that she was discriminated against by a particular *program* of a state or institutional entity, rather than a state or institutional entity as a whole, that received federal funding. *See* 465 U.S. at 571. The Supreme Court, in *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624 (1984), decided during the same Term, extended the holding of *Grove City* to claims under the Rehabilitation Act, determining that the "ban on discrimination" applies only "to the specific program that receives federal funds." *Id.* at 636.

Therefore, in overturning the Supreme Court's holding in *Grove City*, Congress also overturned the Court's holding in *Consolidated Rail* through the promulgation of the new definition of "program or activity" in the Civil Rights Restoration Act. *Haybarger v. Lawrence Cty. Adult Prob. & Parole*, 551 F.3d 193, 199-200 (3d Cir. 2008) (recognizing that Congress overturned the holding of *Consolidated Rail* through the passage of the Civil Rights Restoration Act).

a State or of a local government . . . any part of which is extended Federal financial assistance funds." 29 U.S.C. § 794(b)(1)(A) (emphasis added). Defendant's argument therefore is based on overturned law, and thus Defendant has failed to satisfy his burden under Rule 56. *See* Fed. R. Civ. P. 56(a) ("The [C]ourt shall grant summary judgment if the movant *shows* that . . . the movant is entitled to judgment as a matter of law." (emphasis added)).

B. Plaintiffs' Reasonable Accommodation Claims

In order for the Court to find that Plaintiffs are entitled to summary judgment on their reasonable accommodation claims under the Fair Housing Act, the ADA, and the Rehabilitation Act – which the Court, for analytical purposes, treats as a single claim – Plaintiffs must demonstrate that, as a matter of law, (1) the residents of Oxford House West Hale are "handicapped" or "disabled," as the statutes define those terms; (2) Plaintiffs requested an accommodation, and Defendant refused that request; (3) the requested accommodation was reasonable; and (4) the requested accommodation "may be necessary to afford" the residents of Oxford House West Hale "equal opportunity to use and enjoy a dwelling." *Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683, 687-94 (M.D. La. 2013) (quoting 42 U.S.C. § 3604(f)(3)(B)). Plaintiffs have demonstrated that there is "no genuine dispute as to any material fact" regarding each of the elements of their reasonable accommodation claims and that they are "entitled to judgment as a matter of law" on those claims. Fed. R. Civ. P. 56(a).

1. Handicap or Disability

Under the Fair Housing Act, a "handicap" is defined as "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment." 42 U.S.C. § 3602(h). Under the statute, "current, illegal use of or addiction to a controlled substance" is not considered a "handicap." *Id.* Similarly, the ADA defines a "disability" as "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual[,] (B) a record of such an impairment[,] or (C) being regarded as having such an impairment." *Id.* § 12102(1). "Major life activities," as that term is used in the definition of "disability" under the ADA, include, but are not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." *Id.* § 12102(2)(A). The Rehabilitation Act, for purposes of establishing a reasonable accommodation claim, utilizes the definition of "disability" that is promulgated under the ADA. *See* 29 U.S.C. § 705(9)(B).

Although alcoholism and drug addiction are "impairments" under the statutes, "there is no *per se* rule that categorizes recovering alcoholics and drug addicts as disabled or handicapped, and a case-by-case evaluation is necessary" because "mere status as an alcoholic or substance abuser does not necessarily imply a 'limitation' under the second part of [the] definition" of a "handicap" or "disability" under the

statutes. *Oxford House*, 932 F. Supp. 2d at 688-89 (quoting *Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 47 (2d Cir. 2002)).

The Court finds that the residents of Oxford House West Hale are "handicapped" or "disabled" within the meaning of those terms as used in the Fair Housing Act, the ADA, and the Rehabilitation Act. Daniel's impairment – an addiction to opioids, (*see* Doc. 59-7 at p. 10, ll. 2-4) – rendered her unable to maintain steady employment; over the course of one year, Daniel held twelve different jobs, was discharged from many of those jobs due to complications caused by her addiction, and resigned from the other positions knowing that she inevitably would be discharged, (*see id.* at p. 68, ll. 1-8). Daniel also could not maintain stable housing as a result of her impairment, renting rooms from various persons for short periods of time. (*See id.* at p. 69, ll. 14-20). Catanese, a current resident of Oxford House West Hale, endured periods of homelessness as a result of her impairment, (Doc. 59-6 at ¶ 7) – substance abuse, (*id.* at ¶ 6). Catanese also suffered from economic distress during her addiction, spending "every penny" on drugs. (*Id.* at ¶ 7). Because of the nature of the necessary criteria that an applicant must meet in order to reside at Oxford House West Hale, all of the residents are recovering from alcoholism or drug addiction, and the experiences of Daniel and Catanese during the times of their addictions therefore are representative of the residents' experiences generally.

Given the substantial limitation, as a result of their addictions, that was placed on the ability of the Oxford House West Hale residents to maintain steady employment and housing and to retain adequate finances to support themselves –

which are "major life activities" – the residents of Oxford House West Hale are "handicapped" or "disabled" within the definition of those terms under the Fair Housing Act, the ADA, and the Rehabilitation Act. *See* 42 U.S.C. § 3602(h); *id.* § 12102(1), (2)(A); *see also Oxford House*, 932 F. Supp. 2d at 689 (finding that the residents of an Oxford House were "handicapped" or "disabled" for purposes of the Fair Housing Act and the ADA because the residents could not maintain stable housing outside the Oxford House due to the inevitability of relapse). Defendant thus has failed to demonstrate that there is a "genuine issue for trial" regarding the residents' status as "handicapped" or "disabled" persons. *Anderson*, 477 U.S. at 250.

2. Refusal of a Requested Accommodation

In order to demonstrate that Defendant "refused" their requested accommodation, Plaintiffs must demonstrate that they "requested an accommodation and . . . [D]efendant refused it." *Oxford House*, 932 F. Supp. 2d at 690. "[P]laintiffs must first provide the governmental entity an opportunity to accommodate them through the entity's established procedures used to adjust the neutral policy in question." *Tsombanidis*, 352 F.3d at 578. "It may be that once the governmental entity denies such an accommodation, neither the [Fair Housing Act] nor the ADA require[s] a plaintiff to *exhaust* the state or local administrative procedures . . . [b]ut a plaintiff must first use the procedures available to notify the governmental entity that it seeks an exception or variance from the facially neutral laws when pursuing a reasonable accommodation claim." *Id.* at 579.

The record reflects that Plaintiffs directed two requests for an accommodation to the Fire Marshal, first on January 12, 2015, and again on October 9, 2015. (*See* Docs. 59-21, 59-25). In the first request – which contained the words "Reasonable Accommodation Request" in the subject line – Polin, representing Oxford House, Inc., stated that he was "making a reasonable accommodation request pursuant to the . . . Fair Housing Act, 42 U.S.C. [§] 3604(f)(3)(B)." (Doc. 59-21 at p. 1). Specifically, Polin requested that the Fire Marshal "waive . . . the limitations of the maximum number of unrelated persons who can reside together as a family under the . . . [L]ife [S]afety [C]ode . . . and treat the use of Oxford House as the functional equivalent of a family . . . and the use of the property as a single[-]family use." (*Id.*). Neither a response to this letter nor notice regarding the resumption of the inspection process was ever received by a representative of Oxford House, Inc., before Fire Marshal employees arrived at Oxford House West Hale to inspect the residence on April 28, 2015. (Doc. 59-3 at ¶ 34).

After the submission of the first request for an accommodation, the Fire Marshal informed Polin that it did not have a process to evaluate and review requests for accommodations. (Doc. 59-20 at ¶ 4). The Fire Marshal further advised Polin that it would only consider such requests in the form of "plan review" applications. (*Id.* at ¶ 5). Polin then followed the advice provided by the Fire Marshal regarding its own processes and submitted, on October 9, 2015, a document that contained the words "Reasonable Accommodation Request/Plan Review" in the subject line. (Doc. 59-25 at p. 5). In the document, Polin stated that he was "request[ing] that the . . . Fire

Marshal make a reasonable accommodation pursuant to the . . . Fair Housing Act, 42 U.S.C. [§] 3604(f)(3)(B)." (*Id.*) In particular, Polin requested that the Fire Marshal "waive the limitations of the maximum number of unrelated persons who can reside together as a family under the . . . [L]ife [S]afety [C]ode" and "treat the use of Oxford House as the functional equivalent of a family . . . and the use of the property as a single[-]family use." (*Id.*) Polin attached to the document a copy of the *Oxford House Manual*, the lease agreement between the Millers and Oxford House West Hale, and a floor plan of the structure. (*See id.* at pp. 5-61). The Fire Marshal responded to this request by sending a "Building Rehabilitation" letter to the Millers, stating that the Fire Marshal treated the request as a petition to change the occupancy type of the Oxford House West Hale structure from a one- or two-family dwelling to a lodging or rooming house and demanding that the Millers ameliorate various deficiencies to comply with the requirements that the Life Safety Code prescribes for lodging or rooming houses. (*See* Doc. 59-26 at ¶¶ 1-7).

This response was a specific refusal of Plaintiffs' very particularized request for an accommodation to "use the . . . property as a single[-]family [dwelling]," (Doc. 59-25 at p. 5): the Fire Marshal's response disregarded Plaintiffs' request that the structure continue to be classified as a one-family dwelling and demanded that the Millers bring the structure into conformity with the Life Safety Code's provisions regarding lodging or rooming houses, (*see* Doc. 59-26 at ¶¶ 1-7). Plaintiffs therefore have demonstrated that they used the procedure that the Fire Marshal itself stated was the only means available to submit a request for an accommodation, and the Fire

Marshal refused that request. *See id.* Defendant thus has failed to demonstrate that there is a "genuine issue for trial" regarding the Fire Marshal's refusal of Plaintiffs' requested accommodation. *Anderson*, 477 U.S. at 250.

3. Reasonableness of the Requested Accommodation

"An accommodation is reasonable if it 'does not cause any undue hardship or fiscal or administrative burdens on the [governmental entity] or does not undermine the basic purpose that the [challenged regulation] seeks to achieve.'" *Oxford House*, 932 F. Supp. 2d at 692 (quoting *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1186 (E.D.N.Y. 1993)).

In essence, Plaintiffs have requested, as an accommodation, that the Fire Marshal interpret the term "family" – as that term is used in the Life Safety Code – in a manner that would capture the type of relationship shared among the residents of Oxford House West Hale, which consequently would permit the Oxford House West Hale structure to remain classified as a one-family dwelling. It is undisputed that no undue hardship or fiscal or administrative burdens would result if the Fire Marshal interpreted the term "family" in such a way. (*See* Doc. 59-11 at p. 67, ll. 9-14). Therefore, the crucial question that this case presents is whether interpreting the term "family" in a manner that would capture the type of relationship shared among the residents of Oxford House West Hale would undermine the basic purpose that the Life Safety Code seeks to achieve.

The Life Safety Code defines a "one- or two-family dwelling" as a "building[] containing not more than two dwelling units in which each dwelling unit is occupied

by members of a single family with not more than three outsiders, if any, accommodated in rented rooms." Life Safety Code ¶ 24.1.1.1 (Nat'l Fire Prot. Ass'n 2012). The Life Safety Code specifically states that it "does not define the term family." *Id.* ¶ A.24.1.1.1. Rather, the Life Safety Code states that "[t]he definition of family is subject to federal, state, and local regulations and might not be restricted to a person or a couple (two people) and their children." *Id.* In addition to not defining the term "family," the Life Safety Code does not limit the number of persons who may be considered members of a "family." *See id.*

The Fire Marshal is vested with the power to interpret the provisions of the Life Safety Code,[23] which the State of Louisiana has adopted as the minimum standards of fire safety with which all structures must comply. *See* La. Rev. Stat. § 40:1578.6(A). (*Id.* at p. 45, ll. 15-20). The Fire Marshal defines "family," as that term is used in the Life Safety Code, as "a householder and one or more people living in the same household who are related to [the] householder by birth, marriage, or adoption." (Doc. 59-10 at pp. 15-16). According to the Fire Marshal, this definition is derived from the definition utilized by the United States Census Bureau and the definition provided in Louisiana Revised Statutes section 46:2121.1, which states that for the purposes of laws relating to family violence shelters, "'family or household members' means spouses, former spouses, parents, children, stepparents,

[23] In fact, the Fire Marshal previously has issued interpretive guidance on the definition of a "one- or two-family dwelling." *See* Doc. 59-30. In "Interpretive Memorandum 2011-04," the Fire Marshal "reason[ed] that a single building owner is allowed to rent to a maximum of 3 outsiders," and even though that "would place a total of 4 non-related persons in [a] sleeping facility," the structure could retain its "classification as a single[-]family residence." *Id.*

stepchildren, foster parents, and foster children[, as well as] grandparents or their grandchildren." *Id.* § 46:2121.1. (*Id.*).

Defendant contends that the requested accommodation – the interpretation of the term "family" in a manner that would capture the type of relationship shared among the residents of Oxford House West Hale – would increase the potential danger to the residents that is presented by the risk of fire, which would undermine both the purpose of the Life Safety Code and the Fire Marshal's statutory mandate to "take all steps necessary and proper to protect life and property from the hazards of fire and of panic which may arise from fire or from the threat of fire or explosion." *Id.* § 40:1563(A). Defendant's primary argument is that in order to ensure fire safety in one-family dwellings, a crucial characteristic of a "family" is the presence of a "head or manager" and a hierarchal structure, both of which the residents of Oxford House West Hale lack. An expert retained by Defendant opined that a "head of household has the ability . . . in the case of fire safety, to ensure that people in th[e] house are not . . . doing things that might put other people at risk." (Doc. 79-7 at p. 5, ll. 9-13). Regarding the importance of a hierarchy, another expert retained by Defendant maintained that a hierarchy ensures that persons inside a single-family dwelling have "inherent responsibilities," causing the head of household to secure the safety of the other persons in the house in the event of a fire, rather than merely focusing on her own, independent safety. (Doc. 79-8 at p. 7, ll. 3-15).

According to Defendant, the residents of Oxford House West Hale do not have a "head or manager" or a hierarchal structure. In support of this contention,

Defendant directs the Court to the fact that Oxford Houses are democratically operated by the residents of each house, with each resident enjoying an equal vote in matters relating to house management. (*See* Doc. 79-16 at p. 5, l. 3). Although Oxford House West Hale – and all Oxford Houses – have five elected officers with specific duties, Defendant highlights the fact that those officers may only be elected to six-month terms. (*See id.* at p. 5, ll. 4-6). Defendant also alleges that the residents of Oxford House West Hale do not possess the requisite familiarity with each other to react to a fire in the manner that a "family" would react: an Oxford House resident in Louisiana typically moves out of her house after eleven months, (Doc. 79-19 at p. 8), and the rate of turnover may be even higher at Oxford House West Hale, (*see* Doc. 79-11).

The Court finds that the residents of Oxford House West Hale exhibit a social structure that mirrors a hierarchy, which would aid the safe evacuation of the structure in the event of a fire. Although the social structure is less formal than the traditional hierarchies found in many homes – for example, parent-child, grandparent-grandchild, or aunt-nephew – a hierarchal structure nonetheless exists among the residents, primarily based on the length of time that a resident has lived in the house. Daniel testified that because she "was pretty much the most knowledgeable, [she] had to . . . help the other people . . . and show people . . . how things [were] supposed to be." (Doc. 59-7 at p. 16, ll. 11-16). A portion of the *Congressional Record* relating to the debate on the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (codified at 21 U.S.C. ch. 20), confirms that more

knowledgeable or older Oxford House residents provide a mentoring function within their houses: "Older residents make newer residents feel at home . . . . The most important function of older residents may be serving as role models . . . ." 134 Cong. Rec. 33,141 (1988). This informal hierarchy is buttressed by a more formal and familiar hierarchy: one of the residents of Oxford House West Hale serves as the "President" of the house. (*See* Doc. 59-6 at ¶ 4). The residents of Oxford House West Hale thus have both informal and formal social structures in the house that resemble the hierarchy that families traditionally exhibit.

Further, all of the residents of Oxford House West Hale are adults, and thus they do not require the level of supervision that a head of household otherwise would provide to children in a family. As an example of the importance of a head of household to ensuring a family's fire safety, Defendant's expert testified, "If my son brings a charcoal grill inside the house, as the head of household[,] I can tell him, 'You're not allowed to do that,' and I can have the grill removed from the house." (Doc. 79-7 at p. 5, ll. 4-7). The residents of Oxford House West Hale are adults and thus are sufficiently knowledgeable to understand that obvious fire hazards, like "bring[ing] a charcoal grill inside the house," must be avoided. (*Id.*). Therefore, even though the residents of Oxford House West Hale have social structures that resemble the hierarchy that families typically exhibit, the residents – because of their status as adults – have a lesser need for a hierarchy or head of household than a traditional family with children.

The Court also finds that the residents of Oxford House West Hale share a very close bond with each other and that they would react to a fire in a manner similar to a family. Catanese stated that the residents "always help one another out whenever anything comes up." (Doc. 59-6 at ¶ 8). Residents of Oxford House West Hale "become very close" with each other, (*id.* at ¶ 11), and they even maintain some of these tight-knit relationships after leaving the house,[24] (*see* Doc. 59-7 at p. 13, ll. 3-17), attesting to the quality and nature of these bonds of friendship. Catanese stated, "We . . . know all of each other's personal details, just like a family, and we hold each other accountable, just like a family." (Doc. 59-6 at ¶ 8). The portion of the *Congressional Record* relating to the debate on the Anti-Drug Abuse Act of 1988 confirms the existence of this familial relationship as well: "The house is like a family."[25] *Id.* at 33,144.

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[24] Defendant disputes the extent to which Daniel enjoyed close bonds with the other residents at Oxford House, insofar as she testified at her deposition that she could not recall the names of certain residents and that she had not been in contact with some of her former housemates for extended periods of time. *See* Doc. 79-1 at ¶¶ 12-13 (citing Doc. 79-12 at pp. 3-5). Daniel testified at her deposition, however, that she indeed maintains contact with *some* women with whom she previously lived at Oxford Houses. *See* Doc. 59-7 at p. 12, ll. 22-25; *id.* at p. 13, ll. 1-13; *id.* at p. 65, ll. 6-15.

[25] The concept of "family" is not static. Over the course of the past fifty years, the Supreme Court consistently has expanded the scope of persons who deserve recognition as a "family" under the law: interracial spouses, *Loving v. Virginia*, 388 U.S. 1 (1967); extended relatives living under one roof, *Moore v. City of E. Cleveland*, 431 U.S. 494 (1977); and same-sex spouses, *Obergefell v. Hodges*, ___ U.S. ___, 135 S. Ct. 2584 (2015). "Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family." *Moore*, 431 U.S. at 504 (plurality opinion).

In more recent versions, the drafters of the Life Safety Code likewise have expanded the definition of "family." In 1985, the drafters interpreted "family," for purposes of the Life Safety Code, to mean "a social unit consisting of parents and children they rear, the children of the same parents, and one's husband (or wife) and . . . children they adopt." Nat'l Fire Prot. Ass'n, Life Safety Code Handbook 783-84 (3d ed. 1985). In 1997, however, the drafters of the Life Safety Code indicated that "[t]he definition of 'family' . . . may not be as narrow as" a definition that included only "a person or couple . . . and the children [that] they raise." Nat'l Fire Prot. Ass'n, Life Safety Code Handbook 665 (7th ed. 1997)

Because the residents of Oxford House West Hale comport themselves like a family, their level of fire safety is consistent with that of a family, and therefore the residents would not be placed in danger if Oxford House West Hale were to retain its status as a one-family dwelling. Michael J. Slifka ("Slifka"), a fire protection engineer who personally inspected the Oxford House West Hale structure, found that "[t]he residents of Oxford House[]West Hale have a reasonable, acceptable level of fire/life safety equal to any family related by blood, marriage[,] or adoption that may have several children . . . ." (Doc. 59-28 at ¶ III.E.4). Slifka further found that "[i]t would be reasonable to apply the life safety requirements found in the one-[]and two-family dwelling provisions of the Life Safety Code to Oxford House[]West Hale." (*Id.*)

In sum, the residents of Oxford House West Hale exhibit informal and formal social structures that resemble the hierarchies traditionally displayed by families, and the residents share a close bond with each other that prompts them to aid each other in times of need, as families tend to do. Because of these social structures and tight-knit relationships among the residents, the residents would react in a manner similar to a family in the event of a fire. Therefore, the accommodation that Plaintiffs requested – that the Fire Marshal interpret the term "family" in a manner that would capture the type of relationship shared among the residents of Oxford House West Hale – would not increase the potential danger to the residents that is presented by the risk of fire. Therefore, the requested accommodation is "reasonable" because it does not undermine the basic purpose of the Life Safety Code, nor does it undermine the Fire Marshal's statutory mandate to protect persons in Louisiana from injury due

to fire: the residents boast a level of fire safety that is comparable to the level of fire safety typically exhibited by a family. *See Oxford House*, 932 F. Supp. 2d at 692. Defendant thus has failed to demonstrate that there is a "genuine issue for trial" regarding the reasonableness of the requested accommodation. *Anderson*, 477 U.S. at 250.

4. Necessity of the Requested Accommodation

Finally, the Court must determine whether the requested accommodation "may be necessary to afford" the residents of Oxford House West Hale "equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). "This requirement is divided into two considerations: is the accommodation necessary[,] and will the accommodation afford equal opportunity to the disabled?" *Oxford House*, 932 F. Supp. 2d at 693. "In order for a requested accommodation to be necessary, the plaintiff must show 'a direct linkage between the proposed accommodation and the equal opportunity to be provided to the handicapped person.'" *Id.* (quoting *Bryant Woods Inn, Inc. v. Howard Cty.*, 124 F.3d 597, 604 (4th Cir. 1997)). "If the requested accommodation 'provides no direct amelioration of a disability's effect,' it is not necessary." *Id.* (quoting *Bryant Woods Inn*, 124 F.3d at 604). Regarding the requirement that the accommodation afford "equal opportunity," the Fair Housing Act "does not require accommodations that increase a benefit to a handicapped person above that provided to a nonhandicapped person with respect to matters unrelated to the handicap." *Id.* (quoting *Bryant Woods Inn*, 124 F.3d at 604).

In addition to documentary evidence, (*see, e.g.*, Doc. 59-7 at p. 15, l. 22-25; *id.* at p. 16, l. 2; *id.* at p. 70, ll. 21-22; Doc. 59-6 at ¶ 7), empirical evidence establishes the effectiveness of the Oxford House model at preventing an individual's relapse into alcohol and drug use. *See* Leonard A. Jason et al., *The Need for Substance Abuse After-Care: Longitudinal Analysis of Oxford House*, 32 Addictive Behavs. 803 (2007). Residents of Oxford Houses are over four times more likely to retain their sobriety than other persons recovering from alcoholism or drug addiction. *See id.* In order for a particular Oxford House to exhibit this effectiveness, however, at least six otherwise unrelated persons who are recovering from alcoholism or drug addiction must reside together in the dwelling. (*See* Doc. 59-3 at ¶ 14). Therefore, the requested accommodation is "necessary" within the meaning of the statute because residency in an Oxford House directly ameliorates the effects of alcoholism and drug addiction, and at least six otherwise unrelated individuals who are recovering from alcoholism or drug addiction must reside together in a dwelling in order to achieve these ameliorative effects. *See Oxford House*, 932 F. Supp. 2d at 693.

Defendant argues that the Fire Marshal is not prohibiting the residents of Oxford House West Hale from living together; the residents simply must install various fire safety features in the Oxford House West Hale structure or relocate to a structure that already possesses such features. "The law dictates," however, "that a handicapped individual must be allowed to enjoy a *particular* dwelling, not just some dwelling somewhere in the town." *Id.* at 694 (quoting *Babylon*, 819 F. Supp. at 1185 n.10).

Without the requested accommodation, in order for the residents of Oxford House West Hale to remain in their existing dwelling and continue furthering their recovery, they would be required to install extensive and costly fire safety features – including a fire alarm system, an automatic sprinkler system, and single-station smoke alarms – to bring the Oxford House West Hale structure into compliance with the Life Safety Code's requirements for lodging or rooming houses. (*See* Doc. 59-26 at ¶¶ 3-7). The estimated cost to install a compliant fire alarm system at Oxford House West Hale is $2,800, (*see* Doc. 59-33);[26] however, the actual cost of installing the same system at a comparable four-bedroom home in Lake Charles was $6,355, (*see* Doc. 59-34). Depending on the precise provision of the Life Safety Code applicable to Oxford House West Hale, installation of a compliant automatic sprinkler system – which must provide a direct alarm signal transmission to the local fire department – was estimated to cost between $6,600 and $14,250. (*See* Docs. 59-33, 59-34). In connection with the installation of an automatic sprinkler system, additional plumbing and a backflow preventer also may be required to be installed, which was estimated to cost $6,500. (*See* Doc. 59-34). Plaintiffs did not obtain an estimate for the installation of single-station smoke alarms.

Additionally, the pipes that connect the Oxford House West Hale structure to the water main may require adjustment or replacement to accommodate the

[26] Defendant has not properly disputed these cost estimates; rather, Defendant merely "controverts" these estimates insofar as Plaintiffs "attempt to establish [their] own cost estimate[s] as . . . established fact[s, which] ha[ve] not been established." *E.g.*, Doc. 78-5 at ¶ 151. Defendant does not cite to any materials that tend to show that Plaintiffs' cost estimates are inaccurate, as is required by Rule 56(c). *See* Fed. R. Civ. P. 56(c)(1)(A).

necessary water flow for the automatic sprinkler system, thereby resulting in additional costs. (Doc. 59-8 at ¶ 7). Houses of similar age to the Oxford House West Hale structure do not have pipes that are large enough to accommodate such water flow, but Plaintiffs have not determined whether the relevant pipes of the Oxford House West Hale structure are sufficiently large. (*Id.*)

Neither Oxford House West Hale nor the residents of the house collectively have the financial means to install these fire safety features. None of the residents of Oxford House West Hale could afford a higher weekly payment than the $125 sum that is currently required, (Doc. 59-6 at ¶ 16), and due in large part to their previous addictions, the financial circumstances of most – if not all – of the residents of the house are bleak, (Doc. 59-4 at ¶ 21); an Oxford House resident in Louisiana earns, on average, less than $2,000 per month, (*see* Doc. 59-3 at ¶ 20). Further, at the time of Plaintiffs' Motion, Oxford House West Hale had less than $700 in its bank account, (*see* Doc. 59-6 at ¶ 14), and it has no alternative access to funding, (*see* Doc. 59-3 at ¶ 15). Thus, if required to install the fire safety features mandated by the Fire Marshal, Oxford House West Hale would be forced to cease its operations. (Doc. 59-6 at ¶ 15). In fact, far less costly expenses have forced the closure of various Oxford Houses in Louisiana. (*See* Doc. 59-4 at ¶ 23).[27]

[27] Moreover, even if the residents of Oxford House West Hale *could* amass the necessary funding to install the fire safety features in the house, neither the Millers nor any other landlord – barring extraordinary circumstances – would allow the residents to proceed with the installation of such features due to their unsightliness and the corresponding impact on the property's value. (*See* Doc. 59-8 at ¶¶ 10-11; Doc. 59-4 at ¶ 18). In the estimation of Lori Holtzclaw – the regional manager for Oxford House International, who has "negotiated hundreds of leases and lease renewals" and who has "dealt directly with hundreds of homeowners, property managers, and prospective landlords" – *no* landlord would permit the installation of such features, even in the unlikely event that the landlord incurred no expenses in the process. (Doc. 59-4 at ¶ 18).

Because of the vast costs associated with the fire safety features that the Fire Marshal is demanding that the residents of Oxford House West Hale install in order to continue to reside together in their home, the requested accommodation "may be necessary" to afford "equal opportunity" to the residents to "use and enjoy" the Oxford House West Hale structure; without the requested accommodation, the residents of Oxford House West Hale would be required to vacate the home due to the cost-prohibitive nature of installing the various fire safety features, which other persons would not be required to install in order to lease the same house. *See id.* (citing *Babylon*, 819 F. Supp. at 1185). Further, the benefit that is conferred by the requested accommodation – that more than three unrelated persons may reside together at Oxford House West Hale without the structure losing its status as a one-family dwelling – is *directly* related to the residents' handicaps: at least six otherwise unrelated individuals who are recovering from alcoholism or drug addiction must reside together in a dwelling in order to achieve the empirically proven ameliorative effects that the Oxford House model provides. *See id.* (citing *Bryant Woods Inn*, 124 F.3d at 604). (*See* Doc. 59-3 at ¶ 14). Defendant thus has failed to demonstrate that there is a "genuine issue for trial" regarding the necessity of the requested accommodation. *Anderson*, 477 U.S. at 250.

Plaintiffs therefore have demonstrated that there is "no genuine dispute as to any material fact" in connection with each element of their reasonable accommodation claims under the Fair Housing Act, the ADA, and the Rehabilitation Act: the residents of Oxford House West Hale are "handicapped" or "disabled" within the meaning of those terms under the statutes, Defendant denied their request for an accommodation, and their requested accommodation was both reasonable and necessary. Fed. R. Civ. P. 56(a). Without this accommodation, the residents of Oxford House West Hale could not live in their home due to the exorbitant costs that they would be required to incur, and their recovery from alcoholism and drug addiction thus would be hampered.

The common thread throughout this case is the concept of *danger*. Without the requested accommodation, the Oxford House West Hale residents' recovery from alcoholism and drug addiction – and perhaps even their lives – would be in danger. The requested accommodation – that the Fire Marshal interpret the term "family" in a manner that would capture the type of relationship shared among the residents of Oxford House West Hale – however, would not increase the potential danger to the residents that is presented by the risk of fire, and therefore Plaintiffs are entitled to their requested accommodation.

IV. CONCLUSION

Accordingly,

IT IS ORDERED that **Plaintiffs' Motion for Partial Summary Judgment (Doc. 59)** is **GRANTED**. Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs are entitled to summary judgment on their reasonable accommodation claims under the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act, 42 U.S.C. ch. 45; the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. ch. 126; and the Rehabilitation Act of 1973, 29 U.S.C. ch. 16.

IT IS FURTHER ORDERED that the **Motion for Partial Summary Judgment (Doc. 55)** filed by Defendant H. "Butch" Browning, in his official capacity as the State Fire Marshal of the Louisiana Office of the State Fire Marshal, is **DENIED**.

Baton Rouge, Louisiana, this 24th day of July, 2017.

BRIAN A. JACKSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL RIGHTS AND DISCRIMINATION

HOUSING — APPLICABILITY OF FAIR HOUSING AMENDMENT ACT TO FIRE SAFETY CODE REQUIREMENTS

June 25, 1993

Chief Elwood H. Banister
Baltimore County Fire Department

You have requested our opinion whether the federal Fair Housing Amendments Act of 1988 allows you to apply Chapter 21, "Residential Board and Care Occupancies," of the 1988 Edition of the National Fire Protection Association ("NFPA") Life Safety Code to a small private group home housing four to eight mentally ill residents.

For the reasons stated below, we conclude that a provision of the NFPA Life Safety Code that is inapplicable to a single family dwelling may not be applied to a small private group home for the mentally ill unless the provision is necessary to protect the safety of the residents of the home, taking into account their specific needs and abilities. If, despite their disabilities, the residents of the group home are as capable of reacting to a fire emergency as residents in a single family dwelling would be, special safety code provisions may not be applied.[1]

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[1] We note that the issue addressed in this opinion is the subject of a complaint filed with the U.S. Department of Housing and Community Development by ReVisions, Inc., a provider of group housing, against Baltimore County and the County Fire Department. Although our policy generally precludes our issuing an opinion on a matter that is the subject of current or imminent litigation, in this instance both parties seek the opinion, which they view as an alternative to litigation.

In light of our conclusion about the Fair Housing Amendment Act, we need not consider the effect, if any, of the Americans with Disabilities Act on the issue.

I

Background

Under the Mental Hygiene Law, the Department of Health and Mental Hygiene regulates the establishment, licensing, and operation of private group homes. §10-516 of the Health-General Article, Maryland Code ("HG" Article). A "small private group home" is defined as a residence in which at least four but not more than eight individuals "who have been or are under treatment for a mental disorder may be provided care or treatment in a homelike environment." HG §10-514(d)(1) and (e). For zoning purposes, a small private group home "is deemed conclusively a single-family dwelling" and "may not be subject to any special exception, conditional use permit, or procedure that differs from that required for a single-family dwelling or multi-family dwelling of similar density in the same zone." HG §10-518(b)(1)(i) and (3).[2]

In your letter, you indicated that ReVisions, Inc., a licensed provider of care to the mentally disabled, has procured the construction of two individual homes by an area home builder. You stated that the residents of the homes have a "prompt evacuation capability," and there will be a competent monitor on duty at all times. The four to eight persons living together will share household chores, cooking, and caring for their own personal needs. The residents will be placed in the homes only after careful screening by a multi-disciplinary board.

After the homes were completed, an inspection revealed violations of certain provisions of Chapter 21 of the NFPA Life Safety Code, which applies to "board and care occupancies": §§21-2.3.4.2, requiring proper installation of approved smoke detectors; 21-2.3.4.1, requiring proper installation of a manual fire alarm system; and 21-2.3.1.1, requiring protection for vertical openings so

[2] Under the Developmental Disabilities Law, DHMH similarly licenses and regulates private group homes. *See* HG Title 7, Subtitle 9. These homes are also "deemed conclusively [to be] single family dwelling[s]." HG §7-603(b)(1)(i).

that primary exit routes are protected by fire rated enclosures.[3] Different and less extensive safety requirements apply to one and two family dwellings. *See* NFPA Life Safety Code Chapter 22.

II

The Fair Housing Amendments Act

In general, the federal Fair Housing Amendments Act ("FHAA") makes it unlawful to discriminate in the sale of a dwelling to any person on the basis of handicap.[4] Furthermore, reasonable accommodations in rules must be made in order to afford handicapped persons an equal opportunity to use and enjoy a dwelling. Specifically, 42 U.S.C. §3604(f) makes it unlawful for any individual or government:

> To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of –
>
> . . .
>
> (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available....

The FHAA goes on to state that "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 ...." 42 U.S.C. §3604(f)(3). Finally, "any law of a State, a political

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[3] According to a letter dated November 4, 1992 from William O. Jensen, Jr., Baltimore County Office of Law, the only requirement still at issue is the final one involving the protection of vertical openings.

[4] ReVisions, Inc. and the County appear to be in agreement that the persons to be placed in the two homes meet the definition of "handicapped." *See* 42 U.S.C. §3602(h).

subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid." 42 U.S.C. §3615.

The legislative history of the FHAA indicates both a recognition of a state's responsibility to protect safety and also health and an intent to prohibit "the application or enforcement of otherwise neutral rules and regulations on health [and] safety ... in a manner which discriminates against people with disabilities." H.R. Rep. No. 100-711, 100th Cong., 2d Sess. 24 (1988), *reprinted in* 1988 U.S. Code Cong. & Admin. News 2173, 2185. The House Committee pointedly stated that "[g]eneralized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion." *Id*. at 2179. Intent to discriminate is immaterial: "Acts that have the effect of causing discrimination can be just as devastating as intentional discrimination." *Id.* at 2186.

In two published opinions, we have reviewed the relationship between State laws and the provisions of the FHAA. In 74 *Opinions of the Attorney General* 164 (1989), we concluded that certain State law requirements regarding the location of homes for individuals with disabilities were unenforceable because they contravened the FHAA. In 75 *Opinions of the Attorney General* 291 (1990), we concluded that the consideration of "community acceptance" as a decisional factor in determining licensure applications was violative of the FHAA. Both of these opinions reflect our view that the FHAA no longer allows governmental barriers to the right of people with disabilities to live where they choose. This opinion applies this precept to the safety regulations at issue.

III

Application of FHAA to Fire Safety Requirements

An analysis of alleged discrimination under the FHAA resulting from disparate impact entails a comparison between the protected class and others similarly situated. In *Stewart B. McKinney Foundation, Inc. v. Town Plan and Zoning Comm'n*, 790 F. Supp. 1197 (D. Conn. 1992), for example, the "disparate impact" of certain zoning procedures on seven HIV-infected persons who

sought to live together was measured by comparing the procedures applicable to seven unrelated, non-HIV-infected people planning to live together in the particular section of the town. 790 F. Supp. at 1218-19.

In the case of the NFPA Life Safety Code provisions at issue here, we conclude that, as a matter of law, the proper comparison is to fire safety requirements in a single family dwelling. We start with the General Assembly's judgment, albeit in the context of zoning, that a small private group home "is deemed conclusively a single family dwelling." HG §10-518(b). Indeed, a small private group home has all of the characteristics of a single family dwelling under the county's own zoning regulations, but for the fact that the owner or tenant of the group home is compensated for providing room, board, and care to the residents. This compensation makes the group home a "boarding house" under the zoning regulations and the Life Safety Code.

But it is precisely the disability of the group home's residents that requires compensated care to be provided. In other words, the owner of the group home is paid to provide care that is needed because the residents are mentally disabled. The FHAA does not allow this fact alone, linked as it is to disability, to justify a more stringent regulatory regime.

In *Marbrunak, Inc. v. City of Stow, Ohio*, 974 F.2d 43 (6th Cir. 1992), the city sought to require a group home for four mentally retarded women to obtain a special permit as a boarding house, rather than be allowed without permit as a single family dwelling. The trial court held that, as a matter of Ohio law, the intended use indeed qualified as a single family dwelling, and no special permit could be required. 974 F.2d at 45-46. The city's attempt to impose the special permit requirement amounted to discrimination under the FHAA.[5]

Likewise, in our view, the FHAA does not allow a small private group home, given its salient characteristics under Maryland

[5] This aspect of the trial court's decision was not appealed.

law, to be viewed as anything other than a single family dwelling for purposes of fire safety requirements. Thus, if a single family dwelling is subject to a safety code requirement (smoke detectors, for example), a small private group home may be made subject to the same requirement, for such a universal requirement is not discriminatory. But a requirement entailing more than insignificant costs that is applicable to a small private group home, but not to a single family residence, raises serious FHAA issues.

Such a differential requirement can be justified only in terms of the individual needs and attributes of the residents of the home. In *Marbrunak*, the city informed the provider of the group home that it would have to satisfy a series of extensive safety requirements, including sprinklers, an interconnected alarm system, lighted exit signs, push bars on all doors, and a fire extinguisher every 30 feet. The city admitted that these requirements were far more extensive than those required of single family dwellings. The federal appeals court agreed with the lower court's conclusion that the fire safety requirements were "based on generalized perceptions about the inability of developmentally disabled persons to live safely in a 'normal home.'" 974 F.2d at 47. The lower court indicated that Marbrunak was required "'to install an alarm system, doors with push bars, and fire walls and flame retardant wall coverings without showing why such renovations were needed to ensure the safety of the residents. In sum, the requirements have little or no correlation to the actual abilities of the citizens upon whom they are imposed.'" *Id*.

The Sixth Circuit agreed that the fire safety requirements violated the FHAA because the ordinance made "no attempt at individualizing its requirements to the needs or abilities of particular kinds of developmental disabilities":

> The safety measures include nearly every safety requirement that one might think of as desirable to protect persons handicapped by any disability – mental or physical; and all the requirements apply to all housing for developmentally disabled persons, regardless of the type of mental condition that causes

> their disabilities or of the ways in which the disabilities manifest themselves.

Id. The Sixth Circuit went on to say that the FHAA did *not* prohibit the city from imposing special safety standards for the protection of developmentally disabled persons, so long as any standards that are different from those applicable to the general population are warranted by "the unique and specific needs and abilities" of the persons with disabilities.

The Sixth Circuit's reasoning is sound, in our view, and applies to the admittedly far less onerous requirements that Baltimore County proposes in this case. Safety code requirements like those at issue here increase the cost of a house to be used as a small private group home. If the incremental costs are more than *de minimis*, they might contribute to a licensed provider's judgment that a project is not feasible. Similarly, since State resources to pay for care in small private group homes are limited, the incremental cost of special safety requirements could ultimately result in the State's serving fewer individuals with disabilities. In the long run, then, special safety requirements could limit the availability of housing for the mentally ill.

As we understand the facts, the residents of ReVisions's group homes have no "unique and specific needs and abilities" with regard to fire safety; ReVision and fire department officials agree that the residents' ability to evacuate the building is comparable to that of residents of the typical single family dwelling.[6] Under these circumstances, the requirements of Chapter 21 of the NFPA Life Safety Code may not be enforced. As United States District Court for the District of Maryland recently wrote of a group home safety regulation in Montgomery County, a safety code requirement is unlawful as applied to people with disabilities if it "has no necessary correlation to the actual abilities of the persons upon whom it is imposed, and it therefore unreasonably limits their opportunities to

[6] DHMH should consider whether, as a policy matter, its licensing procedures should include a process for determining of the evacuation capabilities of the residents of private group homes.

live in a community of their choice." *Potomac Group Home Corp. v. Montgomery County*, 823 F. Supp. 1285, 1300 (1993).[7]

IV

Conclusion

In summary, it is our opinion that the federal Fair Housing Amendments Act prohibits enforcement of fire safety code requirements in a small private group home for the mentally ill if the requirements are neither imposed on single family dwellings nor tailored to the unique and specific needs and abilities of the home's residents.

J. Joseph Curran, Jr.
Attorney General

Jack Schwartz
Chief Counsel
Opinions & Advice

[7] The Montgomery County regulation at issue excluded from group homes those who were unable to exit from the home on their own.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 14-13216-RGS

BROCKTON FIRE DEPARTMENT and
EDWARD WILLIAMS

v.

ST. MARY BROAD STREET, LLC and
BRIAN BERNENBERG

MEMORANDUM AND ORDER ON
CROSS-MOTIONS FOR SUMMARY JUDGMENT

April 13, 2016

Stearns, D.J.

After a kitchen fire at a sober house on Copeland Street in Brockton, Massachusetts, the Brockton Fire Department, through Lieutenant Edward Williams, brought an action in the Brockton Housing Court seeking to enforce the State Sprinkler Law, Mass. Gen. Laws ch. 148, § 26H, against the operators of the home, defendants St. Mary Broad Street, LLC and Brian Bernenberg. Defendants removed the case to the federal district court on federal question grounds, citing the Federal Housing Act (FHA) as amended, 42 U.S.C. § 3601 *et seq.* In July of 2015, the court stayed a decision, without objection from the parties, given then-pending legislation amending the

Sprinkler Law.[1] *See* Dkt. Nos. 28, 29. The Legislature, however, did not act on the proposed amendment. Consequently, the court will therefore turn to a decision on the parties' cross-motions for summary judgment.

The Sprinkler Law provides that

> [i]n any city or town which accepts the provisions of this section, every lodging house or boarding house shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code. . . .
>
> For the purposes of this section "lodging house" or "boarding house" shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth.

It is undisputed that more than six unrelated persons reside at the Copeland Street house, that the home is not licensed by the State, and that the City of Brockton has accepted the provisions of Section 26H in 1988.

Defendants contend, and the court agrees, that the enforcement of the Sprinkler Law against the sober home is enjoined by the Massachusetts

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[1] The proposed amendment, in conjunction with a proposed amendment to Mass. Gen. Laws ch. 40, § 9D, would have brought sober homes under State regulation and mandate the installation of automatic sprinkler systems. *See* 2015 Massachusetts Senate Bill No. 1062 (https://malegislature.gov/Bills/189/Senate/S1062, last visited April 13, 2016).

Zoning Act (MZA), Mass. Gen. Laws Ch. 40A. Section 3 of the MZA provides in relevant part that

> [n]otwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of Cambridge.

The Sprinkler Law is unquestionably a "health and safety law." On its face, as plaintiffs concede, the Sprinkler Law could not compel the installation of an automatic sprinkler system[2] in a home occupied by a family of six or more related persons, or in group homes such as student dormitories and fraternity houses that are expressly exempted by the law. Plaintiffs also do not contest that the recovering alcoholics and drug addicts hosted by the sober home qualify as "disabled persons" under the MZA. *See S. Middlesex Opportunity Council, Inc. v. Town of Framingham*, 752 F. Supp. 2d 85, 95 (D. Mass. 2010) (*SMOC*) ("Federal regulations define 'handicap' to include drug addiction or alcoholism that 'substantially limits one or more major life

[2] Defendants estimate that the installation of an automatic sprinkler system would cost $42,000, and displace the residents, some of whom would become homeless, for up to four weeks.

activities.'") (citation omitted); *Granada House, Inc. v. City of Boston*, 1997 WL 106688, at *9 (Mass. Super. Feb. 28, 1997) ("In the present case, the court concludes that Massachusetts would look to federal law, including the FHA, in interpreting the phrases 'disabled person' and 'persons with disabilities', and that by so doing, the MZA must be read to bar the City's discriminatory treatment of a group home for recovering drug and alcohol users under the Code.").

Plaintiffs' argument rests on the assertion that the Massachusetts Appeals Court has, at least in one instance, upheld the enforcement of the Sprinkler Law in a sober home context. *See Massachusetts Sober Hous. Corp. v. Automatic Sprinkler Appeals Bd.*, 66 Mass. App. Ct. 701 (2006) (*MSHC*) (upholding the Sprinkler Appeals Board's decision that group sober recovery homes constitute "lodging or boarding houses" under the Sprinkler Law). But, in *MSHC* the Appeals Court expressly noted that the group home operator there did not raise, and therefore it did not consider, the implications of the FHA. *Id.* at 705 and n.6. One thing should be clear: the court does not doubt the sincerity of plaintiffs' representation that their motive to enforce the Sprinkler Law arises from a genuine concern for the safety and welfare of the home's residents. Nor does the court discount the potentially tragic consequences should an unsuppressed fire erupt in the

home. For better or worse, however, the MZA unequivocally prohibits the facially disparate imposition of the Sprinkler Law on a group residence sheltering disabled individuals.[3]

ORDER

For the foregoing reasons, defendants' motion for summary judgment is ALLOWED and plaintiffs' cross-motion is DENIED. The Clerk will enter judgment for defendants and close the case.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

[3] Defendants also fault plaintiffs for failing to make a reasonable accommodation under the FHA that would involve the installation of other less expensive fire suppression devices. *See SMOC*, 752 F. Supp. 2d at 95 (Under the FHA, a party can assert a claim for failure to make a reasonable accommodation.). Defendants' willingness to take intermediate ameliorative steps may offer a reasonable compromise pending any future action by the Legislature.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BEVERLY TSOMBANIDIS, OXFORD HOUSE, INC., and JOHN DOES ONE THROUGH SEVEN (Current and prospective residents of 421 Platt Avenue, West Haven, Connecticut),	:	
Plaintiffs,	:	
	:	**NO. 3:98CV01316(GLG)**
-against-	:	
CITY OF WEST HAVEN, CONNECTICUT, FIRST FIRE DISTRICT OF THE CITY OF WEST HAVEN,	:	
Defendants.	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action is brought under the federal Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601, et seq. ("FHAA"), and Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12165 ("ADA"). Plaintiffs allege that the defendants' application and enforcement of the City's zoning, building, and property maintenance codes, and the State Fire Safety Code to a group home for recovering alcoholics and drug addicts discriminates against persons with a disability or handicap, in violation of these federal statutes.

Following an eight-day bench trial, the Court renders the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The property at 421 Platt Avenue in West Haven, Connecticut is known as Oxford House-Jones Hill (hereinafter "OH-JH" or "the House"). It is a two-story house with a yard, located on a .34 acre lot in a residential area of detached single-family houses. The area is zoned as an "R-2 District," in which only single-family residences are permitted. (West Haven Zoning Regulations, Art. II, Ch. 2, § 2-2.1B.1.a.)

2. Plaintiff, Beverly Tsombanidis, owns the property at 421 Platt Avenue, West Haven, Connecticut. She purchased it in July 1997 after it had been vacant for approximately two years. Since August 1997, the property has been continuously used as OH-JH.

3. Plaintiffs John Does One through Seven are current and/or prospective residents of OH-JH. They are all in recovery from drug and/or alcohol addiction. While there may have been eight residents of OH-JH during a short period immediately after OH-JH was established, the number of residents needed to fill the House has been seven since that time and will not exceed seven.

4. Oxford House, Inc. (hereinafter referred to as "OHI") is an umbrella organization for over 900 independent Oxford Houses operating nation- and world-wide. It is a nonprofit, tax-exempt, Delaware corporation with its principal place of business in Silver Spring, Maryland.

5. Oxford Houses are unsupervised, independent residences for men or women recovering from drug and/or alcohol addiction.

6. Currently, there are twenty-six Oxford Houses in the State of Connecticut, and seven, including OH-JH, in the greater New Haven area.

7. Defendant, the City of West Haven (hereinafter referred to as "the City" or "West Haven"), is a municipal corporation within the State of Connecticut and organized under the laws of the State of Connecticut. West Haven has authority to enforce its Zoning Regulations (included in the Land Use Regulations of the City of West Haven), the State Building Code,[1] and Property Maintenance Code[2] over land and dwellings within its boundaries.

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[1] The State Building Code regulates the design, construction and use of buildings or structures to be erected and the alteration of buildings already erected. Conn. Gen. Stat. § 29-252(a). It is applicable to all towns, cities, and boroughs in the State, pursuant to Conn. Gen. Stat. § 29-253(a).

[2] The Property Maintenance Code of the City of West Haven adopts the BOCA [Building Officials & Code Administrators International, Inc.] National Property Maintenance Code/1993 (4th ed.) with certain modifications. West Haven City Code §§ 127-1, 127-3. The Property Maintenance Code defines its scope as follows:

> This Code is to protect the public health, safety and welfare in all existing structures, residential and nonresidential, and all existing premises by establishing minimum requirements and standards for premises, structures, equipment, and facilities for light, ventilation, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; fixing the responsibility of

8. Defendant First Fire District of the West Haven Fire Department (hereinafter referred to as "the Fire District") is a political subdivision of the State of Connecticut, located wholly within the City of West Haven, and has the authority to enforce the State Fire Safety Code within the City of West Haven.

9. Oxford Houses are financially self-sustaining and OH-JH does not receive, and has not received, support from governmental or other sources. Oxford Houses operate on the premise that people in recovery from drug and alcohol addiction will succeed in remaining sober if they live in a highly supportive environment where substance abuse is non-existent and actively resisted. Many Oxford House residents have made multiple attempts at recovery prior to their arrival at an Oxford House. Statistics indicate that the average length of stay in an Oxford House is thirteen months. A founder of Oxford House claims that eighty percent of those who live in an Oxford House maintain long-term sobriety.

10. The first Oxford House was established in 1975 by Paul Molloy and others. OHI was established in 1987. Since that time, Oxford Houses have been established in thirty-four states in this country as well as two other countries around the world.

> owners, operators and occupants; regulating the occupancy of existing structures and premises, and providing for administration, enforcement and penalties.

PM-101.2 (original emphasis omitted).

11. Through local chapters, OHI facilitates the initiation of each new Oxford House, by providing information and contacts with other local Oxford Houses, and ensuring that experienced Oxford House residents from an established house are available to serve as the core for the new Oxford House.

12. The ground rules for every Oxford House are the same: 1) the house is not supervised and is governed democratically by its residents; 2) the house is rented, and the rent is paid by the residents; and 3) any resident who uses drugs or alcohol is immediately expelled. Thus, an Oxford House is able to carry on in spite of changes in the number of residents, in order to maintain the therapeutic community that is the essence of the Oxford House model.

13. In addition to these ground rules, OHI has observed that Oxford Houses that meet the following criteria are much more likely to succeed: 1) location in single-family residential neighborhoods, not close to neighborhoods where drugs and alcohol are easily available; 2) proximity to the site(s) of regular Alcoholics Anonymous and Narcotics Anonymous meetings; 3) near a commercial area substantial enough to provide residents with easy access to basic necessities such as groceries and household items; 4) near a range of sites of employment, and/or close to public transportation so that residents can travel to their jobs; 5) large enough for a minimum of six people to live, yet small enough that bedrooms are shared by the residents. To the extent

they meet these criteria, Oxford Houses are designed to allow people in recovery from addiction to create a temporary home, and return to sober, productive lives.

14. All of these findings are consistent with fundamental principles of recovery. Alcoholism and drug addiction are lifetime diseases. They are chronic, progressive and, ultimately, fatal. Avoiding relapse and progressing in recovery, therefore, are important aspects of a recovering addict's life. Finding and staying in a healthy, functional environment, surrounded by people who are not abusing alcohol or drugs, away from people and situations that previously triggered substance use, with access to transportation and work opportunities, are essential elements to avoiding relapse.

15. The efficacy of the Oxford House model, as a means of helping individuals recovering from alcoholism and drug addiction to prevent relapse and maintain a sober lifestyle, has been recognized by the United States Congress. See 135 Cong. Rec. H4860-02, 1989 WL 196098. In passing the Anti-Drug Abuse Act of 1988, P.L. 100-690, § 2036, Congress made federal block grant funds available to States to create a revolving fund for interest-free, short-term loans to groups of people in recovery who rent homes that: 1) are democratically self-governing; 2) are self-supporting; and 3) immediately expel anyone who uses drugs or alcohol. In sum, the Oxford House model is a highly successful, rehabilitative method, particularly when its members

attend Alcoholics Anonymous or Narcotics Anonymous (or similar organizations') meetings.

16. A long-time resident of West Haven and active in community service for over twenty years, plaintiff Beverly Tsombanidis bought 421 Platt Avenue with the intention of creating a place where people in recovery from drug and alcohol addiction would work, live, and return to productive lives. She had heard about Oxford Houses through an outreach program in West Haven, and contacted the president of the Oxford House-New Haven chapter, who told her about how Oxford Houses are run. He suggested to Ms. Tsombanidis that seven would be the ideal number of residents at 421 Platt Avenue, and that two refrigerators, two bathrooms, and smoke detectors would be needed. Ms. Tsombanidis assured that these recommendations were fulfilled, and she made numerous repairs and improvements to the House before the tenants moved in. A previous owner of 421 Platt Avenue had operated a day care center there, and there were already interconnected smoke detectors between two bedrooms upstairs and the upstairs hallway.

17. On July 26, 1997, Ms. Tsombanidis signed a lease with OH-JH, and the original John Does began to move in. The lease was renewed every two years thereafter, reducing the maximum number of tenants from nine to eight.

18. On or about July 27, 1997, OH-JH was chartered by OHI. It became part of the New Haven chapter of OHI. The House

pays monthly dues, and one of its residents attends monthly chapter meetings of OHI.

19. Within days after the original residents moved into OH-JH, neighbor Michael Turner approached Ms. Tsombanidis and asked who the men were. Turner asked OH-JH residents what they were doing there. Turner had bothered Ms. Tsombanidis when she was working on the House after Turner learned that it would be an Oxford House. Other neighbors were upset and angry as well. The neighbors did not want OH-JH in their neighborhood because it was a house for recovering drug addicts and alcoholics. They protested to the Mayor and City Council, claiming that the occupants might be criminals or perverts. However, in the years OH-JH has been operating, no resident has been charged with a crime or misdemeanor.

20. On September 8, 1997, an anonymous call was made to the City of West Haven by a neighbor complaining that 421 Platt Avenue was operating as an illegal boarding house. The next day, the City received a call complaining that the House was being used "as a boarding house or halfway house."

21. By late September or early October, within months after the John Doe plaintiffs had moved into OH-JH, a group of neighbors went to see H. Richard Borer, the Mayor of West Haven, to complain about the use of 421 Platt Avenue as a house for people in recovery from addiction. The neighbors met with the Mayor twice, complaining that "a drug rehab house" had been

opened in their neighborhood without the neighbors being notified and, in a second meeting, asking what was going on with this "rehab house." After the second meeting, neighbor Paul Frosolone pressed the issue of the use of 421 Platt Avenue by asking the Mayor and Corporation Counsel about it for the next three or four weeks. Frosolone, who was running for City Council at the time, circulated a petition with the assistance of Turner to let the neighbors know that the people living at 421 Platt Avenue were going through rehabilitation and were disabled.

22. Eighty-four neighbors of OH-JH signed a petition which, on October 14, 1997, was presented to the City Council, with approximately seventy-five neighbors in attendance "protesting the use of the property located at 421 Platt Avenue in a residential neighborhood . . . as a rooming house for people in rehabilitation . . . in violation of numerous planning and zoning codes," and "demanding an immediate cease and desist of this type of operation in a residential neighborhood setting." Frosolone told the City Council he "want[ed] the people out of this property," and several other neighbors repeated that message. Turner also spoke, calling the house "disgusting." Neighbor Walter Boresen stated that the OH-JH residents "drove like maniacs," and insisted that "these people should be put out tomorrow." Three of the neighbors told the City Council they were in fear of the OH-JH residents. Some complained they were in fear of OH-JH residents based on newspaper articles about

residents of "halfway houses" in other towns. The neighbors asked the City Council to get the OH-JH residents out. Turner talked with Councilman Ed Grandfield after the City Council meeting to ascertain the status of the matter. The neighbors were disappointed that they did not secure the prompt removal of the residents.

23. During the fall of 1997, the neighbors also talked to City officials in the Planning and Zoning Office in City Hall, including Jim Hill, Commissioner of Planning and Development, Alfredo Evangelista, Zoning Enforcement Official, and Michael McCurry, Property Maintenance Code Official, who said that they had already received calls about 421 Platt Avenue. Frosolone said he later spoke with McCurry three or four times again, McCurry informing him that OH-JH had been cited for violations of building and fire codes and given a limited period to correct the violations.

24. The press covered some of these events and reported the significant community opposition to OH-JH as a home for people with disabilities, which community opposition the City officials claim to have forgotten.

25. City officials, including Mayor Borer, Hill, Evangelista, and McCurry, claimed that their actions with respect to OH-JH were based on the number of people living in the House. These officials, however, were certainly aware of and were influenced by the opposition of OH-JH neighbors and members of

the community, who were plainly disturbed not so much by the number of people living at OH-JH as by the fact that the John Doe plaintiffs were people recovering from drug and alcohol addiction.

26. On September 8, 1997, the day the City received an anonymous complaint that 421 Platt Avenue was operating as an illegal boarding house and Ms. Tsombanidis was doing work without a permit, Assistant Property Maintenance Code Official Michael McCurry inspected 421 Platt Avenue.

27. On September 8, McCurry posted signs on the front and back doors of the house, publicly charging Ms. Tsombanidis with performing work without a permit.

28. The next day, September 9, McCurry and Evangelista proceeded to inspect the property together. Ms. Tsombanidis informed them that 421 Platt Avenue was an Oxford House, and a home for people in recovery from drug and alcohol addiction and told them how it operated. McCurry responded to Ms. Tsombanidis' information about Oxford House by telling Ms. Tsombanidis that he was "very angry," that the OH-JH residents had no right to be in the neighborhood, and that he wouldn't want addicts in his neighborhood. He ordered her to have them out within twenty-four hours.

29. By letter dated September 9, 1997, Evangelista informed Ms. Tsombanidis that 421 Platt Avenue was "an Illegal Boarding House in a residential zone," in "direct violation" of

the Zoning Regulations of the City of West Haven, and ordered her to "remove the illegal boarding house" from the property within ten days of her receipt of the letter.[3] The letter informed Ms. Tsombanidis that a $99.00 fine would be imposed for each day that she failed to comply with his letter. These fines were not enforced.

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[3] Section 1-3.2 of the West Haven Zoning Regulations, Art. I, Ch. 3, defines "Rooming House (including boarding house)" as

> Roomer, boarder or lodge person or persons occupying room or rooms forming a habitable unit limited to sleeping and living accommodations but not individual cooking facilities. It is further defined as any building which is used in whole or in part where the sleeping accommodations are furnished for hire or other consideration for more than one (1) but not more than eight (8) guests or employees of the management. . . .

The only residences permitted in an R-2 zone, which is the zoning classification of 421 Platt Avenue, are single-family residences. Zoning Regulations § 2-2.1.B.1. A "Family" is defined by the Regulations as:

> One or more persons who live together and maintain a common household, related by blood marriage, or adoption. A group of not more than three (3) persons who need not be so related who are maintaining a common household together in a single dwelling unit and maintaining a household shall also be considered a family. A roomer, boarder or ledger [sic], shall not be considered a member of the family, and no roomer, boarder or lodger shall be permitted where the family is divided as a group of unrelated persons. A common household shall be deemed to exist if all members thereof have access to all parts of the dwelling unit.

West Haven Zoning Regulations, Art. I, Ch. 3, § 1-3.2.

30. In an eleven-and-one-half page letter dated September 11, 1997, Charles E. van der Burgh, Chief Financial Officer for OHI, provided Evangelista with a full explanation of the Oxford House concept and requested that, as a reasonable accommodation pursuant to the FHAA, the City of West Haven treat OH-JH as a single-family dwelling and permit OH-JH to remain at 421 Platt Avenue. Alternatively, he asked that enforcement of the zoning ordinances be held in abeyance until this matter was resolved. Evangelista gave copies of all letters from OHI to his supervisor, James Hill, and to Corporation Counsel.

31. By letter dated September 16, 1997, McCurry informed plaintiff, Ms. Tsombanidis, that she was in violation of PM 202.0 "(one family dwelling)," as well as nine other sections of the City of West Haven Property Maintenance Code. The Property Maintenance Code defines a one-family dwelling as "[a] building containing one dwelling unit with not more than three lodgers or boarders." The Property Maintenance Code further defines a "rooming house" as a "building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family dwelling or a two-family dwelling." (West Haven Property Maintenance Code § 127-1, adopting BOCA National Property Maintenance Code § PM-202.0 (General Definitions)(4th ed. 1993), as modified by § 127-3.) McCurry ordered her to make fourteen alterations to the property and to reduce the number of tenants to three within fourteen days in order to avoid penalties

for operating an illegal boarding house.

32. Ms. Tsombanidis made the fourteen repairs ordered by the Property Maintenance Code Official, but she did not evict any OH-JH residents or otherwise reduce the number of residents at 421 Platt Avenue.

33. On September 16, 1997, Steven Polin, General Counsel for OHI, made another request to Evangelista that OH-JH be treated as a single-family home, pursuant to the FHAA.

34. Although both Van der Burgh's and Polin's letters had invited a response and/or questions from Evangelista, he did not respond to these letters.

35. On September 22, 1997, Evangelista issued a citation ordering Ms. Tsombanidis to pay a fine of $99.00 for violation of the West Haven Zoning Regulations for operating an illegal boarding house. This citation also was not enforced.

36. Van der Burgh wrote a second letter to Evangelista on September 25, 1997, again informing him that the City of West Haven's enforcement actions were violating plaintiffs' rights pursuant to the FHAA.

37. On November 24, 1997, Evangelista sent another letter to Ms. Tsombanidis ordering her to comply with the regulation limiting to three the number of unrelated persons in a single-family home, and again threatening her with fines and penalties. This letter and the citations informed Ms. Tsombanidis of her right to appeal the decision to the Zoning Board of Appeals, or

to seek a special use exception from that body.

38. On December 22, 1997, Building Official Frank Gladwin, following an inspection of OH-JH on December 12, 1997, informed Ms. Tsombanidis that the existing one-family dwelling at 421 Platt Avenue has been changed to a "boarding house use," and that as a result she was required to make fundamental structural changes to the house, including creating bedroom emergency exit windows, and a door and stairs leading out and to the ground from the second floor.

39. West Haven sent Ms. Tsombanidis a second citation dated March 20, 1998, ordering her to pay a fine of $99.00 for her violation of the City's Zoning Regulations. This citation also was not enforced.

40. On March 24, 1998, Attorney Polin sent a letter to Building Official Frank Gladwin and Fire Inspector Richard H. Spreyer, reiterating his position that operation of OH-JH did not constitute a change in use from a single-family dwelling to a boarding house and that application of the Connecticut Fire Safety Code and Building Code to a group of recovering substance abusers violated the FHAA. He requested that West Haven hold in abeyance further notices of violations until the issues raised by his letter had been resolved. He argued that the costs involved in making the required changes were prohibitive for both OH-JH and Ms. Tsombanidis and that continued enforcement of the Building and Fire Safety Codes would result in the constructive

eviction of the current residents, thus placing in jeopardy their recovery from alcoholism and drug abuse.

41. While Gladwin responded to this letter, he did not acknowledge or respond to plaintiffs' request for a reasonable accommodation, taking the position that he had no authority in that regard and had little knowledge of the FHAA, although he did not advise Mr. Polin of this.

42. West Haven enforces its Zoning Regulations, the Property Maintenance Code, and the State Building Code, primarily when responding to complaints.

43. James Hill, as Commissioner of Planning and Development of the City of West Haven, was the supervisor of the members of his department who made these inspections and issued the citations. He received each of the Van der Burgh and Polin letters from OHI.

44. Hill had never previously, in his eleven-and-one-half years as Commissioner, attempted to force inhabitants of an illegal boarding house out by inspecting and enforcing the zoning regulations against it, claiming that most violators ceased such activity when confronted. Nevertheless, when the neighbors at 421 Platt Avenue complained about a "rehab house" moving into that address, Ms. Tsombanidis received no fewer than two letters and two citations for zoning violations, one notice of violations of the Building Code, and one notice of violations of the Property Maintenance Code.

45. Furthermore, Hill failed to respond to any of the letters from OHI and its attorney requesting a reasonable accommodation for OH-JH. In spite of all the letters from OHI and its attorneys describing the nature of Oxford House, identifying and describing the protections afforded to Oxford Houses under federal law, Hill, on behalf of West Haven, persisted in his position that OH-JH was an illegal boarding house.

46. Mayor Borer, as chief executive of the City of West Haven, was responsible for Hill's management of the 421 Platt Avenue issue, after complaints had been made by neighbors as to the progress of Planning and Zoning investigations.

47. Mayor Borer communicated with Hill during the months in which West Haven was attempting to enforce the Zoning Regulations, Property Maintenance and Building Codes against OH-JH.

48. John DeStefano, the Mayor of the City of New Haven, spoke to Mayor Borer about OH-JH, telling Borer that Oxford Houses have special federal status which allow them to facilitate their operations. Borer also was aware, either from DeStefano or from West Haven Corporation Counsel, that the ADA may afford Oxford Houses special status that usurps the zoning codes. Nevertheless, Borer said nothing to Hill about this issue. Borer considered it his role to protect the integrity of West Haven neighborhoods and to ensure the strict enforcement of the codes

in West Haven.

49. In early winter, 1997, a city employee contacted the West Haven Fire Department about OH-JH.

50. Despite plaintiffs' repeated requests for a reasonable accommodation during the fall of 1997 and into 1998, West Haven did not respond to these requests other than to continue its attempts to enforce the Zoning Regulations, Property Maintenance and Building Codes.

51. On May 21, 2001, Ms. Tsombanidis applied to the City of West Haven Zoning Board of Appeals for a special use exception in order to continue to use 421 Platt Avenue as OH-JH. Ms. Tsombanidis, through counsel, provided comprehensive documentary support for the application to the Zoning Board of Appeals, and a public hearing was held on the application on June 20, 2001, at which testimony was presented.

52. At its regular meeting on August 15, 2001, the Zoning Board of Appeals denied this application for a special use exception by a unanimous vote. The Board, which also includes at least one member who is active in assisting homeless who are recovering alcoholics or drug abusers, had previously approved a special use exception for another residential facility for persons recovering from alcohol and/or other substance abuse. The Board denied the application of the plaintiffs because OH-JH is entirely self-run by the residents without any outside, professional contact person, and the residents utilize only an

in-person interview process to screen prospective new residents.

53. None of the City officials who oversaw the enforcement of the West Haven Zoning Regulations, Property Maintenance and Building Codes against plaintiff has ever received any training with respect to the FHAA or the ADA, at least insofar as they apply to people such as the individual plaintiffs.

54. As a result of the treatment she received from West Haven, through its agents, including, but not limited to, public accusations of code violations, biased remarks by at least one individual inspector, repeated threats of substantial monetary sanctions, repeated failures to respond to requests made on Ms. Tsombanidis' behalf for reasonable accommodations, and the ultimate denial of her May 21, 2001 application to the Zoning Board of Appeals for a special use exception, Ms. Tsombanidis suffered some emotional distress and anxiety.

55. In assisting Ms. Tsombanidis and the John Doe plaintiffs in the face of the enforcement attempts by West Haven as described above, plaintiff OHI incurred costs. It incurred out-of-pocket costs of $900 for travel and lodging to send its founder and Chief Executive Officer to testify at the trial in this matter on September 13-14 and October 5, 2001. Mr. Molloy and other corporate employees spent many hours between the first week of September 1997, when the City's enforcement actions began, through August 2001, in addressing this dispute with West Haven and the Fire District. Specifically, Mr. Molloy spent a

total of 541 hours addressing plaintiffs' dispute with the City of West Haven and the Fire District. At his hourly rate of $66.68/hour, the cost to OHI was $36,073.88. Additionally, Molly Brown, an employee of OHI, spent a total of 293 hours addressing this dispute between plaintiffs and the City and Fire District. At her rate of $19.21/hour, the cost to OHI was $5,628.53.

56. In early December 1997, Fire Inspector Richard Spreyer of the Fire District, was notified of the City's code enforcement actions against plaintiffs when he received a copy of McCurry's September 16, 1997 letter to Ms. Tsombanidis.

57. On or about December 12, 1997, Spreyer accompanied City of West Haven Building Official Gladwin to inspect OH-JH.

58. By letter dated January 5, 1998, Spreyer informed Ms. Tsombanidis that 421 Platt Avenue was a "lodging or rooming house" under the Connecticut Fire Safety Code and that as a result of this classification, she was required 1) to enlarge the windows in each bedroom; 2) to enclose the interior stairs; 3) to install fire alarm and smoke detection systems; and 4) to install (pursuant to section of the Fire Safety Code section that applies only to "[a]ll new lodging or rooming houses," Fire Safety Code § 20-3.5.2) an automatic sprinkler system throughout the house. Spreyer's determination that 421 Platt Avenue was a lodging or rooming house was based on the fact that more than three unrelated people lived there.

59. In December 1997, the Connecticut Fire Safety Code

defined "lodging or rooming houses" as

> buildings that provide sleeping accommodations for a total of 16 or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants except as provided in Chapter 21.

Today, the Code defines "lodging or rooming houses" as

> buildings or portions thereof that do not qualify as a one- or two-family dwelling that provide sleeping accommodations for a total of 16 but not fewer than seven persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants except as provided in Chapter 21.

60. In December 1997, the Connecticut Fire Safety Code defined "one- and two-family dwellings" as

> buildings containing not more than two dwelling units in which each living unit is occupied by members or a single family with no more than five outsiders, if any, accommodated in rented rooms.

Today, the Code defines "one- and two-family dwellings" as

> buildings containing not more than two dwelling units in which each living unit is occupied by members of a single family with no more than six outsiders, if any, accommodated in rented rooms.

61. When Spreyer inspected OH-JH in 1997, there were six residents living at OH-JH. Had he treated one resident as a "member of a single family" and the other five as "outsiders," and classified OH-JH at that time as a one-family dwelling under the Fire Safety Code, Ms. Tsombanidis would not have been required to bring the house into compliance with the Code's

provisions applicable to "lodging or rooming houses."

62. The Fire District has no system or practice of inspecting one- and two-family dwellings in residential zones, in the absence of complaints from neighbors or others, to determine whether a violation of the Fire Safety Code has occurred.

63. On March 9, 1998, Spreyer sent Ms. Tsombanidis another letter ordering her to alter OH-JH so as to comply with the Fire Safety Code's requirements for lodging and rooming houses within fifteen days. He mentioned the possibility of civil proceedings and criminal penalties, including a fine and incarceration if she did not comply.

64. By letter dated March 24, 1998, Attorney Polin responded to Spreyer's March 9, 1998 letter, informing Spreyer that the use of 421 Platt Avenue as OH-JH did not constitute a change in use, and that the application of the Fire Safety Code required by Spreyer's letters of January 5 and March 9 to OH-JH violated the FHAA and the ADA. He requested that, as a reasonable accommodation, OH-JH be treated as a single-family home for Fire Safety Code enforcement purposes.

65. By letter dated March 26, 1998, Spreyer forwarded Attorney Polin's March 24 letter to Douglas Peabody, Deputy State Fire Marshal at that time, along with his entire file, and requested a determination from Peabody as to the occupancy classification of 421 Platt Avenue under the State Fire Safety Code.

66. By letter dated May 4, 1998, Peabody responded to Spreyer. Peabody stated in his letter that under the Fire Safety Code, a one- or two-family dwelling could include a single family and no more than five outsiders. With more than five outsiders, a residence would be subject to the lodging and rooming house provisions of the Fire Safety Code. Peabody acknowledged that there was no definition of the term "single family" in the National Fire Protection Association ("NFPA") Life Safety Code, on which Connecticut's Fire Safety Code is modeled. Referring to "[c]ommon use dictionary definitions" of the term "family" as well as a "historic" definition developed by the NFPA Committee on the Life Safety Code, Peabody concluded that the residents of 421 Platt Avenue did not meet the requirements of a "family" and, instead, OH-JH should be classified as a lodging or rooming house for purposes of applying the Connecticut Fire Safety Code.

67. Neither Peabody nor any member of his staff had visited OH-JH or become aware of the actual operations of the household prior to issuing the May 4, 1998 letter. No mention was made in the letter concerning the nature of the household, the organization or general level of housekeeping in the household at OH-JH, fire safety measures already in place, or communication among members of the household regarding fire safety.

68. Peabody had been advised by a member of his staff and by an Assistant Attorney General assigned to his office that he

could, consistent with the language of the Connecticut Fire Safety Code, classify six unrelated individuals living together as a "family" plus five outsiders. Peabody rejected that interpretation.

69. Peabody further advised Spreyer in the May 4 letter to "consult with [West Haven] corporation counsel" as to whether the FHAA applied to OH-JH.

70. Spreyer did consult with the City of West Haven's Corporation Counsel, who referred him to the State Attorney's Office. Assistant State Attorney Mary Galvin advised Spreyer that the FHAA would have no application in this instance because the Life Safety Code was at issue, rather than a zoning code.

71. Spreyer proceeded to rely on the May 4 Peabody letter as confirmation of his position, and to substantiate his application of the Connecticut Fire Safety Code in this case to determine that 421 Platt Avenue, in which there were more than five "outsiders," was not a single-family household. Even before consulting with Attorney Galvin, however, Spreyer (relying on Peabody's May 4 letter), advised Ms. Tsombanidis that he was "continuing with the second abatement notice" because 421 Platt Avenue, in which there were more than five "outsiders," was not a single-family household.

72. On June 15, 1998, Spreyer re-inspected 421 Platt Avenue, and on June 16, 1998, he sent Ms. Tsombanidis a final notice of fire/life safety hazards, stating that imprisonment of

up to six months and/or criminal fines from $200 to $1,000 would be imposed in the event she did not comply.

73. On August 17, 2001, Ms. Tsombanidis made a request to the Fire District, in the form of a request for exemptions from the Fire District's enforcement of the Fire Safety Code provisions enumerated in Spreyer's January 5, 1998 letter.

74. As of the commencement of the trial of this action, Spreyer had not changed his position that OH-JH was a lodging or rooming house even though the Connecticut Fire Safety Code was amended in April 2000 to permit up to six "outsiders" to live in a "single-family dwelling." Despite this amendment, he had not been advised by the State Fire Marshal's office to change his position in this regard. However, on October 16, 2001, at the trial of this case, Deputy State Fire Marshal John Blaschik testified under oath that one of the residents of OH-JH may be considered a "member of a single family" and the other six may be considered "outsiders." Blaschik further testified that OH-JH should now be classified as a single-family occupancy under the Connecticut Fire Safety Code. In reliance on Blaschik's testimony, Spreyer promptly notified Ms. Tsombanidis that he would follow the new interpretation and that she should disregard the previous abatement notices issued by his office which, in any event, had not been enforced. Spreyer testified that he would treat OH-JH as a single-family occupancy henceforth.

75. Neither First Fire District Inspector Spreyer nor

former Deputy State Fire Marshal Peabody has ever had any training with respect to the FHAA or the ADA, at least insofar as it applies to people such as plaintiffs.

76. As a result of the treatment she received by the defendant First Fire District, through its agent Richard Speyer, including, but not limited to, its threats of substantial monetary sanctions and criminal prosecution, Ms. Tsombanidis suffered some emotional distress and anxiety.

77. In assisting Ms. Tsombanidis and the John Doe plaintiffs in the face of the enforcement attempts by the Fire District as described above, plaintiff OHI incurred costs. It incurred out-of-pocket costs of $900 for travel and lodging to send its founder and Chief Executive Officer to testify at the trial in his matter on September 13-14 and October 5, 2001. Mr. Molloy, and other corporate employees, spent many hours between December 12, 1997, when the Fire District's enforcement actions began, through August 2001, in addressing this dispute with the City and the Fire District.

CONCLUSIONS OF LAW

The FHAA[4] and Title II of the ADA, and the regulations promulgated thereunder, prohibit housing discrimination by

[4] The Fair Housing Act was amended in 1988 to protect persons with handicaps. The courts have recognized these amendments as a "clear pronouncement of a national commitment to end the unnecessary exclusion of persons with handicaps from the American mainstream." See, e.g., Hovsons, Inc. v. Township of Brick, 89 F.3d 1096, 1105 (3d Cir. 1996)(emphasis in original).

governmental entities against handicapped persons or persons with disabilities.[5] See 42 U.S.C. § 3604(f)(1) and (f)(3)(B)[6] and 42 U.S.C. § 12132.[7] Both the FHAA and Title II of the ADA have been interpreted to apply to municipal zoning regulations, practices, or decisions that subject persons with handicaps or disabilities to discrimination based upon their handicap or

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[5] The terms "handicap" and "disability" are used interchangeably in this opinion, unless indicated otherwise.

[6] The Fair Housing Act, 42 U.S.C. § 3604, provides in relevant part that it shall be unlawful –

> (f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —
>
> (A) that buyer or renter,
> (B) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
> (C) any person associated with that buyer or renter.
>
> (3) For purposes of this section, 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. . .

[7] The ADA, 42 U.S.C. § 12132, provides:

> Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity.

disability. See Forest City Daly Housing, Inc. v. Town of North Hempstead, 175 F.3d 144, 151 (2d Cir. 1999); Innovative Health Sys., Inc. v. City of White Plains, 117 F.3d 37, 45-46 (2d Cir. 1997); Connecticut Hosp. v. City of New London, 129 F. Supp. 2d 123, 135 (D. Conn. 2001). The legal analyses under both statutes are essentially the same and, thus, we will consider them together.

There is no dispute in this case that the John Doe plaintiffs, as non-abusing, recovering alcoholics and drug addicts are members of a protected class under the FHAA and ADA. 42 U.C.S. § 3602(h); 24 C.F.R. § 100.201(a)(2); 42 U.S.C. § 12210(b)(1) and (2). As "aggrieved persons" and persons with a "handicap," plaintiffs are entitled to the protections of the FHAA, 42 U.S.C. § 3602(h) and (i), and, as "qualified individuals with disabilities," they are protected by the ADA. 42 U.S.C. § 12131(2); see Connecticut Hosp., 129 F. Supp. 2d at 125. Additionally, plaintiff Beverly Tsombanidis, as landlord of the property rented by OH-JH, and OHI, as the umbrella organization for all Oxford Houses and as the advocacy group for plaintiffs, have standing to pursue these claims against defendants.

Three theories of discrimination are available to a plaintiff alleging a violation of the FHAA or Title II of the ADA: (1) intentional discrimination; (2) discriminatory impact; and (3) a refusal to make a reasonable accommodation. Tsombanidis v. City of West Haven, 129 F. Supp. 2d 136, 150 (D.

Conn. 2001); see also Smith & Lee Assocs. v. City of Taylor, 102 F.3d 781, 790 (6th Cir. 1996); Wisconsin Correctional Serv. v. City of Milwaukee, --- F. Supp. 2d —, 2001 WL 1402678 (E.D. Wisc. Sept. 25, 2001); ReMed Recovery Care Centers v. Township of Williston, 36 F. Supp. 2d 676, 683 (E.D. Pa. 1999). In this case, plaintiffs initially asserted all three theories of recovery against both defendants. This Court previously granted the motion for summary judgment of the Fire District as to plaintiffs' claim of intentional discrimination. Id. at 153-55. Additionally, the Court held that plaintiffs' reasonable accommodation claims against both defendants were not ripe. Id. at 159-61. Since then, however, plaintiffs have sought a special use exception from the West Haven Zoning Board of Appeals, which unanimously denied plaintiffs' request, thus rendering their reasonable accommodation claim against the City ripe for review. As for plaintiffs' reasonable accommodation claim against the Fire District, although it was not ripe prior to trial, it is now ripe due to intervening changes in the State Fire Code, which the Deputy State Fire Marshal testified would allow OH-JH to be treated as a one-family dwelling, subject to the one-family dwelling provisions of the State Fire Safety Code. Accordingly, although the Court had previously denied plaintiffs' motion to amend their complaint to reassert a reasonable accommodation claim against the Fire District, in light of this concession, the Court will now grant that request nunc pro tunc to permit the

complaint to conform to the evidence at trial, and will address herein the plaintiffs' reasonable accommodation claim against the Fire District.

In summary, in rendering its Conclusions of Law, the Court considers the theories of intentional discrimination, disparate impact discrimination, and failure to provide a reasonable accommodation against the City of West Haven. Against the Fire District, the Court considers the theories of disparate impact discrimination and failure to provide a reasonable accommodation.

I. PLAINTIFFS' CLAIMS AGAINST THE CITY OF WEST HAVEN

A. Intentional Discrimination by the City of West Haven

The position of the City has been, and continues to be, that OH-JH is a lodging or boarding house. It is not.[8] The residents' occupancy is not limited to a certain room or rooms in the House. There is no landlord, paid staff, or house manager involved in the operation of the House. There is no third person making decisions as to how the House should operate or who should live there. The residents make all the decisions themselves in a democratic manner. The residents live there by choice and can stay for unlimited periods of time and, indeed, some of them stay for a number of months. They rent the entire House, as opposed

[8] See Definition of rooming house or boarding house under the West Haven Zoning Regulations, n. 3, supra, and definition of "boarding house" under the City's Property Maintenance Code, ¶ 31, supra.

to a single room or rooms and have access to the entire House and all household facilities. Each pays an equal amount of rent regardless of the size of his room. There are no special locks on the bedroom doors. The residents function as a single housekeeping unit, paying all expenses out of a single household checking account, and sharing in the cooking, shopping, cleaning, and general care of the premises. The residents live together purposefully to create a "family" atmosphere, where all aspects of domestic life are shared by the residents and where they can provide each other with mutual support and encouragement to remain drug- and alcohol-free. Physically, the House is no different than any other single-family house. The lease is between the landlord and OH-JH, an unincorporated association composed of the residents at OH-JH. Thus, there is a direct landlord-tenant relationship between the actual residents and the landlord. There is no third-party or organization responsible for making the lease payments, other than the residents themselves.

Plaintiffs, on the other hand, claim that OH-JH is a single-family house. Literally, it is not because the residents are not related, whether by blood, marriage or adoption, and are not part

of a single "family," as that term is traditionally defined. However, the definition of "family" set forth in the City's Zoning Regulations does not require that the residents be related so long as they do not exceed three in number and they "maintain [ ] a common household together," (which is deemed to exist "if all members thereof have access to all parts of the dwelling unit"). (West Haven Zoning Regulations § 1-3.2.) Additionally, the West Haven Property Maintenance Code § 127-1, (adopting the BOCA National Property Maintenance Code, 4th ed. 1993) defines "family" as including a "group of not more than three unrelated persons living together as a single housekeeping unit in a dwelling unit." (PM-202.0, as amended by the West Haven Property Maintenance Code § 127-3). Thus, the fact that the OH-JH residents are not related by blood, marriage, or adoption, does not in and of itself preclude their being treated as a "family" under either the Zoning Regulations or Property Maintenance Code. Rather, it is that fact combined with the fact that they are more than three in number that cause OH-JH to run afoul of both City codes.

Following the Supreme Court's decision in City of Edmonds v. Oxford House, Inc., 514 U.S. 725 (1995), there can be no question that the City's Zoning Regulations and Property Maintenance Code are covered by the FHAA. The issue before the Court in City of Edmonds was whether the definition of "family" in the City of Edmonds' zoning code qualified for the FHAA's exemption from

coverage for "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. § 3607(b)(1). The City of Edmonds' zoning provision at issue governed areas zoned for single-family dwelling units and defined "family" as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons." (Edmonds Community Development Code § 21.30.010 (1991).) Thus, except for the number of occupants, the City of Edmonds' zoning provision was virtually identical to the zoning provision at issue in the instant case. The Supreme Court, noting that the housing amendments to the Fair Housing Act had been enacted against the backdrop of an "evident distinction between municipal land-use regulations and maximum occupancy restrictions," 514 U.S. at 732, held that the FHAA's exemption encompassed maximum occupancy restrictions[9] but not family composition rules, which are typically tied to land-use restrictions.[10] Id. at 734-35.

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[9] Maximum occupancy restrictions cap the number of occupants per dwelling, typically in relation to the available floor space or the number and type of rooms. These restrictions ordinarily apply uniformly to all residents of all dwelling units. Their purpose is to protect health and safety by preventing overcrowding of a dwelling. City of Edmonds, 514 U.S. at 733.

[10] Land use restrictions, on the other hand, designate districts in which only compatible uses are permitted and incompatible uses are not allowed. "Land-use restrictions aim to prevent problems caused by the 'pig in the parlor instead of the barnyard.'" City of Edmonds, 514 U.S. at 733 (quoting Village of Euclid v. Ambler Realty Corp., 272 U.S. 365, 388 (1926)).

"In sum, rules that cap the total number of occupants in order to prevent overcrowding of a dwelling plainly and unmistakably . . . fall within § 3607(b)(1)'s absolute exemption from the FHA[A]'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 735 (internal quotations and citations omitted). Turning to the City of Edmonds' family composition provisions, the Court held that they were "classic examples of a use restriction and complementing family composition rule. These provisions do not cap the number of people who may live in a dwelling. In plain terms, they direct that dwellings be used only to house families." Id. at 735-36. The Court rejected the City's argument that its zoning provisions should be considered a maximum occupancy restriction because it included unrelated occupants not exceeding five in number, finding that "[f]amily living, not living space per occupant, is what [the zoning provision] describes."[11] Id. at 737.

Accordingly, based upon the holding in the City of Edmonds case, we hold that the provisions of the West Haven Zoning Regulations and Property Maintenance and Building Codes at issue are land use restrictions, not maximum occupancy limitations, and

[11] The Supreme Court's decision was limited to this single narrow issue and, unfortunately, did not resolve the larger issues presented by the instant case. See City of Edmonds, 514 U.S. at 737.

therefore are not exempt from coverage by the FHAA. Thus, the issue that we must determine is whether the actions of the City in enforcing these Code provisions discriminated against plaintiffs because of their disabilities or handicap in violation of the FHAA and ADA.

The City asserts that it did not intentionally discriminate against plaintiffs. It was simply enforcing the City Codes. It is well established, however, that the FHAA prohibits discriminatory zoning or land use decisions by municipalities, even when such decisions are "ostensibly authorized by local ordinance." Oxford House, Inc. v. Township of Cherry Hill, 799 F. Supp. 450, 458 (D.N.J. 1992); see also 42 U.S.C. § 3615 ("[A]ny law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid."); Oxford House-Evergreen v. City of Plainfield, 769 F. Supp. 1329, 1343 (D.N.J. 1991) (on motion for preliminary injunction: city's enforcement of zoning ordinance so as to prevent operation of local Oxford House in area zoned for single-family residences violated FHAA). As this Court observed in its earlier ruling in this case, a local government that uses its zoning powers in a discriminatory manner or enforces its building codes in a discriminatory manner toward handicapped individuals violates the FHAA and ADA. Tsombanidis, 129 F. Supp. 2d at 151. "Otherwise lawful governmental actions

become unlawful when done for the purpose of disadvantaging the handicapped." Smith & Lee Assocs., 102 F.3d at 790.

"The critical inquiry is whether a discriminatory purpose was a 'motivating factor' in the decision or actions" of the City. Tsombanidis, 129 F. Supp. 2d at 151. As we noted, "'[t]he intent of which the court speaks is the legal concept of intent, to be distinguished from motive.'" Id. (quoting Stewart B. McKinney Found., Inc. v. Town Planning & Zoning Comm'n of Fairfield, 790 F. Supp. 1197, 1212 (D. Conn. 1992)). Plaintiffs are not required to prove that the City officials were motivated by some purposeful, malicious desire to discriminate against them because of their handicap. "They need only show that their handicapped status was a motivating factor in the [City's] decision." Id. Factors to be considered in evaluating a claim of discriminatory decision-making include: (1) the discriminatory impact of the governmental decision; (2) the decision's historical background; (3) the specific sequence of events leading up to the challenged decision; (4) departures from the normal procedural sequences; and (5) departures from normal substantive criteria. Id. at 152 (citing Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 266-68 (1977)). These factors are neither exclusive nor mandated, but constitute a "framework within which [the Court may] conduct its analysis. . . . It is necessary that each case be evaluated on its own facts." Stewart B. McKinney Found., 790 F. Supp. at

1211. Moreover, as we recognized, governmental actions taken in response to significant community bias may be tainted with discriminatory intent even where municipal employees and officials were not themselves biased. Tsombanidis, 129 F. Supp. 2d at 152 (citing Innovative Health Sys., 117 F.3d at 49); see also Pathways Psychosocial v. Town of Leonardtown, 133 F. Supp. 2d 772, 782 (D. Md. 2001). Once the plaintiffs have shown that the defendant's decision was motivated at least in part by a discriminatory animus, the burden shifts to the defendant to prove that it would have made the same decision even if it had not been motivated by an unlawful purpose. Arlington Heights, 429 U.S. at 270, n.21.

1. Discriminatory Impact

The discriminatory impact of the City's classifying OH-JH as a boarding or rooming house is undeniable. OH-JH will not be able to operate in a single-family zoned district of the City; OH-JH residents, unlike a family with seven related members, will not be able to live in any neighborhood with single-family zoning; and recovering alcoholics and drug addicts will be unable to avail themselves of an Oxford House group home in a residential setting in order to enhance their chances of making a full recovery. As recovering alcoholics and drug addicts, the John Doe plaintiffs need to live in a safe, supportive, and drug- and alcohol-free living environment during their recovery period.

See Connecticut Hosp., 129 F. Supp. 2d at 129; Oxford House, Inc. v. Township of Cherry Hill, 799 F. Supp. at 459 (finding that it is crucial for recovering alcoholics and substance abusers to have a supporting, drug and alcohol free living environment, which substantially increases an individual's chances of recovery); Oxford House, Inc. v. Town of Babylon, 819 F. Supp. 1179, 1183 (E.D.N.Y. 1993)("Recovering alcoholics or drug addicts require a group living arrangement in a residential neighborhood for psychological and emotional support during the recovery process.") Thus, the discriminatory impact is substantial.

2. Historical Background

The historical background of the City's enforcement efforts and the events leading up to the challenged decisions have been described in the Findings of Fact, above. There can be no serious dispute as to the bias of the angry and vocal neighbors of OH-JH and that their animosity was directed at OH-JH because of the residents' status as recovering alcoholics and drug addicts. There is also no question that their hostility was communicated on several occasions to various City officials, including the Mayor, the City Council, and Corporation Counsel, and that their opposition to OH-JH motivated the City not only to initiate but to continue its enforcement efforts. The Mayor himself acknowledged the "not in my backyard" attitude of the neighbors. The evidence at trial indicated that the City's

enforcement of its Zoning Regulations, the Property Maintenance Code, and the State Building Code, was almost entirely complaint-driven. Thus, the City's enforcement efforts were at least tainted initially by the bias of the neighbors and citizens' filing complaints with the City. Additionally, it is significant that the City's relentless enforcement efforts against this group home were unprecedented.

3. The Sequence of Events

Almost immediately upon the City's commencing its enforcement efforts against OH-JH, City officials were put on notice of the potential implications of their actions under the FHAA and ADA by virtue of the lengthy and detailed letters from Van der Burgh and Polin. These exhaustive letters explained the Oxford House concept, as well as the applicability of the FHAA and ADA to Oxford House residents. They explained that, even though OH-JH might be in technical violation of a local zoning ordinance, that did not abrogate the rights of the residents under the FHAA or ADA. Additionally, the letters informed the City officials that unlawful discrimination under these federal statutes includes a failure or refusal to make reasonable accommodations, including a waiver of the zoning rules to afford persons with disabilities the same opportunities to live in single-family neighborhoods as non-disabled persons.

The Mayor of New Haven also offered his opinion to Mayor

Borer that these Oxford Houses were afforded special status under federal law. Nevertheless, with knowledge of the potential implications of their actions under the FHAA and ADA, City officials continued in their repeated citation of OH-JH for violations of the City Zoning Regulations, Property Maintenance Code, and Building Code.

4. Evidence of Bias by City Officials

Moreover, there was evidence of bias on the part of certain City employees and officials. Property Maintenance Code Official McCurry expressed his personal dissatisfaction with OH-JH to Ms. Tsombanidis. Additionally, the reason for his initial visit to OH-JH appears to have had nothing to do with building permit violations, as Ms. Tsombanidis later learned, but was precipitated by complaints about her use of the House as an Oxford House facility. McCurry also ordered Ms. Tsombanidis to evict the residents without any supporting authority in the City Code. The City claims that it should not be charged with the personal bias of McCurry, whom it characterizes as a "low level functionary without any policy-making authority." (City's Proposed Concl. of Law at 8, ¶ N.) However, this "low level functionary" is listed on the letterhead of the City of West Haven Building Department as one of two "Property Maintenance Code Official[s]," who apparently had the authority, and exercised the authority, to issue citations for violations of the

Property Maintenance Code. Zoning Enforcement Official Evangelista also persisted in his enforcement efforts, issuing a second citation to Ms. Tsombanidis in March 1998, despite the repeated requests of OHI to hold these actions in abeyance pending a resolution of the FHAA and ADA issues. And, the Mayor himself, aware of the significant community bias and the fact that Oxford Houses as homes for recovering addicts might enjoy "special status" under federal law, permitted the enforcement efforts to continue.

Notwithstanding these repeated citations, the City argues that City officials took "no enforcement action, merely giving proper oral and written notices of the violations and of the possible consequences if enforcement were pursued." (City's Proposed Concl. of Law at 7, ¶ I.) Undoubtedly, no one would be more surprised than Ms. Tsombanidis to learn that neither the September 9 Order, requiring her to remove the illegal boarding house within ten days or face a $99.00/day fine, nor the ensuing citations, also threatening legal action for her failure to comply, were not "enforcement actions."

There is also evidence that Commissioner Hill had never previously, in his eleven-and-one-half years as Commissioner, attempted to force residents of an illegal boarding house out by inspecting it and enforcing the zoning regulations against it. Nevertheless, in response to the intense pressure from angry citizens and neighbors, the City, through various officials, sent

Ms. Tsombanidis two letters and two citations for zoning violations, one notice of her violation of the Building Code, and one notice of violations of the Property Maintenance Code. Furthermore, the City's involvement of the Fire District in zoning matters was unprecedented.

Additionally, the Court finds evidence of bias against the OH-JH residents because of their handicap on the part of the members of the Zoning Board of Appeals. Because of the public nature of the hearing that would be involved if plaintiffs sought a special use exception from the Zoning Board of Appeals, plaintiffs initially balked at the suggestion that this matter would have to be taken to the Zoning Board of Appeals. See Tsombanidis, 129 F. Supp. 2d at 161. Ultimately, however, they did pursue a request for a special use exception, following this Court's decision that their reasonable accommodation claim was not ripe for judicial review. See Id. The Zoning Board of Appeals unanimously voted against a special use exception, ostensibly because the residents were not supervised by an outside professional and because the screening process for new residents was purely internal. However, no credible evidence was offered as to why the presence of a professional would facilitate OH-JH's ability to operate in a neighborhood of single-family residences. In fact, the Board had previously approved a special use exception for another residential facility for recovering alcoholics and drug abusers. There also was no persuasive

evidence as to how the residents' screening process for new residents adversely impacted the make-up of the House. In fact, in the years that OH-JH has been operating, not a single resident has been charged with a crime. There was no evidence that allowing OH-JH to operate in this single-family district would jeopardize the public health, safety, or welfare of the neighbors, or that it would substantially impair or diminish property values in the neighborhood, or that it would adversely implicate any other concern traditionally considered by zoning boards of appeal. See Conn. Gen. Stat. § 8-6(a). Indeed, it appears to the Court that the presence of a professional or an outside screening process might detract from the residents' ability to operate OH-JH like a family.

Although the Zoning Board of Appeals had no legal duty to grant a special use exception (except to the extent that it was necessary to reasonably accommodate plaintiffs' handicap, discussed infra), it could not deny this request because of the residents' handicapped status or because of the discriminatory animus of City officials or members of the community. The Court finds that the reasons proffered by the Zoning Board of Appeals for its denial of a special use exception for OH-JH were not credible and that these reasons, as stated, were a pretext for discrimination against the OH-JH residents because of their disability.

When these events and circumstances are viewed in their

totality, the Court concludes that there is sufficient evidence to find that handicapped status of the OH-JH residents was a motivating factor in the City's enforcement efforts and in its denial of a special use exception to OH-JH. The City has failed to prove that it would have taken the same actions if it had not been motivated by an unlawful purpose. Accordingly, the Court holds that the City intentionally discriminated against plaintiffs in violation of the FHAA and the ADA.

B. Adverse Impact Discrimination by the City

In addition, the Court finds that the City's enforcement of its Zoning Regulations, Property Maintenance Code, and Building Code had a disparate impact on plaintiffs.

Disparate impact claims are premised on facially neutral policies or practices that are adopted without a discriminatory motive but which, when applied, have a discriminatory effect on a group of individuals who enjoy protected status under the anti-discrimination laws. Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 934-36 (2d Cir.), aff'd, 488 U.S. 15 (1988). In order to establish a prima facie case of disparate impact discrimination, plaintiffs must show that the challenged practice "actually or predictably" results in a greater adverse impact on a protected group than on others. Oxford House, Inc. v. Town of Babylon, 819 F. Supp. at 1182-83. Discriminatory intent need not be shown. Huntington Branch, NAACP, 844 F.2d at

934-36. Once a plaintiff establishes a prima facie case, the burden shifts to the defendant to "prove that its actions furthered, in theory and in practice, a legitimate, bona fide governmental interest and that no alternative would serve that interest with less discriminatory effect." Id. at 936 (internal quotations and citations omitted).[12] In the end, this Court must balance plaintiffs' showing of adverse impact against defendants' justifications for their conduct. Corporation of the Episcopal Church in Utah v. West Valley City, 119 F. Supp. 2d 1215, 1219 (D. Utah 2000). Two factors that will weigh heavily in plaintiffs' favor are: (1) evidence of discriminatory intent on the part of defendants (although evidence of discriminatory intent is not required); and (2) evidence that plaintiffs are seeking only to require defendants to eliminate an obstacle to housing rather than suing to compel defendants to build housing (the former requiring a less substantial justification from defendant for its actions). Id.

We have already found that the City intentionally discriminated against plaintiffs in its enforcement efforts and

[12] The Court in Huntington Branch, NAACP, 844 F.2d at 939, held that, in considering the defendants' justifications, the Court should first consider whether there is a less discriminatory alternative. If there is no less discriminatory alternative, the Court should scrutinize the justifications proffered by the defendants to determine their legitimacy and bona fide good faith, by inquiring whether the reasons were of substantial concern such that they would justify a reasonable official in making this determination.

denial of a special use exception to OH-JH. It is also undisputed that plaintiffs are seeking to have the City eliminate an obstacle to their ability to live in a single-family neighborhood rather than asking the City to take affirmative action to provide housing for them. Additionally, as discussed above, plaintiffs have demonstrated that the City's definition of "family" has a greater impact on groups of unrelated persons who are recovering alcoholics or drug abusers, seeking to live together in a single-family residential zone, than on non-handicapped individuals related by blood, marriage, or adoption.

Because of their disabilities, plaintiffs not only choose, but need, to live in a supportive group living arrangement in a residential neighborhood. Plaintiffs presented evidence that it was not economically feasible for OH-JH to operate with three or less residents. Plaintiffs have demonstrated that the City's inflexible enforcement efforts will have the effect of preventing them from living in a single-family neighborhood. Moreover, in order for the Oxford House concept to succeed in a group home setting, there need to be at least six residents and the house should be located in a single-family residential neighborhood, not in close proximity to areas where drugs and alcohol are readily available. Thus, the Court finds that the City's enforcement of the "single-family" provisions of its Zoning Regulations, Property Maintenance and Building Codes has an adverse impact on plaintiffs as handicapped individuals.

Numerous courts have held that facially neutral definitions of "family" in municipal zoning codes that result in the imposition of more stringent requirements on groups of unrelated persons living together have a greater adverse impact on disabled persons than non-disabled persons. See Oxford House, Inc. v. Town of Babylon, 819 F. Supp. at 1183; Oxford House, Inc. v. Township of Cherry Hill, 799 F. Supp. at 462. In the Cherry Hill case, the Court held that "[b]ecause people who are handicapped by alcoholism or drug abuse are more likely to need a living arrangement such as the one Oxford House provides, in which groups of unrelated individuals reside together in residential neighborhoods for mutual support during the recovery process, Cherry Hill's application of this ordinance has a disparate impact on such handicapped people." 799 F. Supp. at 461.

In Huntington Branch, NAACP, 844 F.2d at 934, the Second Circuit directed that, in determining whether evidence of discriminatory effect is sufficient, the courts should look to the congressional purpose of the statute as gleaned from the legislative history. The 1988 Amendments to the Fair Housing Act were "intended to prohibit the application of special requirements through land-use 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." H.R. Rep. No. 100-711 at 24.

This is precisely the adverse effect that will result from enforcement of the City's Zoning Regulations, Property Maintenance and Building Code.

In response, the City offered as a nondiscriminatory explanation for its action that plaintiffs were in violation of the various City codes and regulations. As noted above, however, these codes and regulations are not exempt from the FHAA and do not insulate the City from liability under the FHAA and ADA. Additionally, the City has failed to carry its burden of showing that no less restrictive alternative was available. The City presented no evidence that waiving the single-family requirement or granting plaintiffs a special use exemption would impose an undue financial or administrative burden on the City. The City advanced its legitimate interest in protecting the residential character of the surrounding neighborhood as a justification for enforcing the single-family Zoning Regulations. However, it offered no evidence that allowing OH-JH residents to occupy 421 Platt Street would effect a fundamental change in the nature of the neighborhood. Indeed, the evidence presented by plaintiffs was to the contrary and established that OH-JH functions in many respects like a single-family residence. Further, since the inception of OH-JH, not one of the residents has been charged with a crime.

The only other justification offered by the City was the Board of Zoning Appeals' concern that the residents did not have

professional supervision and had no formal, outside selection process for admitting new residents. As discussed above, we give little credence to proffered explanations.

Accordingly, we hold that plaintiffs have carried their burden of showing that the City's enforcement of the single-family provisions in its Zoning Regulations, the Property Maintenance Code, and the Building Code has an adverse impact upon them as handicapped individuals. We also find that the City has failed to meet its burden of showing that its actions furthered, in theory and in practice, a legitimate, bona fide governmental interest and that there was no alternative which would serve that interest with less discriminatory effect. Therefore, we find in favor of plaintiffs on their FHAA and ADA claims against the City based upon a theory of adverse impact.

C. The City's Failure to Provide A Reasonable Accommodation

Plaintiff's third alleged basis for liability under the FHAA and ADA is the City's failure to provide them with a reasonable accommodation. Both the FHAA and Title II of the ADA place upon municipalities an affirmative duty to make reasonable accommodations in order to afford persons with disabilities the same housing opportunities as the non-disabled, so long as those accommodations are reasonable and do not place an undue financial or administrative burden on the municipality or require a fundamental alteration in the nature of the program. See

Southeastern Community College v. Davis, 442 U.S. 397, 412 (1979); Bryant Woods Inn, Inc. v. Howard County, 124 F.3d 597, 603 (4th Cir. 1997)(recognizing the tension between the County's right to control land uses through neutral regulation and its duty to provide a reasonable accommodation to persons with handicaps). Additionally, the regulations promulgated under Title II of the ADA mandate a reasonable modification by a public entity "in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7); see also Olmstead v. L.C., 527 U.S. 581, 604, n. 16 (1999)(a plurality of the Court holding that Title II of the ADA, consistent with § 504 of the Rehabilitation Act, provides for a reasonable accommodation unless the accommodation would impose an undue hardship on the operation of its program); Wisconsin Correctional Serv., 2001 WL 1402678, at *8-9.

In ruling on a reasonable accommodation claim under the FHAA, the Court in Smith & Lee Associates, 102 F.3d at 794-95, looked at the legislative history of the amendments to the Fair Housing Act, noting that the underlying purpose of the amendments was to afford handicapped individuals the equal opportunity to live in single-family neighborhoods, should they choose to do so, and to end the unnecessary exclusion of persons with handicaps

from the American mainstream. See 42 U.S.C. § 3604(f)(3)(B)("accommodation . . . necessary to afford . . . equal opportunity"). It also cited the statute's use of the term "necessary," which requires plaintiffs to show that but for the requested accommodation they likely will be denied an equal opportunity to enjoy the housing of their choice. Smith & Lee Assocs., 102 F.3d at 795. Finally, the Court noted that in determining whether a requested accommodation is "reasonable," the statute's legislative history indicates that Congress intended courts to apply the line of decisions interpreting the phrase "reasonable accommodation" under Section 504 of the Rehabilitation Act. Id. Under those cases, an accommodation is reasonable, unless it requires "a fundamental alteration in the nature of a program" or imposes "undue financial and administrative burdens." Id. (citing Southeastern Community College v. Davis, 224 U.S. 397, 410, 412 (1979)); see also Bryant Woods Inn, 124 F.3d at 603 (noting that the FHAA does not provide a "blanket waiver of all facially neutral zoning policies and rules," which would give the disabled "carte blanche to determine where and how they would live regardless of zoning ordinances to the contrary.") Thus, the FHAA "requires an accommodation for persons with handicaps if the accommodation is (1) reasonable and (2) necessary (3) to afford handicapped persons equal opportunity to use and enjoy housing." Bryant Woods Inn, 124 F.3d at 603.

In this case, the accommodation that plaintiffs requested

was a special use exception that would allow OH-JH to operate in a single-family residential district. As early as September 17, 1997, when Attorney Polin first wrote City officials explaining the Oxford House concept and requesting that the City hold in abeyance its enforcement of the citations that had been issued to Ms. Tsombanidis, OHI requested a "reasonable accommodation" for OH-JH. Without this accommodation, as discussed above, recovering alcoholics and drug abusers would not have the opportunity to live in a single-family neighborhood because of the number of residents necessary to make the Oxford House model functionally successful and economically feasible. However, plaintiffs did not formally request this accommodation through a request for a special use exception from the Zoning Board of Appeals until May 21, 2001, and, as noted above, this request was unanimously denied.

The Court finds that the requested accommodation was reasonable in light of the fact that OH-JH operates in a manner similar to a single-family residence and the residents' need to live in group homes located in single-family districts removed from the areas where persons in recovery can readily obtain drugs or alcohol. Moreover, the City's Zoning Regulations already treat unrelated persons as a single family so long as they are three or less in number and the Regulations impose no numerical limitations on the number of related persons who can live together in a single-family neighborhood. And, as noted above,

there is no evidence that allowing OH-JH to operate in a single-family district will effect a fundamental change in the neighborhood.

The requested accommodation is also necessary for the plaintiffs' recovery, and, without this accommodation, the John Doe plaintiffs will be denied the opportunity to live in this type of group home.

The City failed to demonstrate that providing plaintiffs with this accommodation would impose any "undue hardship" or "substantial burden." Allowing seven unrelated Oxford House residents to live together in a house, which is operated much like any other single-family residence, will not fundamentally alter the nature of a single-family neighborhood and will not effect a "fundamental change" in the City's existing zoning. There is virtually no cost to the City associated with this requested accommodation. The City provided no evidence that these seven residents would impose a greater administrative or financial burden on the City in terms of the use of City or emergency services than a single family of related members. While certain City residents expressed safety concerns about having the Oxford House residents as neighbors, there was no proof that these residents pose any real threat to the safety of anyone. In fact, the proof was to the contrary, that none of residents had been arrested since the inception of OH-JH. See ReMed Recovery Care Centers, 36 F. Supp. 2d at 683-84.

Thus, when the benefits of allowing recovering alcoholics and drug abusers to live in a single-family neighborhood are weighed against the financial and administrative burdens to the City, if any, it is clear that the benefits to plaintiffs far outweigh the burdens to the City. Accordingly, the Court holds that the City discriminated against plaintiffs by denying them their requested accommodation.

D. Relief Requested

Having found the City liable to plaintiffs for violating Title II of the ADA and the FHAA, we turn to the question of the relief to be awarded plaintiffs against the City. In their complaint, plaintiffs seek a variety of relief from this Court. Specifically they ask the Court to:

1. Enter a permanent injunction restraining the City from taking actions either directly or indirectly which would interfere in any way with plaintiffs' current occupancy of OH-JH;

2. Enter a declaratory judgment that the City has illegally discriminated against plaintiffs by arbitrarily and capriciously applying the State Building Code to the occupancy of 421 Platt Avenue by a group of recovering alcoholics and addicts, thereby interfering with the plaintiffs' equal opportunity to use and enjoy a dwelling on the basis of handicap, in violation of the Fair Housing Act;

3. Enter a permanent injunction enjoining the City of West Haven, its officers, employees, agents, attorneys and successors, and all persons in active concert or participation with any of them, from proceeding with the prosecution of OHI and Beverly Tsombanidis for alleged violations of the West Haven Zoning Regulations and/or Building Codes, or otherwise interfering with the rights of recovering alcoholics or substance abusers to reside at 421 Platt Avenue;

4. Enter an order declaring that plaintiffs' use of 421 Platt Avenue is consistent with classification of the premises as a single-family dwelling and requiring the City to apply all zoning, safety and building codes to plaintiffs' use of 421 Platt Avenue in the same matter as it does to all other single family dwellings;

5. Award compensatory damages;

6. Grant an award of reasonable costs and attorneys' fees; and

7. Grant any and other such other relief that the Court deems just and proper.

We begin by considering what relief is available to plaintiffs under the FHAA and Title II of the ADA. Under the FHAA, this Court

> (A) may award such preventative relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as is necessary to ensure the full enjoyment of the rights granted by this subchapter;
>
> (B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and
>
> (C) may, to vindicate the public interest, assess a civil penalty against the respondent –
>
> (i) in an amount no exceeding $50,000 for a first violation; and
>
> (ii) in an amount not exceeding

$100,000, for any subsequent violation.[13]

42 U.S.C. § 3614(d)(1). Additionally, the Court has discretion to allow the prevailing party attorney's fees and costs. 42 U.S.C. § 3614(d)(2).

The specific relief available under Title II of the ADA is less straightforward. Title II specifically incorporates the remedial scheme set forth in 29 U.S.C. § 794a (the Rehabilitation Act of 1973). 42 U.S.C. § 12133. The Rehabilitation Act, 29 U.S.C. § 794a(a)(2),[14] in turn, incorporates the remedies set forth in Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. (Additionally, the Rehabilitation Act provides for the award of attorney's fees and costs to the prevailing party. 29 U.S.C. § 794a(b).) Although Title VI does not spell out the specific remedies that are available, it has been interpreted as including a judicially implied private right of action. See Guardians Ass'n v. Civil Service Comm'n, NYC, 463 U.S. 582, 594-94 (1983); Garcia v. SUNY Health Sciences Center of Brooklyn, No. 00-9223, 2001 WL 1159970, at *8 (2d Cir. Sept. 26, 2001). Thus, by referencing Title VI's remedial scheme, Title II of the ADA has likewise been interpreted as incorporating an implied private right of action. Garcia, at *8.

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[13] Plaintiffs, however, have not requested that the Court impose a civil penalty under the FHAA.

[14] 29 U.S.C. § 794a(a)(1) applies to employment cases and, thus, is inapplicable to this case.

Although in the past there has been considerable disagreement among the courts as to whether monetary damages are available under Title II of the ADA, the Second Circuit has recently reaffirmed its earlier holding that a private plaintiff may recover monetary damages upon a showing of a statutory violation resulting from "deliberate indifference" to the rights secured the disabled by Title II. Garcia, at *11 (citing Bartlett v. New York State Bd. of Law Examiners, 156 F.3d 321, 331 (2d Cir. 1998), vacated on other grounds by 527 U.S. 1031 (1999)).

In the instant case, we have found the City liable for intentional discrimination against plaintiffs. We based this finding in part on the personal animosity exhibited by certain City officials toward plaintiffs, the fact that community bias and complaints from angry citizens largely drove the City's enforcement efforts, and the unprecedented nature of the City's enforcement activities. Moreover, we noted that the City had repeatedly been put on notice that its actions were in violation of the ADA and FHAA and that plaintiffs were asking for a reasonable accommodation of their handicaps. Despite these notices and requests, the City continued to blindly pursue its enforcement efforts against Ms. Tsombanidis and OH-JH without any effort to ascertain the degree to which OH-JH operated like a single-family residence or the implications of its actions under the ADA and FHAA. Accordingly, we have no difficulty in holding that the City acted with "deliberate indifference" to the rights

of plaintiffs under the ADA because of their status as disabled persons and that the City is liable for monetary damages as a result of this intentional discrimination. See Bartlett, 156 F.3d at 331.

No evidence was presented at trial as to any monetary damages sustained by the John Doe plaintiffs. However, there was sufficient evidence presented at trial concerning emotional distress suffered by Ms. Tsombanidis for the Court to hold that these injuries were proximately caused by the discriminatory conduct of the City. It was Ms. Tsombanidis who was personally subjected to the discriminatory enforcement efforts by City officials. It was Ms. Tsombanidis who met with angry City officials and was directed to remove the residents within 24 hours, who was told by McCurry that he would not want these addicts in his backyard, who was subjected to the repeated citations for her illegal boarding house, who was threatened with criminal sanctions. As a proximate result of these discriminatory enforcement actions, Ms. Tsombanidis sustained emotional pain and suffering for which she is entitled to recover compensatory damages. The amount of these damages is a matter left to the sound discretion of the trial court. Having observed her demeanor at trial and after hearing her testimony, the Court finds that $1,000 is fair and adequate compensation for the emotional pain and suffering that she sustained.

There was also proof at trial of out-of-pocket expenses of

$900 incurred by OHI for travel and lodging to send Mr. Malloy to testify at the trial. The Court does not consider the expenses incurred by OHI as travel and lodging for its Chief Executive Officer as appropriate elements of compensatory damages. OHI also provided evidence of time spent by Mr. Malloy and another OHI employee in addressing this dispute with the City. The Court may award compensatory damages to an advocacy group such as OHI upon proof that the time spent on this matter resulted in a diversion of resources from other matters, or, impaired its ability to facilitate work in other areas. See Havens Realty Corp. v. Coleman, 455 U.S. 363, 379, n. 21 (1982); Baltimore Neighborhoods, Inc. v. LOB, Inc., 92 F. Supp. 2d 456, 465 (D. Md. 2000). The Court is not persuaded that such "diversion of resources" damages are appropriate as to the time spent by Molly Brown, an employee of OHI. However, the Court will award OHI as compensatory damages $36,073.88, for the 541 hours spent by Chief Executive Officer Malloy from September 1997 through October 2001, on this matter. Obviously, by virtue of Chief Executive Officer Malloy's involvement with the OH-JH dispute, he was unable to spend time on other matters. OHI has adequately segregated time spent on this specific matter from other matters involving Oxford Houses. Furthermore, the Court finds that the number of hours claimed by OHI for his work over a four-year period is reasonable and necessary.

Plaintiffs have requested that we enter a permanent

injunction restraining the City from taking actions either directly or indirectly which would interfere in any way with plaintiffs' current occupancy of OH-JH. This, the Court declines to do. That request is far too broad. Nevertheless, finding that plaintiffs have shown that they will suffer irreparable harm absent a more limited permanent injunction, the Court permanently enjoins the City of West Haven, its officers, employees, agents, attorneys and successors and all persons in active concert or participation with any of them, from proceeding with the prosecution of OH-JH, OHI, and/or Beverly Tsombanidis for violations of the West Haven Zoning Regulations, the Building Code, and the Property Maintenance Code, insofar as those violations relate to or arise out of the number of recovering alcoholics or former drug users (not to exceed a total of seven in number) residing at OH-JH. The Court further finds that plaintiffs' current use of the premises at 421 Platt Avenue with seven or fewer residents is consistent with classification of the premises as a single-family dwelling and orders the City to apply and enforce its Zoning Regulations, Building Code, and Property Maintenance Code against OH-JH in the same manner that it does for all other single-family dwellings. Finally, the Court awards attorney's fees and costs to all plaintiffs against the City, in an amount to be determined after further briefing by all parties.

II. PLAINTIFFS' CLAIMS AGAINST THE FIRST FIRE DISTRICT

As discussed above, the discrimination claims against the First Fire District that went to trial were adverse impact discrimination and the Fire District's failure to provide a reasonable accommodation under Title II of the ADA and under the FHAA.

A. Adverse Impact Discrimination by the First Fire District

In order to establish a prima facie case of disparate or adverse impact discrimination by the Fire District, plaintiffs must show that the challenged practices of the Fire District actually resulted, or predictably result, in a disproportionate burden on them as members of a protected class. See Tsombanidis, 129 F. Supp. 2d at 155. In this case, plaintiffs challenged the Fire District's application of the facially neutral provisions of the State Fire Code relating to lodging and rooming houses to OH-JH, as opposed to the one-family dwelling provisions.

Plaintiffs produced evidence that the requirements of the Fire Safety Code for lodging and rooming houses, including the installation of larger, escape windows in every bedroom, enclosing an interior stairwell with fireproof materials, installing fire alarm and automatic sprinkler systems throughout the house, and smoke detectors with visible alarms, were prohibitively expensive for OH-JH and that the continued enforcement of these provisions would result in the constructive eviction of the John Doe plaintiffs from this one-family dwelling

and would limit the housing opportunities available to Oxford House residents. Plaintiffs have also produced substantial evidence of their need to live in a group home setting in a residential neighborhood, in order to facilitate their continued recovery from alcoholism and drug addiction. This is a need that non-handicapped persons do not share to the same degree and, thus, non-handicapped persons would not be impacted as greatly in terms of their housing opportunities as Oxford House residents. See Huntington Branch, NAACP, 844 F.2d at 938 (finding adverse impact in City's rezoning decision based upon percentage of minorities who required subsidized housing as compared to overall percentage of town residents requiring subsidized housing). Thus, we find that plaintiffs have made a prima facie showing that enforcement of the Fire Safety Code's lodging and rooming house provisions has an adverse impact on them as handicapped individuals.

The burden then shifts to the Fire District to show that its actions furthered in theory or practice a legitimate, bona fide governmental interest and that no alternative would serve that interest with less discriminatory effect. Huntington Branch, NAACP, 844 F.2d at 936. The Fire District argues that it does not have the legal authority to interpret, modify, or vary the requirements of the State Fire Safety Code. Additionally, it points to its legitimate interest in protecting the lives and property of the residents and their neighbors.

Plaintiffs respond that they do not dispute that the safety of residents and neighbors is a bona fide governmental interest, but the Fire District has not shown, and cannot show, that this interest cannot be served in a less discriminatory manner. They point to the fact that neither the Fire District nor the Deputy State Fire Marshal ever ascertained the level of fire safety at OH-JH or the degree of communication between the residents or the accessibility of all portions of the House to the residents. As to the Fire District's lack of discretion to interpret or modify the Fire Safety Code, plaintiffs assert that Spreyer interpreted the Code when he first determined in December, 1997, that the six residents of OH-JH could not be considered a one-family occupancy. They also cite to the fact that Deputy State Fire Marshal Peabody threw the issue of compliance with the FHAA back in Spreyer's lap, advising him to consult with Corporation Counsel on that matter.

To a certain degree, this controversy with the Fire District has become moot because of the concession at trial of Deputy State Fire Marshal John Blaschik that under the newly amended Fire Safety Code, the seven residents of OH-JH could be treated as a single family, with one resident as the "family" and the other unrelated residents as his six guests. However, that concession does not moot the claims of plaintiffs relating to the Fire District's enforcement efforts over the three-year period from 1998 until trial, nor does it moot their claims for relief.

Moreover, the Court is not persuaded by the Fire District's excuse that it did not have the power to modify the Fire Safety Code. See Wisconsin Correctional Serv., 2001 WL 1402678, at *8. The Fire District cannot exempt itself from the requirements of the ADA and the FHAA in this manner. See Id. (citing PGA Tour, Inc. v. Martin, 532 U.S. 661, 121 S. Ct. 1879, 1896 (2001) (rejecting PGA's argument that it could not consider granting an exception to its rules because the rules did not provide for exceptions)). As the Court in Wisconsin Correctional Services noted, to allow a municipal or state entity to exempt itself on this basis would allow it to avoid compliance with the ADA altogether.

Accordingly, the Court finds that the Fire District's application and enforcement of the lodging and boarding provisions of the Fire Safety Code as to OH-JH had a discriminatory impact on plaintiffs on the basis of their disability. The Court further holds that the Fire District has failed to prove that there was no alternative that would serve its legitimate interests in fire safety and have a less discriminatory impact on plaintiffs. See Civic Ass'n of Deaf of New York City v. Guiliani, 915 F. Supp. 622, 633 (S.D.N.Y. 1996); Bay Area Addiction Research and Treatment, Inc. v. City of Antioch, 179 F.3d 725, 730-31 (9th Cir. 1999). Therefore, the Court holds that the Fire District's application of the lodging and boarding house provisions to OH-JH had an adverse impact on

plaintiffs because of their handicap, in violation of the FHAA amd Title II of the ADA.

B.The Fire District's Failure to Provide Reasonable Accommodation

The other theory advanced by plaintiffs against the Fire District is that it failed to provide them with the reasonable accommodation of treating OH-JH as a one-family residence, which would allow it to operate without the need for the modifications required of lodging and rooming houses. This Court initially held that plaintiffs' reasonable accommodation claim against the Fire District was not ripe for adjudication because plaintiffs had not sought a variation or exemption from the State Fire Marshal, pursuant to Conn. Gen. Stat. § 29-296.[15] See Tsombanidis, 129 F. Supp. 2d at 160-61. However, as noted, Deputy State Fire Marshal Blaschik testified at trial that OH-JH would be considered a one-family dwelling and would be treated accordingly, thus obviating the need for plaintiffs to apply for that exemption.

Therefore, so long as the Fire District adheres to its representation that it will apply the one-family dwelling provisions to OH-JH, there is no need for plaintiffs to pursue

[15] Section 29-296, Conn. Gen. Stat., provides that the State Fire Marshal may grant variations or exemptions from any regulation issued pursuant to the Fire Safety Code, where strict compliance would entail practical difficulty or unnecessary hardship or is adjudged unwarranted, provided that any such variation or exemption shall, in the opinion of the State Fire Marshal, secure the public safety.

their request for an exemption from the State Fire Marshal. Because the Fire District never rejected plaintiffs' request for an accommodation, this Court finds that there was no violation of the reasonable accommodation provisions of the FHAA and ADA by the Fire District.

C. Relief Against the Fire District

Again, plaintiffs have sought various forms of relief against the Fire District. In their complaint, they request that this Court to

1. Enter a permanent injunction restraining the Fire District from taking actions either directly or indirectly which would interfere in any way with plaintiffs' current occupancy of OH-JH;

2. Enter a declaratory judgment that the Fire District has illegally discriminated against plaintiffs by arbitrarily and capriciously applying the Connecticut Fire Safety Code to the occupancy of 421 Platt Avenue by a group of recovering alcoholics and addicts, thereby interfering with the plaintiffs' equal opportunity to use and enjoy a dwelling on the basis of handicap, in violation of the Fair Housing Act;

3. Enter a permanent injunction enjoining the Fire District, its officers, employees, agents, attorneys and successors, and all persons in active concert or participation with any of them from proceeding withe prosecution of OHI and

Beverly Tsombanidis for alleged violations of the Connecticut Fire Safety Code, or otherwise interfering with the rights of recovering alcoholics or substance abusers to reside at 421 Platt Avenue;

4. Enter an order declaring that plaintiffs' use of 421 Platt Avenue is consistent with classification of the premises as a single-family dwelling and requiring the Fire District to apply all fire codes to plaintiffs' use of 421 Platt Avenue in the same manner as it does to all other single family dwellings;

5. Award compensatory damages;

6. Grant an award of reasonable costs and attorneys' fees; and

7. Grant any and other such other relief that the Court deems just and proper.

We have already addressed the statutory basis for relief under the FHAA and Title II of the ADA. The Fire District argues that plaintiffs are not entitled to compensatory damages for emotional distress injuries, citing to the common-law standard for awarding damages for emotional distress in state tort claims. These cases are inapplicable to the question of recoverable statutory damages under these two federal acts. Dollard v. Board of Education of the Town of Orange, 63 Conn. App. 550 (2001), and Petyan v. Ellis, 200 Conn. 243 (1986), involved a state common-law causes of action for negligent and intentional infliction of emotional distress, claims that are not present in

the instant case.

The primary consideration that distinguishes the relief to be awarded to plaintiffs against the Fire District, from that awarded against the City, is the fact that this Court has made no finding of intentional discrimination by the Fire District.

Accordingly, the Court holds that plaintiffs are not entitled to an award of compensatory damages against the Fire District. The Court further holds that plaintiffs are entitled to recover reasonable attorney's fees in an amount to be determined after further briefing. Additionally, the Court permanently enjoins the First Fire District, its officers, employees, agents, attorneys and successors and all persons in active concert or participation with any of them, from proceeding with the prosecution of OH-JH, OHI, and/or Beverly Tsombanidis for violations of the State Fire Safety Code, insofar as those violations relate to or arise out of the number of recovering alcoholics or former drug users (not to exceed a total of seven in number) residing at OH-JH. The Court further finds that plaintiffs' current use of the premises at 421 Platt Avenue with seven or fewer residents is consistent with classification of the premises as a one-family dwelling and orders the Fire District to apply and enforce the Fire Safety Code against OH-JH in the same manner that it does for all other one-family dwellings.

CONCLUSION

The Court directs the Clerk to enter Judgment in favor of the plaintiffs, John Does One through Seven, Beverly Tsombanidis, and Oxford House, Inc., against the City of West Haven and the First Fire District of West Haven in accordance with the Relief provisions in the Conclusions of Law, set forth above. Plaintiffs are directed to submit appropriate documentation of their attorney's fees and costs within 30 days of the date of this ruling. In so doing, counsel are directed to allocate their fees and costs, to the extent possible, between defendants. Defendants shall have 21 days to file any opposition to plaintiffs' request for attorney's fees and costs. Thereafter, plaintiffs shall have ten days to file a reply, if they deem one necessary.

SO ORDERED.

Date: December 28, 2001._____
Waterbury, Connecticut.

_____/s/_____
GERARD L. GOETTEL,
United States District Judge