



NEW HANOVER COUNTY

ZONING BOARD OF ADJUSTMENT AGENDA

230 Government Center Drive, Lucie Harrell Conference Room, Wilmington, NC 28403

Members of the Board

Raymond Bray, Chair | **Henry "Hank" Adams**, Vice-Chair

Joe Miller | **Cameron Moore** | **Mark Nabell**

Board Alternates

Kristen Freeman | **Brett Keeler** | **Richard Kern**

Wayne Clark, Director of Planning & Land Use | **Sharon Huffman**, Deputy County Attorney

July 23, 2019, 5:30 PM

I. Call Meeting to Order (Vice-Chairman Henry Adams)

II. Official Approval of June Minutes (*currently in draft status*)

June Member Attendees: Hank Adams, Kristin Freeman, Brett Keeler, Cameron Moore, Mark Nabell

III. Regular Items of Business

1. **Case ZBA-939** - Gregory Alan Heafner, PA, applicant, on behalf of Zachary and Ashley Paulovits, property owners, is requesting a special exception for reasonable accommodation under the Federal Fair Housing Act per Section 63.11 of the Zoning Ordinance to allow up to 8 residents in a group home located at 602 Everbreeze Lane.

MINUTES

ZONING BOARD OF ADJUSTMENT

The New Hanover County Zoning Board of Adjustment held a regular and duly advertised meeting at 5:30 P.M. at the New Hanover County Government Center Complex, 230 Government Center Drive, in the Lucie Harrell Conference Room, Wilmington, NC, on Tuesday, June 25, 2019.

Members Present

Hank Adams, Vice-Chairman
Cameron Moore
Brett Keeler
Kristin Freeman
Mark Nabell

Members Absent

Ray Bray, Chairman
Joe Miller
Richard Kern

Ex Officio Members Present

Ken Vafier, Executive Secretary
Kemp Burbeau, County Attorney
Denise Brown, Clerk

Vice-Chairman Adams explained that the Zoning Board is a quasi-judicial board appointed by the Board of Commissioners to consider zoning ordinance variances from residents in New Hanover County where special conditions would create unnecessary hardships. The Zoning Board also hears appeals of the County's interpretation in enforcement of the Zoning Ordinance. The appellants have thirty days in which to appeal any decision made by the Board to Superior Court.

Vice-Chairman Adams inquired of corrections to the past meeting on March 26, 2019 minutes.

Mr. Keeler referenced correction be made to page 1, paragraph 6 language as it refers to Board members Kristen Freeman, Joe Miller and himself did not approve the minutes from the March meeting.

Mr. Keeler stated the March minutes were lengthy and later involved in an appealed case decision. Mr. Keeler stated the document required adequate time to review for corrections as to he was not present at the March meeting.

Mr. Keeler made a motion to approve the March 26, 2019 minutes with the correction to paragraph 6 on page 1 as stated by Mr. Keeler. Mr. Moore second the motion. All ayes to approve the minutes of March 26, 2019.

Vice-Chairman Adams stated the applicant and the opposition will have a time limit of 15 minutes for testimony and an additional 5 minutes for rebuttal or additional time may be allotted as deemed necessary.

CASE ZBA-936

Vice-Chairman Adams swore in County staff, Ken Vafier, Ron Mays, Hill Rogers, Josh Mihaly and Matthew Nichols.

Mr. Vafier presented that Cameron Management, applicant, on behalf of Dry Pond Partners, LLC, is requesting a variance of 5' from the 40' structure height maximum requirement for one building per Section 72-43(11) of the New Hanover County Zoning Ordinance. The site is zoned R-15, Residential District.

The variance request is for one structure in a larger proposed development shown as "Building A" on Exhibit A-1 provided by the applicant. The site is located at 4429 South College Road in the southern portion of the county. Mr. Vafier stated

the subject site is a 25.9 acre portion of a larger 65 acre tract which comprises the boundary of a conditional use application which is currently under consideration by the county in a separate process.

The conditional use application proposes that portion of the subject site be rezoned to R-10, to allow high density development which is defined in the ordinance as any residential development which exceeds the density limit in that applicable zoning district. If the application is approved the high density development design parameters at the site limits the building height to 40 ft.

Section 72-43 of the Zoning Ordinance contains requirements for High Density Development projects, including subsection (11) that creates maximum building height allowances:

- *Maximum allowable height for structures shall be 40 feet. However, the maximum allowable height for piling supported primary structures which are located in "Coastal High Hazard Areas, V-Zones" and/or Ocean Hazard Areas as defined by the Coastal Resources Commission shall be 44 feet. (10/5/92)*

Mr. Vafier stated that at the June 6, 2019, Planning Board meeting, the Board passed a motion to recommend approval of the Conditional Use District application request to move forward to be heard at the July 1st Board of Commissioners meeting. The merits of the Conditional Use District application are going to be considered by the Board of Commissioners at a separate process on July 1st.

Mr. Vafier presented aerial photos of the subject site showing the location of "Building A" located in the approximate center of the site.

The applicant's site plan proposes increasing the subject building to 45 ft.; five feet above the maximum allowance for buildings in a high density development. All the other proposed buildings are not to exceed 40 ft.

Per the submitted Conditional Use District application, "Building A" is proposed as a multi-family building consisting of 60 units with 75, 000 square feet. There are eleven other buildings proposed each with 24 units, in addition to a pool and clubhouse facility.

The closest distance to a nearby property is Fox Woods Farm; with an estimated measurement of approximately 475 ft. from "Building A".

The applicant contends that the variance is needed due to the presence of certain features related to the site and proposed development such as parcel shape, preservation of open space, commercial and stormwater management areas, Comprehensive Plan place type, and building design.

Although the building heights for Whiskey Branch are limited to 40' per Section 72-43(11) of the Zoning Ordinance, structures may exceed 40' in other situations as prescribed in the county's zoning regulations.

Structures in the coastal high hazard areas or V-zones as designated by FEMA, or in Ocean Hazard Areas as defined by the NC Coastal Resources Commission, may reach up to 44 ft.

The subject site is not in any of the Coastal High Hazard areas therefore the maximum allowance on building height is 40 ft. The applicant is requesting relief from the building height to exceed to 45 ft.

The proposed building is within a wooded lot, and has not been developed as of yet.

Mr. Keeler asked if the Planning Board specified conditions on the conditional use district application.

Mr. Vafier stated no conditions apply to the application.

Mr. Keeler asked if the applicant displayed a request for “Building A” to be 45 ft. on the application.

Mr. Vafier stated the application at the Planning Board displayed the building height of “Building A” at 40 ft.

Mr. Keeler inquired of reasonable use of the site if the variance is not approved.

Mr. Vafier stated the applicant must be heard for all parties to make adequate determination of the sites use.

Mr. Moore asked if all the Residential zoning districts have the same building height requirements.

Mr. Vafier stated most residential districts are 35 ft. however, 40 ft. height is solely for high density development.

There are allowances that building height can exceed 40 ft. in the O & I, B-2 and I1 district. I2 does not limit building heights.

Mr. Moore asked about the Comprehensive Plan as it applies to height restrictions.

Mr. Vafier stated each height dimensions are described in stories in the Comprehensive Plan. The current site is split between two place types: General residential and a Community Mixed Use. Each place type has a recommended height for the building in stories.

Mr. Matt Nichols, PLLC- Mr. Nichols presented representing the applicant in the height variance request. The subject tract is 26 acres of a larger tract which entails roughly 63 acres located at 4400 South College Road. Mr. Nichols stated the applicant is seeking a conditional use rezoning of the reference tract to R-10 to accommodate the high density special use permit which proposes 324 apartments at the subject site.

Mr. Nichols stated at the Planning Board meeting held on June 6, the board recommended approval of the rezoning and the special use permit. The final decision of the recommendation will be heard at the next Board of Commissioners meeting. The variance request is for an additional 5 ft. height for the main building of the 12 building apartment complex.

Mr. Nichols presented handouts presented at the June Planning Board meeting that referenced the applicant’s application, the staff letter results of the Conditional Use Special permit approval, staff summary from ZBA-903 variance request in 2016, by the Smith Creek Village applicant and the ZBA-903 Board Order of approval for the Smith Creek village project.

Mr. Nichols stated the current proposal labeled as Phase 2 of the project is the apartment complex. This overall project will complement the county’s Comprehensive Plan by including various types of housing choices in the unincorporated areas.

Whiskey Branch will have eleven buildings with building heights that adhere to the county’s 40 ft. height regulation. The main building will be the focal point of the site constructed with unique architectural design. This building is the sole building for which the variance is requested for at the site.

The main building is the sole structure to have an elevator for tenants to access; which will individuals with disabilities.

Mr. Nichols stated the applicant would adhere to any conditions that the Board would impose on the variance.

Mr. Nichols stated this board approved a similar case for the project located at Gordon Road in 2016. At the time of this request the height allowance for building in this district was 35ft. The applicant requested a height variance of an additional 5 ft. in addition to 10 ft. to the 35 ft. whereby the height approval was 40 ft.

Mr. Nichols stated in the ZBA-903 case hearing that the applicant requested 10 additional ft. to be added to 12 of the 13 buildings at 4645 Gordon Road project. The Board granted an approval of this request.

Mr. Nichols stated ZBA-903 resembles similarities in the proposed plan in the variance request presented today.

Mr. Nichols stated the expectation of tenants and quality of housing has improved over the years. Mr. Nichols stated the Smith Creek project variance that was approved in 2016 has a mixture of houses types similar to the Whiskey Branch site.

Mr. Moore inquired of the housing type diversity.

Mr. Nichols stated the proposed 324 units be half in 1 bedroom units and half 2 bedroom units.

Mr. Moore inquired of the hardship in regards to this case as oppose to the ZBA-903 case.

Mr. Josh Mihaly stated the apartment projects have elevated in quality in the last ten years. The ceilings are at a minimum constructed with 9 ft. ceilings. These building are attracted by potential residents who have downsized over the years and demand higher level amenities. The HVAC will be housed on the roof which is more efficient.

Mr. Mihaly stated the other building are proposed to be 34-35 ft. in height. The idea is to have more amenities to meet the high demand of residents proposed to be housed in these units. ADA standards will be met with 64 units in the main building.

Ms. Freeman asked how many units are in the other buildings and with the increase in units, does it make it more affordable to residents.

Mr. Mihaly stated these types of units are expensive to construct, however with the number of proposed residents to live at the site it makes the project more affordable. Mr. Mihaly stated in comparison to past construction projects in Raleigh people are paying higher amounts for apartments with more amenities.

Mr. Hill Rogers stated the cost of an elevator in a higher number resident building makes the cost affordable as opposed to elevators in every building. The more units in a building, the more affordable they are to the residents.

Mr. Ron Mays (4625 Weybridge Lane; community resident) Mr. Mays stated he is in favor of affordable housing in the area. However, with the proposed construction it will impose multiple trips to the area and a traffic light is desperately needed in the area. Mr. Mays stated the area is resembling more of apartment complex with less visibility of trees as traditionally seen in the county. Mr. Mays stated with all the construction to this area, he and some of the neighbors feel construction should be scaled back.

Mr. Mays stated he lives at Fox Run Farm and he is against the height of the proposed building. Mr. Mays stated the applicant should adhere to the standard height as Mayfaire apartments have 3 buildings with access to elevator.

Mr. Nichols (Rebuttal)- Mr. Nichols stated most of the comments by Mr. Mays would be best presented by him at the upcoming Board of Commissioners meeting. Mr. Nichols reiterated the height request for the Smith Creek site in 2016 was approved which similar to today's request. Mr. Nichols implores the Board to consider the height request as the board order drafted for the ZBA-903 case is similar to today's case hearing.

Mr. Keeler informed board members that the applicant's representative is providing additional testimony of the variance request rather than addressing the opposition's height request concerns.

Mr. Burpeau mentioned to the applicant's representative Mr. Nichols, to specifically address the concerns of the testimony presented by opposition of Mr. Mays regarding the height request.

Mr. Nichols concluded that the county ordinance does not require the applicant to demonstrate height construction at the site. However, the applicant stated that based on the proposed site plans and in reference to the 2016 Comprehensive Plan, the height variance request is a reasonable request. Mr. Nichols stated the applicant is not stating that a 35 ft. building could not be constructed at the site.

Mr. Nichols stated that for a variance approval, it is not necessary to provide proof of a 35 ft. building could be constructed at the site. Mr. Nichols stated it would be a disservice to not allow the variance for the project. The subject site compliments the county's Comprehensive Plan that includes various types of housing in the county.

Mr. Ron Mays- (Rebuttal)-Mr. Mays stated there are several apartment complexes located around the county such as The Pointe which offers a one bedroom at \$1500 monthly. Mr. Mays stated affordable housing should be directed to the lower income bracket. Mr. Mays stated to construct a building with the height requested here is extreme. Mr. Mays stated there is much construction going on around the county with apartment complexes whereby the landscape is aggressively changing.

Mr. Moore asked the applicant if fill dirt will be required for the building.

Mr. Hill Rogers (Cameron Management)- Mr. Rogers stated they have not completed a fill dirt analysis as of yet. Mr. Rogers stated the subject site is flat and all the soils present have not been completed to know the levels of elevation in constructing at the site.

PUBLIC HEARING CLOSED

BOARD DELIBERATION:

Mr. Keeler stated the Board should not consider past case decisions as a precedent and that each case is decided based on its unique factors presented.

Mr. Burpeau stated each case is unique and the Board is to decide based on testimony. However, the Board could refer to past discussions if they choose to in deliberation. Past case decisions prior actions of the Board do not have to be disregarded. Mr. Kemp stated if prior case decisions are useful in deciding factors they can be considered.

Vice-Chairman Adams asked if anyone has a motion.

Mr. Moore made a motion to approve the height variance as it meets two of the findings of fact. Mr. Moore stated the request has been presented within the spirit of the county's Comprehensive Plan.

Mr. Keeler stated that the motion to approve the request should meet all four findings of fact.

Mr. Moore stated for his own personal decision he finds approval in 3 out of the four findings to make a motion of approval.

Mr. Moore reiterated his motion still stands as recommend approval of the variance.

Mr. Vafier stated the findings of facts does not necessary have to be stated in the motion. Mr. Vafier stated the board should discuss to support the motion on the table or discuss additional findings to fill in for a decision of the request.

Ms. Freeman second the motion on the table to grant the height variance request.

Mr. Keeler stated he is not in favor of granting the height variance. Mr. Keeler stated the applicant is requesting additional allowances for 45 ft. as if the subject site was in a V-Zone. Mr. Keeler stated the subject site is not in a V-Zone.

Mr. Keeler stated the applicant's request does not present with a hardship. Mr. Keeler stated that the applicant owns the 64-acre property and the request is not consistent with the Land Use Plan.

Mr. Burpeau stated that in past, some of the case law was more receptive in allowing a board to make decisions on broad conclusions. Mr. Kemp stated currently courts are looking for specific justification to include points; each of the four facts of findings in decision making. Mr. Burpeau stated it is feasible that the Planning Staff assist the board in the potential findings in the final decision.

Mr. Burpeau stated the board could decide based on the uniqueness of the site and proposed building configuration of the development.

Mr. Vafier stated typically the minutes are reviewed and findings for the board order are extracted from the approved minutes document.

Mr. Vafier stated a few things mentioned to support in the Board discussion regarding findings presented by applicant:

1. The minimum ceiling height is typically ranging from 9-10 ft. in ceiling height.
2. The HVAC units are typically on the roof.
3. The height definition could provide challenges in future construction
4. The proposed plan is within the spirit of the County's Comprehensive Plan.

Vice-Chairman Adams inquired how does the elevator in the one building comply with ADA compliance.

Mr. Moore stated in some apartment complexes in the county that house an elevator, they typically include a commercial element. Mr. Moore stated a topographical map was not provided however, he's very familiar with the site and it is a flat area.

Mr. Moore stated the cut sheet was not provided by the applicant displaying the soils and possible fill dirt if required, but typically in constructing multi-family structures it can get troublesome due to irregular level spots of the area, creating a hardship.

Mr. Moore stated he was not on the board in 2016, however it's possible the applicant in case **ZBA-903** requested the height variance for the total of buildings due to the site irregularities in elevation.

Mr. Nabell made a motion to table the decision and wait for the decision of the Board of Commissioners approval of the applicant's rezoning request.

Mr. Moore amended his motion to approve the height variance include a condition that the applicant's rezoning and Conditional Use Rezoning application must be approved by the County Commissioners next meeting.

Mr. Vafier reiterated the Conditional Use Rezoning approval requires the County Commissioners approval of a rezoning and a special use application to be presented at the next Board of Commissioners meeting.

Mr. Nabell second the amended motion.

Mr. Moore stated the applicant must meet all fire safety regulations.

Vice-Chairman Adams called for a final vote.

The board vote was 4-1 to approve the amended motion, with Mr. Keeler voting against the variance approval.

BOARD DECISION:

On a motion by Mr. Cameron Moore and seconded by Mr. Mark Nabell, the board voted 4-1 to grant the height variance at 4429 South College Road. Approval of the accompanying Conditional Use District Request consisting of a rezoning and special use permit for a high density development.

The Board's decision was based on the following conclusions and findings of fact:

1. **It is the Board's conclusion that, if the applicant complies with the literal terms of the ordinance, specially the 40' maximum height requirement for a high-density development required per Section 72-43(11) of the New Hanover County Zoning Ordinance, that an unnecessary hardship would result. (It shall not be necessary to demonstrate that, in absence of the variance, no reasonable use can be made of the property.) This conclusion is based on the following FINDINGS OF FACT:**
 - Current construction practices in multi-family buildings are including ceiling heights of 9-10' and HVAC units are proposed to be located on the roof behind a parapet, necessitating a 45' minimum building height for this structure.
 - The current definition of Building Height results in difficulty in meeting the maximum building height for the proposed structure due to variations in grade elevation and roof height.
2. **It is the Board's conclusion that the hardship of which the applicant complains results from unique circumstances related to the subject property, such as location, size or topography. (*Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.*) This conclusion is based on the following FINDINGS OF FACT:**
 - The site contains variations in the average elevation at the existing grade which result in a grade that is not uniform.
3. **It is the Board's conclusion that the hardship did not result from actions taken by the applicant or the property owner. (The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.) This conclusion is based on the following FINDINGS OF FACT:**
 - The applicant has not taken any action that has caused a hardship.
4. **It is the Board's conclusion that, if granted, the variance will/will not be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:**
 - The request is within the spirit and intent of the Comprehensive Land Use Plan as the building to which the variance would apply is proposed to be a part of a mixed-use development.
 - All minimum fire codes are required to be adhered to, ensuring life safety for residents in the building.

This variance is also subject to the following condition:

- Approval of the accompanying Conditional Use District Request consisting of a rezoning and special use permit for a high density development (Case Z 19-03).

MEETING ADJOURNED.

Please note the minutes are not a verbatim record of the proceedings.

Executive Secretary

Chairman

**SPECIAL EXCEPTION REQUEST
ZONING BOARD OF ADJUSTMENT
July 23, 2019**

CASE: ZBA-939

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: 602 Everbreeze Lane
PID: R04306-014-071-000

ZONING: R-15, 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 602 Everbreeze Lane.

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-15 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 602 Everbreeze Lane. According to New Hanover County tax records, the home lies on a 0.34-acre parcel and contains 2,095 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.**



NEW HANOVER COUNTY

ZONING BOARD OF ADJUSTMENT

230 Government Center Drive, Lucie Harrell Conference Room, Wilmington, NC 28403

Members of the Board

Raymond Bray, Chair | **Henry "Hank" Adams**, Vice-Chair

Joe Miller | **Cameron Moore** | **Mark Nabell**

Board Alternates

Kristen Freeman | **Brett Keeler** | **Richard Kern**

Wayne Clark, Director of Planning & Land Use | **Sharon Huffman**, Deputy County Attorney

ORDER TO GRANT/DENY A SPECIAL EXCEPTION REQUEST – Case ZBA-939

The Zoning Board of Adjustment for New Hanover County, having held a public hearing on July 23, 2019 to consider application number ZBA-939, submitted by Gregory Alan Heafner, PA, applicant, on behalf of Zachary and Ashley Paulovits, property owners, a request for a special exception for reasonable accommodation under the Federal Fair Housing Act to allow up to eight disabled persons to reside together in a group home located at 602 Everbreeze Lane, and having heard all the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

- 1. It is the Board's conclusion that the request to deviate to eight from the limit of six disabled persons living together in a group home at 602 Everbreeze Lane is / is not reasonable.** *Note: 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. This conclusion is based on the following FINDINGS OF FACT:*

- _____.
- _____.
- _____.
- _____.

- 2. It is the Board's conclusion that the request to deviate to eight from the limit of six disabled persons living together in a group home at 602 Everbreeze Lane is / is not necessary.** *Note: 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. This conclusion is based on the following FINDINGS OF FACT:*

- _____.

- _____.
- _____.
- _____.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a SPECIAL EXCEPTION from New Hanover County Zoning Ordinance from Section 63.11(1) to allow up to 8 disabled persons to reside together in a group home located at 602 Everbreeze Lane, be GRANTED/DENIED.

ORDERED this 23rd, day of July, 2019.

Henry Adams, Vice-Chairman

Attest:

Kenneth Vafier, Executive Secretary to the Board



Case: ZBA-939

Vicinity Map

Address: 602 Everbreeze Lane

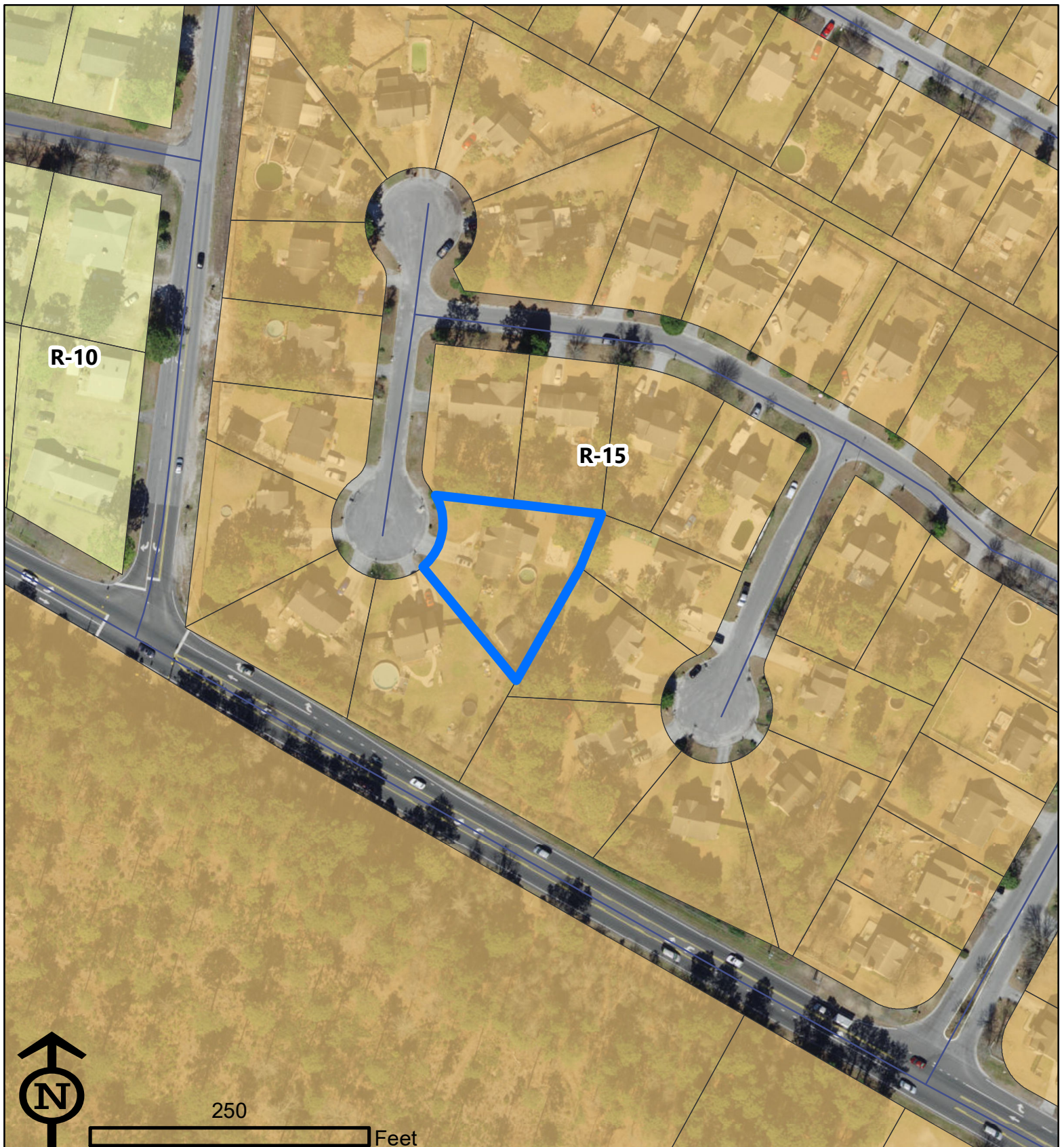
Special Exception Request

Applicant: Greg Heafner

Owner: Ashley Paulovits and Zachary Paulovits

New Hanover County Zoning Board of Adjustment

July 23, 2019



Case: ZBA-939

Zoning Map

Address: 602 Everbreeze Lane

Special Exception Request

Applicant: Greg Heafner

Owner: Ashley Paulovits and Zachary Paulovits

New Hanover County Zoning Board of Adjustment

July 23, 2019



Case: ZBA-939

Aerial Map

Address: 602 Everbreeze Lane

Special Exception Request

Applicant: Greg Heafner

Owner: Ashley Paulovits and Zachary Paulovits

New Hanover County Zoning Board of Adjustment

July 23, 2019



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 Greg Heafner	Owner Name Zachary Paulovits	Address 602 Everbreeze Lane
Company Gregory Alan Heafner, PA	Owner Name 2 Ashley Paulovits	Parcel ID 204306014-071-000
Address 1510 Twisted Oak Drive	Address 2751 Jordan Pointe Blvd.	Area RECEIVED
City, State, Zip Chapel Hill, NC 27516	City, State, Zip New Hill, NC 27562	Summary of Special Exception Requested: JUN 18 2019 Attended
Phone 919.967.3800	Phone 919.817.2052	NEW HANOVER COUNTY PLANNING & ZONING
Email gshafner@bellsouth.net	Email zpaulovits@yahoo.com	
Application Tracking Information		
Case Number 28A-939/6HSE-19-0005	Date/Time received: 6/18/19 4:20pm	Received by: KV

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
OF JUSTIFICATION

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JUN 18 2019

NEW HANOVER COUNTY
PLANNING & ZONING

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.

Jack A. Paulson
Signature of Applicant and/or Property Owner

10 Jun 2019
Date

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THALOMIA



JUN 2019
NEW HANOVER COUNTY
PLANNING & INSPECTIONS
NEW HANOVER COUNTY
PLANNING & ZONING
AUTHORITY FOR
APPOINTMENT OF AGENT

230 Government Center Drive
Suite 110
Wilmington, NC 28403
910-798-7165 phone
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 Greg Heafner	Owner Name Zachary Paulovits	Address 602 Everbreeze Lane
Company Gregory Alan Heafner, PA	Owner Name 2 Ashley Paulovits	City, State, Zip Wilmington, NC 28411
Address 1510 Twisted Oak Drive	Address 2751 Jordan Pointe Blvd.	Parcel ID 204306-014-071-000 KV
City, State, Zip Chapel Hill, NC 27516	City, State, Zip New Hill, NC 27562	
Phone 919-967-3800	Phone 919-817-2052	
Email gshafner@bellsouth.net	Email z.paulovits@yahoo.com	

Case Number Reference: ZBA-938 OHSE-19-005	Date/Time received: 6/18/19 4:20 PM	Received by: KV
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This document was willfully executed on the 10 day of June, 20 19.

Zachary A. Paulovits
Owner 1 Signature

Ashley E. 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 602 Everbreeze Lane in Wilmington. The house is a five bedroom, two and a half bath 2,384 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 over two thousand five hundred 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*

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 the means for the County, through its Board of Adjustment, 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 602 Everbreeze Lane. The reasonableness and necessity as to the Oxford House at 602 Everbreeze Lane 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

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

CERTIFICATION OF COMPLIANCE WITH NEW HANOVER COUNTY CODE FOR GROUP HOMES

I (we) the undersigned operator of a group home at 602 Eerbreeze Lane, 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:

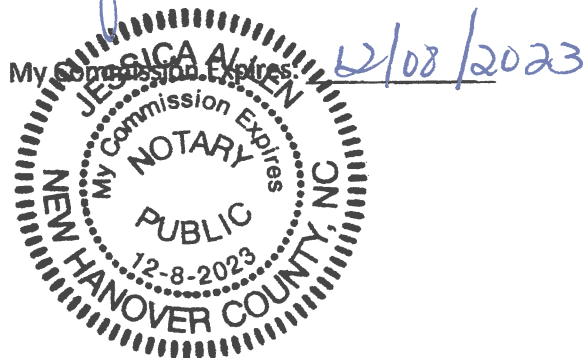
yes

Certified this 10 day of June, 2019.

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

Sworn to and subscribed before me this 10 day of June, 2019.

Jessica Allen
Notary Public



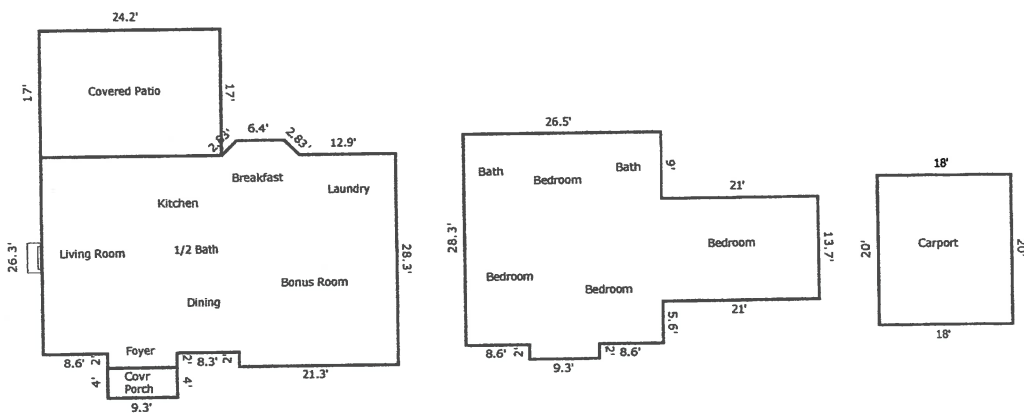


Building Sketch

Borrower	Zachary & Ashley Paulovits				
Property Address	602 Everbreeze Ln				
City	Wilmington	County	New Hanover	State	NC
				Zip Code	28411
Lender/Client	Cornerstone Home Lending, Inc.				

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 NEW HANOVER COUNTY
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TOTAL Sketch by a la mode, inc.

Area Calculations Summary

Living Area		Calculation Details
First Floor	1327.25 Sq ft	$9.3 \times 2 = 18.6$ $0.5 \times 2 \times 2 = 2$ $0.5 \times 2 \times 2 = 2$ $6.4 \times 2 = 12.8$ $26.3 \times 26.2 = 689.06$ $21.3 \times 28.3 = 602.79$
Second Floor	1056.25 Sq ft	$9.3 \times 2 = 18.6$ $13.7 \times 21 = 287.7$ $26.5 \times 28.3 = 749.95$
Total Living Area (Rounded):	2384 Sq ft	
Non-living Area		
Concrete Patio	411.4 Sq ft	$24.2 \times 17 = 411.4$
Open Porch	37.2 Sq ft	$9.3 \times 4 = 37.2$
2 Car Carport	360 Sq ft	$20 \times 18 = 360$

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[illegible]