



St. Joseph County, Indiana

Reasonable Accommodations

Policies and Procedures

In

Zoning and Land Use Decisions

2022

St. Joseph County, Indiana
Reasonable Accommodations Policies and
Procedures in Zoning and Land Use Decisions

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St. Joseph County, Indiana Reasonable Accommodations Policies and Procedures in Zoning and Land Use Decisions

Introduction

St. Joseph County, Indiana, acknowledges that it has an affirmative duty to make reasonable accommodations in its land use and zoning regulations and practices so that persons with disabilities have an equal opportunity to live in dwellings of their choice. The failure to offer reasonable accommodations may be a violation of the federal American with Disabilities Act, 42 *United States Code* §§ 12102 *et seq.*, and the federal Fair Housing Act, 42 *United States Code* §§ 3601, *et seq.*

The following policies and procedures explain the process and the standards used by St. Joseph County, Indiana, in order to provide reasonable accommodations to individuals with disabilities. These policies and procedures are intended as guidelines to assist County officials when providing reasonable accommodations; as well as providing information to persons who request reasonable accommodations and to all members of the public. These policies and procedures may be revised, supplemented and updated consistent with all applicable federal laws.

There shall be no application fee required to request a reasonable accommodation under the County's Reasonable Accommodations Policies and Procedures. Any information related to a disability status and identified by a person requesting a reasonable accommodation as confidential shall be retained in a manner so as to respect the privacy rights of such individual making the request.

St. Joseph County, Indiana, shall post on the County's website at www.sjeindiana.com its *Reasonable Accommodations Policies and Procedures in Zoning and Land Use Decisions* and make these policies and procedures available to the public at the offices of the Department of Infrastructure, Planning and Development and the Human Rights Commission.

Definitions

For purposes of these Reasonable Accommodations Policies and Procedures:

1. “**ADA**” means Title II of the federal Americans with Disabilities Act, 42 *United States Code* §§ 1201 *et seq.*
2. “**Area Board of Zoning Appeals (ABZA)**” means the board identified in the County’s zoning ordinance, *St. Joseph County Code* § 154.635 Board of Zoning Appeals.
3. “**Building Department**” means the executive department established to perform administrative functions as set forth in *St. Joseph County Code* § 32.04.
4. “**County**” means St. Joseph County, Indiana.
5. “**Dwelling**” means any building, or portion of a building which is designed or used primarily for residential purposes as further addressed in *St. Joseph County Code* § 154.635.
6. “**FHA**” means the federal Fair Housing Act, 42 *United States Code* §§ 3601 *et seq.*
7. “**Major life activity**” means any task central to a person’s daily life, including but not limited to caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working, as this phrase may be interpreted by applicable federal judicial decisions and federal regulations.
8. “**Person with a disability**” means any person who:
 - a. Has a physical or mental impairment that substantially limits one (1) or more major life activities; or
 - b. Has a record of having such impairment.
9. “**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, emotional illness, learning disabilities, HIV disease, tuberculosis, drug addiction (except illegal drugs) and alcoholism; and shall include changes hereafter as may be required by federal law. Short term, temporary health conditions shall not be included.
10. “**Reasonable accommodation**” means a modification or a waiver of zoning requirements, rules, policies or practices if the modification or waiver is reasonable and necessary to give a person with disabilities an equal opportunity to use and enjoy a dwelling.
11. In the definition of “**reasonable accommodation**”:
 - a. “**Necessary**” means that without the accommodation, the person requesting the accommodation would not be able to live in the dwelling of his or her choice.

b. “**Reasonable**” means that the accommodation will not create an undue financial or administrative burden for the City and will not fundamentally alter the land use and zoning plan of the City.

12. “**Zoning Administrator**” means the individual designated as having the responsibility for the interpretation and administration of the County’s zoning ordinance as further addressed in *St. Joseph County Code* § 154.635.

Policies

1. Reasonable Accommodation Policy.

The County is committed to providing, in accordance with the law, reasonable accommodations to persons with disabilities in order to give those individuals an equal opportunity to live in the dwellings of their choice. The policy of the County is to fulfill this commitment to provide persons with disabilities an equal opportunity to use and enjoy housing in the County.

This policy establishes a procedure for making requests for reasonable accommodation in zoning, land use and building regulations, rules, policies, practices and procedures of St. Joseph County, Indiana to comply fully with all applicable federal and state laws.

2. Authority and Duty to Provide Reasonable Accommodations.

The following federal laws authorize and require the County to provide reasonable accommodations:

a. The FHA makes it unlawful for the County to make unavailable or to deny a dwelling to any person because of that person’s disability, pursuant to 42 *United States Code* § 3604 (f). A reasonable accommodation should be considered when the accommodation is necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling pursuant to this same section of the *United States Code*, and when the person requesting the reasonable accommodation complies with the procedures set forth in this policy.

b. The ADA makes it unlawful for the County to discriminate against persons with disabilities or to deny persons the benefits of services, programs, or activities because of the person’s disabilities, pursuant to 42 *United States Code* § 12132. A reasonable accommodation should be considered when the accommodation is reasonable and necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling pursuant to this same section of the *United States Code*, and when the person requesting the reasonable accommodation complies with the procedures set forth in this policy.

3. General Principles for Providing Reasonable Accommodations.

a. The County shall grant a request for a reasonable accommodation whenever the accommodation is necessary and reasonable, with further procedures set forth below.

- b. Requests for reasonable accommodations shall be evaluated on a fact-specific, case-by-case basis.
- c. Requests for reasonable accommodations shall be an interactive process between the County and the person requesting the accommodation.
- d. Requests for reasonable accommodations will be decided by the Zoning Administrator.

Procedures

1. Reviewing Authority and Summary of Process.

- a. Requests for reasonable accommodation shall be received and reviewed by the Zoning Administrator.
- b. The Zoning Administrator shall have the following additional authority:
 - i. To conduct an ongoing review of the application of Infrastructure, Planning and Growth Department rules, policies, practices or procedures and their compliance with federal laws referenced herein;
 - ii. To consult on a regular basis with the Area Plan Commission Executive Director the results of such ongoing reviews so that zoning and land use best practices are utilized and are consistent with federal laws referenced herein;
 - iii. To provide advisory recommendations to the County Council's Land Use Planning Committee.
- c. The Zoning Administrator shall issue a written decision on a request for reasonable accommodation within thirty (30) days of the date of the application and may either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with the County's Reasonable Accommodation Policies and Procedures in Zoning and Land Use Decisions.
- d. In the event that the Zoning Administrator finds it necessary to request additional information from the applicant, the thirty (30) day period to issue a decision is stayed for a period of up to fifteen (15) days after the applicant fully responds to the request, or thirty (30) days from receipt of the application, whichever is later.
- e. In granting a request for reasonable accommodation, the Zoning Administrator may impose conditions of approval which are deemed necessary and reasonable to ensure that the reasonable accommodation(s) would comply with the findings. For example, conditions may be imposed to ensure that any removable structures or physical design features that are constructed or installed in association with the reasonable accommodation be removed once

those structures or physical design features are not necessary to provide access to the dwelling unit.

- f. While a request for a reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.
- g. Within fifteen (15) days of the date of the Zoning Administrator’s written decision, an individual may appeal an adverse decision. Appeals from the adverse decision shall be made in writing and submitted to the Area Board of Zoning Appeals (ABZA) for de novo review in the same manner as for other appeals.¹
 - i. All appeals must contain a statement of the grounds of the appeal. Any information related to a disability status and identified by the applicant as confidential shall be retained in a manner so as to respect the privacy of the rights of the applicant.
 - ii. No fees shall be charged by the ABZA for review of reasonable accommodation decisions.
 - iii. The ABZA shall hold a public hearing on the appeal within forty-five (45) days of receipt of an appeal or at the next regular ABZA meeting whichever occurs first. Their decision shall be final with their written decision being mailed to the appealing party within five (5) days of the appeal hearing. Written decisions of the ABZA shall include the factual basis for their decision by addressing the issues identified in Section 2 below entitled “Evaluating a Request for a Reasonable Accommodation”.
 - iv. The above appeal process is not an exclusive remedy, and nothing in the appeal procedure shall preclude an aggrieved individual from seeking any other remedies in a court of competent jurisdiction or federal remedies as provided by law and which are further addressed in Attachment # 5.

2. Evaluating a Request for a Reasonable Accommodation.

- a. In making determinations of reasonable accommodation, the Zoning Administrator and the Area Board of Zoning Appeals shall consider and make findings as to the evidence provided by the person requesting a reasonable accommodation of each of the following items:
 - i. Whether the person or persons who are requesting to live in the dwelling are persons with disabilities;
 - ii. Whether the accommodation is necessary, as further addressed in Section 5 below; and
 - iii. Whether the accommodation is reasonable, as further addressed in Section 6 below.

¹ *Indiana Code* § 36-7-4-918.1 gives the area board of zoning appeals the authority to “...hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under the zoning ordinance...”

- b. In order to review a request for a reasonable accommodation, Attachment #1 must be completed and filed by the person requesting an accommodation.
- c. In order to deny a request for a reasonable accommodation, the Zoning Administrator is required to complete and send Attachment #5 to the person requesting a reasonable accommodation.

3. Making the Process Accessible.

- a. To make sure that the process for requesting a reasonable accommodation is accessible, the office of the Zoning Administrator shall help any person who needs assistance during the process of requesting an accommodation. For example, if a person wishing to file a request is unable to read or complete the application form (Attachment #1), that office of the Zoning Administrator shall help the person to provide the required information on the form so that the application may be filed.
- b. Pursuant to Title 28, § 35.160 of the *Code of Federal Regulations*, the City is required to “furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity” to make a request for a reasonable accommodation. For example, a person wishing to file a request may request that written documents be provided in alternative formats such as large print or by alternate means such as verbal communication, or in other languages.

4. Obtaining More Information from a Person Requesting a Reasonable Accommodation.

- a. If the Zoning Administrator needs more information to evaluate a request for a reasonable accommodation, he or she may require the applicant to supply additional information.
- b. To obtain additional information, the Zoning Administrator may:
 - i. Request the person(s) who are requesting to live in the dwelling are persons with disabilities for additional information by asking such applicant(s) to complete Attachment #2;
 - ii. Meet with the applicant in person or by telephone or an equally effective means of communication; or
 - iii. Inspect the dwelling that is subject to the request to ensure that granting the request will not violate the minimum space and maximum occupancy requirements which are applied to similarly sized single-family dwellings, using Attachment #3 to arrange such inspection.
- c. The Zoning Administrator may verify the applicant’s disability status using the application form (Attachment #1), however, the Zoning Administrator may not request the Applicant’s medical records of any specific information about the nature or severity of the applicant’s medical condition.

5. Guidelines for Determining “Necessity”.

- a. The accommodation is necessary if, without the accommodation, the person with a disability would not have an “equal opportunity” to live in the dwelling of his or her choice.
- b. A person would not have an “equal opportunity” to live in a dwelling if, without the reasonable accommodation:
 - i. The person seeking the reasonable accommodation would be excluded from a neighborhood.

6. Guidelines for Determining “Reasonableness”.

- a. An accommodation is “reasonable” if it:
 - i. Does not create an undue financial or administrative burden for the County; and
 - ii. Will not fundamentally alter the County’s approved Comprehensive Plan² and any approved amendments, all of which are on file in the Offices of the St. Joseph County Council and the Department of Planning, Infrastructure and Growth.
- b. An undue financial or administrative burden analysis consists of:
 - i. Determining whether the request for a reasonable accommodation will cause significant and identifiable financial costs to the County.
 - ii. A waiver or modification of zoning requirements generally is not an undue burden if it does not impose any concrete, identifiable financial cost(s) to the County. An example of a waiver would be where a person requests a reasonable accommodation to allow an exception to a setback requirement so that a wheelchair ramp may be constructed to gain access to his or her dwelling.
- c. A fundamental alteration analysis³ consists of:
 - i. Based on analysis, a requested accommodation may be unreasonable if it would substantially change the nature of the zoning plan.
 - ii. The analysis is based on a fact-specific, case-by-case analysis and determination.

² The St. Joseph County Council adopted Resolution No. R14-02 on October 8, 2002, which approved the Comprehensive Plan.

³ 28 *Code of Federal Regulations* § 35.130(b)(7) requires a public entity to make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that the modifications would fundamentally alter the nature of the service, program, or activity. *Wong v. Regents of the Univ. of Cal.*, 192 F. 3d 807 (1999) notes that the “issue of reasonableness depends on the individual circumstances of each case, [with] this determination requiring a fact-specific, individualized analysis of the disabled individual’s circumstances...”

- iii. The analysis takes into consideration the guidance from the U.S. Department of Justice and the U.S. Department of Health and Human Services that “what is reasonable in one circumstance may not be reasonable in another”.⁴

Note: These Policies and Procedures were updated in January 2020, adapted from the Policies and Procedures initially adopted in 2014 by the City of South Bend. Beginning January 1, 2020, the City of South Bend withdrew its membership from the Area Plan Commission of St. Joseph County, establishing its own plan commission and assuming the responsibilities of zoning administration. Since the staff of the Area Plan Commission would no longer be responsible to review Reasonable Accommodation requests on behalf of the City, the County developed a county-specific Application form.

⁴ See: “Joint Statement of the U.S. Department of Justice and the U.S. Department of Housing and Urban Development, Group Homes, Local Land Use, and the Fair Housing Act”, set forth in the Appendix.
http://www.usdj.gov/crt/housing/final8_1.htm.