

**Department of
Conservation and
Development**

30 Muir Road
Martinez, CA 94553

Phone:1-855-323-2626

**Contra
Costa
County**



FILE COPY

John Kopchik
Director

Aruna Bhat
Deputy Director

Jason Crapo
Deputy Director

Maureen Toms
Deputy Director

Kara Douglas
Assistant Deputy Director

Kelli Zenn
Business Operations Manager

May 9, 2018

Mary Dunne Rose
1020 Glasgow Place
Danville, CA 94526

**Re: Appeal of Reasonable Accommodations Request Denial
County File: #MS06-0037, #CV14-0042
APN: 184-462-008
Address: 78 Grandview Place, Walnut Creek**

The Department of Conservation and Development, Community Development Division (CDD) has received your December 12, 2017 appeal of the Deputy Director's denial of your reasonable accommodations request. Pursuant to the Federal Fair Housing Act, the California Fair Employment and Housing Act, the California Disabled Persons Act (collectively, the "Fair Housing Acts"), and the CDD's Reasonable Accommodation Policy, I have reviewed your request and appeal. Based on the information provided to County staff, I have determined that the requested accommodation is not necessary to make housing on the subject parcel available to you. Therefore, your appeal of the prior determination is denied, and the Deputy Director's December 5, 2017 decision is upheld.

Background

Proposed Project: County File #MS06-0037 was approved on December 14, 2006, to allow for the subdivision of the subject property into two parcels. On May 5, 2014, your representative filed a compliance review application (County File #CV14-0042) to allow recordation of the Parcel Map and the construction of a residence on Parcel-B. To date, you have complied with various conditions of the approved subdivision, but have not yet recorded the Parcel Map, as there are remaining conditions that must be satisfied prior to the recordation.

Request for Reasonable Accommodation: On October 20, 2017 you requested reasonable accommodations in relation to the conditions of approval and other standards applicable to #MS06-0037. In correspondence dated November 17, 2017, County staff advised that a preliminary review of your request had been done and that additional information was needed before a final determination could be made. In response to that communication, you contacted Aruna Bhat, Deputy Director, by telephone on November 21, 2017, and on November 22, 2017. Ms. Bhat confirmed that a formal determination regarding your request had not yet been made, and agreed

to meet with you and Public Works Department staff. However, on November 30, 2017, you advised Sean Tully, Senior Planner, that the available meeting date was too far out. You further advised that you no longer wished to meet and that the County should make a determination based on the documentation that had been provided to date.

On December 5, 2017, the Deputy Director denied your request for reasonable accommodation. You appealed that determination on December 12, 2017.

On May 30, 2017, I met with you briefly, per your request, to verify your medical condition. No discussion regarding this response to your appeal took place at that time.

Initial Requests: Below are summarized versions of your initial reasonable accommodation requests along with my determination on each.

1. *Reduced Structure Setbacks/Yards:* You request approval of a 10-foot front setback (20 feet is required), a 5-foot side yard (10 feet is required) along the western boundary, and to allow a covered front porch to be closer than 10 feet to the front property line. You indicate a desire to construct the proposed house further south on the property within the "flat" area of the lot, which would reduce the need for interior stairs and provide more space for wheelchair turning.

Determination: Based on the information you provided and my review of the subject parcel, the proposed residence, with little or no modifications, could be sited and constructed on Parcel-B without the need for setback or yard variances. Minor design modifications or expanding the "flat" area of the lot through the use of retention walls (similar to those already depicted on your site plan) would enable the proposed residence to be constructed without interior stairs and with adequate space for wheelchair turning, and to comply with the structure setback and yard requirements. Additional information regarding the proposed residence, possible design modifications, and alternative construction locations would enable staff to verify the feasibility of alternatives that would meet your needs and not necessitate a waiver of structure setback and yard requirements. When County staff requested additional information and to meet with you to discuss the matter, you declined to provide the requested information and chose not to meet with County staff. Accordingly, I find that the requested accommodation is not necessary to make housing on Parcel-B available to you, and your request is denied.

2. *Grading (COA #11):* You request to be allowed to import or export fill from the site, whereas COA #11 states that cut and fill on the site needs to be balanced. This will allow for the construction of a wheelchair ramp at the entry of the residence.

Determination: Based on the information you provided, relief from Condition of Approval #11 is not necessary to allow for the construction of a wheelchair ramp at the entry of the proposed residence. The site plan and floor plan you provided did not include a wheelchair ramp, and staff requested additional information to clarify its intended location and manner of construction. You declined to provide the requested information. However, based on the information provided, a wheelchair ramp could be constructed at the entry of the

proposed residence without the import or export of fill material on Parcel-B. Accordingly, I find that the requested accommodation is not necessary to make housing on Parcel-B available to you, and your request is denied.

3. Construction-Related Vehicle Limit (COA #29): *You request authorization to remove the limit on constructed-related vehicle access to the site, whereas COA #29 limits construction-related vehicle access to the site to two vehicles.*

Determination: Compliance with this condition is unrelated to your disability. Accordingly, I find that the requested accommodation is not necessary to make housing on Parcel-B available to you, and your request is denied.

4. Arborist Monitoring (COA #12): *You request that an arborist not be required to be on-site during grading activities.*

Determination: Compliance with this condition is unrelated to your disability. Accordingly, I find that the requested accommodation is not necessary to make housing on Parcel-B available to you, and your request is denied.

5. Timing of Tree Planting (COA #18): *You request to be allowed to plant trees after the house is built, whereas COA #18 states that 12 trees shall be planted prior to issuance of building permits.*

Determination: Compliance with this condition is unrelated to your disability. Accordingly, I find that the requested accommodation is not necessary to make housing on Parcel-B available to you, and your request is denied.

6. Review of Landscaping by Others (COA #17): *You request that only three neighbors be given the opportunity to review and comment on the landscaping, whereas COA #17 provides that nine neighbors will be given the opportunity to review and comment on the landscaping.*

Determination: Compliance with this condition is unrelated to your disability. Accordingly, I find that the requested accommodation is not necessary to make housing on Parcel-B available to you, and your request is denied.

7. Drainage Requirements (COA #54): *You request that you not be responsible for on-site and off-site drainage facility upgrades to meet collect and convey requirements.*

Determination: Condition of Approval #54 of the approved subdivision requires that drainage improvements be made to ensure that downstream drainage facilities are adequate to convey storm water runoff created by the proposed residence. If the request were granted, the County would suffer an undue financial and administrative burden because the County would be responsible for procuring a construction contractor (administrative burden) and paying the costs of the required drainage improvements (financial burden). Moreover, compliance with this condition is unrelated to your disability. Accordingly, I

find that the requested accommodation is not necessary to make housing on Parcel-B available to you, and your request is denied.

Appeal Points: Below are summarized versions of your appeal points, along with the County's responses.

1. *Appeal Point: The CDD has not attempted to comply with the spirit of the Federal, State, and local (General Plan) laws, programs, and policies for helping a senior or disabled family.*

County Response: The Reasonable Accommodation Policy and the CDD's implementation of the policy comply with the Fair Housing Acts. The Reasonable Accommodation Policy also complies with the Housing Element of the County General Plan, which identifies goals and objectives pertaining to reasonable accommodations and accessible housing for persons with disabilities.

2. *Appeal Point: Were good faith efforts to comply with reasonable accommodations laws made by the CDD?*

County Response: The County accepted a formal reasonable accommodation request from you on October 20, 2017. Staff reviewed the submitted request, requested additional documentation from you to facilitate the review, and attempted to meet with you to discuss the matter prior to making a final determination. Based on these actions by County staff and the limited information provided to staff, a good faith effort was made to comply with the Reasonable Accommodation Policy and the Fair Housing Acts.

3. *Appeal Point: The CDD did not provide prompt reasonable accommodation processing by proposing to meet with the applicant 21 days after a meeting was requested.*

County Response: Your request for reasonable accommodations included relief from zoning standards and other policies enforced by both the CDD and the County Public Works Department. The County sought to have representatives of both the CDD and the Public Works Department attend the meeting to ensure that the County could address each requested accommodation. To do so, the proposed meeting would need to occur when decision-makers from both departments were available. On November 21, 2017, you and staff corresponded to schedule a meeting. Staff was unable to accommodate the meeting dates initially suggested by you for late November due to limited availability around the holiday. County staff offered to meet on the next earliest date where all required staff would be available, December 12, 2017.

4. *Appeal Point: Does the County have a reasonable accommodations policy that has been approved by the Board of Supervisors and codified?*

County Response: The CDD Reasonable Accommodation Policy is a department policy that guides staff in accepting, processing, and resolving reasonable accommodation requests. The Reasonable Accommodation Policy has been developed and implemented

consistent with the County General Plan. The Reasonable Accommodation Policy has not been adopted by the County Board of Supervisors, but adoption by the County Board of Supervisors is not required.

5. *Appeal Point: The CDD took over 60 days to process the reasonable accommodations request.*

County Response: Your formal request for reasonable accommodations was received by the CDD on October 20, 2017. The Deputy Director issued a formal determination on December 5, 2017; 46 days after your formal request. Within that period, CDD communicated the request to the Public Works Department and both departments evaluated the request and available information. On November 17, 2017, the CDD submitted a written request to you for additional information. Subsequent to the request for additional information, you communicated with CDD staff on multiple occasions regarding the requested items and a potential meeting to discuss possible options. County staff offered to meet with you. You then advised the County on November 30, 2017, that you no longer wished to meet regarding the matter. Five days later, the Deputy Director issued a formal determination.

Director Determination

The CDD has accepted, reviewed, and provided a determination for your reasonable accommodation request consistent with the Fair Housing Acts and County policy. The CDD acknowledges the fact that you and your family member have disabilities that may create challenges with respect to the design and construction of your proposed residence. However, based on the information that you have provided to date, I find that the requested accommodation is not necessary to make housing on Parcel-B available to you. **Therefore, your appeal of the prior determination is denied, and the Deputy Director's December 5, 2017, decision is upheld.**

Alternative Relief from Requirements

Despite this determination denying your request for accommodation, you may still seek relief from the conditions by requesting modifications to the conditions of approval for the subdivision, or from the setback requirements by requesting a variance. If you are interested in pursuing either a modification of the conditions or a variance and have questions regarding the process, please contact Sean Tully.

Right to Appeal

Please be advised that under the County's Reasonable Accommodation Policy the Director's Determination may be appealed to the County Board of Supervisors. Any person may appeal the determination by filing a valid letter of appeal with the CDD. To be valid, an appeal letter must:

1. Identify the County File Number referenced above and state the reasons for the appeal.
2. Be accompanied by an appeal fee of \$125. Checks should be made payable to Contra Costa County.

3. Be received at the following address **no later than 5:00 P.M. on Monday, May 21, 2018.**

Department of Conservation and Development
Community Development Division
30 Muir Road
Martinez, CA 94553
Attn: Sean Tully

Please contact Sean Tully at (925) 674-7800 with any questions regarding the procedures or fees for the applications or appeal process discussed in this letter.

Sincerely,



John Kopchik
Director

cc: Warren Lai (Public Works)
Jocelyn LaRocque (Public Works)
County File #CV14-0042