

The Need for Inclusive Communities:

Protections for People with Disabilities Under the Fair Housing Act and Americans with Disabilities Act in Local Building and Zoning Laws



THE ABILITY CENTER
MAKING INDEPENDENCE POSSIBLE SINCE 1920.

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Ability Center Ramp Build

Commercial Vehicle in a Residential Neighborhood

Zoning Laws

- Standard State Zoning Enabling Act and Standard City Planning Enabling Act (1926, 1928)
- Gave zoning and planning power to local jurisdictions
- Create rules for those districts
- Established local and regional plan commission

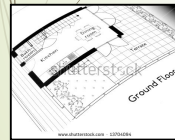


Zoning laws: Variances


Application for Building Permit

Denial by Building Inspector

Appeal to Board of Zoning Appeals



Zoning Laws: Nuisances



Violation of Zoning Code

Ticketed for Nuisance by a Code Inspector

Appeal to Board of Housing Appeals

What about Civil Rights?

Fair Housing Amendments Act

- Prohibits discrimination on the basis of disability in the rental or sale of a dwelling;
- Includes a refusal to make reasonable accommodations in rules, policies, practices, or services when they are necessary to use and enjoy a dwelling;
- a refusal to permit reasonable modifications of the premises if they are necessary to afford a person full enjoyment of the premises. 42 U.S.C. 3604(f).

Americans with Disabilities Act

Prohibits public entities from excluding qualified people with disabilities from participation in or denying them the benefits of their services, programs, and activities or subjecting them to discrimination. 41 U.S.C. 12132.

Discrimination includes refusing to make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. 28 C.F.R. 35.130.

General Rule: Discriminatory Ordinances

- Where an ordinance is passed for the purpose of discriminating against people with disabilities, it is unlawful under the FHAA and ADAA. *Smith & Lee Associates v. City of Taylor*, 102 F.3d 781, 791 (6th Cir.1996).
- Where the enforcement of an ordinance has the effect of denying housing or making housing unavailable to people with disabilities, it is unlawful under the FHAA and ADAA. *Smith & Lee Associates v. City of Taylor*, 102 F.3d 781, 791 (6th Cir.1996).

General Rule: Reasonable Accommodations

- Non-discriminatory ordinance;
- Enforcement of the ordinance prevents a person with a disability from having access to housing;
- Must grant a reasonable accommodation.



Discriminatory malice? Do governments have to want to discriminate?

- It may be lawful for local governments to have an ordinance with a disparate effect on people with disabilities or to deny reasonable accommodations if there is a legitimate, non-discriminatory reason for the ordinance or enforcement decision;
- One court found that a 500 ft. spacing requirement between group homes was lawful;
- To the extent that a local ordinance would violate federal law, it is unenforceable.

Reasonable Accommodation Examples:

- Group home granted a larger rear yard. (1993)
- Person granted parking access to the alley behind their home because the front entrance was not accessible. (2013)
- Child allowed to keep her miniature horse despite the "no farm animals" ordinance. (2015)
- Homeowners association had to allow an adult with an intellectual disability to live with his parents despite the age restrictions on their community. (2002)

What can we do locally?

- Education;
- Intervene with the inspector;
- Contact the commissioner of building inspection;
- Assist person at Board of Zoning Appeals or Board of Housing Appeals hearing.

Developing Local Procedures for Reasonable Accommodations in Zoning

- Local governments can create their own procedures for processing reasonable accommodations in zoning
- Cannot act as a barrier to reasonable accommodations because of cost or difficulty
- Sample local ordinance developed by Mental Health Advocacy Services, Inc. here: <http://www.hcd.ca.gov/housing-policy-development/housing-element/documents/model-reasonable-accommodation-ordinance.pdf>

File a Complaint

- Department of Housing and Urban Development (HUD): http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination
- Department of Justice Disability Rights Section: <https://www.ada.gov/complaint/>

What happened?

- Commercial Vehicle in a Residential Zone
- Ramp that Didn't Fit Within Zoning Guidelines

Resources

- ADA National Network
- Local Fair Housing Center
- Department of Justice
- Department of Housing and Urban Development

Want a copy of our booklet (they're free!)?

- Contact us:
 - Lisa Justice
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Sponsors:

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