

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

NEXT STEP RECOVERY HOME, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:24-cv-353-TWP-MKK
)	
STATE OF INDIANA; EXECUTIVE)	
DIRECTOR, INDIANA DEPARTMENT OF)	
HOMELAND SECURITY, in his official)	
capacity,)	
)	
Defendants.)	

Amended Complaint for Declaratory and Injunctive Relief

Introduction

1. In *New Horizons Rehabilitation, Inc. v. Indiana*, 400 F. Supp. 3d 751 (S.D. Ind. 2019), this Court held that the actions of the State of Indiana and the Executive Director of the Indiana Department of Homeland Security in imposing requirements on group homes for persons with disabilities where the homes were in all respects identical to homes containing single families, other than the fact that they were not occupied by a “traditional family,” violated the Fair Housing Act Amendments Act, 42 U.S.C. § 3604(f); the Rehabilitation Act, 29 U.S.C. § 794; and the Americans with Disabilities Act, 42 U.S.C. § 12132.

2. Now, more than four years after *New Horizons*, the same defendants are imposing the identical onerous and unlawful requirements on a group home for persons with disabilities owned by Next Step Recovery Home, Inc. (“Next Step”). Specifically, defendants have informed Next Step that the single-family home that it purchased to be a group home for up to six or more persons with disabilities can house only two such persons or it will be shut down. Defendants have indicated that if Next Step houses any more than two persons it will be classified as a Class 1 commercial structure, which would require costly and burdensome modifications to the home that are not imposed on Class 2 structures, which are structures occupied as single-family residences. This, despite the fact that the Next Step home is indistinguishable from other single-family homes. The defendants have unequivocally indicated that no variance can be given to a Class 1 structure to make it a Class 2 structure and have refused to grant such a variance to a similar group home provider. The refusal to recognize the home as a Class 2 structure is no less unlawful and discriminatory now than it was in 2019, and the failure to treat the home in the same manner as a single-family home violates the Fair Housing Amendments Act, the Rehabilitation Act, and the Americans with Disabilities Act. Appropriate injunctive and declaratory relief should issue requiring defendants to treat the Next Step home in the same manner as traditional single-family homes.

Jurisdiction, venue, and cause of action

3. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.

4. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rule 57 of the Federal Rules of Civil Procedure.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

6. Plaintiff brings its claims pursuant to 42 U.S.C. § 3613, 42 U.S.C. § 12133, and 29 U.S.C. § 794a(a)(2).

Parties

7. Next Step Recovery Home, Inc., is a non-profit corporation incorporated in Indiana.

8. The State of Indiana receives federal funds and is therefore subject to the Rehabilitation Act, 29 U.S.C. § 794.

9. The Executive Director of the Indiana Department of Homeland Security is the duly appointed head of the Indiana agency that also receives federal funds and, among other things, administers required building code reviews and enforces fire and building safety codes in public buildings in Indiana.

Legal background

10. Under the Fair Housing Amendments Act (“FHA”), 42 U.S.C. § 3601, *et seq.*, it is 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 of (A) that buyer or renter; (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that buyer or renter.” 42 U.S.C. §

3604(f)(1). The term “handicap” means a person who has “a physical or mental impairment which substantially limits one or more of such person’s major life activities.”

42 U.S.C. § 3602(h)(1).

11. The Americans with Disabilities Act (“ADA”) 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.” 42 U.S.C. § 12132. Land use regulations are deemed to be an activity of government. *See, e.g., Wisconsin Community Services, Inc., v. City of Milwaukee*, 465 F.3d 737, 750 (7th Cir. 2006) (referring to local zoning decision). The ADA’s definition of an individual with a disability includes, among other persons, a person who has a physical or mental impairment that substantially limits one or more major life activities. 42 U.S.C. § 12102(1).

12. The Rehabilitation Act, 29 U.S.C. § 794(a), provides that “no otherwise qualified individual with a disability” may be discriminated against on the grounds of that disability by any program receiving federal funding. The Rehabilitation Act incorporates the ADA’s definition of “individual with a disability.” 29 U.S.C. § 705(20)(B).

13. Alcoholism and drug addiction are impairments recognized by the above statutes. However, this does not include those who have a “current, illegal use of or addiction to a controlled substance.” 42 U.S.C. § 3602(h). *See also* 42 U.S.C. § 12210(a).

Factual allegations

14. Next Step Recovery Home, Inc., is an Indiana non-profit organization that was incorporated for the specific purpose of providing safe and sober housing to men in the Jasper, Indiana area recovering from substance abuse and addiction disorders.

15. As a result of a grant from the Dubois County Community Foundation, Next Step formed specifically to create a recovery home for men in Dubois County as there were no existing recovery homes in the county.

16. To fulfill this goal, Next Step purchased a three-bedroom, two-bathroom home, with a finished basement, in Jasper, Indiana in 2023.

17. The Next Step home is one of many in a neighborhood of single-family homes, and it is indistinguishable in design, architecture, and appearance from those surrounding it.

18. The home purchased by Next Step was used as a single-family home by its prior owner. Next Step has not changed the physical structure of the home since this time.

19. It was the intent of Next Step that this home initially house six men recovering from alcohol and/or drug addiction, who would live there while they maintain their sobriety, and receive treatment that would be provided primarily outside of the home. The number of residents might be expanded to eight men in the future. All residents would be recovering from substance abuse disorders.

20. Next Step arranged for the home to be operated by Behind the Wire Ministries, Inc. ("Behind the Wire"), which supervises the treatment of the men in the home.

21. Behind the Wire, an Indiana non-profit corporation, owns and operates similar homes in Martin County and provides services to men residing in the homes who are recovering from substance abuse disorders.

22. Next Step announced it was opening the home in November of 2023.

23. Shortly after the public announcement, before any residents occupied the home, Next Step was contacted by an employee of the Indiana Department of Homeland Security's Division of Fire and Building Safety who asked to inspect the home, to which Next Step agreed.

24. After the inspection, the inspector indicated that if Next Step allowed more than two men to reside in the home, the Department of Homeland Security would shut the home down. The inspector indicated that if it housed more than two persons, the home would be deemed to be a Class 1 structure that requires, among other things, a sprinkler system.

25. If the home were housing a "traditional" family, it would be considered a Class 2 structure, and the sprinkler system and any other requirements imposed on Class 1 structures would not be imposed.

26. The president of the board of directors of Next Step contacted a local company and was given an estimate of \$100,000 for the sprinkler system. Next Step paid \$217,400 to purchase the house.

27. Next Step cannot afford to pay \$100,000 for a sprinkler system.

28. As a result, the home is now occupied by only two persons recovering from addiction, although it could certainly house more given the home's size.

29. The current residents of the home, and all planned future residents, are persons recovering from substance abuse disorders with impairments that substantially limit one or more of their major life activities.

30. The current residents receive formal programming at the campus of Behind the Wire in Loogootee, Indiana.

31. It is anticipated that if the home is allowed to have at least six residents most of the programming will occur at the campus of Behind the Wire in Loogootee, although residents may participate in Zoom counseling sessions from the home a couple of days a week conducted or arranged by Behind the Wire.

32. The home is intended to serve, and currently serves, as a residence where those participating in the program live as a family, sharing meals, responsibility, and life.

33. The home is, and will continue to be, controlled in large part by the residents. There are staff persons who supervise the home, but they do not reside on-site in the homes. It is the residents who are responsible for the day-to-day operation of the home and they do this communally, as a family.

34. The staff persons provide supportive services only.

35. The only persons living in the homes are its residents.

36. Residents of the Next Step home may remain in the home for the duration of the program provided by Behind the Wire, which can be up to two years. During the time that they are in the program the home is the permanent residence of those living there while they participate in programming and receive the support of living in a family setting.

37. As indicated, the home is designed as a single-family residence and is physically indistinguishable from other single-family residences that it is near. The residents do not have possession of unique parts of the homes, other than their individual bedrooms that they may share with other residents if Next Step is allowed to house more than two persons in the home.

38. The Next Step home has fire extinguishers on each floor. It also has smoke and carbon-monoxide detectors that are linked into a monitored security system.

39. The Next Step home satisfies local zoning standards imposed on the single-family residences that are near the group home and complies with all local land-use regulations and requirements.

40. The residents of the Next Step home are expected to work and pay for their stay and programming. However, the residents do not sign a formal lease agreement.

41. Limiting the Jasper home to two residents thwarts the organizational purposes of Next Step in that it is not able to maximize its ability to address the obvious needs of

Jasper-area persons with disabilities because they are recovering from drug and alcohol addiction.

42. Additionally, restricting the Jasper home to two residents limits the therapeutic benefit that will come from having more persons in the home living as a family.

43. At the current time Next Step is aware that there are additional persons with disabilities recovering from drug and alcohol addiction who are ready to move into the Next Step home, but for the defendants' limiting to two the number of residents in the home.

44. The Indiana Department of Homeland Security only regulates Class 1 structures. It does not regulate Class 2 structures.

45. Under Indiana law a Class 1 structure is one that is occupied or used by the general public, by three or more tenants, or by one or more persons who act as the employees of another. Ind. Code § 22-12-1-4; 675 IAC 12-6-2.

46. The definition of Class 1 structures excludes "Class 2" structures that are defined as:

(1) A townhouse or a building or structure that is intended to contain or contains only one (1) dwelling unit or two (2) dwelling units unless any part of the building or structure is regularly used as a Class 1 structure.

(2) An outbuilding for a structure described in subdivision (1), such as a garage, barn, or family swimming pool, including an above ground swimming pool, unless any part of the outbuilding is regularly used as a Class 1 structure.

Ind. Code § 22-12-1-5.

47. As noted, the rules imposed on Class 1 structures require, among other things, the installation of fire suppression systems.

48. If Next Step were to sell its home to a nuclear family, the home would without any structural changes again be deemed to be a Class 2 structure as it would be occupied by a “traditional” family, and would not be subject to any review by the Department of Homeland Security and would not be subject to the onerous and expensive requirements imposed on Class 1 structures, such as the requirement that a sprinkler system be installed.

49. Of course, as a Class 2 structure, the home could be occupied by more than two persons. Indeed, a married couple with eight children could live in the home with their entire family.

50. If a Class 1 structure operates in violation of the rules imposed on such structures it can be shut down by state regulators and/or those operating it can be subject to fines.

51. Next Step is a non-profit entity and does not have the available funds to make the changes necessary to meet the Class 1 standards for the Jasper home.

52. Although variances may be sought for some requirements imposed on Class 1 structures, the Department of Homeland Security takes the position that it is impossible to grant a variance to a Class 1 structure so that it is deemed to be a Class 2 structure.

53. Such variances were sought by a similar group home provider, Inspiration Ministries, Inc., and defendants have admitted in other litigation that the variances were

denied. See *Inspiration Ministries, Inc. v. State of Indiana, et al.*, No. 1:23-cv-2027-TWP-MKK (S.D. Ind.), Dkt. No. 24 ¶¶ 53-55.

54. In *New Horizons* this Court found, among other things, that the distinction between Class 1 and Class 2 structures imposed disparate treatment on the group home residents and the owner of the home in violation of the ADA, FHA, and Rehabilitation Act. 400 F. Supp. 3d at 768.

55. In *New Horizons* this Court further found that the failure to grant a variance allowing the structure in question to be treated as a Class 2 structure, without the Class 1 requirement of a sprinkler system, violated the ADA, FHA, and Rehabilitation Act as failing to provide a reasonable accommodation. *Id.* at 766.

56. Following the issuance of the *New Horizons* decision the Department of Homeland Security issued a public notice designed to clarify “when supportive living facilities” are considered to be Class 1 or 2 structures. (Exhibit 1).

57. The notice defines supportive living facilities as facilities “that provide staff to its residents to assist with daily living” and states that these facilities are considered Class 2 structures if:

1. the structure is a townhouse or only contains one or two dwelling units;
2. the structure is intended to be occupied by no more than two tenants (except for townhouses which may only have one tenant per unit by definition);

A tenant is someone, or some group that either: (1) has possession of a unique portion of a structure; or (2) occupies a structure on unique

or independent terms from other occupants. The overarching concern is whether the person or persons occupying, or intending to occupy, the structure or portion of the structure, are doing so independently or as a single occupant. If a structure is rented out on a per room basis (even with shared common areas), the structure has as many tenants as rooms intended to be rented out.

3. the structure is intended to be used for nontransient residential occupancy;
4. the presence of employees at the structure is limited to providing supportive living services (services limited to supporting the regular use and enjoyment of the structure for residential purposes); and
5. the structure does not contain nonresidential areas that are not traditionally found in a dwelling unit.

(Id.).

58. The Next Step home meets these criteria in all respects and should therefore be classified as a Class 2 structure.

59. The defendants have determined that the Next Step home is a Class 1 structure solely because it is, and will be, occupied by persons with disabilities as opposed to by a nuclear family

60. The defendants have engaged in intentional discrimination against Next Step and the residents and potential residents of its home, who are persons with disabilities, solely because the home is occupied by persons with disabilities as opposed to a nuclear family.

61. Next Step and its current and potential residents of its Jasper home are being caused irreparable harm for which there is no adequate remedy at law.

Legal claims

62. The actions of the State of Indiana and the Secretary of the Indiana Department of Homeland Security in imposing burdens and requirements upon the Next Step home that are not imposed on identical homes containing a single family, and are therefore imposed solely because of the status of the residents and potential residents as persons with disabilities, represents intentional discrimination against Next Step and the residents and potential residents of the home in violation of the Rehabilitation Act, 29 U.S.C. § 794(a); the Fair Housing Amendments Act, 42 U.S.C. § 3604(f); and the Americans with Disabilities Act, 42 U.S.C. § 12132.

63. The actions of the State of Indiana and the Secretary of the Indiana Department of Homeland Security in refusing to allow the homes to be treated as Class 2 structures represents a failure of the defendants to make reasonable accommodations to avoid discrimination on the basis of disability in violation of the Rehabilitation Act, 29 U.S.C. § 794; the Fair Housing Amendments Act, 42 U.S.C. § 3604(f); and the Americans with Disabilities Act, 42 U.S.C. § 12132.

Request for relief

WHEREFORE, plaintiff requests that this Court:

- a. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
- b. Declare that defendants have violated federal law for the reasons noted above.

- c. Enter a preliminary injunction, later to be made permanent, enjoining defendants from classifying as a Class 1 structure the home that Next Step maintains for its current and potential residents.
- d. Award plaintiff its costs and reasonable attorneys' fees pursuant to 29 U.S.C. § 794a(b), 42 U.S.C. § 12133, and 42 U.S.C. § 3613(c)(2).
- e. Award all other proper relief.

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