CROSSING OVER, INC., & OTHERS[1] VS. CITY OF FITCHBURG & OTHERS.[2]

Docket:	19-P-903
Dates:	May 1, 2020 - November 23, 2020
Present:	Sullivan, Kinder, Lemire, JJ.
County:	Worcester
Keywords:	Automatic Sprinkler Appeals Board. Lodging House. Zoning, Lodging house. Fair Housing Act. Anti-Discrimination Law, Housing.

Civil action commenced in the Superior Court Department on August 10, 2017.

A motion for judgment on the pleadings was heard by Rosemary Connolly, J., and the entry of separate and final judgment was ordered by Michael P. Doolin, J.

Andrew J. Tine for the plaintiffs and the intervener.

Gregor Pagnini for the city of Fitchburg & another.

Julie E. Green, Assistant Attorney General, for Automatic Sprinkler Appeals Board.

SULLIVAN, J. The plaintiffs, Theodore Bronson and Crossing Over, Inc. (collectively, Crossing Over), and the intervener, the Massachusetts Alliance for Sober Housing, Inc., appeal from a partial judgment on the pleadings entered pursuant to Mass. R. Civ. P. 54 (b), 365 Mass. 820 (1974), dismissing Crossing Over's claims for injunctive relief and damages against the defendants, the city of Fitchburg (city), the city's fire prevention bureau (fire department), and the Automatic Sprinkler Appeals Board (board), in which Crossing Over sought to bar the enforcement of an order of the city fire chief requiring installation of sprinklers in the plaintiffs' sober home.[3] In the two counts before us, Crossing Over, the operator of a sober home, contends that the fire department's enforcement of the sprinkler law, G. L. c. 148, § 26H, against its sober home[4] violates G. L. c. 40A, § 3, because § 3 prohibits the enforcement of laws and regulations that impose restrictions on facilities serving the disabled that are not imposed on family units of similar size.

We conclude that the sprinkler law is a State law that is unaffected by the prohibitions against local enforcement contained in G. L. c. 40A, § 3. We therefore affirm the judgment

entered on the first two counts of the complaint, but remand for consideration of the plaintiffs' disability discrimination claims under State and Federal law.

Background. 1. Statutory framework. Before we turn to the facts of this case, it is important to describe the statutory framework within which this dispute arose.

The Commonwealth's sprinkler laws reflect a patchwork of requirements enacted, seriatim, in response to various tragedies.[5] "[F]ollowing a fire in a luxury high rise hotel that killed nine firefighters," MacLaurin v. Holyoke, 475 Mass. 231, 245 n.33 (2016), "automatic sprinklers were first required in 1972, in new high rise buildings throughout the Commonwealth, for buildings built after March 1, 1974. See G. L. c. 148, § 26A; St. 1973, c. 395, § 1." Id. at 245. "In 1982, following a deadly fire in Fall River, the commercial sprinkler provision, applicable to new nonresidential buildings of more than 7,500 square feet, and existing such buildings when they underwent 'major alterations,' was adopted." Id., discussing G. L. c. 148, § 26G, inserted by St. 1982, c. 545, § 1. "[I]n 1986, after a major fire in the Prudential Center in Boston, sprinklers were required in existing, and not just new, high rise buildings across the Commonwealth, G. L. c. 148, § 26A 1/2, with a ten-year phase-in period. St. 1986, c. 633, § 2." (Footnote omitted.) MacLaurin, supra. The sprinkler requirement for lodging houses at issue in this case was enacted within two years of the 1984 Elliot Chambers rooming house fire, a fire in Beverly in which fifteen people died and fourteen more were injured. See G. L. c. 148, § 26H, inserted by St. 1986, c. 265; Ortega, 1984 Beverly Fire Etched into Memory of Witnesses, Boston Globe (July 4, 2014), https://www.bostonglobe.com/metro/2014/07/03/three-decades-later-beverly-rooming-house-fire-that-killed-leaves-legacy-loss-and-reform/PljEbDRo6WmiAs5L84MRNP/story.html [https://perma.cc/VXQ7-R5NF].

The lodging house provisions of G. L. c. 148, § 26H, provide in pertinent part:

"In 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."

Into this statutory mix is added G. L. c. 40A, § 3, which provides:

"Notwithstanding 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."

(Emphasis added.) It is this statute that Crossing Over asserts bars the application of G. L. c. 148, § 26H, to sober homes, and overrides any other State law to the contrary. See Beacon S. Station Assocs. v. Board of Assessors of Boston, 85 Mass. App. Ct. 301 306 (2014) ("The Legislature uses the 'notwithstanding' language to trump the effect of other potentially inconsistent statutes").

2. Crossing Over's sober home. Crossing Over operates a sober home occupied by eight residents in the city. The home provides housing to people in recovery from substance use disorders. Individuals in recovery are considered disabled and are entitled to the protection of State and Federal disability laws. See G. L. c. 151B, § 1 (17) (excluding from definition of "handicap" any "current, illegal use of a controlled substance as defined in section one of chapter ninety–four C"); 42 U.S.C. § 3602(h) (excluding "current illegal use or addiction to a controlled substance" from definition of "handicap"); 24 C.F.R. § 100.201(a)(1) (including in definition of handicap "drug addiction [other than addiction caused by current, illegal use of a controlled substance] and alcoholism").[6]

On November 4, 2002, the city accepted the provisions of G. L. c. 148, § 26H, which (as described above) requires lodging houses to be equipped with sprinklers. On March 8, 2017, the chief of the fire department sent a letter to Crossing Over to inform it that the fire department had determined that Crossing Over's sober home was a lodging house and that the home was not in compliance with the statute because it did not have automatic sprinklers.

Following an unsuccessful attempt to convince the fire department to reverse its determination, Crossing Over timely appealed to the board, arguing to that agency that a series of decisions rendered in the United States District Court for the District of Massachusetts had interpreted G. L. c. 40A, § 3, to exempt housing for disabled people -- such as those at the sober home -- from G. L. c. 148, § 26H. See, e.g., Brockton Fire Dep't v. St. Mary Broad St., LLC, 181 F. Supp. 3d 155, 156-157 (D. Mass. 2016).[7]

After an evidentiary hearing, the board affirmed the decision of the fire department, stating that "[t]he [b]oard believes that the legislative intent of both [G. L.] c. 148, [§] 26H[,] and c. 40A, [§] 3[,] can be applied in a harmonious manner. The purpose of [G. L.] c. 40A, [§] 3[,] is to protect certain identified persons or groups of persons from discrimination by means of the adoption of local, 'home grown' land and building use restrictions that target said groups differently from other similarly situated groups. . . . [T]he enhanced fire protection requirements of [G. L.] c. l48, [§] 26H[,] is a [S]tate statute, enacted by the Massachusetts Legislature. It is not a creation of a municipal local zoning authority acting pursuant to the [G. L.] c. 40A, [§] 3[,] methodology." The board further concluded it had no jurisdiction to consider the plaintiffs' disability discrimination claim.

Crossing Over timely filed a complaint in the Superior Court alleging violations of G. L. c. 30A, § 14; the Federal Fair Housing Act, 42 U.S.C. §§ 3601, et seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq.; and G. L. c. 151B, § 4. After substantial motion practice, a judge of the Superior Court also concluded that "G. L. c. 148, § 26H, governs and applies to this [p]roperty which is being used as a lodging house and that the anti-discrimination provision of [the] Zoning Act [contained in G. L. c. 40A, § 3,] does not invalidate the application of the sprinkler law in a sober house sheltering eight disabled persons," because "[t]he [c]ity's adoption of this [S]tate statute does not then transform it into a local law or ordinance" covered by G. L. c. 40A, § 3. Judgment entered for the defendants on the first two counts of the complaint, and a certification of partial final judgement pursuant to Mass. R. Civ. P. 54 (b) also entered. This appeal followed.

Discussion. At issue is whether G. L. c. 40A, § 3, exempts sober homes from application of the sprinkler law, to lodging houses for disabled persons.[8] Under G. L. c. 30A, § 14 (7), "[w]e shall uphold an agency's decision unless it is based on an error of law, unsupported by substantial evidence, unwarranted by facts found on the record as submitted, arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." Massachusetts Sober Hous. Corp. v. Automatic Sprinkler Appeals Bd., 66 Mass. App. Ct. 701, 704-705 (2006), quoting Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 867-868 (1997). "We review questions of statutory interpretation de novo." Worcester v. College Hill Props., LLC, 465 Mass. 134, 138 (2013).[9] See DiLiddo v. Oxford St. Realty, Inc., 450 Mass. 66, 73–74 (2007).

1. Statutory construction. Crossing Over contends that G. L. c. 40A, § 3, fourth par., inserted by St. 1989, c. 106, § 1, exempts sober homes from compliance with the sprinkler law, because the sprinkler law, G. L. c. 148, § 26H, is a "health and safety law[]" imposed on a

"congregate living arrangement[] among non-related persons with disabilities that [is] not imposed on families and groups of similar size." As a result, Crossing Over maintains, application of the sprinkler law to a sober home is unlawful because similar requirements are not imposed on a single family of the same size. See G. L. c. 40A, § 3.

This argument fails to recognize the critical distinction codified in G. L. c. 40A, § 3, between State statutes and local laws.[10] "A fundamental principle of statutory interpretation is that a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." City Elec. Supply Co. v. Arch Ins. Co., 481 Mass. 784, 791 (2019), quoting Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 749 (2006). "The statutory language, when clear and unambiguous, must be given its ordinary meaning." DiLiddo, 450 Mass. at 73, quoting Bronstein v. Prudential Ins. Co., 390 Mass. 701, 704 (1984).

The plain reading of G. L. c. 40A, § 3, fourth par., is that the provision applies to "local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town" (emphasis added). To interpret the terms "local" and "of a city or town," to proscribe the enforcement of State health and safety laws such as G. L. c. 148, § 26H, is contrary to the plain meaning of the statute and would render the highlighted terms "unnecessary surplusage." City Elec. Supply Co., 481 Mass. at 790.[11] Moreover, the Legislature gave c. 40A the title "The Zoning Act." G. L. c. 40A, § 1. The title offers "useful guidance" and "reinforc[es]" our view of the Legislature's intent. Tyler v. Michaels Stores, Inc., 464 Mass. 492, 496 (2013).

Our interpretation is consistent with the purpose of G. L. c. 40A, § 3, which limits the authority of cities and towns to adopt certain local laws. Chapter 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. See, e.g., St. 1983, c. 91 (wheelchair ramps exempted from zoning set-back requirements); St. 1985, c. 637, § 2 (limiting local authority to regulate solar energy systems); St. 1987, c. 191 (limiting local authority to regulate home child care facilities). The prohibition of discrimination against disabled persons contained in G. L. c. 40A, § 3, fourth par., works in the same manner: it prevents cities and towns from enacting "local land use and health and safety laws, regulations, practices, ordinances, [or] by-laws" that would exclude people with disabilities from "congregate living

arrangements." General Laws c. 40A restricts municipalities from excluding or limiting certain types of land uses. General Laws c. 40A, § 3, fourth par., does not apply to the General Laws of the Commonwealth.

2. Other congregate living arrangements. Crossing Over notes that G. L. c. 148, § 26H, carves out from the obligation to install sprinklers "fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth," and suggests that the carve-out means that the Legislature either intended to relieve group homes and lodging houses of the obligation to install sprinklers, or that different treatment should be afforded group homes. Lodging houses for the disabled, Crossing Over argues, should be treated in the same manner. The premise is incorrect. The distinction drawn between the lodging houses and other congregate living arrangements in G. L. c. 148, § 26H, preserves the regulatory authority granted to State agencies and municipalities over licensed group homes, dormitories, or fraternities, but does not generally exempt them from fire safety regulation.

The relevant language encompasses "rest homes or group residences licensed or regulated by agencies of the commonwealth" (emphasis added). G. L. c. 148, § 26H. "Rest homes" are licensed by the Department of Public Health. See G. L. c. 111, § 71. Group mental health residences, for example, are licensed by the Department of Mental Health. See G. L. c. 19, § 19. As of this writing, both rest homes and group mental health residences are subject to fire safety standards that are either set by statute, see G. L. c. 111, § 71, tenth par. (rest homes), or by regulation. See 104 Code Mass. Regs. § 28.13(1)(i)–(j) (2017) (group mental health residences); 104 Code Mass. Regs. § 28.14 (2017) (same). Moreover, various types of residences, including those listed in G. L. c. 148, § 26H, are subject to the comprehensive State fire code, which contains varying sprinkler requirements depending on the nature, size, and age of the building. See 527 Code Mass. Regs. § 1.04 (2018) (adopting by reference National Fire Protection Association [NFPA] 1 Code [2015 ed.]); 527 Code Mass. Regs. § 1.05 (2018) (modifying NFPA 1 Code [2015 ed.]); NFPA 1 Code (2015 ed.).[12]

Sober homes, however, are not licensed by the Commonwealth. Instead they are subject to a voluntary State accreditation and training program, G. L. c. 17, § 18A, inserted by St. 2014, c. 165, § 37; accreditation is required if the sober home is to receive referrals from State agencies. G. L. c. 17, § 18A (h). Contrast G. L. c. 111, § 73 (providing fines for operation of rest home without license). General Laws c. 148, 26H, thus has the effect of extending the sprinkler statute to lodging houses that are sober homes; other statutes and regulations extend varying levels of fire safety standards to other congregate living arrangements. Whether the specific manner in which § 26H does so is permissible, or whether it violates State or Federal

antidiscrimination statutes when applied to sober homes, is a separate question to be considered on remand.

3. The Fair Housing Amendments Act and G. L. c. 140, § 3, fourth par. Congress passed the Federal Fair Housing Amendments Act of 1988 (FHAA) to, among other things, expand the list of protected classes to include those with physical and mental disabilities. See 42 U.S.C. §§ 3601 et seq., as added Sept. 13, 1988, Pub. L. No. 100-430, 102 Stat. 1627. See also 42 U.S.C. § 3604(f)(1) (rendering it unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap").[13] See generally Edmonds v. Oxford House, Inc., 514 U.S. 725 (1995). Crossing Over points to the following language found in the legislative history of the disability discrimination provisions of the FHAA to show that G. L. c. 40A, § 3, is "clearly derived from the legislative history of the Fair Housing Act."

"These new subsections [§ 804(f)(1), (2) of the FHAA, 42 U.S.C. § 3604(f)(1), (2)] would also apply to state or local land use and health and safety laws, regulations, practices and decisions which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such means as the enactment or imposition of health, safety or 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.

The Committee intends that the prohibitions against discrimination against those with handicaps apply to zoning decisions and practices. The Act is 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."

(Footnotes omitted; emphasis added.) H.R. Rep. No. 100-711, 100th Cong. 2d Sess. at 24 (1988). Crossing Over contends that this legislative history is fully incorporated in G. L. c. 40A, § 3, fourth par., and that § 3 therefore confers a per se blanket prohibition against the enforcement of the sprinkler law by a municipality against group homes or lodging houses for disabled persons in situations in which a single family residence would not be similarly

regulated. Thus, Crossing Over asserts, sober homes are permitted to operate without sprinklers "as a matter of right."

Putting aside the usual rule that we do not look to extrinsic sources when a statute is clear and unambiguous, see Commonwealth v. Buono, 484 Mass. 351, 356 (2020), the legislative history upon which Crossing Over relies reinforces our view that G. L. c. 40A, § 3, fourth par., does not apply to State laws. The Federal legislative history cited by Crossing Over makes an explicit reference to State laws: "These new subsections would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps" (emphasis added). H.R. Rep. No. 110-711, at 24. There is no reference to State laws in G. L. c. 40A, § 3, a zoning statute that concerns municipal land use regulation. We understand this omission to reflect a legislative decision not to include State laws in the prohibitions of G. L. c. 40A, § 3, fourth par. "[E]xpress mention of one matter excludes by implication other similar matters not mentioned." Selectmen of Hatfield v. Garvey, 362 Mass. 821, 824 (1973). For this reason, § 3 does not provide the plaintiffs relief as a matter of right.[14]

This is not to say, however, that sober homes are not protected by State or Federal disability discrimination laws, or that decisions of State and local officials are not subject to review under State or Federal antidiscrimination laws. See Summers v. Fitchburg, 940 F.3d 133, 138 (1st Cir. 2019) (FHAA applies to municipalities). The quoted section of the Congressional report was one of several examples intended to explain the reach of § 804(f)(1) and (2) of the FHAA, 42 U.S.C. § 3604(f)(1) and (2), the provisions of the FHAA that bar disability discrimination in the "terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith." 42 U.S.C. § 3604(b). The FHAA defines disability discrimination to include, among other things, the "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

The Federal courts have consistently interpreted 42 U.S.C. § 3604 (f)(1),(2), and 3(B) to authorize causes of action under disparate impact, disparate treatment, and reasonable accommodation theories against municipalities in cases alleging housing discrimination on the basis of disability.[15] Several Federal cases involve State or municipal regulation of sober homes or the application of sprinkler requirements to sober homes.[16] Our appellate courts have also recognized these causes of action, though we have yet to squarely address claims of housing discrimination against State or municipal governments under G. L. c. 151B.[17] See, e.g., Burbank Apartments Tenant Ass'n v. Kargman, 474 Mass. 107, 121-126 (2016)

(recognizing disparate impact claim under FHAA and rejecting per se rule precluding liability where developers acted in accordance with State law);[18] Boston Hous. Auth. v. Bridgewaters, 452 Mass. 833, 838–839 (2009) (reasonable accommodation); Andover Hous. Auth. v. Shkolnik, 443 Mass. 300, 307-309 (2005) (reasonable accommodation). See also DiLiddo, 450 Mass. at 76-79 (enforcing requirement of subsidy provisions of G. L. c. 151B, § 4 [10]). On remand Crossing Over may pursue its claims of disparate impact, disparate treatment, denial of reasonable accommodation, or other discriminatory conduct on the basis of disability. These claims require factual development and legal analysis, and have yet to be heard in the Superior Court.

Conclusion. The judgment entered pursuant to Mass. R. Civ. P. 54 (b), dismissing counts I and II of the complaint, is affirmed. The matter is remanded for further proceedings on counts III and IV.

So ordered.

footnotes

[1] Theodore Bronson; and Massachusetts Alliance for Sober Housing, Inc., intervener.

[2] Automatic Sprinkler Appeals Board and Fitchburg fire prevention bureau.

[3] Judgment entered against the plaintiffs on count I, which alleged that the board's decision was arbitrary, discriminatory, and based on an error of law. See G. L. c. 30A, § 14 (7). While an alleged violation of State or Federal law would obviously fall within § 14, the parties have confined their arguments under count I to the interpretation of G. L. c. 40A, § 3, and so do we. Judgment also entered against the plaintiffs on count II, which sought injunctive relief under G. L. c. 40A, § 3, to prevent the enforcement of the sprinkler law, G. L. c. 148, § 26H, against Crossing Over. Although the Fair Housing Act, 42 U.S.C. §§ 3601 et seq., is mentioned in count II, we understand the gravamen of the count to address G. L. c. 40A, § 3, and leave for remand the adjudication of the plaintiffs' rights under the Fair Housing Act. The Superior Court judge retained count III, alleging discrimination under the Fair Housing Act, 42 U.S.C. §§ 3601 et seq., G. L. c. 151B, and 804 Code Mass. Regs. §§ 2.00 (1993), and count IV, alleging that the city and the fire department failed to accommodate Crossing Over under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.

[4] We use the phrase "sober home" throughout. See G. L. c. 17, § 18A (a) (defining "[a]lcohol and drug free housing" as "a residence, commonly known as a sober home, that provides or advertises as providing, an alcohol and drug free environment for people recovering

from substance use disorders"); Massachusetts Sober Hous. Corp. v. Automatic Sprinkler Appeals Bd., 66 Mass. App. Ct. 701, 702 (2006) (describing "'sober houses,' where men or women recovering from alcoholism and drug addiction may live together in a safe and affordable home environment").

[5] In this, the sprinkler laws follow a pattern set by earlier fire safety laws enacted after the Cocoanut Grove nightclub fire in Boston and the Triangle Shirtwaist Factory Fire in New York. See Chief of the Fire Dep't of Boston v. Sutherland Apartments, Inc., 346 Mass. 685, 690-691 (1964) ("the language of [G. L. c. 148,] § 30[,] permitting equitable enforcement of the [Board of Fire Prevention Regulations] rules was added in 1945 . . . upon the recommendation of a special commission appointed after the tragic Cocoanut Grove fire of 1942 . . . to investigate and recommend changes in the fire laws"); Cockcroft v. Mitchell, 187 A.D. 189, 193 (N.Y. App. Div. 1919) ("Immediately after the Triangle Waist Company fire, which occurred on March 25, 1911, resulting in the loss of 146 human lives, the Legislature created [the Factory Investigating] Commission to investigate the 'existing conditions under which manufacture is carried on, . . . including . . . matters affecting the health and safety of operatives as well as the security and best interests of the public.' . . . The resulting disclosure of conditions existing in the factories of this State brought forth a popular demand for remedial legislation").

[6] The parties do not dispute that residents of Crossing Over are recovering from substance use disorders and are "persons with disabilities" for purposes of G. L. c. 40A, § 3. Contrast Peabody Props., Inc. v. Sherman, 418 Mass. 603, 605-606 (1994).

[7] See also Summers vs. Fitchburg, U.S. Dist. Ct., No. 15-CV-13358-DJC, slip op. at 7 (D. Mass. Sept. 15, 2016), S.C., 940 F.3d 133 (1st Cir. 2019); Donohue vs. Methuen, U.S. Dist. Ct., No. 18-CV-10713-LTS, slip op. at 9-11 (D. Mass. Nov. 21, 2018). See also Mannai Home, LLC vs. Fall River, U.S. Dist. Ct., No. 17-CV-11915-FDS, slip op. at 8 (D. Mass. Feb. 5, 2019) (discussing Brockton Fire Dep't, 181 F. Supp. 3d at 156-157, in the context of city ordinance).

[8] Crossing Over's sober home is a "lodging house" for purposes of G. L. c. 148, § 26H. See Massachusetts Sober Hous. Corp. v. Automatic Sprinkler Appeals Bd., 66 Mass. App. Ct. 701, 708 (2006).

[9] The board is not the "agency charged with interpreting and administering" G. L. c. 40A, § 3, a local zoning statute. Craft Beer Guild, LLC v. Alcoholic Beverages Control Comm'n, 481 Mass. 506, 520 (2019). We therefore do not grant deference to the board's interpretation of G. L.

c. 40A, § 3. Id. Compare Massachusetts Sober Hous. Corp., 66 Mass. App. Ct. at 708 (deferring to "board's reasonable interpretation of its own statute," G. L. c. 148, § 26H).

[10] There is no indication in the Federal decisions that the distinction we recognize between local laws and State statutes was argued or considered. See note 7, supra.

[11] The lodging house sprinkler statute contains its own exceptions to enforcement. See G. L. c. 148, § 26H ("No such sprinkler system shall be required unless sufficient water and water pressure exists. In such buildings or in certain areas of such buildings, where the discharge of water would be an actual danger in the event of a fire, the head of the fire department shall permit the installation of such other fire suppressant systems as are prescribed by the state building code in lieu of automatic sprinklers").

[12] Although Crossing Over focuses on a comparison between sober homes and group homes rather than "fraternity houses or dormitories," we note that other provisions of the sprinkler law have broad application. See, e.g., G. L. c. 148, § 26G (requiring sprinklers in buildings over 7,500 square feet); G. L. c. 148, § 26A 1/2 (requiring sprinklers in buildings over seventy feet tall); G. L. c. 148, § 26I (requiring sprinklers in new multi-unit construction). The 2015 NFPA 1 Code, as applicable here, also sets explicit standards for sprinkler systems in new and existing dormitories, and for new lodging or rooming houses. See NFPA 1 Code §§ 13.3.2.15, 13.3.2.16, 13.3.2.19.2; 527 Code Mass. Regs. §§ 1.04, 1.05. Additionally, the General Laws grant municipalities the authority to license certain dormitories and fraternity houses. See G. L. c. 140, § 22 (including "fraternity houses and dormitories of educational institutions" in definition of "lodging house"); College Hill Props., LLC, 465 Mass. at 143-144 (municipalities are "licensing authorities" for such facilities and have "broad discretion in issuing lodging house licenses").

[13] The Legislature amended G. L. c. 151B in 1989 to comply with the FHAA, 42 U.S.C. 3610(f), Pub. L. No. 100-430, § 6, 102 Stat. 1627 (1988). See St. 1989 c. 722, "An Act Further Regulating Housing Rights for Certain Persons." As Governor Dukakis explained when he submitted the bill to the Legislature, "[i]n order to continue to receive federal funds, the Fair Housing Amendments Act requires all states to amend their housing discrimination statutes to be substantially equivalent with the Act's provisions." 1989 House Doc. No. 5534. The amendments to the Zoning Act, G. L. c. 40A, see St. 1989, c. 106, "An Act Prohibiting Discrimination Against Disabled Persons," were made later that year in separate legislation, unaccompanied by similar explanation.

[14] Crossing Over also points to the reference to local "decisions" in G. L. c. 40A, § 3, fourth par., and argues that on this basis, even if State laws are not covered by G. L. c. 40A, § 3, fourth par., the decision of the municipality is subject to scrutiny under that paragraph. Even if we were to accept this argument, we are not persuaded that the statute imposes a per se requirement that all sober homes be treated in all circumstances as would single family homes as a matter of law. Section 3 refers to several different types of comparators, that is, "families and groups of similar size or other unrelated persons." The Federal cases that have considered the comparison between a sober home and a family, or a sober home and other similar residences, have done so on the basis of a nuanced factual record. See note 15, infra.

[15] See, e.g., Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc., 576 U.S. 519, 524 (2015) (recognizing disparate impact liability under Fair Housing Act); Edmonds, 514 U.S. at 728-729 (reasonable accommodation); Summers, 940 F.3d at 138-139 (recognizing all three theories) Mhaney Mgt., Inc. v. County of Nassau, 819 F.3d 581, 605-620 (2d Cir. 2016) (disparate impact and disparate treatment); Avenue 6E Invs., LLC v. Yuma, 818 F.3d 493, 503-513 (9th Cir. 2016) (same); Schwarz v. Treasure Island, 544 F.3d 1201, 1229 (11th Cir. 2008) (all three theories). The pertinent regulatory framework for disparate impact claims under Federal law is currently in flux, however. See Massachusetts Fair Hous. Ctr. vs. United States Dep't of Hous. & Urban Dev., U.S. Dist. Ct., No. 20-11765-MGM (D. Mass. Oct. 25, 2020) (enjoining HUD's Implementation of Fair Housing Act's disparate impact standard, 85 Fed. Reg. 60288 [Sept. 24, 2020] which amended 2013 rule, 78 Fed. Reg. 11560 [Feb. 15, 2013]); 24 C.F.R. § 100.500.

[16] See, e.g., Summers, 940 F.3d at 139-142 (rejecting reasonable accommodation claim on grounds that request that city exempt sober homes from sprinkler statute was unreasonable and posed threat to public safety; disparate treatment and disparate impact claims waived): Pacific Shores Props., LLC v. Newport Beach, 730 F.3d 1142 (9th Cir. 2013) (remanding for trial on sober home's claim that ordinance was enacted with discriminatory purpose); Tsombanidis v. West Haven Fire Dep't, 352 F.3d 565 (2d Cir. 2003) (dismissing sober home's disparate impact claims but affirming disparate treatment and reasonable accommodation claims), superseded in part by regulation, 24 C.F.R. § ?100.500; New Horizons Rehabilitation, Inc. v. State, 400 F. Supp. 3d 751 (S.D. Ind. 2019) (denial of reasonable accommodation to modify fire suppression system requirements violated FHAA); Sailboat Bend Sober Living, LLC vs. Fort Lauderdale, U.S. Dist. Ct., No. 19-60007-CIV (S.D. Fla. Aug. 14, 2020) (rejecting reasonable accommodation and disparate treatment claims); Oxford House, Inc. v. Browning, 266 F. Supp. 3d 896, 912 (M.D. La. 2017) (sober home entitled to FHAA accommodation that fire marshal

interpret term "family" to include sober home residents); Oxford House, Inc. v. Baton Rouge, 932 F. Supp. 2d 683 (2013) (allowing summary judgment for sober home regarding city's denial of zoning variance on disparate treatment and reasonable accommodation grounds).

[17] Most of our jurisprudence has been decided under the FHAA, and the Federal cases interpreting it, with reference to G. L. c. 151B where the statutory provisions were the same. See Andover Hous. Auth. v. Shkolnik, 443 Mass. 300, 306-307 (2005). Whether the housing discrimination provisions of G. L. c. 151B apply to governmental entities has not been squarely addressed by our appellate courts. See Northborough v. Collins, 38 Mass. App. Ct. 978, 979 (1995) ("We may put to one side whether a statute that governs the conduct of owners, etc., of real property has any bearing on municipal zoning codes or municipal officers"). The Commonwealth's statutory analogue to the housing discrimination provisions of the FHAA, G. L. c. 151B, § 4 (6) and (7), and 42 U.S.C. § 3604(f)(1) and (2), are not identical -- G. L. c. 151B, § 4 (6) and (7), list a series of private actors, as well as the managing agents of publicly assisted housing, to whom those provisions apply, while the FHAA is drafted more broadly. However, the language of § 3604(f)(3)(B) of the FHAA and G. L. c. 151B, § 4 (7A) (2), are the same. In addition, other sections of G. L. c. 151B apply to any "person," a term which is defined to include State and municipal actors. See G. L. c. 151B, §§ 1, 4, & 4A (7A), (10), (13).

The governing regulations provide that persons covered by the housing discrimination provisions of G. L. c. 151B, § 4, include "[t]hose persons who coerce, intimidate, threaten or interfere with another person in the exercise or enjoyment of any right under G. L. c. 151B, § 4," "[t]hose persons who directly or indirectly prevent or attempt to prevent the construction, purchase, sale or rental of any dwelling or land covered by G. L. c. 151B, § 4," and "[t]hose persons who aid or abet in doing any illegal acts specified by 804 [Code Mass. Regs. §] 2.00 et seq." 804 Code Mass. Regs. § 2.01(2)(f)-(h) (1993). The regulations further provide that "[e]xamples of unlawful housing practices include, but are not limited to the following: . . . [passing] an ordinance that unlawfully denies a dwelling, commercial space or land to a person or group of persons because of their protected status." 804 Code Mass. Regs. § 2.01(6)(f) (1993). And, as noted above, G. L. c. 40A, § 3, fourth par., applies to municipal laws and decisions. The interpretation of these statutes and regulations may be addressed, if necessary, on remand.

[18] To the extent that the decision of the Superior Court judge may be read to state that the sprinkler statute creates a per se bar to liability under the FHAA, we reject that analysis. See Burbank Apartments Tenant Ass'n, 474 Mass. at 124.