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THE MILE HIGH CITY

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# 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.<sup>1</sup> 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.<sup>2</sup> 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),

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<sup>1</sup>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).

<sup>2</sup>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.

2. All residents live in the dwelling unit as a single, non-profit housekeeping unit,
3. The number of adult residents per dwelling unit exceeds the number of unrelated adults otherwise permitted to live as a "Household" by the Denver Zoning Code,
4. Length of residents' tenancy is longer than 30 days and is not otherwise constrained except by individual choice or by resident consensus (e.g., immediate expulsion for using illegal drugs or alcohol), and
5. The adult residents receive fewer services than they would in the following types of 'Group Living' use types: Special Care Home, Transitional Housing, or Assisted Living Facility."

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.

## APPLICABLE DENVER ZONING RULES & REVIEW CRITERIA FOR DETERMINING AN UNLISTED PRIMARY USE

### GENERAL AUTHORITY TO DETERMINE UNLISTED USES - DZC, SECTION 12.4.6

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."

DZC, Section 12.4.6.3.D.

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.

### REVIEW CRITERIA FOR DETERMINING UNLISTED PRIMARY USES

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.<sup>3</sup>

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.

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<sup>3</sup> Douglas L. Polcin, Ed.D., Diane Henderson, B.A., Karen Trocki, Ph.D., Kristy Evans, B.A., and Fried Wittman, Ph.D., *Community Context of Sober Living Houses*, National Institute of Health Public Access – Author Manuscript (December 1, 2012) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3902663/>

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.

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## 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.
- A **“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.

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## 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.

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## 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:<sup>4</sup>

- 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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<sup>4</sup> See Oxford House, Inc. v. Township of Cherry Hill, 799 F. Supp. 450, 452 (D.N.J. 1992); Oxford House, Inc. v. City of Baton Rouge, 932 F.Supp. 2d 683 (M.D. La. 2013); Oxford House, Inc. v. Browning, 266 F.Supp. 3d 896 (M.D. La 2017); Oxford House – Evergreen v. City of Plainfield, 769 F.Supp. 1329 (D.N.J. 1991).

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"<sup>5</sup> 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"<sup>6</sup> 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<sup>7</sup>, 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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<sup>5</sup> "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.

<sup>6</sup> "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."

<sup>7</sup> "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)”)⁸, 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.

## FINAL USE DETERMINATION AND DECISION

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 vehicle parking is required in an amount equal to 2 parking spaces.
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:



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Tina Axelrad, Zoning Administrator

Date: September 30, 2019 (Revised October 8, 2020)

### Attachments:

1. Exhibit A: Letter from Steven G. Polin, Esq., General Counsel for Oxford House, Inc., to Tina Axelrad, Zoning Administrator, dated January 21, 2019.

**Exhibit A:**

**Letter from Steven G. Polin, Esq., General Counsel for Oxford House, Inc., to Tina Axelrad, Zoning Administrator, dated January 21, 2019.**