

Federal Judge Strikes Down NJ Law on Changed Zoning for Alzheimer's Facilities

The state has a legitimate interest in protecting citizens with Alzheimer's, but it "may not protect these individuals in a way that discriminates against them without justification," U.S. District Judge Peter Sheridan said.

By Suzette Parmley

A federal judge has invalidated a New Jersey law passed in 2015 that changed how Alzheimer's disease facilities are classified, granting summary judgment to a developer on grounds that the 4-year-old law is discriminatory.

U.S. District Judge Peter Sheridan of the District of New Jersey ruled Wednesday that Blake Gardens, a limited liability company based in Mahwah that builds community residences geared to those with Alzheimer's, succeeded in demonstrating intentional disparate treatment of persons with the disease, and other forms of dementia, as it relates to housing.

"For the reasons stated herein, Blake Garden's summary judgment motion is granted and the State's summary judgment motion is denied," wrote Sheridan in the 23-page opinion. "This Court also finds that the 2015 Act violates the Fair Housing Act."

The 2015 New Jersey law changed zoning on Alzheimer's residences, from conditional approval in a single-family residential zone to one

requiring a use variance, according to the decision, *Blake Gardens v. New Jersey*. The law "reclassified such residences as health care facilities pursuant to the Health Care Facility Planning Act" and "placed them under the review of the Department of Health," the decision explained.

In 2017 Blake Gardens sought to build from the ground up a 16-bedroom, single-story, roughly 6,000-square-foot Alzheimer's residence in a residential zoning district in Freehold Township. "Our vision is to provide the highest quality of life and care possible for 15 residents in a setting that is safe, comfortable, familiar and homelike," read the exhibit letter by Blake Gardens' president, Eric Boe, in an overview of the project, including diagrams, that he presented to Pasquale Popolizio, Freehold's director of zoning and housing enforcement, in early March 2017, according to the decision.

But in a letter three weeks later, Popolizio rejected Boe's application based on the change in the Municipal Land Use Law, which



PETER SHERIDAN

PHOTO BY CARMEN NATALE

excluded persons with Alzheimer's disease from the definition of persons with a head injury, according to the complaint.

Rather than appeal the rejected application with the Freehold Township Planning Board, Blake Gardens instead filed a complaint against the state on May 9, 2017. The suit challenged the 2015 law as a violation of the federal Fair Housing Act, because it changed the classification for Alzheimer's facilities to health care facilities, regulated by the New Jersey Department of Health rather than the Department of Community Affairs, and amended the definition of a person with a head injury to exclude persons with Alzheimer's

disease and related disorders, or other forms of dementia.

The suit claimed the resulting MLUL requirement that Alzheimer's residences be subject to local zoning approval was discriminatory.

In its motion for summary judgment and for the court to annul the 2015 law, Blake Gardens contended that the state couldn't establish that the law served a legitimate interest, and that no less discriminatory course of action existed.

The state countered that it has a legitimate interest in protecting individuals with Alzheimer's, and that the reclassification and other zoning requirements were a reasonable exercise of its authority.

Sheridan said the state fell short.

"Accordingly, the state has not shown that there is no alternative course of action that could be adopted to serve its interest with a less discriminatory impact," wrote Sheridan.

The state denied that the 2015 law was discriminatory because dementia facilities were never considered community residences for those with head injuries. The law closed a loophole that permitted construction of community residences for persons with Alzheimer's or other dementia disorders under the "head injury" exception.

"This argument, however, lacks merit because 22 such residences have been developed, and it is dif-

ficult to accept that the 'loophole' existed over such a long period of time without corrective action," Sheridan said.

Kelly Dana Schneid of Moritt Hock & Hamroff in Garden City, New York, represents Blake Gardens. "We are thrilled that Judge Sheridan issued a detailed decision emphasizing the State's obligation to refrain from discriminating against vulnerable persons and recognizing that community residences for those with Alzheimer's disease or dementia can be developed in residential districts," Schneid said in an email. "This is a victory in all respects for people with Alzheimer's or dementia. It also represents a successful step forward for the public at large, given that studies confirm increased incidences of Alzheimer's and dementia and a rising need for diverse, person-centered care and community-based housing options."

Dominic Larue Giova of the New Jersey Attorney General's Office represents the state in the case. Lee Moore, a spokesman for the Attorney General's Office, said the office had no comment.

One of the sponsors of the 2015 law was Assemblywoman Valerie Vainieri Huttle, D-Bergen, who supported a community group that opposed the Blake Gardens facility being built in Freehold.

"My intent with the 2015 law was to protect Alzheimer's and memory

care patients from harm, ensuring that the proper oversight was given to the facilities by the Department of Health," Huttle said in a phone call on Friday. "I do not believe the Act violates the Fair Housing Act. Alzheimer's disease and dementia are different from head injuries and require a higher level of care.

"I believe the intent of the legislation remains intact," Huttle said. "However, I respectfully disagree with the decision of the U.S. District Court and I am still in the process of examining all the facts of the case and the court's decision and will issue a full statement on the case at a later date."

In ruling, Sheridan said the 2015 law treats individuals with Alzheimer's disease or dementia disparately.

Sheridan said the state indeed has a legitimate interest in protecting its most vulnerable citizens with Alzheimer's and dementia.

"Nevertheless, the State may not protect these individuals in a way that discriminates against them without justification," Sheridan wrote.

"The State has not provided any justification for the 2015 Act's facial discrimination against individuals with Alzheimer's disease and dementia. For these reasons, the State's motion for summary judgment is denied, and Plaintiff's motion is granted," added Sheridan. ■