

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

A HELPING HAND, L.L.C. :  
 :  
v. : CIVIL NO. CCB-02-2568  
 :  
BALTIMORE COUNTY, M.D., et al. :

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**MEMORANDUM**

Following a jury verdict in favor of A Helping Hand, LLC (“Helping Hand” or “the Clinic”) against Baltimore County, Maryland (“the County”), the Fourth Circuit affirmed in part and reversed in part, upholding the verdict on the substantive due process claim but reversing the judgments on various claims brought under the Americans with Disabilities Act (“ADA”). The Fourth Circuit also vacated the injunction entered on the jury’s verdict for consideration of what injunctive relief would be appropriate based on the due process claim alone. *Helping Hand v. Baltimore County*, 515 F.3d 356, 373 (4th Cir. 2008).<sup>1</sup> Since then, the plaintiffs have filed a motion for permanent injunction, which the defendants oppose. Oral argument was heard July 1,

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<sup>1</sup> Specifically, the court said:

In so far as the injunction rests on the now-reversed ADA judgments, it can no longer stand. We recognize that the award of judgment to the Clinic on the due process claim, which we have affirmed, may provide the basis for a portion of the injunctive relief granted. We must vacate the entire injunction, however, because it is unclear whether the district court in fact based any portion of the injunction on this ground. On remand, the court will have to determine the appropriate injunctive relief on the basis of the due process claim alone.

515 F.3d at 373 (internal citations omitted).

2008. For the reasons that follow, limited but not permanent injunctive relief will be granted prohibiting the County from enforcing Bill 39-02 against Helping Hand for a period of two years.

As both sides agree, the court's authority to grant injunctive relief rests solely on the finding that the County violated the Clinic's substantive due process rights by the manner in which the bill was enacted and enforced against Helping Hand; the ordinance itself has not been set aside or found to violate the ADA. The due process judgment necessarily rested on a finding, which the Fourth Circuit upheld, that as of April 15, 2002, the Clinic had a vested property right under Maryland law, such that the Clinic's right in the existing zoning use was "constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use," *Helping Hand*, 515 F.3d at 370-71 (quoting *Powell v. Calvert County*, 795 A.2d 96, 102 (Md. 2002)). The question before the court, therefore, is what injunctive relief may appropriately be granted to enforce the Clinic's constitutional protection against subsequent zoning that, if enforced, will preclude its licensed operation as a methadone maintenance clinic.

Through its motion and at the hearing, the Clinic seeks a "two-prong" permanent injunction that would (1) forbid application of Bill 39-02 to the Clinic entirely and also (2) prohibit any further "interference" with its operations at 116 Slade Avenue. The County took the position that no injunctive relief is warranted and Helping Hand is now subject to the six-month amortization clause of Bill 39-02. County counsel then represented that "the County will do everything within its power to streamline the process . . . should [the Clinic] need to move." (Tr. 7/1/08 at 39).

In seeking injunctive relief, the plaintiff must demonstrate:

(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

*Phelps & Assoc., LLC v. Galloway*, 492 F.3d 532, 543 (4th Cir. 2007) (quoting *eBay, Inc. v. MercExchange, LLC*, 126 S.Ct. 1837, 1839 (2006)). Even if the plaintiff makes that showing, the decision whether to grant the injunction remains within “the ‘equitable discretion’ of the court.” *Id.*

Preliminarily, I reject the County’s assertion that the six-month amortization provision in Bill 39-02 is applicable or should limit the scope of injunctive relief. The enactment and enforcement of the Bill in its entirety, as applied to Helping Hand, was challenged by the plaintiffs and found to violate the Clinic’s substantive due process rights. The Bill unreasonably targeted the Clinic even in the limited scope of its retroactivity; had the Clinic been in operation before April 1, 2002 it would not have been affected by the ordinance.

Nonetheless, it is relevant to the exercise of the court’s discretion that a nonconforming use, though it is a vested right entitled to constitutional protection, may be eliminated by “amortization,” that is, by requiring its termination over a reasonable period of time. *Trip Assoc., Inc. v. Mayor & City Council*, 898 A.2d 449, 456 (Md. 2006); *see also Naegele Outdoor Adver., Inc. v. City of Durham*, 844 F.2d 172, 177 (4th Cir. 1988) (discussing amortization in the context of a taking claim).

Amortization periods noted in the case law range from six months to five years, depending on the nature of the nonconforming use. *See, e.g., Trip*, 898 A.2d 456-57; *see also World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004);

*Ambassador Books & Video, Inc. v. City of Little Rock*, 20 F.3d 858 (8th Cir. 1994); *Naegele*, 844 F.2d at 172; *Hart Book Stores, Inc. v. Edmisten*, 612 F.2d 821 (4th Cir. 1979); *Shiflett v. Baltimore County*, 230 A.2d 310 (Md. 1967).

The plaintiff relies on *Mays-Ott Co., Inc. v. Town of Nags Head*, 751 F. Supp. 82 (E.D. N.C. 1990) and *Browning-Ferris Indus. v. City of Maryland Heights*, 747 F. Supp. 1340 (E.D. Mo. 1990), both of which permanently enjoined enforcement of a city ordinance or ‘interference’ with a business following a determination that a company’s due process rights had been violated. Both cases are distinguishable, however, based on the degree of permanence of the business operation involved. *Mays-Ott* involved construction of a residential building development. 751 F. Supp. at 83. *BFI* involved a 99-acre landfill that had been in continuous operation for over a decade at a location not suitable for any other use until filled. 747 F. Supp. at 1341-43. The clinic, in contrast, rents space at a particular location for which its license is issued. With the County’s cooperation, it appears likely the Clinic could obtain a lease and a license for a new location within the area permitted by Bill 39-02 within a reasonable period of time.<sup>2</sup> Since April 2002, several additional methadone clinics have opened in the County.

The factors governing permanent injunctive relief must be measured against this background:

(1) Given adequate time to relocate, it does not appear that the Clinic, which has had the benefit of six years of operation in its current location, would be irreparably harmed;

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<sup>2</sup>The record indicates that it took Joel Prell approximately sixteen months to find suitable space and open Helping Hand at its current location. (See Pls.’ Mot. for Sum. J., docket entry no. 56, Prell Aff.) Relocation, of course, should include finding a site reasonably convenient for the Clinic’s clients, and some additional time is warranted for this purpose.

(2) monetary damages are not presently at issue;

(3) the balance of hardships between the Clinic and the County weighs in favor of a reasonable period of time to relocate but does not justify permanent denial of enforcement of a still-valid ordinance; and

(4) the public interest in protecting the rights of the Clinic to serve its clients in its current location is sufficiently served by a limited rather than permanent injunction.

A separate Order follows.

October 8, 2008

Date

/s/

Catherine C. Blake  
United States District Judge

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**ORDER**

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. the plaintiff's motion for permanent injunctive relief (docket entry no. 240) is **GRANTED in part and DENIED in part;**
2. defendant Baltimore County is enjoined for two years from the date of this Order from enforcing Bill 39-02 (B.C.Z.R. § 4C-101 *et seq.*) against A Helping Hand, LLC;
3. Baltimore County must cease all administrative proceedings and abate any fines or penalties ordered against A Helping Hand, LLC in connection with Bill 39-02; and
4. the court shall retain jurisdiction of this case for the two-year period of the injunctive relief.

October 8, 2008  
Date

/s/  
Catherine C. Blake  
United States District Judge