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SJC-13639

BAK REALTY, LLC, & another<sup>1</sup> vs. CITY OF FITCHBURG & another.<sup>2</sup>

Worcester. December 2, 2024. - March 28, 2025.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,  
& Wolohojian, JJ.

Municipal Corporations, By-laws and ordinances. Zoning, Lodging house, Zoning district, Validity of by-law or ordinance, Board of appeals: decision, Appeal. Handicapped Persons. Lodging House. Statute, Construction. Practice, Civil, Zoning appeal, Summary judgment. Words, "Family," "And."

Civil action commenced in the Superior Court Department on January 31, 2020.

The case was heard by Janet Kenton-Walker, J., on a motion for summary judgment.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Kevin J. Powers (Vincent P. Pusateri, II, also present) for the defendants.

Andrew J. Tine for the plaintiffs.

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<sup>1</sup> Crossing Over, Inc.

<sup>2</sup> Zoning board of appeals of Fitchburg.

James S. Timmins, City Solicitor, & Paul Kominers, for Massachusetts Municipal Lawyers Association, amicus curiae, submitted a brief.

Dana Alan Curhan, for city of Brockton & others, amici curiae, submitted a brief.

WOLOHOJIAN, J. At issue is whether the city of Fitchburg's zoning ordinances violate the antidisability discrimination provision of the Zoning Act, G. L. c. 40A, § 3, fourth par. (§ 3, fourth par.), as applied to a sober house that is being operated in a three-family house located in the residential B (RB) district of Fitchburg (city of Fitchburg). The answer to this question turns on a matter of statutory interpretation: namely, whether § 3, fourth par., requires that local ordinances treat disabled persons living in congregate living arrangements not only as "groups of similar size o[f<sup>3</sup>] other unrelated persons," but also as "families" regardless of how that term is defined on the local level (emphasis added). We conclude that

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<sup>3</sup> It is apparent that the word "or" is a clerical or scrivener's error that should instead read "of." Congress's report on the Fair Housing Act -- which appears to be the source from which the language of § 3, fourth par., was drawn -- uses "of" instead of "or," thus lending credence to the idea of clerical error. See H.R. Rep. No. 100-711, 100th Cong., 2d Sess., at 24 (1988) ("[Discrimination] has been accomplished by such means as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities" [emphasis added]).

it does not. Instead, the statute entitles disabled people to be treated the same as nondisabled people are treated under local ordinances. Thus, if a group of disabled people living in a congregate living arrangement meets the definition of "family" under the local regulations, then it is entitled to be treated as such. Likewise, it is entitled to be treated as any similar-sized group of nondisabled unrelated people is treated under the local regulations. Because the thirteen sober home residents in this case did not meet the local definition of "family" and were treated for purposes of the zoning code the same as any similar group of thirteen unrelated people living together in a three-unit house in the RB district of Fitchburg, we agree with the decision of the zoning board of appeals of Fitchburg (board) and accordingly reverse the judgment of the Superior Court.<sup>4</sup>

1. Background. a. Statutory and regulatory framework.

One year after Congress amended the Fair Housing Act (FHA) to prohibit housing discrimination against "handicapped" persons,<sup>5</sup>

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<sup>4</sup> We acknowledge the amicus briefs submitted by the Massachusetts Municipal Lawyers Association; and the cities of Brockton, New Bedford, Taunton, and Fall River.

<sup>5</sup> As a result of the amendment, the FHA prohibits discrimination in the sale or rental of housing against "handicapped" persons, including discrimination by "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

see Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619, 1620-1622 (1988) (adding 42 U.S.C. § 3604[f]); see also Edmonds v. Oxford House, Inc., 514 U.S. 725, 728 & n.1 (1995), our Legislature amended § 3 of the Zoning Act, G. L. c. 40A, §§ 1 et seq., to do the same,<sup>6</sup> see St. 1989, c. 106, § 1 ("An Act prohibiting housing discrimination against disabled persons"). Section 3, fourth par., limits local zoning action by declaring 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." G. L. c. 40A, § 3, fourth par. Although the statute provides no definition of "disabled person," the parties do not dispute -- and we agree with -- the Appeals Court's conclusion that individuals in recovery from addiction are to be considered "disabled" for purposes of § 3, fourth par. See Crossing Over, Inc. v. Fitchburg, 98 Mass. App. Ct. 822, 825 (2020), and authorities cited. See also Peabody Props., Inc. v. Sherman, 418 Mass. 603, 606 (1994) (under FHA, "drug dependency together

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<sup>6</sup> "General Laws c. 40A, § 3, was originally enacted to prevent municipalities from restricting educational and religious uses of land, see St. 1975, c. 808, § 3, but the Legislature has expanded G. L. c. 40A, § 3, over time to ensure that other land uses would be free from local interference." Crossing Over, Inc. v. Fitchburg, 98 Mass. App. Ct. 822, 829 (2020) (citing legislative history).

with . . . participation in a drug rehabilitation program" is "handicap"); 42 U.S.C. § 3602(h) (excluding "current, illegal use of or addiction to a controlled substance" from definition of "handicap"); 24 C.F.R. § 100.201(a)(2) (including in definition of "handicap" "drug addiction [other than addiction caused by current, illegal use of a controlled substance] and alcoholism").

Section 3, fourth par., defines discrimination as the "[i]mposition 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 o[f] other unrelated persons" (emphasis added).

G. L. c. 40A, § 3, fourth par.

Fitchburg has adopted a zoning code, and we deal here with the version in effect as of June 8, 2018 (zoning code).<sup>7</sup> The

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<sup>7</sup> The 2018 zoning code was "enacted for the purpose of promoting the health, safety, convenience and general welfare of the present and future inhabitants of the City of Fitchburg and to:

1. Lessen congestion in the streets.
2. Secure safety from fire, flood, panic and other dangers.
3. Provide adequate light and air.
4. Prevent overcrowding of land.
5. Avoid undue concentration of population.
6. Encourage housing for persons of all income levels.
7. Facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements.

zoning code applies to all buildings or structures in Fitchburg, and provides that "[n]o building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located." Fitchburg Zoning Ordinance, c. 181, § 181.14 (2018).

The zoning code divides the city into residential, business, industrial, and institutional districts. Fitchburg Zoning Ordinance, c. 181, § 181.21 (2018). There are five residential districts. Id. at § 181.211. At issue here is the RB district. The RB district allows single-family dwellings and two-family dwellings as of right. Id. at § 181.313. But three-family dwellings, which are defined as three attached dwelling units designed as the residences of three families, require a

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8. Conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.

9. Encourage the most appropriate use of land throughout the city.

10. Preserve and increase amenities by the promulgation of regulations to fulfill said objectives.

11. Facilitate the safe, convenient and meaningful provision of adequate vehicular and utility access to all lots intended for building purposes in the City."

Fitchburg Zoning Ordinance, c. 181, § 181.11 (2018).

special permit from the planning board.<sup>8,9</sup> Id. at §§ 181.10, 181.313. Boarding houses, which are defined as "[a] dwelling or part thereof in which lodging is provided by the owner or operator to at least three, but not more than six, boarders," are prohibited in the RB district.<sup>10</sup> Id.

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<sup>8</sup> "Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use." G. L. c. 40A, § 9, first par.

<sup>9</sup> Prior to July 7, 2004, the zoning code allowed three-family dwellings as a matter of right in the RB district. Fitchburg Zoning Ordinance, c. 181, § 181.313 (2018). The record is silent as to whether the building in which the sober house is operated was built before the 2004 amendment. That said, there is no issue raised about the conformity of the structure itself with the code. The only issue is about the building's use.

<sup>10</sup> The 2020 amended zoning code modified the definition of "boarding house" to

"A building, structure or a portion thereof where lodgings are let to more than three, [sic] persons not within the second degree of kindred to the person conducting it and shall include fraternity houses and dormitories of educational institutions. The term includes student housing owned by non-governmental persons or persons or entities. The definition does not include inns, bed and breakfast establishments, or any hospital, sanitorium, convalescent or nursing home, infirmary or boarding home for the aged licensed by the Department of Public Health or any dwelling licensed, authorized or regulated by the Department of Mental Health or any other agency of the Commonwealth or United States."

Fitchburg Zoning Ordinance, c. 181, § 181.10 (2020). Compare G. L. c. 140, § 22 (definition of "lodging house"); G. L. c. 148, § 26H (definition of "lodging or boarding houses").

The zoning code's definition of "family" turns on whether a group of people are living as a "single housekeeping unit." Fitchburg Zoning Ordinance, c. 181, § 181.10 (2018). No more than four unrelated people who are living as a single housekeeping unit may be considered a "family" for purposes of the zoning code. Id. However, a group of persons "related by blood, marriage or adoption, including wards of the state" may be deemed a family -- regardless of their number -- if they are living as a single housekeeping unit. Id.

"A person or number of persons occupying a dwelling unit and living as a single housekeeping unit, provided that a group of five or more unrelated persons shall not be deemed a 'family' where not related by blood, marriage or adoption, including wards of the state."

Id.

b. Factual background.<sup>11</sup> BAK Realty, LLC (BAK Realty) leases a three-unit dwelling (which the parties colloquially refer to as a "triple decker") to Crossing Over, Inc. (Crossing Over), a nonprofit organization that uses the property to operate a sober house. Crossing Over provides all-inclusive housing for a monthly charge, and "residents receive use of the whole house, shared living arrangements, with all utilities, TV

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<sup>11</sup> The facts are undisputed. We draw our recitation from the parties' joint appendix submitted in connection with the plaintiffs' motion for summary judgment, and from the findings of the board.

and amenities included." The residents are required to participate in random drug tests, and to attend various meetings to promote and maintain their sobriety.

The property is located in the RB zoning district of Fitchburg. In June 2019, the sober house was occupied by thirteen unrelated people -- twelve individuals recovering from alcohol and drug addiction, as well as one live-in manager -- who lived in a 5-5-3 arrangement across the three units. Residents stay at the sober house for varying periods of time, and they do not all arrive and leave on the same date.

On June 25, 2019, Crossing Over was notified by a Fitchburg building inspector that the sober house was functioning as a boarding house, and that such use was not permitted in the RB district.<sup>12</sup> In response, Crossing Over took the position that G. L. c. 40A, § 3, fourth par., required the city to treat the residents of the sober house the same as it would treat a "family" under the city's zoning code. Crossing Over further requested that the city provide reasonable accommodations under the FHA "to avoid being subjected to any code requirements not imposed upon single-family (or three single families in this

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<sup>12</sup> Crossing Over was also notified that it needed to obtain a lodging house license from the board of health, and that an accessible route for the building would need to be created. These issues are not implicated in this appeal.

case) occupancy of this property." See 42 U.S.C. § 3604(f)(3)(B).

For two reasons, the building commissioner disagreed that the residents of the sober house were a "family" for purposes of the zoning code. First, he noted that the group was not living together as a single housekeeping unit. Second, the commissioner stated his belief that there were more than four unrelated people per unit. The commissioner reiterated his view that the sober house was operating as a boarding or lodging house -- a use that was not permitted in the RB district. The commissioner further stated that he did not have the authority to provide reasonable accommodations from health, fire, and license commission codes as requested by Crossing Over, and he suggested that Crossing Over direct its request for reasonable accommodations to the board.

Crossing Over and BAK Realty heeded that suggestion and appealed from the commissioner's decision to the board, where they also made a request for reasonable accommodation under the FHA. After a hearing, the board found that the thirteen residents of the sober house were "disabled" for purposes of § 3, fourth par., which the board acknowledged required that they be treated no differently from a family or other group of similar size. But the board concluded that the residents did not meet the zoning code's definition of "family." The board

therefore determined that the sober house was not being operated as a three-family dwelling but rather as a boarding house. Because boarding houses are not permitted in the RB district, the board upheld the commissioner's decision.

Notwithstanding that conclusion, the board allowed the request for reasonable accommodation under the FHA. In this regard, the board found that the irregular distribution of persons across the three living units was necessary to accommodate housing on the first floor for the live-in manager, who could not "reasonably be expected to double-bunk with a resident." The board also found that the presence of the live-in manager was essential, or at least highly beneficial, to the functioning of the recovery program. The board also accepted the plaintiffs' contention that the residents of the sober house benefited from living in a large group setting rather than in divided smaller groups. The board noted that the number of residents in the building was only one more than would be permitted as the aggregate maximum allowed for three families of unrelated people living in a three-family dwelling.<sup>13</sup> The board also found that it would be "unjust and counterproductive for

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<sup>13</sup> This is because four unrelated persons could live together as a "family" in each unit as a matter of right under the code, resulting in a total of twelve people living in the building. See Fitchburg Zoning Ordinance, c. 181, §§ 181.10, 181.313 (2018).

the [b]oard to insist that the thirteenth resident be immediately evicted." The board determined that "[a]llowing irregular distribution across floors/units, and allowing a single additional resident to remain over a short-term period will not substantially nullify or derogate from the purpose of the [z]oning" code. Based on these findings and conclusions, the board unanimously voted to provide a reasonable accommodation to allow up to a total of twelve residents distributed across floors however Crossing Over saw fit. In other words, the residents would not be required to conform strictly to the requirement that there be no more than four unrelated persons living in a single unit. The board also determined that the residents "need not function as a 'single housekeeping unit,' in that they may begin and terminate residency independent of one another, and may circulate freely across floors as [Crossing Over's] program may permit." The board further allowed the current thirteen residents to remain in place until such time as one of them left the program, at which time that resident would not be replaced, and the program would continue with a maximum of twelve persons. Provided all its conditions were met, the board ruled that Crossing Over's "use shall be deemed a compliant three-family dwelling for zoning purposes."

The plaintiffs then filed the underlying suit in the Superior Court, seeking to annul the decision of the board because it "fail[ed] to treat the [sober house] occupants the same as a family." See G. L. c. 40A, § 17. In addition, the plaintiffs sought injunctive relief under G. L. c. 40A, § 3, damages for discrimination in violation of the FHA, recovery of costs pursuant to G. L. c. 40A, § 17, and damages for discrimination under G. L. c. 151B.

The plaintiffs moved for partial summary judgment on their claim for annulment and on their claim under the FHA. The judge allowed so much of the motion as sought annulment of the board's decision on the ground that G. L. c. 40A, § 3, "requires that the disabled residents of the property not be subject to any local ordinance requirement that would not be imposed on families -- e.g., a housing unit of four or more related individuals -- and groups of similar size o[f] other unrelated persons, whichever is more favorable." On this basis, the judge concluded that G. L. c. 40A, § 3, barred enforcement of the zoning code against the residents of the sober house. She accordingly allowed the plaintiffs' motion for summary judgment in part and annulled the board's decision. The parties then agreed to the dismissal of the plaintiffs' remaining claims. This appeal followed, in which the only issue is the judge's ruling annulling the board's decision that the sober house was

not being used as a three-family dwelling but rather as a boarding house.

2. Discussion. The root of the plaintiffs' position on appeal is that § 3, fourth par., requires that disabled persons living in congregate living arrangements be treated as "families" regardless of how that term is defined at the local level. They base this view on their reading of the statute, which they contend requires that groups of unrelated disabled people living in a congregate setting be treated as both a "family" as well as any other similar-sized group of nonrelated persons. In other words, the plaintiffs contend that such persons must be given "family" status even if they do not meet the local definition of that term and even if the local code treats them like similar-sized groups of nonrelated persons.

We disagree for two reasons. First, § 3, fourth par., does not preempt municipalities from defining what constitutes a "family" for purposes of their local zoning codes. Cf. Roma, III, Ltd. v. Board of Appeals of Rockport, 478 Mass. 580, 581, 591-592 (2018) (State law did not preclude municipality from prohibiting use of land for private heliport where there was "no clear legislative intent to preempt local zoning enactments"). Second, § 3, fourth par., does not require that groups of unrelated disabled persons living together be treated the same as both families and similar-sized groups of nondisabled

unrelated persons. Instead, they must be treated the same as any comparable group of unrelated persons, whether that is a "family" as the term is defined on the local level, or some other similar-sized group of unrelated persons under the local code.

a. Local definition of "family." As we have already noted, § 3, fourth par., does not define "family" or "families," nor are those terms defined elsewhere in G. L. c. 40A. Instead, consonant with its general delegation of zoning authority to the local level, the Legislature has left it to each municipality to define the term "family" for purposes of its own zoning code. See Zoning Bd. of Appeals of Wellesley v. Ardmore Apartments Ltd. Partnership, 436 Mass. 811, 822 n.22 (2002) (Legislature has delegated almost all of its constitutional zoning authority to cities and towns, and "[G. L.] c. 40A, itself expressly recognizes local autonomy in dealing with land use and zoning issues"). This delegation does not mean that a municipality is entirely unrestrained in how it may define the term "family." But, as long as the local definition is constitutionally permissible and does not run afoul of the Zoning Act or other controlling legislation, a city or town may define "family" in a manner that will help preserve the residential character of its neighborhoods. See Styller v. Zoning Bd. of Appeals of Lynnfield, 487 Mass. 588, 599 (2021); Zuckerman v. Hadley, 442

Mass. 511, 517 (2004); Sturges v. Chilmark, 380 Mass. 246, 253 (1980).

The plaintiffs do not contend that Fitchburg's definition of "family" runs afoul of these constraints. Nor do they argue that the city could not permissibly draw a distinction between the number of unrelated people (such as, for example, college students) living together as a single housekeeping unit who may be deemed a "family" under its zoning code and the unlimited number of related persons who may be so deemed. Because authority to define the term "family" has been delegated to the local level, and no argument has been made that Fitchburg's definition is impermissible, the sober house residents were required to meet the local definition.

What remains is whether the board permissibly concluded that the residents of the sober house did not meet the definition of "family" and that Crossing Over was operating a boarding house. See Shirley Wayside Ltd. Partnership v. Board of Appeals of Shirley, 461 Mass. 469, 475 (2012) (we "accord deference to a local board's reasonable interpretation of its own zoning bylaw"). The residents do not live as a single housekeeping unit within each unit. Instead, the residents live across the building as a whole, with Crossing Over providing group services and amenities, as well as a live-in manager, in exchange for rent. Beyond that -- whether considered on a unit-

by-unit basis or taking the building as a whole -- the residents exceeded the number of unrelated people who can be deemed a "family" under the zoning code. Accordingly, the board was permitted to conclude that the sober house was not being used as a three-family house, but was instead being used as a boarding house -- a use not permitted in the RB district.

b. Meaning of "and" in § 3, fourth par. As we have already noted, § 3, fourth par., provides that discrimination occurs when local land-use requirements imposed "on congregate living arrangements among non-related persons with disabilities" are "not imposed on families and groups of similar size o[f] other unrelated persons" (emphasis added). G. L. c. 40A, § 3, fourth par. In other words, the provision tests for discrimination by comparing the treatment of unrelated disabled persons to the treatment of two other groups: families and similar-sized groups of unrelated people. The question here is whether § 3, fourth par., requires cities and towns to treat unrelated disabled persons the same as both of those groups, or if it only requires the same treatment as given to one of those groups -- either families, or groups of similar size of other unrelated persons -- that is alike but for disability. Both readings are permissible and plausible as a matter of grammar. However, we conclude that only the latter interpretation comports with the legislative purpose of § 3, fourth par., to

prohibit discrimination against disabled persons. See Reade v. Secretary of the Commonwealth, 472 Mass. 573, 578 (2015), cert. denied, 578 U.S. 946 (2016), quoting Watros v. Greater Lynn Mental Health & Retardation Ass'n, 421 Mass. 106, 113 (1995) ("reading of a statute should not be adopted if the result will be to thwart or hamper the accomplishment of the statute's obvious purpose, and if another construction which would avoid this undesirable result is possible").

We first set out each of the parties' textual interpretations. On the one hand, the plaintiffs contend that the word "and" is used in its joint sense, and therefore links families and "groups of similar size o[f] other unrelated persons" so that discrimination occurs when disabled individuals are not afforded the same treatment as both groups. G. L. c. 40A, § 3, fourth par. See B.A. Garner, *Dictionary of Legal Usage* 639 (3d ed. 2011) (word "and" has "a joint sense"). On the other hand, the defendants contend that the word "and" is used in its distributive sense. See id. ("and has a distributive [or several] sense"). When used in its distributive sense, the word "and" impliedly repeats or distributes a preceding word or phrase to each item in a list. See Bradley v. Board of Zoning Adjustment of Boston, 255 Mass. 160, 173 (1926) (explaining that "seven specified grounds [for when a board can alter a zoning map]" that are joined by word

"and" were "intended to be used distributively and not conjunctively"). See also Pulsifer v. United States, 601 U.S. 124 (2024). If § 3, fourth par., uses "and" in its distributive sense, then the phrase "not imposed on" implicitly repeats before each of the two groups identified in the provision, so that discrimination occurs when a restriction imposed on nonrelated people with disabilities is "not imposed on families and [not imposed on] groups of similar size o[f] other unrelated persons." G. L. c. 40A, § 3, fourth par. See Pulsifer, 601 U.S. at 136, citing R. Huddleston & G.K. Pullum, *The Cambridge Grammar of the English Language* 1298-1299 (2002). Under this reading, discrimination does not occur provided the municipality imposes the same requirements on "congregate living arrangements among non-related persons with disabilities" as it does on either families or on similar-sized groups of unrelated persons. G. L. c. 40A, § 3, fourth par.

We look to the context in which "and" appears in order to determine whether it is used in its joint or in its distributive sense. Pulsifer, 601 U.S. at 134-135. That context is § 3, fourth par., which prohibits municipalities from using local "land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions" to discriminate against

disabled people.<sup>14</sup> G. L. c. 40A, § 3, fourth par. The plain language of § 3, fourth par., prohibits discriminatory treatment; it does not mandate preferential treatment under local zoning regulations. See Automobile Insurers Bur. of Mass. v. Commissioner of Ins., 425 Mass. 262, 267 (1997), quoting Industrial Fin. Corp. v. State Tax Comm'n, 367 Mass. 360, 364 (1975) ("Where the [legislative] intent is clear, the statute, if reasonably possible, must be construed to carry out that intent"). Nondiscriminatory treatment of disabled persons is consistent with one of zoning's over-all purposes, which is to "stabilize property uses in [a municipality's] specified districts." Moore v. Cataldo, 356 Mass. 325, 327 (1969), quoting Kane v. Board of Appeals of Medford, 273 Mass. 97, 104 (1930). Treating groups of disabled people who live in congregate living arrangements differently from other similar-sized groups of nondisabled persons in the same type of living

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<sup>14</sup> The title and language of St. 1989, c. 106, § 1, which added § 3, fourth par., to the Zoning Act, make clear that the legislative intent was to target discrimination based on disability. Specifically, c. 106 is entitled "An Act prohibiting housing discrimination against disabled persons," and § 1 only mentions discrimination against disabled persons. See Lynn Teachers Union, Local 1037, AFT, AFL-CIO v. Massachusetts Comm'n Against Discrimination, 406 Mass. 515, 524 (1990), abrogated on other grounds by Clifton v. Massachusetts Bay Transp. Auth., 445 Mass. 611, 620 (2005) ("title and provisions of [act]" that "refer[] explicitly only to age discrimination" demonstrate "the intent of the Legislature to focus exclusively on the problem of age discrimination").

arrangement within the same district would run counter to that stabilizing purpose. It would also undermine municipalities' ability to use zoning regulations "to protect communities' 'residential character'" (citation omitted). Styller, 487 Mass. at 599.

Against this context, we conclude that the word "and" is used in its distributive sense. Thus, local zoning regulations do not run afoul of § 3, fourth par., unless they impose requirements on groups of unrelated disabled persons in a congregate living arrangement that are not imposed on families or on similar-sized groups of nondisabled unrelated persons. That is not the case here. The residents of the sober house were subject to the same requirements for "families" as well as for similar-sized groups of nondisabled unrelated persons (in this case, a "boarding house").

3. Conclusion. Because Fitchburg's zoning code did not impose on the residents of the sober house any requirements that were neither imposed on "families" nor imposed on similar-sized groups of unrelated persons, we reverse the judgment of the Superior Court.

So ordered.