

## **Second District Court of Appeal Invalidates Approval of Elder Care Facility, Citing Lack of Evidence to Support Zoning Determination**

A developer relying on financial hardship to obtain approval of an elder care facility exceeding the square footage permitted in a residential zone must present evidence of such financial hardship to sustain the required finding. Simply averring that a smaller project would not achieve economies of scale needed to provide adequate support services is inadequate. [Walnut Acres v. City of Los Angeles](#), No. B254636 (2nd Dist., April 15, 2015). In 2006, the City of Los Angeles adopted Municipal Code section 14.3.1 in order to consolidate the land use approvals required for eldercare facilities, including housing for Alzheimer's/dementia care, assisted living, and skilled nursing. Section 14.3.1 applies as a permitting overlay to a site's underlying zoning. One required finding is that "strict application of the land use regulations on the subject property would result in practical difficulties or unnecessary hardships...", the same finding required in many jurisdictions (including Los Angeles) to obtain a zoning variance. The developer in *Walnut Acres* sought to construct a 50,289 square-foot, 60-guest room elder care facility in a residential district, with 25 percent of the beds allocated to persons with Alzheimer's or dementia. Application of the relevant zoning provisions to the site would have limited the facility to 12,600 square feet and 16 guest rooms. The zoning administrator approved the project over objections from neighbors. To substantiate Section 14.3.1's "undue hardship" requirement, the zoning administrator found that strict application of the code's requirements would, among other things "result in significant underutilization of the site and would not permit the operator to achieve the economy of scale required to provide the level of on-site support services and amenities required for the elder care facility's unique population." The zoning administrator's decision was affirmed by the City Council's Planning and Land Use Management Committee. The Court of Appeal concluded that the zoning administrator's undue hardship determination was not based on any actual evidence in the administrative record. Applying concepts derived from case law on variances, the court found that although financial hardship may constitute undue hardship, such a finding cannot be supported in the absence of evidence demonstrating that financial difficulties would result from application of the relevant zoning controls. While the developer asserted, and the zoning administrator found, that the facility would not be feasible at only 16 guest rooms, no specific evidence was provided to substantiate this claim. The zoning administrator testified that "it's just a matter of logic and practicality that . . . if you were to limit the site to 12,600 square feet, you would end up with a . . . maximum of 16 guest rooms. And with the level of support services that this type of facility needs, it really wouldn't be feasible." The court did not accept this as adequate evidence, citing other evidence in the record showing that elder care facilities were being operated in small homes with four to ten beds (although it was not clear what services were provided in those facilities). The court summarized its holding as follows: "because financial hardship is [the project proponent's] sole basis for unnecessary hardship, there must be some evidence supporting it." *Walnut Acres* indicates that simply alleging that an elder care facility providing specific services cannot be operated economically within existing zoning regulations is inadequate to demonstrate undue financial hardship. Project proponents will need to submit economic data, market studies or other evidence to support a local agency's finding of undue hardship based on financial concerns.

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