Federal and state anti-discrimination laws[[1]](#footnote-1) require local governments to make “reasonable accommodations” (modifications or exceptions) to rules, policies, practices, or services when necessary to afford persons with disabilities equal access to housing or public accommodations such as restaurants, retail establishments, or other businesses normally open to the public. These laws must be considered within local land use and zoning practices but do not specifically preempt or invalidate local zoning.

**Should disabled applicants be required to seek a variance or conditional use permit?**

No. Granting a variance or conditional use is generally not the appropriate way to accommodate persons with disabilities[[2]](#footnote-2) because:

* Even in cases involving persons with disabilities,[[3]](#footnote-3) applicants must meet *all* of the standards, and this would be an unfair burden on those with disabilities.
* The decision to grant or deny these permits should be based (in part) on the physical conditions of the property, *not* the circumstances of the property owner. Once granted, these permits “run with the property,” meaning all subsequent property owners are entitled to continue the use or dimensional allowance subject to limitations specified at the time of the permit.

**What is the process for allowing reasonable accommodations?**

The suggested procedure for allowing reasonable accommodations is through an administrative permit granted by the zoning administrator. Barron County includes the following language in their local zoning code to accomplish this purpose:[[4]](#footnote-4)

*The County Zoning Administrator will use a zoning permit that waives specified zoning ordinance requirements, if the administrator determines that both of the following conditions have been met.*

* 1. *The requested accommodation (i.e., the requested waiver of zoning restrictions), or another less-extensive accommodation, is:*

1. *Necessary to afford handicapped or disabled persons equal housing opportunity or equal access to public accommodations, and*
2. *The minimum accommodations that will give the handicapped or disabled persons adequate relief.*
   1. *The accommodation will not unreasonably undermine the basic purposes the zoning ordinance seeks to achieve.*

If no procedure is specified, persons with disabilities may request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed below.

**What is a “reasonable” accommodation?**

What constitutes a reasonable accommodation must be made on a case-by-case basis and depends on the facts of the situation. If a requested modification imposes an undue financial or administrative burden on a local government or if the modification fundamentally alters the local government’s land use or zoning scheme, it is not considered a “reasonable” accommodation.[[5]](#footnote-5) Local governments are not required to meet these requests.

**May local governments impose conditions on accommodations for the disabled?**

Local governments may require that modifications granted to accommodate disabilities be removed after no longer necessary. For example, when authorizing a building addition or structure (such as a ramp), the zoning administrator may require that the alteration be removed after the disabled person vacates the property. Barron County requires applicants to sign and record an affidavit with the local register of deeds outlining conditions and removal procedures associated with allowing accommodations for the disabled.

1. Wisconsin’s Open Housing Law prohibits housing discrimination based on race, color, religion, national origin, ancestry, sex, age-18 and over, disability, lawful source of income, marital status, sexual orientation, and family status [Wis. Stat. § 106.50 and Wis. Admin. Code § DWD 220]. [↑](#footnote-ref-1)
2. Many local governments allow group homes as a conditional use. This is a valid use of this procedure, assuming group homes are not discriminated against or treated less favorably than groups of non-disabled persons. [↑](#footnote-ref-2)
3. For a case regarding variances, see *Sawyer County Zoning Bd. v. Wisconsin Dept. of Workforce Development*, 231 Wis. 2d 534, 605 N.W.2d 627 (Ct. App., 1999). For a case regarding conditional use permits see *State ex rel. Bruskewitz v. City of Madison*, 2001 WI App 233; 248 Wis. 2d 297; 635 N.W.2d 797. [↑](#footnote-ref-3)
4. *Barron County Code of Ordinances*, Chapter 17: Zoning, Land Divisions, Sanitation 17.74(5)(h). Available: <http://www.co.barron.wi.us/forms/zoning_landuse_ord.pdf>. Retrieved 5-10-06. [↑](#footnote-ref-4)
5. ***Group Homes, Local Land Use, and the Fair Housing Act*. Joint Statement of the Department of Justice and the Department of Housing and Urban Development. Available:** <http://www.usdoj.gov/crt/housing/final8_1.htm>. Retrieved 5-9-06. [↑](#footnote-ref-5)