

**REASONABLE ACCOMMODATION REQUEST
ZONING BOARD OF ADJUSTMENT
July 28, 2020**

CASE: ZBA-949

PETITIONER: Gregory Alan Heafner, PA, applicant, on behalf of Gary and Lisa Hooker, property owners.

REQUEST: Reasonable accommodation request under the Federal Fair Housing Act per Section 10.3.13 of the Unified Development Ordinance to allow up to 8 disabled persons residing together in a group home.

LOCATION: 6601 Newbury Way
PID: R03515-006-006-000

ZONING: R-15, Residential District

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 Unified Development Ordinance allows up to six disabled persons to reside in a group home by-right in the R-15 zoning district per the Principal Use Table in Section 4.2.1:

Table 4.2.1: Principal Use Table																							
Key: P = Permitted by Right S = Special Use Permit Required * = Specific Use Standards Apply in District blank cell = not allowed																							
Use	Zoning District																				Use Standards		
	RA	AR	R-20S	R-20	R-15	R-10	R-7	R-5	RMF-L	RMF-M	RMF-MH	RMF-H	PD	UMXZ	B-1	CB	B-2	O&I	SC	CS		AC	I-1
Group Living																							
Group Home	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *	P *		S *				S *			4.3.2.2

Additional standards for group homes are detailed in Section 4.3.2.B.3, as well as a process described under section 10.3.13 by which a group home provider may petition for a reasonable accommodation under the Federal Fair Housing Act to vary any of the provisions outlined in Section 4.3.2 B, including the number of residents, parking allowance, or distance requirement. Section 10.3.13 also details the eligibility requirements for residents of a Group Home.

Group Home – A home in which more than three unrelated persons with a disability, as defined in the U.S. Fair Housing Act, 42 U.S.C. 3601 et seq., live together as a self-supporting and self-sufficient household unit.

The Fair Housing Act defines persons with a disability to mean those individuals with mental or physical impairments that substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness.

4.3.2. RESIDENTIAL USES

B. Group Living

3. Group Home

Group homes shall comply with the following standards:

- a. Group homes shall be limited to six disabled persons living together as a self-supporting and self-sufficient household unit.*
- b. No group home shall be occupied or operated without zoning approval.*
 - 1. Group homes that are exempt from licensure pursuant to NCGS §122C-22 must recertify their exemption status annually; and*
 - 2. Group homes for special needs persons must recertify qualification of all residents as special needs persons annually.*
- c. Parking shall be provided in accordance with Section 5.1: Parking and Loading.*
- d. Group homes shall not be located closer than 2,000 feet to any other existing group home, measured by a straight line from the nearest property lines, irrespective of jurisdictional boundaries. The distance shall be reduced by the right-of-way of a major thoroughfare exceeding 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.*
- e. Reasonable accommodations shall be provided in accordance with Section 10.3.13, Reasonable Accommodation.*

The Zoning Board of Adjustment is authorized to grant requests for reasonable accommodation after a public hearing and finding that the request meets the criteria below, particularly if it is found to be both “reasonable” and “necessary:”

10.3.13. REASONABLE ACCOMMODATION

A. Applicability

1. General

This section provides a procedure for reasonable accommodation of eligible persons in cases where the strict application of the standards of this Ordinance would deprive them of their right to equal opportunity to use a dwelling under the federal Fair Housing Act.

2. Eligible Persons

- a. An eligible person is a person who meets the definition of a disabled or handicapped person under federal law.*
- b. A person recovering from substance abuse is considered a person with a disability or handicap provided they are not currently engaging in the illegal use of controlled substances.*

(section B discusses the Reasonable Accommodation application and review procedures)

C. Reasonable Accommodation Review Standards

1. *A reasonable accommodation application shall be approved on a finding the proposed accommodation:*
 - a. *Will be used by an individual or individuals with a disability or handicap protected under federal law;*
 - b. *Is the minimum needed to provide accommodation; and*
 - c. *Is reasonable and necessary.*
2. *For the purposes of this section, an accommodation is reasonable if it would not undermine the legitimate purposes of this Ordinance, it does not constitute a substantial alteration of this Ordinance or other County standard, and it will not impose significant financial and administrative burdens upon the County.*
3. *For the purposes of this section, an accommodation is 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 use housing in residential districts in the County.*

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 6601 Newbury Way. According to New Hanover County tax records, the home lies on a 0.35-acre parcel and contains 3,112 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 reasonable accommodations for the special circumstances as set forth in 10.3.13 of the New Hanover County Unified Development Ordinance to allow for reasonable accommodation under the Federal Fair Housing Act. The Board of Adjustment shall grant a request for reasonable accommodation under the Federal Fair Housing Act if the Board finds by the greater weight of the evidence that the proposed special exception will be used by an individual or individuals with a disability or handicap protected under federal law, is the minimum needed to provide accommodation, and is both "reasonable" and "necessary."

1. "Reasonable" - An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes of this Ordinance, it does not constitute a substantial alteration of this Ordinance or other County standard, and it will not impose significant financial and administrative burdens upon the County; 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 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.**