

February 8, 2023

Dear Members of the Planning Board,

I watched the Planning Board meeting on February 6th, 2023. As an advocate for those with disabilities I felt compelled to follow up on some remarks that were made by the Planning Board toward accessibility and potential discrimination against those with disabilities. I am submitting this letter as a Hingham resident and not on the behalf of the Commission on Disabilities of which I am the Vice- Chair.

Mr. Gary Tondorf- Dick brought up an issue regarding accessibility to the ADU. The board narrowed the question to “foot traffic” not vehicular access. I think this is a very important issue to better vet as it speaks to the derisive actions, and attitude, toward individuals with disabilities by many policy makers in Hingham.

The Fair housing Act prohibits discrimination based on disability and requires housing entities to allow a person with a disability equal use and enjoyment of their dwelling. Property owners, housing managers, condominium associations, real estate agents, and lenders, among others, are required to follow fair housing laws and may face legal consequences if anti-discrimination laws are violated.

Given that the proposed ADU By-law suggests that ADU’s would be used for rental purposes they must comply with the Fair Housing Act. One can not “let the market” dictate if a person with a disability would rent the unit as one member of the Planning Board suggested. I was also rather disheartened that the Chair of the Planning Board made the flip and derisive comparison of requiring a single-family home to have an elevator to having basic accessibility to a rental unit.

As leaders, planners, and policy makers in the Town of Hingham I would implore the members of the Hingham Planning Board to show some level of thoughtfulness regarding the laws that would govern rental ADU’s.

One of the stated purposed of creating ADU’s in the proposed by-law is to create “a diversity of housing options”. If that is the case then fostering housing that would at least have basic foot traffic accessibility, with a stable surface, would be imperative to creating diverse rental opportunities for those with mobility challenges or disabilities. “Diversity in housing” should not just mean size, scale, and location of a structure on a lot. To add any meaningful “diversity in housing” the town should promote living options that are accessible, both from an economic and physical, perspective to our once intended ADU audience which were seniors and adults with disabilities.

For your knowledge I have included a summary of some of the laws one should consider when drafting a by-law that would apply to the general public.

Thank you,

Diane DeNapoli

16 Gardner Street

Federal

The [Fair Housing Act](#) (FHA) prohibits housing providers from treating individuals with disabilities less favorably because of their disabilities. The FHA obligates housing providers to grant reasonable accommodations that will allow individuals with disabilities to equally enjoy the dwelling. Additionally, the FHA obligates housing providers to permit residents with disabilities to make reasonable modifications at their own expense. Requests for accommodations and modifications are not considered reasonable if they impose an undue financial and administrative burden or would fundamentally alter the nature of the provider's operations. The reasonable accommodation requirements of this law do not apply to owners in owner-occupied buildings with four or fewer dwelling units, among other exemptions.

[Section 504 of the Rehabilitation Act of 1973](#) prohibits discrimination against people with disabilities in programs that receive federal financial assistance. Housing providers that receive federal financial assistance (subsidized housing) are required to provide reasonable accommodations to applicants/residents with disabilities. When reasonable, they are also obligated to finance modifications.

State

[Massachusetts General Law c. 151B §§4 \(6\) and \(7\)](#) offers comparable anti-discrimination protections and imposes similar obligations to accommodate as the Federal Fair Housing Act. Most public and private housing is covered under this law, with the exception of owner-occupied two-family dwellings. Additionally, public housing entities must finance reasonable modifications based on the needs of a person with a disability. Private housing with 10 or more units must also provide reasonable modifications at the expense of the owner.

Note that federal and state fair housing laws apply to slightly different types of housing. **While both levels will apply to most housing, there are cases in which only one will apply, e.g. owner-occupied three- and four-unit housing is only covered by the Massachusetts law, not the FHA.**

Who is considered a person with a disability under fair housing laws?

Fair housing laws use a similar definition of disability to the Americans with Disabilities Act (ADA). A person with a disability is defined as an individual:

- With a physical or mental impairment that substantially limits one or more [major life activities](#),
- Who is regarded as having such an impairment, or
- With a record of such an impairment.

What is disability discrimination in housing?

There is a distinct difference between discriminatory behavior and other problems a person might experience in housing (e.g. interpersonal conflicts, lease and sanitary code violations).

According to federal and state fair housing laws, disability discrimination occurs when a housing provider treats an individual differently because they have a disability or are associated with someone with a disability or denies a reasonable accommodation/modification. Examples include:

- Refusal to rent, sell, or otherwise make a unit unavailable based on disability.
- Offering different terms, conditions, or privileges of a sale, rental, occupancy, or services for those with disabilities.
- Falsely representing that a unit is not available, limiting access to brokerage services, or selectively enforcing land use, zoning, or other ordinances due to a disability.
- Making unnecessary inquiries about a person's disability beyond that needed to explain the connection between a disability-related limitation and a request for reasonable accommodation/modification.
- Denying a request for accommodation or modification that is reasonable and necessary for a resident with a disability (or a resident's friend, family member, or other associate with a disability) to equally enjoy a dwelling.

What are reasonable accommodations and reasonable modifications?

A **reasonable accommodation** is a change, exception, or adjustment to a rule, policy, practice, or service that will allow a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common spaces.

The main considerations around whether an accommodation is considered reasonable are:

- The disability-related need for the accommodation,
- The financial or administrative burden of providing it, and
- Whether granting it would require a fundamental alteration of the provider's operations.

Examples of reasonable accommodations:

- Assigning a closer parking space to a resident with a mobility disability.
- Making an exception to a no animals policy to allow an individual to have a service dog or emotional support animal.
- Assisting an applicant with a cognitive disability with completing paperwork.
- Relocating a trash storage area to a room that is on a ground floor so that it is accessible without using stairs.
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A **reasonable modification** is a structural change that is made to an existing premises that will allow a person with a disability equal access and full enjoyment of the dwelling.

Examples of reasonable modifications:

- Installing a visual fire alarm for a tenant who is deaf.
- Ramping a step at an entrance for a wheelchair user.
- Adjusting the door pressure to make opening the door easier for someone with limited arm strength.
- Installing grab bars in a shower and by a toilet for a tenant who has a high fall risk