

**AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING
REASONABLE ACCOMODATION (TC1500006)**

WHEREAS, the Durham City Council wishes to amend certain provisions in the *Unified Development Ordinance* (UDO) regarding reasonable accommodation; and

WHEREAS, it is the objective of the Durham City Council to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community; and

WHEREAS, it is the objective of the Durham City Council to comply with federal law regarding reasonable accommodation to individuals with disabilities;

NOW, THEREFORE, be it ordained that Article 2, Review Authority; Article 3, Applications and Permits; and Article 16, Definitions, of the *Unified Development Ordinance* is amended to make the following changes set forth in the strikethroughs and underlining below:

PART 1

Sec. 2.4 Board of Adjustment (BOA)

[Paragraphs not listed remain unchanged]

2.4.5 Powers and Duties

The Board of Adjustment shall have the following powers and duties.

A. Authority

1. The Board of Adjustment shall be responsible for final action regarding the following:
 - a. Applications for variances; ~~and~~.
 - b. Applications for design and minor special use permits.
 - c. Appeals of decisions made by administrative officials interpreting the provisions of this Ordinance.
 - d. Applications for reasonable accommodation.

Sec. 3.2 Common Review Procedures

[Paragraphs not listed remain unchanged]

3.2.1 Applicability

The review procedures described below apply to the types of applications listed below, as may be limited by the individual subsections that follow.

R. Reasonable Accommodation

3.2.5 Notice and Public Hearings

A. Summary of Notice Required

Notice shall be required for applications for development approval as shown in the table below.

[Portions of the table not included remain unchanged]

Procedure	Published	Mailed	Posted
<u>Reasonable Accommodation</u>	✓	✓	✓

E. Required Hearing

1. A legislative public hearing or a quasi-judicial hearing shall be required for development review as shown in the table below.

[Portions of the table not included remain unchanged]

Applications for Approval	Historic Preservation Commission	Board of Adjustment	Planning Commission	Governing Body
<u>Reasonable Accommodation</u>		✓ ¹		

¹ Requires a quasi-judicial hearing.

Sec. 3.24 Reasonable Accommodation

3.24.1 Purpose

This section provides a procedure for making requests for reasonable accommodation to land use and zoning regulations, policies, practices, and procedures of the City and County of Durham to comply fully with the intent and purpose of federal laws.

3.24.2 Applicability

- A. This section shall apply to those persons who are defined as disabled or handicapped under federal law. A person recovering from substance abuse is considered a person with a disability or handicap; however, a person who is currently engaging in the illegal use of controlled substances is not.
- B. A request for a reasonable accommodation may be made by any person with a disability or handicap, his or her legal representative, or a provider of housing for persons with disabilities or handicaps in the city's and county's land use and zoning regulations, when the application of such may act as a barrier to affording such person(s) equal opportunity to use and enjoy a dwelling in accordance with the law.
- C. A request for a reasonable accommodation may include a modification or exception to the rules, standards, and/or practices for the siting, development, and use of housing or housing-related facilities in this ordinance, that would eliminate regulatory barriers and provide a person with a disability or handicap an equal opportunity to a dwelling of his or her choice.
- D. Nothing in this section requires persons with disabilities or handicaps, or operators of family care homes, or group homes for persons with disabilities, or handicaps acting or operating in accordance with applicable zoning, licensing or land use laws or practices, to seek reasonable accommodation under this section.

3.24.3 Other Regulatory Obligations

A reasonable accommodation shall not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.

3.24.4 Pre-Application Conference

If an individual needs assistance in making the request for reasonable accommodation, the Planning Department will provide assistance to ensure that the process is accessible. Applicants seeking reasonable accommodation may request a pre-application conference with the Planning Director or designee to discuss the procedures, standards, and regulations applicable for submittal of an application. Such requests shall be made at least 10 days prior to the date of submittal.

3.24.5 Application Requirements

A. An application for reasonable accommodation shall be submitted in accordance with paragraph 3.2.4, Application Requirements. In addition, the following information shall be provided by the applicant:

1. The current actual use of the property;
2. The basis for the claim that the applicant is considered disabled or handicapped under federal law;
3. The UDO provision(s) or regulation(s) from which reasonable accommodation is being requested; and
4. An explanation of why the reasonable accommodation is necessary to make the specific property available for the individual.

B. An application for a reasonable accommodation under this section shall be submitted to the Planning Director or designee.

3.24.6 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give notice as set forth in paragraph 3.2.5, Notice and Public Hearings.

3.24.7 Burden of Proof

The applicant seeking reasonable accommodation shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to make the findings set forth below, as well as the burden of persuasion on those issues.

3.24.8 Action by the Planning Director

The Planning Director or designee shall provide the Board of Adjustment with a copy of the application and all relevant materials pertaining to the request prior to the public hearing.

3.24.9 Action by the Board of Adjustment

A. Each decision shall be accompanied by a written finding of facts by the Board of Adjustment which specifies the reasons for the decision and;

- B. The Board of Adjustment may prescribe whether the reasonable accommodation is granted to the applicant or shall be allowed to pass with transfer of property.
- C. The Board of Adjustment may approve the request, deny the request, or continue the request. In approving the request, the Board of Adjustment may prescribe reasonable and appropriate conditions provided that the conditions are reasonably related to the request.

3.24.10 Findings

- A. In granting a reasonable accommodation request, the Board of Adjustment shall find based on competent, material, and substantial evidence, that the proposed accommodation:
 - 1. Will be used by an individual or individuals with a disability or handicap protected under federal law;
 - 2. Is "reasonable." An accommodation is reasonable if it will not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the city or county and/or constitute a substantial or fundamental alteration of the ordinance provisions; and
 - 3. Is "necessary." An accommodation is necessary if it will provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and it will afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the city or county.
- B. The Board of Adjustment shall issue a written order on a request for reasonable accommodation within 60 days of the date of the quasi-judicial decision.

3.24.11 Appeal

Appeal from final action by the Board of Adjustment on a reasonable accommodation request can be taken by filing a petition in the nature of certiorari with the Durham County Superior Court.

Sec. 16.3 Defined Terms

[Definitions not listed remain unchanged]

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.

G.D. The presence of household employees or children in foster care shall not disqualify any premises otherwise satisfying the above rules.

PART 2

That the Unified Development Ordinance shall be renumbered as necessary to accommodate these changes and clarifications.

PART 3

That this amendment of the Unified Development Ordinance shall become effective July 1, 2016