

GREGORY ALAN HEAFNER, PA
ATTORNEY AT LAW
1510 TWISTED OAK DRIVE
CHAPEL HILL, NORTH CAROLINA 27516
PHONE (919) 967-3800
FAX (919) 336-4165

May 24, 2019

Mr. Jerry Kontos
Assistant City Attorney
City of Winston Salem
PO Box 2511
Winston-Salem, NC 27102

RE: *1520 Doune Street, Winston Salem*

Dear Mr. Kontos:

This follows our conversation regarding the City's May 1, 2019 letter from John Floyd to Oxford House, Inc. stating the above referenced property is in violation of the City's Unified Development Ordinance (UDO). A copy of Mr. Floyd's May 1, 2019 letter is enclosed for certainty of reference. This letter shall serve as Oxford House, Inc.'s appeal of this violation pursuant to Section 6-1.4(c)(1)(b) of the UDO. Should the City require anything further for this appeal, then please advise me.

As we discussed the above referenced property is an Oxford House. This letter describes what Oxford House is and is not, and shall serve as request pursuant to the Federal Fair Housing Act for a reasonable accommodation for the City to allow eight men to live at the house.

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. The first Oxford House was started in 1975. Today there are over 2,000 Oxford Houses in the United States, and over 200 in North Carolina. Most of the over 200 Oxford Houses in North Carolina were started with loans pursuant to Anti-Drug Abuse Act through an ongoing contract with the State of North Carolina.

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.

Each Oxford House has a separate tax identification number and bank account. The houses operate autonomously, but must follow the procedures in the Oxford House Manual and adhere to the conditions of its charter. 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, halfway houses, shelters or community care facilities. No treatment, counseling, therapy, or any type of health care services are 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 random testing for alcohol or drug use, nor are there any rules relating to curfews. In an Oxford House, as opposed to a halfway 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. 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.

Oxford House residents are a protected class under the Federal Fair Housing Act, and the American with Disabilities Act. See the Fair Housing Act, 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 Federal Fair Housing Act, 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. Thus, any allegation that Oxford House has violated a local zoning ordinance does not abrogate its rights in claiming discrimination under the Federal Fair Housing Act. The Federal Fair Housing Act prohibits discriminatory land use decisions by municipalities, 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”).

In addition, 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.

Regarding the Oxford House at 1520 Doune Street, Mr. Floyd’s May 1, 2019 letter states the property is in violation of two different provisions of the UDO. First, he classifies the home as a Family Group Home B under the UDO which is prohibited in an RS-9 single family zoning district in which the home is located. Second, Mr. Floyd classifies the home as a Family under the UDO which prohibits locking mechanisms on internal bedroom doors.

The use of the property cannot be classified as to different things at the same time.

As explained above, Oxford House clearly does not fit the definition of a Family Group Home because there is no “support and supervisory personnel”, and Oxford Houses do not provide any “room and board, personal care and rehabilitative services”.

As explained above, Oxford Houses are more akin to a family, notwithstanding the definition of Family limiting the number of residents to four unrelated persons. As such the Oxford House has removed all locks from all bedroom and all internal doors in the home.

Should the City maintain the Oxford House is a Family Group Home B (with eight residents), then Oxford House requests a reasonable accommodation either:

1. To allow the home to remain as is, or;

2. To classify the home as a Family Group Home A, which is allowed as of right in the R-9 district with six residents, and grant an accommodation to allow two additional persons to live at the home.

Should the City maintain the Oxford House is a Family, then Oxford House requests a reasonable accommodation:

1. To allow eight unrelated persons to live at the home.

My client appreciates the City's consideration, and I look forward to hearing from you once the City has had an opportunity to review this matter further. Should you have any questions in the interim, please do not hesitate to contact me.

Sincerely,



Greg Heafner

cc: Paul Molloy, Esq., CEO Oxford House, Inc.



May 1, 2019

Bryce A. Swarr Municipal Building
100 E. First St., Suite 328
P.O. Box 2511
Winston-Salem, NC 27102
City Link 311 (336.727.8000)
Fax: 336.727.2792
www.cityofws.org

Oxford House, Inc
Agent: Corporation Service Company
2626 Glenwood Ave. Suite 550
Raleigh, NC 27608

Dear Sir or Madame:

Please be advised that an inspection of the property at 1520 Doune St., referenced as Tax Lot (s): 304B, of Tax Block: 0666, Zoned RS-9, indicates that a violation of the Unified Development Ordinances exists, specifically, Chapter A, Article II; Chapter B, Articles 2-3, 2-5, 6-1, 9-1, and Table 2.6 in that:

Family Group Home B is prohibited in the RS-9 zoning district

Failure to comply with the definition of "Family" in the RS-9 zoning district is prohibited (to wit: separate double key or other locking mechanisms on internal bedroom doors which have the purpose of preventing access while the bedroom is not occupied).

Failure to correct said violation(s) within five (5) days of receipt of this Notice will result in you being assessed a civil penalty of one hundred dollars (\$100.00) for each day the violation continues after the fifth (5th) day. In addition, the City of Winston-Salem, may also seek injunctive relief to remedy this violation.

In addition to assessment of a civil penalty, Section 9-1 of the Unified Development Ordinances provides that a violation of the Zoning Ordinance constitutes a misdemeanor punishable upon conviction of a fine not to exceed five hundred dollars (\$500.00) or imprisonment of up to thirty (30) days. You may avoid all such penalties by bringing the described property into compliance within five (5) days of receiving this Notice.

Please be advised that any future violations(s) of the Winston-Salem/Forsyth County Unified Development Ordinances as listed above may subject you to Civil Penalties as outlined in Chapter B, Article 9-1 and may be assessed without further notice.

If you have any questions about bringing the property into compliance, please call John Floyd, Zoning Inspector, at (336) 727-2819.



Call 311 or 336-727-8000
citylink@cityofws.org

City Council: Mayor Allen Joines; Vivian H. Burke, Mayor Pro Tempore, Northeast Ward; Denise D. Adams, North Ward; Dan Besse, Southwest Ward; Robert C. Clark, West Ward; John C. Larson, South Ward; Jeff MacIntosh, Northwest Ward; Annette Scippio, East Ward; James Taylor, Jr., Southeast Ward; City Manager: Lee D. Garrity

County Commissioners: David R. Flyler, Chairman; Don Martin, Vice Chair, Fleming El-Amin; Ted Kaplan; Richard V. Linville; Gloria D. Whisenhunt; Everette Witherspoon; County Manager: Dudley Watts, Jr.

As soon as you have brought the property into compliance with the Unified Development Ordinances, you should call our office so that a prompt inspection can be made and further penalties, if any, can be stopped.

John Floyd
Zoning Inspector for the
Director of Inspections

Case #: Z1900282

ZO *JF*

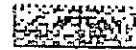
CERTIFIED MAIL: 7017 2620 0000 7779 2021



Winston-Salem/Forsyth County
PLANNING & DEVELOPMENT SERVICES
INSPECTIONS DIVISION
100 E. First Street, Suite 328
Winston-Salem, NC 27101

Oxford House, Inc
Agent: Corporation Service
Company
2626 Glenwood Ave. Suite 550
Raleigh, NC 27608

neopostSM FIRST-CLASS MAIL
05/02/2019 PSRT
US POSTAGE \$000.45⁹



ZIP 27101
041M12250984

CAJLSHP 27608

