



NEW HANOVER COUNTY
PLANNING & INSPECTIONS

230 Government Center Drive
Suite 110
Wilmington, NC 28403
910-798-7165 phone
910-798-7053 fax
www.nhcgov.com

Application for
SPECIAL EXCEPTION

Petitioner Information	Property Owner(s) <i>If different than Appellant</i>	Subject Property
Name <i>Greg Heafner</i>	Owner Name <i>Gary Hooker</i>	Address <i>4601 Newbury Way</i>
Company <i>Bregory Alan Heafner, PA</i>	Owner Name 2 <i>Lisa Hooker</i>	Parcel ID
Address <i>1510 Twisted Oak Drive</i>	Address <i>5717 Mossdale Lane</i>	Area
City, State, Zip <i>Chapel Hill, NC 27516</i>	City, State, Zip <i>Charlotte, NC 28278</i>	Summary of Special Exception Requested: <i>Allow 8 persons to live at 4601 Newbury Way</i>
Phone <i>919-967-3800</i>	Phone <i>919-524-2704</i>	
Email <i>gshafner@bellsouth.net</i>	Email <i>gary.hooker@bellsouth.net</i> <i>Lisa.hooker@bellsouth.net</i>	
Application Tracking Information (Start Only)		
Case Number <i>ZBA-949</i>	Date/Time received: <i>3/3/20 4:50 pm</i>	Received by: <i>KV</i>

APPLICATION OVERVIEW

In order to assist petitioners through the process for requesting a special exception, petitioners are highly encouraged to attend a pre-application conference prior to application submittal. Petitioners are requested to review the Section 63.11 of the Zoning Ordinance prior to submission, and advised to contact Planning Staff with any questions.

Requests for special exceptions to any of the provisions of Section 63.11 of the Zoning Ordinance may be taken to the Board of Adjustment. The Board of Adjustment will hear and decide on the special exception in a quasi-judicial proceeding. The Board of Adjustment shall grant a special exception to any provision of this ordinance as a reasonable accommodation under the Federal Fair Housing Act if the Board finds by the greater weight of the evidence that the proposed special exception is:

1. "Reasonable." An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the County and/or constitute a substantial of fundamental alteration of the County's ordinance provisions; and
2. "Necessary." An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the County.

A concurring vote of four-fifths (4/5) of members of the Board is necessary to grant a special exception.

Unless otherwise published or announced, Zoning Board of Adjustment meetings are held on the 4th Tuesday of each month at 5:30PM in the Lucie F. Harrell Conference Room at 230 Government Center Drive. All meeting dates and application deadlines are published on the New Hanover County Planning website.



**NEW HANOVER COUNTY
PLANNING & INSPECTIONS**

**AUTHORITY FOR
APPOINTMENT OF AGENT**

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Wilmington, NC 28403
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910-798-7053 fax
www.nhcgov.com


Please note that for quasi-judicial proceedings, either the land owner or an attorney must be present for the case at the public hearing.


The undersigned owner does hereby appoint an authorized the agent described herein as their exclusive agent for the purpose of petitioning New Hanover County for a variance, special use permit, rezoning request, and/or an appeal of Staff decisions applicable to the property described in the attached petition. The Agent is hereby authorized to, on behalf of the property owner:

1. Submit a proper petition and the required supplemental information and materials
2. Appeal at public meetings to give representation and commitments on behalf of the property owner
3. Act on the property owner's behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of any petition applicable to the New Hanover County Zoning Ordinance.

Agent Information	Property Owner(s)	Subject Property
Name <i>Ereg Heatrner</i>	Owner Name <i>Gary Hooker</i>	Address <i>6601 Newbury Way</i>
Company <i>Gregory Alan Heatrner, PA</i>	Owner Name 2 <i>Lisa Hooker</i>	City, State, Zip <i>Wilmington, NC 28411</i>
Address <i>1510 Twisted Oak Drive</i>	Address <i>5717 Mossdale Lane</i>	Parcel ID
City, State, Zip <i>Chapel Hill, NC 27516</i>	City, State, Zip <i>Charlotte, NC 28278</i>	
Phone <i>919.967.3800</i>	Phone <i>919.524.2706</i>	
Email <i>gshetrner@bellsouth.net</i>	Email <i>gary.hooker@bellsouth.net</i> <i>lisa.hooker@bellsouth.net</i>	
Application Tracking Information (Staff Only)		
Case Number Reference: <i>ZPA-949</i>	Date/Time received: <i>3/3/20 4:50 pm</i>	Received by: <i>KV</i>

This document was willfully executed on the 2nd day of March, 2020.


Owner 1 Signature


Owner 2 Signature

PRE-APPLICATION CONFERENCE ENCOURAGED

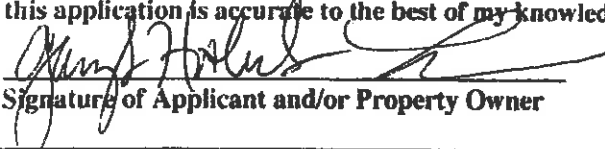
In order to assist petitioners through the process for filing a request for special exceptions, petitioners are highly encouraged to attend a pre-application conference prior to application submittal. Applications for special exceptions must be filed no later than 5:00PM on the application deadline day prior to a Zoning Board of Adjustment meeting.

REQUEST FOR SPECIAL EXCEPTION

In the space below, please describe the request for the special exception, including what provision(s) of Section 63.11 from which the special exception is being requested. Applicants are advised to demonstrate how the special exception request is reasonable and necessary as described on Page 1. Please attach additional sheets if necessary.

SEE ATTACHED
STATEMENT OF
JUSTIFICATION

By my signature below, I certify that this application is complete and that all of the information presented in this application is accurate to the best of my knowledge, information, and belief.


Signature of Applicant and/or Property Owner

3/2/2020
Date

STATEMENT OF JUSTIFICATION

Oxford House, Inc. requests a Special Exception from Section 63.11:1 of the County Zoning Ordinance, which section limits the number of disabled persons that may live in a group home to six.

Specifically, Oxford House requests that eight disabled women be allowed to live at the Oxford House located at 6601 Newbury Way in Wilmington. It will be what Oxford House calls, a house for women with children. Specifically, up to eight women, two of which may have a child, will live at the home. The maximum age for a male child is ten and the maximum age for a female child is twelve, however usually the children are babies. The house itself is a single-family detached home, 3350 square foot home, with 6 bedrooms, 4 baths, and a two-car garage with additional driveway parking.

New Hanover County's zoning ordinance defines Oxford Houses as a "group homes" pursuant to the definition of same in the ordinance. Further, the residents of Oxford House are defined as "disabled persons" pursuant to the definition of same in the ordinance.

WHAT IS AN OXFORD HOUSE

Oxford Houses are homes for persons recovering from alcoholism and or drug addiction, who are no longer using alcohol or drugs. Oxford House is a self-run, self-supported recovery home concept and standardized system of operation that served as the model for the self-run, self-supported group recovery homes authorized for start-up loans under §2036 of the Federal Anti-Drug Abuse Act of 1988, PL 100-690. This legislation required each state to set aside \$100,000 in a revolving loan fund to make loans to recovering addicts and alcoholics to assist in the

establishment of housing that is financially self-supported, democratically run, and immediately expels anyone who relapses.

Many of almost three thousand Oxford Houses in the United States were started with loans pursuant to this Act through contracts with state governments. Most of the nearly three hundred Oxford Houses in North Carolina were started with loans pursuant to this Act through an ongoing contract with the State of North Carolina. Since 1990, the State of North Carolina, through the Department of Health and Human Services, has entered into annual contracts with Oxford House, Inc., the umbrella organization of the national network of Oxford Houses, to help establish and assist in the maintenance of a statewide network of Oxford Houses.

Each Oxford House is chartered by Oxford House, Inc., a 501(c)(3) nonprofit umbrella organization. Three basic conditions are required to obtain a charter: 1). The house must be democratically self-run following the standard system of operation set forth in the Oxford House Manual; 2). The house must be financially self-supporting by the individual residents paying equal shares of household expenses in a timely manner, and; 3). The house must immediately expel any resident who returns to using alcohol or drugs inside or outside of the house.

Oxford House, Inc.'s by-laws preclude it or its chartered houses from owning residential property, thus all Oxford Houses are rented. A group wanting to start an Oxford House behaves in the household rental market just like an ordinary family. It finds an available, suitable house and rents it by paying the first month's rent and security deposit to a willing landlord. Usually, these funds come from the above referenced start-up loans. Oxford House residents are encouraged to rent single family dwellings in good neighborhoods.

The houses operate autonomously, but must follow the procedures in the Oxford House Manual and adhere to the conditions of its charter. Each Oxford House has its own bank account.

There are no dues or fees to Oxford House, Inc. by individual houses, but having a charter gives the houses technical assistance and support by Oxford House, Inc., including defense of the civil rights of every Oxford House.

Oxford Houses are not substance abuse centers or halfway houses. No treatment, counseling, therapy, or any kind of health care is provided. There is no house manager, paid staff, or other type of institutional personnel involved in the supervision or management of the house. All decisions relating to the functioning of the house are made democratically. Each house manages its own finances. There is no required random testing for alcohol or drug use, nor are there any required rules relating to curfews. In an Oxford House, residents live there by choice.

Oxford House residents are considered to be the functional equivalent of a family for several reasons. First, all the residents have access to the entire house. Second, all the residents participate equally in the housekeeping functions of the house, such as chores and finances. Each resident, however, is responsible for his own food and cooking. Third, the quality of the relationship among the residents is one of emotional and mutual support and bonding giving each resident support in their recovery from alcoholism and providing an ameliorative therapeutic benefit toward recovery to each resident. Fourth, the living arrangement is not based upon a profit motive. Finally, there are no limits as to how long a resident can stay in Oxford House. The average length of stay, nationally, is about thirteen months. For more detailed information about Oxford House and its recovery program and the benefits thereof, see the Oxford House Manual enclosed herewith and incorporated herein by reference, and the Oxford House website at www.oxfordhouse.org.

The residents of Oxford House are considered “disabled persons” pursuant to the definition of same in the County’s ordinance. Oxford House residents are a protected class under the Federal

Fair Housing Act, and the American with Disabilities Act. See the Fair Housing Act (FHA), 42 U.S.C. 3600 et. seq. Recovering addicts and alcoholics are specifically included within the definition of “handicapped” or “disabled” individuals under these Acts. See 42 U.S.C. 3602(h), and *City of Edmonds, WA v. Oxford House, Inc.* 514 U.S. 725 (1995); *Oxford House v. City of St. Louis*, 77 F.3d 249 (8th Cir. 1996); *United States (on behalf of Oxford House) v. Village of Palatine*, 37 F.3d 1230 (7th Cir. 1994); *United States (on behalf of Oxford House) v. Village of Audubon*, 797 F. Supp. 353, aff’d without opinion, 968 F.2d 14 (3d Cir. 1992); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179 (E.D.N.Y. 1993); *Oxford House v. Township of Cherry Hill*, 799 F. Supp. 450 (D.N.J. 1992); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1197 (D.N.J. 1991), and; *Tsombanidis, and Oxford House, Inc. v. City of West Haven, Connecticut*, 180 F. Supp. 262 (Ct. 2001).

As members of a protected class under the FHA, Oxford Houses are protected against discriminatory zoning practices. As such, the issue of whether an Oxford House is in violation of local zoning ordinances is not relevant to the question of federal law. See *United States (on behalf of Oxford House) v. Village of Audubon*, supra. The FHA prohibits discriminatory land use decisions by local governments, even when such decisions are “ostensibly authorized by local ordinance.” See *Oxford House Evergreen v. City of Plainfield*, supra; also 42 U.S.C. Section 3615 (“any law of a State, a political subdivision, or other jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid under the Fair Housing Act”).

The aforementioned prohibition under the FHA against zoning discrimination by local governments includes the requirement that local governments make reasonable accommodations in their zoning ordinances to allow the operation of Oxford Houses. Specifically, 42 U.S.C.

3604(f)(3)(B), defines discrimination to include a “refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such handicapped person equal opportunity to use and enjoy a dwelling.” See *Oxford House v. City of St. Louis*, supra; *Oxford House v. City of Plainfield*, supra; *Oxford House v. Township of Cherry Hill*, supra, and; *Oxford House, Inc. v. Town of Babylon*, supra. The County’s zoning ordinance is ostensibly a means for the County, through its BOA, to provide the required reasonable accommodation.

The Section 63 of the County Zoning Ordinance follows federal law by requiring a reasonable accommodation when the request is both reasonable and necessary as each is defined in the law and set forth in Section 63.1 of the ordinance. Specifically, the ordinance defines reasonable and necessary as follows:

1. “Reasonable”. An accommodation will be determined reasonable if it would not undermine the legitimate purposes and effects of the existing zoning regulations, and if it would not impose significant financial and administrative burdens upon the County and/or constitute a substantial or fundamental alteration of the County’s ordinance provisions; and
2. “Necessary”. An accommodation will be determined necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts of the County.

Under Section 63.1 of the ordinance, upon the finding that the request by Oxford House is reasonable and necessary as defined above, the BOA shall grant the requested exception to allow

8 persons to live at 6601 Newbury Way. The reasonableness and necessity as to Oxford House at 6601 Newbury Way are set forth below.

REQUEST IS REASONABLE

No Burden

There is no evidence of any financial or administrative burden on the County by the existence of the Oxford House. In fact, the Oxford House will provides a free benefit to the County by providing housing and aiding in the recovery of those recovering from alcoholism and drug addiction.

Zoning Scheme Not Undermined or Fundamentally Altered

The Oxford House does not undermine the purposes of the County's zoning ordinance. The ordinance expressly allows for this type of housing. The ordinance also allows for this type of housing at this particular location. Further, the ordinance was recently amended to provide for an exception or reasonable accommodation for the request made herein. The ordinance itself is proof that the Oxford House does not undermine the County's ordinance or fundamentally alter its zoning scheme. There are other Oxford Houses in the County in similar zoning districts, and none have undermined or fundamentally altered the County's zoning scheme.

REQUEST IS NECESSARY

Therapeutically Beneficial

By its very nature the Oxford House model's therapeutic benefit is derived solely from its residents. As described above, in an Oxford House there are no counselors, managers, care providers or outside personnel that provide any therapeutic services. Oxford Houses are not like traditional group homes, halfway houses, or family care homes - all of which have managers and provide some services to their residents. In such traditional homes a lesser number of residents

will not have any therapeutic impact. Not so in an Oxford House. The quality of the relationship among the residents in an Oxford House is one of mutual support and bonding, providing an ameliorative therapeutic benefit which aids each resident in their recovery from alcoholism or drug addiction. As a result of this therapeutic benefit, those living in an Oxford House are more likely to remain clean and sober than those living on their own.¹

The average number of residents in an Oxford House in North Carolina is eight (8). The average vacancy rate for Oxford Houses in North Carolina is one (1), meaning that with an allowed maximum capacity of 8, the Oxford House at 6601 Newbury Way will usually have just 7 residents. If the house is not granted the requested exception, then it would be limited to 6 residents. With the average vacancy rate, a 6 person Oxford House would usually have only 5 residents. As set forth above the oxford House model requires a minimum of 6 residents at all time to hold all required offices (president, vice president, secretary, treasurer, comptroller, and coordinator). A house that falls below six residents on a regular basis can lose its charter from Oxford House, Inc. Without the requested accommodation/exception, the Oxford House 6601 Newbury Way would be put in jeopardy of failing for lack of enough residents. Failure of the house means it would close, causing its residents to lose their home and support in their recovery. Invariably some would relapse. Relapse could be permanent and fatal. The ameliorative

¹ DePaul University study that followed 897 residents in 219 Oxford Houses across the country for 27 months found that only 13% relapsed. A peer-reviewed published report of that study in *Addictive Behaviors* 32 (2007) can be downloaded at the Oxford House, Inc. website under "Publications/Evaluations/DePaul." In another study 150 individuals getting out of primary treatment were divided into two groups of 75 each with one group going to Oxford Houses and the other group going to normal living situations, each group was followed for two years after treatment and the Oxford House group did substantially better in staying clean and sober – 66% v. 33%. *American Journal of Public Health*, Oct 2006; Vol. 96, pp1727–1729.

therapeutic benefit of the requested exception here is a threshold, make or break degree of amelioration.

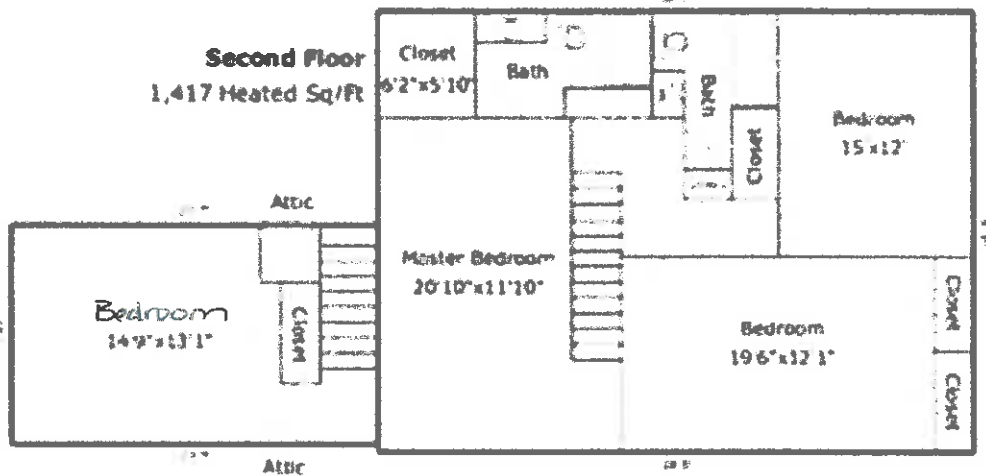
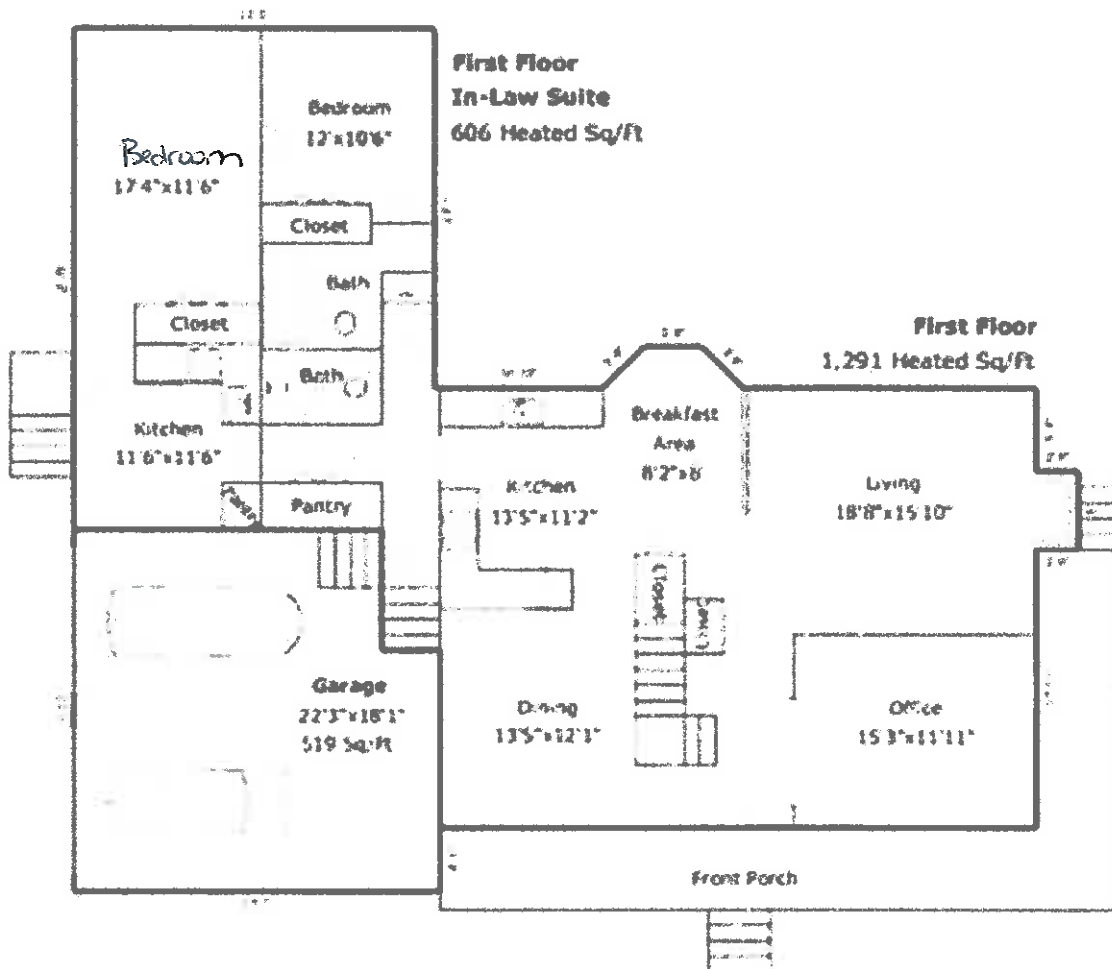
An Equal Opportunity to Use and Enjoy Housing of Their Choice

Finally, the Oxford House at 6601 Newbury Way will be home to its residents. The requested accommodation/exception provides the residents an equal opportunity to use and enjoy housing of their choice².

Without the requested accommodation the house would close as noted above. Closing of the house cause some residents to relapse, with potentially fatal consequences as noted above. Additionally, finding another house to rent to potentially relocate the Oxford House would be extremely difficult. Finding landlords willing to rent to Oxford House is difficult because of the stigma of alcoholism and drug addiction, the fear of zoning problems, neighbor ignorance and opposition, and finally because Oxford House requires long-term leases into which many landlords simply will not often enter.

² The County's ordinance falls short of what federal law requires as to equal opportunity. The law requires not just an equal opportunity to enjoy and use housing "in residential districts in the County", but requires equal opportunity for disabled person to enjoy and using housing *of their choice*. Several courts have held the FHA protects the rights of disabled persons to use and enjoy the particular dwelling of their choice. See, e.g., *Hovson's, Inc. v. Township of Brick*, 89 F.3d 1096, 1103-06 (3rd Cir. 1996); *United States v. City of Jackson*, 318 F.Supp.2d 395, 416 (S.D. Miss. 2002) (FHA "guarantee[s] that the disabled be afforded equal opportunity to live, not in some residence in the community, but rather in the residence of their choice"); *ARC of New Jersey, Inc. v. State of New Jersey*, 950 F. Supp. 637, 645 (D. N.J. 1996) ("Such ceiling quotas [imposed via group home spacing rules] improperly limit the ability of handicapped persons 'to live in the residence of their choice in the community,' House Report at 24, even if imposed in the name of integration or 'declustering'"); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 n.10 (E.D. N.Y. 1993) (FHA "dictates that a handicapped individual must be allowed to enjoy a particular dwelling, not just some dwelling somewhere in the town"); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1344 (D. N.J. 1991) (defense based on existence of alternative locations in the city for group home held "without merit").

6601 Newbury Way
3,315 Heated Sq/Ft



**CERTIFICATION OF COMPLIANCE WITH NEW HANOVER COUNTY CODE
FOR GROUP HOMES**

I (we) the undersigned operator of a group home at 10601 Newbury Way, Wilmington, New Hanover County, NC, certify that the residents residing at this address meet the definition of disabled persons as defined in the New Hanover County Zoning Ordinance Section 23, or that the facility is exempt from licensure pursuant to North Carolina General Statutes §122C-22. If the facility is exempt from licensure, applicant shall cite exemption status below. The undersigned agrees to notify the zoning office of any changes to this application, including procedures for ensuring compliance with county's Zoning Ordinance.

Special Needs Individuals: 6

Exempt pursuant to GS §122C-22: yes

Certified this 2 day of March, 2020.

Applicant: Jade Lynn Feliciano on behalf of Oxford House Newbury
By: [Signature] Jade Lynn Feliciano
Title: Outreach Coordinator

Sworn to and subscribed before me this 2nd day of March, 2020.



[Signature]
Notary Public

My Commission Expires: 04-16-2024