UNLISTED PRIMARY USE DETERMINATION:
FHA GROUP HOMES

REQUEST FOR UNLISTED PRIMARY USE DETERMINATION

At the direction of the City Attorney’s Office and the Executive Director of Community Planning Development (“CPD”), the Zoning Administrator initiated this “unlisted use determination” to consider whether to permit an unlisted type of primary residential use, where a dwelling unit is occupied by a larger number of unrelated adults than allowed under the Denver Zoning Code’s current definition of “household”, but where the dwelling unit’s residents are protected under the Federal Fair Housing Act (“FHA”) as a “handicapped” population. The proposed use shall be referred to in this document as a “FHA Group Home.”

This unlisted use determination would allow FHA Group Homes in all neighborhood contexts and Denver Zoning Code zone districts that allow establishment of any new Household Living use other than a Live/Work Dwelling use. The underlying reason for the determination is because the proposed “FHA Group Home” does not clearly fit any defined specific use type under the more general classification of permitted Residential Primary Uses.

DESCRIPTION OF PROPOSED FHA GROUP HOME USE

The proposed unlisted primary FHA Group Home use is described as follows (all capitalized land uses, words, terms, and phrases have the meanings stated in the Denver Zoning Code):

“Residential Occupancy of a Dwelling Unit where:

1. All adult residents (18 years and older) are ‘handicapped’ as defined by the Federal Fair Housing Act (see footnote 1),

1 Under the Federal Fair Housing Act, “handicap" means, with respect to a person: (1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance. 42 U.S.C. § 3602(h). U.S. Courts have uniformly held that persons who have recovered from drug or alcohol addiction are “handicapped” persons protected by the FHA. See Corporation of Episcopal Church in Utah v. West Valley City, 19 F.Supp.2d 1215, 1219 (D. Utah 2000).

2 All zone districts in all neighborhood contexts currently allow establishment of at least one specific type of new “Household Living” primary use (other than a Live/Work Dwelling), except for the I-A, I-B, DIA, O-1, and OS zone districts. The modifier “new” is an important distinction because certain Household Living uses may continue in the I-A and I-B zones if they existed before July 1, 2004; however, new Household Living use in those zone districts (not including Live/Work Dwellings) are prohibited. References to “Household Living” uses in this document shall mean all specific Household Living use types defined in the DZC (e.g., Single-Unit or Two-Unit Dwelling), but not including Live/Work Dwelling.
The proposed FHA Group Home is intended to include, but is not limited to, the Oxford House, Inc. model of sober living homes (also referred to as “recovery residences”), established here in Colorado and similarly across the country. The general counsel for Oxford House, Inc., Steven G. Polin, Esq., submitted a detailed letter on January 21, 2019, describing both the Oxford House concept and how the Oxford House model does not conform with the Denver Zoning Code’s definitions of specific types of Group Living zoning uses (“Polin Letter”). Exhibit A to this determination is a copy of the Polin Letter. The Polin Letter describes the Oxford House model as follows:

“Oxford House provides an opportunity for recovering alcoholics and substance abusers to maintain their sobriety in a supportive living environment that does not require the provision of treatment or counseling services.” Polin Letter, p. 5.

Additional characteristics of the proposed FHA Group Home and its residents, again using the Oxford House as a real-life example, include:

- There is no paid staff, counseling, or therapy involved in the operation of a FHA Group Home. There is no treatment, counseling, therapy, or any type of health care services provided.
- Each resident of a FHA Group Home has open and uninhibited access to use and enjoy the entire home’s interior spaces and grounds, the same as the residents of a dwelling unit containing a Household Living zoning use would typically enjoy.
- Decisions about the home are made democratically by the residents, sometimes guided or facilitated by a house manager who is also a resident, with no intervention or facilitation from an outside third-party. This includes decisions about how the home is run and how, or whether, to fill resident vacancies.
- Residents typically share all household responsibilities, including cleaning and general care of the premises. Residents may or may not eat meals together, and may or may not share food and cooking responsibilities.
- The FHA Group Home may or may not adopt “house rules” governing the conduct of residents. For example, all Oxford House affiliated sober living homes must agree to immediately expel any resident if they use drugs or alcohol, whether inside or outside the home.
The Denver Zoning Code ("DZC"), Section 12.4.6, *Code Interpretations and Determination of Unlisted Uses*, authorizes the Zoning Administrator to allow an unlisted use and impose limitations on such use after review according to the procedures and criteria therein.

According to DZC, Section 12.4.6.1, the Zoning Administrator may determine whether a specific unlisted use, including unlisted primary uses, “may be permitted in one or more zone districts, and what type of use review is required.”

The Zoning Administrator is directed to:

1. Review and evaluate the application in light of this Code, the Comprehensive Plan, established administrative practices and past interpretations, the potential for establishing a precedent with the interpretation, and any other relevant policy and regulatory documents;
2. Review and evaluate the application with consideration of the general rules of interpretation specified in this Section 12.4.6.3.F, as applicable; and
3. Consult with the Manager, City Attorney, other agencies and staff, as necessary.”

In making a use determination, the Zoning Administrator may impose reasonable conditions on such use after consideration of, “at a minimum, the compatibility of the use within the zone districts in which the use may be permitted, the intensity of the use, the amount and configuration of physical space occupied by the use, and the potential for adverse impacts on adjacent properties.” DZC, Section 12.4.6.3.E.2.

As part of the use determination, the Zoning Administrator must also determine which zoning permit use review procedure will apply, such as Informational Notice ("ZPIN"), Special Exception Review ("ZPSE"), or administrative review without notice or hearing ("ZP"). Determining the use review procedure “shall be based on consideration of the zoning procedure(s) applicable to similar land uses or subject matter, and/or the degree to which the zoning procedure may inform mitigation of possible adverse impacts” from the subject use. DZC, Section 12.4.6.3.E.3.

Denver Zoning Code, Section 12.4.6.4, specifies the criteria against which the Zoning Administrator must review all requests for determining whether an unlisted use should be allowed. The Zoning Administrator must find that the request satisfies all the relevant review criteria before permitting the unlisted use. If the Zoning Administrator cannot find the proposed use satisfies the review criteria, then the only regulatory path for permitting such use is to amend the text of the zoning code to specifically list and allow the use.
In sum, an unlisted use may only be permitted through the process established in DZC Section 12.4.6 if the determination is:

“1. Consistent with the intent of this Code; and

2. Consistent with the intent of the subject Neighborhood Context and zone district(s), and with the intent of any specific Code provision(s) at issue.” DZC, Section 12.4.6.4.A.

In addition, the Zoning Administrator must find that the “proposed use has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s)” by assessing all relevant characteristics of the proposed use, including without limitation:

“The type, size, and typical massing of buildings and structures associated with the unlisted use;

Transportation requirements, including the modal split for people and freight, by volume type and characteristics of traffic generation to and from the site;

Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity;

The amount and nature of any external effects generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes;

The type and extent of impacts on adjacent properties created by the proposed use in comparison to impacts from other uses permitted in the zone district.”

DZC, Section 12.4.6.4.B.1.

ANALYSIS FINDINGS REQUIRED TO APPROVE FHA GROUP HOMES AS AN UNLISTED PRIMARY USE

CONSISTENCY WITH DENVER ZONING CODE’S INTENT – DZC §12.4.6.4.A.1

The overarching purpose of the Denver Zoning Code is to “implement Denver’s Comprehensive Plan and guide orderly development of the City that preserves and promotes the public health, safety, prosperity, and welfare of its inhabitants.” DZC, Section 1.1.1, Purpose. To achieve its purpose, the intent of the Denver Zoning Code is to strike a balance between conservation and development, to achieve design excellence in the built environment, and to guide Denver toward a prosperous and sustainable future.

More specifically, the Code’s purpose and intent is enabled by the adoption and administration of zoning standards that, among other things, promote “clear regulations and processes that result in predictable, efficient, and coordinated review processes,” and “diverse and affordable housing options.” DZC, Section 1.1.2., Intent.

In this case, FHA Group Homes will provide an alternative, affordable, and supportive housing option to Denver residents seeking to live in lower- to medium-density residentially-zoned neighborhoods, which
is otherwise not available or allowed under Denver’s current zoning rules governing “Household Living.” Providing a new choice of supportive group living for persons with disabilities and handicaps promotes and furthers the general safety, health, and welfare of the specific Denver residents who will live in such housing. In addition, benefits accrue to the greater Denver community by housing persons who are otherwise challenged by finding supportive housing in residential Denver, and thereby reducing these residents’ risk of institutionalization or relapse.3

This determination provides a clear set of regulations and procedures to guide residents and organizations interested in providing this type of housing option. (§1.1.2.K). Without this determination, prospective residents, administering staff, and interested community members would not know what rules apply or how to proceed to have such a home legally established without risk of violating the zoning code. Finally, as discussed in more detail below, accommodating the proposed FHA Group Home as a permitted “by-right” residential use, treated similarly to large Household Living uses comprised of residents all related to each other, clarifies Denver’s compliance with the Federal Fair Housing Act.

Accordingly, I find that the proposed FHA Group Home use is consistent with the overall purpose and intent of the Denver Zoning Code, including to promote “diverse and affordable housing options” and providing “clear regulations and processes that result in predictable, efficient, and coordinated review processes.”

CONSISTENCY WITH INTENT OF THE SUBJECT NEIGHBORHOOD CONTEXT AND ZONE DISTRICT – DZC §12.4.6.4.A.2

Allowing FHA Group Homes in all zone districts and in all neighborhood contexts that already allow Household Living uses is consistent with the intent of the applicable contexts and districts. All neighborhood contexts and zone districts subject to this determination are intended to facilitate residential or mixed-use development, and already allow primary residential uses in both Household Living and Group Living configurations. Both Group Living and Household Living uses in the subject contexts and zone districts allow dwelling units occupied by 8 or more related or unrelated persons, like the maximum group size proposed for a FHA Group Home. Therefore, the request to allow FHA Group Homes will not introduce an entirely new use or intensity of use into any of the affected neighborhood contexts or zone districts.

An FHA Group Home is essentially a combination of Household Living (a single dwelling unit occupied by a single, non-profit housekeeping unit) and Group Living (occupied by a large group of unrelated adults), where the residents are protected by the Federal Fair Housing Act (FHA) because of their handicap (e.g., Oxford House residents’ status as recovering addicts). Allowing a new version of already permitted Household and Group Living uses is consistent with the intent of the subject contexts and zone districts to facilitate a variety and mix of residential uses.

Accordingly, I find that the proposed FHA Group Home use is consistent with the overall purpose and intent of the subject DZC neighborhood contexts and zone districts, including but not limited to the Residential Zone Districts, where primary Household Living and large Group Living uses are already expressly allowed.

**COMPARISON TO OTHER PRIMARY RESIDENTIAL USES**

As described above, the Zoning Administrator must find that the proposed primary use “has a character and impact that are similar in nature, function, and duration to the other uses permitted in the zone district(s)” by assessing all relevant characteristics of the proposed use. DZC, Section 12.4.6.4.B.1.

For a primary use determination, the Zoning Administrator must first decide which use classification best fits the proposed use. In this case, as described above, the proposed FHA Group Home would fall within the general classification of Primary Residential Uses. The next step is to determine into which use category the proposed FHA Group Home best fits, considering the definitions and salient characteristics of each relevant use category.

Per the Denver Zoning Code, there are only two use categories that fall under the more general classification of Primary Residential Uses: (1) Household Living and (2) Group Living.

**THE HOUSEHOLD LIVING USE CATEGORY**

- **“Household Living”** is defined as “residential occupancy of a ‘dwelling unit’ by a single ‘household’. Tenancy is arranged on a month-to-month or longer basis.” DZC, Section 11.12.2.1.A.
  - A **“Single-Unit Dwelling”** type of Household Living use is defined as “One dwelling unit contained in a single structure.” DZC, Sections 11.12.2.1.C.1.
  - A **“Two-Unit Dwelling”** type of Household Living use is defined as “Two dwelling units contained in one structure located on a single zone lot.” DZC, Sections 11.12.2.1.C.2.
  - A **“Multi-Unit Dwelling”** type of Household Living use is defined as “Three or more dwelling units contained in a single structure.” DZC, Sections 11.12.2.1.C.3.

- **“Dwelling Unit”** is defined as “One or more habitable rooms constituting a unit for permanent occupancy, having but one kitchen together with facilities for sleeping, bathing, and which unit occupies a structure or a portion of a structure.” DZC, Sections 11.12.2.1.B.1. and C.3.

- **A single “Household”** must occupy the dwelling unit in a Household Living use. A “Household” is defined as “A dwelling unit occupied by persons …living as a single non-profit housekeeping unit, including any permitted domestic employees...” DZC, Sections 11.12.2.1.B.2.
  - A single **Household** may be comprised of an unlimited number of marriage- or blood-related persons, but is limited to a maximum of 2 unrelated adults in a Single-Unit Dwelling Unit use, or 4 unrelated adults in a Two-Unit Dwelling or Multi-Unit Dwelling use (plus any number of persons related to any of the unrelated adults). DZC, Sections 11.12.2.1.B.2.a.-d.
THE “GROUP LIVING” USE CATEGORY

• “Group Living” is defined as “residential occupancy of a structure by a group of people that does not meet the definitions of “household living,” “lodging,” or “correctional institution”. Tenancy is arranged on a monthly or longer basis . . . and the size of the group may be larger than a single household, and may include supervisory employees who reside on-site. Often, group living structures have a common eating area for residents. The residents may receive care, training, or treatment, and caregivers may or may not reside at the site. ‘Group living’ includes the term ‘group home”’. DZC, Section 11.12.2.2.

• The only permitted specific types of Group Living uses allowed by the Denver Zoning Code are:
  - Assisted Living Facility
  - Nursing Home or Hospice
  - Residence for Older Adults
  - Rooming and Boarding House
  - Student Housing
  - Residential Care – Transitional Housing
  - Residential Care – Shelter for the Homeless
  - Residential Care – Community Corrections Facility
  - Residential Care – Special Care Home

• Except for the Rooming and Boarding House, the Residence for Older Adults, and the Student Housing Group Living uses, all the other specific types of Group Living uses listed above include the supervised and programmed provision of services and care for residents, including medical, psychological, custodial, and developmental services and care. See DZC, Section 11.12.2.2.

DETERMINATION OF APPLICABLE PRIMARY RESIDENTIAL USE CATEGORY AND SPECIFIC USE TYPE

To determine which Primary Residential Use Category the proposed FHA Group Home is more comparable to in character and impact, Household Living or Group Living, it is critical to delve more deeply into the definition of “Household”. As defined above, in a “Household,” all persons occupying the dwelling unit live as a “single non-profit housekeeping unit.” DZC, Section 11.12.2.1.B.2. “Single non-profit housekeeping unit” is a term of art that is not specifically defined in the Denver Zoning Code, nor in the Denver Building Code. Accordingly, the Zoning Administrator looks to both the usual and customary meaning of the term, and in the case of a term of art, also to the subject industry’s general understanding of the term’s meaning. See DZC, Section 13.2.A.

The modifier “non-profit” in the subject term, per its plain meaning in context, means the dwelling unit’s residents do not operate the household as a commercial venture or operation with the primary purpose to earn a profit for themselves. One example of a FHA Group Home, Oxford House, does not operate to generate taxable income or profit for the residents or for the shareholders of Oxford House, Inc. The residents of the home are an unincorporated group or association of adults who use the home as their primary residence, and do not operate the home as a for-profit business. While Oxford House, Inc., assists groups of adults in active addiction recovery in finding homes to live in, and in providing an
organizational and operational framework for residents to live by and under, Oxford House, Inc. does not operate the homes as a commercial venture with the intent to generate a profit for itself.

Over time, in both zoning and building code practice, the term a “single...housekeeping unit” has come to mean, generally, the equivalent of how society expects a traditional “family household” to use and enjoy a dwelling unit. Traditionally, a “family household”, comprised primarily of persons related by blood or marriage, would use and enjoy a dwelling unit in the following general ways:4

- All household members would have free and open physical access to all rooms within the house, including bathrooms and the kitchen. All residents live in the dwelling unit by choice, and generally all residents share in all aspects of domestic life.
- All household members use the house and the adult members run the household as a unit or group, making decisions on how to use and run the house for the benefit, safety, and enjoyment of the whole household group, and generally to the exclusion of no single household member. There is no third-party or other outside “operator” making decisions about how the home is run or operated, or how long residents may stay, or whom may reside in the home.
- The dwelling unit is typically financially self-supported by those living there (e.g., by paying rent or a mortgage).
- There is no paid outside staff or manager involved in the supervision of residents or operation of the house. There is no expectation that residency includes the provision of professional therapy, counseling services, treatment, or other types of health care services.
- The home is not required to be licensed by the State of Colorado or by the City of Denver.
- Individual adult members of the household are generally free to come and go as they please from the home, and their tenancy is typically not formalized or obligated by a contract with a third-party (other than a lease for rental from the property owner).

The characteristics and description of how residents will live together in a FHA Group Home are consistent with the above characteristics and description of a “single non-profit housekeeping unit.” (See description of a FHA Group Home, pp.2-3 above.) Moreover, the residential structure or dwelling unit occupied by the proposed FHA Group Home is identical to what Household Living residents would occupy. Transportation requirements and demand are the same for the proposed use and Household Living uses because there is no limit on the number of related adults who can make up a “Household.” A property housing a FHA Group Home has access to the same on-street or off-street vehicle access and parking spaces as would a Household Living use in the same location, and the same access to sidewalks and trails for pedestrian travel. The proposed use and a Household Living use of the same size generate similar traffic. Because there is no limit on how large a Household may be (when all adults are related by blood or marriage), there is arguably no difference in the amount and nature of any external effects (such as noise), and the type and extent of impacts on adjacent properties created by the proposed use is comparable to potential impacts from other Household and Group Living residential uses permitted in the same zone districts.

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The proposed FHA Group Home use, however, also falls into the DZC’s definition of “Group Living” because the homes are occupied by a group of unrelated adults in excess of the number of persons allowed in a Household Living primary use (i.e., more than 2 unrelated adults in a single-unit dwelling, and possibly more than 4 unrelated adults in a two-unit or multi-unit dwelling). This raises the question whether the proposed FHA Group Home is more comparable to the Group Living use types allowed by the DZC.

While most of the specific types of Group Living uses allowed under Denver zoning involve the provision of some type of residential care, the use and enjoyment of a dwelling unit by the residents of a FHA Group Home does NOT include the supervised and programmed provision of services and care for residents, such as medical, psychological, custodial, and developmental services. In a FHA Group Home, there is no third-party or other outside operator intervening in the day-to-day use and enjoyment of the subject dwelling unit, and the operation of the FHA Group Home is not subject to state or local licensing schemes.

Accordingly, the proposed FHA Group Home use falls outside the definitions of those specific Group Living primary use types that require the provision of some sort of professional or supervised care (i.e., the “residential care” uses), leaving only the following Group Living primary uses to explore as potential “closest fits” for the proposed FHA Group Home:

1. Student Housing,
2. Residence for Older Adults, or
3. Rooming and Boarding House.

The proposed FHA Group Home does not meet the specific definition of “Student Housing” because its residents are not necessarily all students, and the home is not formally affiliated with any recognized higher-education institution like a college, university, or seminary. While a FHA Group Home could meet the definition of “Residence for Older Adults” if all its residents were limited to adults 55 years or older, and if the total number of residents exceeded the number allowed in a Household Living use, such age restriction is too limiting to include the proposed use because handicapped adults come in all ages.

Compared to the primary “Rooming and Boarding House” use, the proposed FHA Group Home is distinguishable because the former is operated and run by one or some of the residents of the Rooming

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5 “Student Housing” is defined as: A structure used for long-term group residential accommodations for students of a college, university or seminary, and where such structure is related to the college, university or seminary. Common cooking facilities and common gathering rooms for social purposes may also be included. May include a building used for group living quarters for members of a fraternity or sorority that has been officially recognized by the college, university or seminary. DZC, Section 11.12.2.2.A.8.

6 “Residence for Older Adults” is defined as: “A single unit dwelling or multi-unit dwelling housing a number of unrelated mobile older adults (individuals fifty-five (55) or more years of age) in excess of the number of unrelated persons permitted per dwelling unit, receiving fewer services than a special care home or assisted living facility.” DZC, Section 11.12.2.2.A.8.

7 “Rooming and Boarding House” is defined as: “A residential building containing one or more guest rooms that are used, rented, or hired out, with or without meals, for permanent occupancy. A Rooming and Boarding House makes no provision for cooking in any of the guest rooms occupied by paying guests.” DZC, Section 11.12.2.2.A.6.
and Boarding House (i.e., the “proprietor(s)”)

while the other residents are considered “guests” who individually contract and pay to occupy (rent) a specific room within the dwelling unit, and may or may not have use and enjoyment of all of the rooms/spaces within the dwelling unit. For example, the proprietor may place certain rooms/areas “off limits” to roomers/boarders, such as kitchens, dining rooms, living rooms, laundry facilities, outdoor yards, garages, and certain bedrooms and bathrooms. Moreover, the proprietor of the Rooming and Boarding House is solely and individually responsible for the financial security of the dwelling unit (e.g., paying the mortgage); the roomers/boarders have no stake or say in the financial security of the dwelling unit – only in paying the agreed-upon rent for an individual “guest room”.

In comparison, all persons in a proposed FHA Group Home are equal in status as primary residents of the home (no third-party or other outside party operates the home or acts as “proprietor”), and all residents use and enjoy the whole of the home (unless otherwise agreed by all residents, no parts of the home are “off limits” to other residents, including the kitchen, bathrooms, outside yards, and laundry areas). In the proposed FHA Group Home, non-owner residents typically pay rent direct to the owner (or owner’s agent), and not under individual contracts with a third-party. Residents of a FHA Group Home live together purposefully as a Household, sharing in all aspects of domestic life and none of the residents are treated – formally or informally – as “guests.”

In conclusion, based on the analysis above, I find that the proposed FHA Group Home primary residential use:

1. Fits into the general definition of the “Group Living” primary residential use category because of the large number of unrelated adults living together in excess of the number allowed in a Household Living dwelling unit use;
2. Does not fall within any of the definitions of the specific use types that comprise the Group Living use category allowed by the Denver Zoning Code;
3. Is most comparable to and matches the defining characteristics of a “Household” in that its residents live as a “single non-profit housekeeping unit;” and
4. Will not result in external effects and will not cause adverse impacts on adjacent properties substantially different in kind or degree from other permitted Household and Group Living residential uses allowed in the same zone districts.

Because the proposed FHA Group Home use falls into an identified “gap” between the zoning code’s Group Living and Household Living uses, this use determination will allow it as a specific type of Group Living use, but defined and limited by reasonable conditions to ensure it is most comparable in character and impact with Household Living uses.

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8 Technically, per the definition of “Rooming and Boarding House”, it is also feasible that the proprietor(s) of such house does not reside in the home as their primary residence, but runs it as a business while residing elsewhere.
Based on the above analysis and according to the review criteria for unlisted use determinations in DZC, Section 12.4.6, I find that the proposed FHA Group Home use:

1. Is consistent with the intent of the Denver Zoning Code;
2. Is consistent with the intent of the affected neighborhood contexts and the zone districts; and
3. Is substantially similar in character and impact to other permitted primary residential uses in the same zone districts.

I also find that the type and extent of impacts on adjacent properties by a proposed FHA Group Home use are potentially no different from, and most likely less than other permitted primary uses in the same zone districts.

As part of the unlisted use determination, the Zoning Administrator must also determine the applicable zoning permit use review procedure to apply to the unlisted use. I determine that a Zoning Permit (“ZP”) review will be required for all requests to establish a FHA Group Home in the zone districts specified below, according to the review process stated in DZC, Section 12.4.1, Zoning Permit Review.

In conclusion, my final decision is to ALLOW the proposed FHA Group Home use as an “unlisted primary use,” according to the following USE DEFINITION, APPLICABILITY LIMITS, APPLICABLE ZONING REVIEW PROCEDURE, and USE & PERMIT LIMITATIONS:

1. DEFINITION OF UNLISTED PRIMARY USE: The use at issue shall be referred to as “FHA Group Home.” FHA Group Home shall be classified and defined as follows:
   a. A FHA Group Home is classified as a primary residential use, and categorized as a specific type of Group Living use.
   b. A FHA Group Home is defined as:

      “Residential Occupancy of a Dwelling Unit where:

      (1) All adult residents are “handicapped” as defined by the Federal Fair Housing Act,
      (2) The residents live in the dwelling unit as a single non-profit housekeeping unit,
      (3) The number of adult residents exceeds the number of unrelated adults otherwise permitted to comprise a Household in a dwelling unit,
      (4) Length of residents’ tenancy is longer than 30 days and is otherwise not constrained except by individual choice or by resident consensus (e.g., immediate expulsion for using drugs or alcohol), and
      (5) The adult residents receive fewer services than in a Special Care Home, Transitional Housing, or Assisted Living Facility.

All capitalized words, terms, phrases, and zoning land uses referenced above shall have the meanings stated in the Denver Zoning Code.
2. **APPLICABILITY OF UNLISTED USE DETERMINATION:** This use determination and final decision is applicable in all zone districts in all neighborhood contexts that allow establishment of a new primary "Household Living" specific use type, but not including a Live/Work Dwelling use. Accordingly, this use determination allows a FHA Group Home in all zone districts except in the I-A, I-B, DIA, O-1, and OS zone districts.

3. **APPLICABLE ZONING USE REVIEW PROCEDURE:** A zoning permit ("ZP") review will be required for all requests to establish a new FHA Group Home, according to the procedure and review criteria stated in DZC, Section 12.4.1. A pre-application meeting is voluntary per DZC, Section 12.3.2.

4. **USE & PERMIT LIMITATIONS:** Applications for a zoning permit for a FHA Group Home shall provide information and evidence showing compliance with all the following limitations:
   a. The proposed FHA Group Home meets all the elements of the definition of the use stated in paragraph 1 above.
   b. The number of unrelated adults residing in the FHA Group Home shall not exceed 8 persons; provided, however, for every additional 200 square feet of gross floor area in the subject residential structure above 1600 square feet, the number of unrelated adult residents may be increased by 1 person. (For example, in a one-unit dwelling containing 2,200 square feet of gross floor area, the maximum number of FHA Group Home residents is 8 + 3 or 11 persons.)
   c. An FHA Group Home may also be occupied by any persons bearing to any of the unrelated adult residents the relationship of parent, grandparent, child, sibling, step-child, stepsibling, step-parent, grandchild, parent-in-law, sibling-in-law, child-in-law, parent-sibling (uncle or aunt), or nibling (nephew or niece).
   d. Minimum off-street parking is required in an amount equal to that required for establishment of a "Residence for Older Adults", where "unit" shall mean bedroom. For example, a "0.75/unit" parking requirement applied to a 4-bedroom dwelling unit = (0.75 * 4) = 3 off-street parking spaces required (minimum).

5. A FHA Group Home permitted in compliance with the Denver Zoning Code, per this use determination, is subject to compliance with all other applicable City laws and regulations, including without limitation, the Denver Building and Fire Codes.
APPEAL

This final use determination may be appealed to the Denver Zoning Board of Adjustments within 15 days from the date of this written decision, according to DZC, Section 12.4.8, Appeal of Administrative Decision.

Approved by:

Tina Axelrad, Zoning Administrator

Date: September 30, 2019

Attachments:

Exhibit A:

January 21, 2019

SENT VIA ELECTRONIC MEANS

Tina Axelrad  
Zoning Administrator  
Community Planning and Development  
City and County of Denver  
201 W. Colfax Ave., Dept 205  
Denver, CO 80202

Re: Oxford House  
6662 E Dickenson, 3200 E Mexico & 736 S Canosa

Dear Ms. Axelrad:

I am General Counsel for Oxford House, Inc. I am responding to the notices given to the owners of the aforementioned properties concerning the notices of violations issued concerning the number of unrelated, disabled persons residing in a single family zone.

According to the notices, the City of Denver has enacted legislation that is aimed at regulating groups of unrelated, disabled persons residing in single family dwellings in residential zones. The City is requiring that each of the Oxford Houses submit an application based on the classification of “Residential Care Use” which is a subcategory of “Group Living.”

I have reviewed the application. I have also reviewed the City’s zoning code’s “Group Living” classifications. Finally, I have reviewed the City’s “Group Living Advisory Committee.” Through the Committee, the City has recognized that there are apparent problems with the use of the Group Living classifications and restrictions of the application of the “household” classification, which based on my review of the City’s zoning code, is the City’s way of defining family. The City has posted a summary of the progress of the Committee on its website, and it states:

Since October, the Group Living Advisory Committee has been exploring possible changes to the zoning code aimed at addressing the problem statements developed in the first phase of the Group Living project. Early progress includes:

A recommendation to update the code’s definition of “household” to stop differentiating between related and unrelated adults and incorporate foster and guardian relationships in any list of permitted individuals.
A recommendation to update the current “Shelter for the Homeless” section of the code to remove outdated terminology and encourage smaller shelters where people already live and use transit and services, as an alternative to large facilities to which guests must be transported every evening.

In 2019, the committee and topic-specific subgroups will continue to modernize definitions, update regulations on where residential care facilities and other group living uses are permitted and ensure that use limitations clearly address impacts on neighborhoods while providing for a full continuum of housing options for Denver’s residents.

The City’s website has also posted the following concerning the restrictive interpretation of “household:”

Denver is seeing increasing demand for non-traditional housing. With the evolving needs of our residents in mind, along with recent changes to other housing regulations, city planners will work with an advisory committee to evaluate the Denver Zoning Code’s rules for “group living.” This evaluation will include a review of land uses and definitions for: households, community corrections facilities, shelters for the homeless, residential care homes, new uses like tiny home villages, and more. Based on this evaluation, planners will recommend updates to the zoning code for some or all of these housing types.

Based on the foregoing, each of the aforementioned Oxford Houses will not submit a “Residential Care Use” application. This decision is based on the problems identified by the Committee and the acknowledgment that its “group living” classification needs to be reviewed and modernized. Oxford House does seek to be in compliance of the City’s zoning laws, and in order to comply is requesting as a reasonable accommodation pursuant to the Federal Fair Housing Act, that the City treat the residents of each of the aforementioned Oxford Houses as a “household” and waive the limitation imposed on the number of unrelated persons that can be deemed a household.

The City’s zoning code defines “Household” as follows:

**Household:** A dwelling unit occupied by persons in any one of the following four categories living as a single non-profit housekeeping unit:

1. A single person plus, if applicable, any number of persons bearing to each other the relationship of: mother, father, grandmother, grandfather, son, daughter, brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew or niece; or
2. A husband and wife plus, if applicable, any number of persons bearing to either the relationship of: mother, father, grandmother, grandfather, son, daughter, brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew or niece; or

3. In a single unit dwelling use only: Two unrelated adults over the age of 18 years plus, if applicable, any persons bearing to either of the two unrelated adults the relationship of mother, father, grandmother, grandfather, son, daughter, brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew or niece; or

4. In a two-unit dwelling use or multi-unit dwelling use only: Four unrelated adults over the age of 18 years plus, if applicable, any persons bearing to either of the four unrelated adults the relationship of mother, father, grandmother, grandfather, son, daughter, brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew or niece.

Each of the four categories is premised on a relationship based on blood or marriage.

Residential Care Use

a. Definition

A specific type of group living use where the residents are provided supervised medical, psychological, or developmental care or treatment on a daily, regular basis

b. Types of Residential Care Uses

"Residential care use" is limited to the following specific types of group living uses:

i. Transitional housing: A residential structure housing a number of unrelated persons in excess of the number of unrelated persons allowed per dwelling unit in the Zone District, where such persons are provided with individual bedrooms, where the primary service offered at the facility is related to transitioning into permanent housing and all services provided are not sufficient
to constitute a “special care home” and where occupancy of such housing is primarily made available for more than 30 days and less than 2 years. Transitional housing shall be considered a Small Residential Care use.

ii. Shelter for the homeless: See definition of “shelter for the homeless” in subsection 11.12.2.2.A.6.


iv. Special care home: A special care home is a residential structure housing a number of unrelated persons in excess of the number of unrelated persons allowed per dwelling unit in the Zone District in which the dwelling unit is located, where such persons are living as a single housekeeping unit and are receiving more than 12 hours per day of on-premises treatment, supervision, custodial care or special care due to physical condition or illness, mental condition or illness, or behavioral or disciplinary problems. A special care home, depending on its size, shall be considered a large or Small Residential Care use.

c. Exclusions

Residential care uses shall NOT include any of the following types of group living or institutional uses:

i. Assisted living facility
ii. Foster family care
iii. Nursing home or hospice
iv. Residence for older adults
v. Rooming and/or boarding house.
vi. A residential structure containing residents whose principal form of support is financial assistance.

vii. Safe house: A residential structure that provides residents a place of refuge from abusive people or dangerous social situations. Such structure does not provide refuge for fugitives from justice. Such use may be allowed as a "multiunit dwelling" use.

d. Residential Care Use, Large

A Residential Care use that is the primary residence of 9 or more persons. “Large
Residential Care use" shall include a shelter for the homeless of any size, or a community corrections facility of any size.

e. Residential Care Use, Small

A residential structure that is the primary residence of 8 or fewer persons, but housing a number of unrelated persons in excess of the number of unrelated persons allowed per dwelling unit in the Zone District or transitional housing of any size. This use shall not include a community corrections facility, shelter for the homeless, rooming and/or boarding house, nursing home, safe house, or large special care home.

Based on the admitted uncertainty by the City of the status of its zoning code, Oxford House believes the most prudent manner in which to proceed is for the City to grant its reasonable accommodation request. As demonstrated below, the Oxford House model does not conform to any of the “Residential Care Use” definitions. For the reasons stated below, it is requested that the City treat the residents of Oxford House as a household, and the use of the dwelling as a single family use.

I. THE OXFORD HOUSE CONCEPT

Oxford Houses provide an opportunity for recovering alcoholics and substances abusers to maintain their sobriety in a supportive living environment that does not require the provision of treatment or counseling services.

Oxford House-Canosa, Monaco and Mexico each provides safe and sober housing for persons in recovery from alcoholism and substance abuse. Oxford House-Canosa will accommodate up to nine (9) men. Oxford House-Monaco will accommodate a maximum of eight (8) men. Oxford House-Mexico will accommodate a maximum of 11 men. In this regard, Oxford House, Inc., the national organization, assists in establishing housing for recovering addicts and alcoholics that is financially self-supported, democratically run, and immediately expels anyone who uses drugs or alcohol, inside or outside the house. There is no paid staff, counseling, therapy, or house manager involved in the operation of the house. In Oxford House, the group behaves like any family and makes group decisions based on democratic procedures. Oxford House is nothing more than a single-family residence.

Oxford House residents are encouraged to rent single-family dwellings located in good neighborhoods. This means Oxford Houses are usually located in areas zoned for single-family dwellings.

Oxford Houses are not substance abuse centers, halfway houses, shelters nor community care facilities. There is no treatment, counseling, therapy, or any type of health care service provided.
Oxford Houses are not licensed by the State of Colorado, nor are they required to be licensed. In an Oxford House, as opposed to a halfway house, residents live there by choice. 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 an Oxford House are made democratically. An Oxford House manages its own finances and has its own bank account. Oxford Houses are not halfway houses, nor are they a substitute for halfway houses.

Oxford Houses are neither rooming nor boarding houses. The residents of Oxford House rent the entire premises rather than a single room. All residents have access to the entire house and all of the household facilities, and live in the house as any other group of unrelated persons functioning as a single housekeeping unit. The residents of the house share all household responsibilities, including financial responsibility for the rent and utilities, which they pay out of a single household checking account. They also share in the cooking, shopping, cleaning and general care of the premises. The residents live together purposefully to create a "family" atmosphere, where the residents share all aspects of domestic life. There are no individual locks on the doors of the bedrooms. There is no staff, paid or otherwise, living in the house or overseeing the house, and no treatment or professional services provided at the premises. Oxford House, Inc. plays no role, whatsoever, in how the house functions.

Physically, the house is no different from any other single-family home in the neighborhood. It is simply a single-family dwelling that is being rented by a group of individuals. The lease is between the landlord and the residents of Oxford House-Canosa, Oxford House-México and Oxford House-Monaco. Each Oxford House is an unincorporated association composed of the residents who reside there. Thus, there is a direct landlord-tenant relationship between the actual residents of the premises and the landlord. As the lease clearly indicates, there are no other persons or organizations, other than the residents who are living in the house, responsible for paying the rent or utilities for this rental property.

More important, there is no third party making any decisions regarding the way these houses operate, who resides in the house or how the houses are to be run. On the contrary, the residents themselves make all of these decisions. Moreover, there is no owner or operator at the premises who makes decisions regarding who lives in the premises and how the premises would function. Further, all of the household expenses, including rent, utilities and basic household supplies, are paid for only by the residents. The payments are all equal, regardless of the size of the room, since each resident is leasing the entire house, not just a room. The landlord is paid one monthly check for rent, which reflects the rent for the entire house. Finally, if there is a vacancy, the residents decide whether to fill it, and if so, the identity of the new occupant.

Not only is there no "operator" making decisions regarding the running of the premises, but rather the owner has absolutely nothing to do with the identity of the new individuals residing at the house, or how long the individuals stay at the house (other than simply establishing the lease for the
entire property). All of these decisions are made exclusively by the tenants who are renting the premises.

For the same reasons asserted, we submit that the use of each of the aforementioned Oxford House, (which is based on the same model of self-run, self-supported shared living as an intentional "family") are likewise not a transitional housing, residential care facility, special needs home, nor a rooming or boarding house, group home or halfway-house under any applicable definition. See Oxford House - Evergreen v. City of Plainfield, 769 F. Supp. 1329 (D. N.J. 1991)(Oxford House is not a halfway house. Residents share more than "household responsibilities" and meals. The residents make all house decisions in a democratic fashion. But even more important, the support they lend each other is therapeutic, in the same manner as that of a well-functioning family. The relationship is not analogous to that between residents of a boarding house).

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, i.e. house chores and house finances. Each resident, however, is responsible for her own food and cooking. Third is the quality of the relationship among the residents. The emotional and mutual support and bonding given Oxford House residents in support of their recovery from drug addiction and alcoholism is the equivalent of the type of love and support received in a traditional family. Finally, the living arrangement is not

1 Also, See Oxford House, Inc., et al. v. Township of Cherry Hill, 799 F. Supp. 450, 452 (D.N.J. 1992), wherein the Court stated:

Oxford Houses are not health care facilities, rehabilitation centers, or supervised halfway houses. They are simply residential dwellings rented by a group of individuals who are recovering from alcoholism and drug addiction . . . No professional treatment, therapy, or paid staff is provided. Unlike a boarding house, where a proprietor is responsible to run and operate the premises, at Oxford House, the residents are responsible for their own food and care as well as for running the home. Because the house must be self-supporting, each of the residents needs a source of income to pay his or her fair share of the expenses.

See, United States v. Borough of Audubon, 797 F. Supp 353, aff'd 968 F.2d 14 (3d Cir. 1992)(Oxford Houses are not health care facilities, rehabilitation centers, or supervised halfway houses. Unlike those facilities, no professional treatment or paid staff are provided. Instead, such houses are simply residential dwellings that are rented by a group of individuals who are recovering from alcoholism or drug addiction.). The Court also held that Oxford House residents are handicapped under the Federal Fair Housing Act, and that the residents drug and/or alcohol addictions did substantially impair one or more of their major life activities.
based upon a profit motive. It has been found that individuals who decide to live in programs such as that offered by each of the aforementioned Oxford Houses are allowed to engage in the process of recovery from alcoholism and substance abuse at their own pace, which enhances their ability to advance and succeed in the recovery process. By living with other persons who are in recovery, the residents should never have to face an alcoholic's or addict's deadliest enemy: loneliness and isolation. It is necessary that each Oxford House be able to have a maximum of between 8 and 11 residents, in order for the residents to ameliorate the effects of the diseases of alcohol and drug addiction. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1227 (11th Cir. Fla. 2008).

In addition, residents live in their respective Oxford Houses by choice. The choice is usually motivated by the individual's desire not to relapse into drug and/or alcohol use again after that individual has "bottomed out," i.e., lost jobs, home or family. It is also motivated by the desire that one must change their lifestyle, the manner in which they conduct their affairs, and the need to become a responsible, productive member of society. The final factor in determining the Oxford House residents are the "functional equivalent" of a family is the fact that there is no limit as to how long a resident can stay in their respective Oxford Houses. Conceivably, an individual can stay in their Oxford House for a lifetime if he/she does not relapse. The Surgeon General of the United States has recognized the Oxford House model as a leading example of "Recovery Housing." *Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health.* 2016.; https://addiction.surgeongeneral.gov/.

The residents of Oxford House are considered "handicapped" under the 1988 amendments to the Federal Fair Housing Act (FFHA). See 42 U.S.C. 3600 et seq. Recovering addicts and alcoholics are specifically included within the definition of "handicapped individual." See, 42 U.S.C. 3602(h) and 24 C.F.R. 100.201(a)(2). See, also, *City of Edmonds v. Oxford House, Inc*, 514 U.S. 725 (1995). The Fair Housing Act was amended to include handicapped individuals within its parameters, and to guarantee the ability of these individuals to live in the residence of their choice within the community. *Tsombanidis v. City of West Haven*, 180 F. Supp. 2d 262, 282 (D. Conn. 2001), aff'd in part, rev'd in part, 352 F.3d 565 (2d Cir. 2003); *Oxford House - Evergreen v. City of Plainfield, supra* (noting that residents of an Oxford House in Plainfield, New Jersey "are part of a nationally recognized program which, through peer pressure and strict conditions of abstinence, successfully maintains freedom from addiction and improves the lives and opportunities of its participants."); *Oxford House, Inc. v. Township of Cherry Hill*, 799 F. Supp. 450, 454 (D.N.J. 1992)("There is a shortage of adequate housing in New Jersey for recovering substance abusers and alcoholics. Interfering with the use of the aforementioned residences as Oxford Houses and forcing the residents to leave would be extremely detrimental to their recovery and would substantially increase the likelihood of relapse"). As recovering alcoholics and addicts who cannot presently live independently or with their natural families, Oxford House residents are individuals with handicaps within the meaning of the Fair Housing Act. *City of Plainfield*, at 1342.
II. REASONABLE ACCOMMODATION REQUEST TO BE TREATED AS A FAMILY

Under the Fair Housing Act, it is a discriminatory housing practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B); Groome Resources, Ltd. v. Parish of Jefferson, 234 F.3d 192 (5th Cir. 2000); Smith & Lee Assocs. v. City of Taylor, 102 F.3d 781, 790 (6th Cir. 1996); Wisconsin Correctional Serv. v. City of Milwaukee, 173 F. Supp. 2d 842 (E.D. Wisc. 2001); Oconomowoc Residential Programs, Inc. v. City of Milwaukee, 300 F.3d 775, 787 (7th Cir. 2002); ReMed Recovery Care Centers v. Township of Willistown, 36 F. Supp. 2d 676, 683 (E.D. Pa. 1999); Tsombanidis v. City of W. Haven, 180 F. Supp. 2d 262, 283, rev'd other grounds, 352 F.3d 565 (2nd Cir. 2003).

Under Fair Housing Amendments Act of 1988, the City may not act to prevent those with handicaps from living in recovery housing within its boundaries. A reasonable accommodation in this instance would be for the City to accept the residents of Oxford House as the functional equivalent of a family and waive the limitation on the number of unrelated persons who may reside together under the City's zoning code, and apply all code provisions in the same manner as it applies to single family dwellings for single family purposes. In other words, Oxford House is seeking to be treated as a family under the express terms of the City's definition of family. See, Oxford House, Inc. v. City of Baton Rouge, 932 F. Supp. 2d 683, 693 (M.D. La. 2013) (finding that the proposed use of the Oxford Houses is similar to the uses already permitted by the zoning, and that it is reasonable to treat the uses as a family).

The reasonable accommodation requirement of the Fair Housing Act draws no distinction between "rules," "policies," and "practices" that are embodied in zoning ordinances and those that emanate from other sources. All are subject to the "reasonable accommodation" requirement. Thus, when a municipality refuses to make a reasonable accommodation in its zoning "rules," "policies," or "practices," and such an accommodation may be necessary to afford handicapped persons an equal opportunity to use and enjoy a dwelling, it violates the reasonable accommodation provision of the act, 42 U.S.C. 3604(f)(3)(B). See United States v. Village of Marshall, 787 F. Supp. 872, 877 (W.D. Wis. 1991) (Congress in enacting the Fair Housing Amendments Act "anticipated that there were rules and regulations encompassing zoning regulations and governmental decisions about land use")

The Courts have interpreted reasonable accommodation in cases involving zoning ordinances to mean that a municipality must change, waive or modify a rule that is generally applicable to everyone so as to make its burden less onerous on the person with disabilities. Township of Cherry Hill at 465, n. 25. See, Casa Marie, Inc. v. Superior Court of Puerto Rico for the District of Arecibo, 752 F. Supp. 1152, 1169 (D.P.R.1990), rev'd on other grounds, 988 F.2d 252 (1st Cir. 1993) (noting that a court hearing a reasonable accommodation claim under the Fair Housing Act may "adjudge whether compliance with the zoning ordinances may be 'waived'"); Horizon House Development Services v. Township of Upper Southampton, 804 F. Supp. 683, 699-700 (E.D. Pa. 1992), aff'd mem.,
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995 F.2d 217 (3d Cir. 1993) ("affirmative steps are required to change rules or practices if they are necessary to allow a person with a disability to live in a community"). A request for a reasonable accommodation may even encompass as request for non enforcement of a zoning ordinance. Proviso Association of Retarded Citizens v. Village of Westchester, 914 F. Supp 1555, 1561-62 (N. D. Ill. 1996); Tsombanidis, supra.

One of the purposes of the reasonable accommodations provision is to address individual needs and respond to individual circumstances. In this regard, courts have held that municipalities that municipalities must change, waive, or make exception to their zoning rules to afford people with disabilities the same access to housing as those who are without disabilities. Town of Babylon, 819 F. Supp. at 1192; Horizon House, 804 F. Supp. at 699; Township of Cherry Hill 799 F. Supp. at 461-63; Village of Marshall, 787 F. Supp at 878; Commonwealth of Puerto Rico, 764 F. Supp. at 224; Tsombanidis, supra.

The Fair Housing Act places an affirmative duty on the municipality to accommodate the needs of persons with disabilities. The Act demands that local governments such as the City of Denver change the manner in which its zoning ordinances are applied to afford the disabled the same opportunity to housing as those who are not disabled. City of Plainfield, 769 F. Supp. at 1344 (accommodation reasonable where it "would not cause undue financial burden to the City").

Permitting Oxford House to exist as a Household would not significantly compromise the policies reflected in any of the land use ordinances that the City would apply or enforce. Nor is there any significant evidence that such an accommodation would significantly compromise the City's legitimate interests in the protecting the residential character of the surrounding neighborhood. The City of Denver is not being asked to build housing; rather, it is being requested to remove an obstacle to housing. See, Town of Babylon, supra; Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 936 (2d Cir), aff'd 488 U.S. 15 (1988).

If need be, Oxford House can demonstrate that the proposed accommodation is reasonable, for the Fair Housing Act requires a showing that the accommodation "may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B). See, Parish of Jefferson v. Allied Health Care, Inc., 1992 U.S. Dist. Lexitis 9124 (E.D. La.)(The proper inquiry on a request for a reasonable accommodation is the number of unrelated persons who can reside together is to reasonableness of the request.) If the City classifies Oxford House as something other than a single family use, it is actually enforcing its definition of family in its zoning ordinance by utilizing more stringent requirements on groups of unrelated disabled individuals wishing to live together in a rental property than on individuals related by blood or marriage. Parish of Jefferson, supra (zoning ordinance limiting the number of unrelated persons residing together as a family to four found to be in violation of the Fair Housing Act since it has the effect of discriminating against groups of handicapped persons by unnecessarily restricting their ability to live in residences of their choice in the community.) Tsombanidis v. City of West Haven, 180 F. Supp. 2d
262 (D.Conn. 2003) (stringent enforcement of the City’s three person rule has a greater adverse impact on disabled persons than non-disabled persons). *Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683 at 691 (request to be treated as a family is reasonable.)

Reasonable accommodation requests are necessary to achieve an opportunity for the disabled residents of Oxford House to live in a residential area of the City of Denver. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1226 (11th Cir. 2008) (Section 3604(f)(3)(B)(requires only accommodations necessary to ameliorate the effect of the plaintiff’s disability so that the resident may compete equally with the non-disabled in the housing market.) Absent the group-home setting, the individual residents of the plaintiffs’ programs would not be able to live in a supportive environment in a residential area, let alone a single-family residential area. *See also Oconomowoc Residential Prog.,* 300 F.3d at 784 (“When a zoning authority refuses to reasonably accommodate these small group living facilities, it denies disabled persons an equal opportunity to live in the community of their choice.”); *Sharpvisions, Inc. v. Borough of Plum*, 475 F. Supp. 2d 514, 524-25 (W.D. Pa. 2007) (holding that request for accommodation to definition of “family” was necessary for a resident “to enjoy the housing of his or her choice”). *Groome Resources, Ltd. supra; Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683 at 693 (residency in Oxford House has been shown to ameliorate the effects of alcoholism and drug addiction). *See also, Oxford House, Inc. v. Browning*, 266 F. Supp. 3d 896, 915 (M.D. La. 2017) (The residents of Oxford House comport themselves like a family and does not require additional fire safety requirements).

The Oxford House residents are individuals who are handicapped by alcoholism or drug abuse. It can demonstrate that the ability of recovering alcoholics and drug addicts to live in a supportive drug free environment in a quiet residential area is critical to their recovery as enhances the recovery process.2

2Other programs similar to Oxford House have successfully demonstrated the need of recovering individuals to reside in quiet residential areas in order to enhance the recovery process. *See Borough of Audubon*, 797 F. Supp at 360 (“Based on the testimony, we find that the OH-Vasssar residents' addictions substantially limit their ability to live independently and to live with their families. Accordingly, we find that the residents are "handicapped" under the Act, and are entitled thereby to the projections of the Act. We do not think that the list of major life activities set forth in the regulation was meant to be all-inclusive. Even if it were, the residents would still satisfy the definition because their inability to live independently constitutes a substantial limitation on their ability to ‘care for themselves.’”); *City of Plainfield*, 769 F. Supp at 1339-40. (“In addition to losing their residence, which may in itself be an irreparable injury, plaintiffs would also lose the benefit of their therapeutic and supportive living environment, and may relapse... For a non-handicapped individual, the disintegration of a family unit is traumatic for recovering alcoholics and drug addicts, it may be devastating.”)
The residents of Oxford House are individuals who are handicapped by alcoholism or drug abuse and who cannot live independently without the risk of relapse. They cannot live with their families, friends or in the neighborhoods that contributed to their use of drugs and alcohol. Oxford House can demonstrate that the ability of recovering alcoholics and drug addicts to live in a supportive drug free environment in a quiet residential area is critical to their recovery since they are not able to live independently at this time without the fear of relapse. These individuals are more likely to need a living arrangement such as provided by Oxford House, wherein groups of unrelated individuals reside together in a residential neighborhood for mutual support during the recovery process so as to prevent the possibility of resumption of the use of drugs and/or alcohol. This type of living arrangement provides the tools to the residents to enable them at a future time to be a sober responsible, productive member of society. *Township of Cherry Hill*, 799 F. Supp. at 450. "When that home is also a therapeutic environment critical to maintaining continued recovery from alcohol or drug addiction, eviction is life threatening. Depriving such individuals of housing, or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery." *See City of Plainfield*, 769 F. Supp. at 1345.

Each resident of Oxford House is a recovering alcoholic and/or substance abuser. The Oxford House residents' status as persons in recovery from alcoholism and/or substance abuse limits one or more major life activities as that term is defined under both the Fair Housing Act, 42 U.S.C. § 3602(h), and the Americans with Disabilities Act, 42 U.S.C. § 12102(2). Major life activities have been limited because they are unable to live independently without the fear of relapse; that they need to live in a structured sober living environment; their inability to reside with their families or significant others leads to the risk of relapse; their lack of knowledge and ability to live without the use of drugs and alcohol; the lack of a stable living environment; the possibility of becoming homeless or incarcerated; and, the need to be surrounded with other women who are learning to live productively without the use of drugs or alcohol. *See, Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683, 689 (M.D. La. 2013); *Reg’l Econ. Cmty. Action Program v. City of Middletown*, 294 F.3d 35, 47-48 (2d Cir. 2002); *McKivitz v. Twp. of Stowe*, 769 F. Supp. 2d 803, 821-822 (W.D. Pa. 2010).
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I look forward to discussing how our mutual interests can be addressed. However, please be advised that Oxford House, Inc. is not adverse to seeking a determination in federal court that the City’s Group Living classifications are discriminatory and have a discriminatory impact of groups of disabled persons.

Sincerely yours,

Steven G. Polin

cc: Oxford House, Inc.  
Jim Merrion