



125 LINCOLN STREET, 5TH FLOOR, BOSTON, MA 02111-2503

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**Fair Housing Analysis for the City Of Newton Community Preservation Committee:
Submitted 1/26/10**

Project: Veteran House 2148-2150 Commonwealth Ave, Auburndale, MA

Developer: Citizens for Affordable Housing in Newton Development Organization (CAN-DO)

Number of units: 2 multi-level units

Date of First Occupancy: 1895

Historical property or historical significance designation: No

New Construction: No

Level of Rehabilitation: Moderate level

Sources of Government Funding: Community Development Block Grant Funds

Targeted Population: Veterans and their families.

Disclaimer: In this document, Metropolitan Boston Housing Partnership (MBHP) provides a scoping and coverage analysis not a legal determination of compliance with the relevant fair housing accessibility mandates on both the state and federal levels. MBHP did not perform an access audit nor did we do a full plan review (review of a plan done to scale that had all specifications and dimensions displayed) of this project. That was beyond the scope of the RFP. Contents of this document should not be considered a legal opinion.

Introduction: MBHP was asked to evaluate this property for accessibility scoping and coverage under the Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 Title II & Title III, MGL Chapter 151B and the regulations of the Massachusetts Architectural Accessibility Board. All of the above named laws and regulations determine scoping and coverage based on some or all of the following factors: date of first occupancy, number of units, new construction, degree of rehabilitation and source of government funding. This analysis was done based on the materials provided by the City of Newton Community Preservation Committee. The conclusions of this analysis are based strictly on application of these scoping and coverage mandates and not on interpretations or advocacy preferences.

Overview of Veteran House: Veteran House, an acquisition and rehabilitation project of Citizens for Affordable Housing in Newton Development Organization (CAN-DO), is a 2 multi-level unit residential building. This building was first occupied in 1895 but is not a building with any historical significance. The project includes a moderate rehabilitation component consisting roughly of deleading, removal and construction of front concrete stairs, demolition of an existing garage, repaving of a driveway, structural repairs to back porches and other general cosmetic repairs. At the time of this analysis, CAN-DO had one approved source of government funding which was HUD Community Development Block Grants (CDBG) monies from the City of Newton.

Scoping and Coverage Analysis:

Fair Housing Amendments Act of 1988 (FHAA): The FHAA accessible design and construction requirements covers only new construction of multifamily buildings of 4 or more units first occupied after March 13, 1991 (42 U.S.C. 3604 (f)(3)(C) ,U.S.C.3604 (f)(7) &(24 CFR 100.205). Veteran House has only 2 units and was first occupied in 1895. It is also a rehabilitation project not new construction. The FHAA design and construction requirements are not applicable to Veteran House. The FHAA reasonable accommodation and reasonable modification provisions do apply.

Section 504 of the Rehabilitation Act of 1973 (Sec. 504): The CDBG funds for this project are considered direct federal funding even though they are administered by the City of Newton., therefore a Sec. 504 analysis was necessary. Sec. 504 accessibility mandates covers renovation of residential buildings that receive direct federal funding if the building has 15 or more units and the cost of alterations would be 75% or more of the replacement cost of the completed facility (24 CFR 8.23(a)). MBHP is unable to determine if the work performed is 75% of the full and cash value of the building based on the documents provided but because Veteran House has only two units the architectural accessibility requirements of Sec. 504 do not apply to this project. The Sec. 504 reasonable accommodation and reasonable modification provisions do apply.

Americans with Disabilities Act of 1990 Title II (ADA): ADA Title II applies to rehabilitation projects of 15 units or more on buildings that receive state and/or local government funding (UFAS) (36 CFR 1190). CAN-DO is applying for Community Preservation funds which would be considered local government funding however there are only 2 units in this project therefore ADA Title II architectural accessibility mandates do not apply. The ADA reasonable accommodation and reasonable modification provisions do apply.

Americans with Disabilities Act of 1990 Title III (ADA): ADA Title III applies to new construction or rehabilitation of public accommodations (UFAS) (36 CFR 1190). If a residential building or development has features/amenities such as a leasing office or manager's office that is open to the general public then that feature/amenity must be made accessible under ADA Title III. Based on the documents provided by the City of Newton, there are no features/amenities on the Veteran House property that would be open to the general public. Veteran House would not be covered under ADA Title III architectural accessibility mandates. The ADA reasonable accommodation and reasonable modification provisions do apply.

Massachusetts General Law Chapter 151B (MGL CH 151B): Chapter 151B accessibility scoping & coverage mandates apply to new construction of 3 or more units first occupied after 1991. It does not cover residential rehabilitation projects. Veteran House has only 2 units and was first occupied in 1895. It is also a rehabilitation project not new construction. Veteran House would not be covered under the accessibility scoping & coverage mandates of CH 151B. The CH 151B reasonable accommodation and reasonable modification provisions do apply.

Massachusetts Architectural Access Commission (MAAB): MAAB is the Commonwealth's building code for accessibility. In new construction it covers 3 or more units first occupied after 1996. For rehabilitation it covers 3 or more units in a residential building, provided the work being performed, in a three year period, exceeds 30% of the full and fair cash value of the building (See **521 CMR 3.3.2**). Work performed to public use and common use areas however, is subject to all of **521 CMR 3.3**. MBHP is unable to determine if the work performed is 30% of the full and cash value of the building based on the documents provided but because Veteran House is 2 units and has no public accommodations, MAAB would not be applicable.

Summary: After a thorough review of the documents provided by the City of Newton, it appears that the architectural accessibility scoping and coverage requirements of all the laws and regulations abovementioned are not applicable. However, Veteran House would be covered by the reasonable accommodation (RA) and reasonable modifications (RM) provisions of all the abovementioned laws except for the regulations of MAAB. MBHP was unable to determine if CAN-DO has policies or procedures in place that would adequately address RA and/or RM requests. In a telephone discussion with the City of Newton, MBHP did request a copy of such policies and procedures. MBHP was informed that at this time CAN-DO did not have written RA and RM policies or procedures.



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**Fair Housing Analysis for the City of Newton
Community Preservation Committee
Addendum: Reasonable Accommodation & Reasonable Modification
submitted 2/1/2010**

Per your request regarding background information regarding fair housing reasonable accommodation and reasonable modification policies for persons with disabilities and the responsibilities of housing providers, please read the following:

Overview:

All housing providers regardless of funding source are covered by the reasonable accommodation and reasonable modification provisions of the Fair Housing Amendments Act of 1988 and MGL 151B. If a housing provider receives state or local government funding then additionally they are covered by these provisions as defined in the Americans with Disabilities Act of 1990. If the housing provider receives direct funding from the federal government than similar provisions of Sec. 504 of the Rehabilitation Act apply. Furthermore, the ADA and Sec. 504 mandate that housing providers have written reasonable accommodation and reasonable modification policies. The reasonable accommodation and reasonable modification provisions in these different laws are defined similarly and work in the same general manner.

These policies should instruct residents how to request these provisions, identification of person(s) responsible for handling such requests and an appeal process if mandated by the government funding source. All residents whether they have a disability or not, should be informed of these policies. It is allowable that a housing provider, who has oversight of more than one building or development, to have one policy that covers all. It is also allowable for a housing provider to have the same person designated to handle such requests for all developments. For additional information regarding reasonable accommodations and reasonable modifications please refer to the documents listed below:

<http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>

http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf

Reasonable Accommodation:

1. **Definition:** A reasonable accommodation is a request for a change or waiver to policies, practices, procedures or services to provide greater use and accessibility of the housing services.
2. **Request process:**
 - An internal formal process can be used but not mandated
 - A verbal request is allowable
 - A written note or letter from applicant or tenant is allowable

3. **Approval/Denial:** A reasonable accommodation can only be denied if it causes an undue administrative and financial burden or changes the basic nature of the program. If the request does not meet either of these conditions, it must be approved.
4. **Implementation:** Must be done in a fair and good faith manner that meaningfully implements the reasonable accommodation request.

Reasonable Modification:

1. **Definition:** A physical alteration to provide greater accessibility and use of the premises for a person with a disability. Reasonable modifications can include structural changes to interiors and exteriors of dwelling units as well as common and public use areas.
2. **Request process:**
An internal formal process can be used but not mandated
A verbal request is allowable
A written note or letter from applicant or tenant is allowable.
3. **Allowable Conditions of Approval:**
Reasonable modification will be done in a professional and code compliant manner.
Person(s) doing the reasonable modification is licensed and insured
4. **Who pays for Reasonable Modification:**
In Massachusetts, if under 10 units or there is no government funding, the person making the request assumes all costs. If there are 10 or more contiguous units or the building/development is directly government subsidized, the housing provider assumes all costs. This provision would view condominium governing boards as the responsible party for reasonable modifications.
5. **Conditions of restoration:** The housing provider can request that alteration(s) must be restored when resident vacates the premises if it is internal to the unit and would affect the marketability of such unit. If the alteration was to a common use area or external to the unit, resident is not responsible for restoration.
6. **Implementation:** Must be done in a fair and good faith manner that meaningfully implements the reasonable modification request.