

ORDINANCE NO. 763

AN ORDINANCE TO AMEND APPENDIX A OF THE PETOSKEY CODE OF ORDINANCES, ZONING ORDINANCE ARTICLE XIX

THE PETOSKEY CITY COUNCIL ORDAINS:

1. **Appendix A, Article XIX, Section 1912 of the Petoskey Code of Ordinances is hereby created to read:**

Sec. 1912. Fair Housing Accommodation Policy

1. Purpose.

It is the policy of the City of Petoskey, pursuant to the Federal Fair Housing Act and the Michigan Elliot Larsen Civil Rights Act (hereafter "fair housing laws") to provide individuals with disabilities reasonable accommodation in rules, practices and procedures to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities. This section is intended to provide a procedure for individuals with disabilities and developers of housing for individuals with disabilities to seek relief from the application of zoning regulations, practices and procedures to further the City's compliance with fair housing laws and provide greater opportunities for the development of critically needed housing for individuals with disabilities.

2. Definitions.

For purposes of this section, the following terms shall have the meanings ascribed to them:

Eligible Person: A person who is an individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities.

Individual with a Disability: Someone who has a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having such impairment; or anyone with a record of such impairment as defined by the fair housing laws. Individuals with a disability include those in recovery from drug or alcohol abuse, but such term does not include current illegal use of a controlled substance (as defined in 21 U.S.C. § 802).

Person: An individual, partnership, limited-liability company, corporation or other entity.

Reasonable Accommodation: Providing eligible persons with flexibility in the application of zoning regulations, practices and procedures, or even granting variances from certain requirements, when it is necessary to eliminate barriers to equal housing opportunities.

Request for Reasonable Accommodation: A request by any individual with a disability, his or her representative, a developer or provider of housing for individuals with disabilities, when the application of a zoning regulation, policy, practice or procedure acts as a barrier to fair housing opportunities.

3. Notice of fair housing accommodations policy, assistance available.

- a) Notice of the availability of reasonable accommodation shall be prominently displayed at City Hall, advising the public of the availability of the procedure for eligible individuals. Forms for requesting reasonable accommodation shall be available to the public in the Office of City Planner.
- b) The notice shall indicate that the Office of City Planner will provide an applicant with assistance in filing a request for reasonable accommodation or an appeal from a decision on such request so that the process is accessible.

4. Requests for reasonable accommodation.

- a) The Zoning Board of Appeals shall have the jurisdiction and power to grant a special exception from the non-use requirements of the Zoning Ordinance where necessary to provide reasonable accommodation to allow individuals with disabilities to have reasonable access to housing in the City of Petoskey.
- b) A special exemption is not necessary for state-licensed adult foster care homes to the extent that state law preempts local zoning and may exist legally without the special exception.
- c) An eligible person may request a reasonable accommodation in zoning regulations, practices and procedures.
- d) Requests for reasonable accommodation shall be made in writing, filed in the Office of the City Planner and provide the following information:
 - 1. Name and address of the individual(s) requesting reasonable accommodation;
 - 2. Name and address of the property owner(s) (if different);
 - 3. Address of the property for which accommodation is requested;
 - 4. Evidence that the request is for an individual with a disability under fair housing laws;
 - 5. Description of the requested accommodation and the regulation(s) or procedure for which accommodation is sought;
 - 6. Reason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling;
 - 7. Evidence that all alternative accommodations and other options have been considered by the applicant;
 - 8. Evidence of whether the property is within 400 feet of another property granted accommodations for use by four (4) or more unrelated persons under this section; and
 - 9. The written consent of the property owner.
- e) Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection except as may be required by the Michigan Freedom of Information Act.

- f) A request for reasonable accommodation in regulations, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.
- g) Requests for reasonable accommodation shall be reviewed by the Zoning Board of Appeals using the criteria set forth in Subsection (5).
- h) Notice of the application and hearing shall be given in accordance with Section 2006 of the Petoskey Code of Ordinances.

5. Standards of review. The written decision by the Zoning Board of Appeals shall be consistent with fair housing laws and shall take into account the following factors:

- a) Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws;
- b) Whether the requested accommodation is necessary to make housing available to an individual with disabilities under the fair housing laws;
- c) Whether the requested accommodation would impose an undue financial or administrative burden on the City;
- d) Whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning plan;
- e) Whether there is an alternative accommodation which may provide an equivalent level of benefit to the applicant;

For reasonable accommodations requested by a recovery residence or other group treatment facility, the Zoning Board of Appeals, consistent with fair housing laws, shall also take into account the following additional factors:

- f) Whether the recovery residence is state licensed as a substance use disorder facility;
- g) Whether the recovery residence is a certified member of an established entity that conducts its own inspections and has its own standards for the benefit of occupants, e.g., CARF International, National Alliance for Recovery Residences (NARR) or any equivalent entity having similar requirements for membership;
- h) Whether the property should be managed by a person living on site;
- i) Whether and how the requested accommodation will benefit the people in the program; and
- j) Whether the property is within 400 feet of another property granted accommodations for use by four (4) or more unrelated persons under this section.

6. Written decisions, notice to applicant.

- a) The Zoning Board of Appeals shall issue a decision on a request for reasonable accommodation within 45 days from the date a complete application has been filed with the Office of City Planner and may either grant, grant with modifications or conditions, or deny a request for reasonable accommodation in accordance with the criteria in Subsection 5.
- b) If necessary to reach a determination on the request for reasonable accommodation, the Zoning Board of Appeals may request further information from the applicant consistent with fair housing laws, specifying in detail the information that is required. In the event that a request for additional information is made, the forty-five-day period to issue a decision is stayed until the applicant completely responds to the request.
- c) If the Zoning Board of Appeals fails to render a decision on the request for reasonable accommodation within the 45 days from the date a complete application has been filed with the Office of City Planner, the request shall be deemed granted.
- d) The written decision of the Zoning Board of Appeals shall explain in detail the basis of the decision, including its findings on the criteria set forth in Subsection 5. The decision shall give notice of the applicant's right to appeal and to request reasonable accommodation in the appeals process as set forth below. A copy of the decision shall be provided to the applicant or sent to the applicant by first class mail.
- e) The written decision of the Zoning Board of Appeals shall be final unless an applicant appeals it to the circuit court.

7. Effect of zoning pending a determination. While a request for reasonable accommodation is pending, all zoning regulations, practices and procedures otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

8. Appeals. An applicant may appeal a decision by the Zoning Board of Appeals as provided by statute.

2. Conflicting Standards.

If any of the standards set forth in this amendment conflict with any other standards of previous or further ordinances or amendments, the stricter standards shall apply.

3. Repeal; Savings Clause.

All ordinances, resolutions, or orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, repealed.

4. Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

5. Effect.

This ordinance shall take effect fifteen (15) days following its enactment and shall be published once within seven (7) days after its enactment as provided by Charter.

Adopted, enacted and ordained by the City of Petoskey City Council this 21st day of May 2018.

John Murphy
Its Mayor

Alan Terry
Its Clerk