NEW HANOVER COUNTY

BOARD OF ADJUSTMENT

230 GOVERNMENT CENTER DRIVE, LUCIE HARRELL CONFERENCE ROOM
WILMINGTON, NORTH CAROLINA 28403

MEMBERS OF THE BOARD
Cameron Moore, Chairman   Mark Nabell, Vice-Chair
Hank Adams   Kristin Freeman   Raymond Bray

BOARD ALTERNATES
Pete DeVita   Michael Keenan, Sr.   Richard Kern

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

September 22, 2020, 5:30 PM

I. Call Meeting to Order (Chairman Cameron Moore)

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

July Member Attendees: Cameron Moore, Hank Adams, Pete DeVita, Michael Keenan, Richard Kern

III. Regular Items of Business

Case ZBA-950 - Joseph Higgs, Jr., applicant, on behalf of Dr. Babatunde Olatidoye, property owner, is requesting a variance of 15’ from the 75’ minimum Conservation Space setback per Section 5.7.4.B of the New Hanover County Unified Development Ordinance. The property is located at 4619 Serenity Point.

IV. Other Business

V. Adjourn

MINUTES

ZONING BOARD OF ADJUSTMENT-DRAFT

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, July 28, 2020.

Members Present	Members Absent
Cameron Moore, Chairman	Mark Nabell, Vice- Chairman
Hank Adams	Ray Bray
Pete DeVita	Kristin Freeman
Michael Keenan	
Richard Kern	

Ex Officio Members Present
Ken Vafier, Executive Secretary
Sharon Huffman, County Attorney
Denise Brown, Clerk

Chairman Moore explained that the Zoning Board is a quasi-judicial board appointed by the Board of Commissioners to consider Unified Development 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 Unified Development Ordinance. The appellants have thirty days in which to appeal any decision made by the Board to Superior Court.

Chairman Moore inquired on corrections to June 23, 2020 minutes.

Mr. DeVita made a motion to approve the June 23, 2020 minutes, Mr. Keenan second the motion. The motion passed unanimously to approve the June 23, 2020 minutes.

County Attorney Sharon Huffman made a statement prior to the case to inform the public that today's hearing is to listen to testimony regarding whether the request for reasonable accommodation to add two (2) additional members to the group home at 6601 Newbury Way is reasonable and necessary.

Ms. Huffman stated per the Federal Fair Housing Act, these homes are allowed by right to locate in residential districts and this allowance provides residency for individuals with special needs and/or disabilities. Ms. Huffman stated the City of Wilmington's residential zoning districts allow eight (8) members to reside in a group home by-right without additional board approval.

Ms. Huffman stated the New Hanover County ordinance allows up to six (6) members to live at a group home facility by-right without additional approval from the Board of Adjustment. Ms. Huffman stated that the county ordinances do not allow more than three (3) unrelated residents to live together however this rule does not apply to protected class.

Ms. Huffman concluded that today's attendees' testimony should refer solely to the applicant's request for two (2) additional members to reside at the group home facility.

CASE ZBA-949

Chairman Moore swore in County staff, Ken Vafier.

Mr. Vafier presented an overview of the case to the board stating the petitioner, Mr. Heafner, on behalf of the property owner, Gary and Lisa Hooker, is requesting a reasonable accommodation request 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 eight (8) residents in a group home at 6601 Newbury Way. Mr. Vafier stated the proposal is specifically for an Oxford House Group Home for Disabled Persons.

The property is located in the north central section of New Hanover County in the Brittany Woods subdivision. The site is zoned R-15, Residential District, representative of the larger portion of the zoning designation in the area. A group home with six (6) members is allowed by-right per the zoning ordinance in this district.

Mr. Vafier stated the New Hanover County UDO includes two definitions; Group Homes and Disabled Persons.

Mr. Vafier provided history that in 2015 the definition of Group Homes and Disabled Persons were adopted in the New Hanover County Zoning ordinance via text amendment in order to add provisions allowing reasonable accommodations for this respective protected class under the Federal Fair Housing Act. The amendment defined these two terms as well as parameters for group homes, in allowing the number of occupants, parking, distance from others group homes and the special exceptions provisions and procedures. The approval process set forth in Section 10.3.13 of the UDO.

The ordinance states that the process for variances and appeals shall apply for a reasonable accommodation request. Mr. Vafier stated that in order to be considered “reasonable” the Board of Adjustment must find that the request will not undermine the legitimate purpose and effects of the existence regulations such as financial or administrative burden on the county.

Mr. Vafier stated a request shall be determined “necessary” if it will provide direct and meaningful therapeutic of the effects of the particular disability or handicap. This act will afford handicapped or disabled persons’ equal opportunity to enjoy housing. Mr. Vafier stated typically the board decides on variance hearings however, with a reasonable accommodation request the board is tasked with deciding if factors presented by the applicant are reasonable and necessary. Mr. Vafier stated there are no residential staff on site and the residents are self-supporting.

Mr. Vafier presented aerial photo of the subject site from various angles.

Mr. Vafier stated the county tax records indicate the residence has 3,100 sf of living space consisting of four (4) bedrooms and 2.5 bathrooms to accommodate the residents. The application states the residence is 3,300 sf and consists of six (6) bedrooms and four (4) bathrooms. The applicant is present and can provide specific information on the accommodations and function within the residence as it relates to the Oxford House model.

Mr. Vafier presented a visual of the county’s tax card on file which displays the detached garage. Tax information list this structure as a part of the main living area. There is an additional structure in the rear listed as a garage on the property. The data varies in what the tax department has listed versus the applicant. The applicant can clarify the layout of the home. Mr. Vafier stated the applicant is meeting the group home distance requirement.

Mr. Vafier stated to his knowledge zoning has not received any complaints from previous approved Oxford Homes.

The Chairman swore in Greg Heafner, Jacklyn Feliciano, Elizabeth Williams, Kenneth Dieppa and James McIntosh.

Mr. Greg Heafner, PLLC- Mr. Heafner presented representing Oxford House in the proceedings. The owner of the home is leasing the house to the Oxford House. Mr. Heafner explained that Oxford House is a recovery program for people suffering from alcoholism or drug addiction. The home is located at 6601 Newbury Way.

Mr. Heafner stated there has been some modification to the residence, the house currently has six (6) bedrooms and four (4) bathrooms and a two-car garage. He is requesting a special exception for reasonable accommodation under the Federal Fair Housing Act per Section 10.3.13 of the UDO to increase the number of residents at the home from six (6) people to eight (8) people.

Mr. Heafner stated the residents will elect home officials to ensure all chores, home guidelines, rules and utilities are properly attended to. The residents all work together cohesively for the success of the Oxford House model. Mr. Heafner stated all Oxford Houses are leased with no profit to the Oxford House agency.

Mr. Heafner stated the two extra people are necessary for the house to maintain operations. The house residents are self-sustaining. The residents support themselves and with an increase of residents to eight (8) the residents will benefit successfully in participating and meeting financial burden.

There are three rules for all residents to comply with: they must be self-supporting, self-governing, and they cannot use alcohol or drugs. Mr. Heafner stated Oxford Houses are not half way houses or substance abuse centers, there is no treatment provided at the residence by any sort of staffing. The houses are used solely for residential living.

Mr. Heafner stated there is a therapeutic benefit in having more people in the house; all the residents support each other’s goals and aspirations of independent living. The residents share a bedroom, two residents to a room. There is no financial burden to the county anticipated.

Mr. Heafner stated the home is for female residents and total of two (2) children age six (6) years of age will occupy the home with their mother. Mr. Heafner stated there is no drug testing. However, residents who resort to drug use are asked to leave the home. Mr. Heafner stated the children are not included in the count of the residents in the group home.

Mr. Heafner presented materials that stated DePaul University surveyed the Oxford House model and determined eight (8) people or greater is an ideal number in a group setting for therapeutic value among sobriety persons in recovery. On an average the homes will have a vacancy as residents transition out to their own home.

Mr. Heafner stated Oxford Houses will not decrease property value and crimes adjacent to the homes are not increased.

Mr. Heafner stated this is the sixth home to be requested in the unincorporated area of the county. In addition, there are eight (8) residents in all the Oxford Homes.

Mr. Heafner concluded that the board is tasked with deciding if the request is reasonable and necessary. There is no administrative burden to the county and fundamentally the request does not change the zoning character of the neighborhood.

Mr. DeVita asked if the home is monitored by outside agency or staff, and if there are random drug tests for the residents.

Mr. Kern inquired as to the children being included in the number of residents requested and what the room assignments are. In addition, Mr. Kern inquired as to DSS involvement with the mothers of the home.

Ms. Jacklyn Feliciano - Oxford House Representative – Ms. Feliciano stated the home is for female residents only. Ms. Feliciano stated the home has rooms that resemble a mother-in-law suite for the women with the children. The house has remaining rooms for two members to a room. One of the rooms has been converted to a play room for the children.

Ms. Feliciano stated she spoke to county staff and they understood that the children are not counted as a part of the number of disabled persons residing in the home. Neither of the women are involved in Department of Social Services investigations. The mothers are in parenting and coping cases. Ms. Feliciano stated the mothers have the support of the residents in the home.

Ms. Feliciano stated she works with the mothers in obtaining support from outside agencies to the success of the mothers maintaining primary parental status as the caretaker. Ms. Feliciano stated Oxford House allows a maximum of two (2) children to reside in a primary home with their resident mother.

Mr. Vafier stated the Oxford House representative contacted staff for clarification of the number of occupants counted are not counted in the Oxford House as the home is classified as a group home residency.

Mr. DeVita inquired as to the swimming pool status at the home and asked how would parking for eight (8) residents be addressed.

Ms. Feliciano stated the pool was removed and a closed deck added. Currently two (2) residents have cars and should additional parking be necessary they will address that as need arise in the future of creating additional parking.

OPPOSITION:

Community Resident- Mr. Kenneth Dieppa (1004 Shenandoah Street) - Mr. Dieppa spoke on behalf of community residents stating they are aware of the home providing residency for group home residents and currently the home is being operating successfully with six (6) members in the household and the two (2) additional members to the home is not required for member success. Mr. Dieppa stated there is information in case studies that show Oxford Houses can sustain with less than six (6) members.

Mr. Dieppa stated the home sits on a corner lot and residents in the community are concerned of lack of adequate parking availability for the group home residents as it would be excessive with the amount of people to reside in the home.

Mr. Dieppa stated there is a bus stop nearby the group home and the community has concerns of safety in visibility to the stop sign located on the same corner as the group home. Mr. Dieppa gave testimony regarding statistics of the community that 90% oppose the home in the community.

Mr. Dieppa stated there are Oxford Houses operating with less than eight residences and these homes show success rate with as less as four (4) members but no more than six (6) members as the county ordinance allows. Mr. Dieppa stated the additional members requested are for economic purposes.

Mr. Greg Heafner - (Rebuttal) Mr. Heafner stated the concerns shared by the residents has no applicability as related to additional administrative burden stated by the county ordinance. Mr. Heafner stated most concerns shared by the public toward the Oxford Homes do not relate to the required criteria of the county ordinance for additional residents to allow two (2) additional members to the group home.

Mr. Heafner stated the request is for two (2) additional members as the ordinance has provisions to do so by way of seeking approval from the Board of Adjustment.

Mr. Keenan asked if the rent stays the same with a possible increase in residency to the home.

Mr. Heafner stated all Oxford Houses are leased from the home owner.

Mr. DeVita made a statement that the Oxford House representative continues to set a precedent in obtaining homes with six (6) residents and then pursue the two (2) additional residents thru requesting a reasonable accommodation to the Board of Adjustment.

Mr. Adams stated the City of Wilmington allows group home residency of eight (8) residents to a home. Mr. Adams stated the Oxford House continues to seek a reasonable accommodation of additional residents to their group homes in the unincorporated area houses.

Ms. Huffman stated the courts provided thru the Federal Fair Housing Act allows provisions to group home residency. The City of Wilmington has allowance of these group homes by-right to allow eight (8) people to a home. The county allows six (6) residents by-right which is a minimum approval by the County Commissioners to group homes.

She stated the Oxford House has the option to apply for a special exemption of two (2) additional residents per the county ordinance.

Mr. Kenneth Dieppa - (Rebuttal) Mr. Dieppa stated the home became operational upon obtaining a county facility permit in March 2020 however, he is disturbed that the home is listed publicly on the Oxford House website as an eight (8) member home without board approval.

Mr. Dieppa stated the home has been operational with six (6) members and that should be sufficient in the house can maintain success with less members in residency. Mr. Dieppa stated surveys presented should include cause and effect of the occupancy for the Oxford House. Mr. Dieppa stated the home has proven to be successful for this amount of time without additional people. Mr. Dieppa stated the members of the household could potentially hold two offices to maintain structure.

Ms. Elizabeth Williams- (Brittany Woods Resident) Ms. Williams gave testimony that she is in support of the houses for recovery individuals. She works closely as a rehab counselor with residents with addictions and housing has become problematic in various locations within the county. Ms. Williams stated Oxford House is doing good work in assisting individuals with substance abuse with placement into the housing community as this provides support for a better quality of life and success to these residents.

Mr. James (Jim) McIntosh- (6605 Row Gate Lane)- Mr. McIntosh stated in his opinion residents living in homes that are coddled with no responsibility as it relates to their recovery have the potential to be problematic. Mr. McIntosh is in favor of group homes for recovering individuals however in his opinion oversight is needed.

Mr. Dieppa – Mr. Dieppa stated another home could be implemented by Oxford House within regulation of the required distance of 2,000 feet away for the current home. The house has been proven successful with six (6) residents he does not see need to additional people to the home other than financial.

Ms. Feliciano stated the rent to the home is $2,900 per month for the two-year lease.

PUBLIC HEARING CLOSED.

BOARD DISCUSSION:

Chairman Moore reiterated that today's hearing is to listen to testimony regarding whether the request for the special exception for reasonable accommodation to add two (2) additional members to the group home.

Mr. Kern stated research on case studies stated there is a therapeutic value with eight (8) residents living together. Also, it assists in relieving financial burden to the residents with more members in the home.

Mr. Keenan stated with more people in the home it can benefit with residents sustaining financial responsibility.

Chairman Moore stated the question regarding children residing in the home has been addressed by the applicant. He does not view the additional residents to the home will change the zoning scheme.

Mr. Keenan inquired as to the additional members how will the rent be paid by all residents.

Mr. Kern stated a concern to the children in the home and inquired if a condition could apply to the number children to the residence.

Ms. Huffman relayed to the Board members' conditions can be applied to variances, not to reasonable accommodation requests.

Mr. DeVita made reference of most of the Oxford House cases present to the board for two (2) additional residence and he would like discussion in the future of the request being a part of policy to not have the board decide on these type of case hearings.

Mr. DeVita stated the regulation per the ordinance for Oxford Homes allows six (6) members and increasing to eight (8) on every Oxford Home that presents to the Board of Adjustment sets a precedent.

Chairman Moore stated there has been discussion regarding these type of case hearing request however, the Board is tasked with decision based on what the current ordinance language.

Mr. Adams stated the house is large enough to support a group home of eight (8) residences.

Mr. DeVita stated the numerous requests have set a precedent of making the requests to the Board.

Ms. Huffman stated the findings showing reasonable and necessary as presented by the applicant is what the Board should deliberate in making their decision.

Ms. Huffman stated each Oxford House case is unique.

Mr. Kern made a motion to approve the reasonable accommodation request based on the applicant having met the requirements and presented evidence stating there is no burden to the county administration; no changing in zoning and there is a therapeutic benefit to eight (8) disabled residents living together.

Mr. Adams second the motion.

All ayes to the motion submitted to approve the special exception to have eight (8) members in a group home.

BOARD DECISION:

On a motion by Mr. Richard Kern and seconded by Mr. Hank Adams, the board voted 5-0 to grant the special exception request to allow up to eight (8) residents to reside in the group home at 6601 Newbury Way, Wilmington NC.

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

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 6601 Newbury Way is reasonable. This conclusion is based on the following FINDINGS OF FACT:**

    - The will be no negative impact to the Unified Development Ordinance.
    - The home has sufficient area that there will be no overcrowding with two (2) occupants per bedroom.
    - The 19.2% national vacancy rate for Oxford Homes is approximately the same percentage as the increase from six (6) to eight (8) occupants.
    - There has been no evidence presented to show an increased burden on the county or an increased crime rate.

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 6601 Newbury Way is necessary. This conclusion is based on the following FINDINGS OF FACT:**

    - A home with eight (8) occupants provides an economic benefit by dispersing the monthly rent eight (8) ways.
    - Testimony showed that the increased number of occupants will provide additional therapeutic amelioration.
    - Monthly rent will be lower with eight (8) occupants which leads to increased chances for recovery.

MEETING ADJOURNED.

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

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Executive Secretary **Chairman**

Date_____________________

VARIANCE REQUEST
ZONING BOARD OF ADJUSTMENT
September 22, 2020

CASE:	ZBA-950
PETITIONER:	Joseph L. Higgs, Jr., applicant, on behalf of Dr. Babatunde A. Olatidoye, property owner.
REQUEST:	Variance of 15’ from the 75’ Conservation Space Setback requirement per Section 5.7.4.B, Additional Performance Controls, of the New Hanover County Unified Development Ordinance (UDO).
LOCATION:	4619 Serenity Point PID: R07217-007-004-000
ZONING:	R-15, Residential District
ACREAGE:	0.52 Acres

PETITIONER’S REQUEST:

Joseph L. Higgs, Jr., applicant, on behalf of Dr. Babatunde A. Olatidoye, property owner, is requesting a variance of 15’ from the 75’ conservation space setback as required in Section 5.7.4.B, *Additional Performance Controls,* of the UDO in order to construct a single family residence on the site located at 4619 Serenity Point.

BACKGROUND AND ORDINANCE CONSIDERATIONS:

The subject property consists of 0.52 acres within the 4 lot Serenity Point subdivision. The subdivision is located in the southern part of the county off Masonboro Loop Road. Two neighboring lots to the east are adjacent to the Intracoastal Waterway. The remaining two lots in the subdivision are adjacent to the salt marsh along their northern property lines. A salt marsh is one of the designated conservation resources for which the UDO contains additional performance controls related to setbacks of impervious surfaces and retention of runoff.

The applicable UDO language states:

> ***5.7.4. ADDITIONAL PERFORMANCE CONTROLS***
>
> *In addition to the general performance controls specified in Section 5.7.3, Conservation Space General Performance Controls, additional controls shall be required to protect certain conservation resources in certain zoning districts. Table 5.7.4: Additional Performance Controls, lists for each conservation resource and type of district (residential or non-residential and mixed use), the reference number of the group of additional controls that shall be required. Requirements for each group are set forth in subsections A through D, following the table. If the parcel being developed is associated with two or more conservation re-sources with conflicting performance controls, then the most restrictive controls shall apply. However, improvements as specified in Section 5.7.3.D, Improvements, may be permitted within the conservation space setbacks. Additionally, decks may be allowed to encroach into the conservation space setback up to six feet provided they are uncovered and constructed so that the floorboards are spaced to allow water to flow through directly to the ground. The ground below the deck shall be either left undisturbed or planted with ground cover or other vegetation.*