

To: Professor Robert Whitman
From: Anuradha Yadav
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Re: The Obligation of Local Connecticut Zoning Boards to Accommodate for
Therapeutic Homes for Recovering Addicts

Issue

Local Connecticut zoning boards have the obligation to accommodate to allow for therapeutic homes for recovering addicts in residential zones because 1) recovering addicts in therapeutic homes are a protected class under Fair Housing Act Amendments¹ (hereinafter “FHAA”) and American with Disabilities Act² (hereinafter “ADA”); 2) recovering addicts in therapeutic homes are protected against restrictive definitions of family under the FHAA and ADA; and 3) recovering addicts in therapeutic homes are entitled to reasonable accommodations as handicapped persons protected under the FHAA and ADA.

Introduction

There has been much tension in Connecticut and throughout the United States between towns zoning boards and therapeutic homes for recovering addicts. Therapeutic homes for recovering addicts are located in single-family residential areas. The therapeutic home model advocates living with other recovering addicts in a drug and alcohol free environment and this model has helped thousands of addicts. Community opposition to therapeutic homes by neighbors who do not want recovering addicts to live in their back yard has invoked restrictive zoning rules by zoning boards. Federal law

¹ 42 U.S.C. § 3604 (2000).

² 42 U.S.C. § 12132 (2000).

supports the rights of the recovering addicts in therapeutic homes. Since the recovering addicts in therapeutic homes are considered “handicapped”³ and protected under the FHAA and ADA, they are entitled to protection from restrictive zoning laws involving the definition of family, and are entitled to reasonable accommodations. If municipalities do not grant variances from existing single-family housing codes to therapeutic homes, or subject therapeutic homes to more stringent building codes, or do not provide reasonable accommodations to therapeutic homes, then recovering addicts in therapeutic homes can file a discrimination suit in federal court under the FHAA and ADA.

A. Background on Therapeutic Homes

Therapeutic homes help in the recovery process by providing a drug and alcohol free-living environment where alcohol and drug addicts can remain clean and sober and return to their product lives. The Oxford House is one type of non-profit group therapeutic home designed to help people recovering from drug and alcohol addiction.⁴ With federally mandated start-up grants under the Anti-Drug Abuse Act of 1988, the Oxford House created nearly 500 group homes nationwide for recovering addicts and alcoholics between 1988 and 1994.⁵ The Oxford House model’s success has been recognized by the United States Congress and it is known as a “successful, rehabilitative method, particularly when its members attend Alcoholics Anonymous or Narcotics

³ Id.

⁴ Plaintiff’s Findings of Fact and Conclusions of Law at 7, *Tsombanidis v. City of West Haven*, 129 F.Supp.2d 136, (D. Conn. 2001) (No. 3:98CV1316).

⁵ Douglas Miller, Note, *The Fair Housing Act, Oxford House, and the Limits of Local Control Over Regulation of Group Homes for Recovering Addicts*, 36 Wm. & Mary L. Rev., 1467, 1467 .

Anonymous meetings.⁶ Under the Oxford House model, the house is unsupervised and is governed democratically, with all residents in the house paying rent and utilities. In keeping with its goal of providing an alcohol and drug free environment, anyone who relapses faces immediate expulsion from the home.⁷ By surrounding recovering addicts with people who are also not abusing drugs or alcohol, rather than people who trigger substance abuse, recovering addicts reside in a supportive family unit composed of other recovering addicts.⁸ The recovering addicts have the same goal: to adopt a drug and alcohol free lifestyle. They also have easy access to public transportation and work opportunities.⁹

Therapeutic home models that are located in single-family residential neighborhoods, “not close to neighborhoods where drugs and alcohol are easily available, aid recovering addicts” help in addiction recovery.¹⁰ Throughout the United States, and in several Connecticut towns, local zoning boards have tried to shut down these therapeutic homes in single-family residential neighborhoods, using various zoning violations and demanding cease and desist of this type of operation.¹¹ Residents opposed to the therapeutic homes have used restrictive family definitions and safety related use permit requirements in local zoning codes to exclude group homes from single-family neighborhoods.¹² The underlying reason behind the zoning board’s actions is neighbors’ opposition to having recovering addicts living in their neighborhoods. Neighbors feel

⁶ Plaintiff’s Findings of Fact and Conclusion of Law at 7. *Tsombanidis* (No. 3:98CV1316).

⁷ Plaintiff’s Brief at 5, *Tsombanidis v. City of West Haven*, 129 F.Supp.2d 136, (D. Conn. 2001) (No. 3:98CV1316).

⁸ *Id.*

⁹ *Id.*

¹⁰ Plaintiff’s Findings of Fact and Conclusion of Law at 5. *Tsombanidis* (No. 3:98CV1316).

¹¹ *Id.* at 9.

¹² Miller, *supra* note 5, at 1475.

that therapeutic homes for recovering addicts threaten their neighborhood security.¹³

Federal lawsuits between the municipalities and group homes for recovering addicts have ensued regarding about the extent of protection under the FHAA for zoning in single-family zones and reasonable accommodation. These expensive litigation battles have resulted in victories for the recovering addicts in therapeutic homes.

ARGUMENT

A. Local Connecticut Zoning Boards have the Obligation to Accommodate for Recovering Addicts in Therapeutic Homes Because they are a Protected Class under the FHAA and ADA

Connecticut zoning boards have an obligation to provide accommodation for recovering addicts in therapeutic homes because they are a protected class under the FHAA and ADA.¹⁴ The amended FHAA prohibits discrimination in housing on the basis of a handicap, a “1) physical or mental impairment which substantially limits one or more of such person’s major life activities...or 3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction of a control substance.”¹⁵ Indeed, the U.S. House Report recognizes that “individuals who have a record of drug use or addiction but who are not currently using illegal drugs would continue to be protected if they fall under the definition of handicap...like any other person with a disability such as cancer.”¹⁶

¹³ Plaintiff’s Findings of Fact and Conclusion of Law at 5. *Tsombanidis* (No. 3:98CV1316).

¹⁴ 42 U.S.C. § 3602(h) (2000).

¹⁵ *Id.*

¹⁶ H.R.Rep. No. 711, 100th Cong., 2d. Sess 22 (1988), reprinted in 1988 U.S.Code Cong. & Admin.News 2173, 2183.

The statutory language clearly recognizes that recovering drug addicts have “impairments” under the FHAA. It is equally clear that Congress did not intend to include recovering addicts currently using drugs under the definition of handicapped.¹⁷ Further and most relevant, individuals who are recovering from addiction and participating in treatment programs or self-help groups are not excluded from protection under the FHAA.¹⁸

The ADA was passed to eradicate discrimination on the basis of disability in all areas of public life.¹⁹ The ADA “assures equality of opportunity...independent living and economic self-sufficiency for people with disabilities.”²⁰ Both the ADA and the FHAA prohibit discrimination by public and governmental entities delivering services in connection with housing people with handicaps.²¹

This recognition of recovering addicts as disabled is supported by *Connecticut Hospital v. City of New London*.²² In this case, the substance abuse center operated by Connecticut Hospital sued the municipality claiming that the town’s attempt to close an outpatient halfway house violated the FHAA. The court recognized that the recovering alcohol and substance abusers at Connecticut Hospital are handicapped and receive protection under the FHAA and ADA.²³

¹⁷ Williams, *supra* note 5, at 1482.

¹⁸ 42 U.S.C. §§ 3602(h) and (i) (2000).

¹⁹ 42 U.S.C. § 12101 (2000).

²⁰ 42 U.S.C. § 12101(a)(8) (2000).

²¹ 42 U.S.C. 12131(2) (2000). *see Innovative Health Systems, Inc. v. City of White Plains*, 117 F.3d 37, 48 (2d. Cir. 1997).

²² 129 F. Supp. 2d 123, 125 (D. Conn. 2001).

²³ *Id.* at 135.

As a protected class under the FHAA and ADA, recovering addicts have certain rights in regards to local zoning laws.²⁴ Further, recovering addicts residing in therapeutic homes can bring a housing discrimination claim if there is proof of discriminatory intent²⁵ or of discriminatory impact.²⁶ Further, a showing of failure to apply reasonable accommodation for recovering addicts is the third means of bringing a discrimination claim.²⁷ Reasonable accommodation is the strongest of the three standards because it grants the handicapped preferred status in housing discrimination claims.²⁸

Thus, Connecticut zoning boards have the obligation to accommodate recovering addicts in therapeutic homes because they are considered disabled and receive protection under the ADA and FHAA.

²⁴ Before recovering addicts were included as handicapped and a protected class under the FHAA, group homes were defeated at the local level and had to challenge restrictive zoning ordinances on constitutional grounds.

²⁵ *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 429 U.S. 252, 266 (1977). When considering discriminatory intent, a court considers the following factors: 1) whether the action had a discriminatory impact; 2) historical background of the situation; 3) the sequence of events leading up to the challenged decision; 4) any departures from normal substantive criteria.

²⁶ *Tsombandis v. City of West Haven*, 129 F.Supp.2d 150 (D. Conn. 2001). When zoning boards have imposed more stringent building standards, fire safety and zoning requirements on inhabitants of group homes, courts have found intentional discrimination under the FHAA and ADA. In *Tsombandis*, the plaintiffs claimed intentional discrimination based on the fact that the defendants placed stricter standards on them than on individuals related by blood, marriage or adoption and living in single-family districts. The defendants claim that there was no official expression of bias, that meetings with concerned citizens was routine and there was no yielding to community discrimination. The events leading up to the City's enforcement actions and the City's departure from normal procedure provide evidence of intentional discrimination. *Id.* at 152. Those actions include petition drives against the group home, neighbors pleading with the city to order a cease and desist to this "rehab house." *Id.* The court found that the plaintiffs had provided sufficient evidence of the events leading up to the City's enforcement and departures from normal procedures raised genuine issues of material fact as to whether the actions taken by the City were motivated by discriminatory intent. *Id.* at 153.

²⁷ *Id.*

²⁸ Williams, *supra* note 5, at 1492.

B. Connecticut Zoning Boards have the Obligation to Accommodate for Therapeutic Homes because those Homes are not Subject to Restrictive Zoning Codes Regarding the Definition of Family

Connecticut zoning boards have the obligation to accommodate for therapeutic homes under the auspices of the FHAA and ADA because recovering addicts are not subject to restrictive zoning codes, including the narrow definition of family. The FHAA and the ADA have been interpreted to apply to municipal zoning regulations or “decisions that subject persons with handicaps or disabilities to discrimination based upon their handicap or disability.”²⁹ The FHAA makes it unlawful 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.”³⁰ The U.S. House Report clearly states that the FHAA applies to “state or local land use and health and safety laws, regulations, practices, or decisions that discriminate against individuals with handicap.”³¹ Title II of the ADA was enacted to prevent the isolation and segregation of individuals with disabilities and to promote their assimilation into the mainstream of all aspects of community life and it clearly prohibits intentional discrimination.³² While it is clear that FHAA and ADA apply to local zoning regulations, there has been dispute regarding whether therapeutic homes fit within the definition of single family and the application of the FHAA.

Municipalities have brought unsuccessful zoning claims against therapeutic homes on the grounds that these homes do not belong in single family zoning districts. In

²⁹ Plaintiff’s Findings of Fact and Conclusion of Law at 29. *Tsombanidis* (No. 3:98CV1316). see *Connecticut Hospital vs. City of New London*, 129 F. Supp.2d, 123, 135 (D. Conn. 2001).

³⁰ 42 U.S.C. § 3604(f)(1) (2000).

³¹ H.R. Rep 100-711, App. II-14.

³² 42 U.S.C. §12132 (2000).

the recently decided case, *Tsombanidis v. City of West Haven*, the plaintiffs bought a disparate impact discrimination claim³³ against the municipality because it classified the therapeutic home as a lodging or boarding house rather than a single family residence and refused to consider the FHAA and ADA when applying the Connecticut Fire Safety Code, State Building Code and zoning requirements to the Oxford House.³⁴ The plaintiffs' argued in this motion in opposition of summary judgment that the classification as a lodging or boarding house had a disparate impact, i.e. it actually or predictably resulted in discrimination against the recovering addicts based on their handicapped status.³⁵ The defendant, the Town of West Haven, classified the Oxford House as a lodging or boarding house.³⁶

In making its decision, the *Tsombanidis* court recognized that the challenged practice of classifying a group home for recovering addicts as a boarding or lodging house resulted in discrimination.³⁷ The court examined the statutory framework of the FHAA and recognized that while local governments have the authority to protect and to regulate land use, that authority has been used to restrict the ability of handicapped individuals to live in communities through the enactment of safety or land use

³³ Other jurisdictions have also dealt with family composition rules and discrimination claims under disparate impact. When a plaintiff establishes a prima facie case of disparate impact discrimination, the burden shifts to the defendant to prove that no alternative would serve that interest with less discriminatory effect. In *Oxford House v. Township of Cherry Hill*, 799 F.Supp. 450,462 (D. N.J. 1991), the Township refused to issue plaintiffs certificate of occupancy based on the grounds that they failed to meet the definition of single family under the townships zoning ordinance (definition did not include individuals who were unrelated by blood or marriage). The plaintiffs bought a discrimination claim against the township under disparate impact. The court held that the prospective residents established the likelihood of success in proving a violation of the FHAA and that the Township's interpretation of family in its zoning ordinance imposed more stringent requirements on groups of unrelated individuals who wanted to live together in a rental property than on individuals related blood or marriage.

³⁴ *Tsombandis*, 129 F.Supp.2d at 155.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

requirements among non-related people with disabilities.³⁸ This land restriction has the effect of discriminating against people with disabilities.³⁹

Further, an examination of West Haven's Land Use Regulations defining family in terms of "one or more persons related by blood, marriage...or a group of not more than three persons who are not so related that maintain a common household together in a single dwelling" is subject to the FHAA.⁴⁰ The residents in the group home had a single housekeeping unit, no locks on the doors and no direct landlord-tenant relationship.⁴¹ The court held that the defendant's classification of the group home as a boarding or lodging house would have adverse impact on the plaintiffs as disabled individuals.⁴² The plaintiffs produced evidence that their need to live in a group home in a residential neighborhood facilitated their continued recovery from drug and alcohol addiction. Non-handicapped people do not share the same need and would not be impacted as greatly in terms of their housing opportunities as Oxford House residents.⁴³ Thus, West Haven's Zoning Regulations and Property Maintenance Code are subject to the FHAA.

Other cases support the *Tsombanidis* decision that group homes for recovering addicts can live in a single-family zone. In *Connecticut Hospital*, the court did not accept

³⁸ *Id.*

³⁹ *Id.* at 150. The *Tsombanidis* court also addressed the question whether the FHAA's exemption regarding the maximum number of occupants permitted to occupy a dwelling was applicable in this case. The *Tsombanidis* court cited the United States Supreme Court decision in *City of Edmonds vs. Oxford House*, 514 U.S. 725 (1995) number of occupants per dwelling. The FHAA exemption did not encompass family composition rules, which are tied to land use restrictions where only compatible uses are permitted. The *Edmonds* decision is important for the rights of recovering addicts because if the Supreme Court had ruled that single-family ordinances were exempt from the FHAA, the exemption would have undermined the purpose of the FHAA to protect the rights of recovering addicts. While limitations on unrelated residents is not always invalid, they must be scrutinized for the discriminatory intent or impact.

⁴⁰ *Id.*

⁴¹ *Id.* at 158.

⁴² *Id.*

⁴³ *Id.* at 157-158.

the defendant's argument that residents in the group home for recovering addicts were not family and therefore are not protected under the FHAA.⁴⁴ Instead, the court recognizes that since family is defined in the FHAA, it protects "one or more families" who live in a dwelling.⁴⁵ Further, the court rejected the defendant's claim that group homes are rehabilitative facilities or counseling centers and not residences because no treatment or premises occurred at the group home.⁴⁶ If that were the case, "any group living arrangement that facilitated recovery of a handicapped person would lose the protection of the FHAA."⁴⁷

Similarly, the town of Groton in *Meyers v. Zoning Board of Appeals of Groton* cited two group homes for recovering addicts owned by Meyers because they were in violation of zoning regulations as a rooming or boarding house in a single family zone.⁴⁸ According to the municipality, the two houses fall under the definition of rooming/boarding house as a dwelling with "at least three persons but less than twelve persons are housed or lodged for hire."⁴⁹ The traditional definition of family, "of not more than four persons keeping house together, but not necessarily related by blood or marriage" was also part of the zoning regulations.⁵⁰ The court concluded that it did not have the power to decide matters arising under the FHAA. Despite that, the court recognized that the use of Meyers' properties as a recovery home for addicts did not

⁴⁴ *Connecticut Hospital*, 129 F.Supp.2d at 129.

⁴⁵ *Id.* at 131.

⁴⁶ *Id.* at 132.

⁴⁷ *Id.*

⁴⁸ *Meyers v. Town of Groton*, No. 950535547, 1997 WL 325816, at *4 (Conn. Super. Ct. June 3, 1997).

⁴⁹ *Id.* at 2.

⁵⁰ *Id.*

violate regulations for the single-family homes.⁵¹ Nonetheless, the court recognized that if the town permits the “single family use by other groups who are not struggling with handicaps (e.g. college students, or navy personnel) they are acting in a discriminatory manner, which is made illegal by the FHAA.”⁵²

The *Hargrove v. Town of North Haven* and *Hargrove v. Burns* cases involved the town claiming that the Hargroves were in violation of town zoning regulations in a single family residential zone by renting rooms to recovering addicts, which was deemed a non-conforming use.⁵³ The Hargroves brought an action challenging North Haven’s zoning regulations as a violation of the FHAA.⁵⁴ The court recognized that there was good cause that the plaintiffs suffered irreparable harm if they were forced to leave the group home and that the tenants would likely prevail on the merits of their actions.⁵⁵ In the latest court decision in the Hargrove case, the Appellate Court of Connecticut held that the trial court had no jurisdiction in rendering a judgment more than 120 days after the hearing.⁵⁶

Based on the interpretations of zoning purposes by these courts, therapeutic home for recovering addicts would be considered single-family housing and protected by the FHAA and ADA. Due to the “disability” status of recovering drug and alcohol addicts, therapeutic homes are not subject to zoning laws which restrict the number of unrelated individuals who may live in a single family dwelling. Municipalities claims of zoning violations against therapeutic homes based on arguments that the group home is in

⁵¹ *Id.*

⁵² *Id.* at 23

⁵³ *Hargrove v. North Haven*, 64 Conn. App. 251, 251 (Conn. App. Ct. 2001). See also *Burns v. Hargrove*, CV 9940429323S, 2000 WL 277296, at *1 (Conn. Super. Ct. March 2, 2000), which was reversed and remanded on other grounds.

⁵⁴ *Burns*, 2000 WL 277296 at 3.

⁵⁵ *Id.*

⁵⁶ *Hargrove*, 64 Conn. App. at 251.

violation of the single family zoning ordinances because it is a treatment facility, boarding house or rooming house have consistently been struck down by courts. These therapeutic homes are designed to provide an alcohol and drug free-living environment conducive to the recovery process, which provides recovering addicts the choice to live as a family unit.⁵⁷ Thus, Connecticut Zoning Boards have an obligation to not permit restrictive zoning ordinances and to recognize that the FHAA and ADA protect therapeutic homes situated in single-family zones.

C. Connecticut Zoning Boards have the Obligation to Provide Reasonable Accommodations for the Handicapped Person

Connecticut zoning boards have the obligation to provide reasonable accommodations since recovering addicts are a protected handicapped class under the FHAA and ADA. Therapeutic homes, such as the Oxford House have requested reasonable accommodation instead of applying for a use permit or variance when faced with a local zoning challenge.⁵⁸ A reasonable accommodation, according to the FHAA and ADA requires “modest, affirmative steps to accommodate the handicapped...as long as such modifications are not substantial and do not constitute fundamental alterations or impose undue financial or administrative burdens.”⁵⁹ The FHAA “requires an accommodation for persons with handicaps if the accommodation is 1) reasonable and 2) necessary and 3) to afford handicapped persons equal opportunity to enjoy housing.”⁶⁰

⁵⁷ *Connecticut Hospital*, 129 F.Supp.3d at 132.

⁵⁸ *Williams*, *supra* note 5, at 1493.

⁵⁹ *Shapiro v. Cadman Towers, Inc.* 51 F.3d 328, 334-335 (2d. Cir. 1995)

⁶⁰ *Bryant Woods Inn v. Howard County* 124 F.3d 597, 603 (4th Cir. 1997).

The FHAA was intended “to require that changes be made to such traditional rules or practices if necessary to permit a person with handicaps an equal opportunity to use and enjoy a dwelling.”⁶¹ If no reasonable accommodation is provided for recovering addicts in therapeutic homes, the recovering addicts can bring a discrimination claim as a protected class under the FHAA for failure to make reasonable accommodation.⁶²

Case law supports reasonable accommodation for recovering addicts in therapeutic homes. In *Connecticut Hospital v. City of New London*, the plaintiffs sought reasonable accommodation from New London by proposing a text amendment to the zoning regulations that would accommodate this type of group home.⁶³ The plaintiffs argued that the town’s attempt to stop the operation of the group homes constituted a violation of the FHAA.⁶⁴ The court found that the plaintiffs had met their burden of proving a likelihood of success on the merits that the defendant failed to make a “reasonable accommodation for plaintiff’s handicapped status.”⁶⁵ To show that the plaintiffs’ requested accommodations is unreasonable, the defendants must prove that the request either imposes “undue financial and administrative burden on the defendant, or requires a fundamental alteration in the nature of the program.”⁶⁶ The court found no evidence substantiating the defendants’ claim that continuing to allow the group homes to operate would be an undue financial or administrative burden on the city.⁶⁷ Thus, Connecticut Hospital was able to establish the likelihood of prevailing on a claim that the

⁶¹ H.R. Rep. No. 100-711, 100th Cong, 2d. Sess., 25, reprinted in 1988 U.S.Code Cong. & Admin. 2173.

⁶² Williams, *supra* note 5, at 1485.

⁶³ Connecticut Hospital, 129 F. Supp. 2d at 126.

⁶⁴ *Id.* at 131.

⁶⁵ *Id.* Because there was a claim for reasonable accommodation, the court did not discuss the plaintiff’s discriminatory intent and disparate impact claims under the FHA.

⁶⁶ *Id.*

⁶⁷ *Id.*

town of New London failed to make a reasonable accommodation for the plaintiffs' handicapped status protected under the FHAA.⁶⁸

Reasonable accommodation claims can be held not ripe for adjudication if the plaintiffs do not exhaust all administrative procedures when applying for a variance. The reasonable accommodation claim in *Tsombanidis* was found by the court to be without merits because the plaintiffs failed to follow administrative remedies in asking for a variance from the single-family residential zoning requirements.⁶⁹ While the plaintiffs requested a special use exception that would allow the Oxford House to operate in a single-family residential district in several letters to the City and the First Fire District, they did not officially request a special use permit from the Zoning Board of Appeals.⁷⁰ The plaintiffs argued that without this accommodation, recovering alcoholics and drug abusers would not be able to live in a single-family neighborhood.⁷¹ The defendants argued that the plaintiffs failed to follow proper administrative avenues of relief. The court found that because the plaintiffs had not requested a special use permit, an exemption or a variation from the Zoning Board of Appeals or the State Fire Marshal, the reasonable accommodation claim were not ripe for adjudication.⁷² The plaintiffs had to give the defendants the opportunity to accommodate them through the established administrative procedures.⁷³

⁶⁸ *Id.* at 129.

⁶⁹ *Tsombanidis*, 129 F. Supp.2d at 159.

⁷⁰ *Id.*

⁷¹ Plaintiff's Findings of Fact and Conclusion of Law at 53. *Tsombanidis* (No. 3:98CV1316).

⁷² *Tsombanidis*, 129 F. Supp.2d at 159.

⁷³ *Id.* at 160.

While this line of reasoning has been followed by other jurisdictions, courts have also recognized that not pursuing administrative remedies prior to filing a discrimination suit for reasonable accommodation under the FHAA is also acceptable.⁷⁴ In *Huntington Branch NAAACP v. Town of Huntington*, the court held that administrative remedies need not be exhausted in filing a formal application for re-zoning seeking reasonable accommodation prior to filing suit in federal court.⁷⁵ The court recognized that Section 810(d) of Title VII, 42 U.S.C. § 3610(d) indicates that Congress gave explicit consideration to the lack of an exhaustion requirement being intended in Section 810.⁷⁶ This split view of exhausting administrative remedies before filing a suit in federal court makes it more difficult to interpret whether the court will dismiss a reasonable accommodation claim by a therapeutic home for failure to follow administrative procedure. The approach adopted in *Tsombanidis* could potentially avoid the high costs of litigation due to the fact that a plaintiff seeking reasonable accommodations would first need to pursue administrative remedies before filing a federal suit. If, after pursuing the administrative procedure, the variance for reasonable accommodations is denied by the zoning board, a federal discrimination claim for failure to accommodate can be made.

Nonetheless, Connecticut zoning boards do have the obligation to provide reasonable accommodations under the FHAA and ADA for recovering addicts in

⁷⁴ See *United States v. Village of Palatine*, 37 F.3d 1230, 1233 (7th Cir. 1994) and *Oxford House-A v. City of University City*, 87 F.3d 1022 (8th Cir. 1996) where reasonable accommodation claims were not ripe for adjudication because the plaintiffs had not applied for a variance from the statute or exhausted local administrative procedures. Plaintiff did not need to apply for any administrative procedures prior to filing suit in *Warde v. Harte*, 794 F. Supp. 109, 113 (S.D.N.Y. 1992)

⁷⁵ *Huntington Branch NAAACP v. Town of Huntington*, 689 F.2d. 391, 394 (2d. Cir. 1982).

⁷⁶ *Id.*

therapeutic homes if it were found those accommodations do not create undue financial hardship on the municipality and they follow proper administrative procedures.

Recommendations

While it is clear that the FHAA and ADA protect recovering addicts in therapeutic homes, endless litigation between the municipalities and therapeutic homes has nonetheless ensued. This is driven in part by ignorance of the law. Neighbors who do not want recovering addicts in their backyard have influenced the restrictive zoning against therapeutic homes. They have used the press to create public outcry in opposition of therapeutic homes in West Haven, Connecticut.⁷⁷ This, in turn, placed a substantial amount of pressure on local government officials and zoning board members. While the press played a part in inciting prejudice and public opinion against therapeutic homes in West Haven, it could also be used to educate neighbors, town officials and the public about the goals of therapeutic homes.

Drug and alcohol addiction are prevalent today. Recovering addicts who are trying to turn their lives around should not be fighting to live in these therapeutic homes as much as they should be fighting to stay sober. Thus, there are strong public policy arguments for educating the public and zoning boards about the rights of recovering addicts. Legislative efforts in Connecticut regarding zoning bills and therapeutic homes have so far been unsuccessful. State agencies (especially the Connecticut Department of Mental Health and Addiction Services), local town officials and recovering addicts in

⁷⁷ *Tsombanidis*, 129 F. Supp.2d at 143.

therapeutic homes need to be working with each other so that recovering addicts can be afforded their proper protection under the FHAA and ADA.

Conclusion

Local Connecticut zoning boards have the obligation to accommodate to allow for therapeutic homes for recovering addicts in residential zones because 1) recovering addicts in therapeutic homes are a protected class under the FHAA and ADA; 2) recovering addicts in therapeutic homes are protected against restrictive definitions of family under the FHAA and ADA and 3) recovering addicts in therapeutic homes are entitled to reasonable accommodations as handicapped persons protected under the FHAA and ADA. Both an interpretation of federal law and relevant case law support the rights afforded to recovering addicts in therapeutic homes. Instead of being embroiled in litigation against municipalities, therapeutic homes should be carrying out their mission of helping recovering addicts in developing a lifestyle free from alcohol and drug use.