

ORDINANCE 463

AN ORDINANCE TO AMEND ZONING ORDINANCE 303 AS FOLLOWS:

Article I

Addition:

Section 1.4 CONSTRUCTION, APPLICATION AND ENFORCEMENT CONSISTENT WITH FEDERAL LAW

The provisions of this Ordinance shall in every instance be construed, applied and enforced in a manner consistent with applicable federal law, including but not limited to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the Fair Housing Act), 42 U.S.C. §§ 3601-3619; and Title II of the Americans with Disabilities Act (the ADA), 42 U.S.C. §§ 12131-12134.

Notwithstanding any other provision of this Ordinance to the contrary, the Building Inspector, Planning Board Members, and other City officials with zoning--related responsibilities shall make reasonable accommodations in the rules, policies, and practices of their offices so that handicapped or disabled persons or a provider of housing for a handicapped or disabled persons are not discriminated against and are afforded an equal opportunity to use and enjoy dwellings.

Article VII

Addition:

7.3(d)(5) REASONABLE ACCOMMODATION:

In order to make specific housing available to one or more individuals with disabilities, a disabled person or a person or provider acting on behalf of an individual with a disability (collectively "Applicant") may request a reasonable accommodation relating to the zoning ordinance. Whenever an Applicant has a disability or acts on behalf of an individual with a disability which entitles such Applicant to protection under the ADA or the Fair Housing Act, and the use and enjoyment of the structure requires deviation from this ordinance as a "reasonable accommodation", as defined by appropriate federal statutory authority or relevant case law in effect at the time, the Applicant shall address a request for a reasonable accommodation to the Building Inspector. The Applicant may make this request orally in person, or in writing. If requested by the Applicant, the Building Inspector shall, in a timely manner, assist in obtaining information required by the city and in filling out the application. The application shall be made by filling out a form, which the Building Inspector shall provide. The form shall contain:

- A. the current zoning for the property;
- B. the name of the owner of the fee interest of the property (if other than the Applicant);
- C. the nature of the disability that requires the reasonable accommodation. In the event that the specific individuals who are expected to reside at the property are not known to a provider in advance of making the application, the provider shall not be precluded from filing the application, but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing. The provider shall

notify the Building Inspector, in the event the residents at the location are not within the range described. The Building Inspector shall then determine if an amended application and subsequent hearing is appropriate;

D. the specific type of accommodation requested by the Applicant. To the extent practicable, this portion should include information concerning the impact of the reasonable accommodation on the adjoining properties and area, the number of people who are expected to be availing themselves of the reasonable accommodation, the estimated number of people in an average week who will be necessary to provide services to the person(s) with disabilities at the property on an on-going basis, whether or not this type of reasonable accommodation is required to obtain a license from any state or county authority to operate, and any other information the Applicant thinks would assist in determining the reasonableness of the accommodation;

E. the Applicant should also note, if known, whether this accommodation requires any additional licensure from the city (E.g., business license);

F. whether the accommodation requested may be necessary to afford one or more persons with disabilities equal opportunity to use and enjoy a specific dwelling; and

G. a notice to Applicants providing that, should the information provided by the Applicant include medical information or records of the proposed resident(s), including records indicating the identity, medical condition, diagnosis or medical history of the proposed resident(s), the Applicant may, at the time of submitting such medical information, request the City, to the extent allowed by law, treat such medical information as confidential information of the Applicant and/or proposed resident(s).

Within twenty (20) days of completion of the application, the Building Inspector shall make a written recommendation to the Board of Adjustment ("Board") specifying the reasons why the request should be approved, modified or denied. Upon receipt of the Building Inspector's recommendation, the Board shall conduct a hearing on the request. Said hearing shall comply with Section 7.4. In deciding whether to approve, modify or deny an application, the Board should take into account whether the requested accommodation would require a fundamental alteration to the city's zoning scheme, and whether the requested accommodation would impose undue financial or administrative burdens on the city. To protect the confidentiality of any medical information provided by the Applicant, or contained in the application, the Board shall, to the extent allowed by law, enter in to executive session to review and discuss said medical information. The non-confidential portion of the hearing shall be conducted in public. The Board shall issue a written decision specifying its grounds for granting, denying, or modifying the application. In the event that the Building Inspector or the Board does not issue a decision as required by the time frames specific herein and in other pertinent sections of the Ordinance, the application shall be deemed granted.

Upon approval of the application, whether modified or not, the Applicant shall be entitled to undertake said reasonable accommodation, and shall be entitled to any attendant licensure by the city that is outlined in the application as approved by the Board. If a business license is required as part of the reasonable accommodation, the business license official shall issue said license upon approval of the accommodation.

The accommodation shall be in force and effect as long as the Applicant owns and/or resides in said structure. Said reasonable accommodation shall be limited to the number of people availing themselves of the reasonable accommodation as approved by the Board. Further, should the number of people necessary to provide the reasonable accommodation at the property in an average week on an on-going basis materially increase from the number of people indicated in the application approved by the Board, a new application for an accommodation will need to be made to the Building Inspector. If the structure is sold, or otherwise changes ownership, the reasonable accommodation is not transferable to the new owner. It is the duty of the owner to notify the Building Inspector of this event. The city shall allow the new owner an opportunity to renew and/or modify the reasonable accommodation in accordance with this section. In the event that the reasonable accommodation is not renewed or modified within sixty (60) days from the date of change in ownership, the reasonable accommodation will lapse and the structure will have to comply with all requirements of this ordinance.

Nothing in this section will require the city to expend any funds to achieve a reasonable accommodation except and to the extent required by federal law.

Section 7.4

PROCEDURE FOR REQUESTING A HEARING: Request for a hearing before the Board of Adjustment for an administrative review, special exception, variance, or reasonable accommodation shall observe the following procedures:

Article VIII

Section 8.2

Edit definition of Convalescent, or Nursing, Home:

A building, or portion thereof, wherein for compensation, living accommodations and care are provided for persons suffering from illness, which is not of sufficient severity to require hospitalization, or for persons requiring further institutional care after being discharged from a hospital; includes Extended Care Facilities.

Addition to Definition of Family

Persons with disabilities, including residents of group homes, will not be excluded from the definition of "family" if the persons occupying the dwelling unit otherwise meet this definition, regardless of whether the group home is established or maintained as a for-profit or not-for-profit entity.

Add Definition of Group Home

Group Home. A dwelling for a person or persons with disabilities as defined by the Fair Housing Act, including but not limited to a “Community Residential Facility” as set forth in the Alabama Department of Mental Health Administrative Code, Chapter 580-3-23 - 06(2)(a), as authorized by the Code of Alabama § 22-50-1, or in a subsequently amended or adopted law or regulation.

ADOPTED THIS 15TH DAY OF JUNE, 2010.

Ordinance to be effective upon publication and approval of consent decree by the court in the matter of U.S. v Satsuma CV 08-0242-KD-C.

Mayor Pro Tem Tom Williams

ATTEST:

Vicki L. Miller, City Clerk