IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AUNT MARTHA'S HEALTH AND WELLNESS, INC., an Illinois not-for-profit corporation,	)	
Plaintiff,	)	No. 20-CV-2861 Hon. Thomas Durkin
v.	)	
VILLAGE OF MIDLOTHIAN, an Illinois municipal corporation,	)	
Defendant.	)	

DEFENDANT VILLAGE OF MIDLOTHIAN'S RESPONSE TO PLAINTIFF AUNT MARTHA'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

The motion of plaintiff Aunt Martha's Health and Wellness, Inc. ("Plaintiff" or "Aunt Martha's") should be denied, because its Fair Housing Act claims in Counts I and II are doomed to fail. In secrecy, Aunt Martha's shrouded its plans to dramatically alter the use of a Group Home, which was formerly authorized under the Village of Midlothian Zoning Code as a "Community Residence" for individuals of ages 18-24. Aunt Martha's has transformed it into a Medical Quarantine Center to temporarily isolate DCFS Youth-In-Care, who include children ranging in ages of 0-18. (Ex. A, Weinert Decl. ¶¶ 16-29.) Once the plans became apparent to the Village of Midlothian (the "Village"), Aunt Martha's defiantly refused to follow applicable standards related to safety and health, rules that serve to protect the public and the very individuals Aunt Martha's seeks to quarantine. (Weinert Decl. ¶¶ 35-37.). Instead, Aunt Martha's filed suit claiming discrimination.

The court should examine the Village's response to Aunt Martha's illegal use against the backdrop of the duties the Village owes to the public when a pandemic compromises the health and safety of the community. The "police powers" of local government to protect "public health and public safety" have long been recognized by the United States Supreme Court. *E.g. Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 25–26 (1905). In times of viral pandemic, "a community has the right to protect itself against an epidemic disease which threatens the safety of its members." *Id.* at 27. Constitutionally, courts will invalid a statute "purporting to have been enacted to protect the public health, the public morals, or the public safety [only if it] has no real or substantial relations to those objects, or is beyond all question, a plain, palpable invasion of rights secured by the fundamental law[.]" *Id.* at 31.

COVID-19 has reached global pandemic state. Now, more than ever, it is critical that local government use their police powers and enforce rules related to health and safety for the welfare of everyone. Rule of law is a cornerstone of society. Consistent with its duty under *Jacobson* to protect its community against the pandemic outbreak of COVID-19 that threatens the safety of Village residents and emergency personnel—a risk that has already materialized by the direct exposure and assault of a COVID-19 positive patient against Village patrol officers—the Village has requested that Aunt Martha's simply comply with the Village Zoning Code and Building Regulations. (Ex. B, Delaney Decl. ¶ 9).

The court should recognize the important interest of safety and deny Aunt Martha's motion for the following reasons. First, Aunt Martha's request to allow the Medical Quarantine Center to operate *disturbs* the status quo and does not prevent irreparable harm. The Village has agreed to allow the current DCFS Youth-In-Care to remain and Aunt Martha's has not explained why other potential occupants have nowhere else to go in Illinois.

Second, Aunt Martha's will not succeed on the merits. The transient Medical Quarantine Center is not a protected "dwelling" under the FHA. Further, Aunt Martha's has not meet its burden in establishing that it has protected "familial" or "handicap" status under the FHA.

Also, Aunt Martha's has not shown that the Village's conduct was intentional discrimination. The Medical Quarantine Center no longer meets the requirements and use standards of the "Community Residence" use that formerly authorized its operation. The new use violates applicable safety codes and puts children, first responders, and children at risk. The Village's request for compliance is rationally related to fulfill the goal of safety—not intentional discrimination.

The FHA claims fail on this basis, but Aunt Martha's also contends that its continued unauthorized and illegal use is a reasonable accommodation. This theory fails too. Aunt Martha's conduct is unreasonable. It refused to use the special use approval process, which is the proper avenue for Aunt Martha's to legally operate. The courts have recognized the importance of public and safety oversight. Aunt Martha's defiance of the safety codes is unreasonable, which precludes an FHA claim. Aunt Martha cannot meet the other two elements of a reasonable accommodation claim. The accommodation is not "necessary." Further, Aunt Martha's cannot satisfy the "equal opportunity" element, which limits the accommodation duty so that not every rule that creates a general inconvenience or expense needs to be modified. The Village's conduct had nothing to do with discrimination. Everyone in the Village must comply with applicable safety rules. Balancing all of the interests favors denial of injunctive relief and Aunt Martha's motion.

BACKGROUND

I. Aunt Martha's Usage of the Aunt Martha's House Prior to March 31, 2020 Satisfied Zoning and Building Code Conditions.

Since 2012, Aunt Martha's has owned a single-family house at 14401 Pulaski Road in Midlothian, Illinois (the "Aunt Martha's House"), and until recently has operated it as a group home for up to eight homeless young adults between the ages of 18 and 24 years providing support and transitional services. (Doc 1 ¶¶ 32, 38; Ex. A, Weinert Decl. ¶ 9.)

On June 27, 2012, the Village passed Ordinance No. 1792, which amended the definitions of "Community Residence, Large" in the Village Zoning Code, codified at Village Code § 11-16-3,[1] to read as follows:

[1] The Village Code is available at https://www.sterlingcodifiers.com/codebook/m_index.php?book_id=851. The Village's Zoning Code is located at Title 11 of the Village Code. The Village's Building Code is located at Title 4 of the Village Code. (Weinert Decl. ¶ 4.)

> COMMUNITY RESIDENCE, LARGE: This use includes residential facilities shared by twenty four (24) hour resident staff and seven (7) or more disabled individuals, elderly individuals, minors, adjudicated wards of the court (under the Illinois juvenile court act or the Illinois probate act), or individuals, who are eighteen (18) to twenty four (24) years of age, are not wards of the court and who require specialized attention and care (including, but not limited to, life skill education, therapy or counseling) in order to achieve personal independence, who live together as a single housekeeping unit in a long term, family like environment, where staff persons provide care, and facilitate education and participation in community activities for the residents in order to enable them to live as independently as possible in a residential environment. This use shall not include institutional "assisted living facility", as defined herein, or an alcohol or drug treatment center, a work release facility for convicts or ex-convicts, or other facilities serving as an alternative to incarceration.

(Weinert Decl. ¶ 10.) A "Community Residence, Small" facility is described in the exact same way, except that it serves six or fewer residence. (*Id.*) Aunt Martha's House was, and still is, zoned in District B-3, "Community Commercial." Structures qualifying as "Community Residence, Large" and "Community Residence, Small" are permitted uses in a District B-3, so long as they also comply with the standards set forth in Zoning Code § 11-9-2, which states the following:

> (B) Community Residence, Small Or Large: Small or large community residences shall meet all federal, state and local requirements including, but not limited to, licensing, health, safety and building code requirements. In addition, the following criteria shall be considered:
>
> > 1. The cumulative effect of such uses will not alter the residential character of the neighborhood.
> > 2. The facility shall retain a residential, rather than institutional, character.
> > 3. The operation of the facility shall not adversely impact surrounding properties.
> > 4. Each operator shall make available to the village fire department and police department, upon request, a list indicating the names, addresses and phone numbers of all adults or children being cared for in the community residence.

(Weinert Decl. ¶ 11.)

Prior to March 31, 2020, the Village believed that Aunt Martha's was running a group home consistent with a "Community Residence, Large" use for up to eight young homeless adults, between the ages of 18 and 24 years. In that setting, the Village believed that Aunt

Martha's provided supportive and transitional housing to achieve personal independence, living together as a single housekeeping unit in a long-term, family-like environment, where staff provided care, and facilitated education and participation in community activities for the residents in order to enable them to live as independently as possible in a residential environment. The Village believed that this usage was consistent with the standards set forth in Village Code § 11-16-3 & 11-9-2(B). (Weinert Decl. ¶ 12.)

The Village also believed that since the Aunt Martha's House was a "Community Residence, Large" facility serving adults ages 18 to 24 years on a non-transient basis, it qualified under Section 310.5 of the International Building Code ("IBC"), which was adopted into the Village Code, as a Residential Group R-4. Until March 31, 2020, the Village believed that the Aunt Martha's House complied with the Village Building Code as a Residential Group R-4 structure and the Zoning Code as a Community Residence, Large in a B-3 Zoning District. (Weinert Decl. ¶¶ 13-15.)

II. Aunt Martha's Requested a Building Permit in April 2020 but Intentionally Avoided Disclosing Its Plan to Alter the Use of the Aunt Martha's House From a Group Home for Homeless Young Adults to a Medical Quarantine Center for Persons Aged 0 to 18.

The Village Building Superintendent, Nicholas Weinert, has the duty under the Village Code to review all building permits and to approve or deny them, to enforce the Building Code, and to enforce the Zoning Code. (Weinert Decl. ¶¶ 5–8.) A representative from Aunt Martha's named Angelica Jimenez first reached out Superintendent Weinert via email on March 31, 2020. Ms. Jimenez advised that the Aunt Martha's House currently had five rooms and that Aunt Martha's wanted to expand its capacity to eight or nine rooms with a new layout. Ms. Jimenez asked whether this was a permitted use within the current zoning district. Superintendent Weinert emailed back asking her what the additional rooms would be used for and what usage was

planned. Ms. Jimenez responded, "We currently operate a homeless youth facility at that location. We currently have 5 rooms at that location and wanted to increase the number of rooms to 8 or 9 and wanted to see if we needed to get a special permit for that." Later in the email chain, Ms. Jimenez clarified that she "thought we were working with 18–24 year olds[.]" Superintendent Weinert advised that different standards would apply depending on the number of residents and the usage. (Weinert Decl. ¶ 16.)

On April 3 and 4, 2020, the Midlothian Police were called to the Aunt Martha's House for disturbance complaints. (Ex. B, Delaney Decl. ¶ 8.) Both complaints related to a single resident of the Aunt Martha's House named S.C., who was committing acts of physical violence and making threats to harm herself. The resident was transported to the hospital. During these encounters, Aunt Martha's staff advised Midlothian police that S.C. had tested positive for COVID-19. The responding officers were potentially exposed during the encounter, and they were required to self-isolate until they could be tested, which resulted in a reduction in available workforce during that time period. (Delaney Decl. ¶¶ 8–10.)

On April 4, 2020 (Saturday), Midlothian Police Chief Delaney emailed Superintendent Weinert (among others) to advise that the Aunt Martha's House "intends to convert their facility into a COVID19 treatment center for youth that tested positive." That same day, Superintendent Weinert responded to Chief Delaney, "Thanks, they must have changed their mind. When I spoke to the group home management Thursday afternoon they had a positive case. All personnel were removed and relocated. The home was to be professionally cleaned and then remodeled to increase capacity. They were asking about permits and requirements. I will call management Monday to find out what their game [plan] is now." (Weinert Decl. ¶ 17.)

On April 6, 2020 (Monday), Superintendent Weinert called Ms. Jimenez and asked again about Aunt Martha's intended usage for the Aunt Martha's House. Mary Martin from Aunt Martha's returned Superintendent Weinert's call, but would not confirm the intended usage for the Aunt Martha's House. Neither Ms. Jimenez nor Ms. Martin told Superintendent Weinert that Aunt Martha's intended to use the Aunt Martha's House as a quarantine center. (Weinert Decl. ¶ 18.) Indeed, the Declarations of Ms. Jimenez and Ms. Martin in this case confirm that they did not disclose to Superintendent Weinert that the Aunt Martha's House was intended to be used as a quarantine center. (*See* doc. 18-3, Martin Decl. ¶ 12 and doc. 18-9, Jimenez Decl. ¶ 5.)[2]

Aunt Martha's misdirection continued on April 6 and 7, 2020, when Ms. Martin emailed Superintendent Weinert Aunt Martha's first application for a building permit and the building's current architectural drawings. The application described the project only as follows: "Negative pressure HVAC system and minor remodel for single occupancy rooms." The application valued the project at $198,980. (Weinert Decl. ¶ 20.)

Confused by why a "minor remodel" would cost nearly $200,000, Superintendent Weinert advised Ms. Martin on April 8, 2020 that the application could not be approved because Aunt Martha's had not submitted drawings for the proposed construction, its description of a "minor remodel" was inconsistent with the project price, and the application did not include stamped architectural drawings, which were required to include information on wall construction, mechanicals, electrical, plumbing, fenestration, and egress, among other things. Schematics that were provided were dark and illegible. Superintendent Weinert could not make a decision on whether to grant a permit based on the information provided. (Weinert Decl. ¶ 21.)

[2] Superintendent Weinert further disputes the allegation in Ms. Martin's Declaration that he told Ms. Martin that the Mayor would not approve the building permit. The Mayor did not make that comment to Superintendent Weinert, and Superintendent Weinert did not make that comment to Ms. Martin. Such comment would be inconsistent with the Village Code, which delegates authority to Superintendent Weinert to issue or reject building permits.

Aunt Martha's Chief Legal and Administrative Officer, Jessica Cummings, responded on April 8, 2020 with a letter advising, for the first time, that Aunt Martha's intended to alter the use from a group home for 18–24 year olds to a facility to "house youth in care who will range in age from 0–18 years and will be overseen 24 hours a day/7 days a week by Aunt Martha's staff." Nowhere in the letter does Ms. Cummings disclose that the reason for the modifications is to host a quarantine center for COVID-19 positive patients, but rather Ms. Cummings slyly advises that the negative air pressure HVAC system and the proposed renovations on the property are needed "to provide safe environment for up to eight (8) youth during the COVID-19 pandemic at the request of [DCFS]." (Weinert Decl. ¶ 22.) Superintendent Weinert emailed Ms. Martin that same day advising that the HVAC system could be approved if Aunt Martha's would submit a separate application for that work, but that the remodel required additional information. (Weinert Decl. ¶ 23.)

On April 11, 2020 (Saturday), Aunt Martha's general contractor, Pyra-Med Design and Construction, emailed Superintendent Weinert a new building permit application for the HVAC System, which the contractor valued at $78,000. Pyra-Med also submitted sketches for the proposed remodel showing where certain rooms would be divided, but containing no other information. (Weinert Decl. ¶ 25.) On April 13, 2020, Superintendent Weinert emailed Pyra-Med and advised that the drawings were still deficient to approve a remodel. Superintendent Weinert also advised at that time that since Aunt Martha's intended to house youths ages 0 to 18, its occupancy classification under the IBC was no longer Residential Group R-4, and that it would need to adhere to more stringent IBC standards. (Weinert Decl. ¶ 26.)

On April 13, 2020, Ms. Cummings emailed Superintendent Weinert a letter asking him to expedite the review process for the building permit related only to the HVAC system. She

advised that Aunt Martha's expected to begin housing at least five youths starting April 22 at the Aunt Martha's House, and requested approval of the HVAC system by April 15. Ms. Cummings again failed to mention that Aunt Martha's intended to operate a medical quarantine center for COVID-19 positive patients. (Weinert Decl. ¶ 26.) That same day, Superintendent Weinert responded via email to Ms. Cummings that he had spoken to the Pyra-Med, who had agreed to supply needed information, which the contractor did. Based on Ms. Cummings's request for expedited review, the Building Department approved the building permit for the HVAC system on April 15, 2020. (Weinert Decl. ¶ 26.)

On April 17, 2020, Aunt Martha's President and CEO Raul Garza sent a letter to Village Officials thanking them for working with Aunt Martha's to approve the negative pressure HVAC system. Mr. Garza explained that Aunt Martha's intended to "house youth in care who will range in age from 0–18 years and will be overseen 24 hours a day/7 days a week by Aunt Martha's staff." Mr. Garza offered the Village "priority use of our COVID-19 testing facility that will be located in Harvey, IL . . . as a resource to the Village of Midlothian." Mr. Garza did not state in his letter that Aunt Martha planned to transition its group home into a medical quarantine center, and in fact suggested otherwise by offering COVID-19 testing at Aunt Martha's location in Harvey, Illinois. (Weinert Decl. ¶ 27.)

On April 20, 2020, counsel for the Village emailed Aunt Martha's and advised that housing youths 0–18 years of age would reclassify the Aunt Martha's House under the IBC as an Institutional Group I-2 structure rather than a Residential Group R-4 structure. Village's counsel also advised that the Aunt Martha's House did not satisfy Institutional I-2 standards. (Weinert Decl. ¶ 28.) Following this letter, the Village and Aunt Martha's exchanged several letters and conducted a telephone conference on May 14, 2020, during which Aunt Martha's finally

disclosed for the first time to Superintendent Weinert and Village counsel that it intended to use the facility as a quarantine and treatment center for up to eight COVID-19 positive patients aged 0 to 18 years. This use, as described in Aunt Martha's Complaint, includes medical and nursing care like infection control, monitoring and treating symptoms, testing, and utilizing special medical equipment. (Doc. 1 ¶ 43.) Aunt Martha's also disclosed for the first time during this call that COVID-19 positive patients would be cycled out after their quarantine was complete for new COVID-19 positive patients. (Weinert Decl. ¶ 29.)

III. The Relevant Building Code Provisions and Aunt Martha's House's Classification as an Institutional Group I-2.

Aunt Martha's proposed use as a medical quarantine center for children aged 0 to 18 years qualifies it as an Institutional Group I-2 classification under the IBC, which means it must comply with stricter building code standards than if it were classified as Residential Group R-4.

Classification of a building as a Residential Group R-4 is defined as follows:

> **310.5 Residential Group R-4**. Residential Group R-4 occupancy shall include buildings, structures or portions thereof for more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised residential environment and receive *custodial care*.[3] Buildings of Group R-4 shall be classified as one of the occupancy conditions specified in Section 310.5.1 or 310.5.2. This group shall include, but not be limited to, the following:
>
> Alcohol and drug centers
> Assisted living facilities
> Congregate care facilities
> *Group homes*
> Halfway houses
> Residential board and care facilities
> Social rehabilitation facilities
>
> Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code.

[3] Italics indicate that the term is defined in the IBC.

> **310.5.1 Condition 1**. This occupancy condition shall include buildings in which all persons receiving custodial care, without any assistance, are capable of responding to an emergency situation to complete building evaluation.
>
> **310.5.2 Condition 2**. This occupancy condition shall include buildings in which there are any persons receiving custodial care who require limited verbal or physical assistance while responding to an emergency situation to complete building evacuation.

(Weinert Decl. ¶¶ 30–31.)

Aunt Martha's proposed use to house youths aged 0 to 18 years fails to meet Conditions 310.5.1 and 310.5.2 of Residential Group R-4 because small children, including infants aged 0, which Aunt Martha's has indicated it intends to accept, are not "capable of responding to an emergency situation to complete building evacuation" without assistance or with limited verbal or physical assistance. Children that young need complete assistance to evacuate the building. Based on this, Superintendent Weinert believes that Aunt Martha's proposed use is not an occupancy properly classified as a Residential Group R-4. (Weinert Decl. ¶ 32.)

Classification of a building as Institutional Group I-2 is defined as follows:

> **308.3 Institutional Group 1-2.** Institutional Group 1-2 occupancy shall include buildings and structures used for *medical care* on a 24-hour basis for more than five persons who are *incapable of self-preservation.* This group shall include, but not be limited to, the following:
>
> *Foster care facilities*
> *Detoxification facilities*
> *Hospitals*
> *Nursing homes*
> *Psychiatric hospitals*
>
> **308.3.1 Occupancy conditions**. Buildings of Group I-2 shall be classified as one of the occupancy conditions specified in Section 308.3.1.1 or 308.3.1.2.
>
> **308.3.1.1 Condition 1**. This occupancy condition shall include facilities that provide nursing and medical care but do not provide emergency care, surgery, obstetrics or in-patient stabilization units for psychiatric or detoxification, including, but not limited to, nursing homes and foster care facilities.

> **308.3.1.2 Condition 2**. This occupancy condition shall include facilities that provide nursing and medical care and could provide emergency care, surgery, obstetrics or in-patient stabilization units for psychiatric or detoxification, including but not limited to hospitals.
>
> **308.3.2 Five or fewer persons receiving medical care**. A facility with five or fewer persons receiving medical care shall be classified as Group R-3 or shall comply with the International Residential Code provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the International Residential Code.

(Weinert Decl. ¶ 33.)

Aunt Martha's proposes to house more than five youths (up to eight youths). Aunt Martha's proposes to receive youths of such a young age that they are "incapable of self-preservation" (like youths aged fewer than 5 years). Aunt Martha's proposes to receive youths that require "medical care" (which is defined by the IBC as "care involving . . . nursing or for psychiatric purposes"), in that Aunt Martha's proposes to serve a population of youths that are positive or symptomatic of COVID-19, and quarantine and nurse the symptoms of COVID-19. This proposed use satisfies Occupancy Condition 1 of Institutional Group I-2 (308.3.1.1), and so Superintendent Weinert believes that the Aunt Martha's House qualifies as an Institutional Group I-2 classification. (Weinert Decl. 34.)

IV. The Aunt Martha's House Does Not Meet Building Code Standards for Institutional Group I-2.

Superintendent Weinert discussed the Office of State Fire Marshall's findings regarding the Aunt Martha's House with the Midlothian Fire Chief. He also reviewed the schematics of the structure provided by Aunt Martha's in its permitting applications, as well as the proposed remodel sketches. Based on this information, Superintendent Weinert formed the opinion that the Aunt Martha's House fails to satisfy multiple IBC standards for an Institutional Group I-2 structure, set forth in Section 407 of the IBC, with or without the remodel. The specific

provisions of the IBC with which Aunt Martha's fails to comply are set forth in Weinert Declaration ¶ 35.

V. Aunt Martha's Proposed Use as a Medical Quarantine Center Is Not a Permitted Use in Zoning District B-3.

Further, the proposed use of the Aunt Martha's House as a medical quarantine center does not qualify as a "Community Residence, Large" or "Community Residence, Small" because the purpose of the quarantine center is *not* to house persons "in order to achieve personal independence, who live together as a single housekeeping unit in a long term, family like environment, where staff persons provide care, and facilitate education and participation in community activities for the residents in order to enable them to live as independently as possible in a residential environment." (Weinert Decl. ¶ 33); Village Code § 11-16-3.

Also, a "medical quarantine center for COVID-19 youths" is not a listed use (permitted or special) in the Village Zoning Code. (Weinert Decl. ¶ 36); Village Code 11-6-2. To accommodate the proposed use, the Village requested that Aunt Martha's submit an application for a special use permit to operate the quarantine center in the B-3 Zoning District. To date, Aunt Martha's has not applied for a special use permit. (Weinert Decl. ¶ 37.)

VI. Superintendent Weinert's Enforcement of the Village Building and Zoning Code Is Not Motivated By Any Discriminatory Animus.

Superintendent Weinert did not act with the intent to discriminate, nor did he actually discriminate, nor will he discriminate, against Aunt Martha's or its consumers on the basis of disability, familial status, or any other protected category. Rather, from the outset, his obligation under the Village Code has been to ensure that Aunt Martha's House satisfies the applicable Building and Zoning Codes standards related to its intended use for the purpose of protecting the

safety of the residents in the Aunt Martha's House and the surrounding community. (Weinert Decl. ¶ 38.).

STANDARD

Temporary restraining orders and preliminary injunctions serve different, though related, purposes. *Savis, Inc. v. Cardenas*, No. 18 CV 6521, 2018 WL 5279311, at *7 (N.D. Ill. Oct. 24, 2018). By definition, a TRO precedes any preliminary judgment and is "issued to preserve the status quo before a preliminary injunction hearing may be held." *Id.* at *7 (quoted omitted). "A temporary restraining order . . . is an extraordinary and drastic remedy, which should not be granted unless the movant carries the burden of persuasion by a clear showing." *Recycled Paper Greetings, Inc. v. Davis*, 533 F. Supp. 2d 798, 803 (N.D. Ill. 2008) (quotes omitted). The party moving for a temporary restraining order bears the burden of making a clear showing that it is entitled to the relief it seeks. *See Goodman v. Illinois Dept. of Fin. & Prof'l Regulation*, 430 F.3d 432, 437 (7th Cir. 2005). Aunt Martha's burden is even greater than usual because the interim injunction it requests in its present motion would give its substantially all the relief it seeks in this lawsuit. *See, e.g., Boucher v. Sch. Bd. of Sch. Dist. of Greenfield*, 134 F.3d 821, 827 n. 6 (7th Cir. 1998) ("A preliminary injunction that would give the movant substantially all the relief he seeks is disfavored, and courts have imposed a higher burden on a movant in such cases.") "The essence of a temporary restraining order is its brevity, its ex parte character, and . . . its informality." *Geneva Assurance Syndicate, Inc. v. Med. Emergency Servs. Assocs.*, 964 F.2d 599, 600 (7th Cir. 1992).

A party seeking a temporary restraining order must first demonstrate as a threshold matter that (1) its case has some likelihood of succeeding on the merits; (2) no adequate remedy at law exists; and (3) it will suffer irreparable harm if preliminary relief is

denied. *Somerset Place, LLC v. Sebelius*, 684 F. Supp. 2d 1037, 1040 (N.D. Ill. 2010) (citing *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir.1992)). If the moving party meets this burden, then the court must consider the irreparable harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied. *Storck USA, L.P. v. Farley Candy Co.*, 14 F.3d 311, 314 (7th Cir.1994). Finally, the court considers the public interest served by granting or denying the relief, including the effects of the relief on non-parties. *Id.* "Failure to establish any one of these elements is sufficient to deny a motion for TRO or preliminary injunction. *Harder v. Vill. of Forest Park*, No. 05 C 5800, 2005 WL 3078096, at *2 (N.D. Ill. Nov. 14, 2005).

ARGUMENT

I. Aunt Martha's Request to Operate a Medical Quarantine Center Disturbs the Status Quo, Does Not Comprise an Emergency, and Does Not Prevent Irreparable Harm.

"[A] preliminary injunction is a provisional remedy designed to preserve the status quo until the case can be heard upon the merits." *Westinghouse Elec. Corp. v. Free Sewing Mach. Co.*, 256 F.2d 806, 808 (7th Cir. 1958). "The status quo is the last uncontested status which preceded the pending controversy." *Id.* at 808. In this case, the status quo is the Children's Quarantine Center ("CQC") remaining open for its current residents in quarantine so that those residents do not lose their housing pending further hearing. *See* (Doc. 18, p. 30).

While the CQC is currently in violation of various zoning and building codes, creating numerous risks to children residing within the facility, as well as jeopardizing the health of the general public and first responders, the Village also recognizes that any COVID infected or exposed DCFS Youth-In-Care currently residing at the CQC needs a safe and reliable place to quarantine. For those reasons, the Village offered to preserve the status quo by advising Aunt

Martha's on May 16 that it will not take action to remove the current residents infected with COVID-19 or take other enforcement action until after the 14 day quarantine period expires. (Doc. 18-2, Village's May 16 Letter.)

With the status quo preserved, the Village's counsel emailed Aunt Martha's counsel offering to discuss the case on May 16 or 17. (Ex. C, M.Victor Email to R.Meza dated 5.16.20.) Aunt Martha's declined the offer and filed this motion instead seeking an injunction that would authorize Aunt Martha's to take in *additional* DCFS Youth-In-Care who have tested positive and/or been exposed to COVID-19. (Doc. 18, p. 4). This request is for a change to the status quo, and one that is dangerous because Aunt Martha's House is in violation of various codes.

Aunt Martha's also fails to show irreparable harm. Aunt Martha's claims that DCFS requested placement for one 16 or 17-year old minor. (Doc. 18, p. 24). However, Aunt Martha's House is not the only place in the State of Illinois where this individual can go. Aunt Martha's serves over 650 communities.[4] It has relationships with healthcare providers across Illinois.[5] It already demonstrated that it has the ability and resources to find alternative housing, including other single-family homes and hotels. (Doc. 1 ¶ 32). Aunt Martha's has not met its burden to demonstrate that it or its consumers will suffer irreparable harm.

Further, Aunt Martha's began discussions about the CQC program in mid-March. It has had ample time to seek a special use or find other locations in Illinois. Aunt Martha's delay in seeking relief undermines its claim for an emergency.

II. Aunt Martha's Is Not Likely to Succeed on the Merits.

Jacobson recognizes the Village's interest in protecting the public in times of a pandemic. The Village of Midlothian is home rule under Art. VII, sec. 6 of the Illinois

[4] https://www.auntmarthas.org/our-impact/
[5] https://www.auntmarthas.org/business-directory/

Constitution. Consistent with its home rule authority, the Village has enacted a robust system of rules and standards that are specifically designed and intended to achieve the goals of protecting health and safety. (Weinert Decl. ¶ 4.) These provisions protect all individuals who cross of the borders of the Village, including, of course, the members of the Village community as a whole. But additionally, the Village Code protects the very children who occupy Aunt Martha's House. Further, the Village Code protects employees of the Village, including first responders.

Specifically, the Village enacted a Zoning Code, which aims to fulfill several important interests relevant in this case. (Village Code 11-1-2(A)) (safety, incompatible uses, fires, explosions, alterations that do not comply, etc.). The Village has also codified "Building Regulations," which are motivated by a purpose to provide for the public safety, health and welfare through structural strength and stability, means of egress, adequate light and ventilation and protection of life and property from fires and hazards incident to the design, construction, alteration or demolition of buildings and structures" within the Village. (Village Code 4-1-2).

Aunt Martha's sudden defiance of the law is a striking about-face. Aunt Martha's formerly complied with the Village's rules that applied to protect the Home's 18-24 year old residents and the staff who serve them. (Weinert Decl. ¶ 12.) These are the same standards that Aunt Martha's now flouts. The Village repeatedly invited Aunt Martha's to provide additional information to Superintendent Weinert or to file an application for a special use permit. (Village Code 11-2-16) (purpose of special use is to protect public health and safety). Aunt Martha ignored these requests and instead began accepting COVID-19 positive patients without Village approval.

Aunt Martha's falsely recasts this dispute about statutory interpretation as one involving "intentional discrimination." But Aunt Martha's has not presented any evidence of intentional

discrimination, and Superintendent Weinert has expressly disclaimed any such intent. Aunt Martha's cannot satisfy the elements of a claim under the FHA. It does not allege that it is a protected dwelling or that it qualifies as a protected familial status. Aunt Martha's cannot prove intentional discrimination. Also, Aunt Martha's cannot show that the Village denied a request for a reasonable accommodation. This court should deny Aunt Martha's motion for injunctive relief.

A. The Quarantine Center is not a protected "Dwelling" under the FHA.

As acknowledged by Aunt Martha's, under the FHA, the proposed Medical Quarantine Center must fall within the statutory definition of "dwelling" to receive protection from discrimination. *See* (Doc. 18, pp. 19-20) (citing 42 U.S.C. § 3601(a)-(c) and 3601(f)(2)(B)). Pursuant to Section 3602(b) of the FHA, "Dwelling" means "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more families . . . ." 42 U.S.C. §3602(b). Aunt Martha' maintains that the proposed quarantine facility classifies as a dwelling because the DCFS Youth-In-Care residing at the facility are accorded a "familial status" under the FHA. (Doc. 18, p. 20).

"Whether a building is a 'dwelling' depends on the length a person stays at a residence, and whether that person intends to return to the home." *Schneider v. Cty. of Will, State of Illinois*, 190 F. Supp. 2d 1082, 1087 (N.D. Ill. 2002). In *Schneider*, the court held that a bed and breakfast did not fall within the FHA definition of "dwelling" because of the transient nature of the facility. 190 F. Supp. 2d at 1087 (N.D. Ill. 2002) (highly unlikely that any customers of the bed and breakfast would "intend to return"). In this case, Aunt Martha's, by its own admission, is seeking to use the CQC solely as a "transient" quarantine facility. (Doc. 18, p. 28); (Weinert Decl. ¶ 29). As further made clear by the supporting record, this means housing DCFS Youth-In-Care exposed to COVID-19 for period of up to, but not exceeding, fourteen days. (Doc. 18-1,

May 14 Letter from Aunt Martha's Counsel describing length of quarantine). Similar to the customers in *Schneider*, it is highly unlikely that any residents of the CQC would "intend to return" to the quarantine facility, especially given that to return would put the former occupants back into contact with exposed individuals. Aunt Martha's use is akin to a transient stay at a hospital, not a residence to which individuals intend to return.

B. The definitions of "familial status" and "handicap" do not apply to protect Aunt Martha's.

Aunt Martha's has not adequately established that it qualifies for protected "familial status" under the FHA. As Aunt Martha's notes, the individuals involved (here, the DCFS Youth-In-Law) must be "domiciled" with the other person (here, Aunt Martha's employees). A "domicile" is an individual's "true, fixed, and permanent home and principal establishment." *Keys Youth Servs., Inc. v. City of Olathe, KS*, 248 F.3d 1267, 1272 (10th Cir. 2001). Traditionally, an individual has only one domicile at a time. *Id.* If a group home is operated by caretakers who do not live at the premises and who work in shifts, then the caretakers are not "domiciled" with the individuals; and therefore, there is no "familiar status" protection. *Id.* at 1272; *Westhab, Inc. v. City of New Rochelle*, No. 03 CIV. 8377(CM), 2004 WL 1171400, at *16 (S.D.N.Y. May 3, 2004) (following *Keys*). Here, Aunt Martha's has not supported its claim to "familial status" protection with evidence establishing the staff will actually *live* the House. Aunt Martha's has not made the "clear showing" necessary to establish the extraordinary relief of an injunction.

Aunt Martha's maintains that the DCFS Youth-In-Care residing at the CQC have a "handicap" because they suffer from physical, mental, behavioral and developmental disabilities and because they have had known exposure to the COVID-19 virus or have tested positive for the COVID-19 virus. (Doc. 18, pp. 18-19). However, the gravamen of Aunt Martha's claim is

that the Village is discriminatorily applying its zoning ordinances and building codes to prevent the CQC from serving as a quarantine facility because the DCFS Youth-In-Care have tested positive for, or have been exposed to, COVID-19, *not* because the DCFS Youth-In-Care suffer from a physical, mental, behavioral or developmental disability. (Doc. 18, p. 23) ("Defendant is actively attempting to prevent DCFS Youth-In-Care with exposure to COVID-19 from being quarantined in their Village").

Aunt Martha's argues that COVID-19 is a "handicap" within the meaning of the FHA because it is a particularly contagious disease. Aunt Martha's cites to a joint statement from the Department of Housing and Urban Development and the Department of Justice which states that the term "physical or mental impairment" includes diseases. (Doc. 18, pp. 18-19). As noted in the joint statement, the term "handicap" in the FHA has the same legal meaning as the term "disability" in the Americans with Disabilities Act ("ADA"). (Doc. 18-20, pp. 3-4, fn. 2) (citing *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998)). Under the FHA and the ADA, "handicap" and "disability" mean, with respect to a person, "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); 42 U.S.C. § 12102.

While COVID-19 is an extremely dangerous and contagious respiratory virus, Aunt Martha's allegations that it intends to quarantine DCFS Youth-In-Care who have tested positive, or have been exposed to, the virus, do not establish that those conditions are a "handicap" under the meaning of the FHA. *Prince v. Illinois Dep't of Revenue*, 73 F. Supp. 3d 889, 893 (N.D. Ill. 2010) ("[n]ot every medical affliction amounts to, or gives rise to, a substantial limitation on a major life activity.") Aside from alleging that the DCFS Youth-In-Care who have tested positive, or have been exposed to, the virus, would be subject to a 14-day quarantine at the facility, Aunt

Martha's has not alleged the virus has limited or restricted their ability to perform major life activities. *Id.* (allegation that he has diabetes does not mean that he is disabled under ADA). Indeed, Aunt Martha's proffered evidence indicates that the most infected people do not need special treatment and that the type of individuals Aunt Martha's seeks to quarantine are those *without* serious symptoms or any serious underlying health condition. (Doc. 18-10 ¶¶ 9, 18, 19).

Second, Aunt Martha's lumps a COVID-19 diagnosis and a COVID-19 exposure as one in the same. While they may be the same from strategic quarantine perspective, they are not the same as contemplated by the joint statement and the FHA's meaning of "handicap." This would allow anyone who has been *exposed* to any type of illness (*e.g.* cold, flu) to be designated as handicap for the purposes of an FHA claim. This cannot be the case.

C. Aunt Martha's intentional discrimination claim fails.

1. Aunt Martha's is illegally operating in the Village, because it is no longer using Aunt Martha's House as a "Community Residence," but instead, as a transient, Medical Quarantine Center without Village oversight or approval.

Aunt Martha's, by its own admissions, is not operating either a large or small "Community Residence" under Village Code § 11-16-3 because the purpose of the facility as a CQC is not to house residents "to achieve personal independence, who live together as a single housekeeping unit in a long term, family like environment, where staff persons provide care, and facilitate education and participation in community activities for the residents in order to enable them to live as independently as possible in a residential environment." (Weinert Decl. ¶ 10.) Rather, the CQC is a "program" where DCFS Youth-In-Care between the ages of 0–18 will remain at the single-dwelling for the length of a quarantine period, which is 14 days. (Doc. 18, p. 8; doc. 18-2). This usage is not for "long term," and it is not consistent with a "family like environment." Because the individuals are completely quarantined, there will not be

"participation in community activities for the residents in order to enable them to live as independently as possible in a residential environment." This usage is not intended to help residents "achieve personal independence." This is not a Community Residence. It is a short-term medical quarantine facility, administering a program designed by doctors and implemented with trained staff providing specialized medical care tailored to COVID-19. *See* (Doc. 18 pp. 8-9; 18-6, Dr. Barron Declaration).

Children's Quarantine Centers are not usages defined in the Village Zoning Code. They are not permitted uses in the B-3 Zoning District, and they are not even usages for which a special use permit is statutorily authorized. However, they are also not "prohibited" usages in the B-3 Zoning District. They are simply undefined. Since the CQC proposed by Aunt Martha's is not a permitted use, the Village requested that Aunt Martha's apply for a special use permit. Aunt Martha's refused to do so. Inasmuch, Aunt Martha's proposed use is in violation of the Village Zoning Code.

2. Aunt Martha's fails to meet codified standards applicable to the specific use of a Community Residence because it violates building code and safety rules designed to protect vulnerable children, including those who currently occupy Aunt Martha's House.

Aunt Martha's does not qualify as a Community Residence under Section 11-16-3. Even if it did, the use of Aunt Martha's House as Medical Quarantine Center violates applicable mandatory standards for use. Community residences "shall meet all federal, state and local requirements including, but not limited to, licensing, health, safety and building code requirements." (Weinert Decl. ¶11) (citing Village Code § 11-9-2(B)) ("Standards for Specific Uses" applicable to "Community Residence"). Additionally, the "facility shall retain a residential, rather than institutional, character." (Village Code § 11-9-2(B)(2). The Medical

Quarantine Center violates these standards; therefore, it does not qualify as a Community Residence.

Aunt Martha's knew that its proposed new use would be controversial, and so it purposefully avoided disclosing that fact. When Aunt Martha's first reached out to Superintendent Weinert on March 31, 2020 about its current zoning district and remodel, Aunt Martha's failed to disclose its anticipated use as a Medical Quarantine Center, and even stated that it intended to just increase its current capacity for homeless young adults. (Weinert Decl. ¶ 16.) The building permit application submitted on April 6 and 7 described the project only as, "Negative pressure HVAC system and minor remodel for single occupancy rooms." The application valued the project at $198,980. Superintendent Weinert—who is motived only by a desire to ensure compliance with safety codes (Weinert Decl. ¶ 38)—could not approve the application because of the lack of critical information, which was important for his compliance review. For instance, based on the application, Superintendent Weinert could not determine compliance with: (1) Village ordinances; (2) the National Fire Protection Association 13 ("NFPA 13"); (3) the NFPA 72 drawings for smoke and carbon monoxide alarms and pull stations; and (4) ADA compliance (both interior and exterior). (Weinert Decl. ¶ 21.) Superintendent Weinert requested additional information—consistent with his responsibilities to ensure compliance and ensure safety in an informed way—and Aunt Martha's supplied the necessary information, the HVAC system was approved. (Weinert Decl. ¶ 26.)

When it became clear that Aunt Martha's intended to house children as young as infants (who cannot "self-preserve") and not adults aged 18–24, Superintendent Weinert realized that the Aunt Martha's House would classify as an "Institutional Group I-2" structure under the IBC. (Weinert Decl. ¶¶ 28, 30-34) Under this classification, Aunt Martha's must meet certain

standards to protect the residence (including infants). (Weinert Decl. 35.). These standards relate to the safety of children in the event of a fire or smoke event, building collapse, natural disaster, or even active shooter. Given the current makeup of the structure, it is unsafe for firefighters to enter to save children and does not adequately allow the adults inside to save children. The Aunt Martha's House does not meet the standards for an Institutional Group I-2 structure, (Weinert Decl. ¶ 35), so it cannot operate as one in the Village.

3. Aunt Martha's use violates other standards for the specific uses of a Community Residence.

Aunt Martha's violates other use standards applicable to Community Residences. Aunt Martha's is required to "make available to the village fire department and police department, upon request, a list indicating the names, addresses and phone numbers of all adults or children being cared for in the community residence." (Village Code § 11-9-2(B)(4)). On May 16, 2020, the Village requested this information, but Aunt Martha's has not responded. (Doc. 18-2, Village's May 16 Letter). This is the type of information that first responders need should they be called to respond. As discussed above, Aunt Martha's has a history of hiding information that the Village needs for safety purposes. Also, the "operation of the facility shall not adversely impact surrounding properties." (Village Code § 11-9-2(B)(3)). Aunt Martha's has been unable to satisfy this standard as demonstrated by S.C.'s escape from the facility to commingle with the community and to expose responding police officers to COVID-19. (Delaney Decl. 8(b)-(c)).

4. The Village's refusal to accept Aunt Martha's illegal and dangerous interpretation of the definition for Community Residence is not discrimination, but rather, is rational and justifiably related to protect children, first responders, and the community at large.

As demonstrated above, it is reasonable for the Village to enforce safety standards related to safety of the occupants, first responders, and the community. According to *Jacobson*, this duty

takes on special importance when a pandemic threatens society. By hiding this purpose, Aunt Martha's attempted to hamstring the Village from fulfilling its goal. When the Village refused to let Aunt Martha's illegally operate as a rogue entity, Aunt Martha's filed suit, falsely characterizing the events as discrimination.

These tactics should not be encouraged and are not discrimination under the law. *E.g. Nikolich v. Vill. of Arlington Heights, Ill.*, 870 F. Supp. 2d 556 (N.D. Ill. 2012). In *Nikolich*, a developer who sought to construct a housing facility sued a village after it denied its construction application, which included several zoning amendments and variances. *Id.* at 560. The housing facility was intended to be occupied by those with mental illnesses. The court rejected the developer's claims on several grounds. The court held that it was not discrimination even though the proposed use was the only type of residential housing to be zoned "Institutional" for housing. *Id.* at 562. Further, the village's zoning ordinances were not unrelated to legitimate governmental interests. *Id.* The theory of discrimination was additionally undercut because the village's conduct would have been the same if the proposal was any resident. *Id.* at 563.

The Village has correctly interpreted that Aunt Martha's use does not fit the "Community Residence" definition. A correct statutory interpretation cannot be intentional discrimination. Because Aunt Martha's has a new use, it has to meet new safety rules. This would be true for any entity operating in the Village which changed its use in a way that subjected it to new rules. The Village's conduct was rational related to this legitimate end. *Heine v. Comm'r of Dep't of Cmty. Affairs of New Jersey*, 337 F. Supp. 3d 469, 484 (D.N.J. 2018), *aff'd*, 794 F. App'x 236 (3d Cir. 2020) (actions were taken for nondiscriminatory health and safety reasons and the justification for health, safety, and fire regulations is obvious and it is neutral as to family status). Aunt Martha's argues that this discrimination started after the S.C. incident, but this overlooks that the

HVAC system was *approved* after this incident. Further, Superintendent Weinert contacted Aunt Martha's after the S.C. incident to confirm Aunt Martha's anticipated use, and Aunt Martha's did not disclose to Superintendent Weinert at that time that it planned to host a quarantine center even after he asked directly. (Weinert Decl. ¶ 18.)

For these reasons, this case is like *Nikolich* and the authority relied upon by Aunt Martha's is misplaced. (Doc. 18, p. 20 (citing *North Shore-Chicago Rehab. Inc. v. Vill. of Skokie*, 827 F. Supp. 497, 500 (N.D. Ill. 1993)). *North Shore* is distinguishable, because there, the restrictions at issue "had no rational relationship to the general welfare or safety of the proposed North Shore residents." *Id.* at 501. But *North Shore* additionally noted that restrictions should be upheld where they are "designed to foster the general welfare and safety of residents of such rehabilitation facilities." *Id.* That's the case here. *Sierra v. City of New York*, 579 F. Supp. 2d 543 (S.D.N.Y. 2008) (rejecting FHA claim which alleged that provision of city housing maintenance code prohibiting children from living in single room occupancy discriminated on the basis of family status). Aunt Martha's cannot succeed on the merits of its claim.

D. Aunt Martha's reasonable accommodation claim fails.

Aunt Martha's backup argument to support its FHA claim is that the Village failed to reasonably accommodate. (Doc. 18, pp. 24-26). "The basic elements of an FHAA accommodation claim are well-settled." *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 749 (7th Cir. 2006). To prevail on a failure-to-accommodate claim, a plaintiff must show (1) that the requested accommodation is reasonable; and (2) that the accommodation is "necessary"; (3) to afford the person an equal opportunity to use and enjoy the dwelling. *Id.* Aunt Martha's reasonable accommodation theory fails on each element.

1. Aunt Martha's failed to follow the procedures that exist to aid the Village in evaluating the exact nature of Aunt Martha's requested accommodation and whether that accommodation was reasonable.

As a threshold matter, Aunt Martha's failure to provide accurate information up front and the shifting nature of Aunt Martha's explanations and applications has blockaded the Village's ability to evaluate the accommodation requested, including safety concerns and compliance with the Village Codes. The Village has established a procedure to obtain the information necessary to evaluate accommodation requests, and that procedure is to apply for a special use permit. The Village's "special use process addresses these unique circumstances and regulates such uses to protect the public health, safety, comfort, convenience and general welfare." (Village Code 11-2-16(A)). Aunt Martha's could have filed an application for a special use permit. The Village warned Aunt Martha's that its continued use with a special use permit endangered Aunt Martha's residents and the Village's first responders, and invited Aunt Martha's to submit an application. (Doc. 18-2, Village's May 16 Letter.) Aunt Martha's has so far refused. *E.g.* (Doc. 18-2, Village's May 16 Letter.)

To be sure, the Seventh Circuit has recognized the importance of both public oversight and the special use process as it relates to housing. *See United States v. Vill. of Palatine, Ill.*, 37 F.3d 1230, 1231 (7th Cir. 1994). In *Village of Palatine*, a non-profit sought to establish a group home to help recovering alcoholics. However, given the quantity of proposed residents and the fact that the home would be run by unlicensed, unpaid staff, the proposed use did not fall into the permitted use for "group homes" in a "single-family dwelling." *Id.* at 1232. However, the municipality did allow the type of group home proposed so long as the non-profit's special use was approved. *Id.*

Like in this case, the non-profit in the *Village of Palatine* knew about the process, but, as a matter a practice, it refused to seek any prior zoning approval or a special use prior to operating in its preferred manner. *Id.* In its claim, the non-profit argued that the municipality failed to make a reasonable accommodation.

In evaluating this claim, first, the Seventh Circuit noted that the non-profit's claim for failure to make a reasonable accommodation in its zoning laws was unripe because the non-profit had not yet requested a change in the zoning law. *Id.* at 1233. Second, the Seventh Circuit rejected the argument that the non-profit should be relieved from applying for a special use permit as a reasonable accommodation because the non-profit's interest in avoiding the special use process did not outweigh the village's "interest in applying its facially neutral law to all applicants for a special use approval." *Id.* at 1234. The court stated, "Public input is an important aspect of municipal decision making; we cannot impose a blanket requirement that cities waive their public notice and hearing requirements in all cases involving the handicapped." *Id.*

This case is similar to *Village of Palatine.* Like the non-profit there, Aunt Martha's reasonable accommodation theory has two aspects. It contends that the Village discriminated in the application of its zoning laws, but the Seventh Circuit teaches that this claim is unripe. Aunt Martha's also seeks to avoid the special use process. The Village's special use process would apply to any applicant in the position of Aunt Martha's and this process exists to protect everyone in the community. Under *Village of Palatine,* this theory fails because requiring Aunt Martha's to participate in the special application process is justifiable and is not illegal discrimination.

2. Aunt Martha's request to avoid the Village's procedures and its refusal to follow standards for safety and health is dangerous and unreasonable.

As mentioned above, under *Village of Palatine*, Aunt Martha's request is unreasonable. "An accommodation is reasonable if it is both efficacious and proportional to the costs to implement it." *Wisconsin Cmty. Servs., Inc.*, 465 F.3d at 749 (quoting *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 784 (7th Cir. 2002)). This assessment is a highly fact-specific inquiry and requires balancing the needs of both parties. *Id.* at 753. Accordingly, the court must take into account the costs to the municipality, not just the plaintiff. *See id.*

The Seventh Circuit has summarized the factors courts should consider:

> Some of these costs may be objective and easily ascertainable. Others may be more subjective and require that the court demonstrate a good deal of wisdom in appreciating the intangible but very real human costs associated with the disability in question. On the other side of the equation, some governmental costs associated with the specific program at issue may be a matter of simply looking at a balance sheet. Others, however, may be those intangible values of community life that are very important if that community is to thrive and is to address the needs of its citizenry. *Id.*

Further, a a modification is "unreasonable if it is so at odds with the purpose behind the rule that it would be a fundamental and unreasonable change." *Id.* at 749, 752.

First, Aunt Martha's program has not been "efficacious;" it has demonstrated that it cannot keep its residents safe. There have been several instances of escapees and COVID-19 positive patients commingling with the public and law enforcement.

Second, the costs for the program are steep and detrimental in several ways. Aunt Martha's proposed use puts children at risk if Aunt Martha's House is not compliant with the applicable health and safety standards designed to protect them in the event of an emergency, like the Institutional Group I-2 Building Code standards. Aunt Martha's has never explained why

it cannot find or develop a compliant structure which would meet the stated goals of the CQC program, but in a much safer way.

Aunt Martha's argues that: "If Plaintiff cannot continue to operate CQC, these DCFS Youth-In-Care will have nowhere else to go." (Doc. 18, p. 25). It already demonstrated the ability and resources and cross-state physical footprint to find alternative housing for its residents, including other single-family homes and hotels. (Doc. 1 ¶ 44). Aunt Martha's began discussions about the CQC program in mid-March. It has had ample time to seek a special use or find other locations in Illinois. *See, e.g., Brandt v. Vill. of Chebanse, Ill.*, 82 F.3d 172, 175 (7th Cir. 1996) (not unreasonable to reject request to build multi-unit housing for disabled people in an area zoned for single-family homes because disable "could live as easily, if somewhat more expensively" in other locations). Its pleadings do not identify a specific child at risk of abandonment because Aunt Martha's was required to apply for a special use permit.

Further, the secretive way that Aunt Martha's has operated the CQC represents a tangible threat to the safety of first responders. That threat has already materialized, resulting in reduction in the police force (which has further consequences for the community). In this way, this case is starkly different from the authority Aunt Martha's cites, *Onnomowoc Res. Prog. v. City of Milwaukee*, 300 F.3d 775, (7th Cir. 2002), which found no evidence that the group home would impose additional costs on police and emergency services.

Put simply, Aunt Martha's proposed accommodation to have *carte blanche* authority to operate in any it sees fit and to ignore all codes and procedures is contrary to the purpose of local government oversight. Allowing Aunt Martha's to operate like this will erode the fundamental purpose behind safety rules, and nothing will stop Aunt Martha's from doing it again in the future. If Aunt Martha's gets its way, then it can rely on the ruling in this case to open medical

quarantine centers in any other municipality without notice to the municipality or compliance with building or zoning codes. This is not reasonable.

3. The requested accommodation is not "necessary," because the rules that apply to Aunt Martha's CQC exist for the safety of all and are applied evenhandedly.

Even if an accommodation is reasonable, to succeed on an FHA claim, the requested accommodation must be "necessary," meaning that, "without the accommodation, the plaintiff will be denied an equal opportunity to obtain the housing" of the plaintiff's choice. *Wisconsin Cmty. Servs., Inc.*, 465 F.3d at 749. The "necessary" analysis is a causation inquiry. *Id.* If the proposed accommodation provides no direct amelioration of a disability's effect, it cannot be said to be necessary. *Id.*

Aunt Martha's cites *Good Shepherd Manor Found., Inc. v. City of Momence,* 323 F.3d 557 (7th Cir.2003), to support its case; but *Good Shepard* actually supports the Village's position. *See* (Memorandum, pp. 24, 26). In *Good Shepherd*, a group home challenged a city's attempt to shut off a water supply, arguing that "by not supplying their lot with water and sewage, the city harmed the disabled adults by preventing them from living in the group homes." *Good Shepherd Manor Found., Inc.*, 323 F.3d at 562. The Seventh Circuit rejected the argument, reasoning that "[c]utting off the water prevents anyone from living in a dwelling, not just handicapped people." *Id.* The affected developmentally disabled adults were treated no differently affected than any other resident. Other cases have followed *Good Shepherd* to reject reasonable accommodation claims where zoning ordinances were uniformly imposed. *See, e.g.*, *Nikolich v. Village of Arlington Heights*, 870 F. Supp. 2d 556, 565 (N.D. Ill. 2012). Aunt Martha's has not satisfied its burden to demonstrate that a waiver of all safety rules and building code regulations at the Aunt Martha House is the only way that it can find housing.

4. Aunt Martha's fails to establish the "equal opportunity" element because the Village's application of its Village Code is common to all and is unrelated to discrimination.

Aunt Martha's must also establish the "equal opportunity" element to succeed on its reasonable accommodation claim. *See Wisconsin Cmty. Servs., Inc.*, 465 F.3d at 749. "The 'equal opportunity' element limits the accommodation duty so that not every rule that creates a general inconvenience or expense to the disabled needs to be modified." *Id.* Instead, all that are required are "accommodations necessary to ameliorate the effect of the plaintiff's disability so that she may compete equally with the non-disabled in the housing market." *Id.* This analysis examines whether a policy, if left unmodified, hurts "handicapped people *by reason of their handicap,* rather than . . . by virtue of what they have in common with other people, such as a limited amount of money to spend on housing." *Hemisphere Bldg. Co., Inc. v. Vill. of Richton Park,* 171 F.3d 437, 440 (7th Cir.1999) (emphasis in original).

Here, Aunt Martha's cannot meet the "equal opportunity" element. In *Wisconsin Community Services, Inc.*, an operator of a mental health clinic sued a city and argued that the city must waive the obligation to apply special-use criteria to the clinic because granting the clinic's request would ameliorate overcrowding, a condition that particularly affects disabled clients. 465 F.3d at 54. However, the clinic's obligation to meet the city's special-use standard was not due to the client's disabilities, but instead due to the plan to open a non-profit health clinic in a location where the city desired a commercial, taxpaying tenant instead. *Id.* The Seventh Circuit held that the clinic's claim failed because the city would have rejected similar proposals from non-profit health clinics that service the non-disabled. *Id.*

In *Hemisphere Building Company*, a developer wanted to build residences designed to meet the needs for wheelchair-bound persons, but the zoning prohibited the number of units

desired. 171 F.3d at 439. The developer requested rezoning and also submitted a special use application to pierce rules about density limitations. *Id.* The village rejected this request, but offered a compromise rezoning solution; however, this would have increased the cost to development in a way the developer felt would be cost-prohibitive for prospective purchasers with disabilities. *Id.* The court noted that risk that if piecemeal requests are allowed, it "paves the way" for further requests, until the land-use plan is completed eroded. *Id.* The Seventh Circuit rejected the argument that the increase costs from the refusal of the developer request discriminated against handicapped, reasoning:

> "To require consideration of handicapped people's financial situation would allow developers of housing for the handicapped to ignore not only the zoning laws, but also a local building code that increased the cost of construction, or for that matter a minimum wage law, or regulations for the safety of construction workers. Anything that makes housing more expensive hurts handicapped people." *Id.* at 440.

Accordingly, a "zoning ordinance that merely raises the cost of housing hurts everyone who would prefer to pay less and forgo whatever benefits the higher cost confers, and so need not be waived for the handicapped." *Id.* at 440; *Affordable Recovery Hous. v. City of Blue Island*, 860 F.3d 580, 582 (7th Cir. 2017) (affirming summary judgment on FHA claim and holding that there was no evidence that temporary expulsion of residents after city determined that sprinkler system was inadequate "was attributable to anything other than an honest concern with possible fire hazards to the residents."). This case is similar to *Wisconsin Community Services, Inc.* and *Hemisphere Building Company* because the Village Zoning Code and Building Code apply to all persons and entities in the Village. To the extent compliance with Institutional Group I-2 standards is more costly than compliance with Residential Group R-4 standards, that same escalated cost is required of all structures that house more than five persons who incapable of

self-preservation. It is not unique to Aunt Martha's. Aunt Martha's was not denied an "equal opportunity" by the Village.

III. Equities, Public Policy, and the Public Interest Balance in Favor Respect for Adherence to Safety and Health Standards.

The policy interest will be promoted by denying Aunt Martha's request for injunctive relief. Aunt Martha's asserts that has an interest in providing children a safe place to quarantine, but the Home is not currently safe for use as a Medical Quarantine Center. Aunt Martha's has not demonstrated that this unsafe premises in the only available building in Illinois where DCFS Youth-In-Care can quarantine. Aunt Martha's states: "The facilities where the DCFS Youth-In-Care are currently housed do not offer a safe and reliable place for the youth to quarantine during the required fourteen-day period." (Doc. 18, p. 28). Neither does the House. The public interest favors enforcement of safety rules so that the DCFS Youth-In-Care escape one type of harm only to find themselves trapped in another (potentially more) dangerous situation.

CONCLUSION

Defendant, the Village of Midlothian, requests that this court deny Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction, and for any further relief this court deems appropriate.

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