

I. PETITION DESCRIPTION:

Petition Number: ZTA 2014-039, Ordinance 2014-25

Project Name: Zoning Text Amendment – Chapter 5.13, Reasonable Accommodation.

Applicant/Petitioner: Village of Wellington

Request: Text Amendments to Article 5, adding Chapter 5.13, Reasonable Accommodation.

II. BACKGROUND:

“Reasonable Accommodation” is a statutorily established method that allows an individual who is disabled and/or handicapped, as those terms are defined in federal Fair Housing Amendments Act (42 U.S.C. 3601, et seq.) ("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) ("ADA"), to request a modification or alteration in the application of a specific Code provision, rule, policy or practice.

The Fair Housing Act, 42 U.S.C. 3601 et seq., prohibits discrimination by direct providers of housing, such as landlords and real estate companies as well as other entities, such as municipalities, banks or other lending institutions and homeowners insurance companies whose discriminatory practices make housing unavailable to persons because of:

- race or color
- religion
- sex
- national origin
- familial status, or
- disability.

Discrimination in Housing Based Upon Disability

The Fair Housing Act prohibits discrimination on the basis of disability in all types of housing transactions. The Act defines persons with a disability to mean those individuals with mental or physical impairments that substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working.

The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled under the Fair Housing Act, by virtue of that status. The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

Discrimination in Housing Based Upon Disability Group Homes

Some individuals with disabilities may live together in congregate living arrangements, often referred to as "group homes." The Fair Housing Act prohibits municipalities and other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against individuals with disabilities. The Fair Housing Act makes it unlawful:

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.

- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing. What constitutes a reasonable accommodation is a case-by-case determination. Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

There has been a significant amount of litigation concerning the ability of local governmental units to exercise control over group living arrangements, particularly for persons with disabilities.

Title II of the Americans with Disabilities Act applies to State and local government entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance.

III. PROPOSED ZONING TEXT AMENDMENT:

The chapter below is proposed to be added to Article 5. Development Review Proceedings to provide procedures for review, determination, and appeal of requests for reasonable accommodations to afford persons with disabilities an equal opportunity to use and enjoy housing in the Village of Wellington.

CHAPTER 13 REASONABLE ACCOMODATION

Sec. 5.13.1. Purpose and General Provisions.

- A. This chapter addresses requests for reasonable accommodation to the Village's ordinances, rules, policies, and procedures for persons with disabilities and facilities serving them as provided by the federal Fair Housing Amendments Act (42 U.S.C. 3601, et seq.) ("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) ("ADA").
- B. The following general provisions shall be applicable:

1. The Village shall display a notice in the Village's public notice bulletin board (and shall maintain copies available for review in the Village Clerk's office) advising the public disabled individuals (and qualifying entities) may request reasonable accommodation as provided herein.
2. A disabled individual may apply for a reasonable accommodation on his/her own behalf or may be represented at all stages of the reasonable accommodation process by a person designated in writing by the disabled individual.
3. The Village shall provide assistance and accommodation as is required pursuant to FHA and ADA in connection with a disabled person's request for reasonable accommodation, including, without limitation, assistance with reading application questions, responding to questions, completing the necessary forms, filing an appeal, and appearing at a hearing to ensure the process is accessible.

Sec. 5.13.2. Definitions.

For purposes of this chapter, a "disabled" individual or person is an individual that qualifies as disabled and/or handicapped under the FHA and/or ADA. Any person who is disabled (or qualifying entities) may request a reasonable accommodation with respect to the Village's land use or zoning laws, rules, policies, practices and/or procedures as provided by the FHA and the ADA pursuant to the procedures set out in this chapter.

Sec. 5.13.3. Procedure

- A. A request by an applicant for reasonable accommodation shall be made in writing by completion of a reasonable accommodation request form. The form shall be maintained by (and shall be submitted to) the Planning, Zoning and Building Department.
- B. The Planning Director, or designee, shall have the authority to consider and act on requests for reasonable accommodation. The Planning Director, or designee, shall issue a written determination within 45 calendar days of the date of receipt of a completed application and may in accordance with federal law:
 1. Grant the accommodation request;
 2. Grant a portion of the request and deny a portion of the request, and/or impose conditions upon the grant of the request; or
 3. Deny the request in accordance with federal law.

Any such denial shall be in writing and shall state the grounds therefor. All written determinations shall give notice of the right to appeal. The notice of determination shall be sent to the requesting party (i.e. the disabled

individual or his/her representative) by certified mail, return receipt requested. Notice shall be deemed complete when deposited in the U.S. Mail. If reasonably necessary to reach a determination on the request for reasonable accommodation, Planning Director, or designee, may, prior to the end of said 45-day period, request additional information from the requesting party, specifying in sufficient detail what information is required. The requesting party shall have 15 calendar days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the 45-day period to issue a written determination shall no longer be applicable, and the Planning Director, or designee, shall issue a written determination within 30 calendar days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said 15-day period, the Planning Director, or designee, shall issue a written notice advising that the requesting party has failed to timely submit the additional information, and therefore the request for reasonable accommodation shall be deemed abandoned and/or withdrawn and no further action by the Village with regard to said reasonable accommodation request shall be required.

C. In determining whether the reasonable accommodation request shall be granted or denied, the requesting party shall be required to establish that they are protected under the FHA and/or ADA by demonstrating that they are handicapped or disabled, as defined in the FHA and/or ADA. Although the definition of disability is subject to judicial interpretation, for purposes of this section the disabled individual must show:

1. A physical or mental impairment which substantially limits one (1) or more major life activities; and
2. A record of having such impairment; or
3. That they are regarded as having such impairment.

The requesting party will have to further demonstrate that the proposed accommodations being sought are reasonable and necessary to afford handicapped/disabled persons equal opportunity to use and enjoy housing. The foregoing (as interpreted by the courts) shall be the basis for a decision upon a reasonable accommodation request made by the Planning Director, or designee, or by the Village Manager in the event of an appeal.

D. While an application for reasonable accommodation, or appeal of a determination of same, is pending before the Village, the Village will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant.

Sec. 5.13.4. Appeal.

The requesting party may appeal the decision of the Planning Director or designee. The appeal shall be submitted in writing no later than 30 calendar days after the decision of the Planning Director or designee. All appeals shall include a statement containing sufficient detail of the grounds for the appeal. Appeals shall be to the Village Manager who shall render a determination as soon as reasonably practicable, but in no event later than 60 calendar days after an appeal has been filed.

Sec. 5.13.5. Fee

There shall be no fee imposed by the Village in connection with a request for reasonable accommodation under this chapter or an appeal of a determination, and the Village shall have no obligation to pay a requesting party's (or an appealing party's, as applicable) attorneys' fees or costs in connection with a request or an appeal.

IV. ANALYSIS:

The proposed ordinance assures that the Village's Land Development Regulations treat persons with disabilities and facilities serving them in a non-discriminatory manner while maintaining the fundamental integrity of the Village's zoning authority. Each request for a reasonable accommodation consideration will be reviewed on a case-by-case basis. The Planning Department will track all requests and establish a database to further demonstrate consistency in the Village's non-discriminatory application of this code.

To date, the Village has provided one (1) reasonable accommodation for a resident with a physical disability. The request was for an alteration to the rules regarding above ground pools to accommodate an exercise spa. The spa's size and depth exceeded the code limitations for spas and was considered by code to be an above ground pool. The resident was given the accommodation to allow the exercise spa with the provision that it must be removed from the property if they move from the residence.

V. STAFF RECOMMENDATION:

Approval of Ordinance 2014-25 amending Article 5, adding Chapter 5.13 Reasonable Accommodation.

VI. REVIEW PROCESS:**1. Planning Zoning and Adjustment Board:**

This application shall be reviewed by the Planning Zoning and Adjustment Board: on September 8, 2014.

2. Council:

This application is scheduled to be reviewed by the Council (First Reading) on October 28, 2014 and (Second Reading/Adoption) on November 25, 2014.

VII. PUBLIC NOTIFICATION:

Public notification of this Zoning Text Amendment shall be accomplished by Newspaper Advertisement. Display advertisements shall be placed in The Palm Beach Post on:

- August 24, 2014 – Planning Zoning and Adjustment Board
- _____, 2014 – Council First Reading
- _____, 2014 – Council Second Reading