AGENDA

Board of Adjustment, District 2
August 3, 2011, 6 P.M.
Board of Supervisors Conference Room
1415 Melody Lane, Building G
Bisbee, Arizona 85603

6:00 P.M. Call to Order

Roll Call (Introduce Board members, and explain quorum)

(Also explain procedure for public hearing, i.e., after Planning Director's Report, Applicant will be allowed 10 minutes; other persons will each have 5 minutes to speak and Applicant can have 5 minutes for rebuttal at end, if appropriate.)

Determination of Quorum

Approval of Previous Minutes

NEW BUSINESS

Item 1 - Introduce Docket and advise public who the applicants are.

Public Hearing, Docket BA2-11-02: The Applicant requests a Variance to allow a 1,400 square foot Accessory Living Quarters on their parcel, based on "reasonable accommodation" pursuant to the Fair Housing Act, 42 USC 3604 for handicapped and elderly persons and Section 2103.02 of the Cochise County Zoning Regulations. County Zoning Regulations Section 203, Definitions, define an Accessory Living Quarters as including no more than 850 square feet in area, exclusive of attached garages, patios, and other open areas. The subject parcel (#107-59-014) is located at 7125 E Kendall Lane, Sierra Vista, AZ

Applicant: Phyllis Bacon.

- Call for PLANNING DIRECTOR'S PRESENTATION
- Declare PUBLIC HEARING OPEN
  1) Call for APPLICANT'S STATEMENT
  2) Call for COMMENT FROM OTHER PERSONS (either in favor or against)
  3) Call for APPLICANT'S REBUTTAL (if appropriate)
- Declare PUBLIC HEARING CLOSED
- Call for BOARD DISCUSSION (may ask questions of applicant)
- Call for PLANNING DIRECTOR'S SUMMARY AND RECOMMENDATION
- Call for MOTION
- Call for DISCUSSION OF MOTION
- Call for QUESTION
- ANNOUNCE ACTION TAKEN (with Findings of Fact)

Item 2 – Election of Officers

Call for Planning Director's Report
Call to the Public
ADJOURNMENT

COCHISE COUNTY PLANNING DEPARTMENT

1415 Melody Lane, Bisbee, Arizona 85603

(520) 432-9240
Fax 432-9278

Community Development Director Carlos De La Torre

DRAFT MINUTES

TO: Board of Adjustment, District 2

FROM: Debra Meyer, Secretary

SUBJECT: Minutes of the Regular Meeting of May 4, 2011

DATE: July 21, 2011

MEMBERS PRESENT

Gerry Eberwein, Chairman
Betty Piper, Member

MEMBERS ABSENT
Albert Young, Vice-Chairman

STAFF PRESENT

Beverly Wilson, Senior Planner
Mike Turisk, Interim Planning Director

OTHERS PRESENT: (See attached sheet)

These minutes for the BA2 meeting held on May 4, 2011 are complete only when accompanied by the memorandum for that meeting.

Chairman Eberwein called the meeting to order at 6:00 PM at the Cochise County Board of Supervisors' large conference room in Bisbee, Arizona. Mr. Eberwein followed by calling the roll and a quorum was established with the presence of two Board Members.

Mr. Eberwein followed by offering an explanation of the procedures for the meeting.

Mr. Eberwein asked if there were any additions or corrections to the minutes of the April 6, 2011 meeting. As there were not amendments to the draft minutes, Ms. Piper made a motion to accept the minutes as presented. Mr. Eberwein seconded and the motion passed (2 – 0),

NEW BUSINESS

Docket BA2-11-01: Senior Planner Beverly Wilson the staff report on behalf of the Planning Department for a Variance from Section 704.04 of the Cochise County Zoning Regulations, which requires that structures in a TR-9 Zoning District be set back no less than 10 feet from any property

line.
The Applicant seeks to legitimize an existing carport, which is 3.5 feet from the Eastern property line. The subject parcel (Parcel # 408-24-047B) is located at 127 East 22nd Street in Douglas, AZ. Ms. Wilson presented photos and site plans showing the location of the property and the surrounding zoning and uses. Ms. Wilson presented factors in favor and factors against, and she stated staff had received 3 letters in support and 1 letter in opposition in which the neighbor believed that the fence was not on the property line, the Applicant had the property surveyed and found it to be correct and with that the neighbor withdrew her opposition.

Mr. Eberwein declared the public hearing open.

The Applicant, Dennis McCloskey, stated they are requesting this Variance as the carport was built by the previous owner without a permit, and when he applied for the permit to legitimize the carport they found it was too close to the property line.

Mr. Eberwien opened the meting to the public.

Mr. Mendez stated he has no objections to the proposal.

Chairman Eberwein declared the public hearing closed and asked for staff's recommendation.

Staff recommended approval, based on the factors in favor, with the conditions stated by staff. Ms. Piper moved that the Variance for a 3' setback be granted with the conditions recommended by staff, citing the factors in favor of approval as the findings of fact. Mr. Eberwein seconded the motion, and it passed unanimously (2 – 0).

Member Piper stated she was moving to Tucson, and was resigning from the Board.

Chair Eberwein stated with the resignation of Ms. Piper the election of officers would be tabled until the next meeting. Motion made by Member Piper and seconded by Mr. Eberwein. Vote 2-0 to table the election of officers until the following meeting.

The meeting was adjourned at approximately 6:25 P.M.

COMMUNITY DEVELOPMENT DEPARTMENT

Planning, Zoning and Building Safety

1415 Melody Lane, Bisbee, Arizona 85603

(520) 432-9240
Fax 432-9278

Carlos De La Torre, P.E., Director

MEMORANDUM

TO: Cochise County Board of Adjustment, District 2

FROM: Beverly Wilson, Interim Planning Manager

For: Mike Turisk, Interim Planning Director

SUBJECT: Docket BA2-11-02 (Bacon)

DATE: July 20, 2011, for the August 3, 2011 Meeting

APPLICATION FOR APPEAL OF ZONING INSPECTOR'S INTERPRETATION AND REQUEST FOR A VARIANCE

Docket BA2-11-02 (Bacon): The Applicant is seeking a variance from the Cochise County Zoning Regulations based on "reasonable accommodation" for disabled persons, pursuant to the Fair Housing Act, 42 USC 3604, to allow an Accessory Living Quarters (ALQ) that is larger than 850 square feet in size as defined in the Zoning Regulations (not including open areas such as carports and patios or enclosed attached garages) by allowing a 1,400 square foot ALQ structure. The subject parcel (Parcel No. 107-59-014) is located at 7125 E Kendall Lane, Sierra Vista, AZ. The Applicant is Phyllis Bacon.

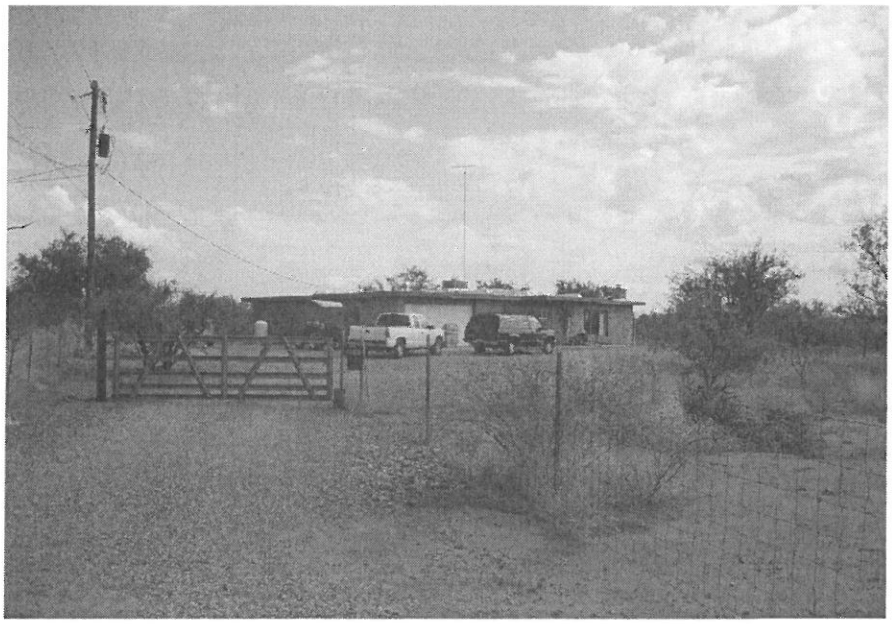
If this Variance is approved, an ALQ application is the next step in the process which include notification of neighbors within a 300 foot radius.

I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING USES

Parcel Size:	4.69 acres
Zoning:	RU-4 (one dwelling per four acres)
Growth Area:	Growth Category D
Plan Designation:	Rural Residential
Area Plan:	Sierra Vista Sub-Watershed
Existing Uses:	Single Family Home
Proposed Uses:	Add a 1,400 square foot Accessory Living Quarters

Surrounding Zoning

Relation to Subject Parcel	Zoning District	Use of Property
North	RU-4	Rural Residential
South	RU-4	Rural Residential and Vacant Land
East	RU-4	Rural Residential
West	RU-4	Rural Residential



This is a photo of the primary residence on the parcel.

II. PARCEL HISTORY

A 2,179 square foot home was built in 1972. There is no further information regarding the home in the files. A permit was issued on February 6, 2009, for a 12 x 16 (192 square foot) Storage Barn. The permit remains open. A permit was issued on September 25, 2008 for a heat pump and roof repair from installation of heat pump. The permit was closed on November 30, 2010. There are no code enforcement actions or violations associated with the property.

III. APPLICABLE REGULATIONS

This docket is a request for a variance to allow a 1,400 square foot Accessory Living Quarters. The Zoning Regulations define an Accessory Living Quarters as containing no more than 850 square feet. A Variance is requested based on a request for reasonable accommodation pursuant to the federal Fair Housing Act for the proposed residents, a widow who is 100% disabled, widowed mother of four children, as defined in Section 2103.02 of the Zoning Regulations.

Article 2 (Definitions) of the Cochise County Zoning Regulations define an Accessory Living Quarters as having a size of no larger than 850 square feet (Attachment 2). Article 21 (Boards of Adjustment) §2103.02 covers Variances, and states that a Variance may be granted for "reasonable accommodation" to the extent that such accommodation is required pursuant to applicable state or federal law.

The Federal Fair Housing Act (42 USCS § 3604: Discrimination in the sale or rental of housing and other prohibited practices) states that discrimination includes (§3604 (f)(3)(B) "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling".

The legal meaning of "enjoyment" as contained in the Fair Housing Act refers to the ability to use housing. The Random House Webster's Dictionary of the Law defines "enjoy" as "to possess or exercise a right or interest; have benefit of." It also comments that "In legal contexts, to 'enjoy' something does not mean to take pleasure in it: [for example] Americans enjoy the right of trial by jury in criminal cases".

IV. BACKGROUND

The Applicant, Mrs. Phyllis Bacon, is requesting a variance from the size restrictions for an Accessory Living Quarters (ALQ), per Section 1717 of the Cochise County Zoning Regulations. She is proposing to build a 1,400 square foot ALQ for her daughter, Heidi, who is 100% disabled, and a widow with four children. She has three daughters, and one son; the children are aged 1 to 17. The Applicant asserts that due to the age differences and number of family members who must reside in the ALQ, an 850 square foot structure would not permit adequate living arrangements. The parcel is 4.56 acres in size and takes access from Kendall Lane.

The current definition and application process for ALQs, was adopted by the Board of Supervisors in October 2002. The maximum allowable size of ALQs is 850 square feet, allowing for garages, which are not included in the maximum size calculations. Furthermore, they are to be subordinate in size to the principal dwelling, and again, up 850 square feet or 70% of the size of the main residence whichever is smaller. The proposed ALQ would be 64% of the size of the main residence which is 2,179 square feet with a 540 square foot garage attached.

This photo was taken from Valley Drive looking south.

V. ANALYSIS

The Applicant's justification for the proposed variance is that reasonable accommodation is required to allow enjoyment of the home pursuant to the Fair Housing Act because:

- Mrs. Bacon's daughter, Heidi, is 100% disabled and widowed. She is able to live alone, with some assistance from her family.
- Heidi has three daughters, aged one, ten, and seventeen, and one son who is fifteen that still live at home with her. Because of this large age difference, an 850 square foot home would not adequately address the needs of all children.
- Heidi requires assistance with the children, which her parents can provide.
- Heidi also has a service dog, which lives with the family.
- Heidi's widow's benefits are being reduced and she will no longer be able to live in her current leased home.

The proposed 1,400 square foot ALQ would provide a safe and secure home for Heidi and her children. A variance is requested to increase the maximum allowable size of the ALQ from 850 to 1,400 square feet based on "reasonable accommodation" pursuant to the Federal Fair Housing Act. The Cochise County Zoning Regulations authorize a variance for "reasonable accommodation that is required pursuant to any applicable state or federal law." The Fair Housing Act prohibits housing discrimination, including a refusal to make "reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling". The legal definition of "enjoyment" pursuant to the Fair Housing Act is to have use or benefit of, housing opportunities.

Staff's conclusion is that granting a variance for a 1,400 square foot ALQ would comply with the Fair Housing Act intent and be a reasonable addition to the rural character of this property.

PUBLIC COMMENT

The Department mailed notices to neighboring property owners within 300 feet. Staff posted the property on June 12, 2010, and published a legal notice in the *Arizona Range News* on June 13, 2011. To date, the Department has received no response from the public to the request.

VI. SUMMARY AND CONCLUSION

The variance is requested based on Section 2103.02 of the Zoning Regulations, which states "A request for 'reasonable accommodation' in these regulations pursuant to any federal or state housing law or similar legislation, as may be necessary to afford an equal opportunity to housing under such law, shall be considered to be an appropriate condition for a variance from the strict application of these zoning regulations". The Board of Adjustment is authorized to grant any such variance "to the extent that any such accommodation is required pursuant to any applicable state or federal law".

Factors in Favor of Allowing the Variance

1. There are peculiar conditions for which strict application of the Zoning Regulations would result in unnecessary hardship.

2. The variance would allow a disabled occupant full enjoyment of her home.

Factors Against Allowing the Variance

1. A purpose of limiting the footprint of ALQs is to prevent crowding and prevent situations (under particular circumstances) that can change the zoning in a de facto manner.

VII. RECOMMENDATION

Based on the factors for approving the variance, staff recommends **approval** of the variance request.

Sample Motion: Mr. Chairman, I move to approve the following Variance appertaining to Docket BA2-11-02: permitting the Applicant to apply for an Accessory Living Quarters of 1,400 square feet.

VIII. ATTACHMENTS

Attachment 1:	Request from Applicant for variance
Attachment 2:	Definition of Accessory Living Quarters
Attachment 3:	Zoning Regulations Article 2103.02
Attachment 4:	42 USCS §3604 (Fair Housing Act)

COMMUNITY DEVELOPMENT DEPARTMENT
Planning, Zoning, and Building Safety
1415 Melody Lane, Bisbee, Arizona 85603
(520) 432-9240
Fax 432-9278

APPLICATION FOR VARIANCE

DESIRING A VARIANCE FROM THE TERMS OF THE COCHISE COUNTY ZONING REGULATIONS:

TO THE HONORABLE BOARD OF ADJUSTMENT, DISTRICT 2.

I (we), the undersigned, hereby petition the Cochise County Board of Adjustment, District 2 to grant a variance from the terms of the Cochise County Zoning Regulations as follows:

(Note: Complete all the following items. If necessary, attach additional sheets.)

1. Parcel Number: 10759014

2. Address of parcel: 7125 E. Kendall Lane

3. Area of Parcel (to nearest tenth of an acre): 4.69 acres

4. Zoning District designation of Parcel: RU-4

5. Describe existing uses of the parcel and the size and location of existing structures and buildings on it.

Single family home. Have a 12 by 16 storage barn

6. Describe all proposed uses or structures, which are to be placed on the property.

1400 square foot accessory living quarters

JUL 1 1 2011
PBD

7. State the specific nature of the variance or variances sought.

A variance from the Choise County Zoning regulations base on reasonable accominidatation for disabled persons pursuant to the FAIR HOUSING ACT, 42 , USC3604, to allow an Excessory living Quarter that is larger than 850 square feet, by allowing a 1400 square feet ALQ.

8. A variance may be granted only when, due to any peculiar situation surrounding a condition of a specific piece of property, including unusual geographic or topographic conditions, strict application of the Zoning Regulations would result in an unnecessary hardship to the property owner. In granting variances, however, the general intent & purpose of the Zoning Regulations will be preserved (See attached Section 2103.02 on variances). Describe the reasons for requesting the variance and attach any documents necessary to demonstrate compliance with the provisions cited above.

This for Heidi, widow, disabled Mother of four children still at home. Heidi as many health problems and needs to be close so we can help her, also because of new laws her widows benefits have been lowered earlier than expected.

9. State why the variance would not cause injury to or impair the rights of surrounding property owners. Identify conditions you propose, if any, to minimize the impact on surrounding properties. It shall be the responsibility of the Applicant to submit any studies and/or data necessary to demonstrate the effectiveness of the alternative conditions.

We live on 4.69 acres and the home would be back enough away from neighbors, that they would hardly know she is here. She is with us now as she is waiting for all this to go through, we did have to call ambulance on July 6 but she is a little better now. The main reason I don't think it will cause any problem is she is family and it will not be in different than us being here, and our neighbors are very good people and they seem to be very understanding people -

10. List the name and address of all owners of the Parcel(s) for which the variance is sought.

PROPERTY OWNER	MAIL ADDRESS
Kennth R. Bacon	7125 East Kendall Lane
Phyllis J. Bacon	Sierra Vista, A.
	85650

The undersigned hereby certifies and declares that to the best of his/her knowledge and belief the data submitted on and attached to this application for a variance from the terms of the Cochise County Zoning Regulations are true and correct.

SIGNATURE OF PETITIONER	ADDRESS	DATE
Kenneth Bacon		7-11-11
Phyllis J Bacon		7-11-11

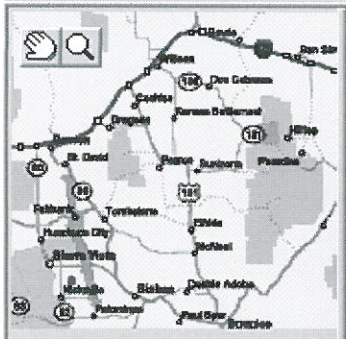
APPLICANT'S PHONE NUMBER 520-803-7013

APPLICANT'S EMAIL ADDRESS KC7JCU@q.com

Note: Each application shall be accompanied by an accurate site plan showing the parcel of land and the existing and proposed structures and buildings on it, and shall be accompanied by a check in the amount of three hundred dollars ($300) payable to the Cochise County Treasurer. Return to the Cochise County Planning Department, 1415 Melody Lane, Building E, Bisbee, Arizona, 85603.

MapView: Cochise County

File View Tools Help

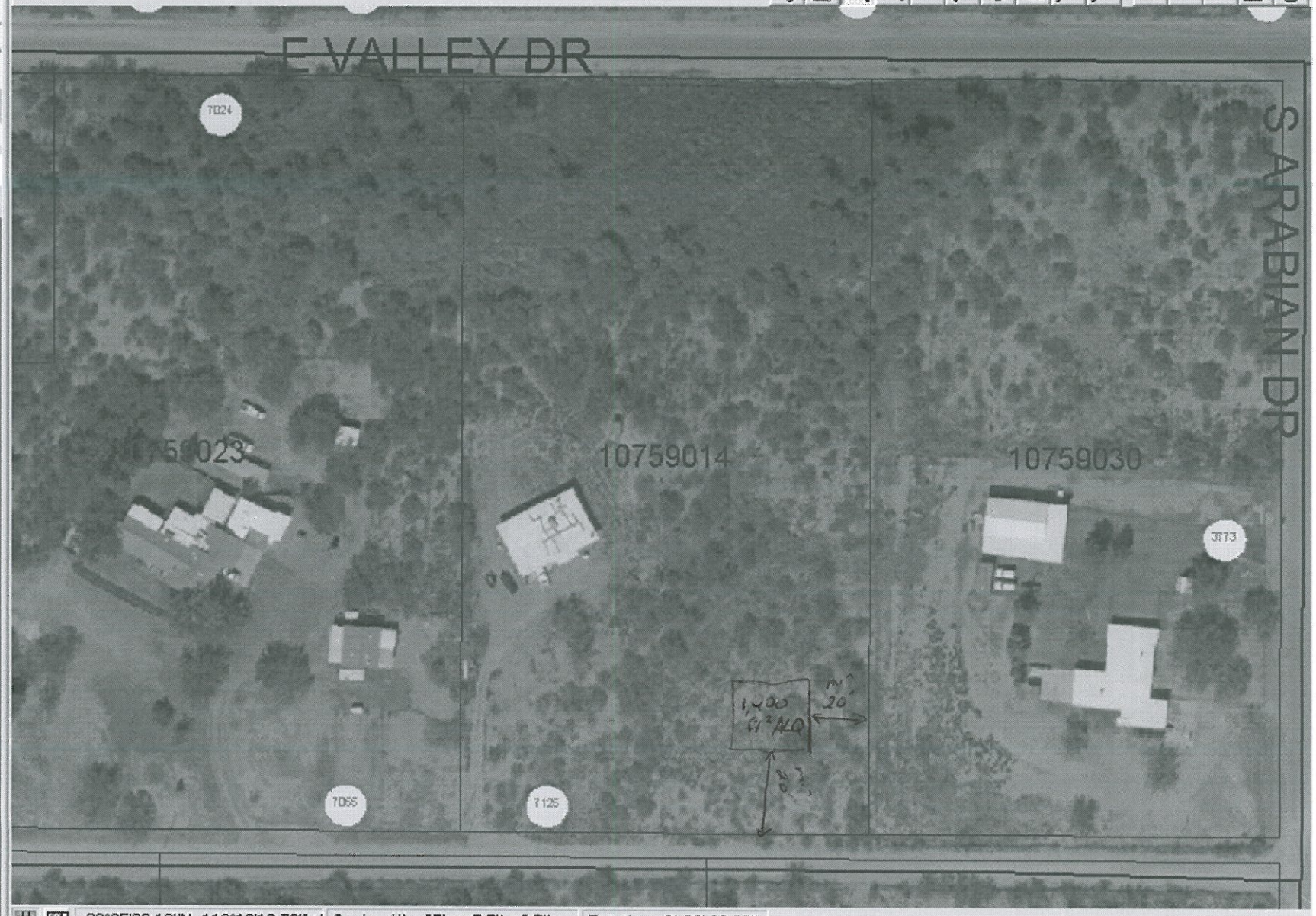


Locate by: APN to Parcel | Book: 107 | Map: 59 | Parcel: 014

Parcels, 6604

General | Owner | Related

Attribut	Value
APN	10759014
Book	107
Map	59
Parcel	014
Use Cod	0134
Tax Area	4907
Zoning	RU-4
Category	D-RURAL RESIDE
ESN	102
Precinct	49
Referenc	ASSESSOR LEGAI
Identifi	6604
User M	jmcgrath
Source	2010-Jan-05 15:14:



32°25'39.18"N 110°10'12.70"W | Scale: 1" = 87' on 7.5" x 8.5" | Rotation: 0° 00' 00.00"

start | Property Inquiry... | Inbox - Microsof... | PTWin32v2 - Pe... | MapView: Cochi... | B106 | Division Depot | 1:39 PM

May 18,2011

Mr. Michael Turisk
Cochise County Planning and Zoning
1415 Melody Lane
Bisbee, AZ. 85603

Dear Mr. Turisk:

Recently, I spoke with Keith Demist of your office, who suggested that I write to you explaining our situation.

Our Daughter Heidi, age forty two, is 100% disabled and is a widow. She has a service dog. Four of her children, three girls, aged one, ten, and seventeen years old, and a son fifteen are still at home. Her widow's benefits are going to be cut down in July. Due to both her financial situation and her serious health concerns, she will no longer be able to live in her current leased home in El Mirage.

We, Heidi, Ken and my self, feel the best situation for Heidi would be to be where we can help her with the care of the children on those days that she needs us, she tries very hard to do every thing on her own, but would appreciate our support. We have a twenty-four hundred square foot home on 4.8 acres at 7125 E. E. Kendall Lane off Moson Rd. in Sierra Vista. The parcel number is 10759014. We are zoned RU-4. This is a fairly open rural area.

We understand from your office that accessory living quarters of up to 850 square feet are allowed on our parcel. However, this size of dwelling would be too small for Heidi's families needs. Is it possible to obtain a variance that would allow a somewhat larger house to be built? We believe Habitat would be able to build a 1,400 square foot house that is needed; because of age difference in children and size of family.

Any suggestions and help you can give us would be greatly appreciated.

Thank you,
Ken Bacon & Phyllis J Bacon
Ken and Phyllis Bacon

Home phone is 520-803-7013
E-mail is kc7jcv@q.com

ARTICLE 2

DEFINITIONS

201 Intent

This article is intended to clarify the meaning of any term used within these Regulations for which the common definition may not serve the purpose of the Regulations, or which is not a commonly used term outside of the context of these Regulations.

202 Interpretations

Any dispute regarding the meaning of any word or term used in these Regulations shall be decided by the Zoning Inspector, and all such decisions shall be subject to appeal to the appropriate Board of Adjustment.

203 Definitions

Access - A means of vehicular ingress and egress connecting a site to the roadway system.

Accessory Living Quarters – An attached or detached structure that is used either as a guesthouse or as quarters for the ill, elderly or disabled, or their caretaker. Accessory living quarters must be incidental and subordinate in size, impact and purpose to a principal dwelling. The structure may be no more than 850 square feet in size, including exterior wall dimensions. In the absence of a special use permit issued pursuant to §1715.05, the structure shall be no more than 70% the size of the principal dwelling.

The area calculation shall include all attached areas, except carports and patios, and enclosed attached garages. The combined square footage of a detached accessory living quarter and the total square footage of a garage attached to the accessory living quarters shall be subordinate in size to the principal dwelling.

The accessory living quarters shall not have a separate address or separate utility meters and shall not be rented separately from the main residence, nor used for commercial purposes other than a home occupation. Recreational vehicles, other than park models, shall not be permitted as accessory living quarters in any zoning district. Manufactured homes, rehabilitated mobile homes, mobile homes with the State Office of Manufactured Housing Rehabilitation Insignia of Approval and park models may be permitted as accessory living quarters in those Zoning Districts that allow mobile homes and manufactured homes as permitted structures.

Accessory Structures or Uses - Structures or uses on the same site and of a nature customarily incidental and subordinate in size, impact and purpose to the principal structures or uses. Accessory structures or uses shall observe all site development standards required of the principal structure or use, except as otherwise specified within these Regulations. Structures attached to the principal structure shall be considered a part of that principal structure.

Acre - An area of land comprising forty-three thousand, five hundred sixty (43,560) square feet.

Agricultural Processing Services - Those services which alter the condition of and add value to a marketable, agricultural commodity through a processing activity.

ARTICLE 21

BOARDS OF ADJUSTMENT

2101 Creation and Membership

A Board of Adjustment is hereby established in each supervisorial district of Cochise County. Each Board of Adjustment shall consist of 3 members, each of whom shall be a resident of the supervisorial district from which he is appointed. Appointments shall be made by the Board of Supervisors. Members shall serve without compensation except for reasonable travel expenses. No member of any Board of Adjustment shall be a member of the Cochise County Planning and Zoning Commission, and no employee of said Commission shall be appointed to a Board of Adjustment. The terms of the members of each Board of Adjustment first appointed shall be 2, 3 and 4 years; thereafter, each term shall be 4 years. Any member may be removed by the Board of Supervisors for neglect of duty, inefficiency, or misconduct in office, after a 10 day written notice and public hearing thereon. A written statement of the reason for removal shall be filed with the Clerk of the Board of Supervisors. If a member moves from the supervisorial district from which he is appointed, his office shall at once become vacant. Vacancies shall be filled for the unexpired term of any member whose office has become vacant.

2102 Meetings and Rules

2102.01 Each Board of Adjustment shall hold at least one regular meeting each month if there is a need, and such additional meetings as the Chairman or a majority of the members deem necessary for the transaction of business. All regular and special meetings shall be open to the public.

2102.02 Each Board of Adjustment shall adopt its own by-laws and rules of procedure, which shall be filed with the Clerk of the Board of Supervisors. The Planning Director shall serve each Board of Adjustment as Executive Secretary.

2102.03 Each Board of Adjustment shall keep written or recorded minutes of its proceedings showing the vote of each member upon each question, or indicating any member's absence or failure to vote, and shall keep records of its examinations and other official actions, all of which shall be filed and maintained by the Planning Director and shall be available for public inspection during customary office hours.

2102.04 A majority of the Board of Adjustment shall constitute a quorum. All action shall be by resolution, and the concurring vote of a majority of the quorum shall be necessary to reverse any order or determination of the County Zoning Inspector, or to decide in favor of an applicant in any matter of which the Board of Adjustment has original jurisdiction under these Zoning Regulations, or to grant any variance from the requirements contained in these Zoning Regulations.

2102.05 Each Board of Adjustment may call upon any Cochise County officer, department, board, commission or agency for assistance in the performance of its duties, and it shall be their duty to render such assistance as may be reasonably required.

2103 Jurisdiction and Powers

Each Board of Adjustment shall have jurisdiction only within the supervisorial district from which its members are appointed and shall have the following powers and may exercise any other powers specifically conferred by any provision of these Regulations:

2104 Application for Variance

Application for any variance from these Regulations shall be made to the Board of Adjustment after the formal applicable permit application has been submitted and reviewed. Such applications shall be made on forms prescribed by the Board of Adjustment, shall be filed with the Planning Director, and shall be accompanied by:
Reasons for requesting the variance, which shall include a notation of the specific provisions of the Regulations under which the variance is requested. Any documents necessary to demonstrate compliance with the cited provision shall be attached.

2105 Fees

Applications to the Boards of Adjustment shall be accompanied by the appropriate fee as set forth in the adopted Planning and Zoning Fee Schedule.

2106 Hearings

Upon receipt of notice of appeal, application for a variance or any other application properly invoking its jurisdiction, the Board of Adjustment shall schedule a public hearing to take place within a reasonable time frame established by the Zoning Inspector. Public notice of every hearing shall be given not less than 15 days prior to the hearing by publication of the notice at least once in a newspaper of general circulation in the county seat.

In the case of a variance, the property shall also be posted in no less than two places not less than 10 days in advance of the hearing. Notice shall also be mailed, via first class, to each real property owner, as shown on the last assessment of the property, within 300 feet of the proposed variance.

2107 Decisions

Decisions of the Board of Adjustment shall be made within a reasonable time. Every decision of the Board of Adjustment shall be based upon findings of fact, and every finding of fact shall be supported in the record of its proceedings.

2108 Conditions

In approving any variance, the Board of Adjustment may prescribe appropriate conditions in harmony with the general purpose of these Zoning Regulations which will maintain the integrity and character of the zoning district within which the use is situated.

Where necessary, the Board of Adjustment may require that securities be deposited with the Cochise County Treasurer, in such form and amount as it may deem proper under the circumstances, to insure compliance with the conditions designated in connection therewith. If any regulation, restriction, condition or stipulation is violated, the said securities shall be forfeited to Cochise County and the decision allowing the variance or granting the use or building permit shall become null and void.

Failure to fulfill any condition shall be deemed a violation of these Zoning Regulations.

2109 Appeal of a Decision Made by the Board of Adjustment

Any person aggrieved by a decision of the Board of Adjustment may at any time within 30 days of such decision appeal to the Superior Court, and the matter shall be heard in like manner as appeals from courts of justices of the peace.

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act[1] (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.[2] One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.[3] HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

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1 The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

2 The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. *See* Bragdon v. Abbott, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

3 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.[4]

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them[5] and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling."[6] The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

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[4] Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. *See* U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and "Section 504: Frequently Asked Questions," (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

[5] The Fair Housing Act's protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). *See also* H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) ("The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities."). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

[6] 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.[7] With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

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[7] This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.[8] This list of major life activities is not exhaustive. *See e.g.*, Bragdon v. Abbott, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.[9] Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

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[8] The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. See Toyota Motor Mfg, Kentucky, Inc. v. Williams, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See* Sutton v. United Airlines, Inc., 527 U.S. 470, 492 (1999).

[9] *See, e.g.*, United States v. Southern Management Corp., 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its "no pets" policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a "fundamental alteration"?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

> **Example 1**: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

> **Example 2:** Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words "reasonable accommodation" are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers <u>may</u>, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;

- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;

- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and

- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

> **Example 1:** An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

> **Example 2:** A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

> **Example 3:** An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits[10] or a credible statement by the individual). A doctor or other

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[10] Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g.*, Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;

- By completing the "on-line" complaint form available on the HUD internet site: http://www.hud.gov; or

- By mailing a completed complaint form or letter to:

  Office of Fair Housing and Equal Opportunity
  Department of Housing & Urban Development
  451 Seventh Street, S.W., Room 5204
  Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at http://www.usdoj.gov/crt/housing/hcehome.html.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.