



CITY OF DURHAM | DURHAM COUNTY
NORTH CAROLINA



Date: June 20, 2016

To: Thomas J. Bonfield, City Manager

Through: Keith Chadwell, Deputy City Manager

From: Steven L. Medlin, AICP, Planning Director

Subject: *Unified Development Ordinance* Text Amendment, Reasonable Accommodations (TC1500006)

Summary. This text amendment proposes revisions to the Unified Development Ordinance (UDO) to allow reasonable accommodations to UDO requirements. Staff has developed regulations and a procedure to seek reasonable accommodations.

The federal Fair Housing Amendment Act (FHA) of 1988 and the American with Disabilities Act (ADA) prohibit discrimination against individuals with disabilities in housing, and require local governments to be flexible in the application of land use, zoning and building regulations when accommodations may be necessary to afford disabled persons an equal opportunity to housing.

To better comply with the FHA and ADA requirements, staff is proposing revisions to establish a formal procedure for persons with disabilities to seek reasonable accommodations to UDO requirements and to establish criteria to be used when considering such requests. Staff, upon review of similar ordinances of other jurisdictions, proposes to establish a reasonable accommodations process that would require a quasi-judicial hearing and approval by the Board of Adjustment. The proposal also includes revisions to the UDO definition of “family” with regard to “reasonable accommodations” and the requirements of the FHA.

Recommendation. Staff recommends approval of the attached Ordinance to amend Article 2, Review Authority; Article 3, Applications and Permits; and Article 16, Defined Terms, of the Unified Development Ordinance; and recommends approval of a consistency statement declaring the request consistent with the Durham *Comprehensive Plan* and that the request is reasonable and in the public interest. Information supporting these recommendations is found within this memo, attached documents, and any information provided through the public hearing.

Background. Three federal laws and one North Carolina state law specifically prohibit housing discrimination that acts as a barrier to individuals with disabilities who are seeking housing.

The federal laws are:

1. The Fair Housing Amendment Act, 42 U.S.C. § 3601 *et. seq.*, (“Fair Housing Act”), makes it unlawful to discriminate, make unavailable, or otherwise deny a dwelling to any person because of a handicap. *See id.* at § 3604(f).; and
2. The Americans with Disabilities Act, 42 U.S.C. § 12102(1) (“ADA”), prohibits discrimination against persons with disabilities.

Pursuant to the Fair Housing Amendment Act and the ADA individuals with handicaps or disabilities are defined in the following manner:

- an individual with a physical or mental impairment that substantially limits one or more major life activities;
- an individual with a record of having such an impairment; or
- an individual regarded as having such an impairment.

By way of example, mental or physical impairment may include blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness.

On February 3, 2016, the Joint City-County Planning Committee (JCCPC) received this proposed text amendment with no comments. JCCPC recommended staff to get input from the Human Relations Commission and the Mayor’s Committee for Persons with Disabilities. The comments that were received from these two entities were incorporated into the regulations.

The Planning Commission recommended approval, 12-1, of the text amendment on April 12, 2016. The Planning Commission determined that the Ordinance request is consistent with the adopted *Comprehensive Plan* and that the request is reasonable and in the public interest based on comments received at the public hearing and the information in the staff report. The recommendation also included some additional clarifying amendments.

The Durham Board of County Commissioners will consider this amendment at its June 27, 2016, meeting.

Issues. Many jurisdictions in North Carolina have relied upon existing variance and/or special use permit procedures to handle requests for reasonable accommodation. However, the legal standard for granting a reasonable accommodation differs from the standard applicable to a variance or a special use permit application. A reasonable accommodation request must be granted if it is both “reasonable” and “necessary”. In addition, there is generally a requirement to verify that the request is to accommodate a person or persons with a handicap or disability. Examples of the type of requests that may be made are provided below.

- *Example 1:* An applicant may be granted exceptions to fence height restrictions when greater privacy is necessary for a person with a disability to use and enjoy the outdoors at a residence.
- *Example 2:* An applicant may request for a dwelling unit to be used for a group living arrangement that may function as a family but does not meet the current definition of “family”.

After reviewing several adopted reasonable accommodation ordinances from jurisdictions within North Carolina, staff recommends that the city adopt a quasi-judicial reasonable accommodation procedure with applications heard by the Board of Adjustment.

In addition to establishing a reasonable accommodations process, staff proposes amending the definition of “family” in Sec. 16.3, Defined Terms, as follows to ensure inclusion of those protected under state and federal law.

Family: One or more individuals residing in a dwelling unit, living as a single housekeeping unit, and complying with the following rules:

- A.** Any number of individuals related by blood, marriage, or adoption may occupy a dwelling unit;
- B.** Where some or all of the occupants are unrelated by blood, marriage, or adoption, the total number of occupants that are unrelated, shall not exceed three. In applying this provision, children who are under the age of 23 and who are children of the owner or a person renting an entire dwelling unit from the owner shall be counted as a single occupant. In addition, in all cases, the limitation set out in subsection C. below shall apply;
- C.** Where a reasonable accommodation has been approved.
- D.** The presence of household employees or children in foster care shall not disqualify any premises otherwise satisfying the above rules.

The Planning Commission recommended consideration of one change to the proposed amendment:

Paragraph 3.24.9: Revise the proposed text to clarify that an approved Reasonable Accommodation request shall apply solely to the applicant and not run with the land.

Since this may be a case-by-case situation, staff has considered this request and incorporated it into the proposed ordinance by requiring the Board of Adjustment to make a determination as to whether the approval is applicant-specific or if it appropriate to let the approval run with the land.

Consistency with the *Comprehensive Plan*; Reasonable and In the Public Interest. The proposed amendment will add regulations required to comply with the FHA and ADA

requirements in regards to housing for disabled persons. The *Durham Comprehensive Plan* specifically addresses special needs populations within Chapter 3, Housing Element, as a primary issue within its Summary of Issues.

Special Needs Populations. The factors that have limited provision of adequate housing for low-income and very low-income households have also limited provision of affordable housing for families and individuals with special needs.

Goal 3.2, Special Needs Housing, Encourage the development of special needs housing for underserved populations, particularly permanent and transitional housing.

Objective 3.2.1 Special Needs Housing, Ensure that special needs populations have access to affordable, safe and sanitary housing that is appropriate to their special needs.

Staff Contacts.

Supriya Chewle, AICP, Senior Planner, Supriya.Chewle@DurhamNC.gov,
919-560-4137 ext. 28271.

Attachments:

Attachment A: An Ordinance to Amend Provisions of the Unified Development Ordinance to add Reasonable Accommodation (TC1500006),

Attachment B: Statement of Consistency Pursuant to NCGS § 160A-383

Attachment C: Planning Commission Comments