

**SPECIAL EXCEPTION REQUEST
ZONING BOARD OF ADJUSTMENT
March 26, 2019**

CASE: ZBA-937

PETITIONER: Gregory Alan Heafner, PA, applicant, on behalf of Zachary and Ashley Paulovits, property owners.

REQUEST: Special exception for reasonable accommodation under the Federal Fair Housing Act per Section 63.11 of the Zoning Ordinance to allow up to 8 disabled persons residing together in a group home.

LOCATION: 1205 Dotson Court
PID: R04215-001-005-000

ZONING: R-10, Residential District

PETITIONER’S REQUEST:

The applicant is requesting a special exception for reasonable accommodation under the Federal Fair Housing Act to deviate from the maximum number of 6 residents that may be allowed in a group home to allow up to 8 residents at 1205 Dotson Court.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

The applicant intends to permit a group home run by the Oxford House at the subject property. The New Hanover County Zoning Ordinance allows up to six disabled persons to reside in a group home by-right in the R-10 zoning district per Section 63.11 (1). Additional standards for group homes are also part of Section 63.11, as well as a process described under subsection (6) by which a group home provider may petition for a special exception for reasonable accommodation under the Federal Fair Housing Act to vary any of the provisions outlined in Section 63.11, including the number of residents, parking allowance, or distance requirement:

***Disabled Persons** – Individuals with disabilities, including individuals recovering from alcoholism and/or drug addiction, who are protected by either the provisions of the Americans with Disabilities Act of 1990, 42 USC 12101, the Fair Housing Act, 42 USC 3601 et. seq., or NCGS Chapter 168, Article 3, as each may be amended.*

***Group Home** – A home in which more than three (3) unrelated Disabled Persons live together as a self-supporting and self-sufficient household unit.*

	PD	R 20S	R 20	R 15	R 10	R 7	B 1	B 2	I 1	I 2	O & I	A R	A I	S C	R A	R F M U	Supp Regs	N A I C S
Permitted Uses																		
Group Homes	P	P	P	P	P	P						P			P			

Section 63.11: Group Homes

Group homes shall be permitted in accordance with the table of permitted uses in Section 50 and the following standards:

1. *Group homes shall be limited to six (6) Disabled Persons living together as a self-supporting and self-sufficient household unit.*
2. *No group homes shall be occupied or operated without zoning approval.*
 - a. *Group homes that are exempt from licensure pursuant to NCGS § 122C-22 must recertify their exemption status annually; and*
 - b. *Group homes for special needs persons must recertify qualification of all residents as special needs persons annually.*
3. *Parking shall be provided in accordance with Article VIII: Off-Street Parking and Loading.*
4. *Group homes shall not be located closer than 2000 feet to any other existing group home, measured by a straight line from the nearest property lines, irrespective of municipal boundaries.*
5. *With respect to the distance between the proposed use and the existing, permitted uses described in subsection 4 above, the distance shall be reduced by the right-of-way of a major thoroughfare exceeding one hundred (100) feet, major topographical features such as a major watercourse, or by major nonresidential or public uses such as a park, school, or religious institution.*
6. *Special Exceptions*
 - a. *Applicability. The Board of Adjustment is authorized to grant special exceptions for the special circumstances set forth in this section to allow for a reasonable accommodation under the Federal Fair Housing Act.*
 - b. *Application. An application for a special exception under this section shall be submitted to the Board of Adjustment by filing a copy of the application with the Planning Director or their designee. No filing fee shall be required for such application.*
 - c. *Approval process. The procedures set forth in Section 121-3 for variances and appeals shall apply to Staff Review and Report, Public Hearing Notice and Action of the Board of Adjustment.*
 - d. *Approval criteria. 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:*
 - i. *"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 or fundamental alteration of the County's ordinance provisions; and*
 - ii. *"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 person's equal opportunity to enjoy and use housing in residential districts in the County.*

The Zoning Board of Adjustment is authorized to grant special exception requests after a public hearing and finding that the request is "reasonable" and "necessary" as described further later in this document under *Board of Adjustment Power and Duty*.

The specific request is to allow up to 8 disabled persons instead of up to 6 disabled persons to reside in a proposed group home at 1205 Dotson Court. According to New Hanover County tax records, the home lies on a 0.28-acre parcel and contains 2,298 square feet of living area. A copy of the property record card is included as an addendum to this staff report.

Included with the petitioner's application is a statement of justification for the special exception request, as well as the Oxford House Manual.

BOARD OF ADJUSTMENT POWER AND DUTY:

The Board of Adjustment is authorized to grant special exceptions for the special circumstances as set forth in Section 63.11 of the New Hanover County Zoning ordinance to allow for reasonable accommodation under the Federal Fair Housing Act. The Board of Adjustment shall grant a special exception 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 or 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 person's equal opportunity to enjoy and use housing in residential districts in the County.

ACTION NEEDED (Choose one):

1. **Motion to approve the special exception request based on the findings of fact (with or without recommended conditions)**
2. **Motion to table the item in order to receive additional information or documentation (Specify).**
3. **Motion to deny the special exception request based on specific negative findings in either of the two categories above.**