



Fair Housing Council of Suburban Philadelphia

Fact Sheet on Fair Housing and Zoning and Land Use

What is Fair Housing?

Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act)

Title VIII of the Civil Rights Act of 1968, as amended, is known as the Fair Housing Act. The Fair housing Act makes it illegal to discriminate in the sale, rental, financing, or insurance of a dwelling, or in any other type of housing related transaction on the basis of race, sex, religion, national origin, color, disability, or familial status (the presence of children under the age of 18 in the household). In addition, certain multifamily dwellings, constructed after 1991, are required to be accessible to persons with disabilities.

How Does the Fair Housing Act Relate to Zoning and Land Use?

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. Similarly, a municipality may not make zoning or land use decisions based on neighbors’ fears that a dwelling would be occupied by members of these protected classes. 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.

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.

What is a Reasonable Accommodation?

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 to the Fair Housing Act

There is one exemption to the Fair Housing Act that applies to zoning and land use. Housing for older persons, or housing where 80% of the units are occupied by at least one person over the age of 55, is except from the portion of the Fair Housing Act that prohibits discrimination against families with children. According to the Housing for Older Persons Act, a housing facility or community for older persons may include “a municipally zoned area”. Therefore, although 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, any area zoned specifically for housing for older persons would be exempt from this prohibition.

Examples of Prohibited Activities Under the Fair Housing Act

- A municipality may not reject a proposed affordable housing development in response to neighbors’ fears that such housing will be occupied by racial minorities.
- A municipality may not require neighbor notification or a public hearing only for the development of affordable housing or group homes, but not other types of residential development.
- A municipality may not 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.
- A municipality may not impose spacing requirements on group homes for persons with disabilities.

- A municipality may not 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.

The following are examples of local fair housing cases that have involved zoning and land use:

- 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 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.
- United States v. City of Philadelphia: The city was ordered to provide a reasonable accommodation that would allow an exception to the rear yard requirement of the city's zoning ordinance, so that a non-profit organization could rehabilitate a building to use for a group home.

Further Reading

- The Fair Housing Act: www.usdoj.gov/crt/housing/title8.htm
- The Housing for Older Persons Act: www.fairhousing.com/index.cfm?method=page.display&pageID=443
- HUD/DOJ Joint Memo on Group Homes, Local Land Use, and the Fair Housing Act: www.usdoj.gov/crt/housing/final8_1.htm
- HUD/DOJ Joint Memo on Reasonable Accommodations Under the Fair Housing Act: www.usdoj.gov/crt/housing/jointstatement_ra.htm
- Addressing Community Opposition to Affordable Housing Development: A Fair Housing Toolkit (includes many further examples of fair housing cases involving zoning and land use): content.knowledgeplex.org/kp2/cache/documents/68549.pdf

About the Fair Housing Council of Suburban Philadelphia

Founded in 1956, the Fair Housing Council of Suburban Philadelphia (FHCSF) is the oldest fair housing council in the nation and serves Southeastern Pennsylvania. FHCSF has been serving Delaware County for 51 years and is the only Qualified Fair Housing Enforcement Organization, as designated by HUD that serves Delaware County. As an essential complement enforcement

activities, FHCSP sponsors and participates in educational workshops and forums, and develops educational materials that enable consumers to recognize housing discrimination when they encounter it, housing counselors to recognize when their clients encounter it, government officials to understand the ramifications of housing discrimination for their constituents, and housing providers to understand their responsibilities under the Fair Housing Act.

The mission of FHCSP is “To educate and advocate for equal access to quality, affordable housing for everyone in Southeast Pennsylvania.”

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