

**KTJ**

KLEIN, THORPE & JENKINS, LTD.  
Attorneys at Law

April 9, 2018

For any questions or comments you might have regarding this newsletter, please feel free to contact:

Authored By:

Name: Scott F. Uhler

Email: [sfuhler@ktjlaw.com](mailto:sfuhler@ktjlaw.com)

Phone: 312-984-6421



## LEGAL ALERT

### **Fair Housing Act & ADA May Require "Reasonable Accommodation" Under Zoning Code To Allow Disabled Adults To Reside In Residential Neighborhood**

The 7<sup>th</sup> Circuit Court of Appeals has concluded the City of Springfield likely engaged in unlawful discrimination against three disabled individuals under the federal Fair Housing Act and Americans With Disabilities Act by enforcing a City zoning provision that they could no longer occupy a single-family care residence located within 600 feet of another, existing single-family care residence. The Court confirmed that the Fair Housing Act and Americans With Disabilities Act can require changes to or waivers of zoning requirements (absent undue financial hardship or an undue burden on the municipality), if needed to afford the disabled an equal opportunity equal to use and enjoy a residence, which in this case means an 'equal opportunity' to choose to live in a residential neighborhood. *Valencia v. City of Springfield*, No. 17-2773 (7th Cir. 2018)

**A more detailed summary of the decision is set forth herein.**

**The following link is to the full decision of the 7<sup>th</sup> Circuit Court of Appeals:**

**<https://www.courtlistener.com/opinion/4473714/mary-valencia-v-city-of-springfield/>**

#### Inside This Issue

Full Opinion.....	1
Summary Of The Decision.....	2-4
Court Analysis.....	4-6
Court Decision.....	6



## SUMMARY OF THE DECISION

### Facts of the Case:

#### *Springfield Zoning Requirements*

The City of Springfield Zoning Code provides that residential zoning districts are primarily for single family detached residences. The term "family" is defined in the Zoning Code as "one or more persons each related to one another by blood, marriage, or adoption, or is a group of not more than five persons not all so related occupying a single dwelling unit which is not a boardinghouse or lodging house as defined in this section." The Zoning Code also allows for "family care residences" in certain of the City's residential zoning district categories. That definition, of a "family care residence" in the City Zoning Code is: "A single dwelling unit occupied on a relatively permanent basis in a family-like environment by a group of no more than six unrelated persons with disabilities, plus paid professional support staff provided by a sponsoring agency either living with the residents on a 24-hour basis or present whenever residents with disabilities are present at the dwelling, and complies with the zoning regulations for the district in which the site is located." The Springfield Zoning Code adds further restrictions on family care residences, including that a family care residence must be "located upon a zoning lot which is more than 600 feet from the property line of any other such facility."

#### *Zoning Purposes*

The purposes of this physical separation requirement, as stated in the Code, is to ensure that family care residences, "which operate most effectively in residential environments, do not adversely affect those environments through over concentration."

#### *Proposed Single Family Care Home*

The IAG group in Springfield provides services to facilitate integrated living opportunities for disabled persons in residences. The residence at issue here is known as "Noble" Home (located on Noble Avenue in Springfield). The disabled individuals who seek to live there rent the Home. IAG does not own or operate the property as a group home; rather they coordinates and provide care for these disabled adults with their daily life activities such as dressing, food preparation, shopping, home maintenance, and cleaning.



These support services then allow the disabled persons to live in regular residential communities known as "community integrated living arrangements ("CILAs"). In 2012, IAG reached out to some property owners in Springfield to facilitate housing for CILAs. A couple on agreed to rent their home, located at 2329 Noble Avenue (the Noble Home) to three IAG clients. The Noble Home is located in a Springfield residential zoning district that allows single family homes and family care residences. The Noble Home itself physically looks like (and is the same as) other homes in the area.

The Noble Home is an ordinary one-story ranch house that is the same as other dwelling units in the neighborhood. The Court found there was nothing about the exterior of the Noble home that indicates it was inhabited by disabled individuals. While IAG employees are in the Home any time the home is occupied, they do not drive marked vehicles. There are generally no more than two IAG staff cars present at any time. The three disabled persons each have a serious physical or mental impairment. Two of them were non-ambulatory. The owners of the Noble Home made significant renovations to the Noble Home physical structure including widening doorways, enlarging two bathrooms, and lowering kitchen counters to make the home wheelchair accessible, prior to move in by the three disabled renters. At that time, IAG did not know that there was a family care residence already operating across the street (which had been in operation for 12 years and looked like the other homes in the neighborhood). In fact, the Noble Home and existing family care residence are only 157 feet apart.

#### *Complaint of Zoning Violation*

In August 2016, after receiving a complaint about the fact that the Noble Home was located closer than 600 feet to another family care residence, the City then notified IAG that the 3 disabled residents of the Noble Home would be evicted unless they first applied for and were granted a Conditional Permitted Use. Under the City's Code, a]ny family care residence ... not in compliance with [the Code] ... may seek a conditional permitted use under ... the zoning ordinance." To qualify for a CPU, a family care residence must establish that: (1) "the proposed location and use will not have any adverse impact upon residents of nearby facilities when located within 600 feet of another such facility"; and (2) "[t]he proposed location will not have any detrimental affect [sic] upon existing privacy, light or environment of surrounding residences."



### *Request for Zoning Relief – Zoning Hearings*

The Noble Home owners and IAG then made the application for a CPU. They appeared before the Sangamon County Plan Commission and the Springfield Planning and Zoning Commission. The Sangamon County Plan Commission recommended denial of the application because "[t]he evidence provided in the petition [did] not provide sufficient detail to allow staff to make a reasonable determination whether the design and method of operation of the proposed use [would] minimize the adverse effects on the character of the surrounding area."

A land use planning and zoning expert, testified before the Springfield Planning and Zoning Commission. He concluded that because the Noble home was leased by IAG's clients, not IAG itself, the City should treat its residents as a "family" under [the City Zoning Code] and classify the home as a single-family detached residence rather than a family care residence. He also opined that, even if the home was deemed a family care residence, a CPU should be issued because the home met City standards and did not adversely affect the neighborhood. At that same hearing, there were residents who lived on the block requesting denial of the CPU because IAG caregivers "rac[ed] up and down their block to get to work on time," "listen[ed] to ... loud music in their vehicles," "park[ed] on the wrong side of the street," and blocked driveways and Sidewalks". The Springfield Planning and Zoning Commission then voted 4-3 to also recommend denial of the CPU. After it considered the recommendations of the County Commission and the Springfield Commission, the Springfield City Council then voted 8-2 to deny the request for a CPU.

### **Analysis of the Court:**

#### *Complaint Filed Against the City*

The property owners and IAG sued the City claiming unlawful discrimination based on disability under the Fair Housing Act and the Americans With Disabilities Act. The discrimination alleged was straightforward: that there were zoning restrictions placed on unrelated disabled persons living in family care residences, but not on unrelated non-disabled persons living in single family residences and that the 600-foot spacing requirement had a disparate impact on persons with disabilities. There was also a claim that by refusing to grant the Noble home a CPU, the City failed to make a reasonable accommodation, as required both by



the Fair Housing Act and the Americans With Disabilities Act.

### *Fair Housing and ADA Violations*

The Fair Housing Act prohibits discrimination in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap. The ADA also provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. The Court addressed the key question here, indicating that these statutes can extend to and cover municipal zoning decisions. Citing to *Wis. Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 752 n.12 (7th Cir. 2006) (en banc); *Oconomowoc Residential Prog.v. City Of Milwaukee*, 300 F.3d 775, 782 (7<sup>th</sup> Cir. 2002). The Court in this matter noted that a violation of the Fair Housing Act or ADA can be shown by demonstrating disparate treatment or disparate impact based on a person's disability or by showing a refusal by a municipality to make a reasonable accommodation. Citing to *Reg'l Econ. Cmty. Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 48 (2d Cir. 2002).



For any questions or comments you might have regarding this newsletter, please feel free to contact:

**Chicago Office**

20 N. Wacker Drive, Ste. 1660  
Chicago, IL 60606

T: (312) 984-6400

F: (312) 984-6444

**Orland Park Office**

15010 S. Ravinia Ave., Ste 10  
Orland Park, IL 60462

T: (708) 349-3888

F: (708) 349-1506

[www.ktjlaw.com](http://www.ktjlaw.com)

This newsletter is not to be construed as legal advice or a legal opinion under any circumstance. The contents are solely intended for general informative purposes, and the readers of this newsletter are strongly urged to contact their attorney with regard to any concepts discussed herein.

This newsletter may be deemed advertising under the laws of the Supreme Court of Illinois.

© 2018 Klein, Thorpe and Jenkins,  
Ltd.

**KTJ**

KLEIN, THORPE & JENKINS, LTD.  
Attorneys at Law

The Court here specifically points to the language of the Fair Housing Act which requires public entities "to reasonably accommodate a disabled person by making changes in rules, policies, practices or services as is necessary to provide that person with access to housing that is equal to that of those who are not disabled." Citing to *Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 561 (7th Cir. 2003); *see also* 42 U.S.C. § 3604(f)(3)(B). to allow a disabled person an equal opportunity to use and enjoy a dwelling. See *Oconomowoc Residential Prog. v. City Of Milwaukee*, 300 F.3d 775, 783 (7<sup>th</sup> Cir. 2002). In the context of a zoning waiver, the Court stated that 'equal opportunity' means the opportunity to choose to live in a residential neighborhood."

**Decision of the Court:**

The Seventh Circuit affirmed the entry of a preliminary injunction to prevent the proposed eviction of the disabled residents, finding that plaintiffs possessed a reasonable likelihood of success on the merits in their suit under the Fair Housing Act, 42 U.S.C. 3601–31, Americans with Disabilities Act, 42 U.S.C. 12101–213, and the Rehabilitation Act, 29 U.S.C. 794(a).

*Valencia v. City of Springfield*, No. 17-2773 (7th Cir. 2018)