STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	
JOY DEWITT	)	Charge No.: 2023CH0244
	)	HUD No.: 05-22-7056-8
Petitioner.	)	ALS No.: 23-0350

ORDER

This matter coming before the Commission on August 28, 2024, by a panel of three, Chair Selma D'Souza, Commissioner Jacqueline Y. Collins, and Commissioner Janice M. Glenn presiding, upon the Request for Review ("Request") of Joy DeWitt ("Petitioner"),[1] of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2023CH0244, and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the dismissal of Counts A and B of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.[2]

DISCUSSION

On September 22, 2022, the Petitioner filed a charge of discrimination with the United States Department of Housing and Urban Development, which was cross-filed with the Respondent, perfected on November 20, 2022, alleging that Village of Glen Ellyn ("Village") failed to provide her with a reasonable modification (Count A) and subjected her to discriminatory terms, conditions, privileges, or services and facilities of a real estate transaction due to her physical disability (Count B), in violation of Sections 3-102(B), 3-102.1(B), and 3-102.1(C)(1) of the Illinois Human Rights Act ("Act"). On September 11, 2023, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Petitioner stated that, during April 2021, she sent a doctor's note to the Village's Planning Director, Stacey Springer, requesting a modification to have a walkway installed from the front door of her home to the sidewalk. She said that the note explained that not having the walkway presented a

[1] In a request for review proceeding, the party filing the request for review is referred to as the "Petitioner" and the Illinois Department of Human Rights is the "Respondent."
[2] This Order is entered pursuant to a 3-0-0 vote by the Commissioners.

tripping hazard for her. The Petitioner stated that the Village told her that the walkway could not be continuous and "must be cut off before the sidewalk because it must be grass before the sidewalk."

The Petitioner said that the Village presented her with four options for installing a walkway. First, the Village said that she could widen her driveway, but this would have eliminated her walkway, and she would have been left with "nothing but driveway." Second, the Petitioner could taper her walkway; the Petitioner said that this would not be a "full walkway" and would cut off the walkway before the sidewalk and "would just be grass which is a tripping hazard." Third, the Village suggested separating the Petitioner's proposed walkway from the driveway. The Petitioner stated that this option did not work because it would "incorporate grass in between the walkway and the driveway, and she would have a walkway from her door to the sidewalk." She said that this option would have only allowed for four feet between the door and the driveway, which would be too narrow for a walkway, and it would make the walkway uphill. Fourth, the Petitioner said that the Village told her that she could pay $1,000 and appear before the "Board" to seek a variance. The Petitioner stated that the Village issued her a permit in April 2021 for the first three options that it provided her, but she disagreed with these options.

The Petitioner said that, in April 2022, the Village emailed her inquiring whether she had completed the work for which she had received a permit. She stated that, in response, she emailed a second doctor's note to the Village for the same modification that she had requested in 2021.[3]

The Petitioner stated that, in July or August 2022, the Village refused to communicate with her further about her modification after explaining that she could only do one of the four options that it had presented in 2021. She said that she proceeded with her modification as originally requested because "she had waited too long for [the Village] to approve the modification that she wanted."

The Petitioner said that the Village denied her reasonable modification request when it denied her request to have a continuous walkway from her front door to the sidewalk to alleviate a tripping hazard. She stated that the Village treated her with discriminatory terms and conditions because she had seen similar walkways at other residences in the Village. The Petitioner said that the Village told her that the type of walkway that the Petitioner requested was only approved prior to the year 2000, and, after the year 2000, the walkways were "not acceptable."

The Petitioner provided a copy of a letter from her medical provider dated July 15, 2021, that she said was the first letter that she gave to the Village, which stated: "This is to certify that the above patient…has limited mobility. Please accommodate her needs while performing her job duties."

The Petitioner also provided a copy of a letter from her medical provider dated March 7, 2022, which stated that the medical provider was familiar with the limitations of the Petitioner's disability and

[3] The Petitioner did not explain what was included in this note.

"[the Petitioner] is in need of a continuous walkway from her residence to the public sidewalk." The investigation report did not indicate whether this letter was provided to the Village.

The Village's In-House Attorney Gregory Matthews said that, on April 30, 2021, Jose Rafael Ponce Mena (the Petitioner's husband and co-owner of the property at issue) filed an application with the Village's Community Development Department for a building permit to replace the property's asphalt driveway. He stated that Plan Examiner Paula Moritz reviewed the application, and, on May 13, 2021, Moritz emailed Mena stating that the Village could not approve his plan as submitted because his plan proposed to widen his driveway but not his approach. Moritz also explained that the Village's zoning code required that the width of the driveway match and align with the approach where the two meet the sidewalk. Moritz attached a marked-up version of Mena's drawing to illustrate what changes would be code-compliant and stated that, if Mena agreed with these changes, Moritz could issue a work permit that included the noted conditions. Matthews said that the Petitioner did not agree with the modified plan provided by the Village. He stated that, on an unknown date in May 2021, the Village received a note from the Petitioner's doctor regarding the requested modification.[4]

On May 14, 2021, Moritz emailed the Petitioner, informing her that every effort was made to apply the Village's code consistently to every application and providing examples of how the code had been applied in similar instances. Moritz also stated that, while the Petitioner may have seen walkways that were not compliant with the code, those walkways were constructed prior to March 1, 1999, and the Petitioner could not construct a similar walkway unless she provided an "accurate play of survey dated prior to March 1, 1999." Finally, Moritz asked that the Petitioner advise how she would like to proceed. Mena responded to Moritz's email that same day requesting a meeting. Moritz responded later that day providing dates and times that the Village could meet to discuss their permit requests. The Petitioner responded that an in-person meeting was not necessary.

On May 18, 2021, Springer emailed the Petitioner offering to meet with the Petitioner and Mena via Zoom to discuss their permit. She advised that the Village did not have the authority to approve the Petitioner's permit as submitted, as it was obligated to follow the zoning code, and could not grant variations from the code. She stated that the Village could provide the Petitioner with three options: (1) create the walkway that the Petitioner wanted on an angle at the end of the driveway so that it matched the other side of the sidewalk; (2) widen the Petitioner's sidewalk by 15 feet so that it would match her walkway; or (3) "extend [the Petitioner's] side," but she would also have to extend the public side as well.[5] Springer advised that the Petitioner could opt to seek a variance with the Zoning Board of Appeals, and the variance process would take approximately three months and would cost $660.

[4] The investigation report did not explain what this note contained or whether this note is different from the notes dated July 15, 2021, and March 7, 2022.
[5] The email also stated that the Village had provided options that were code-compliant previously, though it is not clear exactly when the Village provided these options.

On May 26, 2021, Springer emailed the Petitioner requesting that the Petitioner provide dates and times that she would be available to discuss her permit request. On July 19, 2021, the Petitioner emailed the Village saying that she could not work around the staff's schedule, that she did not want to meet, and that it was unreasonable for the Village to refuse her request for modification. The Petitioner also said that the Fair Housing Act protected people with disabilities and provided for reasonable modifications. She stated that the Village denied her request for a reasonable modification on May 18, 2021. The Petitioner also attached a physician's note.[6]

Matthews stated that, on July 22, 2021, Springer emailed the Petitioner and informed her that she was reviewing the information that the Petitioner had provided. He said that, on July 26, 2021, Springer emailed the Petitioner, attaching a link to the Village's code provisions related to permissions for modifications and inquiring how the Petitioner wanted to proceed. On July 27, 2021, the Petitioner emailed Springer citing to the Americans with Disabilities Act ("ADA") and inquiring, among other things, why the note from her physician did not "qualify for reasonable modifications to the zoning ordinance."

On August 9, 2021, Springer emailed the Petitioner stating that her permits for the three modification options presented by the Village were ready for her to pick up. She told the Petitioner that tapering both of her sidewalks to the width of the driveway at the sidewalk provided her with an accessible path to the driveway, and that the walkway would be paved and meet the ADA requirements (though she noted that the ADA did not apply to the Petitioner's residential property).

Matthews stated that, after this point, the Petitioner did not engage further with the Village or obtain a variance. He said that the Village issued a permit to the Petitioner on August 11, 2021, for each option provided by the Village, and this permit would have expired on August 11, 2022. Matthews stated that, instead of moving forward with one of the approved options, the Petitioner added a concrete retaining wall to her driveway, along with other modifications that were not approved by the Village.

The Commission determines that substantial evidence does not exist as to Counts A and B. Under the Act, substantial evidence is "evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." 775 ILCS 5/7A-102(D)(2). If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D)(3).

Count A

The Petitioner alleged that the Village failed to provide her with a reasonable modification due to her physical disability. The standard for such a claim states that is a violation of the Act to "refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises

[6] Neither the email nor the investigation report specified which note was attached.

occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises." 775 ILCS 5/3-102.1(C)(1).

First, the standard requires that the Petitioner be disabled under the Act, and under the Act, "disability" excludes "conditions that are transitory and insubstantial" or "not significantly debilitating or disfiguring." 56 Ill. Admin. Code § 2500.20(b)(1). "Transitory" is defined as "of brief duration," "existing momentarily," or "temporary." *Anderson v. Modern Metal Products*, 305 Ill. App. 3d 91, 98 (2d Dist. 1999). Here, there is not enough information to determine whether the Petitioner was disabled under the Act. The Petitioner alleged that she had a physical disability but did not specify the nature of her disability and whether it was a permanent and major condition. The doctor's notes that she provided merely stated that the Petitioner had limited mobility, and that her doctor was aware of her disability but did not state the nature of such disability. Additionally, it does not appear from the investigation report that the Respondent inquired into the nature of the Petitioner's alleged disability.

However, the issue of whether the Petitioner was disabled under the Act is not dispositive; regardless, a *prima facie* case has not been established because the Village did not deny or refuse to permit the modification. The Petitioner requested a specific modification, and, because such a modification would be in violation of the Village's zoning code, it provided the Petitioner with three similar walkway options and gave her a permit for each option. Additionally, the Village advised that if the Petitioner wanted to pursue a permit for the specific modification that she requested, she could go before the Board to seek a variance. Thus, the Village did not deny the Petitioner, it provided her with several options to construct a walkway, including the specific walkway that she desired. Accordingly, the Commission sustains the Respondent's dismissal of Count A for lack of substantial evidence.

Count B

The Petitioner alleged that the Village subjected her to discriminatory terms, conditions, privileges, or services and facilities of a real estate transaction due to her disability when it did not grant the modification to her home that she requested but granted similar modifications to other homeowners. A *prima facie* case of discriminatory terms, conditions, privileges, or services and facilities of a real estate transaction requires that: (1) the petitioner is a member of a protected class; (2) the defendant was aware of the petitioner's protected class; (3) the defendant subjected the petitioner to discriminatory terms and conditions; and (4) the defendant treated a similarly situated person outside of the petitioner's protected class more favorably under similar circumstances. *Turner v. Human Rights Comm'n*, 177 Ill. App. 3d 476, 487 (1st Dist. 1988).

The Commission determines that a *prima facie* case has not been established, as the Petitioner was not subjected to discriminatory terms and conditions. The Village could not approve the Petitioner's modification as requested because the modification did not comply with the Village's zoning code, and it provided the Petitioner with several code-complaint options for constructing her walkway, including seeking a variance for a permit to construct the walkway as she desired.

Additionally, it has not been established that the Village treated a similarly situated person outside of the Petitioner's protected class more favorably under similar circumstances. Though the Petitioner alleged that other homes in the Village had walkways similar to what she requested, these walkways were only approved by the Village prior to the year 2000, and the Petitioner requested her walkway after 2000. Moreover, a proper comparator in this situation would be a Village resident who sought such a walkway as the Petitioner but was not required to seek a variance before the Board in order to receive a permit for their specific request. Accordingly, the Commission sustains the Respondent's dismissal of Count B for lack of substantial evidence.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioner's charge for lack of substantial evidence is hereby **SUSTAINED**.

2. This is a final Order. A final order may be appealed to the Illinois Appellate Court by filing a Petition for Review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Village of Glen Ellyn as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 4th day of SEPTEMBER 2024.

Chair Selma D'Souza

Commissioner Jacqueline Y. Collins

Commissioner Janice M. Glenn