IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

VISION WARRIORS CHURCH, INC.,	)	
	)	
Plaintiff	)	
	)	**CIVIL ACTION 1:19-cv-03205(MHC)**
	)	
vs.	)	**JURY DEMAND**
	)	
CHEROKEE COUNTY, GEORGIA, et al.,	)	
	)	
Defendants.	)	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

Plaintiff Vision Warriors, a non-profit faith-based ministry for disabled individuals – grandfathers, husbands, fathers and sons striving to achieve long-term recovery from addiction – has been the continued target of discrimination by Defendants. Only after Vision Warriors' diligent efforts to ensure it had obtained the necessary zoning approval did Plaintiff purchase the Property at issue in this case. Four months later, and at the behest of disgruntled neighbors who lodged false accusations against Vision Warriors based upon unfounded fears and concerns regarding the handicapped people Vision Warriors ministers

to, Defendants began proceedings – many of which were unprecedented – to ensure Vision Warriors would never be able to use the Property as intended. First, Defendants asked Plaintiff to respond to the false accusations of neighbors. Next, Defendants revoked the zoning certification and TOC permit Vision Warriors had lawfully obtained. At the time Plaintiff purchased the Property, its use was lawful – not only pursuant to a zoning determination issued by the County's Zoning Administrator, but also under Defendant County's zoning ordinance permitting "dormitories" as an open use in all residentially zoned areas. Notwithstanding several legal notices to Defendants regarding Vision Warriors' rights under federal law, Defendants then proceeded to deny Plaintiff's land use applications and appeal. Defendants acted with a clear understanding of their obligations under federal law.

STATEMENT OF FACTS

Vision Warriors is a non-profit corporation focused on creating lasting recovery through a "faith community that focuses on community, accountability and transparency." Plaintiff's Statement of Undisputed Material Facts (hereinafter "PSUMF") filed herewith, at 1-3, 9.[1] Vision Warrior's Founder, Kirk

[1] Citations to PSFUM are to each numbered paragraph and/or fact, not page number.

Driskell, is the CEO and has been working with men in recovery for more than twenty-six years. PSUMF 10. Vision Warriors provides residents necessary components for long-term recovery including (1) a family-like environment that is proven to better recovery; (2) location in a residential community; (3) affordability to residents (cost is often a hindrance for those seeking recovery); and (4) on-site recovery meetings and religious services. PSUMF 48-62. The current maximum capacity of the main building, based on the number of beds therein, is 36. PSUMF 63. Vision Warriors residents use the warehouse/woodshop to make furniture, crosses and make repairs of donated items; all proceeds go to Vision Warriors. PSUMF 64. Vision Warriors utilizes the auto garage to perform auto repairs by residents and staff for purposes of equipping residents with job skills and raising money for Vision Warriors. PSUMF 65. Vision Warriors does not charge for labor on repair of cars; those receiving a car repair are only asked to cover the cost of parts and love offerings or donations are accepted. PSUMF 66.

Defendant Johnston served on the Board of Commissioners (hereinafter "Board") from 2000 to 2014, and has served as Chairman of the Board since January 2019. PSUM 4. Defendants West, Gunnin, Carter and Ragsdale served on the Board at all times relevant to this case. PSUMF 5-7. Defendant Michael

Chapman is the County's current Zoning Administrator. PSUMF 8. Vicki Lee/Smith[2] is Chapman's predecessor and served as Zoning Administrator from August 2002 to November 2018.

The Property at issue in this case is currently owned by Vision Warriors and is located at 1709 Old Country Place. PSUMF 47. The Property is made up of two parcels. PSUMF 13. The current zoning for Parcel 1 is R-80, whereas Parcel 2 is Zoned R-80 and R-20. *Id.* The Property was owned by the Youngs/Happy Acres Mission Transit from 1972 to December 2017 and was utilized to house missionaries (approximately four families at a time) and to host retreats for up to 50 people and various other events in a dormitory/chapel building. PSUMF 15, 17, 22-24. The Youngs obtained a building permit to build the main building which was utilized as a dormitory and chapel. PSUMF 18. A certificate of occupancy was issued for the main building in 1989. PSUMF 19. In addition, the Youngs obtained building permits for two other structures on the Property: a warehouse and detached garage. PSUMF 18. The Youngs utilized the auto garage to repair vehicles for missionaries, widows, etc., in exchange for donations, PSUMF 25, and the warehouse and woodshop to build and ship crates,

[2] As explained in her deposition Vicki Taylor Lee recently married and now goes by Vicki Smith. Exhibit D (Smith Depo) at 6:3-6.

repair furniture and store items for missionaries. PSUMF 26. The Youngs received assurances from the County Attorney in 1996 that its use of the warehouse/woodshop in the manner describe above "for the manufacture of wooden pallets for shipment" was permissible. PSUMF 27.

In July 2017, a representative of Happy Acres and Kirk Driskell (CEO for Vision Warriors) met with the County's then-Zoning Administrator Vicki Lee/Smith to discuss Vision Warriors' proposed use of the Property and obtained assurances that its use would be permitted. PSUMF 37-38. Shortly thereafter, Ms. Lee/Smith issued a certificate of zoning acknowledging the two parcels containing "a primary home, a detached garage, a dormitory and chapel and another accessory structure" and stating that "as a legal non-conforming use, you may continue to house guests in the dormitory for short periods of time. You cannot expand the use of a different land use or increase the number of people served." PSFUM 40. Vision Warriors sought further clarification to make sure Ms. Lee/Smith's determination would apply to a residential program for men and Ms. Lee confirmed that it would be, stating ""I am the interpreter of land use and I assure you this meets Vision Warriors use." PSUMF 41. Ms. Lee/Smith was then put on notice that Vision Warriors was moving forward with the purchase of the Property and she told Driskell, "You are good to go," notified Driskell that

he would need to obtain a Tenant Occupancy permit (which he did, see SUMF 67) and wished him the best on his endeavor. PSUMF 42-43. In December 2017, Vision Warriors purchased the Property and began operating a residential ministry shortly thereafter. PSFUM 47.

Pursuant to Section 14.1 of the Zoning Ordinance, "[e]xcept as otherwise provided in these regulations the Zoning Administrator shall administer, interpret and enforce this Ordinance." PSUMF 44. Ms. Lee/Smith and the Director of Planning and Zoning, Watkins, have confirmed that Ms. Lee/Smith had authority to issue the certification of zoning (COZ) to Vision Warriors. PSUMF 45-46. Additionally, Director Watkins has confirmed he has no information that would indicate Ms. Lee was misinformed regarding Vision Warriors' use before issuing a COZ. PSUMF 89.

After Vision Warriors obtained a tenant occupancy change (TOC) permit in April 2018 (which Director Watkins confirmed was filled out correctly, *see* PSUMF 68), the County – in response to unfounded accusations by neighbors – contacted Vision Warriors and began asking questions regarding Vision Warriors' use. PSUMF 76-81. Vision Warriors met with County officials and answered questions posed by the County. *Id*. Approximately seven county employees showed up on the Property for a site inspection. Fire Marshal Arp

confirmed that he can't recall a time recently when that many officials/employees accompanied him on a site visit. PSUMF 74-75. In May 2018, Vision Warriors provided the County with a formal statement of its operations, as well as an ante litem notice that if the Defendants actions were to revoke the zoning and permit it would violate federal law. PSUMF 77. Then, on June 12, 2018, the County Attorney notified Vision Warriors that it was revoking the COZ previously issued, as well as the TOC permit and advised Vision Warriors that it should immediately find alternative housing for its residents. PSUMF 82-84. Vision Warriors again notified the County that its actions likely violated federal law. PSUMF 85. Notwithstanding this notice, the County's decision was affirmed by the new Zoning Administrator, Michael Chapman, in August 2018, see PSUMF 86-87, despite the fact that Chapman has admitted he is unsure whether he has authority to revoke a tenant change occupancy permit. PSUMF 146. In his communications to Vision Warriors, Chapman asserts Ms. Lee/Smith was misinformed and that Vision Warriors likely provided her with erroneous information; however, he later acknowledged that he has never spoken with Ms. Lee/Smith. PSUMF 88. Chapman believes the Zoning Administrator does authority to issue a COZ for a nonconforming use. PSUMF 145. Director Watkins disputes Chapman's assertion. PSUMF 89. Numerous County officials have

confirmed that the revocation of COZ is unprecedented and has not been done, except as to Vision Warriors. PSUMF 91-94. On August 23, 2018, the County was notified for a third time that Vision Warriors was an organization protected under the FHA and ADA, and that the County's actions were subject to federal law. PSUMF 112. The County was placed on notice that Vision Warriors was making a request for reasonable accommodation. *Id*. In September 2018, Vision Warriors appealed Chapman's determination that its use was that of a temporary shelter and not permitted and the revocation of its TOC permit. PSFUM 111.

Shortly thereafter, in November 2018, Vision Warriors filed applications for a special use permit to operate a dormitory and church as well as its accessory uses, or, in the alternative, for a rezoning. PSUMF 113. At the time Vision Warriors purchased the Property, a dormitory was an "open use" and did not require a special use permit. PSUMF 70 (identifying the date on which the zoning ordinance was amended and "dormitories, fraternities & sororities" was changed from an open use to a use requiring special permit). Staff Reports prepared by Chapman for the Planning Commission and the Board relating to Plaintiff's zoning applications, see PSUMF 117, confirmed that traffic and parking would not be an issue. PSUMF 119. Chapman also indicated that the future land uses for the residential zoning classification of both parcels making up the Property

included "residential uses, as well as semi-public and institutional uses." PSUMF 121-122. Chapman has acknowledged the County received more emails and letters from neighbors than an average zoning matter. PSUMF 118. Director Watkins has testified that Vision Warriors use is more like a "residence hall" or "dormitory" – something more permanent than a temporary shelter. PSUMF 124. Other county officials regularly referred to Vision Warriors use as a "dormitory." PSUMF 34, 36, 40, 129.

NAICS Code 624221 defines Temporary Shelters as "establishments primarily engaged in providing (1) short-term emergency shelter for victims of domestic violence, sexual assault, or child abuse and/or (2) temporary residential shelter for homeless individuals or families, runaway youth, and patients and families caught in medical crisis." PSUMF 95. The NAICS is the primary place the County looks to in determining the definition for land uses. PSUMF 96. The County's Permitted Uses Table for dormitories refers to NAICS code 721310 which defines the use as follows: "establishments primarily engaged in operating rooming and boarding houses and similar facilities . . . These establishments provide temporary or longer-term accommodations, which, for the period of occupancy, may serve as a principal residence. These establishments also may provide complementary services, such as housekeeping, meals and laundry

services." PSUMF 98. Some of the uses falling under NAICS 721310 include: "boarding houses," "clubs, residential," "corporate rooming and boarding houses," and "rooming and boarding houses." PSUMF 99.

In reaching a determination that Vision Warriors was not a dormitory, but instead a temporary shelter, Chapman acknowledges that he did not consult anything that would have led him to believe that individuals coming to reside at Vision Warriors were homeless. PSUMF 100. Chapman testified that he considered Vision Warriors' use to involve a "medical emergency or crisis," but admits that he knew Vision Warriors does not provide medical care or clinical services. PSUMF 101-102. When asked whether he knew of and considered Vision Warriors' admissions process to be one akin to "an emergency situation," Chapman admits that he was aware of the admissions process and criteria for a new resident and answered that, "Well, I think that really informed my decision to conclude that it wasn't a church." PSUMF 103. Chapman testified that he would have classified Happy Acres' use as a "worker dorms or dormitories," because "I don't think it [Happy Acres] was their "permanent residence. I think it was just more of a way-station or a holding station going to or from their mission trips." PSUMF 105. Chapman admits that he did not have any information to support his belief that the men living at Vision Warriors were

actually homeless. PSUMF 106. Chapman was also aware that Vision Warriors occasionally provides meals and laundry facilities to its residents. PSUMF 109.

On March 5, 2019, a public hearing before the Planning Commission was held on Vision Warriors' applications for a special use permit and for a rezoning. PSUMF 115. On April 16, 2019, both land use applications submitted by Vision Warriors were heard by the Board, and it voted unanimously to deny both applications. PSUMF 125. On April 16, 2019, and prior to the Board's hearing on Vision Warriors' applications, Abigail Southerland, on behalf of Vision Warriors, sent a letter by email to the Board and put the County on notice once again that "Vision Warriors' submission of a special use permit application, or in the alternative, a rezoning request, is a request for reasonable accommodation in the zoning regulations under the FHA and ADA." PSUMF 126. Prior to the Board's hearing and vote on Vision Warriors' application, and in an email dated March 31, 2019, Commissioner Johnston informed a neighbor that he "plan[ned] to vote to sustain the denial recommendations, and I think its likely the other commissioners will do the same." PSUMF 127. On April 1, 2019, also prior to the Board's hearing, Commissioner Johnston informed a neighbor opposed to Vision Warrior's use, "I don't think they'll get anything from the BOC. Maybe through the courts." PSUMF 128. On July 16, 2019, Defendant Commissioners heard

Vision Warriors' administrative appeal (filed on July 11, 2018) and voted unanimously to deny Vision Warriors' appeal. PSUMF 128. As the Chair, Johnston is expected to provide leadership to the Board, to preside over meetings, and declare emergencies. PSUMF 130. In response to the question regarding whether it would be fair to the applicant if a Commissioner indicated how he would vote on appeal before the hearing took place, Director of Planning and Zoning indicated it "would seem to be unfair to render a decision before hearing everything." PSUMF 132. Chapman also testified that it is his opinion that it would not be fair if "a board of commissioner member determine[d] how they will vote before even attending the appeals hearing and hearing the information." PSUMF 133.

Defendant Commissioners Johnston, West, Gunnin, Carter and Ragsdale attended the appeals hearing and voted unanimously to affirm Chapman's determination and deny Vision Warriors' requested relief. PSUMF 137. At the appeals hearing, Chairman Johnston stated, "there's insufficient evidence that the decision was in error or lack of evidence that the decision was in error." PSUMF 138. Prior to the matter involving Vision Warriors, the County was sued by another recovery center for alleged violations of the ADA and FHA, including

denial a reasonable accommodation. PSUMF 135. In or around November 2017, the County settled the case. PSUMF 136.

ARGUMENT

I. Legal Standard

A court shall grant a party's motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)). A party seeking summary judgment "'is entitled to a judgment as a matter of law' [when] the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." *Id.* at 323. Plaintiff Vision Warriors has satisfied this standard for the reasons set forth below.

II. Defendants Denied Plaintiff A Reasonable Accommodation in Violation of the FHA and ADA.

The Fair Housing Act (FHA) and the American with Disabilities Act (ADA) prohibit housing discrimination by governmental entities against handicapped persons or persons with disabilities. Specifically, the FHA makes it unlawful "to

discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap." 42 U.S.C. § 3604(f)(1). "Handicap" is defined as

> (1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21).

42 U.S.C. § 3602(h). The FHA's implementing regulations further define physical and mental impairment to include "drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism." 24 C.F.R. § 100.201. *See Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339, 1346-47 (S.D. Fla. 2007) (other citations omitted).

Similarly, the ADA prohibits discrimination by public entities based on a disability and provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by such entity." 42 U.S.C. § 12132. Akin to the FHA's interpretation of "handicap," "disability" under the ADA is defined as "(A) a physical or mental impairment that substantially limits one or more major life

activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment . . . ." 42 U.S.C. § 12102(1). The ADA specifically notes that qualified individuals include those "participating in a supervised rehabilitation program and is no longer engaging in such use." 42 U.S.C. § 12114(b)(2).

"Due to the similarity of the ADA and the FHA's protections of individuals with disabilities in housing matters, courts often analyze the two statutes as one." *Caron Found. of Fla., Inc. v. City of Delray Beach*, 879 F. Supp. 2d 1353, 1364 (S.D. Fla. 2012) (citing *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 573 n.4 (2d Cir. 2003); *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 782-83 (7th Cir. 2002)). "Sober living homes can constitute a dwelling," and both the ADA and FHA apply to municipal zoning decisions. *Id.* at 1364 (citing *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1212-16 (11th Cir. 2008) (other citations omitted)).

Three theories of discrimination are available to a disabled individual or an organization associated with disabled individuals: (1) intentional discrimination (or disparate treatment); (2) discriminatory impact; and (3) a refusal to make a reasonable accommodation. *Schwartz*, 544 F.3d at 1213. *See e.g., Bonasera v. City of Norcross*, 342 F. App'x 581, 583 (11th Cir. 2009);

Hallmark Dev., Inc. v. Fulton Ctny., 466 F.3d 1276, 1283 (11th Cir. 2006). Plaintiff seeks summary judgment on the third claim: refusal to make a reasonable accommodation.

The FHA and ADA's reasonable accommodation provisions prohibit "[1] refusal[s] to make [2] reasonable accommodations in rules, policies, practices, or services, when such accommodations [3] may be necessary to afford such person equal opportunity to use and enjoy a dwelling[.]" *Schwarz*, 544 F.3d at 1218 (quoting 42 U.S.C. § 3604(f)(3)(B)). *See also Akridge*, 2006 U.S. Dist. LEXIS 7428, at *25. Each of these factors is analyzed below.

1. Defendants Refused Plaintiff's Repeated Request for a Reasonable Accommodation.

"A plaintiff must actually request an accommodation and be refused in order to bring a reasonable accommodation claim under the FHA." *Schwarz*, 544 F.3d at 1219 (citations omitted).

> [T]he duty to make a reasonable accommodation does not simply spring from the fact that the handicapped person wants such an accommodation made. Defendants must instead have been given an opportunity to make a final decision with respect to [p]laintiffs' request, which necessarily includes the ability to conduct a meaningful review of the requested accommodation to determine if such an accommodation is required by law.

Id. (citation omitted). Furthermore, if there is a local variance process to bring the

accommodation request, "they must use that procedure first and come away unsatisfied prior to filing suit in federal court." *Id.* at 1219 n. 11 (citations omitted).

In the present case, Vision Warriors put the County on notice of its duty to provide a reasonable accommodation four different times over more than a year's time, *see* PSUM 77, 85, 112, 126, and made several requests for reasonable accommodation (via a special use application, rezoning application and appeal of revocation of COZ). PSUMF 113-116, 125, 130. Defendants denied each request. PSUMF 125, 130. Importantly, the County, aside from the four notices provided by Vision Warriors spelling out quite clearly for the County its obligations to consider a reasonable accommodation, was already well aware of its duties under federal law to organizations protected under the FHA and ADA. Just two years prior to Vision Warriors' requests for reasonable accommodations, the County was sued for similar violations of the FHA and ADA by a similar plaintiff. The claims filed in the case included an alleged violation of the FHA and ADA's reasonable accommodation. PSFUM 135-136.

2. Reasonableness

An accommodation is reasonable "if the requested accommodation does not impose significant financial or administrative burdens upon the defendants, or

substantial modifications to existing programs or policies that would fundamentally change the nature of the function of the program or policy." *Akridge,* 2006 U.S. Dist. LEXIS 7428, at *25. *See e.g.*, *Schwarz*, 544 F.3d at 1220. Whether a requested accommodation is reasonable or necessary "is highly fact-specific, and determined on a case-by-case basis by balancing the cost to the defendant and the benefit to the plaintiff." *Id.* (citation omitted). The court in *Schwartz* provided the following guidance:

> if the proposed use is quite similar to surrounding uses expressly permitted by the zoning code, it will be more difficult to show that a waiver of the rule would cause a 'fundamental alteration' of the zoning scheme. Similarly, if the municipality routinely waives the rule upon request, it will be harder to show that the rule is "essential."

544 F.3d at 1221. In *Schwartz*, the court found that where the plaintiff sought to use its houses in the same manner as it could use an apartment building across the street, the plaintiff's requested accommodation was reasonable. 544 F.3d at 1225. In *Akridge* the court held that a jury could find that the accommodation was reasonable and necessary where Akridge had provided assurances that the internal and exterior structures of the home on the property would not be disturbed, and thus, her operation would not alter the character of the neighborhood. *Akridge*, 2006 U.S. Dist. LEXIS 7428, at *25-26. Likewise, in

Hovsons, Inc. v. Township of Brick, the court held that allowing a developer to build nursing homes would not fundamentally alter the zoning code where similar uses such as planned residential retirement communities were permitted. 89 F.3d 1096 (3d Cir. 1996).

There is ample evidence in this case that Plaintiff's requested accommodations – for a special use permit to operate as a dormitory and church, and/or to overturn the decision to revoke its permit and COZ – were entirely reasonable just as in the situations found in *Akridge* and *Hoysons*. The County's denials, on the other hand, were not. In fact, they were unprecedented and illogical. See PSUMF 99-107 (outlining Chapman's illogical reasoning for classifying Plaintiff's use as a temporary shelter where there was no evidence that it provided "emergency housing," or medical treatment and, instead, had a selective application process for admitting residents).[3] *See e.g.*, PSUMF 91-94 (presenting testimony by County officials that they aren't aware of another occasion where a COZ has been revoked).

[3] Indeed, nothing about the definition of temporary shelter accurately defines Vision Warriors' use. It does not provide short term emergency shelter for victims of violence, sexual assault, child abuse, etc. See PSUMF 95 (providing definition of temporary shelters)

Plaintiff's request for special use permit would have simply allowed Vision Warriors to carry on the same activities that had taken place on the Property for decades. See PSUMF 22-26, 28-30 (detailing activities of Happy Acres including housing of four families and up to 50 people for retreats; operations in car garage and woodshop building); PSUMF 63-66 (detailing similar activities of Vision Warriors). Once more, Vision Warriors' requests to operate as a dormitory and church were uses expressly permitted by right under the zoning code at the time Vision Warriors purchased and began operating its residential recovery ministry on the Property. PSUMF 70 (explaining the ordinance was amended only after April 2019). And while Defendants continued to insist in formal zoning hearings that Vision Warriors' ministry was not a dormitory (because it would have been permitted by right and/or as a grandfathered use), several Defendants continuously referred to Plaintiff's use as a dormitory and church, not as a temporary shelter. See PSUMF 34, 36 40 (former Zoning Administrator Lee referring to use of the main building as dormitory/chapel); PSUMF 124 (Director of Planning and Zoning testifying that he considered Plaintiff's use to be more like a dormitory); PSUMF 129 (Comm'r Johnston referring to Plaintiff's use as dormitory and chapel in correspondence with neighbors).

Furthermore, just like the plaintiff in *Akridge*, Plaintiff has established that its use would not alter the character of the neighborhood. In addition to the facts above, Chapman's report to the Planning Commission and Board indicates that the proposed use will not present any traffic or parking issues, *see* PSUMF 119, and that anticipated future land uses for the same area include "residential uses, as well as semi-public and institutional uses." PSUMF 121-122. In fact, the only issue raised in Chapman's report is that of the septic system, wherein he states, "the septic system may require upgrades." PSUMF 120. This, however, would not be an expense for the County and an insufficient reason, alone, for denial.

There is no evidence that Plaintiff's request was unreasonable or that it would impose significant financial or administrative burdens upon the Defendants.

3. Necessity

Necessity depends on whether the residential program will "contribute in a meaningful way to an addict's recovery." *Schwartz*, 544 F.3d at 1227. Importantly, the Eleventh Circuit and numerous other federal courts have recognized "the efficacy of group living arrangements for recovering substance abusers." *Id.* (citing *Connecticut Hosp. v. City of New London*, 129 F. Supp. 2d

123, 132 (D. Conn. 2001); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 (E.D.N.Y. 1993)). Congress has recognized the same in that the statute regulating the use of federal money allows grants "'to support group homes for recovering substance abusers.'" *Id.*, at 1227 n. 16 (quoting 42 U.S.C. § 300x-25(a)).

Vision Warriors exists to provide a faith-based residential community for men recovering from addiction. As Vision Warriors' founder has explained, the residential program is "an integral and essential part" of providing care which adequately addresses the needs of those struggling to overcome addition. Most coming to Vision Warriors do not have a safe living environment as they have either lost the relationship with their family members or the relationship is a toxic one, making the residential program necessary for their recovery. Community living during transition (or the first twelve months of recovery) in a residential neighborhood is crucial for recovery. PSUMF 59. Vision Warriors' location provides residents a "safe, dependable environment where everybody else there is holding you up and going the same direction you're going," which is essential to long-time recovery. Cost is a huge obstacle to many seeking long-time sobriety and Vision Warriors is able to provide an affordable option because the Property already contains the existing buildings and "provide[s] everything

needed for a dormitory-like living environment (including large kitchen,, dining hall, bedrooms, sufficient bathrooms, meeting areas, ability to develop job skills). PSUMF 49, 50, 58. Every activity on the Property – from weekly recovery meetings, worship services and opportunities to serve the community, to learning a skill (in the woodshop or the garage) – facilitates recovery and seeks to set up each member up for success upon transitioning to normal life. PSUMF 48, 51-54, 56. Vision Warriors is the only Christ-centered, faith-based ministry of its kind in Cherokee County. PSUMF 55.

Importantly, courts have explained that the appropriate question to ask regarding equal opportunity is "whether the handicapped [will] have an equal opportunity to live in the dwellings *of their choice*, not simply an opportunity to live somewhere in the City." *Schwartz*, 544 F.3d at 1225 (noting further that the "language of the statute suggests as much by requiring an "equal opportunity to use and enjoy *a dwelling*, 42 U.S.C. § 3604(f)(3)(B) (emphasis added), rather than an equal opportunity to live in *a city*."). Thus, it will not serve the County to suggest that another dwelling elsewhere within its boundaries is available. *Schwartz*, 544 F.3d at 1225-26 ("We therefore conclude that the availability of another dwelling somewhere within the City's boundaries is irrelevant to

whether local officials must accommodate recovering substance abusers in the halfway houses of their choice").

Vision Warriors requested and was denied an accommodation, the request was more than reasonable and one actually permitted under the zoning ordinance, and Vision Warriors has demonstrated necessity.

III. Defendants Denied Plaintiff Equal Protection of the Law.

The Equal Protection Clause of the Fourteenth Amendment "commands that no State shall deny to any person within its jurisdiction the equal protection of the laws." *City of Cleburne v. Cleburne Living Ctr*, 473 U.S. 432, 439 (1985). "The Equal Protection Clause requires the government to treat similarly situated persons in a similar manner." *Leib v. Hillsborough Ctny. Pub. Transp. Comm'n*, 558 F.3d 1301, 1305 (11th Cir. 2009). As this court previously noted, "[t]he preliminary step in any equal protection analysis is to determine whether persons who are similarly situated are subject to disparate treatment by the statute or ordinance." Order (Doc. 57) (quoting *Chabad of Nova, Inc., v. City of Cooper City*, 575 F. Supp. 2d 1280, 1292 (S.D. Fla. 2008) (citing *Campbell v. Rainbow City*, 434 F.3d 1306, 1313 (11th Cir. 2006) (other citation omitted). In sum, and as applied in this case, the Equal Protection Clause "protects against intentional discrimination at the hands of government officials who selectively

enforce laws." *LHR Farms, Inc. v. White Ctny.*, 2010 U.S. Dist. LEXIS 149917, at *57 (N.D. Ga. Sep. 14, 2010) (quoting *Campbell,* 434 F.3d at 1313).

In order to prevail on an equal protection claim based upon the application of a facially neutral status, a plaintiff must establish that . . . the defendant unequally applied the facially neutral statute for the purposes of discriminating against the plaintiff." *Chabad*, 575 F. Supp. 2d at 1292 (citing *Strickland v. Alderman*, 74 F.3d 260, 264 (11th Cir. 1996)). As this Court has already noted,

> [o]ne type of as-applied challenge is a 'class of one,' which does not allege discrimination against a protected class, but rather asserts that the plaintiff has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.

Order (Doc. 54), at 43 (citations omitted).

To prevail on an as applied challenge, Plaintiff must "show (1) that [it was] treated differently from other similarly situated individuals, and (2) that Defendant[s] unequally applied a facially neutral ordinance for the purpose of discriminating against Plaintiff." *Chabad*, 575 F. Supp. 2d at 1292. *See also Snowden v. Hughes*, 321 U.S. 1, 8 (1944) ("The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful

discrimination."). "The idea of [the] intention or purpose" element of the equal protection claim "means that 'the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Corey Airport Servs*, 682 F.3d at 1297.

A. Vision Warriors has adequately identified a similar comparator.

In *Griffin Indus. v. Irvin*, the court evaluated "what degree of similarity is required for two entities to be considered 'similarly situated'" and warned that neither too broad nor too narrow a definition of "similarly situated" must be applied. 496 F.3d 1189, 1202 (11th Cir. 2007) (explaining that if the comparison was too broad, all decisions could be subject to challenge, but if too narrow, those plainly treated disparately would be excluded from the zone of equal protection).

In *Willowbrook v. Olech*, the court found two uses to be similarly situated for purposes of an equal protection claim where the defendant "Village intentionally demanded a 33-foot easement as a condition of connecting her property to the municipal water supply where the Village required only a 15-foot easement from other similarly situated property owners." 528 U.S. 562, 565 (2000). In contrast, in *Grider v. City of Auburn*, the court declined to find plaintiff's restaurant similarly situated to two others, "In Italy" and "1716," because plaintiff's establishment was larger than the other two comparators and

there was insufficient evidence regarding each establishment's emergency exits and fire suppression systems, as well as the layout and exact square footage for each. 618 F.3d 1240, 1266 (11th Cir. 2010).

The comparison in this case is quite simple because it involves the same Property (rather than two similar properties). Thus, the location is the same, the zoning is the same, the exterior structures remained the same, and the use of each structure on the property did not change (both as to the actual use and the intensity of the uses). *See* PSUMF 22-26, 28-30 (detailing activities of Happy Acres including housing of four families and up to 50 people for retreats; operations in car garage and woodshop building); PSUMF 63-66 (detailing similar activities of Vision Warriors – i.e. future intended use of up to 50 residents, but maximum potential capacity of 36 currently and similar activities in woodshop and garage). *See e.g.*, PSUMF 141-143 (same). Indeed, the only change in use – as the new Zoning Administrator Chapman has testified – was that Vision Warriors housed men in recovery and Happy Acres housed missionaries –a distinction irrelevant in determining whether the use was more appropriately classified as a shelter or dormitory pursuant to the zoning code and NAICS definitions. *See* PSUMF 95 (defining temporary shelter) and PSUMF 98-99 (defining dormitories). Further, building permits, a certificate of occupancy for

the dormitory/chapel and a letter from the then-County Attorney in 1996 indicate that Happy Acres operated with the County's approval. Similarly, Vision Warriors had also gone to great lengths to obtain the County's approval and had received a certificate of occupancy and TOC permit. PSUMF 40-43, 67. *See e.g.*, PSUMF 143.

B. There is ample evidence of exclusionary, arbitrary treatment by Defendants Chapman and Commissioners that lacks rational basis and is discriminatory.

The record in this case is replete with discriminatory decision-making. And this wasn't the County's first rodeo. Just one or two years prior to targeting Vision Warriors, the County settled a lawsuit filed by another recovery center protected under the FHA and ADA. PSUMF 135. Simply put, in light of this fact, the four notices provided to Defendants regarding the application of federal law, and clearly established law,[4] Defendants cannot claim ignorance here. *See Grider*,

[4] As this Court previously held in this case,

> *Cleburne* gave Defendants fair warning that their conduct violated clearly established law. Like this case, Cleburne involved an applied challenge under the Equal Protection Clause. See Pl.'s Opp'n at 28, 30; Cleburne, 473 U.S. at 447. The First Amended Complaint asserts a claim for violation of the Equal Protection Clause in part based on Defendants' rescission of Vision Warriors' tenant occupancy permit and denial of its land use applications. First Am. Compl. ¶¶ 137-38. Like the plaintiff in *Cleburne*,

618 F.3d at 1266-67 ("In determining whether a constitutional right was clearly established at the time of violation, '[t]he relevant, dispositive inquiry . . . is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.' *Saucier*, 533 U.S. at 202, 121 S. Ct. at 2156").

Discriminatory decision-making in revocation of COZ

First, and as County officials have even admitted, the revocation of Vision Warriors' COZ was unprecedented. PSUMF 91-93. Defendant Chapman is not aware of any provision in the zoning ordinance giving him authority to take such action. PSUMF 94. The same is true for revocation of the TOC permit. PSUMF 86-87 (explaining that Chapman issued a letter in his capacity as the new Zoning Administrator confirming the revocations); PSUMF 146 (explaining Chapman admits he is unsure whether he has authority to revoke a TOC permit). Even prior to the revocation, County officials admitted in meetings with Vision Warriors that neighbors had expressed opposition regarding the type of residents Vision Warriors housed. PSUMF 76. In fact, Vision Warriors was asked to

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> Vision Warriors was required under zoning regulations to obtain a special use permit in order to operate and was denied that permit.

Order (Doc. 57), at 69 (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985).

respond to accusations lodged by neighbors. PSUMF 139. Once more, County officials surprised Vision Warriors with a site visit by the Fire Marshal accompanied eight (8) County employees/officials in tow – yet another unprecedented action by the County. PSUMF 74-75.

Second, the revocation was unfounded. Ms. Lee and Director Watkins both testified that Ms. Lee had authority to issue the COZ to Vision Warriors. PSUMF 45-46. Ms. Lee testified that banks and citizens alike rely upon her certifications for assurances that their uses will be permitted. PSUMF 39. Mr. Watkins testified that he had no concerns regarding Ms. Lee's decision making. PSUMF 90. Chapman asserted that he has authority to issue a COZ for a nonconforming use. PSUMF 144 (defining non-conforming use); 145 (affirming his authority).

Defendant Chapman and the Commissioners revoked Vision Warriors' COZ on baseless assertions. Chapman asserts that Ms. Lee was mistaken when she issued the certification, yet Chapman admits he never spoke with Ms. Lee regarding Vision Warriors and Director Watkins refuted the assertion and testified that he is not aware of any information that would suggest Ms. Lee was misinformed when issuing the certification. PSUMF 87-89. Further, communications between Ms. Lee, Tori Young and Vision Warriors indicate a clear understanding of Vision Warriors' proposed uses. Indeed, as the

correspondence demonstrates, Vision Warriors went out of its way to obtain assurances that its use was legal and would be permitted. PSUMF 42 (Upon being questioned by Tori Young if Ms. Lee could provide something "more specific to Vision Warriors," Ms. Lee responded, "I am the interpreter of land use and I assure you this meets Vision Warriors use."). *See also* PSUMF 43 (When Mr. Driskell informed Ms. Lee he was moving forward with the purchase of the Property based on her certification and asked if there is anything else he needed to do, Ms. Lee told Mr. Driskell, "You are good to go" and indicated the next step would be a Tenant Occupancy Permit).

Discriminatory decision-making in classification of Vision Warriors as temporary shelter – a use conveniently prohibited under the Zoning Ordinance, and denial of this decision on appeal.

There is no evidence that Vision Warriors' use is different than Happy Acres in any relevant aspect relating to land use. Indeed, Mr. Chapman has testified that the only difference is *who* Vision Warriors helps; yet, Mr. Chapman testified that he would classify Happy Acres' use as a dormitory, and Vision Warriors' use as a homeless shelter. PSUMF 104-105. The County's Director of Planning and Zoning testified that he considered Vision Warriors' use to be more like a dormitory. PSUMF 124. Notably, a dormitory was expressly permitted as an open use when Vision Warriors purchased the Property and, thus, would have

been permitted even after the zoning ordinance was amended. PSUMF 70-71 (explaining amendment to ordinance to remove dormitory as open use and that Section 13.3 provides that a lawful use existing at the time of enactment of an amendment may be continued). Mr. Chapman's reasoning as to why he classified Vision Warriors' use as a temporary shelter is illogical and a far cry from rational. First, Chapman testified that the homeless nature of residents, combined with the "medical crisis" of those struggling with addiction is what informed his decision to classify Vision Warriors as a temporary shelter, rather than a dormitory like Happy Acres. PSUMF 95. However, Chapman testified that he did not consult any information that would have confirmed that residents of Vision Warriors are homeless. PSFUMF 100, 106. In addition, he confirms that he knew that Vision Warriors does not provide any medical treatment to its residents. PSFUM 101-102. Once more, Chapman admitted that he knew of the application process for a resident to live at Vision Warriors (negating any suggestion that it provided on an emergency basis like homeless shelters do). PSUMF 103. Chapman also confirmed that he was aware that there were shared meals and laundry facilities on site – yet another element/defining use under dormitory. PSUMF 98, 109.

Plaintiff would not receive fair treatment by the Board either. The same Board that advised regarding the revocation and denied Plaintiff's special use permit also decided Plaintiff's appeal. The Commissioners denied the request and voted unanimously against Vision Warriors. As Commissioner Johnston – chair and leader of the Board – has indicated in emails to neighbors, this was the plan all along. See PSUMF 128 (Commissioner Johnston informed a neighbor opposed to Vision Warriors' use, "I don't think they'll get anything from the BOC. Maybe through the courts"); PSUMF 131. Director Watkins and Defendant Chapman both have testified that it would be unfair for a Commissioner to render a decision before hearing everything. PSUMF 132-133. The Board's reason for denial also lacks rational basis. PSUMF 137-138.

Discriminatory decision-making in denial of Vision Warriors' special use application to operate a dormitory.

As explained in extensive detail above in Section II.1-2, Vision Warriors' proposed primary use as a dormitory and chapel with accessory uses was not only reasonable, it was expressly permitted under the zoning ordinance at the time Vision Warriors began operating, and had been permitted for decades prior to Vision Warriors' purchase of the Property. PSUMF 18, 19, 27. The Staff Report is devoid of any sufficient reasoning to deny the Plaintiff's zoning application for

a special use permit. No valid reasoning was provided in support of denial by the Board in April 2019, and, to top it off, Commissioner Johnston told neighbors on two occasions that he would likely vote against Vision Warriors even *before* its application was heard and voted upon by the Board. Mr. Johnston also indicated he believed the other Commissioners would also vote against Vision Warriors. PSUMF 127-129.

The effect of Defendants' arbitrary and discriminatory decision-making it to shut down Vision Warriors and displace its residents.

IV. Defendants Deprived Vision Warriors of Rights Secured by the Georgia Constitution.

Citizens of Georgia may not be deprived of property without due process of law. U.S. Const., Amend. V & XIV; Ga Const. Art. 1, §1, ¶ 1. Land use regulations must be rationally related to a legitimate government purpose. *Hitch v. Vasarhelyi*, 302 Ga. App. 381 (2010). Land use regulations are in invalid exercise of the police power when the regulation is arbitrary and capricious and bears no substantial relation to the health, safety, morals or general welfare. 3 Ga. Jur. Property § 25.83. As asserted above, Vision Warriors has demonstrated that Defendants have applied a different standard to it than to similarly situated persons. As such, Plaintiff has established that Defendants' revocation zoning

and TOC permit, and the Defendants continued refusal to recognize its vested property rights bears no substantial relation to the health, safety, morals, or general welfare. Defendants have denied Vision Warriors due process of law. *See Baker v. City of Marietta*, 271 Ga. 210, 213 (1999). See also Order (Doc. 57) at 50-54.

CONCLUSION

For the foregoing reasons, Plaintiff Vision Warriors Church, Inc., respectfully requests that the Court enter an order granting its Motion for Partial Summary Judgment against all Defendants for failure to provide a reasonable accommodation in violation of the Fair Housing Act and Americans With Disabilities Act (Counts I and II); against Defendant County and Individual Defendants in their individual capacities for violation of the Equal Protection Clause of the Fourteenth Amendment (Count IV); and against the Individual Defendants for violation of Plaintiff's state constitutional rights.

Respectfully submitted this 4th day of June 2021.

AMERICAN CENTER FOR LAW & JUSTICE

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J. Ethan Underwood
[redacted]

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I certify that the foregoing **MOTION FOR PARTIAL SUMMARY JUDGMENT** has been prepared in accordance with Local Rule 5.1(C) and is in a 13 Century Schoolbook font.

This 4th day of June 2021.

Abigail A. Southerland
Abigail A. Southerland

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2021, I caused the foregoing document to be filed with the United States District Court for the Northern District of Georgia via the Court's CM/ECF system.

Abigail A. Southerland
Abigail A. Southerland