



Memo

To: City of Jonesboro, Public Works Council Committee, Metropolitan Area Planning Commission
From: Otis T. Spriggs, Planning Dept.
cc: Mayor Harold Perrin; Phillip Crego/Carol Duncan, City Attorney's Office; LM Duncan
Date: November 9, 2011
Re.: **Proposed Process for Reasonable Accommodation – Fair Housing Act Code Revisions**

Attached you will find proposed text amendments to the Jonesboro Code of Ordinance as presented to the Metropolitan Area Planning Commission on November 8, 2011, to establish a City policy for handling Zoning Cases/requests for reasonable accommodations for Fair Housing Act compliance in the future.

This language was produced as a result of the King's Ranch Law Suit/Judgment against the City decided April 25, 2011, as well as training provided by the Arkansas Fair Housing Commission Director on September 27, 2011.

We kindly request your review and approval at the earliest date possible to address this urgent issue.

If you have any questions, please do not hesitate to contact me.

Thank you.

Revise Section 117-2. Definitions of terms and uses.

Replace Existing Family Definition: ~~Family means one or more persons related by blood, marriage or adoption, or a group of not more than five unrelated persons living together and subsisting in common as a single, nonprofit housekeeping unit utilizing only one kitchen. A family may include domestic servants employed by said family.~~

(ADD: New Definition)

Family: includes a single individual;

Familial Status means:

(A) The status resulting from one (1) or more individuals who are under eighteen (18) years of age being domiciled with:

(i) The parent or another person having legal custody of the individual under the age of eighteen (18) years; or

(ii) The designee of the parent or other person having custody, with the written permission of the parent or other person; or

(B) The status resulting from being in the process of securing legal custody of any individual who is under the age of eighteen (18) years; or

(C) The status resulting from being pregnant;

Revise Existing Definition:

~~Dwelling means a building or portion thereof which is designed or used as living quarters for one or more families; but not including motels, boardinghouses, tourist homes, convalescent homes, travel trailers, mobile homes, or manufactured housing.~~

Add New Definition:

Dwelling means any building, structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families; but not including motels, boardinghouses, tourist homes, convalescent homes, accessory storage buildings, travel trailers or recreational vehicles.

Person with a disability means any person who:

a. has a physical or mental impairment that substantially limits one or more major life activities;

b. has a record of having the impairment; or

c. is regarded by others as having the impairment.

d. The fact that a person is a registered sex offender does not make him or her a person with disabilities.

Physical or mental impairment includes, but is not limited to, orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Reasonable accommodation means a modification or a waiver of zoning requirements, rules, policies, or practices if the modification or waiver is reasonable and necessary afford a person with disabilities an equal opportunity to use and enjoy a dwelling. “Necessary” means that without the accommodation, the person would not be able to live in the dwelling of his or her choice. “Reasonable” means that the accommodation will not create an undue financial or administrative burden for the City and will not fundamentally alter the zoning scheme of the City.

**Revised: ARTICLE II. ADMINISTRATION AND ENFORCEMENT, DIVISION 1.
GENERALLY, Sec. 117-31. Administrative officer, by adding (7) Reasonable Accommodation:**

(7) Reasonable Accommodation Approval:

A. Purpose and Intent. The purpose of allowing Reasonable Accommodation(s) is to provide a process for individuals with disabilities to make requests for Reasonable Accommodation(s) for relief from the various land use, zoning, or rules, policies, practices, and/or procedures of the City. It is the policy of the City, pursuant to the Federal Fair Housing Act, to provide people with disabilities Reasonable Accommodation(s) in rules, policies, and procedures that may be necessary to ensure equal access to housing.

B. Requesting Reasonable Accommodation(s):

1. In order to make specific housing available to an individual with a disability, a disabled person, or representative may request Reasonable Accommodation(s) relating to the various land use, zoning, or rules, policies, practices, and/or procedures of the City.
2. If an individual needs assistance in making the request for Reasonable Accommodation(s) or appealing a determination regarding Reasonable Accommodation(s), the Planning Director will endeavor to provide the assistance necessary to ensure that the process is accessible to the applicant.
3. A request for Reasonable Accommodation(s) with regard to City regulations, rules, policies, practices, and/or procedures may be filed on an application form provided by the Planning Director at the time that the accommodation may be necessary to ensure equal access to housing.

C. Required Information. The applicant shall provide the following information when requesting Reasonable Accommodation(s). This information shall be made part of the public record for the project and subject to all applicable State and Federal laws for public access to records.

1. A completed City application indicating, among other things, the applicant’s name, address, and telephone;
2. Address of the property for which the request is being made;
3. The current actual use of the property;
4. The Zoning Code provision, regulation, or policy from which Reasonable Accommodation(s) is being requested;

5. The basis for the claim that the person(s) for whom the Reasonable Accommodation(s) is/are sought is/are considered disabled under the Fair Housing Act and why the accommodation is reasonably necessary to make specific housing available to the person(s);
6. Such other relevant information as may be requested by the Planning Director as the Director reasonably concludes is necessary to determine whether the findings required by Section 117-31., 7.F. (Required Findings for Reasonable Accommodation(s)) can be made, so long as any request for information regarding the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individual(s) affected.

D. Approving Authority and Approval Process.

1. The Planning Director shall have the authority to consider and take action on requests for Reasonable Accommodation(s). When a request for Reasonable Accommodation(s) is filed with the Planning Department, it will be referred to the Planning Director for review and consideration as an administrative action unless determined otherwise by the Planning Director. A request for Reasonable physical improvement that cannot be constructed to conform to the City's setbacks or design standards. Typical improvements considered to be "administrative" in nature would include ramps, walls, handrails, or other physical improvements necessary to accommodate a person's disability. The Planning Director shall issue a written determination of his or her action within 15 days of the date of receipt of a completed application and may:

- a. Grant or deny the accommodation request; or
- b. Grant the accommodation request subject to specified nondiscriminatory condition(s); or
- c. Forward the request to the Planning Commission for consideration as a Conditional Use Permit and subject to the findings stated in Section 117-31., 7.F. (Required Findings for Reasonable Accommodation(s)).

2. In the event the Planning Director determines that the request for Reasonable Accommodation(s) is non-administrative in nature, such request shall be forwarded to the Planning Commission in accordance with Section 117-197, Conditional use Permit) and shall be subject to the findings stated in Section 117-31., 7.F. (Required Findings for Reasonable Accommodation(s)).

3. All written determinations of actions of the Planning Director shall give notice of the right to appeal and the right to request Reasonable Accommodation(s) on the appeals process (e.g., requesting that City staff attempt to schedule an appeal hearing as soon as legally and practically possible), if necessary. The notice of action shall be sent to the applicant by mail.

4. If necessary to reach a determination or action on the request for Reasonable Accommodation(s), the Planning Director may request further information from the applicant specifying in detail what information is required. In the event a request for further information is made, the 15-day period to issue a written determination shall be stayed until the applicant fully and sufficiently responds to the request.

E. Considerations.

The City may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling:

1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability;
2. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation;

3. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants;
4. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.
5. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's Zoning Code (Section 117);
6. Whether the requested accommodation would fundamentally alter the character of the neighborhood;
7. Whether the accommodation would result in a substantial increase in traffic or insufficient parking;
8. Whether granting the requested accommodation would substantially undermine any express purpose of either the City's Land Use or Comprehensive Plan or an applicable specific plan;
9. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

F. Required Findings for Reasonable Accommodation(s). In making a determination regarding the reasonableness of a requested Reasonable Accommodation(s), the Approving Authority shall make the following findings:

1. The housing which is the subject of the request for Reasonable Accommodation(s) will be used for an individual protected under the Fair Housing Act.
2. The request for Reasonable Accommodation(s) is necessary to make specific housing available to an individual protected under the Fair Housing Act.
3. The requested Reasonable Accommodation(s) does not impose an undue financial or administrative burden on the City and does not fundamentally alter City zoning, development standards, policies, or procedures.
4. The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning process, as "fundamental alteration" is defined in fair housing laws and interpretive case law.
5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

Conclusion:

As a result of the King's Ranch Judgment the following types of state-licensed facilities must be permitted as of right in all districts in which single-family residences are permitted:

- i. a group home for the developmentally disabled with 8 or fewer residents;
- ii. a group home for persons with mental disorders that has 8 or fewer residents; and
- ii. a therapeutic group home for children with 8 or fewer residents.

Any request for reasonable accommodation deemed to be beyond administrative authority shall be processed as a conditional use once the Findings (Section F) are determined by the Planning Director reflecting such.