

COUNTY COMMISSIONERS OF CAROLINE COUNTY, MARYLAND

(EMERGENCY) LEGISLATIVE BILL #2024-00_

INTRODUCED BY: COMMISSIONERS BREEDING, PORTER, AND BARTZ

INTRODUCED ON: _____, 2024

ATTEST: _____
J. TRAVIS BREEDING, PRESIDENT

PUBLIC HEARING: _____, 2024, BEGINNING AT ____ A.M.
COURTHOUSE, 109 MARKET STREET, ROOM 106
DENTON, MARYLAND

THIRD READING: _____

ENACTED: _____

EFFECTIVE: _____

**Chapter 175 - Zoning -
Article XXVI - Reasonable Accommodation Procedure**

AN Emergency Act to create Article XXVI “Reasonable Accommodation Procedure” of Chapter 175 “Zoning” of the Code of Public Local Laws of Caroline County, Maryland (the “Code”) to provide reasonable accommodation procedures for disabled persons under the Fair Housing Act and the Americans with Disabilities Act; providing for repeal of conflicting provisions; providing for severability; providing for inclusion in the Code; and making this Act an Emergency Bill.

WHEREAS, the County Commissioners of Caroline County, Maryland (the "County Commissioners") are authorized under Article XI-F of the Maryland Constitution and § 9-308 of the Local Government Article of the Annotated Code of Maryland (the “Local Government Article”) to adopt public local laws in general;

WHEREAS, the County Commissioners are authorized under the Land Use Article, Title 4, of the Annotated Code of Maryland to enact and administer zoning and land use Bills;

WHEREAS, the County Commissioners desire to provide a reasonable accommodation application procedure in order to afford full protection and due process to disabled individuals, and provide for the preservation of the integrity of Caroline County’s Code and zoning districts, including the protection of the residential character of the County’s residential neighborhoods;

WHEREAS, pursuant to Section 197.B of Chapter 175, the County Commissioners have received the positive recommendation of the Planning Commission and the staff of the Caroline County Department of Planning and Codes regarding enactment of the provisions proposed in this Bill; and

WHEREAS, this Bill may also be known by its short title “Chapter 175 - Zoning - Article XXVI - Reasonable Accommodation Procedure”.

NOW, THEREFORE, in an exercise of the County’s police power as a Code Home Rule County, be it enacted by the County Commissioners of Caroline County, Maryland that:

SECTION 1. A NEW ARTICLE XXVI “REASONABLE ACCOMMODATION PROCEDURE” OF CHAPTER 175 “ZONING” of the Code of Public Local Laws of Caroline County, Maryland be, and it is hereby enacted, to read as follows:

ARTICLE XXVI

REASONABLE ACCOMMODATION PROCEDURE

§ 175-237. Applicability .

A reasonable accommodation in the land use, zoning and building context means providing individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use, zoning and building code, regulations, policies, practices, and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities. A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a zoning, land use or building code, regulation, policy, or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits, or substantially limits, one or more major life activities, anyone who is regarded as having such impairment, or anyone who has a record of such impairment. Disability does not include current, illegal use of a controlled dangerous substance. The Chapter is intended to apply to those persons who are defined as disabled under the Federal Fair Housing Act and the Maryland Fair Housing Act [Subtitle 7 of Title 20 of the State Government Article of the Annotated Code of Maryland] (collectively, the “FHA”), and the Americans with Disabilities Act (the “ADA”) (all 3 Acts collectively referred to as the “Acts”). A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a

person with a disability equal opportunity to housing of their choice. A reasonable accommodation is specific to the individual(s) with a disability and does not run with the land. A reasonable accommodation does not alter an individual's obligation to comply with other applicable federal, state, and County requirements.

§ 175-238 Application Requirements.

(a) Requests for reasonable accommodation shall be submitted in the form of a letter to the Director of the Caroline County Department of Planning and Codes or his or her designee (hereinafter, the "Director") and shall contain the following information:

(1) Name, address, email address and telephone number of the applicant and, if applicable, the applicant's representative. The applicant may be a person that lives, or will live, with the individual with a disability;

(2) Address of the property for which the request is being made and the name, address, email address and telephone number of each owner of the property, if not the same as the applicant;

(3) The current actual use of the property;

(4) The basis for the claim that the individual is considered disabled under the Acts;

(5) The zoning, land use or building code provision, regulation, policy or practice from which reasonable accommodation is being requested, including an explanation of how application of the existing zoning, land use or building code provision, regulation, policy or practice precludes reasonable accommodation;

(6) Reason(s) why the reasonable accommodation is necessary for the individual(s) with disabilities to use and enjoy the housing or other service;

(7) A statement as to whether the applicant is seeking the accommodation in order to make housing and/or provision of housing financially viable, with supporting documentation;

(8) A statement as to whether the applicant is seeking the accommodation because it is therapeutically necessary, with supporting documentation;

(9) Proof of satisfactory fire, safety, and health inspections required by Maryland law;

(10) A determination, prepared by a qualified professional, of whether or not the request would result in adverse impacts to wetlands, environmentally sensitive habitat areas, public access and/or public views;

(11) Supporting documentation, including, without limitation, plans;

(12) If the applicant is a recovery residence **as defined in § 7.5 - 101(o)** of the Health-General Article of the Annotated Code of Maryland, a policy and procedures manual governing the operation of the facility containing:

- A) Job descriptions for all staff positions.
- B) Drug-testing procedures and requirements.
- C) A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication was prescribed.
- D) Policies to support a resident's recovery efforts.
- E) A good neighbor policy to address neighborhood complaints and concerns.
- F) Rules for residents.
- G) Copies of all forms provided to residents.
- H) Intake procedures.
- I) Sexual predator and sexual offender registry compliance policy.
- J) Relapse policy.
- K) Fee schedule.
- L) Refund policy.
- M) Eviction procedures and policy Code of Ethics.
- N) Proof of insurance.
- O) Proof of background screening.
- P) Proof of satisfactory fire, safety and health inspections.

The above requirements are designed to benefit the protected class by protecting residents of recovery residences against fraud, misrepresentation, exploitation and abuse, and are in accord with the best practices standards adopted by The National Alliance for Recovery Residences (NARR). This narrowly tailored legislation furthers the legitimate government interest of providing consumer protection laws for residents of commercial recovery residences who are purchasing a housing service while they are participating in treatment off site. The County's interest/intent is to provide the residents of these homes with due process rights afforded to every single residential tenant, to prevent homelessness, to provide the residents with a safe place to live, and to help prevent addiction relapse.

(b) Medical information; confidentiality. Should the information provided by the applicant to the Director include medical information or records, including records indicating the

medical condition, diagnosis or medical history of the disabled individual(s), such individual(s) may, at the time of submitting such medical information, request that the County, to the extent allowed by law, treat such medical information as confidential information of the disabled individual(s). The County shall thereafter endeavor to provide written notice to the disabled individual(s), and/or their representative, of any request received by the County for disclosure of the medical information or documentation which the disabled individual(s) has previously requested be treated as confidential by the County. The County will cooperate with the disabled individual(s), to the extent allowed by law, in actions initiated by such individual(s) to oppose the disclosure of such medical information or documentation, but the County shall have no obligation to initiate, prosecute or pursue any such action, or to incur any legal or other expenses (whether by retention of outside counsel or allocation of internal resources) in connection therewith, and may comply with any judicial order without prior notice to the disabled individual(s).

(c) Within 30 days of receipt of a request for reasonable accommodation, the Director shall determine whether all necessary information has been submitted. If additional information is necessary to adequately analyze the request, the applicant shall be notified in writing, within the 30-day period of the specific additional information needed.

(d) Review and Other Land Use Applications. If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (including, but not limited to: conditional use permit, Critical Areas development permit, design review, variance, general plan amendment, zone change, etc.), then the applicant shall file the information required by subsections (a) and (b), above, together for the concurrent review with the application for discretionary approval.

§ 175-239. Review Authority.

(a) A request for reasonable accommodation shall be reviewed by the Planning Commission if no approval is sought other than the request for reasonable accommodation.

(b) Other Review Authority. Requests for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.

§ 175-240. Review Procedure.

(a) Planning Commission Review. The Planning Commission shall notify adjoining landowners and the public of the application, schedule and conduct a public hearing on the application, and notify the applicant that the applicant is invited to participate in the hearing and to be heard in support of the application. The Planning Commission shall deliberate in a

public meeting and shall issue a written determination within 60 days of the date the application is determined to be complete per subsection 175-238 (b) above, or a date mutually agreeable to both the County and the applicant, except as provided in subsection (b), below, 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. If the request is denied, the order shall state the grounds therefor in accordance with Section 175-241 (Criteria for Determination, Findings and Decision). All written determinations shall give notice of the right to appeal.

(b) If reasonably necessary to reach a determination on the request for reasonable accommodation, the Planning Commission, prior to the end of the said 60-day period, may request additional information from the applicant, specifying in sufficient detail what additional information is required. The applicant shall have 15 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 60-day period to issue a written determination shall no longer be applicable, and the Planning Commission shall issue a written determination within 30 days after receipt of the additional information or 90 days after the initial receipt of the application, whichever is later. If the applicant fails to provide all of the requested additional information within said 15-day period, the Director shall issue a written notice advising that the applicant 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 County with regard to said reasonable accommodation request shall be required. Such time frames may be extended by mutual agreement of the County and the applicant.

(c) Other Reviewing Authority. The written determination of whether to grant, grant with conditions, or deny the request for reasonable accommodation shall be made by the authority responsible for reviewing the discretionary land use application in compliance with the applicable review procedure for the discretionary review. The 45-day deadline described above shall be superseded by any deadlines for the discretionary review, and the longer deadline shall apply. The written determination to grant or deny the request for reasonable accommodation shall be made in accordance with Section 175-241 (Criteria for Determination, Findings and Decision).

§ 175-241. Criteria for Determination, Findings and Decision.

(a) Criteria for Determination. In determining whether the reasonable accommodation request shall be granted or denied, the applicant shall be required to establish that the applicant is protected under at least one of the Acts. Further, the applicant must demonstrate that:

(1) the applicant has one or more physical or mental impairments which substantially limit one or more major life activities, a record of having such impairment(s), or that the applicant is regarded as having such impairment(s).

(2) the proposed accommodation being sought is reasonable and necessary. The foregoing (as interpreted by the courts in evaluating reasonable accommodation requests under the FHA or ADA) shall be the basis for a decision upon a reasonable accommodation request made by the Planning Commission, or the County Commissioners in the event of an appeal.

(3) the requested accommodation would not fundamentally alter the County's zoning scheme.

(b) Findings. The written decision to grant, grant with conditions, or deny a request for reasonable accommodation shall be consistent with the Acts and shall be based on consideration of the following factors:

(1) Whether the housing, which is the subject of the request, will be used by one or more individuals who are considered to have a disability under the Acts;

(2) Whether the request for reasonable accommodation is necessary to make the specific housing available to one or more individuals who are considered to have a disability under the Acts;

(3) Whether the request for reasonable accommodation would impose an undue financial or administrative burden on the County;

(4) Whether the request for reasonable accommodation would require a fundamental alteration in the nature of a County program or law, including, but not limited to, land use and zoning;

(5) Potential impact on surrounding uses;

(6) Physical attributes of the property and structures;

(7) Alternative reasonable accommodations which may provide an equivalent level of benefit;

(8) Whether the request for reasonable accommodation would adversely impact wetlands, environmentally sensitive habitat areas, public access and/or public views; and, if it does have such an impact, whether the request can be accomplished under a feasible alternative approach that eliminates or minimizes those impacts. Mitigation must be included to address significant adverse impacts;

(9) The feasible alternative to be implemented is the feasible alternative resulting in the least adverse impact on wetlands, environmentally sensitive habitat areas, public access and/or public views.

(c) Conditions of Approval. In granting a request for reasonable accommodation, the Planning Commission or other reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation is appropriate based on the factors considered in subsections (a) and (b) of this Section and are reasonably necessary to assure compliance with its order. In addition, the Planning Commission or other reviewing authority may impose a condition that the County has the right to terminate any approved exterior reasonable accommodation when it has been determined that the approved reasonable accommodation is no longer necessary.

(d) The notice of determination shall be sent to the applicant (i.e., the disabled individual(s) or representative) by certified mail, return receipt requested, regular mail and, if requested by the applicant, by electronic mail.

§ 175-242. Appeal of Determination.

Within 30 days after the determination by the Planning Commission or other reviewing authority on a reasonable accommodation request, or any order or action of the Planning Commission or other reviewing authority with respect to the application of this Chapter, is mailed to the applicant, such applicant may appeal the decision to the County Commissioners by filing a notice of appeal. The notice of appeal shall be filed with the Director and shall include a statement containing sufficient detail of the grounds for the appeal. The record of the application, which shall include all filings and a recording or transcript of the public hearing, shall be forwarded to the County Commissioners within 30 days after the filing of the notice of appeal. The County Commissioners, after public notice and a public hearing, shall render a determination as soon as reasonably practicable, but in no event later than 60 days after an appeal has been filed.

§ 175-243. Fees.

There shall be no fee imposed by the County in connection with a request for reasonable accommodation under this Chapter or an appeal of a determination on such request to the County Commissioners, and the County shall have no obligation to pay the attorney's fees or costs of an applicant or of an appealing party, as applicable, in connection with the request or appeal.

§ 175-244. Stay of Enforcement.

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

§ 175-245. Miscellaneous Provisions.

(a) The County shall display a notice in the County’s public notice bulletin board and website (and shall maintain copies available for review in the Department of Planning and Codes), advising the public that disabled individuals (and qualifying entities) may request reasonable accommodations as provided herein.

(b) 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 by the disabled individual.

(c) The County shall provide such assistance and accommodation as is required pursuant to the Acts in connection with a disabled person’s request for reasonable accommodation, including, without limitation, assistance with reading application questions, responding to questions, completing any necessary forms, filing an appeal, and appearing at a hearing, etc., to ensure the process is accessible.

§ 175-246. Revocation of Reasonable Accommodation.

Any reasonable accommodation received shall be deemed revoked if the applicant or the property upon which the accommodation is granted is found in violation of any provision of the order granting the reasonable accommodation by a court of law, the Planning Commission, or the County Commissioners.

§ 175-247. Recertification.

All reasonable accommodation requests approved by the County are valid for no more than 2 years. Recertification requests must be filed at least 90 days before the end of the 2-year period of effectiveness of the reasonable accommodation order. The process for recertification shall follow the same requirements as set forth above in this Chapter for original requests, and review of recertification requests shall follow the same procedures as outlined above for new applications. The failure of the applicant to timely apply for recertification in accordance with this Section, or the denial of an application to recertify, shall result in the revocation of the approved reasonable accommodation.

SECTION 3. Each of the above stated Recitals are true and correct, are incorporated herein and deemed a substantive part of this Bill.

SECTION 4. The provisions of this Bill are declared to be severable. If any section, subsection, sentence, clause, phrase, or portion of this Bill is for any reason held invalid or unconstitutional by any court of competent jurisdiction, the same shall be deemed separate, distinct, and independent from, and such holding shall not affect the validity of, the remaining portions of this Bill, it being the intent of the County that this Bill shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion hereof.

SECTION 5. The Publishers of the Code, the Caroline County Office of Law, or the Caroline County Department of Planning and Codes, in consultation with and subject to the approval of the County Administrator, shall be authorized to make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, organization, and any internal or external reference or citations to the Code that is incorrect or obsolete, with no further action required by the County Commissioners. All such corrections shall be adequately referenced and described in the editor's note following the section affected.

SECTION 6. The title and summary of this Bill shall be published in at least one newspaper of general circulation in Caroline County three times, at weekly intervals, and within the 4-week period after passage of the Bill, in accordance with §9-311(i) of the Local Government Article of the Annotated Code of Maryland. The title of this Bill, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this Bill for publication and all other purposes. The title is not a substantive part of this Bill for publication and all other purposes. If the Bill is amended, the title may be administratively revised to conform to the content of the Bill as finally enacted.

SECTION 7. AND BE IT FURTHER ENACTED, that this Bill is hereby declared to be an emergency ordinance and a necessary measure to address an immediate public emergency affecting the peace, health, safety, welfare and property of the residents of Caroline County, and being passed by the affirmative vote of all three County Commissioners, shall become effective upon enactment. Upon enactment, this ordinance shall be retroactive and applicable, to the maximum extent permitted by law and subject to the severability clause above, to all proceedings, and to all filed, pending, or future requests for reasonable accommodation in Caroline County.

Enacted this ____ day of _____, 2024.

ATTEST:

**COUNTY COMMISSIONERS OF
CAROLINE COUNTY, MARYLAND**

Jennifer Reibly
Public Information Officer

J. Travis Breeding, President

(SEAL)

Larry C. Porter, Vice-President

N. Franklin Bartz, III., Commissioner

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

Stewart Barroll
County Attorney