

NEWS

Fitchburg wins appeal over sprinklers in sober houses

Federal appeals court rules sprinkler are required to operate a sober home



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BOSTON — A federal appeals court has upheld a lower court decision that the city did not violate the Americans with Disabilities Act and the Fair Housing Act for requiring the installation of sprinklers in several sober homes.

Jeffrey Summers, who runs a nonprofit organization called Jeffrey's House, Inc. said the sober facilities shouldn't be subject to the requirement and the city's refusal to grant an exemption violates provisions of the Americans with Disabilities Act and the Fair Housing Act.

But a three-judge panel of the first U.S. Circuit Court of Appeals in Boston sided with Fitchburg in an Oct. 8 ruling, stating that Summers failed to show that such an exemption was either reasonable or necessary to allow recovering addicts to live in and benefit from the sober homes.

Summers said he was disappointed with the ruling, adding that he is still considering additional litigation against the city.

"I've been battling the city for eight years on this and it does get tiresome, but we're going to be here until it's no longer feasible," he said. "We're not really sure what happens now. The worst case scenario is that we shut our doors altogether."

Summers said the court's decision will have a negative impact on the city and all of the sober homes operating within it.

"I was hoping that we could have come to an agreement with the city, either years ago or even now," said Summers.

Mayor Stephen DiNatale said he was happy with the court's ruling.

"The city is pleased with the decision as it promotes public safety for the residents of sober homes, their neighbors and first responders," said DiNatale. "I want to thank all of the city officials involved in working so hard to justly and fairly treat sober homes within the City of Fitchburg."

The appeal originated from the enforcement of a state law by the city of Fitchburg. The law requires the plaintiffs to install sprinklers in the four sober houses that they operate for recovering addicts.

Summers operates four sober houses in Fitchburg. These facilities provide supportive residences for individuals recovering from alcohol and/or drug addiction.

Starting in 2013, city officials began to enforce a variety of zoning and building-code provisions that they thought the plaintiffs were violating.

At least three of the sober houses were apparently operating in violation of the use restrictions set forth in the city's zoning ordinance.

At the request of Summers, the city granted an accommodation under the ADA and the FHAA to allow him to operate those sober houses despite the use restrictions.

In July 2014, officials informed Summers that his organization was required, pursuant to a state law that applies to lodging or boarding houses with six or more unrelated residents, to install sprinkler systems in the three sober houses it was then operating.

Summers was given six months to bring the sober houses into compliance but did not do so. Consequently, the city fined him \$1,000 and instituted an enforcement action in the local housing court.

At a housing court hearing in 2015, Summers suggested that, pending resolution of the dispute over the sprinkler requirement, he would reduce the occupancy of each sober house to five or fewer residents, rendering the Sprinkler Law inapplicable.

Once city officials asked him to memorialize this suggestion in writing and agree to allow sporadic inspections to verify the reduced occupancy, he reneged on the offer.

Summers asserted that the Sprinkler Law did not apply to sober houses, that periodic inspections would disrupt the residents, and the cost of sprinklers would be prohibitive.

The dispute simmered until Sept. 14, 2015, when the plaintiffs sued the city and a number of municipal officials in the U.S. District Court for the District of Massachusetts.

The district court dismissed most of the complaints but allowed the plaintiffs to proceed with their reasonable accommodation claims.

As to the reasonable accommodation claims, the court concluded that the plaintiffs had failed to show that their concerns about the sprinkler requirement rendered an accommodation to the Sprinkler Law either reasonable or necessary.

The court also determined that the plaintiffs had voluntarily withdrawn any proposal to reduce occupancy to fewer than six residents per sober house.

The most recent appeal ensued and, in it, the plaintiffs challenged only the district court's entry of summary judgment on their ADA and FHAA reasonable accommodation claims.

The appeals court said Summers failed to demonstrate the request for an exemption from the Sprinkler Law was reasonable and that such an exemption would create an unacceptable safety risk to both the residents and the public.

The court also said that recovering addicts qualify as handicapped individuals and that municipal officials knew of the handicap at all times relevant to this litigation.

Despite this, the court said evidence did not show that installing sprinklers would interfere with the therapeutic benefits that the residents reap from living in the sober houses.

Summers also questioned whether municipal officials engaged in good faith to reach an agreed-upon accommodation with respect to the Sprinkler Law.

The court ruled that the argument was unsupported because "municipal officials worked with the plaintiffs to ensure that the sober houses complied with state and local laws even in the face of the plaintiffs' intransigence."

Summers said Jeffrey's Place will either have to scale back the number of people per household, from six to five, or to invest in sprinklers.

"Those are very difficult and expensive options right now," he said.

Summers said he took issue with several buildings in the city that are able to skirt around the Sprinkler Law requirement, particularly Fitchburg State University.

"Why are they exempt, if the issue is five or more, if students are piling in a house?" asked Summers. "The don't have to have sprinklers, but we do."

Though this case is settled, similar issues continue to pop up across the city.

Crossing Over, a sober home at 29 Nutting St., went before the Zoning Board of Appeals last month to ask the board to reverse a decision to shut down the facility because of too many occupants.

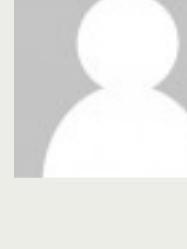
Donald Flagg, the nonprofit's director, petitioned the city to overturn Building Commissioner Mark Barbadoro's decision which says the use of the building as a sober home isn't allowed under city zoning.

Barbadoro said the city discovered there was enough room in the home to house 13 unrelated individuals in the 3-unit single-family dwelling. The city's current definition of family is not more than four unrelated people, he added.

Barbadoro said sober homes are allowed in the city and, in fact, encouraged, but they need to be in the correct zone.

Andrew Tine, Flagg's attorney, said the city cannot make that distinction because it would be in violation of a state law which prohibits cities or towns from making decisions which discriminate against a disabled person.

The ZBA continued the meeting until Nov. 12, when it hopes to make a decision.



Daniel Monahan

Daniel Monahan is a reporter who covers Fitchburg, Westminster and Ashby Lunenburg, and Ashburnham. Before that, he spent six months covering a small area in the Cape for the Sippican Week. A Pepperell native and graduate of UMass Amherst, Daniel enjoys running, board games, and watching independent movies.

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