

FAIR HOUSING REVIEW ZONING AND LAND USE ISSUES

Fair Housing and Zoning Overview

According to the Fair Housing Act, a dwelling includes “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof”. Therefore, decisions related to the development or use of such land may not be based upon the race, sex, religion, national origin, color, disability, or familial status of the residents or potential residents who may live in the dwelling.

Zoning ordinances may not contain provisions that treat uses such as affordable housing, supportive housing, or group homes for people with disabilities differently than other similar uses, and municipalities may not enforce ordinances more strictly against housing occupied by members of the protected classes. Similarly, a municipality may not make zoning or land use decisions based on neighbors’ fears that members of protected classes would occupy a dwelling.

Another way that discrimination in zoning and land use may occur is when a facially neutral ordinance has a disparate impact, or causes disproportional harm, to a protected group. Land use policies such as density or design requirements that make residential development prohibitively expensive, prohibitions on multifamily housing, or a ceiling of 4 or fewer unrelated adults in a household may be considered discriminatory if it can be proven that these policies have a disproportionate impact on minorities, families with children, or people with disabilities. Although zoning and land use is an area where municipalities have primary power, courts have consistently held that the Fair Housing Act prohibits local governments from exercising their zoning and land use powers in a discriminatory way.

A Municipality MAY NOT:

- Reject a proposed affordable housing development in response to neighbors’ fears that racial minorities will occupy such housing.
- Require neighbor notification or a public hearing only for the development of affordable housing or group homes, but not other types of residential development.
- Refuse to allow an exception to a setback requirement as a reasonable accommodation for a disabled resident who must build a wheelchair ramp in order to access his or her home.
- Impose spacing requirements on group homes for persons with disabilities.
- Require additional studies or procedural steps or unnecessarily delay decision making when considering a development that may be occupied by members of the protected classes.

In addition to prohibiting discrimination against persons with disabilities, the Fair Housing Act also makes it unlawful to refuse to make “reasonable accommodations”, or changes to rules, policies, practices, or services, when such accommodations are necessary to allow persons with disabilities an equal opportunity to use or enjoy a dwelling. Under the Fair Housing Act, an accommodation is considered “reasonable” if it does not impose an undue financial or administrative burden and if it does not fundamentally alter the zoning ordinance. Unless a municipality can prove that an accommodation request is unreasonable according to the above criteria, the municipality must grant the accommodation.

Exemptions

Housing for older persons (80% of the units are occupied by at least one person over the age of 55 or 100% of occupants are age 62 or older) is exempt from the portion of the Fair Housing Act that prohibits discrimination against families with children. A municipality would be prohibited under the Fair Housing Act from making a zoning or land use decision based on the presence of families with children residing in a dwelling or proposed development. However, any area zoned specifically for housing for older persons would be exempt from this prohibition.

Local Zoning Cases

Horizon House Developmental Services, Inc. v. Township of Upper - Southampton, PA: A 1,000 foot spacing requirement for group homes was found to violate the Fair Housing Act. Furthermore, requiring group homes to obtain a variance to locate within 1,000 feet of another group home was found to be an insufficient reasonable accommodation, and the township was ordered to cease enforcement of the spacing requirement.

ReMed Recovery Care Centers v. Township of Willistown, PA: The township was ordered to make a reasonable accommodation from its limitation on the number of unrelated persons that can constitute a family under its zoning ordinance, allowing a group home of 8 unrelated individuals rather than the 5 permitted under the zoning ordinance.

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