



**NEW HANOVER COUNTY
PLANNING & INSPECTIONS**

Application for
SPECIAL EXCEPTION

RECEIVED
230 Government Center Drive
Suite 110
Wilmington, NC 28403
910-798-7165 phone
910-798-7053 fax
www.nhcgov.com
**NEW HANOVER COUNTY
PLANNING & ZONING**

Applicant Information		Owner(s)	Subject Property
Name	Greg Heafner	Owner Name	Address
Company	Gregory Alan Heafner, PA	Owner Name 2	Parcel ID
Address	1510 Twisted Oak Drive	Address	Area
City, State, Zip	Chapel Hill, NC 27516	City, State, Zip	Summary of Special Exception Requested:
Phone	919.967.3800	Phone	ALLOW 8 PERSONS TO LIVE AT 1205 DOTSON COURT.
Email	gshafner@bellsouth.net	Email	
Case Number	ZBA-937 / CASE-19-0004	Date/Time received:	Received by:
		3/5/19 4:30pm	YV

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.

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 **RECEIVED**

OR
JUSTIFICATION

MAR 5 2019

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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

Date

2/5/19



**NEW HANOVER COUNTY
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230 Government Center Drive
Suite 110
Wilmington, NC 28403
910-798-7165 phone
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**AUTHORITY FOR
APPOINTMENT OF AGENT**

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

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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.

Property Owner(s)		Subject Property
Name <u>Greg Heafner</u>	Owner Name <u>Zachary Paulovits</u>	Address <u>1205 Dotson Court</u>
Company <u>Gregory Alan Heafner, PA</u>	Owner Name 2 <u>Ashley Paulovits</u>	City, State, Zip <u>Wilmington, NC 28405</u>
Address <u>1510 Twisted Oak Drive</u>	Address <u>2751 Jordan Pointe Blvd.</u>	Parcel ID
City, State, Zip <u>Chapel Hill, NC 27516</u>	City, State, Zip <u>New Hill, NC 27562</u>	
Phone <u>919-967-3800</u>	Phone <u>919-817-2052</u>	
Email <u>gheafner@bellsouth.net</u>	Email <u>z.paulovits@yahoo.com</u>	
Case Number / Reference <u>28A-977 / GNSE-19-0004</u>	Date/Time received <u>3/5/19 4:30pm</u>	Received by: <u>KV</u>

This document was willfully executed on the 31 day of January, 2019.

Zachary Paulovits
Owner 1 Signature

Ashley Paulovits
Owner 2 Signature

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NEW HANOVER COUNTY
PLANNING & ZONING**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 persons, all women recovering from drug addiction or alcoholism, be allowed to live at the Oxford House located at 1205 Dotson Court in Wilmington. The house is a five bedroom, three bath 2,261 square foot single family dwelling.

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 the nearly two thousand Oxford Houses in the United States were started with loans pursuant to this Act through contracts with state governments. Most of the over two-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.

New Hanover County's zoning ordinance defines Oxford House as a "group home" 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.

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 individual" 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*

RSA
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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 newly enacted

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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 of (sic) 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 1205 Dotson Court. The reasonableness and necessity as to the Oxford House at 1205 Dotson Court Circle 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 provides a free benefit to the County by

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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 provides 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.

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

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

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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 1205 Dotson Court Oxford House 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 times 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 1205 Dotson Court Oxford House would be 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 therapeutic benefit of the requested exception here is a threshold, make or break degree of amelioration.

There exists another reason why the requested accommodation/exception here is necessary to provide a necessary ameliorative therapeutic benefit. That reason is because the 1205 Dotson Court Oxford House is new, and most of its residents are newly clean and sober. Longer established Oxford Houses with residents who have been sober longer are better equipped to exist with fewer residents. As result of the Dotson Court Oxford House residents being new in recovery, they have an exceptional need for each other and the therapeutic benefit of having a close supportive relationship with at least one other house member.

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.

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An Equal Opportunity to Use and Enjoy Housing of Their Choice

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Finally, an Oxford House is 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.

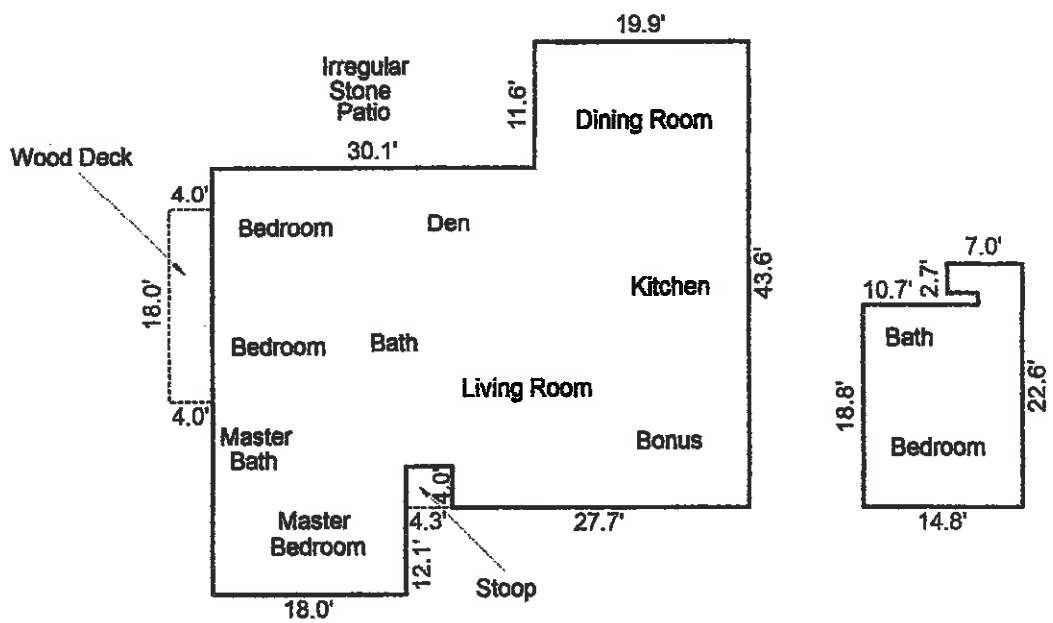
² The County's new ordinance falls short of what federal law requires as to equal opportunity. The law requires not just an equal opportunity to enjoy and use housing "in residential districts in the County", but requires equal opportunity for disabled person to enjoy and using housing *of their choice*. 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").

SKETCH ADDENDUM

Borrower or Owner **Zachary and Ashley Paulovita**
 Property Address **1205 Dotson Court**
 City **Wilmington** County **New Hanover** State **NC** Zip Code **28405**
 Client **Cornerstone Home Lending, Inc.**

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NEIGHBORHOOD COMMUNITY PLANNING & ZONING



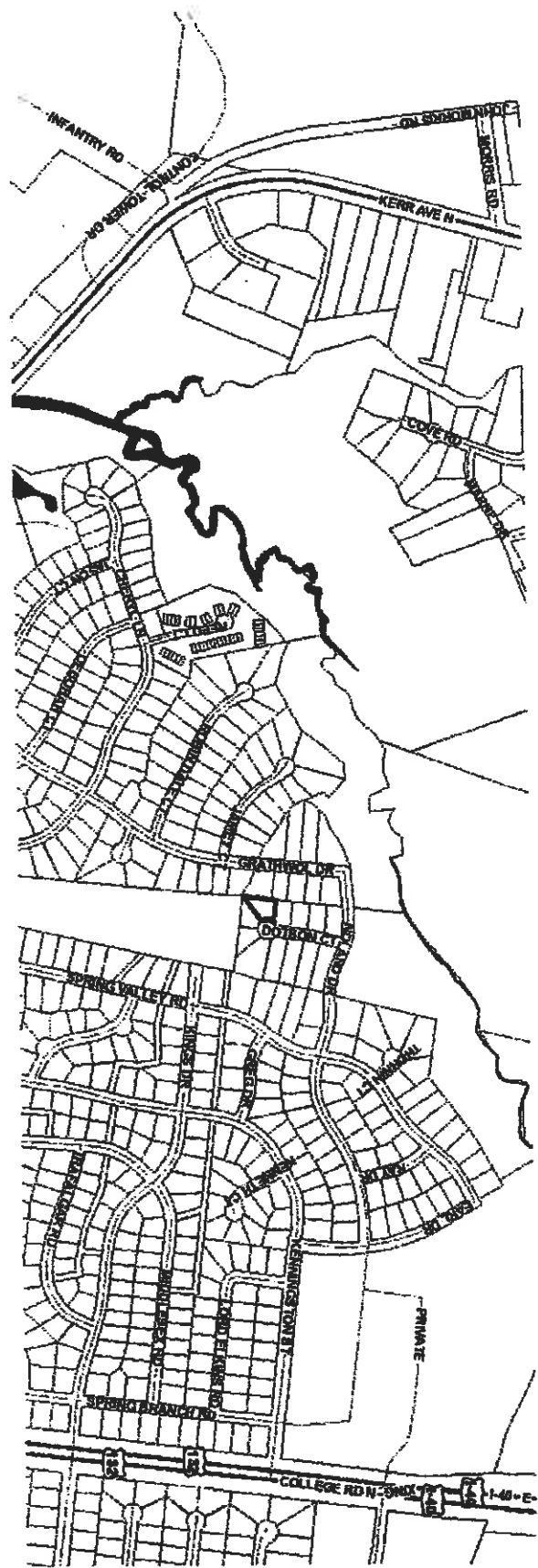
Sketch by Apex Sketch

AREA CALCULATIONS SUMMARY					AREA CALCULATIONS BREAKDOWN					
Code	Description	Factor	Net Size	Perimeter	Net Totals	Name	Base x	Height x	Width =	Area
GLA1	First Floor	1.0	1959.4	211.4	1959.4	First Floor		43.6 x	19.9 =	867.6
GLA2	Second Floor	1.0	301.7	80.5	301.7			30.1 x	28.0 =	842.8
P/P	Wood Deck	1.0	72.0	44.0				7.8 x	4.0 =	31.2
	Stoop	1.0	17.2	16.6	89.2			18.0 x	12.1 =	217.8
						Second Floor		18.8 x	10.7 =	201.2
								18.8 x	4.1 =	77.1
								4.1 x	3.8 =	15.6
							0.5 x	1.1 x	0.1 =	0.1
								2.9 x	2.7 =	7.8
	Net LIVABLE		(rounded)		2,261	9 total items			(rounded)	2,261

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CERTIFICATION OF COMPLIANCE WITH NEW HANOVER COUNTY CODE FOR GROUP HOMES

I (we) the undersigned operator of a group home at 1205 Dutton Court, 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: 8

Exempt pursuant to GS §122C-22: yes

Certified this 4th day of February, 2019.

Applicant: [Signature] on behalf of Oxford House Dutton
By: Jacklyn Feliciano
Title: Outreach Coordinator

Sworn to and subscribed before me this 04th day of February, 2019.

[Signature]
Notary Public
My Commission Expires: 03/11/2022





NEW HANOVER COUNTY BUILDING PERMIT

APPLICATION TYPE: FACILITY LICENSING

APPLICATION Number

PLEASE PRINT CLEARLY & ANSWER ALL QUESTIONS
"Project Responsibility"

(Office Use)

APPLICANT'S NAME: Oxford House Dotson DATE: 1/31/19
 DEVELOPER: _____ PHONE #: _____
 PROJECT ADDRESS: 1205 Dotson Court CITY: Wilmington ZIP: 28405
 SUBDIVISION: _____ BLOCK #: _____ LOT #: _____
 PROPERTY OWNER'S NAME: Zachary Pavlovits PHONE #: 919-817-2052
 OWNER'S ADDRESS: 2751 Jordan Pointe Blvd. CITY: New Hill ST: NC ZIP: 27562
 CONTRACTOR: _____ LICENSE #: _____
 ADDRESS: _____ CITY: _____ ST: _____ ZIP: _____
 EMAIL ADDRESS: _____ PHONE #: _____
 PROJECT CONTACT PERSON: Jacklyn Feliciano PHONE #: 850-418-4418

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(CHECK ALL THAT APPLY)
 ADULT CARE ADULT CARE-DFS CHILD CARE-HOME CHILD CARE CENTER ALE

DESCRIPTION OF WORK: _____

DISCLAIMER: I hereby certify that all information in this application is correct and all work will comply with the State Building Code and all other applicable State and local laws and ordinances and regulations. The NHC Development Services Center will be notified of any changes in the approved plans and specifications or change in contractor or contractor information. ***NOTE: Any Work Performed W/O the Appropriate Permits will be in Violation of the NC State Bldg Code and Subject to Fines Up To \$500.00***

OWNER/CONTRACTOR: Zachary Pavlovits SIGNATURE: [Signature]
(Print Name)

TOTAL # OF PERSONS UNDER CARE: 8 AGE RANGE OF PERSONS UNDER CARE: 18-90

IS CARE TO BE PROVIDED ON A 24 HR BASIS? Yes No
 IF NO, WHAT ARE THE HOURS PER DAY? 6

WHAT IS THE TYPE/CLASSIFICATION SPECIFIED BY THE STATE LICENSING AGENCY WHICH YOU ARE APPLYING?
Not Applicable

IS THE PROPERTY LOCATED IN A FLOODPLAIN? Yes No
 IS ELECTRICAL POWER ON THE BUILDING? Yes No
 IS A NATURAL GAS LINE ON THE PROPERTY? Yes No
 TOTAL SQ FT: 2,2161

** PLEASE ATTACH A COPY OF THE APPLICATION & FLOOR PLAN YOU ARE SUBMITTING TO THE STATE **

WATER: CFPWA COMMUNITY SYSTEM PRIVATE WELL
 SEWER: CFPWA CENTRAL SEPTIC PRIVATE SEPTIC COMMUNITY SYSTEM

*** SEPARATE PERMITS REQUIRED FOR ELECT, MECH, PLBG, GAS EQUIP, PREFABS & INSERTS ***

PAYMENT METHOD: CASH CHECK (PAYABLE TO NHC) AMERICAN EXPRESS MC/VISA DISCOVER

ZONE: _____ OFFICER: _____ (FOR OFFICE USE ONLY)
 Approval: _____ City: _____ DATE: _____ SETBACKS: F _____ LH _____ RH: _____ B: _____
 FLOOD: _____ BFE+2ft= _____
 Comment: _____ PERMIT FEE: \$ _____