

Drug clinic limits stand

Baltimore County to maintain zoning restrictions on methadone facilities

By Laura Barnhardt | sun reporter

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With a less-than-definitive opinion from a federal appeals court, Baltimore County officials say they have no intention of scrapping their restrictions on the location of methadone clinics.

As a result, at least one proposed methadone clinic in Baltimore County could find it harder to open.

A panel of federal judges, sitting one level below the U.S. Supreme Court, issued an opinion this month, finding that a Pikesville methadone clinic should be allowed to stay open. But the appellate court didn't directly answer whether the county law violates the Americans with Disabilities Act - which was the chief complaint made by a Pikesville methadone clinic and the American Civil Liberties Union of Maryland.

Some health and legal experts say that county's zoning regulation on methadone clinics is ripe for another lawsuit.

"The way Baltimore County has avoided the issue in this case would not be likely to happen again," said Ellen M. Weber, an assistant professor at the University of Maryland School of Law and a lawyer involved in another lawsuit against the county over its methadone clinic restrictions. That case settled out of court.

The opinion handed down by the 4th U.S. Circuit Court of Appeals vacates an injunction issued by a federal District Court judge that had prohibited the county from enforcing its law on the location of clinics. But the appellate court decision also allows the clinic, A Helping Hand, to request a new trial on the ADA questions.

The clinic owner and the ACLU of Maryland said they have not decided whether to seek a new trial.

"Part of our decision hinges on what the new injunction says," said Deborah A. Jeon, legal director for the ACLU of Maryland. "We have to weigh the costs and the benefits of a new trial."

County officials say they don't plan to revise the regulations on methadone clinics.

"The fact is that this law is working," said Councilman Kevin Kamenetz, who crafted the legislation in response to proposals in 2002 by two private methadone clinics to open within a half-mile of each other in Pikesville.

"There hasn't been a rash of methadone clinics opening in neighborhoods. But methadone clinics can and have opened in appropriate areas. That's what a county zoning law is for."

The Baltimore County Council passed a zoning law in 2002 requiring additional approval for methadone clinics and other state-licensed medical facilities that want to open less than 750 feet from homes in areas zoned for business and office uses. The law allows the clinics to operate in areas designated for manufacturing without special approvals.

Mark Melenders, who wants to open a methadone clinic on Belair Road near White Marsh Boulevard, says he will have to seek zoning variances and waivers.

"We're trying to get a variance, but who knows?" said Melenders, who has applied with the state to open 4 Walls Health Services.

Methadone, a synthetic narcotic, is used to treat addictions to heroin and some painkillers. It is administered daily by mouth. But the private clinics dispensing methadone in residential areas are often opposed by community groups, who fear that crime will accompany the business and that traffic will disrupt neighborhoods.

"If this was really about treatment, they'd be in a hospital or other medical setting," Kamenetz said.

Because the county law applies to all state-licensed medical facilities, not just methadone clinics, county attorneys say that the regulations are not discriminatory. They say the zoning restrictions are no different from preventing a gas station or other kind of business from opening in the middle of a neighborhood.

Lawyers for A Helping Hand, and the ACLU of Maryland, which joined in the clinic's lawsuit against the county, say drug treatment programs are different from other types of business and have protections under the ADA.

"It's different than not wanting a frat house ... in a neighborhood - that argument doesn't cut it," Weber said.

A Helping Hand has remained open during the litigation, and the appellate court found that because it had its permits to open before the county's law was passed, the clinic should be allowed to continue doing business.

Since 2002, two methadone clinics have opened in Baltimore County.

One, BD Health Care Services, is in a former house at 3955 Old North Point Road in Dundalk in an area zoned for manufacturing, although it is not far from homes.

Another, Whitestone Treatment Center, opened last month in a business park in Woodlawn.

Two other methadone clinics have applied with the state's Department of Health and Mental Hygiene: One is proposed for Wise Avenue in Dundalk, in an area designated for manufacturing and has permits from the county to open.

But Melenders' 4 Walls Treatment Center is on land zoned "business roadside," meaning operating a methadone clinic is allowed only by "special exception" or approval from county zoning officials, said Donald T. Rascoe, deputy director for county permits and development management.

The proposed clinic is about 120 feet from the nearest house, Rascoe said.

Melenders said he doesn't think the clinic will have a negative effect on neighbors.

"It's not a gas-and-go," Melenders said. "And what about how much drugs affect the neighborhoods?"