

## **AIDS group's lawsuit proceeds**

*Judge allows Gilsum case to continue*

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Published: Thursday, April 09, 2009

GILSUM — An AIDS services agency's lawsuit that accuses Gilsum officials of illegally restricting who's allowed to live at a group home the organization runs in town will move forward.

On Tuesday, Cheshire County Superior Court Judge Brian T. Tucker denied a request filed by Gilsum officials in January to dismiss the lawsuit filed last September by AIDS Services for the Monadnock Region.

In its lawsuit, the agency claims the town's zoning board overstepped its authority when it granted a conditional variance in 2006 to the Cleve Jones Wellness House, a residential center for people living with AIDS, HIV or chronic illness, or recovering from drug or alcohol addiction.

Three of the 30 conditions the zoning board imposed — those prohibiting convicts who have been released from prison within the last year, substance abusers who have not been substance-free for at least a year, or people convicted of certain crimes, such as sexual offenses and violent crimes — are the focus of the organization's lawsuit.

The agency's lawsuit claims town officials violated the state constitution, and the conditions illegally restricted who can live at the house.

In their motion to dismiss the lawsuit, town officials argued that because the agency had accepted the terms of the variance when it was granted in 2006 and had not appealed directly to the zoning board about its decision, it was not in the court's jurisdiction to rule on the matter.

But in his ruling, Tucker said that since the lawsuit claims a violation of the state constitution, and questions the zoning board's legal authority to impose the conditions, it is a matter for the court to decide.

Town officials' request also said the lawsuit should be dismissed because the agency didn't appeal to the Superior Court within 30 days after the variance was granted, but Tucker ruled that the agency was not required to do so.

Town attorney James Romeyn Davis could not be reached for comment on the ruling. Gilsum Selectman Raymond Britton Jr. said Wednesday he wasn't aware of the ruling and had no comment.

Bennett H. Klein, a senior attorney with the New England-based legal organization Gay & Lesbian Advocates & Defenders, is representing the agency in its lawsuit.

"What it really means is that the town's effort to undermine the lawsuit was rejected and we

can now get to the merits of showing that these restrictions are invalid,” Klein said.

He added that the conditions don't meet a state statute requirement that they be “for the purpose of promoting the health, safety or general welfare of the community.”

Agency officials have said they agreed to the conditional variance after more than a year of back-and-forth debate about the house because it was the only way they saw to be able to open the house.

Davis told The Sentinel last fall that he believes all the conditions imposed on the house are legal and said town officials stand behind their decisions.

Last April, Gilsum officials had also filed a lawsuit against AIDS Services, alleging agency officials violated several of the conditions, including allowing a convicted sex offender to live at the house for several months.

A judge ruled last June that the agency must meet all the conditions listed in the variance or face possible fines or closure.

It is not known when the lawsuits, which have been combined, will be heard in Cheshire County Superior Court.