REQUEST FOR REASONABLE ACCOMMODATION

In accordance with City Code Section 134-6.8 and City Code Sections 2-1232, 2-1233, & 2-1235, the Zoning Board of Adjustment shall apply the following criteria:

Sec. 2-1232. Purpose and policy.

(a) The 1988 amendments to the federal Fair Housing Act (42 USC 3604(f)(3)(B)), the Iowa Civil Rights Act of 1965 (I.C. § 216.8A(3)(c)(2)), and section 62-102(c)(2) of this Code define illegal discrimination to include a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. The purpose of this article is to provide a fair and uniform procedure for receiving and responding to such requests for reasonable accommodation.

(b) This procedure shall not apply to requests for reasonable accommodation in the rules, policies, practices or services adopted or provided by the city in its capacity as a municipal housing agency. Any person seeking reasonable accommodation in any rules, policies, practices, or services adopted by the city in its capacity as a municipal housing agency shall make application to the director of housing services.

(c) The ultimate issue in deciding whether to grant, conditionally grant, or deny a request for reasonable accommodation under the 1988 amendments to the Fair Housing Act is whether the requested accommodation is a reasonable accommodation necessary to afford [a disabled] person equal opportunity to use and enjoy a dwelling in accordance with 42 USC 3604(f)(3)(B). The decision on the reasonableness of the accommodation requested and whether the accommodation is necessary to afford a person with a disability equal access to use and enjoy a dwelling shall be made only after consideration of the factors adopted by resolution of the city council for that purpose. That decision shall be made in accordance with the procedures set forth in this article.

Sec. 2-1233. Application.

(a) A person seeking reasonable accommodation in rules, policies, practices or services of the city shall file an application with the community development department.

(b) If the application seeks an accommodation to permit property to be put to a use that would otherwise be prohibited by the Zoning Ordinance, including a use which is prohibited at the proposed location by a separation requirement, the application shall be assigned to the Board of Adjustment for consideration and decision in accordance with the procedures identified in section 2-1235.

Sec. 2-1235. Consideration and decision by Board of Adjustment.

(a) Except as modified in this section, the established procedures applicable to requests to the Board of Adjustment for exceptions to the Zoning Ordinance shall apply to applications for reasonable accommodation.

(b) The community development department in cooperation and consultation with the human rights commission shall investigate the facts and circumstances of the case; consult the staff members responsible for the administration and enforcement of the rule, policy, practice or service addressed by the application; consider any comments and information regarding the application received prior to the hearing before the Board; and prepare a staff report and recommendation containing suggested findings of fact with regard to each of the factors and a recommended decision for consideration by the Board at the public hearing.

(c) If the application is before the Board upon appeal from a decision of the administrative panel, the findings and order of the administrative panel may serve as the staff report and recommendation.

(d) The Board shall consider the staff report and recommendation, and any additional testimony and evidence presented by the applicant and other interested parties at the public hearing. The Board shall then either:

1) Adopt the findings in the staff report applying the facts and circumstances of the application to each of the factors identified by the city for consideration in deciding applications for reasonable accommodation; or
2) Amend the findings in the staff report as necessary to conform to the evidence presented to the Board, and adopt the findings as so amended. After such findings have been adopted, the Board shall then determine, on the basis of such findings, whether to grant, conditionally grant, or deny the application. A decision of the Board granting an application may prescribe appropriate conditions and safeguards in conformity with the intent and purpose of Article VII of Chapter 2 of the Des Moines Municipal Code, and the Zoning Ordinance.

Roll Call No. 96-3216, adopted by the City Council on September 16, 1996, established factors to be considered in addressing requests for Reasonable Accommodation. Pursuant to Roll Call No. 96-3216, the ultimate issue in deciding whether to grant, conditionally grant, or deny a request for “reasonable accommodation” under the 1988 amendments to the Fair Housing Act is whether the requested accommodation is a reasonable accommodation necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. The decision on the reasonableness of the accommodation requested, and whether the accommodation is necessary to afford a person with a disability equal access to use and enjoy a dwelling shall be made only after consideration of the factors listed below:

The word “Dwelling” as used herein means the intended place of residence of a person with a disability which cannot be built at the location or to the design desired by the applicant if the existing City regulations are enforced.

I. The person’s need for accommodation.
   A. Is the person for whom the dwelling is sought a person with a disability?
   B. To what extent does the regulation, policies, practices or services at issue operate to prevent a person with a disability from residing in a dwelling of their choice?

II. The external appearance and character of the dwelling sought to be allowed by the accommodation.
   A. If the accommodation sought by the application would permit the construction of a new structure (including parking lot for 4 or more vehicles) or an alteration or modification of an existing structure that does not comply with the Zoning Ordinance (for a reason other than its use), then how does the exterior architectural appearance of the new structure or any change to an existing structure compare with the architectural character of the existing structures in the vicinity?
   B. If the accommodation sought by the application would change the allowed use of property served by a secondary residential street, is the amount of vehicular and pedestrian traffic expected to be generated by the dwelling substantially greater than the amount of traffic generated by other uses existing or allowed in the vicinity?
   C. What is the cumulative effect, if any, of the dwelling when added to the existing dwellings serving persons with disabilities on the factors identified in paragraphs A and B, above?
   D. If the site is within a designated historic district, are any new structures or alterations to existing structures in substantial conformance with the adopted architectural guidelines for the district?

III. The City’s interest sought to be advanced by the affected regulation.
   A. If the regulation affects the permitted location of the dwelling or the dwelling is intended to have more than 6 occupants, then the following additional factors shall be considered.
      1. What does the City’s Comprehensive Plan, as amended by any adopted neighborhood plan, identify as the intended use of the land in the vicinity of the dwelling?
      2. What impact does the exterior architectural appearance of the dwelling and accessory facilities have upon attaining and maintaining the intended use of the land in the vicinity of the dwelling?
      3. What is the availability of other dwellings in the vicinity suitable for the special needs of the person?
      4. Does the accommodation further or hinder the goals of the City's adopted housing policy regarding the de-institutionalization of housing for persons with disabilities?
   B. If the regulation is a safety code (i.e. fire, housing, building, electrical, plumbing, etc.), to what degree is the safety of the public and of the occupants of the dwelling compromised if the regulation is waived?
IV. Possible mitigating conditions to be imposed upon a grant of an accommodation.

A. The accommodation shall be limited to the applicant or to the use of the dwelling by persons with a similar disability and a similar need for accommodation. If the dwelling is later converted to another use, the dwelling must be restored to full compliance with the applicable code.

B. Require that the dwelling be managed and operated as represented in the application.