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**CITY OF KANNAPOLIS, NC**  
**BOARD OF ADJUSTMENT**

**Minutes of Meeting**  
**Tuesday April 2, 2024**

The Board of Adjustment met on Tuesday April 2, 2024, at 6:00 PM at City Hall, 401 Laureate Way, Kannapolis, North Carolina. This meeting was held in accordance with required Public Notice.

**Board Members Present:** Emily Joshi, Chair  
Chris Dwiggin  
Holden Sides, Vice Chair  
Mike McClain, ETJ Representative  
Wilfred Bailey  
Danielle Martini, Alternate Member

**Board Members Absent:** Ryan French

**Staff Present:** Richard Smith, Planning Director  
Elizabeth McCarty, Assistant Planning Director  
Ben Barcroft, Senior Planner  
Wilmer Melton, Assistant City Manager  
Tony Cline, Senior Code Enforcement Officer  
Pam Scaggs, Recording Secretary

**City Attorney:** Wally Safrit  
Keith Merritt (serving as attorney for staff)

**Visitors Present:**

Benjamin Burgess	Randall Hoffman	Susan Hoffman
Joely Powlas	Eric Powlas	Derek Adler
Lauren Burgess	Michael Jordan	Marty Cepelnik
Carlos Planell	Maria Planell	Martin Reinhard
Beatrice Reinhard	Jeff Stewart	Lucinda Stewart
Jeff Helms	Bonnie Tadlock	William Tadlock
Tina Henry	James Brown	Mark Benton
Robert Malina	Jery Lambert	Sarah Malina
Brenda Benton	Mike Wallace	Lesla Andrews
Chip Andrews	Mary Lunceford	Tommy Lunceford
Sharon Barbee	Charles Barbee	Myra Baumgardner
Jeff Baumgardner	Megan Baumgardner	Jonna Bennett
Ken Bennett	Jim Hodgins	Brenda Hodgins
Scott Waters	Timisha Waters	Cameron Sloop
Marc Patterson	Steve McMath	Brenda McMath
Cassidy Montoya	Tina Currence	Ashlyn Stauffenbery
Greg Heafner	Jamie Hoffman	

1 **CALL TO ORDER**

2 Chair Joshi called the meeting to order at 6:00pm.

3  
4 **ROLL CALL AND RECOGNITION OF QUORUM**

5 Recording Secretary, Pam Scaggs, called the roll and presence of a quorum was recognized.

6  
7 **APPROVAL OF AGENDA**

8 Chair Joshi asked for a motion to approve the agenda which was made by Vice Chair Sides, second  
9 by Mr. Bailey and the motion was unanimously approved.

10  
11 **APPROVAL OF MINUTES**

12 Chair Joshi asked for approval of the March 5, 2024 minutes, which was made by Ms. Martini,  
13 second by Vice Chair Sides and the motion was unanimously approved.

14  
15 **SWORN IN FOR TESTIMONY**

16 Richard Smith, Keith Merritt, Benjamin Burgess, Joely Powlas, Derek Adler, Lauren Burgess,  
17 Jeff Helms, Mike Wallace, Robert Malina, Greg Heafner, Susan Hoffman, Jamie Hoffman,  
18 Cassidy Montoya, and Tina Currence were sworn in for testimony.

19  
20 **PUBLIC HEARING**

21 **BOA-2024-06 – Request for a Special Use Permit submitted by Southeastern Recovery**  
22 **Center LLC / H2-1 LLC for property located at 3148 Barr Road to allow for a Residential**  
23 **Care Facility in the Residential 1 (R1) zoning district.**

24 Planning Director, Richard Smith, identified himself stating that he will be providing the case  
25 details, attached to, and made part of these minutes as Exhibit 1. Mr. Smith stated that the subject  
26 property address is 3148 Barr Road and identified the applicant and property owner as H2-1 LLC.  
27 and Southeastern Recovery Center LLC. He utilized the Vicinity map to further illustrate the  
28 location of the property, stating that the property is located just south of the intersection of Barr  
29 Road and Trinity Church Road. Mr. Smith added that the size of the property is approximately  
30 1.41 acres and that the request before the Board is a Special Use Permit (SUP) to allow for a  
31 Residential Care facility in the R1 residential zoning district.

32  
33 Mr. Smith utilized the Zoning Map and stated that the surrounding properties in the area are  
34 composed primarily of single-family residential uses and that large lots are common in the area.  
35 He added that the east side of Barr Road is located within the City of Kannapolis zoning  
36 jurisdiction whereas properties on the west side of Barr Road are located within Cabarrus County’s  
37 zoning jurisdiction. Mr. Smith stated that the properties located within the City’s zoning  
38 jurisdiction in that area are zoned R1 and that the properties located within the County’s zoning  
39 jurisdiction are zoned Agricultural Open (AO).

40  
41 Mr. Smith directed the Board’s attention to the Future Land Use Comprehensive Plan Map stating  
42 that the subject property is split between two Character Areas: “Conservation Neighborhood” and  
43 “Neighborhood Transition 1” Character Areas. He stated that the “Conservation Neighborhood”  
44 Character Area encourages low density residential, and that the surrounding area is more of a  
45 suburban rural character area, adding that it does not have access to City utilities in the immediate  
46 area. Mr. Smith stated that the Neighborhood Transition 1 Character Area is a low to mid density

1 residential area and that single family detached is identified as a primarily use. He directed the  
2 Board’s attention to aerial and street views of the subject property, as well as the submitted site  
3 plan. Mr. Smith reiterated that the request is to allow for a Residential Care facility and read the  
4 definition as follows:

5  
6 *A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-*  
7 *time care to more than 6 individuals. Residential care facilities include dependent and/or*  
8 *independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities*  
9 *(N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S.*  
10 *131D2), retirement housing, congregate living services, assisted living services, continuing care*  
11 *retirement centers, skilled nursing services, and orphanages. This term excludes family care homes*  
12 *and nursing homes.*

13  
14 Mr. Smith stated that a pre-application meeting with the applicant was not held for this case and  
15 that the use began on the site prior to the applicant contacting the City to receive zoning  
16 compliance. He added that the reason the case is before the Board is due to a code enforcement  
17 complaint and that the site is served by an individual well and septic tank.

18  
19 Mr. Smith stated that staff has provided Findings of Fact and reminded the Board that they have  
20 the liberty to make their own findings. He stated that Section 2.5.A(5) of the Kannapolis  
21 Development Ordinance (KDO) requires that the Board of Adjustment shall only approve a special  
22 use permit if the applicant demonstrates that the below criteria have been met and noted that the  
23 response for each of the criteria should be “Yes”. Mr. Smith summarized the criteria:

- 24  
25 1. The use will be in harmony and in general conformance with the City’s Land Use Plan.  
26 2. Ingress and egress will minimize traffic hazards and congestion.  
27 3. The use is not noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.  
28 4. The use will not impede the orderly development and improvement of surrounding  
29 property.  
30 5. The use is not detrimental to or endanger the public health, safety, or general welfare.  
31 6. The use complies with all applicable provisions of the KDO.  
32 7. If conditions of approval are applicable, the applicant would need to agree to them.

33  
34 Mr. Smith directed the Board’s attention to the section of the Staff Report regarding the Findings  
35 of Fact and reviewed the findings staff determined that the appropriate response should be: “no”.

- 36  
37 1. The use will be in harmony and in general conformance with the City’s Land Use Plan.  
38 Mr. Smith stated that a Residential care facility is not inherently listed as a primary or  
39 secondary use in the “Conservation Neighborhood” or “Neighborhood Transition 1”  
40 Character Areas and that the intent of the Neighborhood Transition 1 area is to maintain  
41 the character of existing neighborhoods. He continued that Staff has determined that based  
42 on the application submitted, the use is not consistent nor in harmony with existing and  
43 surrounding uses because of its intensity.  
44  
45 4. The use will not impede the orderly development and improvement of surrounding  
46 property. Mr. Smith stated that the use of a Residential care facility as proposed in the

1 application for this site would impede orderly development or improvement of surrounding  
2 property because the majority of the properties in this area are developed with single-family  
3 residential homes while the proposed use is considered a higher density use.  
4

- 5 6. Use is in compliance with all applicable provisions of the KDO. Mr. Smith stated that per  
6 KDO definition a *Residential care facility* should not be located in a single-family dwelling  
7 and should not provide care for more than six (6) individuals. He stated that the applicant  
8 is currently operating in a single-family dwelling and has more than six (6) individuals and  
9 therefore does not meet applicable provisions of the KDO.

10  
11 Mr. Smith reminded the Board that they should consider all facts and testimony after conducting  
12 the Public Hearing and render a decision accordingly to approve, approve with conditions, or deny  
13 the Special Use Permit and made himself available for questions.  
14

15 City Attorney Wally Safrit asked Mr. Smith to clarify what it means in Finding of Fact 1 regarding  
16 a “Conservation Neighborhood” Character Area. Mr. Smith responded that the 2030  
17 Comprehensive Plan designates the property as being located in the Conservation Neighborhood  
18 which recommends low density area and requires larger lot sizes which are typically more than an  
19 acre. He added that it also complements the rural nature of the area as it transitions to the County  
20 and that there are no public utilities in this immediate area.  
21

22 Mr. Safrit asked Mr. Smith to explain Staff’s finding that the proposed use is not in harmony due  
23 to “intensity”. Mr. Smith responded that the proposed use is occurring in a single-family home and  
24 that the number of individuals currently living in the home lends itself to more of a multi-family  
25 residential use instead of a single-family residential use. He added that family is defined in the  
26 KDO as a group of not more than any five (5) members living together in a dwelling unit.  
27

28 Mr. Safrit stated that part of the procedural process for a SUP includes a hearing with applicant so  
29 that staff and the applicant can discuss the project and asked Mr. Smith to confirm that the hearing  
30 did not take place. Mr. Smith confirmed, stating that the applicant was made aware of the  
31 requirement, but was not interested in meeting with staff. Mr. Safrit asked if Mr. Smith contacted  
32 the applicant and Mr. Smith responded that a Planning staff member informed the applicant. Mr.  
33 Safrit asked why the hearing did not occur and Mr. Smith responded that the applicant gave the  
34 indication that they were not interested in meeting.  
35

36 Chair Joshi referred to the portion of a Residential Care Facility definition that states that it  
37 excludes family care homes and nursing homes, and asked staff to explain how the proposed use  
38 differs from a group home. Mr. Smith responded that they have two (2) separate definitions in the  
39 Ordinance [KDO] and that it is the number of residents, which should be six (6) residents or less.  
40 He added that all definitions are consistent with State statutes.  
41

42 Mr. McClain asked for confirmation that the applicant chose on their own not to attend the pre-  
43 application meeting. Mr. Smith responded, “that’s correct”.  
44

45 Mr. Bailey asked for confirmation that the applicant was operating without City approval. Mr.  
46 Smith confirmed that to be the case.

1 Vice-Chair Sides asked if the use would be an issue if it were occurring in a multi-family home.  
2 Mr. Smith responded the multi-family would not be permitted because there are no utilities in the  
3 area. He added that he would not recommend multi-family use due to the lack of City utilities and  
4 the number of residents in the home.

5  
6 Recognizing no other questions or comments for Staff, Chair Joshi opened the floor to the  
7 applicant.

8  
9 Representative for the applicant, Greg Heafner, 1510 Twisted Oak Drive, Chapel Hill, North  
10 Carolina, stated that he is a lawyer and is representing the applicant. Mr. Heafner stated that he is  
11 not ready to present their case yet but wanted to direct questions to Staff. Mr. Heafner pointed out  
12 that one of the last things that Mr. Smith stated was that Southeast Recovery did not meet with  
13 Staff and asked Mr. Smith if it was his testimony that the applicant refused to meet with Staff. Mr.  
14 Smith responded, "That's correct." Mr. Heafner asked if Mr. Smith was aware that a member of  
15 his staff contacted him [Mr. Heafner] and stated that a meeting was not necessary. Mr. Smith  
16 responded that he was not aware of that conversation and that it was his understanding that a  
17 member of his staff reached out regarding the meeting and was told by the applicant that there was  
18 no reason to have a meeting. Mr. Heafner asked Mr. Smith if he ever contacted him [Mr. Heafner].  
19 Mr. Smith responded "no". Mr. Heafner asked Mr. Smith if he ever had contact with his clients  
20 [pointed across the room to the applicants]. Mr. Smith responded that if he did, it was probably via  
21 email. Mr. Heafner asked Mr. Smith to confirm that an individual on his staff accepted the  
22 application and contacted him [Mr. Heafner] regarding some things that were needed,  
23 "deficiencies, if you will". Mr. Smith remarked that he believed that to be the case. Mr. Heafner  
24 addressed the Board and stated that no one recommended a meeting (additional comment by Mr.  
25 Heafner regarding the application but is inaudible).

26  
27 Mr. Heafner asked Mr. Smith if the definition of a Residential care facility included disabled  
28 people expressly. Mr. Smith responded, "not expressly, no". Mr. Heafner asked if Mr. Smith is  
29 aware that residents of Southeast Recovery are disabled. Mr. Smith responded that he was not. Mr.  
30 Heafner asked Mr. Smith if he, as staff for the City, consider a reasonable request for  
31 accommodation Southeast Recovery made to the City. Mr. Smith responded that the City Attorney  
32 determined that the Board would have to make that determination. Mr. Heafner asked if Mr. Smith  
33 took part in making that decision. Mr. Smith responded that they [Mr. Smith and the City Attorney,  
34 Mr. Safrit] were in discussion about it. Mr. Heafner asked what was determined as part of that  
35 discussion. Mr. Smith reiterated that the Board would make the determination.

36  
37 Mr. Heafner stated that Mr. Smith mentioned that Family care homes are allowed at this location  
38 on Barr Road and asked him to confirm. Mr. Smith responded: "yes sir". Mr. Heafner asked for  
39 confirmation that Family care homes are expressly for individuals with disabilities, and all kinds  
40 of disabilities. Mr. Smith confirmed and added: "up to 6 residents". Mr. Heafner asked for  
41 confirmation that a family is allowed at the [subject] location by right. Mr. Smith confirmed. Mr.  
42 Heafner asked if there was a limitation on the number of people in a family that is related. Mr.  
43 Smith responded: "no". Mr. Heafner stated that a family could have ten (10) kids, and asked Mr.  
44 Smith if he would consider that too intense. Mr. Heafner asked if a family could have extended  
45 family living with them, permanently. Mr. Smith responded: "Yes". Mr. Heafner asked that if it

1 was a family of sixteen (16), would the City consider that too intense. Mr. Smith responded: “Yes,  
2 but it would be allowed”.

3  
4 Mr. Heafner asked if there were other Residential care facilities located in the City of Kannapolis.  
5 Mr. Smith responded that he is aware of one other. Mr. Heafner asked for its location. Mr. Smith  
6 responded: “Lane Street”. Mr. Heafner asked the type of residents for that facility. Mr. Smith  
7 responded that it was a women’s care facility. Mr. Heafner asked if that facility obtained a Special  
8 Use Permit. Mr. Smith stated that it was approved under a previous ordinance.

9  
10 Mr. Heafner directed the Board’s attention to the page 2 of the Staff Report, Policy Issue #1, and  
11 asked Mr. Smith to confirm that the reason staff does not find that the request is in harmony with  
12 the surrounding neighborhood, is because it is located in the Conservation Neighborhood and  
13 Transition Neighborhood 1 Character Area. Mr. Smith confirmed. Mr. Heafner directed attention  
14 to the Future Land Use Map and identified an area on the map that shows “Cluster Residential”,  
15 guessed that it was less than 100 feet from the subject property and asked why Mr. Smith does not  
16 make mention of the “Cluster Residential” area. Mr. Smith responded that it does not touch the  
17 subject property, and that is why it was not mentioned. Mr. Heafner asked Mr. Smith to confirm  
18 that it touches the lot next to the subject property. Mr. Smith responded: “That’s correct”.

19  
20 Mr. Heafner asked Mr. Smith to confirm that Staff found no issue with the second Policy Issue  
21 regarding ingress and egress. Mr. Smith confirmed.

22  
23 Mr. Heafner asked Mr. Smith to confirm that Staff found no issue with the third Policy Issue  
24 regarding being noxious. Mr. Smith confirmed.

25  
26 Mr. Heafner asked Mr. Smith to confirm that Staff found that the proposed use would impede the  
27 orderly development of surrounding property (fourth Policy Issue in Exhibit 1). Mr. Smith  
28 responded: “That’s correct.” Mr. Heafner stated: “And you just responded to me, when I asked  
29 why didn’t you mention the cluster residential, you said ‘Because it doesn’t touch it.’, so the  
30 surrounding property will be the next neighbors, and the lots are all contiguous to 3148 Barr Road,  
31 right.” Mr. Smith responded: “That’s correct.” Mr. Heafner asked: “And they’re already  
32 developed, right.” Mr. Smith responded: “I believe they all have single-family homes, yes”. Mr.  
33 Heafner surmised that the proposed use would not impede surrounding development because the  
34 lots are already developed. Mr. Smith responded that he does not concur and directed attention to  
35 Staff’s response in the Staff Report.

36  
37 Mr. Heafner directed attention to the fifth Policy Issue regarding the general welfare, and asked  
38 Mr. Smith to confirm that Staff agrees that the proposed use would not endanger the general  
39 welfare of the public. Mr. Smith confirmed.

40  
41 Mr. Heafner directed attention to the sixth Policy Issue regarding compliance with the Ordinance,  
42 and asked Mr. Smith to confirm that a Residential care facility is permitted at the subject location  
43 with approval of a Special Use Permit. Mr. Smith responded: “Not in a single-family dwelling.”  
44 Mr. Heafner asked for confirmation that a Residential care facility cannot be located in a single-  
45 family dwelling. Mr. Smith responded: “By definition, a Residential care facility cannot be located  
46 in a single-family dwelling, yes.” Mr. Heafner asked if the other Residential care facility in the

1 City is located in a single-family or multi-family dwelling. Mr. Smith responded that he thinks it  
2 is in a single-family dwelling and reiterated that it was approved under the old ordinance.

3  
4 Mr. Heafner asked Mr. Smith to confirm that the City has no issue with the last Policy Issue. Mr.  
5 Smith confirmed that there are no conditions of approval.

6  
7 Mr. Heafner directed attention to page 4, Item G: Recommendations, of the Staff Report and read  
8 the statement: “Based on the above findings, and these are the findings just discussed, correct”.  
9 Mr. Smith responded: “Yes”. Mr. Heafner continued: “staff recommends denial of the Special Use  
10 Permit based on the staff Findings of Fact and mentions the conceptual site plan; and asked: ‘what  
11 is a conceptual site plan?’” Mr. Smith responded: “In this case, it is the site plan that shows the  
12 existing site as it is at this point in time.” Mr. Heafner asked: “What is objectional about this house  
13 in the middle of a one and half acre lot.” Mr. Smith responded: “Nothing objectional about it being  
14 a residential use again, a Residential care facility cannot occur within a single-family dwelling.”  
15

16 Mr. Heafner continued: “Then you go on to say that the proposed use does not comply with all  
17 local, State, and Federal requirements; do you see that?” Mr. Smith responds: “Yes sir”. Mr.  
18 Heafner asked: “What are the state requirements that this proposal does not meet.” Mr. Smith  
19 responded: “I took that statement to mean all the local, state and federal requirements together and  
20 it does not meet the local requirements.” Mr. Heafner asked if there were any state requirements  
21 that the proposed use does not meet. Mr. Smith responded that he stopped when he determined  
22 that it did not meet the local requirements, because it would not be permitted where it is being  
23 proposed. Mr. Heafner asked if the proposed use meets all Federal requirements. Mr. Smith  
24 responded that it is the same response as was with state. Mr. Heafner asked: “So you have no idea.”  
25 Mr. Smith responded that he did not apply the state and federal requirements, because it failed at  
26 the local level.

27  
28 Mr. Heafner stated the he asked earlier if the City had considered the request for reasonable  
29 accommodation under the Federal Fair Housing Act, asking: “That would be a Federal law or  
30 requirement, would it not?” Mr. Smith responded: “To my knowledge, yes.” Mr. Heafner  
31 continued: “But then, you’re telling me that you have no idea whether it met state or federal  
32 requirements.” Mr. Smith responded: “Again, I proved that it did not meet local requirements, so  
33 I did not proceed further.” Mr. Heafner stated that is all the questions he had for Mr. Smith at this  
34 time.

35  
36 Representative for the City, Attorney Keith Merritt, stated that he has a few questions for Mr.  
37 Smith and asked if he was aware of the number of bedrooms located in the house [3148 Barr Road].  
38 Mr. Smith responded that according to the application, it has six (6) bedrooms, but according to  
39 what the County reports, it has three (3) bedrooms. Mr. Merritt provided a copy of the Cabarrus  
40 County tax appraisal card (Exhibit A) for 3148 Barr Road to the Board and asked Mr. Smith to  
41 confirm that the card shows that the home contains three (3) bedrooms. Mr. Smith confirmed. Mr.  
42 Merritt asked Mr. Smith to confirm that the application (see Staff Report) shows that the home  
43 contains six (6) bedrooms. Mr. Smith confirmed. Mr. Merritt asked Mr. Smith to confirm that he  
44 previously stated that the home is serviced by a well and septic system. Mr. Smith confirmed. Mr.  
45 Merritt provided a copy of the septic permit (Exhibit B) to the Board and stated that the permit  
46 states that it is for three (3) bedrooms and asked Mr. Smith to confirm. Mr. Smith confirmed. Mr.

1 Merritt asked: “So it is permitted for a septic system for a total and maximum of three (3)  
2 bedrooms; correct?” Mr. Smith responded: “Yes sir.” Mr. Merritt continued: “It shows a total tank  
3 size of one thousand gallons, correct?” Mr. Smith responded: “Yes sir.”  
4

5 Mr. Merritt provided copies of 15A North Carolina Admin Code (NCAC) 18E.0801 (Exhibit C –  
6 Septic Tank Capacity Requirements). Mr. Merritt asked Mr. Smith to confirm that this particular  
7 section of the code deals with tank capacity and the number of bedrooms allowed. Mr. Smith  
8 confirmed. Mr. Merritt directed attention to Item number 2, Table XIV of that document, and asked  
9 Mr. Smith to confirm that speaks to minimum liquid capacity in gallons of one thousand gallons  
10 for a four-bedroom (4) house. Mr. Smith confirmed. Mr. Merritt asked if staff has determined that  
11 the septic tank size for the home [3148 Barr Road] is one thousand (1,000) gallons. Mr. Smith  
12 confirmed. Mr. Merritt stated that even if the applicant were to amend their application, the  
13 maximum number of bedrooms that would be allowed, is four (4) bedrooms, and asked Mr. Smith  
14 to confirm. Mr. Smith stated: “That’s correct.” Mr. Merritt asked Mr. Smith to confirm that the  
15 application is requesting six (6) bedrooms. Mr. Smith confirmed. Mr. Merritt stated: “In the staff  
16 report, you noted that there was no issue with the public health or safety with their application.  
17 Wouldn’t a request to have six (6) bedrooms and sixteen (16) residents in a house that is permitted  
18 for three (3) bedrooms be a public health and safety issue with respect to the septic system that is  
19 on the property?” Mr. Smith responded: “That’s correct.” Mr. Merritt asked: “Would you change  
20 your thoughts as to whether they meet those requirements based upon the information that has  
21 been provided to you?” Mr. Smith responded: “Yes, I would.”  
22

23 Mr. Merritt provided copies of the Federal Register (Exhibit D) and explained that it is part of the  
24 register that contains a memorandum with respect to fair housing enforcement policy and  
25 occupancy cases, and asked Mr. Smith to confirm that it is dated March 20, 1991. Mr. Smith  
26 confirmed. Mr. Merritt directed attention to page 2, the third paragraph of the memorandum and  
27 asked Mr. Smith to confirm that it reads: ‘Specifically, the Department believes that an occupancy  
28 policy of two occupants per bedroom, as a general rule, is reasonable under the Fair Housing Act.’  
29 Mr. Smith confirmed.  
30

31 Mr. Merritt directed attention to page 6 of the document, *Other physical limitations of housing*,  
32 and asked Mr. Smith to confirm that it reads: ‘In addition to physical considerations such as the  
33 size of each bedroom and the overall size and configuration of the dwelling, the Department will  
34 consider limiting factors identified by housing providers, such as the capacity of the septic, sewer,  
35 or other building systems.’ Mr. Smith confirmed.  
36

37 Mr. Merritt asked: “So based upon that policy, if it is applied to this case, and there are three (3)  
38 bedrooms that are allowed under the septic permit, that would mean that there would be a  
39 maximum of six (6) residents that would be allowed in this house, correct?” Mr. Smith responded:  
40 “That’s correct.” Mr. Merritt asked: “Just to make clear, the issue with respect to the septic system  
41 and the number of bedrooms, that applies to everyone correct, whether the person is handicapped,  
42 not handicapped, disabled in any way shape or form; that is applied equally across the board,  
43 correct?” Mr. Smith responded: “That’s correct.”  
44

45 Mr. Merritt provided copies of Section 10A NCAC 13F.0305 (Exhibit E) regarding the physical  
46 environment of adult care homes and asked Mr. Smith to confirm that the applicant is not



1 requesting approval for an adult care home and Mr. Smith confirmed. Mr. Merritt directed attention  
2 to item D (7) on the first page and read: ‘A bedroom may not be occupied by more than two (2)  
3 residents’ and asked Mr. Smith to confirm that’s what it states. Mr. Smith confirmed.  
4

5 Mr. Merritt provided copies of Section 10 A NCAC 13G.0308 (Exhibit F) and asked Mr. Smith:  
6 “This deals with adult care homes, and again, this [3148 Barr Road] is not being proposed or  
7 licensed as an adult care home, correct?” Mr. Smith responded: “That’s correct.” Mr. Merritt  
8 continued: “But if it were licensed as such, it [Exhibit F] says that a bedroom shall not be occupied  
9 by more than two (2) residents, correct?” Mr. Smith responded: “That’s correct.” Mr. Merritt  
10 stated: “So it seems to be a consistent rule with respect to both state and federal rules with respect  
11 to, I’ll say group homes as a generic statement, that two (2) residents per bedroom is what is  
12 consistently applied, correct?” Mr. Smith responded: “That’s correct, yes.”  
13

14 Mr. Merritt stated: “Finally, I’ve handed you a document that are rules governing sanitation of  
15 residential care facilities:15A NCAC Section 18A.1600 (Exhibit G). The first part of that actually  
16 has North Carolina General Statute §130A235 and it reads: ‘For protection of the public health,  
17 the Commission shall adopt rules to establish sanitation requirements for all institutions and  
18 facilities at which individuals are provided room or board and for which a license to operate is  
19 required to be obtained, or a certificate for payment is obtained from the Department’.” Mr. Merritt  
20 paused and asked: “Now we know that this is not a licensed facility from what we understand,  
21 correct?” Mr. Smith responded: “That’s correct.” Mr. Merritt continued: “But it goes on and says:  
22 ‘These rules shall also apply to facilities that provide room and board to individuals but are exempt  
23 from licensure under G.S. 131D-10.4(1).’ So, the rules also apply to unlicensed facilities as well,  
24 correct?” Mr. Smith responded: “That’s correct.” Mr. Merritt stated: “If we look to the  
25 administrative code Section 15A NCAC 18A.1613 (Exhibit G - Liquid Wastes) it says: ‘All  
26 sewage and other liquids shall be disposed of in a public sewer system or, in the absence of a public  
27 sewer system, by an approved, properly operating sanitary sewage system.’ As proposed, with six  
28 (6) bedrooms, would the current sewer system be a properly operating and permitted [sewage]  
29 system?” Mr. Smith responded: “No sir, it would not.”  
30

31 Mr. Merritt referred to the questions that Mr. Heafner asked Mr. Smith regarding whether he  
32 provided a response with respect to “reasonable accommodations”, and asked: “Isn’t it true that  
33 the response the City gave to Mr. Heafner is that Staff is not able to provide a reasonable  
34 accommodation and even to basically go elsewhere for that decision [because] it was not in your  
35 authority?” Mr. Smith responded: “That’s correct.”  
36

37 Mr. Merritt asked: “For a family care house under the Kannapolis Development Ordinance, staff  
38 will allow six (6) handicapped individuals to live in the house as a matter of right, correct?” Mr.  
39 Smith responded: “That’s correct.” Mr. Merritt continued: “Under the definition of family, you  
40 can have up to five (5) non-family members that live in a single-family residential house, correct?”  
41 Mr. Smith responded: “That’s correct.” Mr. Merritt asked: “So the Kannapolis UDO [Development  
42 Ordinance] actually allows you, in certain circumstances, to have more handicapped individuals  
43 living in a single-family home than in other situations, correct?” Mr. Smith responded: “That’s  
44 correct.”  
45

46 Having no other questions or comments for staff, Mr. Merritt concluded.

1 Chair Joshi asked if Mr. Heafner would like to present testimony or ask additional questions.

2  
3 Mr. Heafner provided copies of a binder titled, ‘Southeast Recovery, A Request for Reasonable  
4 Accommodation’ (Exhibit H) and stated: “As you all can gather, Southeast Recovery is here  
5 tonight for two (2) , things: one is to further the application they made for a Special Use Permit  
6 and secondly, to present to the Board, pursuant to the City attorney instructions, a request for  
7 reasonable accommodation. And that second thing, the reasonable accommodation, I’m going to  
8 explain to the Board a little bit about what that is before we present our evidence about it, our  
9 evidence about the special use requirements. You’re going to hear more about Southeast Recovery  
10 and what exactly they do at 3148 Barr Road from Jamie Hoffman, who runs Southeast Recovery,  
11 but I will just say that you probably know this from the materials, certainly from our application  
12 if you read it, that Southeast operates a residential person in recovery from alcoholism or drug  
13 addiction at the home. They are not using drugs or alcohol they are all committed to being sober.  
14 They receive treatment elsewhere. They don’t receive any treatment at the home, they just stay  
15 there at night. Southeast, initially when they were contacted by the City, disputed the classification,  
16 the definition of Residential Care Facility primarily for two reasons, and Mr. Hoffman is going to  
17 expand on those, but the first one is that the residential care facility starts out with: ‘Staff provides  
18 care’. There is no care provided in the home. It’s not a facility, there is no care provided there.  
19 Second of all, the residents are disabled, and that definition goes on, pretty much to exclude people  
20 with disabilities. In fact, it even says: ‘such as family care home’. So, for those two main reasons,  
21 Southeast disputed that it was the wrong definition for that. And the alternative, they [City] asked  
22 for reasonable accommodation from the Fair Housing Act. And what that is, is the Fair Housing  
23 Act prohibits discrimination against people and housing on various things, one which is  
24 disabilities. People in recovery from alcoholism and drug addiction, and mental illness, etc., are  
25 considered disabled under the Fair Housing Act and are protected and have certain rights under  
26 the Fair Housing Act.”

27  
28 Mr. Heafner continued: “The Fair Housing Act as against discrimination against people with  
29 disabilities, applies to municipal zoning such as what we’re talking about here. Under Tab 2 in that  
30 notebook (Exhibit H), I provided a printout from United States Supreme Court case from 1995  
31 which is after the memorandum that the Board’s lawyer handed out. This is an actual decision by  
32 the Supreme Court of the United States in 1995 wherein a group home contested the zoning  
33 ordinance limiting the number of residents, ten (10) at that time, in the City of Edmonds in the  
34 State of Washington. The Supreme Court held that the ordinance was subject to the Fair Housing  
35 Act, not the City’s interpretation itself of it, and that the residents, because they’re disabled, are  
36 covered by the Fair Housing Act. Moreover, I will tell you under Tab 3 (Exhibit H), there’s a  
37 court’s consent decision, which is a settlement agreement, if you will, in a case brought by the  
38 United States DOJ (Department of Justice) against the Town of Garner, which is a town just  
39 outside Raleigh, the DOJ sued the Town of Garner and the Board of Adjustment for discrimination  
40 for expressly refusing to provide reasonable accommodation. The City violated them, the City  
41 didn’t have a reasonable accommodation procedure. The City’s lawyer said: ‘go to our Board of  
42 Adjustment.’ They did, I did on behalf of them, the Board said no. They listened to the City’s  
43 lawyer and said no. The Department of Justice sued them as did the group home provider. The  
44 City settled. They agreed that they should have procedures to provide reasonable accommodations,  
45 The had such an ordinance and allowed them to have eight (8) residents in that house and paid  
46 other penalties. So, I introduce those to show you that the Fair Housing Act does apply here and

1 preempts, or trumps if you will, the City zoning ordinance when it comes to this issue. At Tab 1  
2 (Exhibit H) are two (2) sections of the Fair Housing Act, which is codified, is the legal term, 42  
3 USC (United States Code) Section §3615 which says: ‘Any law, in any state, or jurisdiction’,  
4 which would include any municipality, ‘that purports to require anything discriminatory under the  
5 housing act is invalid.’ That’s the preempting language of the Fair Housing Act. The second  
6 document that I have under Tab 1, Section §3064, 3B which is a portion of Fair Housing Act which  
7 includes refusal to make accommodation. And that only applies to those people with disabilities.  
8 If there is discrimination alleged it’s based on sex, race, creed and that’s just either right or wrong.  
9 There is no ‘a little bit’s allowed’, we can accommodate you or whatever, but when it comes to  
10 disabilities, the City’s discrimination with the failure to accommodate, and that’s the request we  
11 made under the Fair Housing Act. We want you to accommodate us. It could be a wheelchair ramp;  
12 that’s the most common accommodation that people can think of. But in this case, and any of those  
13 lawsuits that I included and the Board’s decision of, it’s a request for accommodation. We want  
14 more people than is otherwise allowed from a group that is not blood family. Because as you know  
15 a family can live here [3148 Barr Road]. We don’t know how many people live next door, or  
16 behind us or the size of their septic system. And I would dare to say that if that is the only catch,  
17 then my client would agree to put in a bigger septic tank. But as far as the Fair Housing Act  
18 requiring reasonable accommodation, it typically will require cities to amend, or bend, or exempt  
19 their ordinances in some ways to accommodate requests for disabled to live in a single-family  
20 residential neighborhood and not on the outskirts of town somewhere in some sort of non-family  
21 dwelling.”

22  
23 Mr. Heafner provided an explanation of reasonable and necessary stating: “Reasonable is defined  
24 under the Federal law as not being a burden on the City for something that is outrageously different.  
25 For example, putting a gas station in that neighborhood would be outrageously different. Necessity  
26 goes specifically to the residents need. If you’re blind, then you would need a rail. If you can’t  
27 walk and need a wheelchair, you need ramps. If you’re in recovery from a mental health issue, an  
28 addiction or substance abuse, you need other people to support you. Hence, the additional residents  
29 and not just people living ... you’re going to hear from people at Southeast Recovery, professionals  
30 about why its necessary to have a greater number of people at that location [3148 Barr Road] and  
31 why it’s necessary for them to live in a residential neighborhood.”

32  
33 Mr. Heafner asked Jamie Hoffman to come forward to talk about Southeast Recovery.  
34

35 Ms. Martini referred to the lawsuit cases [Exhibit H] and asked about the zoning district involved.  
36 Mr. Heafner responded: “Single-family residential.” Ms. Martini asked: “And what type of area  
37 was it? Did it have like Transition 2 or anything else or is it just the definition of single-family?”  
38 Mr. Heafner responded: “As far as the case in Washington state, I do not know the answer to that.  
39 As far as the Town of Garner, I can picture the house. It’s actually on the edge of town, no less.  
40 There’s a set of railroad tracks that go through Garner a block over from where town hall is and  
41 it’s right on the other side. Kind of older, smaller homes so it is right in the oldest, um, not fancy,  
42 but one of the oldest residential neighborhoods in town.”

43  
44 Chair Joshi referenced the lawsuit regarding the Town of Garner, recognizing that they were made  
45 to make a reasonable accommodation and asked if that was a Special Use Permit or if they had to  
46 rewrite their ordinance. Mr. Heafner responded that they rewrote their ordinance and directed

1 attention to Tab 3 of Exhibit H. He added that the City of Kannapolis does not have procedures to  
2 provide accommodation and that the Board makes that decision. Chair Joshi asked for  
3 confirmation that because Garner’s ordinance did not specifically contain procedures to provide  
4 reasonable accommodation, they needed to amend their ordinance to provide the procedure and  
5 that the City of Kannapolis will also have to amend their ordinance because there are no  
6 procedures. Mr. Heafner responded that the City could amend their ordinance but that the Board  
7 could grant the request for the Special Use Permit and that would suffice. He added that City staff  
8 could have approved the request for reasonable accommodation and directed attention to Exhibit  
9 H (Tabs 7 & 8) regarding emails between the applicant and the City.

10  
11 Representative for the applicant, Jamie Hoffman, 66 Eaton Brook Dr. Canton, North Carolina,  
12 made himself available for questions. Mr. Heafner asked Mr. Hoffman to provide an explanation  
13 of the daily routines at 3148 Barr Road and to explain the recovery program. Mr. Hoffman  
14 responded: “Wake up at 8 [AM], guys are out of the house in our vans by about 8:45 [AM],  
15 Monday through Friday and they’re at our clinical building until ... clinical ... clinical day ends  
16 at 4:30 [PM]; and in our vans 4:45 [PM]; back at the homes 5 – 5:15 [PM]. Couple nights a week,  
17 we take them to the gym after clinical. Other nights we’ll go to AA or NA meetings. Activities on  
18 the weekends ... Sunday night we’ll have a twelve (12) step meeting behind the men’s house with  
19 everybody in our program, and some of our alumni as well.”

20  
21 Mr. Heafner asked: “Is there any treatment at all or services being provided to the men at the  
22 house?” Mr. Hoffman responded: “No.” Mr. Heafner asked: “They get all that at another facility  
23 run by Southeast Recovery?” Mr. Hoffman responded: “By people much more professional than  
24 me.” Mr. Heafner asked: “And that’s in Concord?” Mr. Hoffman responded: “Yeah.” Mr. Heafner  
25 asked: “So the men are out of the house from at least 9:00 [AM] to 5:00 [PM], Monday through  
26 Friday?” Mr. Hoffman responded in the affirmative. Mr. Heafner asked: “And they return at 5:00  
27 PM to cook, eat, sleep, do their laundry and hang out together and go to sleep until the next day?”  
28 Mr. Hoffman responded: “Yep.” Mr. Heafner asked: “Are there any visitor’s allowed?” Mr.  
29 Hoffman responded: “No.” Mr. Heafner asked: “Are the residents allowed to have vehicles on  
30 site?” Mr. Hoffman responded: “Nope.” Mr. Heafner asked: “How are they transported?” Mr.  
31 Hoffman responded: “We have multiple vans.”

32  
33 Mr. Heafner directed attention to Tab 4 of Exhibit H, which contains photographs, and asked Mr.  
34 Hoffman to identify and describe the pictures. Mr. Hoffman stated: “Those will be front yard, back  
35 yard, off the back deck, ... (inaudible). Mr. Heafner asked: “It’s somewhat private?” Mr. Hoffman  
36 responded: “Yes.” Mr. Heafner asked Mr. Hoffman to talk about the staff at the house and what  
37 they do. Mr. Hoffman responded: “We have Parker, a guy named Garrett, who have been clients  
38 and have been working for over a year and are there to serve as a guide for the rest of the house  
39 and we’ll refer to them as house majors.” Mr. Heafner asked: “So they make sure that everybody  
40 is in line, and nothing is going on. Mr. Hoffman responded: “Yeah, make sure they don’t trash the  
41 house.” Mr. Heafner asked: “What if someone were to come that Southeast didn’t see fitting for  
42 some reason, what would happen?” Mr. Hoffman responded: “Discharged.” Mr. Heafner asked:  
43 “Has that ever happened?” Mr. Hoffman responded: “Yeah, two weeks ago.” Mr. Heafner asked:  
44 “What happened?” Mr. Hoffman responded: “We had a guy come in. He seemed one way on the  
45 phone. He ended up getting there, we searched his belongings, and he was using homophobic slurs.  
46 In the meantime, a couple of us were alerted and I guess on our way over there, he attempted to

1 get physical with staff. By the time we had got in there, he had gotten in the van, and he was off  
2 the property in less than thirty (30) minutes, and we never even did his intake.”

3  
4 Mr. Heafner asked about the screening process for residents before they are admitted. Mr. Hoffman  
5 responded: “A medical detox for starters, and then there’s ‘JD, what, sixty-seven (67) questions?’  
6 (Response from audience: “Correct.”) Mr. Heafner asked: “Is there any criminal background  
7 checks?” Mr. Hoffman responded: “No violent crimes. No sexual crimes. You know, other than  
8 that your drunk charges, the DUI’s might walk through the door.” Mr. Heafner asked: “Is there  
9 any tolerance at all for drug and alcohol use inside or outside the house while the residents are  
10 there?” Mr. Hoffman responded: “Absolutely not.” Mr. Heafner asked: “Are they tested?” Mr.  
11 Hoffman responded: “Multiple times a week through lab testing so we can see what their levels  
12 look like. Whether they’re taking their anti-depressants or sleep meds or anything.” Mr. Heafner  
13 asked the age range of residents. Mr. Hoffman responded: “You have to be eighteen (18) and the  
14 high end of that would be, well it depends on mobility, 60, 70 or 80. That’s all addressed during  
15 the intake process as well.”

16  
17 Mr. Heafner stated: “We’ve talked about the fact that the home ... the number of bedrooms ...  
18 we’ve heard a lot about the number of bedrooms, and bathrooms ... and that ...” Mr. Hoffman  
19 stated: “When we were looking for the house originally, it threw us off guard because our real  
20 estate agent said that we should take a look at it. We looked at the listing and we were like, ‘well  
21 this doesn’t make any sense.’ I guess the previous owners had gone and finished the upstairs which  
22 includes another bathroom, a bedroom, a large bonus room, and then I don’t know, maybe it’s got  
23 a closet, maybe it’s an office or another bedroom; so, two more ... a bedroom, a bonus room, and  
24 we’ll call it an office.” Mr. Heafner asked: “Did Southeast do any of those renovations?” Mr.  
25 Hoffman responded: “No.” Mr. Heafner asked: “So you bought it that way?” Mr. Hoffman  
26 responded in the affirmative.

27  
28 Mr. Heafner asked if Southeast would agree to some conditions to address the septic tank issue?”  
29 Mr. Hoffman responded: “Sure. We have another program in Asheville [NC], both on septic and  
30 what we’ve done with those is to pump them regularly, but we’ve gone in and added additional  
31 drain fields that we’ve backfilled with a bulb valve so, we’ll use one for a handful of months and  
32 then bounce to the other. That drain field dries out, we’ll use the other and vice versa.”

33  
34 Mr. Heafner stated: “I want to turn your attention to these seven (7) or eight (8) factors under the  
35 Special Use Permit application.” He read Policy Issue #1 (See Exhibit 1) and asked Mr. Hoffman  
36 to state Southeast’s response. Mr. Hoffman responded: “[Inaudible] ... do you want me to  
37 elaborate?” Mr. Heafner responded: “Sure. That’s one of their [City] issues they have, so go ahead  
38 and elaborate.” Mr. Hoffman stated: “I mean, you know, when you drive by, you don’t notice  
39 anything. There’s van’s parked around back but nobody notices it from the street and compared to  
40 some of the other homes, it’s a heck of a lot cleaner looking than those.”

41  
42 Mr. Heafner stated: “And the next issue is provision of means of ingress and egress and traffic  
43 minimization. You have less traffic than probably a general home.” Mr. Hoffman stated:  
44 “Exactly.”

1 Mr. Heafner stated: “Noxious or offensive by reason of vibration, noise, dust, smoke, or gas or  
2 odor. Is that applicable?” Mr. Hoffman responded in the affirmative. Mr. Heafner continued: “The  
3 establishment shall not impede the orderly development of the surrounding properties. Do you  
4 know whether or not the surrounding prop ..., well, all the contiguous lots and even the street is  
5 already developed or not?” Mr. Hoffman responded: “Yeah.”

6  
7 Mr. Heafner stated: “And, here’s one ... the establishment or maintenance of the operation will  
8 not be detrimental to the public health, safety, or general welfare. As far as your concerned, is  
9 there any danger?” “Mr. Hoffman responded: “No, we’re making the surrounding area better.” Mr.  
10 Heafner continued: “And staff, I believe, noted that Southeast opened prior to getting any kind of  
11 permit. I don’t know what kind of permit the City would have other than the Special Use Permit  
12 now, but when did Southeast open on this property?” Mr. Hoffman responded: “November.” Mr.  
13 Heafner asked: “And have you had any problems since November, the last five (5) months, other  
14 than the City ... other than this?” Mr. Hoffman responded: “No.”

15  
16 Mr. Heafner asked: “Do you believe the use complies with the provisions of the UDO [KDO], any  
17 state and federal laws?” Mr. Hoffman responded in the affirmative.

18  
19 Mr. Heafner stated: “And lastly, it’s the provision that is uncertain at the moment, but states: ‘Will  
20 the applicant consent in writing to any conditions of approval the Board may have for the special  
21 use permit or even accommodations.’ Will you entertain any conditions?.” Mr. Hoffman  
22 responded: “Sure.”

23  
24 Mr. Heafner stated: “If the Board doesn’t have any questions for Mr. Hoffman, I’d like to bring  
25 up...” [Inaudible response due to multiple people speaking].

26  
27 Mr. McClain asked: “When you saw the house, it’s listed as a three-bedroom, did that not ring  
28 bells in your head as far as what the capacity was?” Mr. Hoffman responded: “I don’t know much  
29 about real estate; I just went inside and there was a bunch of stuff upstairs.” Mr. McClain  
30 continued: “You said that you did not file the request for the zoning [zoning permits], is this the  
31 first house that has ever been done in North Carolina?” Mr. Hoffman responded: “No, we’ve got  
32 a couple and haven’t had to do anything for them.” Mr. McClain asked: “Were zoning requests  
33 done on the other houses prior to occupancy?” Mr. Hoffman responded: “No.” Mr. McClain stated:  
34 “I’m just trying to understand the way ... you know ... even when you build a house ... when I  
35 built my house in Kannapolis, I had to follow zoning, so I’m just trying to understand.” Mr.  
36 Hoffman responded: “So what I’m familiar with is, Buncombe County, Asheville, and we got two  
37 (2) homes up there; one’s in a neighborhood, uh, and you know ... there’s no process for it up  
38 there. There is no North Carolina association for recovery residents; it’s not necessarily governed  
39 by the state. You know, that addresses a handful of things. Up there, I don’t know, there’s a lot  
40 more of these programs up there, I guess, than there is down here.”

41  
42 Mr. Bailey expressed concern regarding the number of residents [16] with regards to the number  
43 of bedrooms and bathrooms. Mr. Hoffman responded that he understands what Mr. Bailey is  
44 inferring and referenced one of the homes in Asheville, stating that there is a huge room in the  
45 basement where there are four (4) beds so that it didn’t seem out of the ordinary to them to put  
46 more than two (2) beds in a larger room. He added: “I’ve also lived this sort of functional lifestyle

1 to an extent. We've been pretty good the last few years, and I've been in and out of some programs  
2 over the course of time and like the one I ended up getting clean in, was an environment just like  
3 we have. And like, was it always ideal as a client ... 'no' ... did I want to strangle my roommate  
4 sometimes ... 'absolutely' ... but I think through that, you know, like, we'll have [Inaudible  
5 comment] ... we have a lot of isolating through addiction, so to push our clients, in all kinds of  
6 different and multiple ways, whether its clinically, mentally, challenging them, challenging  
7 delusional thinking. It's how I got clean. It is what worked for me after repeated attempts.  
8

9 Chair Joshi asked the length of the program. Mr. Hoffman responded that it last thirty to forty-five  
10 (30 – 45) days. Chair Joshi stated: "Sixteen (16) residents in thirty to forty-five days, just in regard  
11 to that with being in harmony and the intensity; potentially you could have fifteen (15) residents  
12 graduate the same day and then another fifteen (15) would be coming in within a matter of days.  
13 I'm not exactly sure how you do that, but in essence that would make it uncharacteristic of a family  
14 dwelling because families would generally not be moving out regularly each month; multiple  
15 people and I want to make that clarification, that it is a lot of moving." Mr. Hoffman commented:  
16 "You should see my wife's family."  
17

18 Mr. Safrit stated that he wanted to understand the house better, stated that the house was originally  
19 shown as a three-bedroom home and asked if Southeast has completed any additions to the home.  
20 Mr. Hoffman responded: "No." Mr. Safrit asked the number of bathrooms. Mr. Hoffman  
21 responded: "Three (3)." Mr. Safrit asked: "So originally you had three (3) bedroom house with  
22 three (3) bathrooms; you didn't add anything?" Mr. Hoffman responded: "No." Mr. Safrit asked:  
23 "Have any of the rooms been subdivided?" Mr. Hoffman responded: "No." Mr. Safrit stated: "So  
24 you have three (3) bathrooms for sixteen (16) people. Mr. Heafner stated: "That's not what we  
25 said. We said there were six (6) bedrooms. Were you ... were you listening?" Mr. Safrit stated:  
26 "I'm sorry. Three (3) original bedrooms." Mr. Heafner stated: "Right. When you got the  
27 application, there are six (6) bedrooms. We didn't add any." Mr. McClain interjected: "That's not  
28 what the listing says. The listing says three (3) bedrooms. Now it's six (6) bedrooms." Mr.  
29 Hoffman stated: "Man I hear you. I saw the listing too and our real estate agent said: 'I know what  
30 the listing says but we need to go see it. And then she goes upstairs ...'" Mr. Safrit asked: "Okay,  
31 tell me about those six (6) bedrooms. You walk through the front door, what are you looking at?"  
32 Mr. Hoffman responded: "Living room straight ahead; kitchen; another living room; two bedrooms  
33 ..." Mr. Safrit interrupted and asked: "You have two (2) living rooms?" Mr. Hoffman shook his  
34 head in affirmation and continued: "Two (2) bedrooms to the right with a bathroom; another  
35 bedroom to the left; bathroom; you go up the stairs, bathroom; bedroom; big bonus room that  
36 we've got a couple beds in and that's staff." Mr. Safrit asked: "How big are these bedrooms, can  
37 you give me an estimate? What's the largest bedroom?" An unidentified woman stated: "18' by  
38 15'." Mr. Safrit asked: "How many beds are in that room?" Mr. Hoffman responded: "Four (4).  
39 I'm guessing at which room she's [Unidentified woman] talking about." The unidentified woman  
40 attempted to respond, and Mr. Smith interrupted, stating: "We need her to come up here for the  
41 record." The unidentified woman attempted to identify herself, but Mr. Safrit stated that she would  
42 have an opportunity to speak later.  
43

44 Chair Joshi stated to the audience: "We'll take the responses from the applicant [Mr. Hoffman]."  
45

1 Mr. McClain asked: “So we have sixteen (16) people with a staff of two (2), correct?” Mr. Hoffman  
2 shook his head in affirmation and added: “Staff are on shifts though. One at a time.” Mr. McClain  
3 asked: “So there are actually eighteen (18) people?” Mr. Hoffman responded: “Seventeen (17).”  
4 Mr. McClain stated: “So seventeen (17) people sleeping ...” Mr. Hoffman interrupted and stated:  
5 “If we’re full.” Mr. McClain stated: “That’s a lot of people.”  
6

7 Mr. Safrit asked: “All male?” Mr. Hoffman responded: “Yeah. Truthful, it has to be.”  
8

9 Mr. Heafner asked: “Let me ask you, did Southeast request a reasonable accommodation from the  
10 City in writing?” Mr. Hoffman responded: “Hm mm.” Mr. Heafner asked: “And is that the letter I  
11 sent to Mr. Smith, dated December 13, 2023 under Tab 7.” Mr. Hoffman responded: “Yeah, and I  
12 asked a couple more times.” Mr. Heafner asked: “And did the City respond under Tab 8, letter  
13 dated January 17, 2024.” Mr. Hoffman responded: “Hm mm.” Mr. Heafner asked: “Is that the  
14 letter?” Mr. Hoffman responded: “Yeah.” Mr. Heafner asked: “And is that why we’re here in court  
15 [Board of Adjustment meeting]?” Mr. Hoffman responded: “Yep.”  
16

17 Ms. Martini stated that there is space on the tax listing to show any improvements that had been  
18 completed and asked if it showed the additional bedrooms. Mr. Hoffman responded that they asked  
19 their real estate attorney who advised that it was good. Mr. McClain asked for clarification. Mr.  
20 Hoffman responded: “Well we asked about it.” Mr. McClain asked: “And what happened?” Mr.  
21 Hoffman responded: “She said: ‘Oh yeah, it’s good.’” Ms. Martini made an inaudible comment  
22 about the tax listing and asked: “Has it been updated, or does it still basically say three (3)  
23 bedrooms?” Mr. Hoffman responded: “We didn’t update it.” Mr. Heafner asked: “But have you  
24 had a chance to update it yet?” Mr. Hoffman responded: “I didn’t know we needed to.” Inaudible  
25 conversation between Mr. Heafner and Mr. Hoffman. Ms. Martini made a comment, possibly  
26 about a date to which Mr. Hoffman responded: “Sounds like a late fee. Those get pricey.” Ms.  
27 Martini responded: “No. It’s not a fee, it’s a listing to update what is in the home.”  
28

29 Mr. McClain asked: “So is this home ... is it ... it is for a profit, correct?” Mr. Hoffman shook his  
30 head to the affirmative. Mr. Merritt stated: “I’m sorry, I did not hear that. It is for a profit?” Mr.  
31 Hoffman responded: “Yes.”  
32

33 Chair Joshi asked for any additional questions.  
34

35 Derek Adler identified himself as an attorney with DeVore, Acton & Stafford, P.A., and is  
36 representing two (2) homeowners, Nathan & Erin Saunders. Mr. Adler stated that he has a few  
37 handouts as well.  
38

39 Chair Joshi asked if Mr. Adler should wait until the Public Hearing. Mr. Smith responded that he  
40 will be directing questions to the applicant. Mr. Heafner asked: “As a point of procedure, how can  
41 somebody in the audience, whether they’re represented by an attorney or themselves, come and ask;  
42 we’d be here all night. I thought they spoke either for or against, but not have an opportunity to  
43 cross-examine the staff and our presentation.” Mr. Safrit stated: “You have had an opportunity to  
44 cross-examine, and you have done that.” Mr. Heafner responded: “I’m not talking about me; I’m  
45 talking about the public. How do they have the opportunity to question?” Mr. Safrit stated: “I  
46 should have said this at the onset, but I was contacted by three attorneys, you being one, and the



1 other two asked for an opportunity to represent their clients here tonight and so that is what he's  
2 doing now. If you would like, he could resume his seat and could call your witness back up at a  
3 later time. Whichever way you want to do it is fine." Mr. Heafner stated: "Yeah, I will do that  
4 because I'm going to object to questioning by the audience during presentation of our application."  
5 Mr. Safrit stated: "That's fine." Mr. Adler stated: "It would be a lot quicker if I do it now." Mr.  
6 Safrit stated: "He's considered a party in this since he had requested an opportunity to represent  
7 his client." Mr. Heafner asked: "How is he [Mr. Adler] a party?" Mr. Merritt responded: "His [Mr.  
8 Adler] client has standing as a resident that's next door to this and is affected by it, so they have  
9 standing in the case and generally the attorneys for folks who have standing have the opportunity  
10 to cross examine." Mr. Heafner stated: "I would object to this gentleman having standing at this  
11 point. The law is pretty clear about who has standing besides the City and the applicant. To have  
12 standing, somebody other than that would have to have quote "special damages". There's a lot of  
13 case law on that. There has been no evidence whatsoever yet that his client, whoever they are, has  
14 any special damages. Just because you're a neighbor, even a next-door neighbor, doesn't provide  
15 you with standing to intervene in a Board of Adjustment hearing. Mr. Safrit commented: "Okay,  
16 well I think that there's ample law that allows any interest in property to be considered an interest  
17 that would allow them to bring presentation to this public hearing. We have to give notice to  
18 adjoining property owners and that makes him a party; that gives him standing to appear tonight."  
19 Mr. Heafner attempted to object, but Mr. Safrit acknowledged his previous objection and advised  
20 that he could file an appeal and addressed Mr. Adler stating: "What I'm asking you to do is to just  
21 sit down." Addressing Chair Joshi, Mr. Safrit stated: "And in a few minutes, we'll open the public  
22 hearing and he'll [Mr. Adler] have an opportunity to call up witnesses to speak. Now, right now, I  
23 think Mr. Merritt would like to ask some questions."  
24

25 Mr. Merritt asked Mr. Hoffman: "Just to confirm, you have stated that the maximum number of  
26 people that may be staying at the residence is actually seventeen (17), correct?" Mr. Hoffman  
27 responded: "Could be." Mr. Merritt asked: "Okay, so sixteen (16) is what's in your application,  
28 correct?" Mr. Hoffman responded: "I guess so, probably." Mr. Merritt asked: "Well is it or isn't  
29 it?" Mr. Hoffman responded: "If you're telling me that it is seventeen (17), then it's seventeen  
30 (17); or sixteen (16). Mr. Merritt stated: "Well it says ... the application says that: 'The house is  
31 intended for up to sixteen (16) residents and I understood you to testify that there could be  
32 seventeen (17). Mr. Hoffman stated: "That's true though. Sixteen (16) residents." Mr. Merritt  
33 asked: "And how many other people?" Mr. Hoffman responded: "And one additional staff." Mr.  
34 Merritt stated: "Okay, so there's going to be seventeen (17) people that are sleeping there every  
35 night at a maximum, correct?" Mr. Hoffman responded: "Correct."  
36

37 Mr. Merritt asked: "So you said there's six (6) bedrooms, correct?" Mr. Hoffman responded to the  
38 affirmative, but the response was inaudible. Mr. Merritt asked: "So three (3) of them were there  
39 and have been identified as being there pursuant to the tax listing, correct?" Mr. Hoffman  
40 responded: "Correct." Mr. Merritt asked: "I believe you said you converted a bonus room into a  
41 bedroom, correct?" Mr. Hoffman responded in the affirmative. Mr. Merritt stated: "Please say  
42 either yes or no, it helps." Mr. Hoffman responded: "Yes." Mr. Merritt asked: "And you have  
43 converted an office into a bedroom, correct?" Mr. Hoffman responded: "Yes." Mr. Merritt asked:  
44 "And you have converted another room into a bedroom, correct?" Mr. Hoffman responded: "That  
45 one's got a closet and a window." Mr. Merritt asked: "Okay, but you're using it as a bedroom,  
46 correct?" Mr. Hoffman responded: "Well if it's got a closet and a window, it's technically a

1 bedroom.” Mr. Merritt asked: “Okay, so the other two (2) don’t have closets or windows?” Mr.  
2 Hoffman responded: “One of them got a ... ah, well maybe it doesn’t have a closet. The bonus  
3 room doesn’t have a closet.” Mr. Merritt asked: “Does it have a window?” Mr. Hoffman  
4 responded: “Yeah.” Mr. Merritt asked: “What about the other bedroom, does it have a closet and  
5 a window?” Mr. Hoffman responded: “I’m not sure about a closet. I know it’s got a window.” Mr.  
6 Merritt stated: “Okay, I’m just trying to figure out if it’s a bedroom under your definition or not.”

7  
8 Mr. Merritt asked: “And just to confirm, prior to opening this facility, you did not undertake any  
9 effort to make any determination whatsoever as to whether or not it complied with the existing  
10 zoning for this district, correct?” Mr. Hoffman responded: “Correct.” Mr. Merritt asked: “So why  
11 sixteen (16) residents for this house?” Mr. Hoffman responded: “I don’t know. It’s the number that  
12 would fit.” Mr. Merritt asked: “So it’s as many as you can pack in the house?” Mr. Hoffman  
13 responded: “We can fit a lot more than that.” Mr. Merritt asked: “So why not apply for twenty  
14 (20), twenty-five (25); why sixteen (16) I guess is what I’m asking? Mr. Hoffman responded:  
15 “Well we’re running out of room in our clinical building at some point there. Ah, you know, other  
16 programs have been too; that’s you know, we had to add this room and that was the bonus room,  
17 so I was just ... “ Mr. Merritt asked: “So the goal is to put as many people as you can in this house,  
18 correct?” Mr. Hoffman responded: “Ah, that’s a goal.” Mr. Merritt asked again: “Well why sixteen  
19 (16) then?” Mr. Hoffman responded: “That’s just what it came out to. We thought we could put  
20 two (2) in that room, three (3) in that one, four (4) in that one, three (3) in that one.” Mr. Merritt  
21 asked: “So let’s go through the bedrooms. So, there are three (3) bedrooms downstairs?” Mr.  
22 Hoffman responded: “Yeah.” Mr. Merritt asked: “So let’s take bedroom number one, how many  
23 beds are in that bedroom?” Mr. Hoffman responded: “That actually got four (4).” Mr. Merritt  
24 stated: “Four (4) beds in that one, okay. Bedroom number two downstairs; how many beds you  
25 got in that one?” Mr. Hoffman responded: “Two (2).” Mr. Merritt asked: “Bedroom number three  
26 downstairs?” Mr. Hoffman responded: “Three (3).” Mr. Merritt asked: “And bedroom number one  
27 upstairs?” Mr. Hoffman responded: “Three (3).” Mr. Merritt asked: “Bedroom number two  
28 upstairs?” Mr. Hoffman responded: “Four (4).” Mr. Merritt asked: “Bedroom number three  
29 upstairs?” Mr. Hoffman responded: “Staff, one (1).” Mr. Merritt asked: “So staff sleeps by  
30 themselves, they don’t sleep with the residents, correct?” Mr. Hoffman responded: “Correct.” Mr.  
31 Merritt asked: “So really what you’ve got is sixteen (16) people in five (5) bedrooms, correct?”  
32 Mr. Hoffman responded: “Sure, yeah.” Mr. Merritt asked: “So there’s no magic number to sixteen  
33 (16) other than that’s what fit in house, correct?” Mr. Hoffman responded: “Correct.”

34  
35 Mr. Merritt asked: “And it’s your contention that you’re not subject to any licensure whatsoever  
36 by the state of North Carolina, with respect to this residence?” Mr. Hoffman asked Mr. Merritt to  
37 clarify. Mr. Merritt reiterated: “In order to have this house and to have sixteen (16) residents in it,  
38 are you required to have any license from the state of North Carolina to do so?” Mr. Hoffman  
39 responded: “For a recovery residence, no.”

40  
41 Mr. Merritt asked if residents have to walk through bedrooms to get to another bedroom. Mr.  
42 Hoffman responded that staff does. Mr. Merritt asked if staff have to walk through a bedroom to  
43 get to their room. Mr. Hoffman shook his head to the affirmative. Mr. Merritt asked the size of the  
44 smallest bedroom. Mr. Hoffman responded: “12 by 12.” Mr. Merritt asked if there was a fire alarm  
45 system in the house. Mr. Hoffman asked if he was referring to a smoke alarm. Mr. Merritt  
46 confirmed. Mr. Hoffman responded: “Yes.” Mr. Merritt asked: “Do you have a pull-alarm that

1 anybody can pull in case of a fire?” Mr. Hoffman responded: “No.” Mr. Merritt asked if there were  
2 fire extinguishers in the house and their location. Mr. Hoffman confirmed and stated that they are  
3 located in the kitchen and in every bathroom and one closet.  
4  
5 Mr. Merritt asked: “And you say that you do some 12-step meetings at the facility?” Mr. Hoffman  
6 responded: “Hm mm.”  
7  
8 Mr. Merritt asked: “Do you receive government reimbursement for room and board?” Mr.  
9 Hoffman responded: “No.”  
10  
11 Mr. Merritt asked: “And the only thing you’re requesting from the Board tonight, is the Special  
12 Use Permit, correct. That’s what you’re applying for?” Mr. Hoffman responded: “Correct.”  
13  
14 Chair Joshi recommended a brief recess. Mr. Merritt stated that he would like to continue asking  
15 questions of the applicant.  
16  
17 Mr. Merritt asked the size of the water heater in the house, but Mr. Hoffman stated that he did not  
18 know, adding: “We haven’t had any issues with it.” Mr. Merritt asked: “So you have seventeen  
19 (17) people taking showers and you haven’t had any issues with running out of hot water?” Mr.  
20 Hoffman responded: “We haven’t had any staff or client complaints.”  
21  
22 Mr. Merritt stated that he did not have any additional questions for the applicant.  
23  
24 Mr. Heafner asked: “Mr. Hoffman, the lawyer asked if the only reason we’re here before the Board  
25 is for the Special Use Permit, but we are here for reasonable accommodation.” Mr. Hoffman  
26 responded: “Oh yeah, yeah. I forgot about that.”  
27  
28 Chair Joshi recommended a brief recess and asked everyone to return at 7:38 [PM].  
29  
30 Mr. Heafner stated that he has two (2) more witnesses that he would like to ask questions of and  
31 introduced Susan Hoffman, 46 Orvis Stone Circle, Biltmore Lake, North Carolina. Mr. Heafner  
32 asked Ms. Hoffman to talk about her occupation and education. Ms. Hoffman stated that she is a  
33 licensed, clinical mental health counselor in the state of North Carolina and that she’s also a  
34 licensed professional counselor in the state of Georgia. She stated that she completed training in a  
35 psych hospital and has been on the “front lines” for ten (10) years. Mr. Heafner asked: “And this  
36 is for people in recovery from substance abuse?” Ms. Hoffman responded: “I’m co-owner of  
37 Southeastern Recovery Center and I’m a primary therapist. There are five (5) of us. Joining me  
38 tonight is Tina Currence, she’ll be up here in a minute and we’re going to tag-team if that’s okay.”  
39  
40 Mr. Heafner stated: “What I’d like you to tell the Board about is; and we’re going from those  
41 elements of the Special use permit to the necessity element of the reasonable accommodation  
42 request; tell us why it’s necessary for the men living there, to be living there together, that number,  
43 in this residential setting.” Ms. Hoffman stated: “If it’s okay, I’d like Tina to step over and be able  
44 to come answer these questions with me since we work as a team.”  
45

1 Tina Currence, Clinical Director with Southeastern Recovery Center, 605 Skyland Drive North,  
2 Mount Pleasant, North Carolina, made herself available for questions. Mr. Heafner asked Ms.  
3 Currence to talk about her occupation and education. Ms. Currence stated: “I have a master’s  
4 degree in counseling; I am a QP; I am a LCAS; a CCSI; and I’m a ICAADC; and I can explain  
5 those. So, I’m a LCAS so I’m a Licensed, Clinical Addiction Specialist; I am also a CCSI so I’m  
6 a clinical supervisor for therapists that are coming in to be licensed clinical specialist for addiction;  
7 and I’m also internationally certified as an advanced alcohol and drug counselor.  
8

9 Mr. Heafner stated: “Tell us why it’s necessary for the men to be living there in that number at that  
10 location.” Ms. Currence responded: “There’s many studies that go into sober living and the  
11 components that they can benefit from. So, they benefit from community. They benefit from  
12 having constant supervision and encouragement. They benefit from being in an environment where  
13 they’re with like-minded individuals. They have that support system there. It increases their ability  
14 to find jobs and maintain those jobs. It brings them back into the community realm. You know it’s  
15 kind of like when we made this shift and started to put mental health; people that were MRDD  
16 back in the day and we took them out of facilities and we brought them into community and we  
17 realized that if we placed them in a home with individuals that also share the same disability, then  
18 they learn how to run a home. It allows them to be able to be in a community where they’re  
19 accepted, and they can gain knowledge and skills and grow. Sober living is in the same realm. The  
20 importance of sober living is an addict’s coming out of treatment; if they go back home, which is  
21 never our recommendation because it rarely works. It’s 11 percent (11%) is what that average is.  
22 If they go to treatment and then right back home, it’s 11 percent (11%) success. If they come out  
23 of treatment and they go into sober living, and continue to be in treatment, it increases their  
24 percentage of success to eighty-one percent (81%). That is a huge jump; that is billions of dollars  
25 that we are saving taxpayers. That is billions of dollars that we are bringing back into communities  
26 because these individuals now can hold jobs. They can learn to survive. They learn to function.  
27 Without doing that, it’s a big disservice to them.”  
28

29 Mr. Heafner asked if Ms. Hoffman has anything to add. Ms. Hoffman added: “Generally, I think  
30 it’s already been mentioned that we drug-screen our guys randomly. This is consistent with  
31 oversight. Staff have all come through recovery; their ability to support addicts as they come  
32 behind them; to be able to share success stories, our staff is an integral part of the entire process.  
33 I’m very confident in the therapeutic value of our day treatment program, but I submit to you the  
34 recovery home has a lot of therapeutic benefit for all of the reasons she [Ms. Currence] listed.  
35 That’s where they forge relationships separate from the day treatment. They get to hang out, they  
36 watch TV, they get together and cook, they share laundry, and they share the cleaning. They do  
37 deep cleanings every Sunday. It’s as much life skills as it is recovery and they do it all knowing  
38 that they’re not being judged; that they’re being well-received and supported in their efforts to  
39 maintain sobriety. And I would lovingly submit to you that there’s not a person in this room that  
40 doesn’t know somebody who is an addict or has struggled with addiction. Statistics will tell you,  
41 it’s one in six Americans, so that means in this room of over fifty (50) people, you can quickly do  
42 the math. I won’t ask you to raise your hands, but addiction is growing. In 2021, there were about  
43 46-million people that would’ve met the criteria for substance use disorder in this country. By  
44 2022, it was 49-million; 17% of the population.” Ms. Hoffman repeated those statistics and  
45 continued: “Again, that’s one in six.” Ms. Currence stated that she is also a recovery patient, stated  
46 that her mother was also a therapist, and suggested that she may not be as successful if she hadn’t

1 followed the steps that they require of their clients. She added that doctors and nurses account for  
2 the highest rates of addiction in the workplace. Ms. Currence quoted a 2022 *USA Today* stating:  
3 ‘Across the country, more than 100 thousand doctors, nurses, technicians, and other health  
4 professionals struggle with abuse and addiction; mostly using narcotics, oxycodone and fentanyl.’  
5

6 Ms. Hoffman quoted SAMHSA (Substance Abuse and Mental Health Services Administration):  
7 ‘Those that meet criteria for substance use disorder, roughly 94% of them in 2021, did not seek  
8 treatment because they didn’t think they needed it.’ Ms. Hoffman suggested that there are a lot of  
9 untreated people in the community that the Board should be more concerned about than those  
10 being treated at Southeastern Recovery. She added that the Charlotte Metro area is underserved  
11 and that they are full after only opening within the last four (4) months. Ms. Hoffman stated:  
12 “Seventy percent (70%) of our clients come from within an hour of our facilities. What that says  
13 to me is that service in this area is wildly underserved; the people in this area are wildly  
14 underserved for a long time and your numbers are growing.” Ms. Currence stated that a 2020  
15 Kannapolis plan (inaudible name of the plan) cited Kannapolis as being an area that will be most  
16 affected or at risk for overdoses. She added that thirty (30) million dollars has been allocated for  
17 expansions for behavioral health centers, substance abuse and crisis centers.  
18

19 Mr. Bailey commented that he understands the issue and the need, but that the issue before the  
20 Board is the facility [3148 Barr Road]. Ms. Hoffman responded stating that there is stigma related  
21 to clients asking for help and that their clients are asking for the help who would otherwise go  
22 “unserved” and “unchecked”. She stated: “The ability for them to live in a safe, residential area,  
23 such as Kannapolis, such as 3148 Barr Road, is precisely therapeutically what they need. You  
24 don’t want them in a commercial area. You don’t want them in an industrial area. You don’t want  
25 them in a space where they can readily get their hands on drugs and alcohol. Having them in a safe  
26 community is wildly therapeutic for them.” Mr. Bailey replied that he understood but questioned  
27 whether 3148 Barr Road is the appropriate place. Ms. Hoffman asked if less people would be  
28 better. Mr. Bailey agreed that the number of people in the home is the issue and not the type of  
29 people in the home.  
30

31 Mr. Heafner stated: “Here’s what I would say sir, about the number of people there; you heard the  
32 City question the number that are there. You know, up to sixteen (16) residents, but you never  
33 heard of why. Is there a problem? Is there legislation that precludes that number of people? No. Is  
34 there any kind of problem? Did they [City] know of any problem to come and interview and inspect  
35 the house? No. You’ve heard Southeast, Jamie [Hoffman] talk about that is not an uncommon  
36 number of people in a group home for people in recovery. This house, you’ve also heard, despite  
37 what the property tax records may say, has twice as many bedrooms as public records say. It’s on  
38 a huge lot. It’s somewhat private in that respect and in that regard, while for somebody not in  
39 recovery community might say that’s a lot people but some in the recovery community say that  
40 they need at least close to a dozen to have that ... [inaudible comment from Board member].” Mr.  
41 Heafner continued: “That’s what they’re here to testify to; why that number.”  
42

43 Ms. Hoffman added: “I would lovingly add that it’s a homey house and the men find it very  
44 comforting and nurturing. And as I mentioned earlier, therapeutically, it adds so much to the day  
45 treatments services we provide. It’s a wraparound, they’re completely immersed in our program  
46 for 30-45 days with the best shot that they’re going to get at sobriety.” Ms. Currence added that

1 she's available 24/7 for extra support and that their clients have expressed that they like the sense  
2 of community. She added that their clients want the help, they don't want to be institutionalized  
3 or homeless. Ms. Hoffman reflected on her own recovery experience and talked about how the  
4 men talk about the house at 3148 Barr Road and how the fellowship with each other helps them to  
5 recover. Ms. Hoffman asked members of the audience who are clients of Southeastern Recovery  
6 to stand and co-owners to raise their hands. She then asked several people standing the length of  
7 time that they've been in recovery and the number of them who have been in sober living treatment  
8 and whether it was beneficial to their recovery. Ms. Hoffman stated: "This is evidence of what we  
9 do at Southeastern Recovery. We help people get and stay sober and run businesses and do the  
10 right thing by getting sober and being contributing members of society.

11  
12 An unidentified member of the audience interrupted and made a comment about the length of time  
13 spent on hearing about the facility. Chair Joshi reminded the audience that the Public Hearing has  
14 not been opened yet and that the audience will have an opportunity to speak but will need to wait  
15 until the hearing is opened for public comment.

16  
17 Mr. Merritt directed questions to Ms. Hoffman and Ms. Current and asked: "Have either of you  
18 had to go to the house?" Ms. Hoffman responded: "Yes." Mr. Merritt asked why. Ms. Hoffman  
19 responded: "To visit with a client who might have an emotional moment." [Inaudible comments,  
20 several people speaking at the same time.] Ms. Current stated: "I went when there were only about  
21 three (3) guys in the house and an older gentlemen, probably in his latter fifties (50's) was having  
22 a difficult conversation with his wife and he got emotional. It wasn't yelling or screaming. It wasn't  
23 interrupting the neighbors; it literally was him and myself and we sat on the back porch, and we  
24 talked until he felt better and then we called his wife together." Ms. Hoffman added: "Again there  
25 are six (6) co-owners; we all keep our cell phones by our bed. She [Ms. Current] is a clinical  
26 director; all of us are available at all times." Mr. Merritt asked: "So you go over and talk to the  
27 residents when they're having difficulties?" Ms. Hoffman responded: "If need be." Mr. Merritt  
28 asked: "So that's therapy, correct?" Ms. Hoffman responded: "It would be a conversation off hours  
29 that would just support the process that they're in." Mr. Merritt asked: "You're providing care,  
30 correct?" Ms. Hoffman responded: "What we call support and direction, guidance through  
31 sobriety." Mr. Merritt asked: "And care, correct?" Ms. Hoffman responded: "Unfortunately, it's  
32 not just a 9 to 5; these people are [inaudible], many of them have overdosed [inaudible due to  
33 additional inaudible comment by Ms. Current] Mr. Merritt attempted to ask another question but  
34 was interrupted by Ms. Hoffman stating: "So her [Ms. Current] point is that it's not a billable  
35 service. If somebody is having a moment and staff needs to be present, that's the kind of services  
36 we offer, as needed, very, very sparingly, but if they need it. Would you rather us not provide?"  
37 Mr. Merritt responded: "Ma'am, I'm just asking if you provide the services." Ms. Current asked:  
38 "Do you have a friend that comes to see you? Do you pick up the phone when you have a rough  
39 moment, and call a friend?" Mr. Merritt responded: "Ma'am, I'm not trying to attack you  
40 personally, and I appreciate what you're doing, but please understand that the rules allow you to  
41 have six (6) residents without doing anything and you're asking for sixteen (16). And so, my role  
42 here is to ask questions about that, and so I'm not attacking you, but I am going to ask questions  
43 and I'm doing it as inoffensively as I possibly can, so I'd appreciate not being attacked." Ms.  
44 Current responded: "I didn't mean to attack you; I just asked if you'd call a friend if you were  
45 having problems." Mr. Merritt responded: "Yes, but I'm not a therapist and I don't ..." Mr. Safrit  
46 interrupted Mr. Merritt, who apologized and asked: "So you have gone to the house, and you have

1 communicated with the residents in moments of trouble at various times?” Ms. Hoffman responded  
2 to the affirmative. Mr. Merritt asked: “Have you published research with respect to the number of  
3 residents that are required in a house in order to derive therapeutic benefit?” Ms. Hoffman  
4 responded: “The number is not nearly as important as the fact that they are in a community.” Mr.  
5 Merritt asked: “So six (6) is just as efficient as sixteen (16), correct?” Ms. Hoffman responded:  
6 “Traditional group therapy, although we don’t offer therapy at the house, would tell you eight (8)  
7 to twelve (12) is roughly a group size.” Mr. Merritt commented: “But you don’t offer that at the  
8 house.” Ms. Hoffman stated: “I was just giving you standards within what a traditional group  
9 would look like and that would be a number that we would start with.” Mr. Merritt asked: “So  
10 what number do you have to have at the house in order to derive the therapeutic benefit of living  
11 in the house?” Ms. Hoffman responded: “I don’t know that there’s a magical number.” Mr. Merritt  
12 asked: “So there’s no justification between six (6) that would be allowed by the ordinance and the  
13 sixteen (16) that are in the house?” Ms. Hoffman responded: “I can find studies that support a set  
14 number, but the idea of communal living, whether it’s four (4), six (6), sixteen (16), is basic.” Mr.  
15 Merritt asked: “So the six (6) allowed by the ordinance would provide a therapeutic benefit in your  
16 opinion, to live in the house?” Ms. Hoffman responded: “Yes, but that would be a limited number.  
17 A group size is usually eight (8) to twelve (12).” Mr. Merritt asked: “For therapy, which is being  
18 provided in the house, correct?” Ms. Hoffman answered in the affirmative.

19  
20 Mr. Merritt asked: “Is a twelve-step (12) program considered care?” Ms. Hoffman responded:  
21 “That’s a community-based program. It’s a non-profit community-based program. Twelve-step  
22 (12) is worldwide.” Mr. Merritt asked: “I’m just asking, is that considered, if at the house they’re  
23 providing a twelve-step (12) program, is that considered care?” Ms. Hoffman responded: “No. It  
24 is led by the clients themselves.” Ms. Current added: “And it’s also support services; it’s not care  
25 services.” Mr. Merritt stated: “Nothing further, thank you.”

26  
27 Mr. Heafner directed questions to Ms. Hoffman and Ms. Current asking: “Let me just be clear,  
28 either one of you can answer this, does Southeast Recovery have a license to be, and are they  
29 required to have a license for a group home?” Ms. Hoffman responded: “We’re not required for  
30 the group home, but we are required for our clinical space.” Mr. Heafner asked: “Which is your  
31 offsite clinical, but the home does not have to have a license by the state?” Ms. Hoffman  
32 responded: “No.” Mr. Heafner asked: “Okay, so the lawyer’s repeated statements just now, that by  
33 law, the ordinance allows you to have six (6). I’m not sure what he’s referring to, perhaps he’s  
34 referring to a family care home which actually by definition is licensed by the Department of  
35 Health and Human Services; which this house, that we’ve determined is not required to be licensed.  
36 So, the statement that they would be allowed by right to have six (6), is not true.” Mr. Merritt asked  
37 permission to clarify.

38  
39 Mr. Merritt asked: “The request for this home is for seven (7) or more residents correct? Is that the  
40 request pursuant to the Special use permit to have more than seven (7) residents at the house?” Mr.  
41 Heafner responded: “The request is for sixteen (16).” Mr. Merritt asked: “Right, but the ordinance  
42 is, if it’s more than seven (7), you have to ask [Special use permit], correct?” Mr. Heafner  
43 responded: “I don’t know what ordinance you’re speaking of.” Mr. Merritt responded: “The one  
44 that’s in the Special use permit that is referred to as the family care home.” Mr. Heafner responded:  
45 “Right. They’re not a family care home by definition. A family care home by definition is a  
46 statutory state definition and it requires a license from the North Carolina Department of Health

1 and Human Services. So, the Southeast Recovery home is not, by definition, a family care home.”  
2 Mr. Merritt asked: “Then what are you under the Kannapolis Ordinance? You have to be  
3 something; what are you?” Mr. Hoffman responded: “That’s right. That goes right back to the  
4 beginning when they tagged us as a residential care facility, we said that we don’t meet that  
5 definition. Actually, they’re closer in definition of a family of unrelated people, which the  
6 ordinance allows up to five (5) unrelated people and we’ve requested accommodation. Unless the  
7 City has some procedure, or some other group home definition; which I can tell you many  
8 municipalities have definitions that fit the model of group homes like this one. But this town  
9 doesn’t, so we said, ‘Give us an accommodation.’ However you want to do it. Consider us a family  
10 of unrelated people, or whatever you want, and that’s why we’re here.” Mr. Merritt asked: “And  
11 if you asked for seventy (70), that would be a reasonable accommodation as well?” Mr. Heafner  
12 responded: “I would submit; I will tell you right now, if you read up on the case law, seventy (70)  
13 would be unreasonable and unnecessary.”  
14

15 Chair Joshi asked for clarification that the applicant applied for a residential care facility to be  
16 amended with the Special use permit and that they only agreed with the definition in order to  
17 request the reasonable accommodation. Mr. Heafner responded: “Exactly.” He referred to Tab 8  
18 of Exhibit H stating: “The City attorney, in response to our request for accommodation, he said we  
19 can’t give it, you need to go to the Board of Adjustment, and he attached the Special use permit  
20 and said that we need to go through this process.” Chair Joshi asked: “Did you request that a  
21 different definition rather than the residential care facility?” Mr. Heafner responded: “We didn’t  
22 agree with it. I don’t know that the City has any other definition other than family of unrelated  
23 people that comes close and the exhibit 7 in my book [Tab 7 of Exhibit H], my December 13<sup>th</sup>  
24 letter is included with the required permit application; here we request and include attachment A  
25 [attachment to the Special use permit application – Tab 9 of Exhibit H] which explains that we  
26 contest the definition and are seeking a reasonable accommodation pursuant to the City’s  
27 instructions. That long letter I sent suggested that the definition of family of up to five (5) unrelated  
28 people living together, fits this use better than anything if you were to increase the number of  
29 unrelated people, and that was what our suggestion was. I don’t think it’s Southeast’s burden to  
30 figure out what definitions the City has, especially when they don’t have one. Or how are we to  
31 get a reasonable accommodation when we’ve asked for one and they [City] tell us that we can’t  
32 get one and to go to one of the Boards. So, that was the whole problem with the Garner case, for  
33 example; and that’s why we’re here. Whatever procedure you have, we’re going to follow it,  
34 despite ...we didn’t come in and didn’t have a meeting. We’re doing everything we can that the  
35 City has told us to do. We’re trying to exhaust our administrative remedies if you will, under the  
36 law.  
37

38 Chair Joshi thanked Mr. Heafner for the clarification. Ms. Hoffman thanked the Board and stated:  
39 “Please know that we’re trying to make this community better.”  
40

41 Mr. Heafner stated: “Madame Chair, that’s all the evidence we have. I’d like to make some sort of  
42 a statement at the end, but would you like me to make it now or after, you tell me.” Chair Joshi  
43 indicated that she would open the Public Hearing next and advised that Mr. Heafner could make  
44 his statement either before or after. Mr. Heafner agreed to make final statements after the public  
45 hearing. Mr. Merritt asked if he could also make closing statements after the public hearing. Mr.  
46 Safrit advised that both attorneys make their closing statements before the public hearing.



1 Mr. Heafner thanked the Board for their time and stated: “We don’t believe that we’re a residential  
2 care facility. So, we take issue with those burdens that are being put on that. We don’t meet what  
3 the residential care facility has to show. We’ve asked for reasonable accommodation under the  
4 Fair Housing Act and the law is very clear that, that preempts the City’s ordinance. And in this  
5 case, that’s exactly the situation where it would, because there’s no provision in the ordinance for  
6 seeking a reasonable accommodation to any kind of zoning issues. We believe we have met the  
7 burden of proof to show that this request, that more than (6) people; although I’m not sure that  
8 there’s anything that says you can have six (6), that’s not in writing; but to have sixteen (16), or  
9 whatever number the Board; whatever the condition the Board may put on the accommodation. If  
10 the Board will grant the accommodation, we’ll entertain whatever kind of conditions the Board  
11 might put on it. Whether it be a larger septic tank [inaudible], to fourteen (14) instead of sixteen  
12 (16), something like that but we’ve met the burden of proof necessity by the testimony that you’ve  
13 heard here today. And quite frankly, we’ve also met the requirements of the Special use permit.  
14 The City’s main argument is the intensity; that it doesn’t fit with the zoning. And yet there’s two  
15 (2) zoning districts that touch property; and there’s also a third that touches half-way into the  
16 property next door; a few feet into this property. We asked staff about the cluster district, and they  
17 just ignored that. So, we’re on the borderline of these other two, just a few feet outside of that one,  
18 and it doesn’t fit. Why? Well, it’s not in keeping with the neighborhood and it’s too intense. Well,  
19 it’s intense why? Because of the number of people? Well, the Board can put a condition as to the  
20 number of people, I suppose. We’ve asked and shown the number of people that’s necessary and  
21 under reasonable accommodation, that’s why that law’s there. Because if it wasn’t, every  
22 municipality would set up zoning ordinance and you wouldn’t have any group homes in residential  
23 areas. You wouldn’t have any. You’d only have six (6) person, state licensed, family care homes,  
24 which states thought to put it in state law many years ago. Under the Fair Housing Act and the  
25 reasonable accommodation law, Southeast Recovery is entitled to be in a residential neighborhood.  
26 That home [3148 Barr Road] is a perfect home for that and I respectively ask that you grant them  
27 what they’re asking; sixteen (16) people by way of either a grant of accommodation or a Special  
28 use permit.”  
29

30 Mr. Merritt stated: “The first thing to address is obviously with respect to the request of the Special  
31 use permit. First is noted, that they procedurally failed to follow the requirements in having the  
32 pre-application meeting, which is set out very clearly in the Kannapolis Development Ordinance  
33 as a required item in order to get a Special use permit, and they did not do so. Secondly, if you go  
34 through the factors that you will have to go through at the end of this with respect to the special  
35 use permit, as the staff went through the first one, the proposed special use will be in harmony  
36 with the area in which it is to be located and in general conformance with the city’s land use plan.  
37 Based upon the evidence presented, this is obviously, as the staff said, sixteen (16) people in what  
38 at least the county considers to be a three-bedroom house with a septic system that is permitted for  
39 three (3) bedrooms. We do not believe that it meets; that this request meets that requirement. Also  
40 we do not believe that it meets the requirement with respect to the establishment, maintenance or  
41 operation of the proposed use will not be detrimental to or endanger the public health, safety or  
42 welfare. We’ve heard a lot of testimony this evening. I think it’s uncontroverted that this is; if you  
43 look at the county information, it’s a 3-bedroom house that they have converted into a 6-bedroom  
44 house, being operated on a septic system for a 3-bedroom house. Actually, seventeen (17) people,  
45 not sixteen (16). So, we believe that that would be a public health issue and something that the  
46 county may well be interested in. The next one is proposed use complies with all applicable

1 provisions of the KDO; again, for this definition for a residential care facility, it specifically states  
2 that you cannot have this facility in a single-family dwelling and the facility is in a single-family  
3 dwelling. Therefore, the use does not comply with all the sections of the Kannapolis Development  
4 Ordinance. So, there are several of the points that you all are going to have to consider that we do  
5 not believe; the staff does not believe meet the requirements of the UDO [Kannapolis Development  
6 Ordinance]. There's also been a lot of discussion with respect to reasonable accommodation. And  
7 it's been presented to you that like it's from on high, it preempts everything that you have the ability  
8 here to do and you must do it or else. Well, the first case that is in the tab presented by the  
9 petitioners, the City of Edmonds versus Oxford House, was actually a very limited decision. It was  
10 a question as to whether or not a limit on the number of non-family members that can live in a  
11 house was a maximum occupancy restriction that was exempt under the Fair Housing Act. And  
12 they said: 'No, it isn't.' And then they said: 'It remains to the lower courts to determine whether  
13 Edmonds actions against Oxford House violate that it's a prohibition against [inaudible due to  
14 coughing]. So that case didn't even determine whether or not there was a violation of the FHA  
15 (Fair Housing Act), it just was defining a particular type of occupancy and whether or not it was  
16 exempt from the Fair Housing Act or not. I would point to a case out of the 4th Circuit which is  
17 the Federal Circuit in which North Carolina resides. And the case says this: 'In enacting the FHA,  
18 Congress clearly did not contemplate abandoning the deference that courts have traditionally  
19 shown to local zoning codes. And the FHA does not provide a blanket waiver of all facially neutral  
20 zoning policies and rules, regardless of the facts. Which would give the disabled carte blanche to  
21 determine where and how they would live, regardless of zoning ordinances to the contrary. So,  
22 they say they have to show three things in order to get a reasonable accommodation. They have to  
23 show it's reasonable; they have to show it's necessary; and they have to show it's necessary to  
24 afford handicapped persons equal opportunity to use and enjoy the housing. So, the first is, is it  
25 reasonable? Well, a request to allow sixteen (16), actually seventeen (17), people to live in a house  
26 with a septic system that is designed for three bedrooms and probably six (6) people, under the  
27 guidance from the FHA, is not a reasonable request. It's not reasonable to ask to put that many  
28 people in that house. On that basis alone, the reasonable accommodation request should be denied.  
29 Secondly, they have to show that the accommodation request is necessary, so they have to show  
30 some pause as to why having sixteen (16), actually seventeen (17), people in this house is necessary  
31 in order to provide the therapeutic benefit that people are getting from being there. And as you  
32 heard the two therapists licensed people say, there's no magic as to sixteen (16); could be any  
33 number. And if you look at the 4th Circuit case again, and look at the rules; in that case, it was a  
34 request to go from expanding the use from eight (8) persons to fifteen (15) persons. And it says:  
35 'The zoning variance that Bryant Woods seeks is not aimed at permitting handicapped persons to  
36 live in group homes in residential communities. That, as we have noted, is already permitted.' It's  
37 already permitted under your ordinance as well with a licensed facility and also in houses with  
38 people of five (5) that are not related. They are looking at expanding its group home size from  
39 eight (8) to fifteen (15) persons. 'While some minimum size may be essential to the success of  
40 group homes, the Inn has introduced no evidence that group homes are not financially viable. With  
41 eight (8) residents' You've heard nothing tonight that says this home couldn't operate with five (5)  
42 residents or six (6) residents and be financially viable. There's no evidence to that. The case goes  
43 on to state: 'Moreover, while it is uncontested that group homes are often therapeutically valuable  
44 in providing patients with a higher quality of life and thereby helping to avoid the functional  
45 decline, which is frequently consequent to institutionalization in a traditional nursing home,  
46 Brightwood Inn has also presented no evidence in this case that expansion from eight (8) to fifteen

1 (15) residents would be therapeutically meaningful.’ Again, there's nothing that they have  
2 presented this evening that said there's a reason why they couldn't operate with five (5) people,  
3 which would be allowed as a home with five (5) unrelated people. They could get licensed and  
4 operate as a family care home and have six (6) people. The only justification you heard is, well,  
5 we want sixteen (16), actually again, seventeen (17), because that's basically as many people as  
6 we could cram in this house. And that's the only justification that you've heard for that request.  
7 There's no necessity that they have shown that that number has any significance whatsoever. So,  
8 they have both failed to show that the request is reasonable based upon just the physical limits of  
9 the house. And it's also they have failed to show that it's necessary in order to derive the  
10 therapeutical benefit that they claim from this household. So, for those reasons, we don't believe  
11 that there's any; they have not proven, and it is their burden to prove, that they're entitled to a  
12 reasonable accommodation in any way, shape or form. So, with that, we believe that the Board  
13 should deny the Special Use Permit.

14  
15 Prior to opening the Public Hearing, Chair Joshi reminded the audience that the attorneys have an  
16 unlimited amount of time to speak and asked the audience to keep their comments to a three-  
17 minute (3) maximum and opened the Public Hearing.

18  
19 Lauren Burgess 3200 Barr Road, stated that she has documents (Exhibit I) to provide to the Board  
20 and asked if she could distribute them. Ms. Burgess reiterated her address and stated that her home  
21 is located directly next door to 3148 Barr Road. She stated that she was notified in August  
22 regarding Mr. Hoffman's (Southeast Recovery) plans to open the sober living facility, that she  
23 contacted the City to confirm whether they could open, and they [Southeast] opened despite having  
24 approval. Ms. Burgess stated that she has witnessed eight (8) to ten (ten) men staying overnight  
25 and that on Sunday's, there are sometimes more than twenty (20) people at the house and six (6)  
26 or more vehicles; and stated that this is not aligned with the character of the neighborhood. She  
27 referred to the standards [Finding of Fact – Exhibit 1] that an applicant must meet to receive  
28 approval for a Special Use Permit and indicated that she will discuss two (2) that are “regularly  
29 breached”. Ms. Burgess stated: “Number one, this business has not proved to be in harmony with  
30 our area. My husband and I, as well as our 3 and 5-year-old children, have heard audible outdoor  
31 use of profanity. This is a constant issue. We have asked them on multiple occasions to please stop  
32 using foul language. This has not stopped, nor seem to deter this problem. Our children's swing  
33 set is twelve (12) yards from the driveway where the occupants frequently walk and congregate.  
34 Profanity is a routine issue. On March 12th, a fight broke out between what appeared to be a  
35 resident and employee, which I've attached the police report [Exhibit I] for you guys to see the  
36 back page. This brings me to violation number five (5) of the standards [Finding of Fact – Exhibit  
37 1]: ‘Operation will not be detrimental or endanger the public health, safety or general welfare.’  
38 Not only have my children been subjected to profanity, but now they're fight yard is just ten (10)  
39 yards from our property line. My 3-year-old was outside playing with his father and had to be  
40 swiftly secured in our garage to ensure his safety. After the physical altercation, the resident  
41 continued with cussing and communicating threats to staff, stating: ‘F this. I'm gonna punish you.  
42 On my kids, on my daughter's kids, I promise, I'm gonna punish you.’ I pray he doesn't follow  
43 through with this threat. Once Mr. Hoffman showed up following the fight, one of his employees  
44 said: ‘It's all good, just another day.’ I understand he was just making light of the situation, but  
45 this type of thing is just another day to them. Then what else is considered acceptable to expose  
46 my children to? I have video recording of these statements, which I sent to Mr. Barcroft. If we

1 have time; I used direct quotes in my statements, so if you don't have time to watch them, that's  
2 fine. Mr. Heafner would have you believe that this is just a dorm for disabled men, but in reality  
3 this is a business with constant turnover of temporary residents using profanity and physical  
4 violence. This is not a charitable endeavor, but a for profit business in a residential single-family  
5 home. The sober house has been in operation for less than five (5) months. My husband and I have  
6 personally seen over twenty-five (25) different men. At this rate, there will be over seventy (70)  
7 by the end of year. And with the goal now of sixteen (16) individuals with an average length of  
8 stay of 30 to 45 days, that's over 150 people in one year's time, conservatively. No one can  
9 guarantee that one of those residents isn't going to mess up. You cannot guarantee that all residents  
10 will abide by the rules set in place. Let me make this very, very clear. It is not the background of  
11 the residents that bothers me. It's the sheer volume of people cycling through. As a mother, I'm  
12 pleading with the City to not grant this permit. I fear for my family's safety as well as my  
13 neighbors. How can any reasonable mother feel safe? Once damage is done, it can never be  
14 undone. Please prioritize the safety of our neighborhood. Thank you.”  
15

16 Joely Powless, 3250 Barr Road, distributed a document to the Board [copy was not provided to  
17 the City]. Ms. Powless asked members of the audience opposed to the Special Use Permit to stand.  
18 She asked those in attendance to raise their hand if they've been in fear by what they've seen and  
19 heard; or if they have felt violated by men looking at or watching them. Ms. Powless reiterated her  
20 home address and stated that she and her husband have lived in the home for almost thirty (30)  
21 years and raised their family. She added: “Upon first hearing of the plans Mr. Hoffman had for the  
22 home, only two doors down from us, we could not understand how someone was planning on  
23 running a business in our residential area. I have personally been on nearly every e-mail between  
24 the Planning and zoning department, with Mrs. Burgess, our neighbor, and Mr. Saunders, whose  
25 property backs up to 3148 [Barr Road]. Initially, our focus was to verify the zoning for our area  
26 and update the City of the comings and goings to be sure our new neighbors were abiding by the  
27 preset zoning guidelines. It was assured to us that the sober house was made aware that they were  
28 not to open without an approved Special Use Permit. That did not happen. It's my understanding  
29 through received emails, that Southeastern Recovery Center was made aware of these facts around  
30 September 21st [2023]. You can reference the emails from conversation. By November 19th  
31 [2023] for their submitted application, they were open and running. This was in direct violation of  
32 our City's Planning department directions. Then after back-and-forth discussions between their  
33 attorney and the City attorney, throughout December and in January, they submitted an incomplete  
34 application. Now here we are in April, six months after they were told that they had to have an  
35 approved permit to begin operations. Our family and fellow neighbors are now dealing with the  
36 consequences of their direct disobedience and blatant disregard of protocol. It is reasonable to  
37 assume that this is how they plan on conducting their business going forward. I urge you to deny  
38 the request for this business. If approved, your setting a precedent for businesses to open in a  
39 residential neighborhood without regard for rules and regulations set by the City of Kannapolis in  
40 an area that is not zoned for commercial use. Thank you.”  
41

42 Mike Wallace, 3429 Trinity Church Road, stated that he has lived in the area for approximately 16  
43 years and that he refers to the area as “country – city living”. He added that the lots are all large  
44 lots and that he completed some research on the request. Mr. Wallace stated: “According to the  
45 North Carolina General Assembly and General Statutes, R1 is considered a single-family dwelling.  
46 Single family dwelling.” Mr. Wallace complemented Mr. Heafner on his testimony and stated:  
47 “But you don't come to one of these things trying to disrupt the complete community for profit.

1 You know R1 doesn't say anything in it about a business. It doesn't say anything about a  
2 multifamily sober living home. It says a single family. Single family normally consisted of the last  
3 name of a group of people. It did not describe fifteen (15), seventeen (17), six (6), three (3) different  
4 members from a different family. So, it does not fit under R1 with all your exceptions, all your  
5 rules, all your guidance, and your G24H and all that stuff. You had one that talked on behalf of the  
6 home that kind of acted like he didn't care, like it's no big deal." Mr. Wallace talked about the  
7 reassessment of property taxes and indicated that his taxes have increased by 25%. He continued:  
8 "I talked to the Cabarrus County tax assessor and explained what was going on to him [the  
9 requested use] and he said: 'That cannot happen. Kannapolis cannot allow it to happen. It's not  
10 zoned for that.' So, I would very much appreciate you put hard consideration, not just to lifestyles,  
11 but investments of homes and what people bought into, and we've raised our kids there; and  
12 continue to raise our kids there. Now some of us aren't the brightest on certain things but you put  
13 sixteen (16) guys together, at one time, and guys want to do guy things, okay. It's very candid right  
14 here, this is a printed statement [unsure what Mr. Wallace is quoting]: 'Conflicts with housemates.  
15 One potential challenge of living in a sober living home, is the potential for conflicts with  
16 housemates. Living in close quarters with others who may be in various stages of recovery, can  
17 sometimes lead to conflicts and disagreements.' This is telling you that there could be problems,  
18 there could be conflicts. It's not all sunshine and roses like they made it sound to be. I agree, to  
19 everybody that recovered, congratulations. I'm glad you recovered from that. I'm proud of you. I  
20 just think there's a possibility that you can open a facility somewhere else; not jammed into a  
21 community that has children. You knew it was illegal when you did it. You admitted that." Mr.  
22 Wallace concluded stating: "I hope that you as the Board, respect us as the citizens of this  
23 community for the investments that we've made in it, to build it into a beautiful area. There's no  
24 cluster home developments around there. They're very nice homes; we'd like to keep it that way  
25 and I am adamantly opposed to this and will fight it to the bitter end. There are numerous other  
26 places where something like this can be done. I agree that it is needed, but it doesn't need to take  
27 place in our community. Thank you."

28  
29 Robert Malina, 3110 Barr Road, stated that his property is opposite 3148 Barr Road and agreed  
30 that a recovery program is needed but not in a neighborhood. He accused the residents of  
31 "gawking" at their neighbors' children and stated: "I hold you all responsible if something happens  
32 to them children."

33 Benjamin Burgess, 3200 Barr Road, stated that he lives directly next to 3148 Barr Road and  
34 provided documents to the Board (Exhibit J). Mr. Burgess stated his wife [Lauren Burgess] already  
35 talked about the profanity and incidents but wanted to stress it again due to the ages of their young  
36 children. He added: "I try to protect them. This is my house. My safe place. Try to protect them  
37 from the world and the world moved next door. And they're hearing all kinds of language that  
38 they're not even old enough understand what it means. Despite talking to the residents, the residents  
39 are constantly coming through, and I had to repeat myself, but it's to no avail." Mr. Burgess referred  
40 to the second Policy Issue (Exhibit 1) and stated that there is more traffic at the home than the  
41 applicant testified. He talked about a water delivery service truck that has to park in the street  
42 because it can't pull into the driveway; multiple cars and vans parked at the home; and group  
43 meetings of twenty (20) or more people. Mr. Burgess expressed concern regarding the safety of  
44 his children and stated that random cars often pull into his driveway, who are seemingly looking  
45 for 3148 Barr Road. Mr. Burgess stated: "Despite Southeastern testament, I have seen visitors  
46 come in and out of this house. They said they didn't have visitors. That's not so. I've seen a couple

1 of residents getting in cars and leave, and then come back. So, they do have visitors. Whether they  
2 only have one counselor there and they're just not aware, it's happened." Mr. Burgess referred to  
3 third Policy Issue (Exhibit 1) stating: "Due to the number of residents at the sober house, my family  
4 is constantly exposed to cigarette smoke and vape smoke. This isn't just one person or two people  
5 at a house smoking; this is like, ten (10), twenty (20) guys outside smoking around my kids." He  
6 noted that the proximity of his kids playground to where the smoking is occurring is located 30  
7 feet, and that his wife suffers from asthma. Mr. Burgess directed the Board's attention to site  
8 photo's [Exhibit J] and stated: "The City's residential garbage pick-up can't even keep up with the  
9 amount of trash that they're producing, even with adding a second trash [receptacle]. And they also  
10 use the recycle bin for trash. You can see it, they have signs on the recycle bin that says: 'This is  
11 trash, please pick it up.'" Mr. Burgess stated that in addition to the trash receptacles, that also have  
12 bagged trash that is set next to his property line and added that as a result, he has to pick up trash  
13 out of his own yard. He noted that the smell hasn't been bad yet because it hasn't been hot enough  
14 yet. Mr. Burgess referred to the fifth Policy Issue (Exhibit 1) stating: "Southeastern has a high  
15 turnover rate as I now see new residents weekly. I see residents leave the sober house and go to  
16 the end of the driveway and wait for people to pick them up. Not only have I witnessed profanity,  
17 but I've also heard discussion among the residents, around my kids, discussing their drug use, drug  
18 of choice, slang verbiage for drugs; one of them was diamond and my little girl asked me where  
19 she could find diamonds at because the neighbors have. I'm not even sure what kind of drug that  
20 is. And, who their dealers were and the type of high they felt with their drug. I also overheard one  
21 employee discussing how he was pulled over speeding one day by an officer, that the officer told  
22 him there was actually a warrant out for his arrest, but the person said that there shouldn't be  
23 because he was off probation." Mr. Burgess stated that the testimony provided by Southeastern  
24 regarding that they opened without incident, is untrue and talked about an altercation where police  
25 were called [Exhibit J] and stated that he has video of the incident. He expressed concern that the  
26 altercation could have been worse and moved into his yard. Mr. Burgess added: "This is my home,  
27 my family's safe place, and after the fight, the resident got into a van to leave, the counselor left  
28 the resident alone in the van with it running, by himself, for a period of time before going and  
29 turning it off. What if this resident decided to steal this van or use it as a weapon? My family and  
30 surrounding community should not be put in this kind of danger. Southeast Recovery states that  
31 the house provides free benefits to the city, and I would argue that this is putting my family in the  
32 surrounding citizens at a high risk for danger given the track record since it's illegal opening only  
33 three months ago. We are a family in a single-family home, while this [3148 Barr Road] is a hotel  
34 for Southeastern Recovery Center, and like a hotel, there is constant turnover. This home is not  
35 being used as a charitable endeavor, but for-profit, commercial business in a residential  
36 neighborhood. Southeastern never followed the zoning laws and never brought this before the City  
37 like it should have. And what we see now, is when the law is not followed and the community is  
38 left to deal with the matter, while Southeast simply asks for forgiveness."

39  
40 Jeff Helms, 6382 Hawk Nest Drive, indicated that most of what he wanted to convey has already  
41 been covered by the attorney's or the previous speakers but added: "I wanted to note that basically  
42 there's a request here for equitable relief by the applicant. If they're seeking equity, as permission  
43 to change the rules to accommodate what they want to do, regardless of the impact on the  
44 neighbors, then you have to look at their own conduct before considering whether any such request  
45 should be granted. As has been noted, they bought the property, opened it, started operating  
46 without ever doing one thing to see whether it was allowed or not; without filing for rezoning

1 without filing for a variance or a special use permit. They just simply did what they wanted to do.  
2 It's analogous to, if I needed a loan from a bank and I went in and took the money and hoped that  
3 I didn't get caught, and then when I get caught later, I say, 'well now I'll fill out your loan  
4 application'. That's basically what's been done here. Secondly, as I believe the last speaker noted,  
5 the application itself for this permit says at least twice that they have operated since they opened  
6 without incident. And that's quote, 'without incident'. I would call the police having to come break  
7 up a fight, or the issue of having an engagement with your neighbor about bad language, are  
8 incidents. So, they've only been open this short period of time and they've had multiple incidents,  
9 but they filed an application with this Board misstating material facts; including falsehoods stating  
10 that they've been clean as a whistle and had no problems at all, which is not true. Then lastly there  
11 was a suggestion early on, well we'll just put the bigger septic tank in, no problem. Anybody who  
12 lives out there knows that you can barely get the place to perk for a two-bedroom, one-bath house.  
13 There are people building a new house across the street from us, who, it took over six months after  
14 they filed a request with Cabarrus County, to get an inspector out to even do the perk test, which  
15 failed. Then they had to wait, come out and dig a hole in a different location. And this is a lot that  
16 was approved thirty (30) years ago when our street was subdivided. It perked then; it won't perk  
17 now. I don't know if the regulations changed, or the soil has changed; what the reason is, but they're  
18 not going to magically show up in thirty (30), sixty (60), even ninety (90) days and put in three  
19 times bigger septic tank with drain fields and fix that problem which the gentleman over here  
20 covered. I know from my own experience in Cabarrus County, you have to have a drain field, and  
21 you have to have a repair field; so that if the drain field ceases properly absorbing everything that  
22 gets put in the tank, there is a place to put a new cell lines in so that it can be shifted to that. So,  
23 they can't just dig the whole yard up and put pipes all over it and expect that to pass muster with  
24 Cabarrus County.”

25

26 There being no additional comments, Chair Joshi closed the Public Hearing.

27

28 Chair Joshi asked for a motion to approve the City's exhibits. Mr. Safrit advised that would be the  
29 content of the Staff Report [Exhibit 1]. Motion to approve was made by Vice-Chair Sides, second  
30 by Mr. McClain and the motion was unanimously approved.

31

32 Chair Joshi asked for a motion to approve or revise the City's Findings of Fact. Mr. Safrit stated  
33 that he wanted to interject before the Board moved on the Findings of Fact.

34

35 Mr. Safrit stated that he wanted to make sure the Board understood how the case got to the Board  
36 of Adjustment and added: "Once the City found out that this facility was in operation, they [the  
37 applicant] were approached by Planning staff who advised that they would need to make  
38 application for the SUP (special use permit). Planning staff, specifically the Director of Planning,  
39 made the determination that the existing ordinance definitions for residential care facility is not  
40 permitted in a single-family dwelling, and that's where you [pointed to the applicant] were. It was  
41 clear to him [Mr. Smith] that sixteen (16) occupants living in a single-family dwelling was not in  
42 harmony, so he made that determination as Planning Director. He then told the attorney that you  
43 met tonight [Mr. Heafner], that it was possible, however, to get a special use permit if he came to  
44 the Board of Adjustment, because you [the Board] may feel that what the Planning Director had  
45 decided was incorrect. So, that's how we got to where we are tonight and not anything else about  
46 accommodations. That's not within his purview to allow that; it had to come to the Board. So, with  
47 that, I think I'd like to walk you through the Findings of Fact that you have to make in order to

1 score the issuance of what is being requested by the applicant, the SUP. So, and I'll remind you  
2 that every Finding of Fact has to be accepted, or positive, or "yes" from you. Otherwise, the request  
3 fails. So, those are in front of you, and I'll just walk you through it. Finding of Fact first; and then  
4 of course the staff has made the recommendation as to what those findings are, but you make your  
5 own decision as to what the Findings of Fact are, and then I'll record that to the best of my ability  
6 and then ultimately produce an Order, one way or another. You've been through all that many  
7 times."

8  
9 Chair Josh asked: "So, we will approve or revise the Findings of Fact now and then once that is  
10 determined, you will prepare the order?" Mr. Safrit confirmed and reiterated that he will prepare  
11 the Order for the Board's consideration at their next meeting.

12  
13 Mr. Safrit continued: "The first Finding of Fact: 'The proposed special use will be in harmony  
14 with the area in which it is to be located and in general conformance with the City's Land Use  
15 Plan.'" There was conversation between Mr. Safrit and Chair Joshi regarding the process to  
16 determine Findings. Mr. Safrit advised that he is going to get a consensus from the Board on each  
17 Policy Issue and then the Board will determine whether the applicant meets the criteria to approve  
18 the request.

19  
20 Ms. Martini indicated that she has questions that she would like the applicant to answer. Mr. Safrit  
21 advised that she could ask her question. Ms. Martini asked: "Is this a facility that is staffed with  
22 one person at all times? Is it similar to an independent living facility, where they are living  
23 independently together, but are unrelated? Is it a group home? Is that what this is?" Mr. Heafner  
24 responded: "There is one staff member present at all times, yes" Ms. Martini asked: "Okay, so  
25 basically they are independently living together in this one place, and sharing, and supporting each  
26 other. Is that a clear understanding of this home?" Mr. Heafner responded: "That's a partial  
27 explanation of what you heard from Southeast Recovery; however, I wouldn't say independent  
28 living; they're living together and that's the key thing. That's what is necessary for their recovery."  
29 Ms. Martini asked: "Then, it's kind of like a group where they all live together, they share in the  
30 cleaning and all of that." Mr. Heafner responded: "I would agree with you that, under most City's  
31 ordinances, they have something called a group home, and their definition is more descriptive of  
32 what goes on here, than a residential care facility definition, yes."

33  
34 Mr. Safrit asked if any other members of the Board had any additional questions. Hearing none,  
35 Chair Joshi reiterated the first Finding of Fact and stated that Staff's determination was that the  
36 applicant did not meet the criteria and asked the Board if they agreed with Staff determination. Mr.  
37 Safrit advised that they need to state reason for their determination. Chair Joshi reviewed the Staff  
38 Report [Exhibit 1] and stated that Staff found that the request was not in harmony due to the  
39 intensity, but that staff did not elaborate. Mr. Bailey asked Ms. Joshi to confirm what she is wanting  
40 the Board to do. Ms. Joshi reiterated that City staff found the request not to be in harmony with  
41 the Land Use Plan due to the intensity and asked if the Board agreed with the City's determination.  
42 Mr. Safrit reiterated that the Board will need to state their reason for their finding based upon the  
43 testimony provided.

44  
45 Mr. Bailey stated that the majority of the houses are single-family homes and that the proposed  
46 use does not fit with the neighborhood. Mr. McClain added that the proposed use is a business.



1 Mr. Safrit advised: “There was testimony that there was movement in and out [of the home] in a  
2 short period of time.”  
3  
4 Chair Joshi confirmed that the applicant stated the program lasts between thirty (30) to forty-five  
5 (45) days and surmised there is the potential for new residents arriving within that timeframe.  
6  
7 Mr. Safrit asked: “So you feel that it [the use] is not consistent with a typical single-family  
8 residence and not in harmony with the existing neighborhood?” Ms. Joshi nodded her head “yes”.  
9  
10 Ms. Martini added that the proposed use fits the definition of a residential care facility and is  
11 therefore not in harmony.  
12  
13 Mr. McClain stated: “The definition of a boarding house, according to the North Carolina Building  
14 Code is defined as: ‘A building range used for lodging or compensation,’ which this is, ‘with or  
15 without meals, not occupied as a single-family unit.’ which then would go back to the definition  
16 of what a family is. Which, in my opinion, this doesn’t coincide with what a family is.”  
17  
18 Chair Joshi stated: “So we’re in agreement with the City’s finding that it is not in harmony.” Mr.  
19 Safrit clarified: “As modified by the Board.”  
20  
21 Mr. Safrit moved on to the next Finding of Fact regarding ingress and egress, stating that Staff  
22 found no issue with that and asked if the Board agreed. The Board agreed with the Finding.  
23  
24 Mr. Safrit directed the Board to the next Finding of Fact regarding the use being noxious or  
25 offensive. Mr. Dwiggin referred to testimony regarding the smoking and the profanity. Mr. Safrit  
26 asked if Mr. Dwiggin thought the response should be “no” due to odor and noise. Mr. Dwiggin  
27 agreed.  
28  
29 Mr. Safrit referred to the next Finding of Fact, stating: “The establishment of the proposed use  
30 shall not impede the orderly development and improvement of surrounding property for uses  
31 permitted within the zoning district”. He advised that Staff finding was in the negative, but that he  
32 did not think there was testimony regarding that issue. Chair Joshi stated that there was testimony  
33 that the other areas were already developed. Mr. Safrit asked if the Board wanted to change that  
34 response from “no” to “yes”. Chair Joshi responded: “Personally, I would change that one from  
35 “no” to “yes” because I don’t see how this special use permit, or this specific use impedes the  
36 development. Mr. Safrit asked if she thought that was because the surrounding properties are  
37 already developed. Chair Joshi responded: “That and even if it wasn’t, I don’t think this use would  
38 prevent anyone from coming in and building a home.”  
39  
40 Mr. Safrit stated: “The next Finding of Fact is ‘The establishment, maintenance, or operation of  
41 the proposed use shall not be detrimental to or endanger the public health, safety, or general  
42 welfare.’ Chair Joshi commented: “Based on testimony from our City Attorney, regarding the  
43 septic and the other waste and potential by-products, that it would endanger public safety.” She  
44 added that it was worth noting that the applicant did agree to increase the size of the septic tank.  
45 Mr. Safrit asked if anyone else had comment. Vice-Chair Sides referred to the testimony regarding

1 fire safety measures and stated: “Personally, I feel there are fire safety issues related to the number  
2 of people living in the house versus the number of fire extinguishers.”

3  
4 Mr. Safrit asked Chair Joshi to further explain her comment about the septic tank. [Inaudible  
5 comment by Chair Joshi]. Mr. Safrit stated: “Well, he has a septic permit, for how many  
6 bedrooms?” Chair Joshi responded: “Three (3) bedrooms.” Mr. Safrit stated: “And you have six  
7 (6) bedrooms.” Chair Joshi commented: “Unofficially. According to the applicant, there are six  
8 (6) bedrooms, but according to the tax assessor, there are only three (3). Mr. Safrit stated: “Yes,  
9 and there was discussion about typically, there are two (2) occupants per room, so you would have  
10 six (6). Whereas here, we have sixteen (16), seventeen (17) occupants. So, I guess the question, in  
11 your opinion, health hazard or does it affect the overall public safety and welfare?” Mr. Bailey  
12 stated that he feels that it does endanger. Mr. McClain stated: “If you have a failing septic system,  
13 everyone in the neighborhood is going to smell it, so that would affect the overall health because  
14 those are considered noxious gases.” [Inaudible discussion among the Board and Mr. Safrit]

15  
16 Mr. Merritt indicated that he could not hear the discussion. Chair Joshi responded that she was  
17 commenting that she doesn’t necessarily agree with changing Staff’s determination for this  
18 Finding. Mr. Merritt asked if he could make a procedural comment. Mr. Safrit responded: “Yes.”  
19 Mr. Merritt stated: “At this point in time, it doesn’t matter what Staff says; it’s what you decide.  
20 The staff recommendation is just a recommendation. You’re taking the evidence presented before  
21 you and making your own determination as to each one of these things.” Mr. Safrit responded: “I  
22 think they understand that. I’m just walking them through each one. But understand, that what you  
23 have are the suggested responses from Staff and do they accept those, as they often do, or do they  
24 change them.”

25  
26 Chair Joshi stated that she doesn’t think that this Finding should be changed because she doesn’t  
27 think that it is detrimental to the public safety. Mr. McClain stated that he thinks it should be  
28 changed and Ms. Martini agreed. [Comment from the audience that they can’t hear the Board  
29 discussion]. Mr. McClain stated: “I think we should change it to meaning that it is detrimental to  
30 the public health.”

31  
32 Chair Joshi read the next Finding: ‘The proposed use complies with all applicable provisions of  
33 the KDO.’ And stated: “Staff determined this response is no because it is a residential care facility  
34 and not a single-family home.” Mr. Safrit asked: “Do you want to change that one or leave it as  
35 is?” The Board agreed to leave it as it is.

36  
37 Mr. Safrit stated that he is going to run through the Findings: “Finding of Fact number one about  
38 harmony of the neighborhood. What I've heard was that the use in a single-family residence is not  
39 in harmony. There were comments about the business and the transient appearance of the use.  
40 There's no change to second finding. The third finding, there was concern about smoking, vaping,  
41 noise in the area. The next one, it was not in agreement with staff finding. You felt that the area  
42 was fully developed. The next finding, you felt that the septic tank issue is a significant public  
43 health concern. And finally, you concur with the last finding that the proposed use does not comply  
44 the KDO. So then, the motion, I think you will see, Madam Chairman, is that the Finding of Facts  
45 as I just discussed with you, are the Findings of the Board and I’ll provide an Order, but you’ll  
46 need get a motion on that. Chair Joshi asked for a motion to approve the revised Findings of Fact

1 as amended by the Board. Mr. Dwiggins made the motion to approve, second by Mr. McClain and  
2 the motion was unanimously approved.

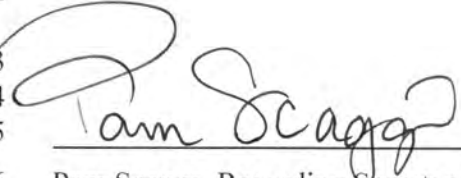
3  
4 Chair Joshi advised the audience that the Order will be approved at the Board's next meeting.

5  
6 **ADJOURN**

7 There being no further business, Vice-Chair Sides made the motion to adjourn, second by Ms.  
8 Martini, and the motion was unanimously approved.

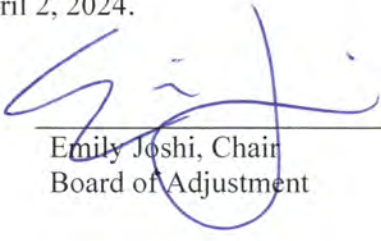
9  
10 The meeting was adjourned at 9:08 PM on Tuesday, April 2, 2024.

11  
12

13   
14  
15 \_\_\_\_\_

16 Pam Scaggs, Recording Secretary  
17 Board of Adjustment

18  
19

  
\_\_\_\_\_  
Emily Joshi, Chair  
Board of Adjustment

# EXHIBIT 1



## Board of Adjustment April 2, 2024 Meeting

### Staff Report

**TO:** Board of Adjustment  
**FROM:** Richard Smith, Planning Director  
**SUBJECT:** Case# BOA-2024-06: Special Use Permit – 3148 Barr Rd.  
Applicant: Southeastern Recovery Center LLC

**Request for a Special Use Permit to allow for a Residential Care Facility on property located at 3148 Barr Rd.**

#### A. Actions Requested by Board of Adjustment

1. Motion to accept the City's exhibits into the record.
2. Motion to approve/revise Findings of Fact for the Special Use Permit.
3. Motion to approve (approve with conditions) (deny) the issuance of the Special Use Permit
4. Motion to Issue Order of Approval.

#### B. Required Votes to Pass Requested Action

A majority vote is required to approve, approve with conditions, or deny the requested actions.

#### C. Background

The applicant, Southeastern Recovery Center LLC., is requesting a Special Use Permit (SUP) to allow for a "Recovery Residence" in the Residential 1 (R-1) zoning district on approximately 1.41 +/- acres of property located at 3148 Barr Rd. and further identified as Cabarrus County Parcel Identification Number 46927680540000.

Pursuant to Table 4.2.B(5) of the Kannapolis Development Ordinance (KDO), issuance of a SUP is required for a Residential Care Facility use in the Residential 1 (R1) zoning district. **The applicant began operation of the facility before inquiring about or obtaining any permits.** Staff became aware of the use after phone calls from neighbors. Per KDO requirements a pre-application meeting is required for a Special Use Permit. **As indicated on the application, no such meeting was held.**

On the Special Use Permit application, the applicant specified that the proposed use will be a "Recovery Residence." A **"Recovery Residence" is not a use that is defined in the KDO.** Based upon the

applicant's submitted description of the facility and its expected number of residents, sixteen (16), the use would be considered a "Residential care facility" under the KDO as defined below:

***Residential care facility***

*A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities (N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.*

A Residential Care Facility, however, is not permitted in a single-family dwelling.

**D. Fiscal Considerations**

None

**E. Policy Issues**

Section 2.5.A(5) of the KDO requires that the Board of Adjustment shall only approve a special use permit if the applicant demonstrates that the criteria below have been met. Staff analysis of each criterion is noted.

**Staff Findings of Fact** - Based on application review:

Yes      No

**The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Land Use Plan.**

Uses on the surrounding properties consist of single-family residential. The *Move Kannapolis Forward 2030 Comprehensive Plan* designates the subject property and surrounding properties as "Conservation Neighborhood" and "Neighborhood Transition 1" Character Areas.

A Residential care facility is not inherently listed as a primary or secondary use in the "Conservation Neighborhood" or "Neighborhood Transition 1" Character Areas. The intent of the Neighborhood Transition 1 area is to maintain the character of existing neighborhoods. Staff has determined that based on the application submitted, the use is not consistent nor in harmony with existing and surrounding uses because of its intensity.

**Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.**

The proposed project is not anticipated to cause any traffic hazards or traffic congestion.

**The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.**

It is not anticipated that the use of a Residential care facility at this location would create vibration, noise, odor, dust, smoke, or gas that would be noxious or offensive to the surrounding area.

**The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.**

The use of a Residential care facility as proposed in the application for this site would impede orderly development or improvement of surrounding property. The majority of the properties in this area are developed with single-family residential homes.

**The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare.**

There is no apparent danger or detrimental impact to the overall public safety, health and welfare resulting from the proposed use. The proposed use is subject to all the requirements of the Kannapolis Development Ordinance.

**The proposed use complies with all applicable provisions of the KDO.**

The proposed use does not comply with all provisions of the KDO. Per KDO definition a *Residential care facility* is not a single-family dwelling.

Residential care facility (KDO definition)

A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities (N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.

**The applicant consents in writing to all conditions of approval included in the approved special use permit.**

N/A unless the Board of Adjustment determines to add conditions.

## **F. Legal Issues**

### **Board's Findings of Fact - Based on application review and public hearing.**

In order to determine whether a special use permit is warranted, the Board must decide that each of the six findings as outlined below has been met and that the additional approval criteria has been satisfactorily addressed. If the Board concurs completely with the findings of the staff, no additional findings of fact are necessary, and the staff findings should be approved as part of the decision. However, if the Board wishes to approve different findings (perhaps as a result of additional evidence or testimony presented at the public hearing), alternate findings need to be included as part of the six criteria below. Should a special use permit be approved, the Board may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use.

- | Yes                      | No                       |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <b>The proposed conditional use will be in harmony with the area in which it is to be located and in general conformance with the City's Land Use Plan.</b>                  |
| <hr/>                    |                          |  |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.</b>     |
| <hr/>                    |                          |  |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.</b>   |
| <hr/>                    |                          |  |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.</b> |
| <hr/>                    |                          |  |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare.</b>               |
| <hr/>                    |                          |  |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>The proposed use complies with all applicable provisions of the KDO.</b>  |
| <hr/>                    |                          |  |
| <input type="checkbox"/> | <input type="checkbox"/> | <b>The applicant consents in writing to all conditions of approval included in the approved special use permit.</b>  |
| <hr/>                    |                          |  |

### **G. Recommendation**

Based on the above findings, staff recommends **denial** of the Special Use Permit based on the staff Findings of Fact (or as modified by the Board), the conceptual site plan, and the proposed use not complying with all local, State, and Federal requirements. A Residential Care Facility is not permitted in a single-family dwelling as proposed in this application.

*The Board of Adjustment should consider all facts and testimony after conducting the Public Hearing and render a decision accordingly to approve, approve with conditions, or deny the Special Use Permit.*

### **H. Attachments**

1. Special Use Permit Application
2. Vicinity Map
3. Zoning Map
4. Future Land Use Map
5. Conceptual Site Plan
6. Elevation Rendering
7. List of Notified Properties

- 8. Notice to Adjacent Property Owners
- 9. Posted Public Notice

**I. Issue Reviewed By:**

Planning Director	X
City Attorney	X
Assistant City Manager	X





## Special Use Permit

So that we may efficiently review your project in a timely manner, it is important that all required documents and fees listed on this form below are submitted with your application.

### SPECIAL USE PERMIT REQUEST

**Special Use Permit (SUP)** – Request for SUP as required by Table 4.3.B(3) of the Kannapolis Development Ordinance (KDO).  
*Approval authority – Board of Adjustment.*

Property Address: 3148 Barr Rd. Concord, Nc 28027

Applicant: Southeastern Recovery Center LLC / H2-1 LLC

### SUBMITTAL CHECKLIST

- Pre-Application Meeting – send an email to [planreviewappointment@kannapolisnc.gov](mailto:planreviewappointment@kannapolisnc.gov)
- SUP Checklist and Application – Complete with all required signatures
- Plot/Site Plan showing the proposed use
- Fee: \$625.00 (\$600 Application Fee + notification fee [see Fee Schedule])

### PROCESS INFORMATION

**Public Notification:** This is a quasi-judicial process that requires a public hearing and public notification including first-class mailed notice to adjacent property owners and a sign posted prominently on the property (Table 2.4.F(2) of the KDO).

**Review Process:** All applications will be reviewed for compliance and then forwarded to the Board of Adjustment for consideration at a public hearing which is held monthly on the 1st Tuesday at 6:00pm in City Hall Laureate Center. The application and all fees must be paid prior to scheduling the public hearing. Please review Section 2.4.D of the KDO.

**Action by Board of Adjustment:** After conducting a public hearing, the Board of Adjustment may: approve; approve with conditions; deny; or conduct an additional public hearing on the application. Per Section 2.5.A(5)c, the Board may approve a petition only if compliance with all standards is obtained.

**Scope of Approval:** Per Section 2.5.A(5)a.2 of the KDO, approval of a SUP does not authorize any development activity, but shall authorize the applicant to apply for final site plan approval. Zoning clearance permits will not be issued until the SUP and final site plan have been approved.

*By signing below, I acknowledge that I have reviewed the Submittal Checklist and have included the required submittal items and reviewed them for completeness and accuracy. I also acknowledge that my application will be rejected if incomplete.*

Applicant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

2/20/24



## SPECIAL USE PERMIT APPLICATION

Approval authority – Board of Adjustment

### Applicant Contact Information

Name: Greg Heafner

Address: 1510 Twisted Oak Drive Chapel Hill, NC 27516

Phone: (919) 967-3800

Email: Gsheafner@bellsouth.net

### Property Owner Contact Information same as applicant

Name: H2-1 LLC Jamie Hoffman

Address: 3148 Barr Rd, Concord NC 28027

Phone: (404) 771-9863

Email: Jamie@serecoverycenter.com

### Project Information

Project Address: 3148 Barr Rd. Concord, NC 28027 Zoning District R1

Parcel PIN: 4692-76-8054-0000 Size of property (in acres): 1.41

Current Property Use: Recovery Residence

Proposed Use: Recovery Residence

The location of the above-mentioned proposed use is indicated on the accompanying site plan, and the nature of the proposed use is more fully described as follows (attach separate sheet if necessary):

See Attached

### REVIEW STANDARDS

The Board of Adjustment does not have unlimited discretion in deciding whether to approve a Special Use Permit (SUP). Per Section 2.5.A(5)c of the Kannapolis Development Ordinance (KDO,) the applicant must demonstrate successful compliance with all standards to obtain a SUP. In the space provided below, indicate the **facts** that you intend to provide to convince the Board that it can properly reach the following conclusions:

- The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Comprehensive Plan.**

See Attached

2. Adequate measures shall be taken to provide ingress and egress to minimize traffic hazards and traffic congestion on the public roads.

See Attached

3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

See Attached

4. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

See Attached

5. The establishment, maintenance, or operation of the proposed use will not be detrimental to or endanger the public health, safety, or general welfare.

See Attached


6. The proposed use complies with all applicable provisions of the KDO.

See Attached

7. The applicant consents in writing to all conditions of approval included in the approved special use permit.

See Attached

*By signing below, I certify that all of the information presented in this application is accurate to the best of my knowledge, information and belief. I acknowledge that the Board of Adjustment may add conditions on the requested use as part of the approval to assure that adequate mitigation measures are associated with the use. For example, landscaping or fencing may be required, or a shift of operations away from adjoining properties may be stipulated.*

Applicant Signature  Date 2/20/24

Property Owner Signature  Date 2/20/24

## ATTACHMENT

### **INTRODUCTION**

Southeastern Recovery Homes, LLC (“Southeastern”) operates a residence for persons in recovery from alcoholism or drug addiction at 3148 Barr Road, Concord, NC 28027.

The City of Kannapolis classifies Southeastern’s use of the property as a Residential Care Facility under Kannapolis’ Development Ordinance (“KDO”) which requires a special use permit.

Southeastern disputes the City’s classification as a Residential Care Facility. The reason for this is that Southeastern services persons with disabilities. The City’s definition of Residential Care Facility does not expressly include disabled persons. In fact, the definition expressly excludes certain homes, such as Family Care Homes, that do expressly serve persons with disabilities.

On December 13, 2023 Southeastern requested a reasonable accommodation pursuant to the Federal Fair Housing, Act 42 U.S.C. 3600 et. seq. to be exempt from the Residential Care Facility classification and be treated as the functional equivalent of a family without limitation of the number of unrelated persons who

can reside together as a family. (A copy of the December 13, 2023 letter making this request is attached hereto and incorporated herein by reference).

The City responded on January 17, 2024 (a copy of which response is also attached and incorporated herein by reference). The response stated that only the Board of Adjustment can grant such a reasonable accommodation, and that Southeastern must go through the Special Use Permit application process. Therefore, Southeastern submits this application for a Special Use Permit to exhaust its administrative remedies in seeking its requested accommodation and apply for a Special Use Permit.

## **DESCRIPTION OF SOUTHEASTERN USE**

The property at 3148 Barr Road is a 3000 square foot, six bedroom, three bath, two-story, single-family detached house. It has a driveway and extension providing parking for four vehicles. It sits on an approximately one and a half acres with a large backyard.

The house is home to men in recovery from alcoholism and/or drug addiction. The house is intended for up to sixteen (16) residents.<sup>1</sup> The home is a safe and supportive place for these men in early recovery to live in a sober

---

<sup>1</sup> The number of residents in this particular home complies with North Carolina Association of Recovery Residences.

environment. The home is staffed by two live-in supervisors to assure the safe and sober environment. No treatment is provided in the home. The men receive treatment for their recovery at another location operated by Southeastern in Concord. This location is licensed as a partial hospital program and intensive outpatient treatment center by the North Carolina Department of Health and Human Services. Residents are at this clinic in Concord for treatment from 9:00 a.m. to 5:00 p.m., Monday through Friday.

The house at 3148 Barr Road is home to men. They return home after 5:00 p.m. after their treatment. They cook together and eat together, do their laundry, sleep, fellowship, and live together in a sober supportive environment. No visitors are allowed, this includes overnight guests.

The residents are not allowed to have vehicles on site. The only vehicles on site are the two supervisors' personal cars, and Southeastern's van for transporting the residents. All transportation is provided by the supervisors in the van. This includes daily transportation to Southeastern's off-site treatment facility referenced above, to Alcoholic Anonymous meetings, to the gym, and to weekend outings.

To live in the house, all residents must first pass a prescreening process. No sexual or violent crime offenders are allowed. Before living in the house all residents are detoxed and drug and alcohol free. While living in the house they are

drug tested several times a week. There is a zero tolerance for alcohol or drug use inside or outside the home. Any use or positive test results in immediate expulsion from the home.

The average length of stay in the home for a resident is 30 to 45 days. The residents range in age from 18 to 60. The home has operated since November 19, 2023 without incident.

### **REQUEST FOR REASONABLE ACCOMMODATION**

Southeastern's residents are a protected class under the Fair Housing Act (FHA), 42 U.S.C. § 3600 et. seq. Recovering alcoholics and addicts are specifically included within the definition of "handicapped individual" under the FHA. *City of Edmonds, WA v. Oxford House, Inc.* 514 U.S. 725 (1995). The FHA's prohibits discrimination against persons within a protected class. This prohibition includes discriminatory zoning decisions by local governments. The FHA defines discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such handicapped person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

Federal law requires a reasonable accommodation when the request is both reasonable and necessary. The law defines reasonable and necessary as follows:

“Reasonable”. An accommodation is reasonable if it would not undermine the legitimate purposes of or fundamentally alter existing zoning regulations, and if it would not impose a significant financial and administrative burden upon the municipality.

“Necessary”. An accommodation is necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing of their choice in residential districts of the municipality.

The reasonableness and necessity of Southeastern’s requested accommodation is as follows:

REASONABLE:

Southeastern’s use does not undermine the purposes of the KDO, nor does it impose any financial or administrative burden on the City. In fact, the Southeastern house provides a free benefit to the City by providing housing to men recovering from alcoholism and drug addiction.



The Southeastern house does not fundamentally alter the City's zoning scheme. As set forth above, Southeastern disputes that it falls under the KDO's definition of a Residential Care Facility.

The KDO definition of Residential Care Facility is: "A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes ( N.C.G.S. 131D), residential child-care facilities ( N.C.G.S. 131D-10.2), assisted living residences ( N.C.G.S. 131D-2), adult care homes ( N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes."

As described above Southeastern does not "provide full-time care" in its home.

Furthermore, the Residential Care Facility definition expressly excludes single family dwellings, and does not include the handicapped.

The KDO defines Family as "An individual; or two or more persons related by blood, marriage, or law; or a group of not more than any five persons living together in a dwelling unit. Employees that provide basic household services to and

share common housekeeping facilities with any family consisting of an individual or two or persons related by blood, marriage, or law, are a part of the family.”

The definition of family would apply to Southeastern if the limitation on unrelated people is increased or lifted.

It is also noteworthy that the KDO allows Family Care Homes (which are for the disabled) as a matter of right in residential districts.

And of course the KDO allows both Residential Care Facilities (which the City has classified Southeastern) and Cooperative Houses (which can also be homes for persons in recovery), each with a Special Use Permit, in the same residential districts where Southeastern is located.

Finally, a women’s recovery home is located at 1102 Lane St., Kannapolis.

NECESSARY:

Living in a supportive and sober house is therapeutically beneficial to persons in early recovery from alcoholism or drug addiction. Safe sober living environments are salient to successful recovery and staying clean and sober. The quality of the relationship among the residents in the Southeastern house is one of mutual support and bonding, providing an ameliorative therapeutic benefit which aids each resident in their recovery from alcoholism or drug addiction. As a result

of this therapeutic benefit, those living in a sober group setting are more likely to remain clean and sober than those living on their own.<sup>2</sup>

Additionally, the requested accommodation provides the residents an equal opportunity to use and enjoy housing of their choice.<sup>3</sup>

## **REVIEW STANDARDS FOR SPECIAL USE PERMIT**

**1. The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Comprehensive Plan.**

The proposed use will be in harmony as evidenced by the City's KDO itself which allows Residential Care Facilities in the area with a Special Use Permit, allows Cooperative Houses in the area by Special Use Permit, allows Family Care Homes as a matter of right in the area, and allows Families of unlimited number of

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<sup>2</sup> *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1227 (11th Cir. 2008) citing a series of federal decisions addressing the efficacy of group living arrangements for recovering substance abusers.

<sup>3</sup> The law requires equal opportunity for disabled persons to use and enjoy housing of their choice. *United States v. City of Jackson*, 318 F.Supp.2d 395, 416 (S.D. Miss. 2002) (FHA "guarantee[s] that the disabled be afforded equal opportunity to live, not in some residence in the community, but rather in the residence of their choice"); *ARC of New Jersey, Inc. v. State of New Jersey*, 950 F. Supp. 637, 645 (D. N.J. 1996) ("ceiling quotas imposed via group home spacing rules improperly limit the ability of handicapped persons 'to live in the residence of their choice in the community,' even if imposed in the name of integration or 'declustering'"); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 n.10 (E.D. N.Y. 1993) (FHA "dictates that a handicapped individual must be allowed to enjoy a particular dwelling, not just some dwelling somewhere in the town"); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1344 (D. N.J. 1991) (defense based on existence of alternative locations in the city for group home held "without merit").

related persons as a matter of right in the area, and a women's recovery home is located at 1102 Lane St., Kannapolis.

**2. Adequate measures shall be taken to provide ingress and egress to minimize traffic hazards and traffic congestion on the public roads.**

The proposed use will not affect traffic at all. As explained above, Southeastern does not allow its residents to have cars on-site, nor are visitors allowed.

**3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.**

This is not applicable. The proposed use produces none of the above.

**4. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.**

This too is not applicable. The use will not impede development or improvement of surrounding property, and there is not evidence to the contrary.

**5. The establishment, maintenance, or operation of the proposed use will no be detrimental to or endanger the public, health, safety, or general welfare.**

The is no evidence of any danger, and the fact that the home has operated since last year without out incident is further proof that the home is not a public danger.

**6. The proposed use complies with all applicable provisions of the KDO.**

The proposed use complies with the applicable provisions of the KDO because the KDO allows Residential Care Facilities in the area with a Special Use Permit, and further nothing about the proposed use does not comply with the applicable provisions of the KDO.

**7. The applicant consents in writing to all conditions of approval included in the approved special use permit.**

The applicant's response to this is premature pending any conditions of approval.



January 17, 2024

***Sent Via US Mail and E-Mail***

Gregory Alan Heafner  
Gregory Alan Heafner, PA  
1510 Twisted Oak Drive  
Chapel Hill, North Carolina 27516  
[gsheafner@bellsouth.net](mailto:gsheafner@bellsouth.net)

Re: Response to Request for Reasonable Accommodation under Federal Fair Housing Act (“FHA”) for Southeastern Recovery Homes, LLC (“Southeastern”) at 3148 Barr Road, Concord, NC 28027 (the “Property”)

Dear Mr. Heafner:

Please accept this letter in response to your letter dated December 13, 2023, and subsequent emails, regarding a request for a reasonable accommodation under the FHA as it relates to your client’s occupation of the Property. More specifically, you request that the City of Kannapolis (“City”) “grant a reasonable accommodation to treat the Southeastern use as the functional equivalent of a family for all applicable codes, and grant a waiver on the limitation of the number of unrelated persons who can reside together as a family.”

As previously communicated, the Property is located in the Planning and Zoning jurisdiction of the City. The City classifies Southeastern’s use of the Property as a Residential Care Facility under the Kannapolis Development Ordinance (“KDO”). The KDO defines a Residential Care Facility as:

“A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S 131D), residential child-care facilities (N.C.G.S 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.”

Pursuant to the KDO, a Residential Care Facility requires a special use permit issued by the Board of Adjustment. As of the writing of this letter, Southeastern has not applied for a special use permit but has instead requested a reasonable accommodation from City staff. It is essential to clarify that City staff lacks the authority to circumvent the Board of Adjustment’s jurisdiction



and grant this type of accommodation. The authority to issue special use permits rests solely with the Board of Adjustment.

Furthermore, the FHA does not allow Southeastern to be exempt from applying for a conditional use permit. *See Oxford House, Inc. v. City of Virginia Beach*, 825 F.Supp. 1251 (E.D.Va. 1993); *see also Oxford House-C v. City of St. Louis*, 77 F.3d 249 (8th Cir. 1996) (stating “Congress did not intend for [the FHA] to remove handicapped people from the normal and usual incident of citizenship, such as participation in the public components of zoning decisions, to the extent that participation is required of all citizens whether or not they are handicapped. In our view, Congress all did not intend the federal courts to act as zoning boards by deciding fact-intensive accommodation issues in the first instance.”) (internal citations omitted). In *City of Virginia Beach*, the court was asked to scrutinize a Virginia Beach zoning ordinance that required group homes to obtain special use permits like those required in the KDO. Oxford, the operators of a group home (like Southeastern, a home for recovering former alcohol and drug abusers), refused to apply for a special use permit. Oxford then sued Virginia Beach alleging, amongst other things, that Virginia Beach requiring that they apply for a special use permit constitutes a failure to make a reasonable accommodation in violation of the FHA. In dismissing Oxfords complaint in this regard, the court stated:

“In this regard, the court observes that, by defining discrimination under the [FHA] to include the ‘refusal to make reasonable accommodations in rules, policies, [and] practices,’ Congress obviously contemplated providing cities, among others, the opportunity to adjust their generally applicable rules to allow handicapped individuals equal access to housing. *See* 42 U.S.C. § 3604(f)(3)(B). The zoning process, including the hearings on applications for conditional use permits, serves that purpose. Indeed, were it otherwise, federal courts increasingly would become entangled prematurely in disputes regarding application of neutral zoning ordinances to the handicapped. Federal courts would thus become not zoning boards of appeals, but zoning boards of first instance, a result Congress surely did not intend.”

*Id.* at 1261 (citations omitted).

In line with this legal precedent, like all prospective operators of a Residential Care Facility, Southeastern must follow the prescribed procedure and apply for a special use permit as



outline in the KDO. The “reasonable accommodation” sought by Southeastern cannot be granted by City staff.

Since your client has occupied the Property without acquiring a special use permit, it is necessary for the City to require submission of an application for the permit immediately. Please submit the enclosed Special Use Permit application on or before January 26, 2024. In the event you fail to do so, it will be deemed as your continued refusal to comply with the requirements of the Kannapolis Development Ordinance. Should you have any questions or concerns about the application process for a special use permit, City staff are available to guide you through that process.

Sincerely,

Walter M. Safrit, II  
City Attorney

WMS/jel

Encl: Special Use Permit

Cc: Richard Smith, City of Kannapolis Planning Director  
Tony Cline, City of Kannapolis Senior Code Enforcement Officer



**GREGORY ALAN HEAFNER, PA**

ATTORNEY AT LAW  
1510 TWISTED OAK DRIVE  
CHAPEL HILL, NORTH CAROLINA 27516  
Phone (919) 967-3800

December 13, 2023

Mr. Richard Smith  
Planning Director  
City of Kannapolis  
401 Laureate Way  
Kannapolis, NC 28081

Via Email Only To: [rsmith@kannapolisnc.gov](mailto:rsmith@kannapolisnc.gov)

RE: *3148 Barr Road, Concord, NC 28027*

Dear Mr. Smith:

I represent Southeastern Recovery Homes, LLC (“Southeastern”). Southeastern operates a home for persons recovering from alcoholism or drug addiction at the above referenced address. This letter follows Tony Cline’s visit to the home and my subsequent conversation with Walter Safrit asking that I write you.

I understand that the City classifies Southeastern’s use of the property as a Residential Care Facility under Kannapolis’ Development Ordinance (“KDO”), which requires a special use permit. This letter shall serve as a request for a reasonable accommodation pursuant to the Federal Fair Housing, Act 42 U.S.C. 3600 et. seq. Specifically, Southeastern requests that the City of Kannapolis grant a reasonable accommodation to treat the Southeastern use as the functional equivalent of a family for all applicable codes, and grant a waiver on the limitation of the number of unrelated persons who can reside together as a family.

**SOUTHEASTERN HOUSE DESCRIPTION**

The property at 3148 Barr Road is a 3000 square foot, five bedroom, three bath, single family detached house. The house is home to men in recovery from alcoholism and/or drug addiction. These men receive out of house treatment for their recovery at another location. The home is simply a safe supportive place for these men to live in a clean and sober environment. The only staff in the home are two live-in supervisors to assure the safe and sober environment.

## **REQUEST FOR REASONABLE ACCOMMODATION**

Southeastern's residents are a protected class under the Fair Housing Act (FHA), 42 U.S.C. § 3600 et. seq. Recovering alcoholics and addicts are specifically included within the definition of "handicapped individual" under the FHA. *City of Edmonds, WA v. Oxford House, Inc.* 514 U.S. 725 (1995). The FHA's prohibits discrimination against persons within a protected class. This prohibition includes discriminatory zoning decisions by local governments. The FHA defines discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such handicapped person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

Federal law requires a reasonable accommodation when the request is both reasonable and necessary. The law defines reasonable and necessary as follows:

"Reasonable". An accommodation is reasonable if it would not undermine the legitimate purposes of or fundamentally alter existing zoning regulations, and if it would not impose a significant financial and administrative burden upon the municipality.

"Necessary". An accommodation is necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing of their choice in residential districts of the municipality.

The reasonableness and necessity of the requested accommodation for Southeastern's use of 3148 Barr Road is as follows:

### **REQUEST IS REASONABLE**

Southeastern's use does not undermine the purposes of the KDO, nor does it impose any financial or administrative burden on the City. In fact, the Southeastern house provides a free benefit to the City by providing housing to men recovering from alcoholism and drug addiction.

Further, the Southeastern house does not fundamentally alter the City's zoning scheme. The KDO does not contain a definition of use that specifically addresses the Southeastern use.

The KDO definition of Residential Care Facility is, "A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes ( N.C.G.S. 131D), residential child-care facilities ( N.C.G.S. 131D-10.2), assisted living residences ( N.C.G.S. 131D-2), adult care homes ( N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes." This definition expressly excludes single family dwellings and does not include the handicapped.

However, the KDO defines Family as “An individual; or two or more persons related by blood, marriage, or law; or a group of not more than any five persons living together in a dwelling unit. Employees that provide basic household services to and share common housekeeping facilities with any family consisting of an individual or two or persons related by blood, marriage, or law, are a part of the family.” This definition encompasses the Southeastern use if the limitation on unrelated people is increased or lifted. It is also noteworthy that the KDO allows Family Care Homes (which are for the disabled) as a matter of right in residential districts.

### **REQUEST IS NECESSARY**

Living in a supportive and sober house is therapeutically beneficial to persons in early recovery from alcoholism or drug addiction. In fact, such safe sober living environments are salient to successful recovery and staying clean and sober. The quality of the relationship among the residents in the Southeastern house is one of mutual support and bonding, providing an ameliorative therapeutic benefit which aids each resident in their recovery from alcoholism or drug addiction. As a result of this therapeutic benefit, those living in a sober group setting are more likely to remain clean and sober than those living on their own.<sup>1</sup>

Additionally, the requested accommodation provides the residents an equal opportunity to use and enjoy housing of their choice.<sup>2</sup>

Based on the foregoing, Southeastern requests a reasonable accommodation pursuant to the Fair Housing Act for the City to treat the Southeastern use as the functional equivalent of a family for all applicable codes and waive the limitation of the number of unrelated persons who can reside together as a family. Southeastern appreciates the City’s consideration and I look forward to the City’s response to this request. Should you have any questions in the interim, please do not hesitate to contact me.

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<sup>1</sup> *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1227 (11th Cir. 2008) citing a series of federal decisions addressing the efficacy of group living arrangements for recovering substance abusers.

<sup>2</sup> The law requires equal opportunity for disabled persons to use and enjoy housing of their choice. *United States v. City of Jackson*, 318 F.Supp.2d 395, 416 (S.D. Miss. 2002) (FHA “guarantee[s] that the disabled be afforded equal opportunity to live, not in some residence in the community, but rather in the residence of their choice”); *ARC of New Jersey, Inc. v. State of New Jersey*, 950 F. Supp. 637, 645 (D. N.J. 1996) (“ceiling quotas imposed via group home spacing rules improperly limit the ability of handicapped persons ‘to live in the residence of their choice in the community,’ even if imposed in the name of integration or ‘declustering’”); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 n.10 (E.D. N.Y. 1993) (FHA “dictates that a handicapped individual must be allowed to enjoy a particular dwelling, not just some dwelling somewhere in the town”); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1344 (D. N.J. 1991) (defense based on existence of alternative locations in the city for group home held “without merit”).

Sincerely,

Greg Heafner

cc: Jamie Hoffman, Southeastern  
Walter Safrit, City Attorney

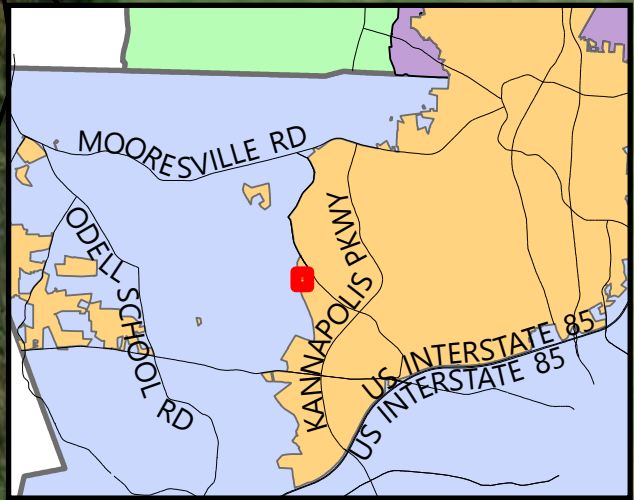


# Vicinity Map

Case Number: BOA-2024-06

Applicant: Southeastern Recovery Homes LLC

3148 Barr Rd



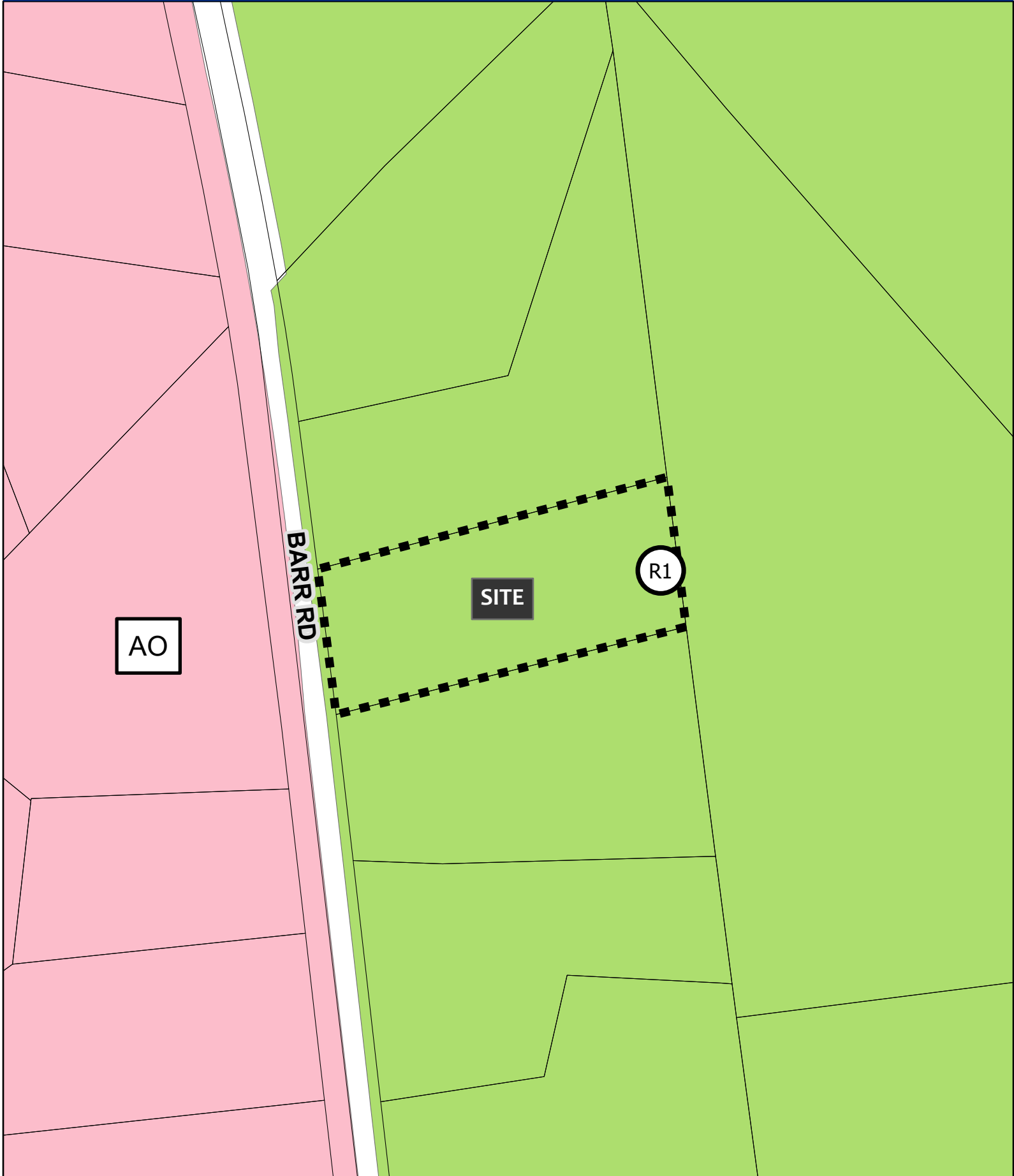


# Kannapolis Current Zoning

Case Number: BOA-2024-06

Applicant: Southeastern Recovery Homes LLC

3148 Barr Rd

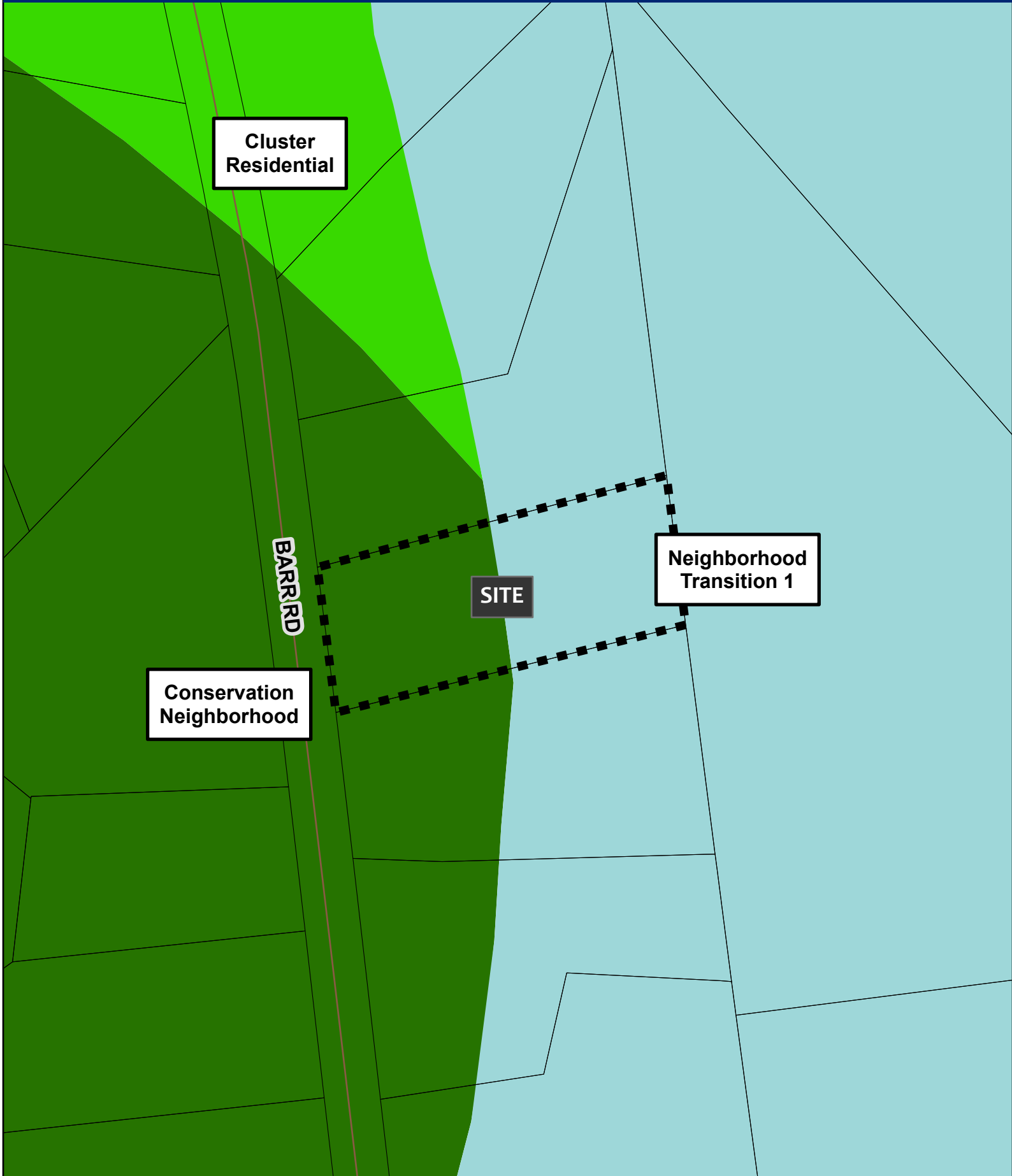


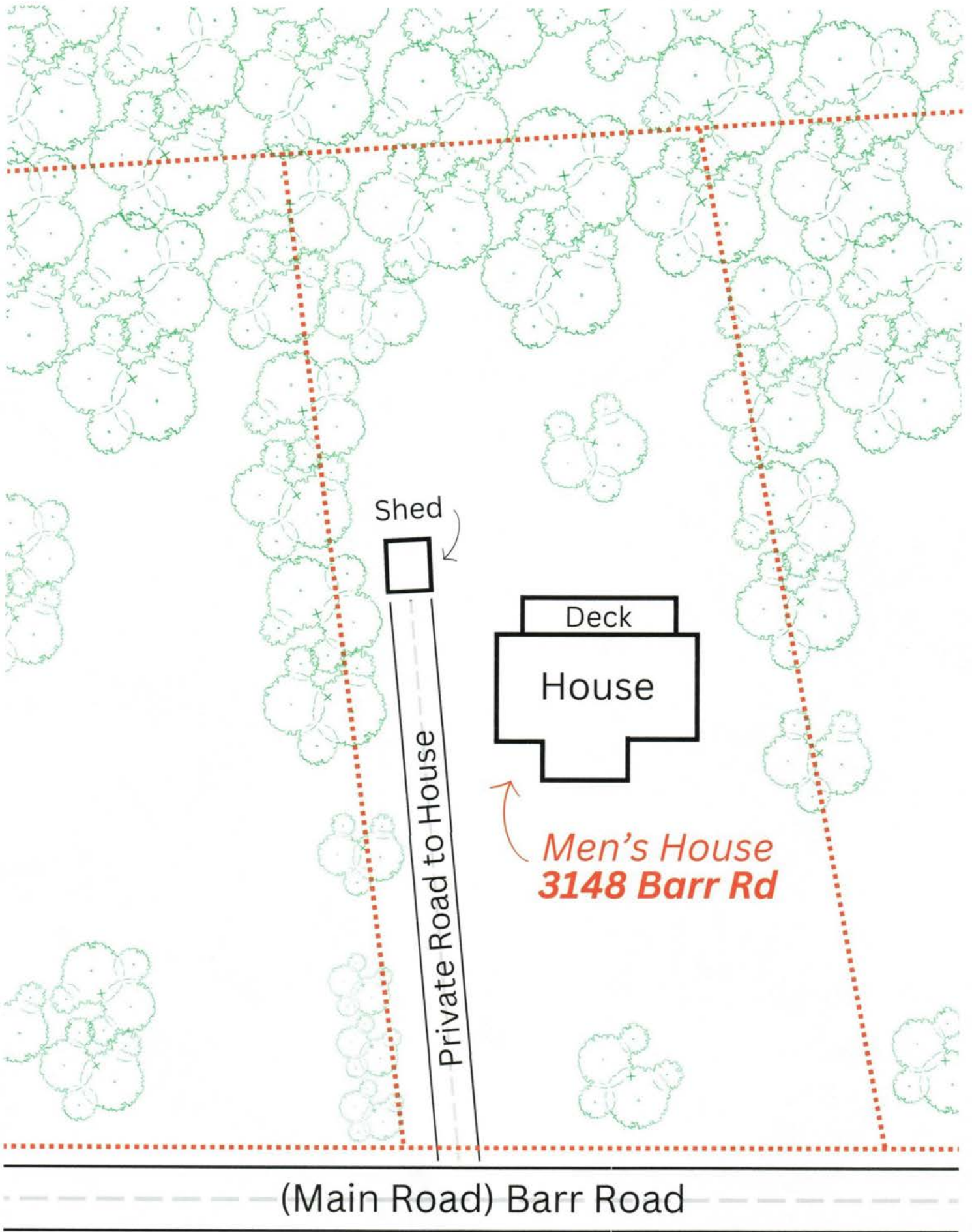
# Kannapolis 2030 Future Land Use Map

Case Number: BOA-2024-06

Applicant: Southeastern Recovery Homes LLC

3148 Barr Rd









<b>AcctName1</b>	<b>MailAddr1</b>	<b>MailCity</b>	<b>MailState</b>	<b>MailZipCod</b>
ERIC & JOELY POWLAS	3250 BARR ROAD	CONCORD	NC	28027
CAMERON & ROBIN SLOOP	3119 BARR RD	CONCORD	NC	28027
BENJAMIN & LAUREN BURGESS	3200 BARR RD	KANNAPOLIS	NC	28027
FRANCISCO & JUANA VARELA	3124 BARR RD	CONCORD	NC	28027
NATHAN & ERIN SAUNDERS	3211 TRINITY CHURCH RD	CONCORD	NC	28027
MARK & ERIN MARCO	901 MILLER ST	KANNAPOLIS	NC	28081
MICHAEL & BRENDA BENTON	3121 BARR ROAD	CONCORD	NC	28027
KIMBERLY JO GORDON & LESLIE MCCREADY	3029 BARR RD	CONCORD	NC	28027
H2-1 CAPITAL LLC	46 ORVIS STONE CIR	BILTMORE LAKE	NC	28715
H2-1 LLC				
ATTN: JAMIE HOFFMAN	3148 BARR RD	CONCORD	NC	28027
GREG HEAFNER	1510 TWISTED OAK DR	CHAPEL HILL	NC	27516



March 19, 2024

Dear Property Owner,

**Please be advised that the City of Kannapolis Board of Adjustment will conduct a quasi-judicial public hearing on Tuesday April 2, 2024, at 6:00 PM at City Hall, located at 401 Laureate Way, for the following case:**

**BOA-2024-06 – Special Use Permit – 3148 Barr Road**

The purpose of this Public Hearing is to consider a request for a Special Use Permit (SUP) to allow for a Residential care facility on property located at 3148 Barr Road. Pursuant to Table 4.2.B(5) of the Kannapolis Development Ordinance, a SUP is required for a Residential care facility in the Residential 1 (R1) zoning district. The subject property is 1.41 +/- acres and is more specifically identified as Cabarrus County Parcel Identification Number 46927680540000 (**Please see attached vicinity map showing the location of this property.**)

**As an abutting property owner, you are being notified of this public hearing in accordance with the requirements of the Kannapolis Development Ordinance. You are welcome to attend the public hearing and present testimony to the Board of Adjustment if you so desire.**

If you have any questions about the public hearing or request, please do not hesitate to contact the Planning Department at 704.920.4355 or [bbarcroft@kannapolisnc.gov](mailto:bbarcroft@kannapolisnc.gov).

Sincerely,

Ben Barcroft  
Senior Planner

Enclosure

The meeting is accessible to people with disabilities. To request special accommodation in advance, contact the City's ADA Coordinator at 704-920.4302.

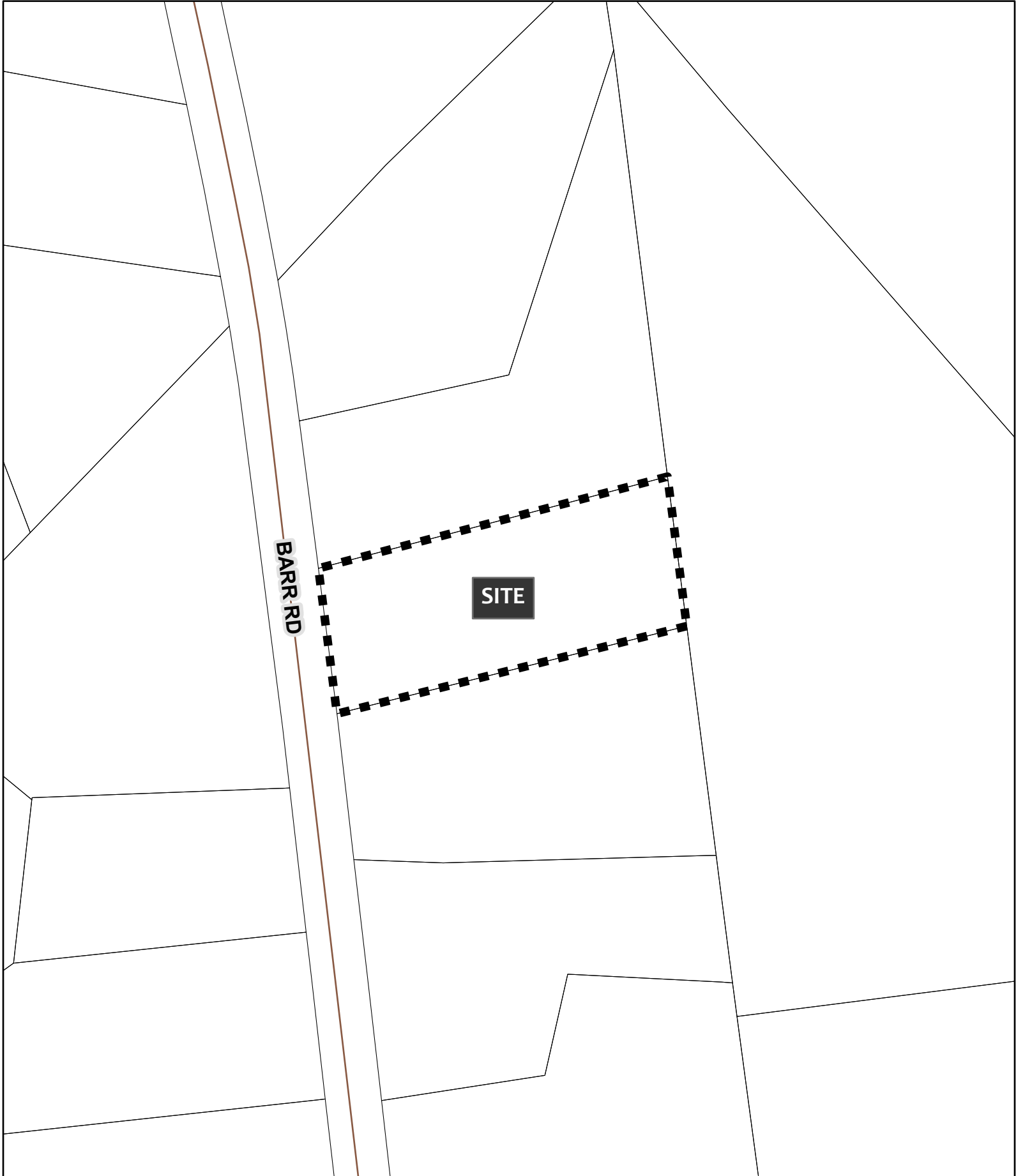


# Special Use Permit

Case Number: BOA-2024-06

Applicant: Southeastern Recovery Homes LLC

3148 Barr Rd



KANNAPLIS  
**BOARD OF**  
**ADJUSTMENT**  
PUBLIC HEARING  
INFORMATION  
CALL 704-920-4350  
CASE # BOA-2024-06

KANNAPOLIS BOARD OF ADJUSTMENT  
APPROVED AND FILED  
DATE: 5/7/2024  
SECRETARY: Pam Scagg

STATE OF NORTH CAROLINA  
CITY OF KANNAPOLIS

IN RE: Southeastern Recovery Center LLC :  
Property: 3148 Barr Road :  
Concord, NC 28027 :  
:  
:  
:  
:  
APPLICATION # 2024-06-BOA :

**ORDER FOR A SPECIAL  
USE PERMIT**

THE BOARD OF ADJUSTMENT for the City of Kannapolis, North Carolina having held a public hearing on April 2, 2024, to consider a request for a Special Use Permit (SUP) to allow for a Residential Care Facility in the building (“Building”) and property (“Property”) located at 3148 Barr Rd. Pursuant to Table 4.2.B(5) of the Kannapolis Development Ordinance, a SUP is required for Residential Care Facility in the Residential 1 (R1) zoning district. The Property is 1.41 +/- acres and is more specifically identified as Cabarrus County Parcel Identification Number 46927680540000

The applicant, Southeastern Recovery Center LLC., is requesting a Special Use Permit (SUP) to allow for a “Recovery Residence” in the Residential 1 (R-1) zoning district on the Property and further identified as Cabarrus County Parcel Identification Number 46927680540000.

On the Special Use Permit application, the applicant specified that the proposed use will be a “Recovery Residence.” A “Recovery Residence” is not a use that is defined in the KDO. Based upon the applicant’s submitted description of the facility and its expected number of residents, seventeen (17), the use would be considered a “Residential Care Facility” under the KDO as defined below:

*“A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities (N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.”*

The following were accepted into evidence to constitute a part of the record in the matter:

1. Special Use Permit Application
2. Vicinity Map
3. Zoning Map
4. Future Land Use Map
5. Conceptual Site Plan
6. Elevation Rendering
7. List of Notified Properties
8. Notice to Adjacent Property Owners
9. Posted Public Notice
10. Photographs of 3148 Barr Road (Applicant)
11. Request for Reasonable Accommodation December 13, 2023, Letter (Applicant)
12. Response to Request for Reasonable Accommodation January 14, 2024, Letter (Applicant)
13. Supportive Housing Studies (Applicant)
14. Cabarrus Health Alliance Septic Permit (City)

The Board considered the approval criteria required by Section 2.5.A(5) of the Kannapolis Development Ordinance.

Having heard all the evidence and arguments presented at the hearing, the Board makes the following FINDINGS OF FACT:

1. The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Land Use Plan.

(a) The Building appears to be constructed as a single-family home.

(b) Testimony provided indicated a use of the Building which did not resemble a single-family home. It was characterized more as a business with short-term lodging for composition.

(c) The use is not consistent nor in harmony with existing and surrounding uses because of its intensity with as many as seventeen occupants in the Building.

(d) The Building is occupied overnight by no less than seventeen individuals.

2. Adequate measures shall be taken to provide ingress and egress so designed as to minimize traffic hazards and to minimize traffic congestion on the public roads.

(a) The proposed use is not anticipated to cause any traffic hazards or traffic congestion.

3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke, or gas.

(a) It is not anticipated that the use of a Residential Care Facility at this location would create vibration, noise, odor, dust, smoke, or gas that would be noxious or offensive to the surrounding area.

4. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

(a) The use of a Residential Care Facility as proposed in the application for this site would not impede orderly development or improvement of surrounding property as the majority of the properties in this area are fully developed with single-family residences.

5. The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger public health, safety, or general welfare.

(a) Credible testimony was offered that the Building has a Cabarrus County septic tank permit for a residential structure with three bedrooms. As proposed, and as currently being used, the Building has six bedrooms and no less than seventeen occupants.

6. The proposed use complies with applicable provisions of the KDO.

(a) The proposed use fails to comply with certain provisions of the KDO.

(1) The proposed use would be located in a single-family residential structure.


- (2) The proposed use is not consistent or in harmony with existing and surrounding uses.
- (3) Applicant applied for a non-existent classification as a “Recovery Residence” and does not otherwise meet alternate KDO facility definitions.
- (b) Residential Care Facility (KDO definition). A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S. 131D), residential child-care facilities (N.C.G.S. 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.

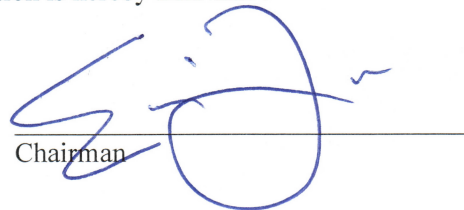
Based upon the above Findings of Fact, the Board makes the following Conclusions of Law:

- (a) That the use of the Building by the Applicant falls within the definition as a Residential Care Facility under the KDO;
- (b) That the Building located at 3148 Barr Road is a single-family dwelling;
- (c) That a Residential Care Facility is not permitted in a single-family dwelling.
- (d) That the Applicant’s request for a Special Use Permit was submitted for a “Recovery Residence” which is not a use defined in the KDO;
- (e) That the Applicant’s request during its public hearing presentation for a “reasonable accommodation” pursuant to the federal “Fair Housing Act” is not within the authority of the Board of Adjustment as the request for reasonable accommodation would require an amendment to an adopted ordinance;
- (f) The Board finds that occupation of the Building by seventeen individuals using six bedrooms is a material violation of the county septic tank permit and presents a significant public health risk and therefore is a danger to public welfare.

Based on the above FINDINGS OF FACT and CONCLUSIONS OF LAW, the Board finds that the requirements of the KDO have not been met and the application is hereby DENIED.

This the 7th day of May, 2024.

  
Secretary

  
Chairman



CABARRUS COUNTY, NC

H2-1 CAPITAL LLC  
3148 BARR RD CONCORD NC 28027  
165292

Return/Appeal Notes: Parcel: 4692 76 8054 0000  
PLAT: 00048/00019  
ID NO: 04 050 0032.13 0000

COUNTY TAX (100), KANNAPOLIS CITY TAX (100)  
CARD NO. 1 of 1  
1.4100 AC  
TW-04

SRC= Estimated  
CI-04 FR-00 EX-  
AT- LAST ACTION 20231023

Reval Year: 2024 Tax Year: 2024

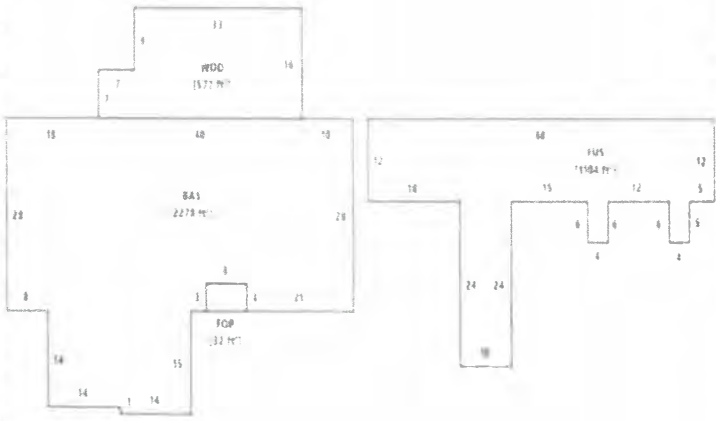
LT 3 MARK & ERIN MARCO

1.4100 AC

SRC= Estimated

Appraised by CA on 07/17/2019 12003 NORTHWEST CABARRUS SCHOOL

CONSTRUCTION DETAIL		MARKET VALUE						DEPRECIATION		CORRELATION OF VALUE	
Foundation - 3	5.00	Eff.	Area	BASE RATE	RCN	EYB	AYB	Standard	0.12000	CREDENCE TO MARKET	
Continuous Footing	5.00	08	01	3,342	106	133.56	446357	2012	2006	% GOOD	88.0
Sub Floor System - 4 Plyw @d	8.00	TYPE: SINGLE FAMILY MODULAR						SINGLE FAMILY HOME		DEPR. BUILDING VALUE - CARD 392,790	
Exterior Walls - 10 Aluminum/Vinyl Siding	30.00	STYLE: 2 - 1.5 Stories								DEPR. OB/XF VALUE - CARD 12,320	
Roofing Structure - 03 Gable	7.00									MARKET LAND VALUE - CARD 88,070	
Roofing Cover - 03 Asphalt or Composition Shingle	3.00									TOTAL MARKET VALUE - CARD 493,180	
Interior Wall Construction - 5 Drywall/Sheetrock	20.00									TOTAL APPRAISED VALUE - CARD 493,180	
Interior Floor Cover - 09 Pine or Soft Woods	10.00									TOTAL APPRAISED VALUE - PARCEL 493,180	
Heating Fuel - 04 Electric	1.00									TOTAL PRESENT USE VALUE - PARCEL 0	
Heating Type - 10 Heat Pump	4.00									TOTAL VALUE DEFERRED - PARCEL 0	
Air Conditioning Type - 03 Central	4.00									TOTAL TAXABLE VALUE - PARCEL \$ 493,180	
Bedrooms/Bathrooms/Half-Bathrooms 3/3/0	15.000									PRIOR	
Bedrooms BAS - 3 FUS - 0 LL - 0										BUILDING VALUE 223,030	
Bathrooms BAS - 2 FUS - 1 LL - 0										OBXF VALUE 6,220	
Half-Bathrooms BAS - 0 FUS - 0 LL - 0										LAND VALUE 66,540	
Office BAS - 0 FUS - 0 LL - 0	0									PRESENT USE VALUE 0	
TOTAL POINT VALUE	107.000									DEFERRED VALUE 0	
BUILDING ADJUSTMENTS											
Quality	3	Average	1.0000								
Shape/Design	4	MF4	1.0500								
Size	Size	Size	0.9400								
TOTAL ADJUSTMENT FACTOR	0.990										
TOTAL QUALITY INDEX	106										



Click on image to enlarge

SUBAREA		CODE	DESCRIPTION	COUNT	LTH	WTH	UNITS	UNIT PRICE	ORIG % COND	BLDG#	SIZE FACT	AYB	EYB	ANN DEP RATE	% OVR	COND	OB/XF DEPR. VALUE
BAS	2,278	100	DRIVE CON	0	0	3,700	4.20	100	1	0.80	2006	2006	S5	50		6216	
FOP	320	35	STORAGE WD	20	16	360	23.00	100	1	1.10	2013	2013	S3	67		6103	
FUS	1,104	085	TOTAL OB/XF VALUE 12,319														
WDD	577	020															
FIREPLACE	1 - None 0																
SUBAREA TOTALS	3,991																446,357

BUILDING DIMENSIONS BAS=S28E8S14E14S1E14N15E3N4E8S4E21N28W10W40W18Area:2278;WDD=N16W33S9W7S7E40Area:577;FOP=E8N4W8S4Area:32;FUS=N12W68S12E18S24E10N24E15S6E4N6E12S6E4N6E5Area:1104;TotalArea:3991

LAND INFORMATION																	
HIGHEST AND BEST USE	USE CODE	LOCAL ZONING	FRONT TAGE	DEPTH	DEPTH / SIZE	LND MOD	COND FACT	OTHER ADJUSTMENTS AND NOTES	ROAD TYPE	LAND UNIT PRICE	TOTAL LAND UNITS	UNT TYP	TOTAL ADJST	ADJUSTED UNIT PRICE	LAND VALUE	OVERRIDE VALUE	LAND NOTES
SFR	0100	R1	167	0	2.1350	8	0.6500	+05 -40 +00 +00 +00	RP	45,000.00	1.410	AC	1.388	62,460.00	88069		
TOTAL MARKET LAND DATA											1.410					88,070	
TOTAL PRESENT USE DATA																	

# EXHIBIT B

2-8-06

Cabarrus Health Alliance Authorization for Wastewater Disposal System Construction  
Permit void 60 months from date of issue or if changed in any form. This permit is non-refundable.  
1307 S. Cannon Blvd Kannapolis NC 28083 (704) 920-1207

File No 05-95

pd CC

Quad: Appl. No: SE009706  
S/D: Date: 5/10/2005 27 2-3-06  
Lot: Permit Fee: \$240.00  
PinNo: 46927588940000

Applicant Name: MARCO MARK & ERIN Applicant #: 400

Owner: MARK & ERIN MARCO

Address:

HPhone:

City/State/Zip: NO CITY NC 28025

OPhone:

Directions:

TAKE 73W/RT ON KANN. HWY/FOLLOW SHARP LEFT BEND/1ST ST ON RT IS BARR/PROP. ON RT/HSE IS THERE/WANTS TO BE THERE/SITE 1

### TYPE OF FACILITY

Single Family:  Multiple Family:   
Business Type: N/A # Employees 1st: 0 2nd 0 3rd 0

Other:

Comments:

MUST MEET ON-SITE PRIOR TO INSTALLATION. STRUCTURE 150 FEET FROM R.O.W. AT-GRADE SYSTEM WITH 12 INCH SOIL CAP.

Bedrooms: 3 Baths: 2

Basement  B'T Plmb  Garbage Disposal  Pump  Water: WELL

Tank Size 1000

S.T. Lines 600X3=1800 Sq. Ft

Stone Depth 6+6=12 Inches

W.M. Lines Sq. Ft

Stone Depth Inches

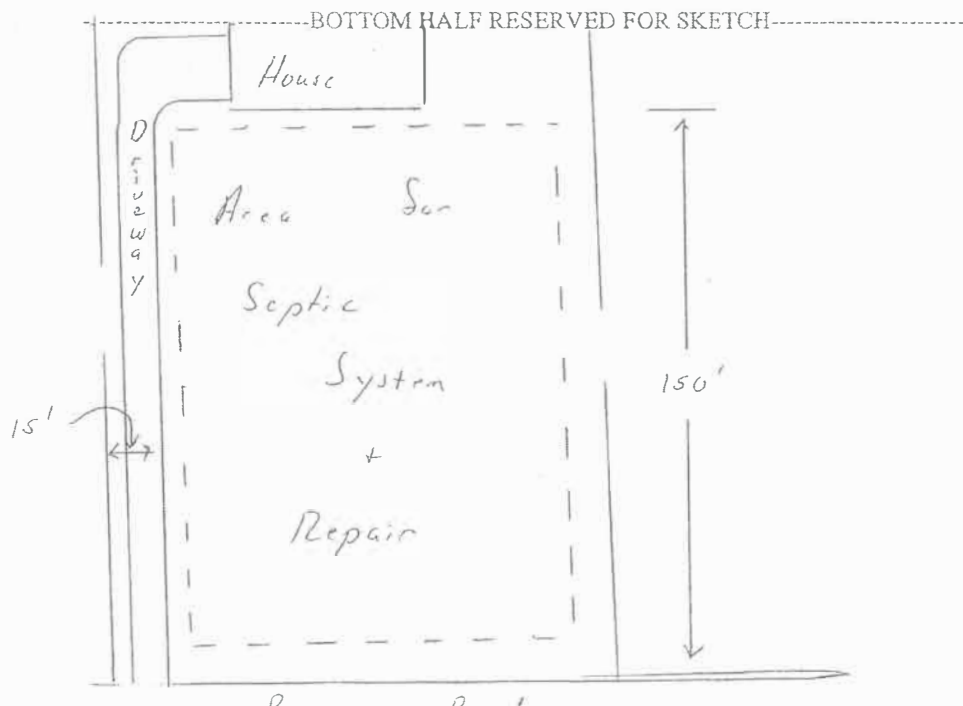
Lot Size 1.41

Initials MDT

Special Conditions/Instructions

At-grade system with

12 inch soil cap.



Cabarrus Health Alliance Wastewater Disposal Operations Permit  
 1307 S. Cannon Blvd Kannapolis NC 28083  
 This permit is non-transferrable

05-95

Quad:  
 S/D:  
 Lot:  
 Pin #: 46927588940000  
 Applicant Name: MARCO MARK & ERIN

Appl. No. -SE009706  
 Date -5/10/2005  
 Permit Fee -240

*PAID 5/11/06*

Owner: MARK & ERIN MARCO  
 Address:  
 City/State/Zip: CONCORD NC 28025

Owner Phone:

Directions

TAKE 73W/RT ON KANN. HWY/FOLLOW SHARP LEFT BEND/1ST ST ON RT IS BARR/PROP. ON RT/HSE IS THERE/WANTS TO BE THERE/SITE 1

Type of Facility

Single Family  Multiple Family

SEPTIC TANK SYSTEM WITH:

Business Type: N/A  
 # Emp 1st: 0 2nd: 0 3rd: 0  
 Other:

Conv Gravity: <input checked="" type="checkbox"/>	Pumps: <input type="checkbox"/>
H Wtr Alarm: <input type="checkbox"/>	Flow>480 GPD: <input type="checkbox"/>
Ot Appar:	

Bedrooms: 3 Baths: 2

Basement:  BT Plmb:  Garb Disposal:

(SEPTIC FIELD)

Tank Size: 1000

# TRENCH: 02	# D BOXES: 01
ST DEPTH: 12	SEALS:

S.T. Lines: 600X3=1800 Sq. Ft.

Stone Depth: 6+6=12 Inches

(WASHER SYSTEM)

W.M. Lines: Sq. Ft.

Tank:	# TRENCH: com
#D BOXES:	
STONE DEPTH:	SEALS:
INSTALLED BY: I. tucker	

Stone Depth: Inches

Lot Size: 1.41

Initials: MDT

Comments: MUST MEET ON-SITE PRIOR TO INSTALLATION. STRUCTURE 150 FEET FROM R.O.W. AT-GRADE SYSTEM WITH 12 INCH SOIL CAP.

Alt Sewage Treatment:

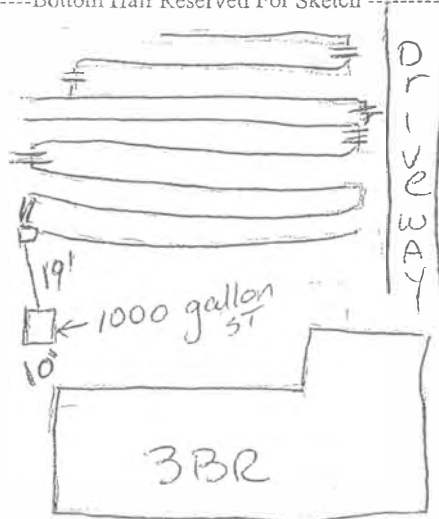
Alt Sewage Treatment 2:

CONDITIONS OF PERMIT:

INSPECTOR AT INSTALLATION: dmt

INSTALLATION DATE: 5/16/2006

-----Bottom Half Reserved For Sketch-----



*NO SCALE*

# EXHIBIT C

## SECTION .0800 – TANK CAPACITY, LEAK TESTING, AND INSTALLATION REQUIREMENTS

### 15A NCAC 18E .0801 SEPTIC TANK CAPACITY REQUIREMENTS

(a) Minimum liquid capacities for septic tanks shall be in accordance with the following:

- (1) The minimum capacity of any septic tank shall be 1,000 gallons unless otherwise provided for in this Rule.
- (2) The minimum capacity of any septic tank serving an individual dwelling unit with five bedrooms or less shall be sized as set forth in Table XIV.

**TABLE XIV.** Minimum septic tank liquid capacity for dwelling units

Number of bedrooms	Minimum liquid capacity in gallons
4 or less	1,000
5	1,250

- (3) Septic tanks for dwelling units greater than five bedrooms, multiple dwelling units, places of business, or places of public assembly shall be sized in accordance with Table XV.
- (4) The minimum septic tank capacity serving two or more dwelling units shall be 1,500 gallons.

**TABLE XV.** Septic tank capacity for facilities not listed in Table XIV

Design daily flow in gpd (Q)	Minimum septic tank liquid capacity (V) calculation in gallons
$Q \leq 600$	$V = 2Q$
$600 < Q < 1,500$	$V = 1.17Q + 500$
$1,500 \leq Q \leq 4,500$	$V = 0.75Q + 1,125$
$Q > 4,500$	$V = Q$

- (5) Septic tanks for RWTS and PIA Systems shall be sized in accordance with the RWTS or PIA Approval, pursuant to Sections .1500 and .1700 of this Subchapter.
- (b) The minimum liquid capacity requirements of Paragraph (a) of this Rule shall be met by use of a single two compartment tank or by two tanks installed in series. The tanks in series may be constructed with or without a baffle wall. Each tank shall have a minimum liquid capacity of 1,000 gallons.
- (c) When a grinder pump or sewage lift pump is installed prior to the septic tank, the required septic tank liquid capacity as set forth in this Rule shall be doubled. The minimum liquid capacity may be met by installing two or more septic tanks in series, each tank containing two compartments. The minimum liquid capacity of each tank shall be 1,000 gallons.
- (d) The Department shall review other septic tanks designed to receive wastewater from grinder pumps or sewage lift pumps if designed by a PE to ensure that effluent discharged from the septic tank meets DSE as set forth in Table III of Rule .0402(a) of this Subchapter.
- (e) An effluent filter approved in accordance with Rule .1404 of this Subchapter shall be in the outlet of the final compartment of the septic tank.
- (f) When two or more tanks are used in series in accordance with Paragraphs (b) or (c) of this Rule, the following conditions shall be met:
- (1) the outlet of the initial tank shall consist of an outlet sanitary tee extending down 25 to 50 percent of the liquid depth; and
  - (2) an approved effluent filter shall be in the outlet of the final compartment.

*History Note: Authority G.S. 130A-334; 130A-335(e), (f), and (f1); Eff. January 1, 2024.*

# EXHIBIT D

**Federal Register**

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Tuesday  
December 22, 1998

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Part V

## Department of Housing and Urban Development

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Fair Housing Enforcement—Occupancy  
Standards; Statement of Policy; Notice;  
Republication

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**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

[Docket No. FR-4405-N-01]

**Fair Housing Enforcement—  
Occupancy Standards; Notice of  
Statement of Policy**

**Note:** This document, FR Doc. 98-33568, was originally published on December 18, 1998 at 63 FR 70256-70257. It is being republished to reproduce the camera copy of the appendix furnished by the agency.

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice of Statement of Policy.

**SUMMARY:** This statement of policy advises the public of the factors that HUD will consider when evaluating a housing provider's occupancy policies to determine whether actions under the provider's policies may constitute discriminatory conduct under the Fair Housing Act on the basis of familial status (the presence of children in a family). Publication of this notice meets the requirements of the Quality Housing and Work Responsibility Act of 1998.

**DATES:** Effective date: December 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Sara Pratt, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, Room 5204, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-2290 (not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339 (toll-free).

**SUPPLEMENTARY INFORMATION:**

**Statutory and Regulatory Background**

Section 589 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998, "QHWRA") requires HUD to publish a notice in the **Federal Register** that advises the public of the occupancy standards that HUD uses for enforcement purposes under the Fair Housing Act (42 U.S.C. 3601-3619). Section 589 requires HUD to publish this notice within 60 days of enactment of the QHWRA, and states that the notice will be effective upon publication. Specifically, section 589 states, in relevant part, that:

[T]he specific and unmodified standards provided in the March 20, 1991, Memorandum from the General Counsel of [HUD] to all Regional Counsel shall be the policy of [HUD] with respect to complaints of discrimination under the Fair Housing Act \* \* \* on the basis of familial status which involve an occupancy standard established by a housing provider.

The Fair Housing Act prohibits discrimination in any aspect of the sale, rental, financing or advertising of dwellings on the basis of race, color, religion, national origin, sex or familial status (the presence of children in the family). The Fair Housing Act also provides that nothing in the Act "limits the applicability of any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." The Fair Housing Act gave HUD responsibility for implementation and enforcement of the Act's requirements. The Fair Housing Act authorizes HUD to receive complaints alleging discrimination in violation of the Act, to

investigate these complaints, and to engage in efforts to resolve informally matters raised in the complaint. In cases where the complaint is not resolved, the Fair Housing Act authorizes HUD to make a determination of whether or not there is reasonable cause to believe that discrimination has occurred. HUD's regulations, implementing the Fair Housing Act (42 U.S.C. 3614) are found in 24 CFR part 100.

In 1991, HUD's General Counsel, Frank Keating, determined that some confusion existed because of the absence of more detailed guidance regarding what occupancy restrictions are reasonable under the Act. To address this confusion, General Counsel Keating issued internal guidance to HUD Regional Counsel on factors that they should consider when examining complaints filed with HUD under the Fair Housing Act, to determine whether or not there is reasonable cause to believe discrimination has occurred.

**This Notice**

Through this notice HUD implements section 589 of the QHWRA by adopting as its policy on occupancy standards, for purposes of enforcement actions under the Fair Housing Act, the standards provided in the Memorandum of General Counsel Frank Keating to Regional Counsel dated March 20, 1991, attached as Appendix A.

**Authority:** 42 U.S.C. 3535(d), 112 Stat. 2461.

Dated: December 14, 1998.

**Eva M. Plaza,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

**BILLING CODE 4210-28-P**



U. S. Department of Housing and Urban Development  
Washington, D.C. 20410-0500

APPENDIX A

March 20, 1991

OFFICE OF GENERAL COUNSEL

MEMORANDUM FOR: All Regional Counsel

FROM: *FK* Frank Keating, G

SUBJECT: Fair Housing Enforcement Policy: Occupancy Cases

On February 21, 1991, I issued a memorandum designed to facilitate your review of cases involving occupancy policies under the Fair Housing Act. The memorandum was based on my review of a significant number of such cases and was intended to constitute internal guidance to be used by Regional Counsel in reviewing cases involving occupancy restrictions. It was not intended to create a definitive test for whether a landlord or manager would be liable in a particular case, nor was it intended to establish occupancy policies or requirements for any particular type of housing.

However, in discussions within the Department, and with the Department of Justice and the public, it is clear that the February 21 memorandum has resulted in a significant misunderstanding of the Department's position on the question of occupancy policies which would be reasonable under the Fair Housing Act. In this respect, many people mistakenly viewed the February 21 memorandum as indicating that the Department was establishing an occupancy policy which it would consider reasonable in any fair housing case, rather than providing guidance to Regional Counsel on the evaluation of evidence in familial status cases which involve the use of an occupancy policy adopted by a housing provider.

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For example, there is a HUD Handbook provision regarding the size of the unit needed for public housing tenants. See Handbook 7465.1 REV-2, Public Housing Occupancy Handbook: Admission, revised section 5-1 (issued February 12, 1991). While that Handbook provision states that HUD does not specify the number of persons who may live in public housing units of various sizes, it provides guidance about the factors public housing agencies may consider in establishing reasonable occupancy policies. Neither this memorandum nor the memorandum of February 21, 1991 overrides the guidance that Handbook provides about program requirements.

As you know, assuring Fair Housing for all is one of Secretary Kemp's top priorities. Prompt and vigorous enforcement of all the provisions of the Fair Housing Act, including the protections in the Act for families with children, is a critical responsibility of mine and every person in the Office of General Counsel. I expect Headquarters and Regional Office staff to continue their vigilant efforts to proceed to formal enforcement in all cases in which there is reasonable cause to believe that a discriminatory housing practice under the Act has occurred or is about to occur. This is particularly important in cases where occupancy restrictions are used to exclude families with children or to unreasonably limit the ability of families with children to obtain housing.

In order to assure that the Department's position in the area of occupancy policies is fully understood, I believe that it is imperative to articulate more fully the Department's position on reasonable occupancy policies and to describe the approach that the Department takes in its review of occupancy cases.

Specifically, the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. The Department of Justice has advised us that this is the general policy it has incorporated in consent decrees and proposed orders, and such a general policy also is consistent with the guidance provided to housing providers in the HUD handbook referenced above. However, the reasonableness of any occupancy policy is rebuttable, and neither the February 21 memorandum nor this memorandum implies that the Department will determine compliance with the Fair Housing Act based solely on the number of people permitted in each bedroom. Indeed, as we stated in the final rule implementing the Fair Housing Amendments Act of 1988, the Department's position is as follows:

[T]here is nothing in the legislative history which indicates any intent on the part of Congress to provide for the development of a national occupancy code. . . .

On the other hand, there is no basis to conclude that Congress intended that an owner or manager of dwellings would be unable to restrict the number of occupants who could reside in a dwelling. Thus, the Department believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit. In this regard, it must be noted that, in connection with a complaint alleging discrimination on the basis of familial status, the Department will carefully examine any such



nongovernmental restriction to determine whether it operates unreasonably to limit or exclude families with children.

24 C.F.R. Chapter I, Subchapter A. Appendix I at 566-67 (1990).

Thus, in reviewing occupancy cases, HUD will consider the size and number of bedrooms and other special circumstances. The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms or special circumstances would make an occupancy policy unreasonable.

#### Size of bedrooms and unit \*

Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom (dwelling based on a "two people per bedroom" policy.) In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on which they planned to live in a small two-bedroom mobile home. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a "two-bedroom" home, but one bedroom is extremely small, depending on all the facts, it could be reasonable for the park manager to limit occupancy of the home to two people.

#### Age of children

The following hypotheticals involving two housing providers who refused to permit three people to share a bedroom illustrate this principle. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment were large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first hypothetical, but not in the second.

#### Configuration of unit

The following imaginary situations illustrate special circumstances involving unit configuration. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a "two people per bedroom" occupancy policy. The first association manages a building in which the family of the five sought to purchase a unit consisting of two bedrooms plus a den or

study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a study or den. Depending on the other facts, a charge might be warranted in the first situation, but not in the second.

Other physical limitations of housing \*

In addition to physical considerations such as the size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing providers, such as the capacity of the septic, sewer, or other building systems.

*→ maximum of 6 residents at house & under disabled act fair fair housing*

State and local law

If a dwelling is governed by State or local governmental occupancy requirements, and the housing provider's occupancy policies reflect those requirements, HUD would consider the governmental requirements as a special circumstance tending to indicate that the housing provider's occupancy policies are reasonable.

Other relevant factors

Other relevant factors supporting a reasonable cause recommendation based on the conclusion that the occupancy policies are pretextual would include evidence that the housing provider has: (1) made discriminatory statements; (2) adopted discriminatory rules governing the use of common facilities; (3) taken other steps to discourage families with children from living in its housing; or (4) enforced its occupancy policies only against families with children. For example, the fact that a development was previously marketed as an "adults only" development would militate in favor of issuing a charge. This is an especially strong factor if there is other evidence suggesting that the occupancy policies are a pretext for excluding families with children.

An occupancy policy which limits the number of children per unit is less likely to be reasonable than one which limits the number of people per unit.

Special circumstances also may be found where the housing provider limits the total number of dwellings he or she is willing to rent to families with children. For example, assume a landlord owns a building of two-bedroom units, in which a policy of four people per unit is reasonable. If the landlord adopts a four person per unit policy, but refuses to rent to a family of two adults and two children because twenty of the thirty units already are occupied by families with children, a reasonable cause recommendation would be warranted.

If your review of the evidence indicates that these or other special circumstances are present, making application of a "two people per bedroom" policy unreasonably restrictive, you should prepare a reasonable cause determination. The Executive Summary should explain the special circumstances which support your recommendation.

[FR Doc. 98-33568 Filed 12-17-98; 8:45 am]

BILLING CODE BILLING CODE 4210-28-C

# EXHIBIT E

## 10A NCAC 13F .0305 PHYSICAL ENVIRONMENT

(a) An adult care home shall provide living arrangements to meet the individual needs of the residents, the live-in staff and other live-in persons.

(b) The requirements for each living room and recreational area are:

- (1) Each living room and recreational area shall be located off a lobby or corridor. At least 50 percent of required living and recreational areas shall be enclosed with walls and doors;
- (2) In buildings with a licensed capacity of 15 or less, there shall be a minimum area of 250 square feet;
- (3) In buildings with a licensed capacity of 16 or more, there shall be a minimum of 16 square feet per resident; and
- (4) Each living room and recreational area shall have windows.

(c) The requirements for the dining room are:

- (1) The dining room shall be located off a lobby or corridor and enclosed with walls and doors;
- (2) In buildings with a licensed capacity of 15 or less, there shall be a minimum of 200 square feet;
- (3) In building with a licensed capacity of 16 or more, there shall be a minimum of 14 square feet per resident; and
- (4) The dining room shall have windows.

(d) The requirements for the bedroom are:

- (1) The number of resident beds set up shall not exceed the licensed capacity of the facility;
- (2) There shall be bedrooms sufficient in number and size to meet the individual needs according to age and sex of the residents, any live-in staff and other persons living in the home. Residents shall not share bedrooms with staff or other live-in non-residents;
- (3) Only rooms authorized as bedrooms shall be used for residents' bedrooms;
- (4) Bedrooms shall be located on an outside wall and off a corridor. A room where access is through a bathroom, kitchen, or another bedroom shall not be approved for a resident's bedroom;
- (5) There shall be a minimum area of 100 square feet excluding vestibule, closet or wardrobe space in rooms occupied by one person and a minimum area of 80 square feet per bed, excluding vestibule, closet or wardrobe space, in rooms occupied by two people;
- (6) The total number of residents assigned to a bedroom shall not exceed the number authorized for that particular bedroom;
- (7) A bedroom may not be occupied by more than two residents;
- (8) Resident bedrooms shall be designed to accommodate all required furnishings;
- (9) Each resident bedroom shall be ventilated with one or more windows which are maintained operable and well lighted. The window area shall be equivalent to at least eight percent of the floor space and be provided with insect screens. The window opening may be restricted to a six-inch opening to inhibit resident elopement or suicide. The windows shall be low enough to see outdoors from the bed and chair, with a maximum 36 inch sill height; and
- (10) Bedroom closets or wardrobes shall be large enough to provide each resident with a minimum of 48 cubic feet of clothing storage space (approximately two feet deep by three feet wide by eight feet high) of which at least one-half shall be for hanging clothes with an adjustable height hanging bar.

(e) The requirements for bathrooms and toilet rooms are:

- (1) Minimum bathroom and toilet facilities shall include a toilet and a hand lavatory for each 5 residents and a tub or shower for each 10 residents or portion thereof;
- (2) Entrance to the bathroom shall not be through a kitchen, another person's bedroom, or another bathroom;
- (3) Toilets and baths for staff and visitors shall be in accordance with the North Carolina State Building Code, Plumbing Code;
- (4) Bathrooms and toilets accessible to the physically handicapped shall be provided as required by Volume I-C, North Carolina State Building Code, Accessibility Code;
- (5) The bathrooms and toilet rooms shall be designed to provide privacy. Bathrooms and toilet rooms with two or more water closets (commodes) shall have privacy partitions or curtains for each water closet. Each tub or shower shall have privacy partitions or curtains;
- (6) Hand grips shall be installed at all commodes, tubs and showers used by or accessible to residents;
- (7) Each home shall have at least one bathroom opening off the corridor with:
  - (A) a door of three feet minimum width;

- (B) a three feet by three feet roll-in shower designed to allow the staff to assist a resident in taking a shower without the staff getting wet;
  - (C) a bathtub accessible on at least two sides;
  - (D) a lavatory; and
  - (E) a toilet.
- (8) If the tub and shower are in separate rooms, each room shall have a lavatory and a toilet;
  - (9) Bathrooms and toilet rooms shall be located as conveniently as possible to the residents' bedrooms;
  - (10) Resident toilet rooms and bathrooms shall not be utilized for storage or purposes other than those indicated in Item (4) of this Rule;
  - (11) Toilets and baths shall be well lighted and mechanically ventilated at two cubic feet per minute. The mechanical ventilation requirement does not apply to facilities licensed before April 1, 1984, with natural ventilation;
  - (12) Nonskid surfacing or strips shall be installed in showers and bath areas; and
  - (13) The floors of the bathrooms and toilet rooms shall have water-resistant covering.
- (f) The requirements for storage rooms and closets are:
- (1) General Storage for the Home. A minimum area of five square feet (40 cubic feet) per licensed capacity shall be provided. This storage space shall be either in the facility or within 500 feet of the facility on the same site;
  - (2) Linen Storage. Storage areas shall be adequate in size and number for separate storage of clean linens and separate storage of soiled linens. Access to soiled linen storage shall be from a corridor or laundry room;
  - (3) Food Storage. Space shall be provided for dry, refrigerated and frozen food items to comply with sanitation rules;
  - (4) Housekeeping storage requirements are:
    - (A) A housekeeping closet, with mop sink or mop floor receptor, shall be provided at the rate of one per 60 residents or portion thereof; and
    - (B) There shall be separate locked areas for storing cleaning agents, bleaches, pesticides, and other substances which may be hazardous if ingested, inhaled or handled. Cleaning supplies shall be monitored while in use;
  - (5) Handwashing facilities with wrist type lever handles shall be provided immediately adjacent to the drug storage area;
  - (6) Storage for Resident's Articles. Some means for residents to lock personal articles within the home shall be provided; and
  - (7) Staff Facilities. Some means for staff to lock personal articles within the home shall be provided.
- (g) The requirements for corridors are:
- (1) Doors to spaces other than reach-in closets shall not swing into the corridor;
  - (2) Handrails shall be provided on both sides of corridors at 36 inches above the floor and be capable of supporting a 250 pound concentrated load;
  - (3) Corridors shall be lighted with night lights providing 1 foot-candle power at the floor; and
  - (4) Corridors shall be free of all equipment and other obstructions.
- (h) The requirements for outside entrances and exits are:
- (1) Service entrances shall not be through resident use areas;
  - (2) All steps, porches, stoops and ramps shall be provided with handrails and guardrails;
  - (3) All exit door locks shall be easily operable, by a single hand motion, from the inside at all times without keys; and
  - (4) In homes with at least one resident who is determined by a physician or is otherwise known to be disoriented or a wanderer, each exit door accessible by residents shall be equipped with a sounding device that is activated when the door is opened. The sound shall be of sufficient volume that it can be heard by staff. If a central system of remote sounding devices is provided, the control panel for the system shall be located in the office of the administrator or in a location accessible only to staff authorized by the administrator to operate the control panel.
- (i) The requirements for floors are:
- (1) All floors shall be of smooth, non-skid material and so constructed as to be easily cleanable;
  - (2) Scatter or throw rugs shall not be used; and
  - (3) All floors shall be kept in good repair.

- (j) Soil Utility Room. A separate room shall be provided and equipped for the cleaning and sanitizing of bed pans and shall have handwashing facilities.
- (k) Office. There shall be an area within the home large enough to accommodate normal administrative functions.
- (l) The requirements for laundry facilities are:
- (1) Laundry facilities shall be large enough to accommodate washers, dryers, and ironing equipment or work tables;
  - (2) These facilities shall be located where soiled linens will not be carried through the kitchen, dining, clean linen storage, living rooms or recreational areas; and
  - (3) A minimum of one residential type washer and dryer each shall be provided in a separate room which is accessible by staff, residents and family, even if all laundry services are contracted.
- (m) The requirements for outside premises are:
- (1) The outside grounds of new and existing facilities shall be maintained in a clean and safe condition;
  - (2) If the home has a fence around the premises, the fence shall not prevent residents from exiting or entering freely or be hazardous; and
  - (3) Outdoor walkways and drives shall be illuminated by no less than five foot-candles of light at ground level.
- (n) Alternate methods, procedures, design criteria and functional variations from the physical environment requirements, because of extraordinary circumstances, new programs or unusual conditions, shall be approved by the Division when the facility can effectively demonstrate to the Division's satisfaction that the intent of the physical environment requirements are met and the variation does not reduce the safety or operational effectiveness of the facility.

*History Note: Authority G.S. 131D-2.16; 143B-165;  
Eff. January 1, 1977;  
Readopted Eff. October 31, 1977;  
Amended Eff. July 1, 1990; April 1, 1987; July 1, 1984; April 1, 1984;  
Temporary Amendment Eff. December 1, 1999;  
Amended Eff. July 1, 2000;  
Recodified from Rule .0303 Eff. July 1, 2004;  
Temporary Amendment Eff. July 1, 2004;  
Amended Eff. July 1, 2005.*

### **10A NCAC 13G .0308 BEDROOMS**

- (a) There shall be bedrooms sufficient in number and size to meet the individual needs according to age and sex of the residents, the administrator or supervisor-in-charge, other live-in staff and any other persons living in a family care home. Residents are not to share bedrooms with staff or other live-in non-residents.
- (b) Only rooms authorized by the Division of Health Service Regulation as bedrooms shall be used for bedrooms.
- (c) A room where access is through a bathroom, kitchen or another bedroom shall not be approved for a resident's bedroom.
- (d) There shall be a minimum area of 100 square feet, excluding vestibule, closet or wardrobe space, in rooms occupied by one person and a minimum area of 80 square feet per bed, excluding vestibule, closet or wardrobe space, in rooms occupied by two persons.
- (e) The total number of residents assigned to a bedroom shall not exceed the number authorized by the Division of Health Service Regulation for that particular bedroom.
- (f) A bedroom shall not be occupied by more than two residents.
- (g) Each resident bedroom must have one or more operable windows and be lighted to provide 30 foot candles of light at floor level. The window area shall be equivalent to at least eight percent of the floor space. The windows shall have a maximum of 44 inch sill height.
- (h) Bedroom closets or wardrobes shall be large enough to provide each resident with a minimum of 48 cubic feet of clothing storage space (approximately two feet deep by three feet wide by eight feet high) of which at least one-half shall be for hanging clothes with an adjustable height hanging bar.

*History Note: Authority G.S. 131D-2.16; 143B-165;  
Eff. January 1, 1977;  
Readopted Eff. October 31, 1977;  
Amended Eff. July 1, 2005; July 1, 1990; April 1, 1984;  
Recodified from 10A NCAC 13G .0307 Eff. July 1, 2005;  
Pursuant to G.S. 150B-21.3A. rule is necessary without substantive public interest Eff. February  
16, 2019.*

# EXHIBIT F

## 10A NCAC 13G .0308 BEDROOMS

- (a) There shall be bedrooms sufficient in number and size to meet the individual needs according to age and sex of the residents, the administrator or supervisor-in-charge, other live-in staff and any other persons living in a family care home. Residents are not to share bedrooms with staff or other live-in non-residents.
- (b) Only rooms authorized by the Division of Health Service Regulation as bedrooms shall be used for bedrooms.
- (c) A room where access is through a bathroom, kitchen or another bedroom shall not be approved for a resident's bedroom.
- (d) There shall be a minimum area of 100 square feet, excluding vestibule, closet or wardrobe space, in rooms occupied by one person and a minimum area of 80 square feet per bed, excluding vestibule, closet or wardrobe space, in rooms occupied by two persons.
- (e) The total number of residents assigned to a bedroom shall not exceed the number authorized by the Division of Health Service Regulation for that particular bedroom.
- (f) A bedroom shall not be occupied by more than two residents.
- (g) Each resident bedroom must have one or more operable windows and be lighted to provide 30 foot candles of light at floor level. The window area shall be equivalent to at least eight percent of the floor space. The windows shall have a maximum of 44 inch sill height.
- (h) Bedroom closets or wardrobes shall be large enough to provide each resident with a minimum of 48 cubic feet of clothing storage space (approximately two feet deep by three feet wide by eight feet high) of which at least one-half shall be for hanging clothes with an adjustable height hanging bar.

*History Note: Authority G.S. 131D-2.16; 143B-165;  
Eff. January 1, 1977;  
Readopted Eff. October 31, 1977;  
Amended Eff. July 1, 2005; July 1, 1990; April 1, 1984;  
Recodified from 10A NCAC 13G .0307 Eff. July 1, 2005;  
Pursuant to G.S. 150B-21.3A. rule is necessary without substantive public interest Eff. February 16, 2019.*



10A NCAC 13F .0305 PHYSICAL ENVIRONMENT

(a) An adult care home shall provide living arrangements to meet the individual needs of the residents, the live-in staff and other live-in persons.

(b) The requirements for each living room and recreational area are:

- (1) Each living room and recreational area shall be located off a lobby or corridor. At least 50 percent of required living and recreational areas shall be enclosed with walls and doors;
- (2) In buildings with a licensed capacity of 15 or less, there shall be a minimum area of 250 square feet;
- (3) In buildings with a licensed capacity of 16 or more, there shall be a minimum of 16 square feet per resident; and
- (4) Each living room and recreational area shall have windows.

(c) The requirements for the dining room are:

- (1) The dining room shall be located off a lobby or corridor and enclosed with walls and doors;
- (2) In buildings with a licensed capacity of 15 or less, there shall be a minimum of 200 square feet;
- (3) In building with a licensed capacity of 16 or more, there shall be a minimum of 14 square feet per resident; and
- (4) The dining room shall have windows.

(d) The requirements for the bedroom are:

- (1) The number of resident beds set up shall not exceed the licensed capacity of the facility;
- (2) There shall be bedrooms sufficient in number and size to meet the individual needs according to age and sex of the residents, any live-in staff and other persons living in the home. Residents shall not share bedrooms with staff or other live-in non-residents;
- (3) Only rooms authorized as bedrooms shall be used for residents' bedrooms;
- (4) Bedrooms shall be located on an outside wall and off a corridor. A room where access is through a bathroom, kitchen, or another bedroom shall not be approved for a resident's bedroom;
- (5) There shall be a minimum area of 100 square feet excluding vestibule, closet or wardrobe space in rooms occupied by one person and a minimum area of 80 square feet per bed, excluding vestibule, closet or wardrobe space, in rooms occupied by two people;
- (6) The total number of residents assigned to a bedroom shall not exceed the number authorized for that particular bedroom;
- (7) A bedroom may not be occupied by more than two residents.
- (8) Resident bedrooms shall be designed to accommodate all required furnishings;
- (9) Each resident bedroom shall be ventilated with one or more windows which are maintained operable and well lighted. The window area shall be equivalent to at least eight percent of the floor space and be provided with insect screens. The window opening may be restricted to a six-inch opening to inhibit resident elopement or suicide. The windows shall be low enough to see outdoors from the bed and chair, with a maximum 36 inch sill height; and
- (10) Bedroom closets or wardrobes shall be large enough to provide each resident with a minimum of 48 cubic feet of clothing storage space (approximately two feet deep by three feet wide by eight feet high) of which at least one-half shall be for hanging clothes with an adjustable height hanging bar.

13x13 for 2  
13 1/2 x 15 1/2 3

(e) The requirements for bathrooms and toilet rooms are:

- (1) Minimum bathroom and toilet facilities shall include a toilet and a hand lavatory for each 5 residents and a tub or shower for each 10 residents or portion thereof;
- (2) Entrance to the bathroom shall not be through a kitchen, another person's bedroom, or another bathroom;
- (3) Toilets and baths for staff and visitors shall be in accordance with the North Carolina State Building Code, Plumbing Code;
- (4) Bathrooms and toilets accessible to the physically handicapped shall be provided as required by Volume I-C, North Carolina State Building Code, Accessibility Code;
- (5) The bathrooms and toilet rooms shall be designed to provide privacy. Bathrooms and toilet rooms with two or more water closets (commodes) shall have privacy partitions or curtains for each water closet. Each tub or shower shall have privacy partitions or curtains;
- (6) Hand grips shall be installed at all commodes, tubs and showers used by or accessible to residents;
- (7) Each home shall have at least one bathroom opening off the corridor with:
  - (A) a door of three feet minimum width;

- (B) a three feet by three feet roll-in shower designed to allow the staff to assist a resident in taking a shower without the staff getting wet;
  - (C) a bathtub accessible on at least two sides;
  - (D) a lavatory; and
  - (E) a toilet.
- (8) If the tub and shower are in separate rooms, each room shall have a lavatory and a toilet;
  - (9) Bathrooms and toilet rooms shall be located as conveniently as possible to the residents' bedrooms;
  - (10) Resident toilet rooms and bathrooms shall not be utilized for storage or purposes other than those indicated in Item (4) of this Rule;
  - (11) Toilets and baths shall be well lighted and mechanically ventilated at two cubic feet per minute. The mechanical ventilation requirement does not apply to facilities licensed before April 1, 1984, with natural ventilation;
  - (12) Nonskid surfacing or strips shall be installed in showers and bath areas; and
  - (13) The floors of the bathrooms and toilet rooms shall have water-resistant covering.
- (f) The requirements for storage rooms and closets are:
- (1) General Storage for the Home. A minimum area of five square feet (40 cubic feet) per licensed capacity shall be provided. This storage space shall be either in the facility or within 500 feet of the facility on the same site;
  - (2) Linen Storage. Storage areas shall be adequate in size and number for separate storage of clean linens and separate storage of soiled linens. Access to soiled linen storage shall be from a corridor or laundry room;
  - (3) Food Storage. Space shall be provided for dry, refrigerated and frozen food items to comply with sanitation rules;
  - (4) Housekeeping storage requirements are:
    - (A) A housekeeping closet, with mop sink or mop floor receptor, shall be provided at the rate of one per 60 residents or portion thereof; and
    - (B) There shall be separate locked areas for storing cleaning agents, bleaches, pesticides, and other substances which may be hazardous if ingested, inhaled or handled. Cleaning supplies shall be monitored while in use;
  - (5) Handwashing facilities with wrist type lever handles shall be provided immediately adjacent to the drug storage area;
  - (6) Storage for Resident's Articles. Some means for residents to lock personal articles within the home shall be provided; and
  - (7) Staff Facilities. Some means for staff to lock personal articles within the home shall be provided.
- (g) The requirements for corridors are:
- (1) Doors to spaces other than reach-in closets shall not swing into the corridor;
  - (2) Handrails shall be provided on both sides of corridors at 36 inches above the floor and be capable of supporting a 250 pound concentrated load;
  - (3) Corridors shall be lighted with night lights providing 1 foot-candle power at the floor; and
  - (4) Corridors shall be free of all equipment and other obstructions.
- (h) The requirements for outside entrances and exits are:
- (1) Service entrances shall not be through resident use areas;
  - (2) All steps, porches, stoops and ramps shall be provided with handrails and guardrails;
  - (3) All exit door locks shall be easily operable, by a single hand motion, from the inside at all times without keys; and
  - (4) In homes with at least one resident who is determined by a physician or is otherwise known to be disoriented or a wanderer, each exit door accessible by residents shall be equipped with a sounding device that is activated when the door is opened. The sound shall be of sufficient volume that it can be heard by staff. If a central system of remote sounding devices is provided, the control panel for the system shall be located in the office of the administrator or in a location accessible only to staff authorized by the administrator to operate the control panel.
- (i) The requirements for floors are:
- (1) All floors shall be of smooth, non-skid material and so constructed as to be easily cleanable;
  - (2) Scatter or throw rugs shall not be used; and
  - (3) All floors shall be kept in good repair.

- (j) Soil Utility Room. A separate room shall be provided and equipped for the cleaning and sanitizing of bed pans and shall have handwashing facilities.
- (k) Office. There shall be an area within the home large enough to accommodate normal administrative functions.
- (l) The requirements for laundry facilities are:
- (1) Laundry facilities shall be large enough to accommodate washers, dryers, and ironing equipment or work tables;
  - (2) These facilities shall be located where soiled linens will not be carried through the kitchen, dining, clean linen storage, living rooms or recreational areas; and
  - (3) A minimum of one residential type washer and dryer each shall be provided in a separate room which is accessible by staff, residents and family, even if all laundry services are contracted.
- (m) The requirements for outside premises are:
- (1) The outside grounds of new and existing facilities shall be maintained in a clean and safe condition;
  - (2) If the home has a fence around the premises, the fence shall not prevent residents from exiting or entering freely or be hazardous; and
  - (3) Outdoor walkways and drives shall be illuminated by no less than five foot-candles of light at ground level.
- (n) Alternate methods, procedures, design criteria and functional variations from the physical environment requirements, because of extraordinary circumstances, new programs or unusual conditions, shall be approved by the Division when the facility can effectively demonstrate to the Division's satisfaction that the intent of the physical environment requirements are met and the variation does not reduce the safety or operational effectiveness of the facility.

*History Note: Authority G.S. 131D-2.16; 143B-165;  
Eff. January 1, 1977;  
Readopted Eff. October 31, 1977;  
Amended Eff. July 1, 1990; April 1, 1987; July 1, 1984; April 1, 1984;  
Temporary Amendment Eff. December 1, 1999;  
Amended Eff. July 1, 2000;  
Recodified from Rule .0303 Eff. July 1, 2004;  
Temporary Amendment Eff. July 1, 2004;  
Amended Eff. July 1, 2005.*

# **EXHIBIT G**

## **RULES GOVERNING THE SANITATION OF RESIDENTIAL CARE FACILITIES 15A NCAC 18A .1600**

**NORTH CAROLINA**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**DIVISION OF PUBLIC HEALTH**

**ENVIRONMENTAL HEALTH SECTION**

**EFFECTIVE FEBRUARY 1, 1976**

**AMENDED EFFECTIVE NOVEMBER 1, 2002**

**All Environmental Health Rules can be accessed at the following website**

**<https://ehs.ncpublichealth.com/rules.htm>**

**North Carolina General Statutes can be accessed at the following website**

**[www.ncleg.net/gascripts/statutes/statutestoc.pl](http://www.ncleg.net/gascripts/statutes/statutestoc.pl)**

## TABLE OF CONTENTS

### PAGE

#### NORTH CAROLINA GENERAL STATUTES 130A-235

<u>RULE</u>	<u>TITLE</u>	
.1601	DEFINITIONS.....	1
.1602	APPROVAL OF PLANS.....	1
.1603	INSPECTIONS.....	1
.1604	REINSPECTIONS: VISITS.....	2
.1605	INSPECTION FORMS.....	2
.1606	GRADING.....	2
.1607	FLOORS.....	2
.1608	WALLS AND CEILINGS.....	3
.1609	LIGHTING AND VENTILATION.....	3
.1610	TOILET: HANDWASHING: AND BATHING FACILITIES.....	3
.1611	WATER SUPPLY.....	3
.1612	DRINKING WATER FACILITIES: ICE HANDLING.....	4
.1613	LIQUID WASTES.....	4
.1614	SOLID WASTES.....	4
.1615	VERMIN CONTROL: PREMISES.....	5
.1616	STORAGE: MISCELLANEOUS.....	5
.1617	BEDS: LINEN: FURNITURE.....	5
.1618	FOOD SERVICE UTENSILS AND EQUIPMENT.....	6
.1619	FOOD SUPPLIES.....	6
.1620	FOOD PROTECTION.....	6
.1621	FOOD SERVICE PERSONS.....	7

EHS 2094 – INSPECTION OF RESIDENTIAL CARE FACILITY

Part 4. Institutions and Schools.

**§ 130A-235. Regulation of sanitation in institutions; setback requirements applicable to certain water supply wells.**

(a) For protection of the public health, the Commission shall adopt rules to establish sanitation requirements for all institutions and facilities at which individuals are provided room or board and for which a license to operate is required to be obtained or a certificate for payment is obtained from the Department. The rules shall also apply to facilities that provide room and board to individuals but are exempt from licensure under G.S. 131D-10.4(1). No other State agency may adopt rules to establish sanitation requirements for these institutions and facilities. The Department shall issue a license to operate or a certificate for payment to such an institution or facility only upon compliance with all applicable sanitation rules of the Commission, and the Department may suspend or revoke a license or a certificate for payment for violation of these rules. In adopting rules pursuant to this section, the Commission shall define categories of standards to which such institutions and facilities shall be subject and shall establish criteria for the placement of any such institution or facility into one of the categories. This section shall not apply to State institutions and facilities subject to inspection under G.S. 130A-5(10). This section shall not apply to a single-family dwelling that is used for a family foster home or a therapeutic foster home, as those terms are defined in G.S. 131D-10.2.

(a1) Notwithstanding any law, rule, or policy to the contrary, the frequency of food service inspections in nursing homes or nursing home beds licensed under Part 1 of Article 5 of Chapter 131E of the General Statutes or Part 1 of Article 6 of Chapter 131E of the General Statutes that are also certified by the Centers for Medicare and Medicaid Services shall be reduced to a minimum of two inspections per year until October 1, 2012, and thereafter reduced to a minimum of one inspection per year, if the facility achieves a grade "A" sanitation score. If the facility receives a grade "B" or lower on its annual food service inspection, the county may conduct inspections until the food service operation achieves a grade "A" sanitation score. Nothing in this section prohibits the county from conducting an evaluation or inspection in response to a complaint or in the interest of public safety.

(b) Rules that establish a minimum distance from a building foundation for a water supply well shall provide that an institution or facility located in a single-family dwelling served by a water supply well that is located closer to a building foundation than the minimum distance specified in the rules may be licensed or approved if the results of water testing meet or exceed standards established by the Commission and there are no other potential health hazards associated with the well. At the time of application for licensure or approval, water shall be sampled and tested for pesticides, nitrates, and bacteria. Thereafter, water shall be sampled and tested at intervals determined by the Commission but not less than annually. A registered sanitarian or other health official who is qualified by training and experience shall collect the water samples as required by this subsection and may examine the well location to determine if there are other potential health hazards associated with the well. A well shall comply with all other applicable sanitation requirements established by the Commission.

(c) The Department may suspend or revoke a license or approval for a violation of this section or rules adopted by the Commission. (1945, c. 829, s. 1; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 543, s. 1; 1989, c. 727, s. 143; 1997-443, s. 11A.79; 1998-136, s. 1; 2001-109, s. 1; 2001-487, s. 84(a); 2011-226, s. 1.)

**SECTION .1600 - SANITATION OF RESIDENTIAL CARE FACILITIES**

Rules .1601 - .1622 of Title 15A Subchapter 18A of the North Carolina Administrative Code (T15A.18A .1601 - .1622); has been transferred and recodified from Rules .0201 - .0222 of Title 10 Subchapter 10A of the North Carolina Administrative Code (T10.10A .0201 - .0222), effective April 4, 1990.

**15A NCAC 18A .1601 DEFINITIONS**

The following definitions shall apply throughout this Section:

- (1) "Department of Environment and Natural Resources" means the Secretary, or his authorized representative.
- (2) "Director" means the State Health Director.
- (3) "Foster Care" means the care of individuals as defined in G.S. 131D-10.2(9).
- (4) "Family foster home" means a facility as defined in G.S. 131D-10.2(8).
- (5) "Manager" means the person in responsible charge of a residential care facility.
- (6) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (7) "Residential care facility" means an establishment providing room or board and for which a license or certificate for payment is obtained from the Department of Human Resources. However, the term shall not include a child day care facility or an institution as defined in 15A NCAC 18A .1300.
- (8) "Resident" means a person, other than the manager, his immediate family, and staff, residing in a residential care facility.
- (9) "Sanitarian" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (10) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. July 1, 1993; September 1, 1990; March 1, 1988; July 1, 1984;  
Temporary Amendment Eff. May 5, 1998;  
Temporary Amendment Expired January 26, 1999;  
Amended Eff. November 1, 2002

**15A NCAC 18A .1602 APPROVAL OF PLANS**

Plans and specifications for new construction or modification of residential care facilities, except family foster homes, shall be submitted to the agency designated by the state licensure regulations and to the local health department for review and approval before beginning construction.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990.

**15A NCAC 18A .1603 INSPECTIONS**

Inspections of residential care facilities shall be made by the Department at least once a year prior to the expiration of the license. Inspections are required for family foster homes only for those homes served by individual or non-community water supplies or on-site sewage systems. A copy of the inspection form shall be provided to the person in charge of the facility. If conditions found at the time of the inspection are dangerous to the health of the residents, the agency supervising the family foster home shall be notified immediately by telephone or other direct means by the sanitarian.

*History Note:* Authority G.S. 130A-235;

*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. July 1, 1993.*

**15A NCAC 18A .1604 REINSPECTIONS: VISITS**

The sanitarian may reinspect or visit residential care facilities at any time to insure compliance with these Rules. When requested by the manager to inspect for the purpose of improving a classification, the sanitarian shall make at least one unannounced inspection within 30 days. The sanitarian shall give assistance in the explanation and interpretation of these Rules.

*History Note: Authority G.S. 130A-235;*  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. September 1, 1990.*

**15A NCAC 18A .1605 INSPECTION FORMS**

The grading of residential care facilities shall be done on an inspection form furnished by the Department to local health departments. The form shall include at least the following information:

- (1) name and address of facility,
- (2) name of person in charge,
- (3) number of residents,
- (4) classification,
- (5) standards of construction and operation as listed in Rule .1607 to .1621 of this Section,
- (6) signature of authorized representative.

*History Note: Authority G.S. 130A-235;*  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. September 1, 1990; June 30, 1980.*

**15A NCAC 18A .1606 GRADING**

(a) The grading of residential care facilities shall be based upon the standards of construction and operation set out in Rules .1607 - .1621 of this Section; however, family foster homes are required to comply only with Rule .1611(a) and (b) and Rule .1613 of this Section.

(b) The grade of the facility shall be classified as follows:

- (1) as approved if the demerit score is 20 or less and no six demerit point item is violated;
- (2) as provisional if any six demerit point item is violated, or if the demerit score is more than 20 but not more than 40; The duration of such classification shall not exceed seven days; provided, that a longer period may be established if construction or renovation is involved;
- (3) as disapproved if the demerit score is more than 40, if the conditions found are dangerous to the health of the residents, or if the conditions resulting in the provisional classification have not been corrected within the specified time.

*History Note: Authority G.S. 130A-235;*  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977;*  
*Amended Eff. July 1, 1993; January 1, 1978.*

**15A NCAC 18A .1607 FLOORS**

All floors shall be easily cleanable and shall be kept clean and in good repair.

*History Note: Authority G.S. 130A-235;*  
*Eff. February 1, 1976;*  
*Readopted Eff. December 5, 1977.*



**15A NCAC 18A .1608 WALLS AND CEILINGS**

The walls and ceilings of all rooms and areas shall be kept clean and in good repair.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977.

**15A NCAC 18A .1609 LIGHTING AND VENTILATION**

- (a) All rooms shall be well lighted by natural or artificial means.
- (b) Ventilation equipment shall be kept clean and in good repair.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. July 1, 1993; October 1, 1985; July 1, 1984.

**15A NCAC 18A .1610 TOILET; HANDWASHING; LAUNDRY AND BATHING FACILITIES**

- (a) All residential care facilities shall be provided with approved sanitary toilet, handwashing and bathing facilities complying with state licensure requirements. These facilities, and laundry facilities when provided, shall be kept clean and in good repair.
- (b) All lavatories and baths shall be supplied with hot and cold running water through mixing devices. Each resident will be provided soap and individual towels. These towels will be stored separately after being used.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977.

**15A NCAC 18A .1611 WATER SUPPLY**

- (a) Water supplies shall meet the requirements in 15A NCAC 18A .1700; however wells shall be approved without meeting the setback to building foundation requirements found in 15A NCAC 18A .1720, if water sampling in accordance with Paragraph (b) of this Rule does not indicate a health threat.
- (b) At least once a year, samples of water shall be collected by the Department and submitted to the North Carolina State Laboratory of Public Health or other laboratory certified by the Department to perform examinations for Nitrates and Coliform bacteria. If the well is located less than 25 feet from a building foundation, the well shall also be sampled for pesticides upon application for licensure or approval. After the initial pesticide sample is collected and analyzed, the well shall be sampled again for pesticides following any treatment for structural pests.
- (c) No backflow connections or cross connections with unapproved supplies shall exist.
- (d) Adequate hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas and any other areas in which water is required for cleaning.

*History Note:* Authority G.S. 95-225; 130A-5(3); 130A-230; 130A-235; 130A-236; 130A-248; 130A-257;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990; July 1, 1984;  
Temporary Amendment Eff.; May 5, 1998;  
Temporary Amendment Expired January 26, 1999;  
Temporary Amendment Eff. January 1, 1999;  
Amended Eff. August 1, 2000.

**15A NCAC 18A .1612 DRINKING WATER FACILITIES: ICE HANDLING**

Common drinking cups shall not be provided or used. If ice is provided for residents, it shall be handled, transported, stored and dispensed in such a manner as to be protected against contamination.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;

*Amended Eff. September 1, 1990.*

#### **15A NCAC 18A .1613 LIQUID WASTES**

All sewage and other liquid wastes shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved, properly operating sanitary sewage system.

*History Note: Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1977;  
Readopted Eff. December 5, 1977;  
Amended Eff. July 1, 1984.*

#### **15A NCAC 18A .1614 SOLID WASTES**

- (a) All solid wastes shall be kept in durable, rust-resistant, nonabsorbent, watertight, rodent-proof standard waste containers which shall be kept covered when filled or stored or not in continuous use.
- (b) Outdoor containers shall be stored on a rack to prevent overturning. Waste containers shall be kept clean.
- (c) All solid wastes shall be disposed of with sufficient frequency and in such a manner as to prevent insect breeding and public health nuisances.

*History Note: Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990.*

#### **15A NCAC 18A .1615 VERMIN CONTROL: PREMISES**

- (a) Effective measures shall be taken to keep insects, rodents, and other vermin out of the residential care facility and to prevent their breeding, harborage, or presence on the premises. The premises shall be kept neat, clean, adequately drained, and free of litter and vermin harborage. All openings to the outer air shall be effectively protected against the entrance of flying insects by screens, closed doors, closed windows, or other effective means.
- (b) Only those pesticides shall be used which have been approved for a specific use and properly registered with the Environmental Protection Agency and with the North Carolina Department of Agriculture. Such pesticides shall be used as directed on the label and shall be so handled and stored as to avoid health hazards.

*History Note: Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. July 1, 1984.*

#### **15A NCAC 18A .1616 STORAGE: MISCELLANEOUS**

- (a) Rooms or spaces which are provided and used for the storage of clothing, personal effects, luggage, necessary equipment and supplies and for items not in routine use, shall be kept clean.
- (b) Pesticides, herbicides and other substances which may be hazardous if ingested, inhaled, or handled, shall be stored in a closet, cabinet or box not accessible to young children unless otherwise required in the rules of the licensing agency.
- (c) Household cleaning agents such as bleaches, detergents and polishes shall be stored out of the reach of young children unless otherwise required in the rules of the licensing agency.
- (d) Medications shall be stored in a separate cabinet, closet or box not accessible to young children unless otherwise required in the rules of the licensing agency.

*History Note: Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990.*

#### **15A NCAC 18A .1617 BEDS: LINEN: FURNITURE**

- (a) All furniture, mattresses, curtains, draperies, and other furnishings shall be kept clean and in good repair.
- (b) Clean bed linen in good repair shall be provided for each resident and shall be changed when soiled.
- (c) Clean linen shall be stored and handled in a sanitary manner and separate from soiled linen.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990.

#### **15A NCAC 18A .1618 FOOD SERVICE UTENSILS AND EQUIPMENT**

- (a) All equipment and utensils shall be so constructed as to be easily cleaned and shall be kept in good repair. All surfaces with which food or drink comes in contact shall, in addition, be easily accessible for cleaning, nontoxic, corrosion-resistant, nonabsorbent, and free of open crevices. Disposable articles shall be made from nontoxic materials.
- (b) All multi-use eating and drinking utensils shall be thoroughly cleaned after each usage, and the facilities needed for the operations of washing and rinsing shall be provided.
- (c) All pots, pans and other utensils used in the preparation or serving of food or drink, and all food storage utensils, shall be thoroughly cleaned after each use. Cooking surfaces of equipment, if any, shall be cleaned at least once each day. Non-food-contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.
- (d) No polish or other substance containing cyanide or other poisonous material shall be used for the cleaning or polishing of eating or cooking utensils.
- (e) All cloths used in the kitchen shall be clean. Disposable items shall be used only once.
- (f) All containers and clean utensils shall be stored in a clean place. Containers and clean utensils shall be covered, inverted, stored in tight, clean cabinets, or otherwise stored in such a manner as to prevent contamination. After cleaning and until use, food-contact surfaces of equipment shall be protected from contamination. Utensils shall be handled in such a manner as to prevent contamination.
- (g) Disposable utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a sanitary manner.
- (h) Acceptable facilities for washing multi-use eating and drinking utensils, and pots, pans and other cooking utensils, include 2-section residential sinks, in counters. It is not necessary that such sinks be deep enough to permit immersion of large utensils.
- (i) Acceptable storage facilities include residential kitchen cabinets, which should be kept clean and free of vermin.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990.

#### **15A NCAC 18A .1619 FOOD SUPPLIES**

- (a) All food, including milk and milk products, shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption.
- (b) If non-acid or low-acid home-canned foods are used, they shall be boiled for ten minutes in order to destroy any toxin that may have been produced by bacteria surviving the canning process.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990.

#### **15A NCAC 18A .1620 FOOD PROTECTION**

- (a) All foods, while being stored, prepared, served, and during transportation, shall be protected from contamination. All perishable foods shall be stored at such temperatures as will protect against spoilage. All potentially hazardous food shall be maintained at safe temperatures (45° F. or below, or 140° F. or above) except during necessary periods of preparation and serving. Frozen food shall be kept at such temperatures as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at

refrigerator temperatures of 45° F. or below; or quick-thawed as part of the cooking process; or by a method approved by the sanitarian. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C). Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to 165° F (74° C) or higher throughout before being served or before being placed in a hot food storage facility, except that food in intact packages from regulated food manufacturing plants may initially be reheated to 140° F (60° C). Stuffings, poultry, stuffed meats and poultry, and pork and pork products, shall be thoroughly cooked before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs, and other potentially hazardous prepared food shall be prepared, preferably from chilled products, with a minimum of manual contact, and on surfaces and with utensils which are clean. Portions of food once served to an individual shall not be served again.

(b) Live pets shall not be allowed in any room or area in which food is prepared or stored. Live pets, unless caged and restricted from the immediate eating area, shall not be allowed in any room or area in which food is served.

(c) Refrigeration facilities, hot food storage facilities, and effective insulated facilities, shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, and serving.

(d) Containers of food shall be stored above the floor, on clean racks, shelves, or other clean surfaces, in such a manner as to be protected from splash and other contamination.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. October 1, 1993; September 1, 1990.

#### **15A NCAC 18A .1621 FOOD SERVICE PERSONS**

(a) All persons, while preparing or serving food or washing equipment or utensils, shall wear clean outer garments, and conform to proper hygienic practices. They shall wash their hands thoroughly before starting work and as often as necessary to remove soil and contamination. After visiting a toilet room, such persons shall wash their hands thoroughly in a lavatory and in no case in the kitchen sink. They shall not use tobacco in any form while preparing or serving food.

(b) No person who has a communicable or infectious disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or who has a boil, infected wound, or an acute respiratory infection with cough and nasal discharge, shall work in food service in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces, with disease-causing organisms or transmitting the illness to other persons.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977;  
Amended Eff. September 1, 1990.

#### **15A NCAC 18A .1622 SEVERABILITY**

If any provision of this Section, or the application thereof to any person or circumstance is held invalid, the remainder of these Rules or the application of such provision to other persons or circumstances, shall not be affected thereby.

*History Note:* Authority G.S. 130A-235;  
Eff. February 1, 1976;  
Readopted Eff. December 5, 1977.



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# **EXHIBIT H**

**City of Kannapolis**

**Board of Adjustment Hearing**

**April 2, 2024**

## **Southeastern Recovery Center**

**Request for a Reasonable Accommodation**

**Fair Housing Act, 42 U.S.C. 3600 et. seq.**

**Application for Special Use Permit**

**Kannapolis UDO Sec. 2.5.A(5)c**

3148 Barr Road  
Kannapolis, North Carolina

## TABLE OF CONTENTS

<u>Exhibit Description</u>	<u>Exhibit Number</u>
42 U.S.C. § 3604(f) 42 U.S.C. § 36015	1
<i>City of Edmonds v., Oxford House, Inc.</i> 514 U.S. 725 (1995)	2
<i>United States of America et al v Town of Garner and Town of Garner Board of Adjustment</i> 5:09-CV-00216, EDNC (2009)	3
Photographs of 3148 Barr Road	4
Kannapolis KDO Article 10 Definitions	5
Kannapolis KDO Article 4 Use Table	6
Request for Reasonable Accommodation December 13, 2023 Letter to Richard Smith	7
Response to Request for Reasonable Accommodation January 17, 2024 Letter from Walter Safrit	8
Southeastern Recovery SUP Application	9
Supportive Housing Studies	10

**42 U.S.C. § 3604(f)**

**It shall be unlawful:**

- (1) To discriminate** in the sale or rental, or **to otherwise make unavailable or deny, a dwelling** to any buyer or renter **because of a handicap** of -

  - (A) that buyer or renter,
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that buyer or renter.
  
- (2) To discriminate against any person** in the terms, conditions, or privileges of sale or rental of a dwelling, or **in the provision of services or facilities** in connection with such dwelling, **because of a handicap** of -

  - (A) that person; or
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that person.
  
- (3) For purposes of this subsection, discrimination includes -**

  - (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
  - (B) **a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.**



**42 U.S.C. § 3615**

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but **any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.**

514 U.S. 725  
115 S.Ct. 1776  
131 L.Ed.2d 801

CITY OF EDMONDS, Petitioner

v.

OXFORD HOUSE, INC., et al.

No. 94-23.

Supreme Court of the United States

Argued March 1, 1995.

Decided May 15, 1995.

*Syllabus*\*

Respondent Oxford House operates a group home in Edmonds, Washington, for 10 to 12 adults recovering from alcoholism and drug addiction in a neighborhood zoned for single-family residences. Petitioner City of Edmonds issued citations to the owner and a resident of the house, charging violation of the City's zoning code. The code provides that the occupants of single-family dwelling units must compose a "family," and defines family as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons." Edmonds Community Development Code (ECDC) § 21.30.010. Oxford House asserted reliance on the Fair Housing Act (FHA), which prohibits discrimination in housing against, *inter alios*, persons with handicaps. Discrimination covered by the FHA includes "a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Edmonds subsequently sued Oxford House in federal court, seeking a declaration that the FHA does not constrain the City's zoning code family definition rule. Oxford House counterclaimed under the FHA, charging the City with failure to make a "reasonable accommodation" permitting the maintenance of the group home in a single-family zone. Respondent United States filed a separate action on the same FHA-"reasonable accommodation" ground, and the cases were consolidated. The District Court held that the

City's zoning code rule defining "family," ECDC § 21.30.010, is exempt from the FHA under 42 U.S.C. § 3607(b)(1) as a "reasonable . . . restrictio[n] regarding the maximum number of occupants permitted to occupy a dwelling." The Court of Appeals reversed, holding § 3607(b)(1)'s absolute exemption inapplicable.

*Held:* Edmonds' zoning code definition of the term "family" is not a maximum occupancy restriction exempt from the FHA under § 3607(b)(1). Pp. \_\_\_.

(a) Congress enacted § 3607(b)(1) against the backdrop of an evident distinction between municipal land use restrictions and maximum occupancy restrictions. Land use restrictions designate districts—*e.g.*, commercial or single-family residential—in which only compatible uses are allowed and incompatible uses are excluded. Reserving land for single-family residences preserves the character of neighborhoods as family residential communities. To limit land use to single-family residences, a municipality must define the term "family"; thus family composition rules are an essential component of single-family use restrictions. Maximum occupancy restrictions, in contradistinction, cap the number of occupants per dwelling, typically on the basis of available floor space or rooms. Their purpose is to protect health and safety by preventing dwelling overcrowding. Section 3607(b)(1)'s language "restrictions regarding the maximum number of occupants permitted to occupy a dwelling"—surely encompasses maximum occupancy restrictions, and does not fit family composition rules typically tied to land use restrictions. Pp. \_\_\_.

(b) The zoning provisions Edmonds invoked against Oxford House, ECDC §§ 16.20.010 and 21.30.010, are classic examples of a use restriction and complementing family composition rule. These provisions do not cap the number of people who may live in a dwelling: So long as they are related by "genetics, adoption, or marriage," any number of people can live in a house. A separate ECDC provision—§ 19.10.000—caps the number of occupants a dwelling may

house, based on floor area, and is thus a prototypical maximum occupancy restriction. In short, the City's family definition rule, ECDC § 21.30.010, describes family living, not living space per occupant. Defining family primarily by biological and legal relationships, the rule also accommodates another group association: five or fewer unrelated people are allowed to live together as though they were family. But this accommodation cannot convert Edmonds' family values preserver into a maximum occupancy restriction. Edmonds' contention that subjecting single-family zoning to FHA scrutiny will overturn Euclidian zoning and destroy the effectiveness and purpose of single-family zoning both ignores the limited scope of the issue before this Court and exaggerates the force of the FHA's antidiscrimination provisions, which require only "reasonable" accommodations. Since only a threshold question is presented in this case, it remains for the lower courts to decide whether Edmonds' actions violate the FHA's prohibitions against discrimination. Pp. \_\_\_.

18 F.3d 802 (CA9 1994), affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and STEVENS, O'CONNOR, SOUTER, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA and KENNEDY, JJ., joined.

W. Scott Snyder, for petitioner.

William F. Sheehan, for private respondents.

Paul Bender, for federal respondent.

Justice GINSBURG delivered the opinion of the Court.

The Fair Housing Act (FHA or Act) prohibits discrimination in housing against, *inter alios*, persons with handicaps.<sup>1</sup> Section 3607(b)(1) of the Act entirely exempts from the FHA's compass "any reasonable local, State, or Federal restrictions regarding the maximum number of

occupants permitted to occupy a dwelling." 42 U.S.C. § 3607(b)(1). This case presents the question whether a provision in petitioner City of Edmonds' zoning code qualifies for § 3607(b)(1)'s complete exemption from FHA scrutiny. The provision, governing areas zoned for single-family dwelling units, defines "family" as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons." Edmonds Community Development Code (ECDC) § 21.30.010 (1991).

The defining provision at issue describes who may compose a family unit; it does not prescribe "the maximum number of occupants" a dwelling unit may house. We hold that § 3607(b)(1) does not exempt prescriptions of the family-defining kind, *i.e.*, provisions designed to foster the family character of a neighborhood. Instead, § 3607(b)(1)'s absolute exemption removes from the FHA's scope only total occupancy limits, *i.e.*, numerical ceilings that serve to prevent overcrowding in living quarters.

## I

In the summer of 1990, respondent Oxford House opened a group home in the City of Edmonds, Washington for 10 to 12 adults recovering from alcoholism and drug addiction. The group home, called Oxford House-Edmonds, is located in a neighborhood zoned for single-family residences. Upon learning that Oxford House had leased and was operating a home in Edmonds, the City issued criminal citations to the owner and a resident of the house. The citations charged violation of the zoning code rule that defines who may live in single-family dwelling units. The occupants of such units must compose a "family," and family, under the City's defining rule, "means an individual or two or more persons related by genetics, adoption, or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage." Edmonds Community Development Code (ECDC) § 21.30.010. Oxford House-Edmonds houses more than five unrelated persons, and therefore does not conform to the code.

Oxford House asserted reliance on the Fair Housing Act, 102 Stat. 1619, 42 U.S.C. § 3601 *et seq.*, which declares it unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of . . . that buyer or a renter." § 3604(f)(1)(A). The parties have stipulated, for purposes of this litigation, that the residents of Oxford House-Edmonds "are recovering alcoholics and drug addicts and are handicapped persons within the meaning" of the Act. App. 106.

Discrimination covered by the FHA includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling." § 3604(f)(3)(B). Oxford House asked Edmonds to make a "reasonable accommodation" by allowing it to remain in the single-family dwelling it had leased. Group homes for recovering substance abusers, Oxford urged, need 8 to 12 residents to be financially and therapeutically viable. Edmonds declined to permit Oxford House to stay in a single-family residential zone, but passed an ordinance listing group homes as permitted uses in multifamily and general commercial zones.

Edmonds sued Oxford House in the United States District Court for the Western District of Washington seeking a declaration that the FHA does not constrain the City's zoning code family definition rule. Oxford House counterclaimed under the FHA, charging the City with failure to make a "reasonable accommodation" permitting maintenance of the group home in a single-family zone. The United States filed a separate action on the same FHA-"reasonable accommodation" ground, and the two cases were consolidated. Edmonds suspended its criminal enforcement actions pending resolution of the federal litigation.

On cross-motions for summary judgment, the District Court held that ECDC § 21.30.010, defining "family," is exempt from the FHA under § 3607(b)(1) as a "reasonable . . . restrictio[n]"

regarding the maximum number of occupants permitted to occupy a dwelling." App. to Pet. for Cert. B-7. The United States Court of Appeals for the Ninth Circuit reversed; holding § 3607(b)(1)'s absolute exemption inapplicable, the Court of Appeals remanded the cases for further consideration of the claims asserted by Oxford House and the United States. *Edmonds v. Washington State Building Code Council*, 18 F.3d 802 (1994).

The Ninth Circuit's decision conflicts with an Eleventh Circuit decision declaring exempt under § 3607(b)(1) a family definition provision similar to the Edmonds prescription. See *Elliott v. Athens*, 960 F.2d 975 (1992).<sup>2</sup> We granted certiorari to resolve the conflict, 513 U.S. ----, 115 S.Ct. 417, 130 L.Ed.2d 332 (1994), and we now affirm the Ninth Circuit's judgment.<sup>3</sup>

## II

The sole question before the Court is whether Edmonds' family composition rule qualifies as a "restrictio[n]" regarding the maximum number of occupants permitted to occupy a dwelling" within the meaning of the FHA's absolute exemption. 42 U.S.C. § 3607(b)(1).<sup>4</sup> In answering this question, we are mindful of the Act's stated policy "to provide, within constitutional limitations, for fair housing throughout the United States." § 3601. We also note precedent recognizing the FHA's "broad and inclusive" compass, and therefore according a "generous construction" to the Act's complaint-filing provision. *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 212, 93 S.Ct. 364, 366-367, 368, 34 L.Ed.2d 415 (1972). Accordingly, we regard this case as an instance in which an exception to "a general statement of policy" is sensibly read "narrowly in order to preserve the primary operation of the [policy]." *Commissioner v. Clark*, 489 U.S. 726, 739, 109 S.Ct. 1455, 1463, 103 L.Ed.2d 753 (1989).<sup>5</sup>

### A.

Congress enacted § 3607(b)(1) against the backdrop of an evident distinction between

municipal land use restrictions and maximum occupancy restrictions.

Land use restrictions designate "districts in which only compatible uses are allowed and incompatible uses are excluded." D. Mandelker, *Land Use Law* § 4.16, pp. 113-114 (3d ed.1993) (hereinafter Mandelker). These restrictions typically categorize uses as single-family residential, multiple-family residential, commercial, or industrial. See, e.g., 1 E. Ziegler, Jr., Rathkopf's *The Law of Zoning and Planning* § 8.01, pp. 8-2 to 8-3 (4th ed.1995); Mandelker § 1.03, p. 4; 1 E. Yokley, *Zoning Law and Practice* § 7-2, p. 252 (4th ed.1978).

Land use restrictions aim to prevent problems caused by the "pig in the parlor instead of the barnyard." *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388, 47 S.Ct. 114, 118, 71 L.Ed. 303 (1926). In particular, reserving land for single-family residences preserves the character of neighborhoods, securing "zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9, 94 S.Ct. 1536, 1541, 39 L.Ed.2d 797 (1974); see also *Moore v. City of East Cleveland*, 431 U.S. 494, 521, 97 S.Ct. 1932, 1947, 52 L.Ed.2d 531 (1977) (Burger, C.J., dissenting) (purpose of East Cleveland's single-family zoning ordinance "is the traditional one of preserving certain areas as family residential communities"). To limit land use to single-family residences, a municipality must define the term "family"; thus family composition rules are an essential component of single-family residential use restrictions.

Maximum occupancy restrictions, in contradistinction, cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms. See, e.g., Uniform Housing Code § 503(b) (1988); BOCA National Property Maintenance Code §§ PM-405.3, PM-405.5 (1993) (hereinafter BOCA Code); Standard Housing Code §§ 306.1, 306.2 (1991); APHA-CDC Recommended Minimum Housing Standards § 9.02, p. 37 (1986) (hereinafter APHA-CDC Standards).<sup>6</sup> These

restrictions ordinarily apply uniformly to all residents of all dwelling units. Their purpose is to protect health and safety by preventing dwelling overcrowding. See, e.g., BOCA Code §§ PM-101.3, PM-405.3, PM-405.5 and commentary; Abbott, *Housing Policy, Housing Codes and Tenant Remedies*, 56 B.U.L.Rev. 1, 41-45 (1976).

We recognized this distinction between maximum occupancy restrictions and land use restrictions in *Moore v. City of East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977). In *Moore*, the Court held unconstitutional the constricted definition of "family" contained in East Cleveland's housing ordinance. East Cleveland's ordinance "select[ed] certain categories of relatives who may live together and declare[d] that others may not"; in particular, East Cleveland's definition of "family" made "a crime of a grandmother's choice to live with her grandson." *Id.*, at 498-499, 97 S.Ct., at 1935 (plurality opinion). In response to East Cleveland's argument that its aim was to prevent overcrowded dwellings, streets, and schools, we observed that the municipality's restrictive definition of family served the asserted, and undeniably legitimate, goals "marginally, at best." *Id.*, at 500, 97 S.Ct., at 1936 (footnote omitted). Another East Cleveland ordinance, we noted, "specifically addressed . . . the problem of overcrowding"; that ordinance tied "the maximum permissible occupancy of a dwelling to the habitable floor area." *Id.*, at 500, n. 7, 97 S.Ct., at 1936, n. 7; accord, *id.*, at 520, n. 16, 97 S.Ct., at 1939, n. 16 (STEVENS, J., concurring in judgment). Justice Stewart, in dissent, also distinguished restrictions designed to "preserv[e] the character of a residential area," from prescription of "a minimum habitable floor area per person," *id.*, at 539, n. 9, 97 S.Ct., at 1937, n. 9, in the interest of community health and safety.<sup>7</sup>

Section 3607(b)(1)'s language—"restrictions regarding the maximum number of occupants permitted to occupy a dwelling"—surely encompasses maximum occupancy restrictions.<sup>8</sup> But the formulation does not fit family composition rules typically tied to land use restrictions. In sum, rules that cap the total

number of occupants in order to prevent overcrowding of a dwelling "plainly and unmistakably," see *A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493, 65 S.Ct. 807, 808, 89 L.Ed. 1095 (1945), fall within § 3607(b)(1)'s absolute exemption from the FHA's governance; rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain, do not.<sup>9</sup>

B

Turning specifically to the City's Community Development Code, we note that the provisions Edmonds invoked against Oxford House, ECDC §§ 16.20.010 and 21.30.010, are classic examples of a use restriction and complementing family composition rule. These provisions do not cap the number of people who may live in a dwelling. In plain terms, they direct that dwellings be used only to house families. Captioned "USES," ECDC § 16.20.010 provides that the sole "Permitted Primary Us[e]" in a single-family residential zone is "[s]ingle-family dwelling units." Edmonds itself recognizes that this provision simply "defines those uses permitted in a single family residential zone." Pet. for Cert. 3.

A separate provision caps the number of occupants a dwelling may house, based on floor area:

"Floor Area. Every dwelling unit shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two." ECDC § 19.10.000 (adopting Uniform Housing Code § 503(b) (1988)).<sup>10</sup>

This space and occupancy standard is a prototypical maximum occupancy restriction.

Edmonds nevertheless argues that its family composition rule, ECDC § 21.30.010, falls within § 3607(b)(1), the FHA exemption for maximum occupancy restrictions, because the rule caps at five the number of unrelated persons allowed to occupy a single-family dwelling. But Edmonds' family composition rule surely does not answer the question: "What is the maximum number of occupants permitted to occupy a house?" So long as they are related "by genetics, adoption, or marriage," any number of people can live in a house. Ten siblings, their parents and grandparents, for example, could dwell in a house in Edmonds' single-family residential zone without offending Edmonds' family composition rule.

Family living, not living space per occupant, is what ECDC § 21.30.010 describes. Defining family primarily by biological and legal relationships, the provision also accommodates another group association: five or fewer unrelated people are allowed to live together as though they were family. This accommodation is the peg on which Edmonds rests its plea for § 3607(b)(1) exemption. Had the City defined a family solely by biological and legal links, § 3607(b)(1) would not have been the ground on which Edmonds staked its case. See Tr. of Oral Arg. 11-12, 16. It is curious reasoning indeed that converts a family values preserver into a maximum occupancy restriction once a town adds to a related persons prescription "and also two unrelated persons."<sup>11</sup>

Edmonds additionally contends that subjecting single-family zoning to FHA scrutiny will "overturn Euclidian zoning" and "destroy the effectiveness and purpose of single-family zoning." Brief for Petitioner 11, 25. This contention both ignores the limited scope of the issue before us and exaggerates the force of the FHA's antidiscrimination provisions. We address only whether Edmonds' family composition rule qualifies for § 3607(b)(1) exemption. Moreover, the FHA antidiscrimination provisions, when applicable, require only "reasonable" accommodations to afford persons with handicaps "equal opportunity to use and enjoy" housing. §§ 3604(f)(1)(A) and (f)(3)(B).

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The parties have presented, and we have decided, only a threshold question: Edmonds' zoning code provision describing who may compose a "family" is not a maximum occupancy restriction exempt from the FHA under § 3607(b)(1). It remains for the lower courts to decide whether Edmonds' actions against Oxford House violate the FHA's prohibitions against discrimination set out in §§ 3604(f)(1)(A) and (f)(3)(B). For the reasons stated, the judgment of the United States Court of Appeals for the Ninth Circuit is

*Affirmed.*

Justice THOMAS, with whom Justice SCALIA and Justice KENNEDY join, dissenting.

Congress has exempted from the requirements of the Fair Housing Act (FHA) "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. § 3607(b)(1) (emphasis added). In today's decision, the Court concludes that the challenged provisions of petitioner's zoning code do not qualify for this exemption, even though they establish a specific number—five—as the maximum number of unrelated persons permitted to occupy a dwelling in the single-family neighborhoods of Edmonds, Washington. Because the Court's conclusion fails to give effect to the plain language of the statute, I respectfully dissent.

I

Petitioner's zoning code reserves certain neighborhoods primarily for "[s]ingle-family dwelling units." Edmonds Community Development Code (ECDC) § 16.20.010(A)(1) (1991), App. 225. To live together in such a dwelling, a group must constitute a "family," which may be either a traditional kind of family, comprising "two or more persons related by genetics, adoption, or marriage," or a nontraditional one, comprising "a group of five or

fewer persons who are not [so] related." § 21.30.010, App. 250. As respondent United States conceded at oral argument, the effect of these provisions is to establish a rule that "no house in [a single-family] area of the city shall have more than five occupants unless it is a [traditional kind of] family." Tr. of Oral Arg. 46. In other words, petitioner's zoning code establishes for certain dwellings "a five-occupant limit, [with] an exception for [traditional] families." *Ibid.*

To my mind, the rule that "no house . . . shall have more than five occupants" (a "five-occupant limit") readily qualifies as a "restrictio[n] regarding the maximum number of occupants permitted to occupy a dwelling." In plain fashion, it "restrict[s]"—to five—"the maximum number of occupants permitted to occupy a dwelling." To be sure, as the majority observes, the restriction imposed by petitioner's zoning code is not an absolute one, because it does not apply to related persons. See *ante*, at \_\_\_. But § 3607(b)(1) does not set forth a narrow exemption only for "absolute" or "unqualified" restrictions regarding the maximum number of occupants. Instead, it sweeps broadly to exempt *any* restrictions *regarding* such maximum number. It is difficult to imagine what broader terms Congress could have used to signify the categories or kinds of relevant governmental restrictions that are exempt from the FHA.<sup>1</sup>

Consider a real estate agent who is assigned responsibility for the city of Edmonds. Desiring to learn all he can about his new territory, the agent inquires: "Does the city have *any* restrictions regarding the maximum number of occupants permitted to occupy a dwelling?" The accurate answer must surely be in the affirmative—yes, the maximum number of unrelated persons permitted to occupy a dwelling in a single-family neighborhood is five. Or consider a different example. Assume that the Federal Republic of Germany imposes no restrictions on the speed of "cars" that drive on the *Autobahn* but does cap the speed of "trucks" (which are defined as all other vehicles). If a conscientious visitor to Germany asks whether there are *any* restrictions regarding the maximum speed of motor vehicles

permitted to drive on the *Autobahn*," the accurate answer again is surely the affirmative one—yes, there is a restriction regarding the maximum speed of trucks on the *Autobahn*.

The majority does not ask whether petitioner's zoning code imposes any restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Instead, observing that pursuant to ECDC § 21.30.010, "any number of people can live in a house," so long as they are "related 'by genetics, adoption, or marriage.'" the majority concludes that § 21.30.010 does not qualify for § 3607(b)(1)'s exemption because it "surely does not answer the question: 'What is the maximum number of occupants permitted to occupy a house?'" *Ante*, at \_\_\_. The majority's question, however, does not accord with the text of the statute. To take advantage of the exemption, a local, state, or federal law need not impose a restriction *establishing* an *absolute* maximum number of occupants; under § 3607(b)(1), it is necessary only that such law impose a restriction "regarding" the maximum number of occupants. Surely, a restriction can "regar[d]"—or "concern," "relate to," or "bear on"—the maximum number of occupants without establishing an absolute maximum number in all cases.<sup>2</sup>

I would apply § 3607(b)(1) as it is written. Because petitioner's zoning code imposes a qualified "restrictio[n]" regarding the maximum number of occupants permitted to occupy a dwelling," and because the statute exempts from the FHA "any" such restrictions, I would reverse the Ninth Circuit's holding that the exemption does not apply in this case.<sup>3</sup>

## II

The majority's failure to ask the right question about petitioner's zoning code results from a more fundamental error in focusing on "maximum occupancy restrictions" and "family composition rules." See generally *ante*, at \_\_\_. These two terms and the two categories of zoning rules they describe—are simply irrelevant to this case.

A.

As an initial matter, I do not agree with the majority's interpretive premise that "this case [is] an instance in which an exception to 'a general statement of policy' is sensibly read 'narrowly in order to preserve the primary operation of the [policy].'" *Ante*, at \_\_\_ (quoting *Commissioner v. Clark*, 489 U.S. 726, 739, 109 S.Ct. 1455, 1463, 103 L.Ed.2d 753 (1989)). Why *this* case? Surely, it is not because the FHA has a "policy"; every statute has that. Nor could the reason be that a narrow reading of § 3607(b)(1) is necessary to preserve the primary operation of the FHA's stated policy "to provide . . . for fair housing throughout the United States." 42 U.S.C. § 3601. Congress, the body responsible for deciding how specifically to achieve the objective of fair housing, obviously believed that § 3607(b)(1)'s exemption for "any . . . restrictions regarding the maximum number of occupants permitted to occupy a dwelling" is consistent with the FHA's general statement of policy. We do Congress no service—indeed, we *negate* the "primary operation" of § 3607(b)(1)—by giving that congressional enactment an artificially narrow reading. See *Rodriguez v. United States*, 480 U.S. 522, 526, 107 S.Ct. 1391, 1393, 94 L.Ed.2d 533 (1987) (*per curiam*) ("[I]t frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be law"); *Board of Governors, FRS v. Dimension Financial Corp.*, 474 U.S. 361, 374, 106 S.Ct. 681, 689, 88 L.Ed.2d 691 (1986) ("Invocation of the 'plain purpose' of legislation at the expense of the terms of the statute itself . . . , in the end, prevents the effectuation of congressional intent").<sup>4</sup>

In any event, as applied to the present case, the majority's interpretive premise clashes with our decision in *Gregory v. Ashcroft*, 501 U.S. 452, 456-470, 111 S.Ct. 2395, 2398-2406, 115 L.Ed.2d 410 (1991), in which we held that state judges are not protected by the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U.S.C. §§ 621-634 (1988 ed. and Supp. V). Though the ADEA generally protects the employees of States and their political



subdivisions, see § 630(b)(2), it exempts from protection state and local elected officials and "appointee[s] on the policymaking level," § 630(f). In concluding that state judges fell within this exemption, we did not construe it "narrowly" in order to preserve the "primary operation" of the ADEA. Instead, we specifically said that we were "not looking for a plain statement that judges are excluded" from the Act's coverage. *Gregory*, *supra*, at 467, 111 S.Ct., at 2404. Moreover, we said this *despite* precedent recognizing that the ADEA "broadly prohibits" age discrimination in the workplace. *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 120, 105 S.Ct. 613, 621, 83 L.Ed.2d 523 (1985) (quoting *Lorillard v. Pons*, 434 U.S. 575, 577, 98 S.Ct. 866, 868, 55 L.Ed.2d 40 (1978)). Cf. *ante*, at \_\_\_ (noting "precedent recognizing the FHA's 'broad and inclusive' compass" (quoting *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 93 S.Ct. 364, 367, 34 L.Ed.2d 415 (1972))).

Behind our refusal in *Gregory* to give a narrow construction to the ADEA's exemption for "appointee[s] on the policymaking level" was our holding that the power of Congress to "legislate in areas traditionally regulated by the States" is "an extraordinary power in a federalist system," and "a power that we must assume Congress does not exercise lightly." 501 U.S., at 460, 111 S.Ct., at 2400. Thus, we require that " 'Congress should make its intention 'clear and manifest' if it intends to pre-empt the historic powers of the States.' " *Id.*, at 461, 111 S.Ct., at 2401 (quoting *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 65, 109 S.Ct. 2304, 2309, 105 L.Ed.2d 45 (1989)). It is obvious that land use—the subject of petitioner's zoning code—is an area traditionally regulated by the States rather than by Congress, and that land use regulation is one of the historic powers of the States. As we have stated, "zoning laws and their provisions . . . are peculiarly within the province of state and local legislative authorities." *Warth v. Seldin*, 422 U.S. 490, 508, n. 18, 95 S.Ct. 2197, 2210, n. 18, 45 L.Ed.2d 343 (1975). See also *Hess v. Port Authority Trans-Hudson Corporation*, 513 U.S. ----, ----, 115 S.Ct. 394, 402, 130 L.Ed.2d 245 (1994) ("regulation of land use [is] a function traditionally performed by

local governments"); *FERC v. Mississippi*, 456 U.S. 742, 768, n. 30, 102 S.Ct. 2126, 2142, n. 30, 72 L.Ed.2d 532 (1982) ("regulation of land use is perhaps the quintessential state activity"); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 13, 94 S.Ct. 1536, 1543, 39 L.Ed.2d 797 (1974) (Marshall, J., dissenting) ("I am in full agreement with the majority that zoning . . . may indeed be the most essential function performed by local government"). Accordingly, even if it might be sensible in other contexts to construe exemptions narrowly, that principle has no application in this case.

## B

I turn now to the substance of the majority's analysis, the focus of which is "maximum occupancy restrictions" and "family composition rules." The first of these two terms has the sole function of serving as a label for a category of zoning rules simply invented by the majority: rules that "cap the number of occupants per dwelling, typically in relation to available floor space or the number and type of rooms," that "ordinarily apply uniformly to *all* residents of *all* dwelling units," and that have the "purpose . . . to protect health and safety by preventing dwelling overcrowding." *Ante*, at \_\_\_.<sup>5</sup> The majority's term does bear a familial resemblance to the statutory term "restrictions regarding the maximum number of occupants permitted to occupy a dwelling," but it should be readily apparent that the category of zoning rules the majority labels "maximum occupancy restrictions" does not exhaust the category of restrictions exempted from the FHA by § 3607(b)(1). The plain words of the statute do not refer to "available floor space or the number and type of rooms"; they embrace no requirement that the exempted restrictions "apply uniformly to *all* residents of *all* dwelling units"; and they give no indication that such restrictions must have the "purpose . . . to protect health and safety by preventing dwelling overcrowding." *Ibid.*

Of course, the majority does not contend that the language of § 3607(b)(1) precisely describes the category of zoning rules it has

labeled "maximum occupancy restrictions." Rather, the majority makes the far more narrow claim that the statutory language "surely encompasses" that category. *Ante*, at \_\_\_. I readily concede this point.<sup>6</sup> But the obvious conclusion that § 3607(b)(1) encompasses "maximum occupancy restrictions" tells us nothing about whether the statute *also* encompasses ECDC § 21.30.010, the zoning rule at issue here. In other words, although the majority's discussion will no doubt provide guidance in future cases, it is completely irrelevant to the question presented in *this* case.

The majority fares no better in its treatment of "family composition rules," a term employed by the majority to describe yet another invented category of zoning restrictions. Although today's decision seems to hinge on the majority's judgment that ECDC § 21.30.010 is a "classic exampl[e] of a . . . family composition rule," *ante*, at \_\_\_, the majority says virtually nothing about this crucial category. Thus, it briefly alludes to the derivation of "family composition rules" and provides a single example of them.<sup>7</sup> Apart from these two references, however, the majority's analysis consists *solely* of announcing its conclusion that "the formulation [of § 3607(b)(1)] does not fit family composition rules." *Ante*, at \_\_\_. This is not reasoning; it is *ipse dixit*. Indeed, it is not until *after* this conclusion has been announced that the majority (in the course of summing up) even defines "family composition rules" at all. See *ibid.* (referring to "rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain").

Although the majority does not say so explicitly, one might infer from its belated definition of "family composition rules" that § 3607(b)(1) does not encompass zoning rules that have one particular purpose ("to preserve the family character of a neighborhood") or those that refer to the qualitative as well as the quantitative character of a dwelling (by "fastening on the composition of households rather than on the total number of occupants living quarters can

contain"). *Ibid.* Yet terms like "family character," "composition of households," "total [that is, absolute] number of occupants," and "living quarters" are noticeably absent from the text of the statute. Section 3607(b)(1) limits neither the permissible purposes of a qualifying zoning restriction nor the ways in which such a restriction may accomplish its purposes. Rather, the exemption encompasses "any" zoning restriction—whatever its purpose and by whatever means it accomplishes that purpose—so long as the restriction "regard[s]" the maximum number of occupants. See generally *supra*, at \_\_\_. As I have explained, petitioner's zoning code does precisely that.<sup>8</sup>

In sum, it does not matter that ECDC § 21.030.010 describes "[f]amily living, not living space per occupant," *ante*, at \_\_\_, because it is immaterial under § 3607(b)(1) whether § 21.030.010 constitutes a "family composition rule" but not a "maximum occupancy restriction." The sole relevant question is whether petitioner's zoning code imposes "any . . . restrictions regarding the maximum number of occupants permitted to occupy a dwelling." Because I believe it does, I respectfully dissent.

\* The Syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

<sup>1</sup> The FHA, as originally enacted in 1968, prohibited discrimination based on race, color, religion, or national origin. See 82 Stat. 83. Proscription of discrimination based on sex was added in 1974. See Housing and Community Development Act of 1974, § 808(b), 88 Stat. 729. In 1988, Congress extended coverage to persons with handicaps and also prohibited "familial status" discrimination, *i.e.*, discrimination against parents or other custodial persons domiciled with children under the age of 18. 42 U.S.C. § 3602(k).

<sup>2</sup> The single-family residential zoning provision at issue in *Elliott* defines "family," in relevant part,

as "[o]ne (1) or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage or adoption, no such family shall contain over four (4) persons." 960 F.2d, at 976.

<sup>3</sup> On May 17, 1993, the State of Washington enacted a law providing:

"No city may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, 'handicaps' are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602)." Wash.Rev.Code § 35.63.220 (1994).

The United States asserts that Washington's new law invalidates ECDC § 21.30.010, Edmonds' family composition rule, as applied to Oxford House-Edmonds. Edmonds responds that the effect of the new law is "far from clear." Reply to Briefs in Opposition 4. Even if the new law prevents Edmonds from enforcing its rule against Oxford House, a live controversy remains because the United States seeks damages and civil penalties from Edmonds, under 42 U.S.C. §§ 3614(d)(1)(B) and (C), for conduct occurring prior to enactment of the state law. App. 85.

<sup>4</sup> Like the District Court and the Ninth Circuit, we do not decide whether Edmonds' zoning code provision defining "family," as the City would apply it against Oxford House, violates the FHA's prohibitions against discrimination set out in 42 U.S.C. §§ 3604(f)(1)(A) and (f)(3)(B).

<sup>5</sup> The dissent notes *Gregory v. Ashcroft*, 501 U.S. 452, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991), as an instance in which the Court did not tightly cabin an exemption contained in a statute proscribing discrimination. See *post*, at \_\_\_. *Gregory* involved an exemption in the Age Discrimination in Employment Act of 1967, 81 Stat. 602, as amended, 29 U.S.C. §§ 621-634, covering state and local elective officials and "appointee[s] on the policymaking level." § 630(f). The question

there was whether state judges fit within the exemption. We held that they did. A state constitutional provision, not a local ordinance, was at stake in *Gregory*—a provision going "beyond an area traditionally regulated by the States" to implicate "a decision of the most fundamental sort for a sovereign entity." 501 U.S., at 460, 111 S.Ct. at 2400. In that light, the Court refused to attribute to Congress, absent plain statement, any intent to govern the tenure of state judges. Nothing in today's opinion casts a cloud on the soundness of that decision.

<sup>6</sup> Contrary to the dissent's suggestion, see *post*, at \_\_\_, n. 5, terminology in the APHA-CDC Standards bears a marked resemblance to the formulation Congress used in § 3607(b)(1). See APHA-CDC Standards § 2.51, p. 12 (defining "Permissible Occupancy" as "the maximum number of individuals permitted to reside in a dwelling unit, or rooming unit").

<sup>7</sup> Other courts and commentators have similarly differentiated between land use restrictions and maximum occupancy restrictions. See, e.g., *State v. Baker*, 81 N.J. 99, 110, 405 A.2d 368, 373 (1979); 7A E. McQuillin, *The Law of Municipal Corporations* § 24.504 (3d ed. 1989); Abbott, *Housing Policy, Housing Codes and Tenant Remedies*, 56 B.U.L.Rev. 1, 41 (1976).

<sup>8</sup> The plain import of the statutory language is reinforced by the House Committee Report, which observes:

"A number of jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit. Reasonable limitations by governments would be allowed to continue, as long as they were applied to all occupants, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status." H.R.Rep. No. 100-711, p. 31 (1988).

<sup>9</sup> Tellingly, Congress added the § 3607(b)(1) exemption for maximum occupancy restrictions at the same time it enlarged the FHA to include a ban on discrimination based on "familial status." See *supra*, at \_\_\_, n. 1. The provision making it

illegal to discriminate in housing against families with children under the age of 18 prompted fears that landlords would be forced to allow large families to crowd into small housing units. See, e.g., Fair Housing Amendments Act of 1988: Hearings on H.R. 1158 before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, 100th Cong., 1st Sess., 656 (1987) (remarks of Rep. Edwards) (questioning whether a landlord must allow a family with 10 children to live in a two-bedroom apartment). Section 3607(b)(1) makes it plain that, pursuant to local prescriptions on maximum occupancy, landlords legitimately may refuse to stuff large families into small quarters. Congress further assured in § 3607(b)(1) that retirement communities would be exempt from the proscription of discrimination against families with minor children. In the sentence immediately following the maximum occupancy provision, § 3607(b)(1) states: "Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons."

<sup>10</sup>. An exception to this provision sets out requirements for efficiency units in apartment buildings. See ECDC § 19.10.000 (1991) (adopting Uniform Housing Code § 503(b) (1988)).

<sup>11</sup>. This curious reasoning drives the dissent. If Edmonds allowed only related persons (whatever their number) to dwell in a house in a single-family zone, then the dissent, it appears, would agree that the § 3607(b)(1) exemption is unavailable. But so long as the City introduces a specific number—*any* number (two will do) the City can insulate its single-family zone *entirely* from FHA coverage. The exception-takes-the-rule reading the dissent advances is hardly the "generous construction" warranted for antidiscrimination prescriptions. See *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 212, 93 S.Ct. 364, 368, 34 L.Ed.2d 415 (1972).

<sup>1</sup> A broad construction of the word "any" is hardly novel. See, e.g., *John Hancock Mut. Life Ins. Co. v. Harris Trust and Savings Bank*, 510 U.S. ---, ---, 114 S.Ct. 517, 524, 126 L.Ed.2d 524 (1993) (citing, as examples where "Congress spoke

without qualification" in ERISA, an exemption for " 'any security' issued to a plan by a registered investment company" and an exemption for " 'any assets of . . . an insurance company or any assets of a plan which are held by . . . an insurance company' " (quoting 29 U.S.C. §§ 1101(b)(1), 1103(b)(2)) (emphasis in *John Hancock* )); *Citizens' Bank v. Parker*, 192 U.S. 73, 81, 24 S.Ct. 181, 184, 48 L.Ed. 346 (1904) ("The word *any* excludes selection or distinction. It declares the exemption without limitation").

<sup>2</sup> It is ironic that the majority cites Uniform Housing Code § 503(b) (1988), which has been incorporated into petitioner's zoning code, see ECDC § 19.10.000, App. 248, as a "prototypical maximum occupancy restriction" that would qualify for § 3607(b)(1)'s exemption. *Ante*, at \_\_\_. Because § 503(b), as the majority describes it, "caps the number of occupants a dwelling may house, *based on floor area*," *ante*, at \_\_\_ (emphasis added), it actually caps the *density* of occupants, not their *number*. By itself, therefore, § 503(b) "surely does not answer the question: 'What is the maximum number of occupants permitted to occupy a house?'" *Ante*, at \_\_\_. That is, even under § 503(b), there is no single absolute maximum number of occupants that applies to every house in Edmonds. Thus, the answer to the majority's question is the same with respect to both § 503(b) and ECDC § 21.30.010: "it depends." With respect to the former, it depends on the size of the house's bedrooms, see *ibid.* (quoting § 503(b)); with respect to the latter, it depends on whether the house's occupants are related.

<sup>3</sup> I would also remand the case to the Court of Appeals to allow it to pass on respondents' argument that petitioner's zoning code does not satisfy § 3607(b)(1)'s requirement that qualifying restrictions be "reasonable." The District Court rejected this argument, concluding that petitioner's "five-unrelated-person limit is reasonable as a matter of law," App. to Pet. for Cert. B-10, but the Court of Appeals did not address the issue.

4. The majority notes "precedent recognizing the FHA's 'broad and inclusive' compass, and therefore accord[ing] a 'generous construction' to the Act's complaint-filing provision." *Ante*, at \_\_\_ (quoting *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209, 212, 93 S.Ct. 364, 366-367, 368, 34 L.Ed.2d 415 (1972)). What we actually said in *Trafficante* was that "[t]he language of the Act is broad and inclusive." *Id.*, at 209, 93 S.Ct., at 367. This is true enough, but we did not "therefore" accord a generous construction either to the FHA's "antidiscrimination prescriptions," see *ante*, at \_\_\_, n. 11, or to its complaint-filing provision, § 810(a), 42 U.S.C. § 3610(a) (1970 ed.) (repealed 1988). Instead, without any reference to the language of the Act, we stated that we could "give vitality to § 810(a) only by a generous construction which gives standing to sue to all in the same housing unit who are injured by racial discrimination in the management of those facilities within the coverage of the statute." 409 U.S., at 212, 93 S.Ct., at 368. If we were to apply such logic to this case, we would presumably "give vitality" to § 3607(b)(1) by giving it a generous rather than a narrow construction.

5. To my knowledge, no federal or state judicial opinion other than three § 3607(b)(1) decisions dating from 1992 and 1993 employs the term "maximum occupancy restrictions." Likewise, not one of the model codes from which the majority constructs its category of zoning rules uses that term either. See *ante*, at \_\_\_ (citing authorities). Accordingly, it is difficult to conceive how Congress, in 1988, could have "enacted § 3607(b)(1) against the backdrop of an evident distinction between municipal land use restrictions and maximum occupancy restrictions." *Ante*, at \_\_\_.

In this context, the majority seizes on a phrase that appears in a booklet published jointly by the American Public Health Association and the Centers for Disease Control—"the maximum number of individuals permitted to reside in a dwelling unit, or rooming unit." *Ante*, at \_\_\_, n. 6 (quoting APHA-CDC Recommended Minimum Housing Standards § 2.51, p. 12 (1986)). Even if, as the majority boldly asserts, this phrase "bears a

marked resemblance to the formulation Congress used in § 3607(b)(1)," *ibid.*, I fail to comprehend how that would add to our understanding of the statute. The majority surely cannot hope to invoke the rule that where "Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed." *Molzof v. United States*, 502 U.S. 301, 307, 112 S.Ct. 711, 715, 116 L.Ed.2d 731 (1992) (quoting *Morissette v. United States*, 342 U.S. 246, 263, 72 S.Ct. 240, 250, 96 L.Ed. 288 (1952)). The quoted phrase from the APHA-CDC publication can hardly be called a "term of art"—let alone a term in which is "accumulated the legal tradition and meaning of centuries of practice." See also *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329, 101 S.Ct. 2789, 2794, 69 L.Ed.2d 672 (1981) (applying the rule to "terms that have accumulated settled meaning under either equity or the common law").

6. According to the majority, its conclusion that § 3607(b)(1) encompasses all "maximum occupancy restrictions" is "reinforced by" H.R.Rep. No. 100-711, p. 31 (1988) U.S. Code Cong. & Admin. News 1988 at pp. 1619, 2192. See *ante*, at \_\_\_, n. 8. Since I agree with this narrow conclusion, I need not consider whether the cited Committee Report is either authoritative or persuasive.

7. See *ante*, at \_\_\_. ("To limit land use to single-family residences, a municipality must define the term 'family'; thus family composition rules are an essential component of single-family residential use restrictions"); *ante*, at \_\_\_ ("East Cleveland's ordinance 'select[ed] certain categories of relatives who may live together and declare[d] that others may not'; in particular, East Cleveland's definition of 'family' made 'a crime of a grandmother's choice to live with her grandson'" (quoting *Moore v. City of East Cleveland*, 431 U.S. 494, 498-499, 97 S.Ct. 1932, 1935, 52 L.Ed.2d 531 (1977) (plurality opinion))).

<sup>8</sup>. All that remains of the majority's case is the epithet that my reasoning is "curious" because it yields an "exception-takes-the-rule reading" of § 3607(b)(1). *Ante*, at \_\_\_, n. 11. It is not clear why the majority thinks my reading will eviscerate the FHA's antidiscrimination prescriptions. The Act protects handicapped persons from traditionally defined (intentional) discrimination, 42 U.S.C. § 3604(f)(1), (2), and three kinds of specially defined discrimination: "refusal to permit . . . reasonable modifications of existing premises"; "refusal to make reasonable accommodations in rules, policies, practices, or services"; and "failure to design and construct [multifamily] dwellings" such that they are accessible and usable, § 3604(f)(3)(A), (B), (C). Yet only *one* of these four kinds of discrimination—the "reasonable accommodations" prescription of § 3604(f)(3)(B)—is even arguably implicated by zoning rules like ECDC § 21.30.010. In addition, because the exemption refers to "local, State, or Federal restrictions," even the broadest reading of § 3607(b)(1) could not possibly insulate *private* refusals to make reasonable accommodations for handicapped persons. Finally, as I have already noted, see n. 3, *supra*, restrictions must be "reasonable" in order to be exempted by § 3607(b)(1).

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, and  
OXFORD HOUSE, INC.,

Plaintiffs,

v.

TOWN OF GARNER, NORTH CAROLINA,  
and TOWN OF GARNER BOARD  
OF ADJUSTMENT,

Defendants.

Civil Action No.  
5:09-CV-00216

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**CONSENT DECREE**

The United States initiated this action to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (the "Fair Housing Act"), 42 U.S.C. §§ 3601-3619. In its Complaint, the United states alleges that the Town of Garner, North Carolina and the Town of Garner Board of Adjustment (the "Defendants") violated 42 U.S.C. § 3604(f)(3)(B) of the Fair Housing Act by (1) failing or refusing to recognize their obligation to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling; and (2) failing or refusing to make a reasonable accommodation in their rules, policies, practices, or services to permit the use of a home located at 117 Broughton Street, Garner, North Carolina (the "Oxford House") as a residence for up to eight persons recovering from addictions to alcohol or illegal drugs. The United States alleges that the Defendants' conduct constitutes a pattern or practice of discrimination, or a denial of rights to a group of persons that raises an issue of general public importance in violation of the Fair Housing Act, 42

U.S.C. § 3614(a). The United States alleges that the Defendants' conduct constitutes discrimination on the basis of disability in violation of the Fair Housing Act.

On August 16, 2005, Oxford House, Inc. filed a timely complaint against the Town with the United States Department of Housing and Urban Development ("HUD"), pursuant to 42 U.S.C. § 3610, alleging discrimination in housing on the basis of disability. HUD subsequently referred this matter to the Attorney General for appropriate action under 42 U.S.C. § 3610(e)(2).

This Consent Decree (the "Decree") is intended to effect a comprehensive settlement of the United States' claims. To avoid costly and protracted litigation, the United States and the Defendants have jointly entered into and agreed to the entry of this Decree to resolve the claims presented.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED:

#### **I. JURISDICTION**

1. The Court has personal jurisdiction over the Defendants for purposes of this civil action, and subject matter jurisdiction over the claims in this civil action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3614(a).

#### **II. DEFINITIONS**

2. The following terms when used in this Decree shall have the following meaning:
- A. The term "Defendants" includes the Town of Garner, the Garner Board of Adjustment, their employees, elected or appointed officials, officers, agents, and persons or entities acting in concert or participation with them;
  - B. "Disability" is the equivalent of the term "handicap" as used in the Fair Housing Act. See 42 U.S.C. § 3602(h);



- C. “Reasonable Accommodation” refers to reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, within the meaning of 42 U.S.C. § 3604(f);
- D. The “effective date of the Decree” refers to the date the Court enters this Consent Decree.



### **III. GENERAL INJUNCTIONS AND NON-DISCRIMINATION PROVISIONS**

- 3. The Defendants shall not:
  - A. deny, or otherwise make unavailable, a dwelling to any person because of a disability of that person residing in or intending to reside in such dwelling, or of any person associated with such person;
  - B. discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of that person, of any person residing in or intending to reside in such dwelling, or of any person associated with that person; or
  - C. refuse to make reasonable accommodations in their rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person an equal opportunity to use and enjoy a dwelling.
- 4. The preceding injunctions shall specifically, but not exclusively, cover:
  - A. administering, enforcing, or amending zoning ordinances of the Town of Garner, including, but not limited to, receiving, evaluating, or deciding

upon applications for building permits, special exceptions, variances, or other uses not provided for; and

- B. conducting hearings, inspecting premises, issuing certificates of zoning compliance or certificates of occupancy, or reviewing any decision made by any zoning, land-use, or building official.

#### **IV. ESTABLISHMENT AND IMPLEMENTATION OF REASONABLE ACCOMMODATION ORDINANCE**

 5. The Defendants have adopted a reasonable accommodation ordinance by adding a new subsection 3.17 to the Town's Unified Development Ordinance. A copy of that reasonable accommodation ordinance is attached to this Consent Decree as Attachment A. 

6. Within ten (10) days of adopting and implementing the Reasonable Accommodation Ordinance, the Defendants shall post and publicly display the Reasonable Accommodation Ordinance on the Town's website.

7. The Defendants shall keep written records of each request for reasonable accommodation they receive. These records shall include: (A) the name, address, and telephone number of the person making the request; (B) the date on which the request was received; (C) the nature of the request; (D) whether the request was granted or denied; and (E) if the request was denied, the reason(s) for the denial.

8. If the Defendants propose to modify the Reasonable Accommodation Ordinance, they shall first provide the United States with a copy of the proposed changes.<sup>1</sup> If the United

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<sup>1</sup> The Defendants shall send all documents, notices, and other communications required by the Decree to be sent to the United States to: Chief, Housing and Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 950 Pennsylvania Avenue, N.W., G Street, Washington, DC 20530, Attn.: DJ #175-54-153.

States does not deliver written objections to the Defendants within sixty (60) days of receiving the proposed changes, the changes may be effected. If the United States makes any objections to the proposed changes within the 60-day period, the specific changes to which the United States objects shall not be effected until the objections are resolved.

9. Nothing in this Decree shall be interpreted to require persons with disabilities — or providers of housing for persons with disabilities — acting or operating in accordance with applicable zoning, licensing, and/or land use laws and practices, to seek permission from the Defendants to begin or continue such action or operation. In addition, nothing in this Decree shall be interpreted to permit persons with disabilities — or providers of housing for persons with disabilities — to violate any applicable zoning, license, and/or land use laws and practices of the Town or the State of North Carolina either before or after commencing operation.

#### **V. REASONABLE ACCOMMODATION FOR 117 BROUGHTON STREET,**

10. Within ten (10) days after the effective date of the Decree, the Defendants shall formally grant the request previously submitted by Oxford House, Inc. to permit up to eight persons recovering from addiction to reside at 117 Broughton Street. The Defendants shall grant the request by sending to counsel for Oxford House, Inc. a letter signed by the Garner official with authority to issue such approval.

#### **VI. FAIR HOUSING TRAINING**

11. The Defendants shall, no later than ninety (90) days after the effective date of the Decree, provide training in the requirements of the Decree and the Fair Housing Act to the Town Manager and Town Planning Director.

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The Defendants shall send all documents, notices, and communications required by or relating to this Decree by regular United States mail and by facsimile to (202) 514-1116.

12. The training shall be conducted by a qualified third party, subject to the approval of the United States. The trainer shall be unconnected to the Defendants or their employees, officials, agents, or counsel, and any expenses associated with this training shall be borne by the Defendants.

13. As part of the training, each person trained shall be given a copy of the Decree and the Act.

14. The Defendants shall, no later than thirty (30) days after training, provide to the United States certifications executed by each person trained confirming his or her attendance and date of training. The certifications shall be in the form of Attachment B.

15. Within thirty (30) days of the completion of the training described in paragraphs 11-14, one or more of the persons trained shall meet with each member of the Board of Adjustment, shall furnish each such member with a copy of this Decree and of the Act, and shall discuss the provisions of the Decree and Act as they pertain to the duties of the Board of Adjustment. Each member of the Board of Adjustment shall sign a certification acknowledging that he or she has received and read the Decree and the Act. This certification shall be in the form of Attachment B hereto.

16. For each person commencing, during the term of the Decree, employment or service as Town Manager, Town Planning Director, or member of the Board of Adjustment, the Defendants shall, no later than thirty (30) days after such commencement or service, give such person a copy of the Decree and the Fair Housing Act, discuss the pertinent provisions thereof, and require such person to sign the certification set out in Attachment C.

## **VII. REPORTING AND RECORD KEEPING**

17. The Defendants shall designate the Town Manager to receive complaints of alleged housing discrimination against any Defendant and coordinate compliance with this Decree. The Town Manager shall maintain copies of the Decree, the HUD complaint form, and the pamphlet entitled "Are You A Victim of Housing Discrimination?" (HUD official forms 903 and 903.1, respectively) and make these materials freely available to anyone upon request and without charge, including all persons making housing discrimination complaints to any Defendant.

18. The Defendants shall prepare semi-annual reports that detail the actions they have taken to fulfill their obligations under the Decree. The Defendants shall submit their first Compliance Report to the United States no later than six months after the effective date of the Decree, and subsequent reports every six months thereafter, for the duration of the Decree, except that the final report shall be delivered to the United States no fewer than sixty (60) days prior to the date upon which the Decree is scheduled to expire.

19. The Defendants shall include the following information in the Compliance Reports:

A. copies of the training certification and acknowledgment forms signed since the last report;

B. any written complaint received since the last report alleging discrimination by any Defendant with respect to any matter subject to the injunctions in part III, above, including a description of any action taken in response to the complaint and copies of all pertinent documents, such as a copy of the complaint, any documents filed with the complaint, and any written response to the complaint made by any Defendant;

C. the identity of each zoning, land-use, or building application or request for reasonable accommodation related to housing for disabled persons (including those for building permits, special exceptions, variances, or other uses not provided for) for which any Defendant has made a determination, indicating: (1) the date of the application; (2) the applicant's name; (3) the applicant's current residential street address; (4) the street address of the proposed housing; (5) the disposition of the application, including any appeals, indicating reasons for that outcome; and (6) if a vote was taken, how each participant voted and the date of the vote; and

D. all documents presented in support of oral testimony offered by any member of the public at any hearing held with respect to each such application or request that is denied by any Defendant.

20. For the duration of this Decree, the Defendants shall maintain all records relating to implementation of and compliance with all provisions of the Decree, including, but not limited to, all records related to zoning, land-use, or building applications or requests for reasonable accommodation related to housing for disabled persons. The United States shall have the opportunity to inspect and copy any records maintained as required by the Decree after giving reasonable notice to the Defendants.

#### **VIII. MONETARY RELIEF**

21. The Defendants shall pay the sum of \$105,000 to OHI within ten (10) days of the effective date of the Decree, by sending a check to the United States payable to "Oxford House, Inc." On receipt of a release of liability in favor of the defendants, in the form of Appendix D,

signed by an authorized representative of OHI, the United States shall send the check to counsel for OHI, and the original signed release to counsel for Defendants.

#### **IX. CIVIL PENALTY**

22. The Defendants shall pay \$9,000 to the United States as a civil penalty pursuant to 42 U.S.C. § 3614(d)(1)(C). Such payment shall be made no later than thirty (30) days after the effective date of the Decree by submitting to the United States a check in such amount made payable to the United States Treasury.

#### **X. DURATION OF DECREE AND TERMINATION OF LEGAL ACTION**

23. The Decree shall remain in effect for a period of four (4) years after its effective date. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Decree, after which time the case shall be dismissed with prejudice. Prior to the expiration of the Decree's term, the United States may move the Court to extend the duration of the Decree in the interests of justice, or for other good cause, including on the basis that a Defendant has failed to comply with a provision of the Decree.

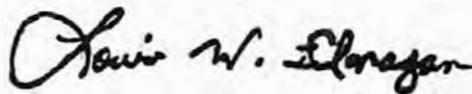
24. The parties agree to work cooperatively with one another in good faith to resolve informally any differences regarding interpretation of, and compliance with, the Decree prior to bringing such matters to the Court for resolution. However, in the event of a failure by any Defendant to perform in a timely manner any act required by this Decree or otherwise to act in violation of any provision thereof, the United States may move this Court to impose any remedy authorized by law or equity, including but limited to, an order requiring performance of such act or deeming such act to have been performed, and an award of any damages, costs, and reasonable attorney's fees that may have been occasioned by the violation or failure to perform.

25. The parties shall have the right to seek from the court modifications of the Decree, provided that any request for a modification has been preceded by good faith negotiations between the parties. The parties may agree in writing to modify any deadlines established by this Decree without Court approval.

#### XI. COSTS OF LITIGATION

26. Each party to this litigation will bear its own costs and attorney's fees associated with this litigation, except as otherwise provided herein.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED this 19th day of January, 2011.



United States District Judge

GEORGE E.B. HOLDING  
United States Attorney

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

s/R.A. Renfer  
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Chief, Civil Division  
United States Attorney's Office  
Eastern District of North Carolina  
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s/Harvey L. Handley  
STEVEN H. ROSENBAUM  
Chief  
MICHAEL S. MAURER  
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HARVEY L. HANDLEY  
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U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.-G. St.  
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FOR PLAINTIFF-INTERVENOR:

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SCOTT P. MOORE  
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Omaha, Nebraska 68102  
(402) 636-8268

## ATTACHMENT A

### Ordinance Changes

(1) Change the designation "Handicapped or home disabled" to:

"Handicapped or disabled home" and add to the end of the existing definition the following: "Provided, however that a proposed handicapped or disabled home may apply to the Board of Adjustment for a reasonable accommodation in the form of special exception as provided in this ordinance."

(2) Add the following to the existing UDO:

#### 3.17. Special exceptions.

A. **Applicability.** The Board of Adjustment is authorized to grant special exceptions for the special circumstances set forth in this section to allow for a reasonable accommodation under the Federal Fair Housing Act for handicapped or disabled persons proposing to live in a handicapped or disabled home.

B. **Application.** An application for a special exception under this section shall be submitted to the Board of Adjustment by filing a copy of the application with the Planning Director. No filing fee shall be required for such application.

C. **Approval process.** The procedures set forth in Section 3.15.C for variances shall apply to Staff Review and Report, Public Hearing Notice and Action of the Board of Adjustment.

D. **Approval criteria.** The Board of Adjustment shall grant a special exception to any provision of this ordinance as a reasonable accommodation under the Federal Fair Housing Act if the board finds by the greater weight of the evidence that the proposed special exception is:

(i) "Reasonable." An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the Town and/or constitute a substantial or fundamental alteration of the Town's ordinance provisions) ;and

(ii) "Necessary." An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the affects of the particular disability or handicap), and would afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the Town.

**Attachment B**

**CERTIFICATION OF ATTENDANCE AT FAIR HOUSING TRAINING**

On \_\_\_\_\_, I attended training on the Consent Decree entered by the federal district court in *United States v. Town of Garner, et al.*, Civil No. (E.D.N.C.) on \_\_\_\_\_, 20\_\_), and the federal Fair Housing Act. I have had all of my questions concerning the Consent Decree and the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Print job title)

(Date)

Attachment C

**ACKNOWLEDGMENT OF RECEIPT OF COPIES OF CONSENT DECREE AND  
FAIR HOUSING ACT**

On \_\_\_\_\_, I received copies of and have read the Consent Decree entered by the federal district court in *United States v. Town of Garner, et al.*, Civil No. 5:09-CV-00216 (E.D.N.C.) on \_\_\_\_\_, 20\_\_), and the federal Fair Housing Act. I have had all of my questions concerning the Consent Decree and the Fair Housing Act answered to my satisfaction.

(Signature)

(Print name)

(Print job title)

(Date)

Attachment D

GENERAL RELEASE IN FULL AND FINAL SETTLEMENT OF CLAIMS

relating to the Consent Decree entered in *United States v. Town of Garner, et al.*, Civil No. 5:09-CV-00216 (E.D.N.C.) on \_\_\_\_\_, 2011.

In consideration of the parties' agreement to the terms of the Consent Decree entered by the Court in *United States v. Town of Garner, et al.*, Civil No. 5:09-CV-00216 (E.D.N.C.) on \_\_\_\_\_, 2011. and the Defendants' payment of the sum of ONE HUNDRED FIVE THOUSAND DOLLARS (\$105,000), I, \_\_\_\_\_, my heirs and assigns, hereby release the Defendants in this action, the Town of Garner and the Garner Board of Adjustment, and their successors, insurers, agents and assigns, from any and all liability for any existing, pending or potential claims or causes of action, legal or equitable, I may have against them arising out of the allegations raised in this action or any related action or complaint pending before HUD involving these Defendants. I hereby acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

In witness whereof, with the intent to be legally bound hereby, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Name

Address

















**Residential care facility**

A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes ( N.C.G.S. 131D), residential child-care facilities ( N.C.G.S. 131D-10.2), assisted living residences ( N.C.G.S. 131D-2), adult care homes ( N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.

**Restaurant**

An establishment serving food and beverages where all service takes place within an enclosed building or accessory outdoor eating or food dispensing areas. Food and beverages are generally consumed on-site. In districts where it is allowed, drive-through service may also be provided.

**Restaurant, Carryout**

An establishment primarily engaged in the preparation of food and beverages for consumption off the premises. Carryout restaurants generally include facilities for customers to pick-up prepared food and beverages in person, which may include limited seating in waiting areas, and may also provide delivery service.

**Retaining wall**

A manmade barrier constructed for the purpose of stabilizing soil, retarding erosion, or terracing a parcel or site.

**Riverine**

See separate definition of this term that applies to the FPO district regulations in Section 3.8.D, Floodplain Protection Overlay (FPO) District.

**Runway**

A defined area on an airport prepared for landing and takeoff of aircraft along its length.

**Rural retreat**

A use, compatible with agriculture and/or open space, which is engaged in the study, testing, design, invention, evaluation, or development of technologies, techniques, processes, or professional and consulting services, or education and training related to such advances and services. Rural corporate retreats may be utilized for basic and applied research services and education wherein the inquiry process is conducted in a manner similar to that of institutions of higher learning or management consulting firms. Rural corporate retreat facilities may include facilities for associated training programs, seminars, conferences, and related activities.

**S**

**Satellite dish antennae or Satellite dish**

A parabolic antenna designed to receive electromagnetic transmissions from a satellite.

**School, Private, charter, or parochial**

An educational institution operated by an entity other than a public school district that offers a program of high school, middle school (or junior high school), and/or elementary school (including kindergarten or pre-kindergarten) instruction meeting state requirements for a school. Such uses may include classrooms,

breeding, boarding, dealing, selling, renting, riding, or training of equines. It includes barns, stables, rings, paddocks, or other related accessory structures.

**Equipment compound**

An area containing accessory equipment surrounding or near the base of a wireless support structure within which a wireless facility is located.

**Erect**

To build, construct, attach, hang, place, suspend, affix, and/or apply.

**Excavation**

The removal of soil, rock, or other inert matter from a land area.

**Expansion of existing antenna array**

The addition of an antenna or antenna array with a new manufacturer and/or model type and/or increases the bandwidth of the antenna or antenna array.

**F**

**Façade**

The entire building walls, including wall faces, parapets, fascia, windows, doors, canopy and visible roof structures of one complete elevation.

**Fall zone**

The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

**Family**

An individual; or two or more persons related by blood, marriage, or law; or a group of not more than any five persons living together in a dwelling unit. Employees that provide basic household services to and share common housekeeping facilities with any family consisting of an individual or two or persons related by blood, marriage, or law, are a part of the family.

**Family care home**

An adult care home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six residents who are handicapped persons. Family care homes are subject to licensure by the North Carolina Department of Health and Human Services, Division of Health Service Regulation.

**Farmers' market (as a principal use)**

A collection of vendors using private or publicly owned property or property owned by a not-for-profit organization for the sale of agricultural and horticultural products, or for the sale of baked, canned, or preserved foods. If the farmers' market occurs regularly for all or most of the year, it is considered a principal use. If the farmers' market occurs only occasionally or periodically for a limited time period during the year, it is considered a temporary use.

**Table 4.2.B(5): Principal Use Table**

P = Permitted by right, or, in planned development district, if specified in PD Plan; S = Special use; - = Prohibited

PRINCIPAL USE CATEGORY OR TYPE	AG	RESIDENTIAL								MIXED-USE					NON-RESIDENTIAL				PD			LEGACY			USE-SPECIFIC STANDARD S		
	AG	R1	R2	R4	R6	R7	R8	R18	MU-N	MU-SC	MU-UC	MU-AC	TOD	CC	OI	GC	LI	HI	PD	PD-	PD-C	CD	CD-R	C-1			
Triplex	-	-	-	-	P	P	P	P	S	S	S	-	-	-	-	-	-	-	P	P	-	-	P	-	5.7.D		
<b>Group Living</b>																											
Boarding house	S	S	S	S	S	S	S	S	S	P	P	P	P	P	S	S	-	-	P	P	P	-	-	-	4.2.D(3)b.1		
Cooperative house	S	S	S	S	S	S	S	S	S	P	P	P	P	P	S	S	-	-	P	P	P	-	-	-			
Dormitory	-	-	-	-	-	-	-	-	-	P	P	P	-	P	-	-	-	-	-	-	-	-	-	-	4.2.D(3)b.2		
Family care home	P	P	P	P	P	P	P	P	S	S	S	S	S	S	P	-	-	-	P	P	P	-	-	-			
Residential care facility	-	S	S	S	S	S	S	S	S	P	P	P	P	P	-	P	-	-	-	-	-	-	-	-	4.2.D(3)b.3		
<b>CIVIC/INSTITUTIONAL USES</b>																											
<b>Communication</b>																											
Broadcasting studio	-	-	-	-	-	-	-	-	-	P	P	P	P	P	P	P	P	S	P	P	P	P	-	P			
Wireless support structure, New or substantial modification less than 65 feet tall	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	4.2.D(4)a.1	
Wireless support structure, New or substantial modification 65 feet or taller	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	4.2.D(4)a.1		
Collocation of antenna on existing structure	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	4.2.D(4)a.1		
Small/Micro wireless facility in a right-of-way	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Small/Micro wireless facility outside of a right-of-way	P	-	-	-	-	-	-	-	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	P			
<b>Community Service</b>																											
Animal shelter	S	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	P	-	-	P	-	-	-			
Childcare center	S	S	S	S	S	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-	P	4.2.D(4)b.1		
Civic, social, or fraternal organization	S	S	S	S	S	S	S	S	P	P	P	P	P	P	P	P	P	P	P	P	P	-	-	P			

(5) PRINCIPAL USE TABLE

Table 4.2.B(5): Principal Use Table

P = Permitted by right, or, in planned development district, if specified in PD Plan; S = Special use; - = Prohibited

PRINCIPAL USE CATEGORY OR TYPE	AG	RESIDENTIAL								MIXED-USE					NON-RESIDENTIAL				PD			LEGACY			USE-SPECIFIC STANDARDS	
	AG	R1	R2	R4	R6	R7	R8	R18	MU-N	MU-SC	MU-UC	MU-AC	TOD	CC	OI	GC	LI	HI	PD	PD-	PD-C	CD	CD-R	C-1		
<b>AGRICULTURAL/RURAL USES</b>																										
<b>All Agricultural/Rural Uses</b>																										
Agriculture	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	P	-	P	4.2.D(2)a.1
Community garden	S	S	S	S	S	S	S	S	P	P	P	P	P	P	P	P	P	-	P	P	P	P	P	P	P	4.2.D(2)a.2
Equestrian center	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Feed lot	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Forestry	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	P	4.2.D(2)a.3	
Livestock auction sales	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	
Rural retreat	P	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Swine farm	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>RESIDENTIAL USES</b>																										
<b>Household Living</b>																										
Duplex	-	-	-	-	P	P	P	P	S	S	S	-	-	-	-	-	-	-	P	P	-	-	P	-	-	
Live-work unit	-	-	-	-	-	-	P	P	P	P	P	P	S	S	P	P	-	-	P	P	-	-	-	-	-	4.2.D(3)a.1
Manufactured home	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4.2.D(3)a.2
Multifamily dwelling	-	-	-	-	-	-	P	P	P	P	P	P	P	P	S	S	-	-	P	P	P	-	P	-	-	5.7.D
Pocket neighborhood development	-	-	-	-	-	-	P	P	P	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	4.2.D(3)a.4
Single-family attached dwelling	-	-	-	-	P	P	P	P	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	
Single-family detached dwelling	P	P	P	P	P	P	P	S	P	-	-	-	-	S	-	-	-	-	P	P	-	-	-	-	-	
Tiny house neighborhood development	-	-	-	-	-	-	P	P	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	4.2.D(3)a.5
Townhouse	-	-	-	-	-	P	P	P	P	P	P	P	P	P	-	-	-	-	P	P	-	-	P	-	-	5.7.D



**GREGORY ALAN HEAFNER, PA**  
ATTORNEY AT LAW  
1510 TWISTED OAK DRIVE  
CHAPEL HILL, NORTH CAROLINA 27516  
Phone (919) 967-3800

December 13, 2023

Mr. Richard Smith  
Planning Director  
City of Kannapolis  
401 Laureate Way  
Kannapolis, NC 28081

Via Email Only To: [rsmith@kannapolisnc.gov](mailto:rsmith@kannapolisnc.gov)

RE: *3148 Barr Road, Concord, NC 28027*

Dear Mr. Smith:

I represent Southeastern Recovery Homes, LLC (“Southeastern”). Southeastern operates a home for persons recovering from alcoholism or drug addiction at the above referenced address. This letter follows Tony Cline’s visit to the home and my subsequent conversation with Walter Safrit asking that I write you.

I understand that the City classifies Southeastern’s use of the property as a Residential Care Facility under Kannapolis’ Development Ordinance (“KDO”), which requires a special use permit. This letter shall serve as a request for a reasonable accommodation pursuant to the Federal Fair Housing, Act 42 U.S.C. 3600 et. seq. Specifically, Southeastern requests that the City of Kannapolis grant a reasonable accommodation to treat the Southeastern use as the functional equivalent of a family for all applicable codes, and grant a waiver on the limitation of the number of unrelated persons who can reside together as a family.

**SOUTHEASTERN HOUSE DESCRIPTION**

The property at 3148 Barr Road is a 3000 square foot, five bedroom, three bath, single family detached house. The house is home to men in recovery from alcoholism and/or drug addiction. These men receive out of house treatment for their recovery at another location. The home is simply a safe supportive place for these men to live in a clean and sober environment. The only staff in the home are two live-in supervisors to assure the safe and sober environment.

## **REQUEST FOR REASONABLE ACCOMMODATION**

Southeastern's residents are a protected class under the Fair Housing Act (FHA), 42 U.S.C. § 3600 et. seq. Recovering alcoholics and addicts are specifically included within the definition of "handicapped individual" under the FHA. *City of Edmonds, WA v. Oxford House, Inc.* 514 U.S. 725 (1995). The FHA's prohibits discrimination against persons within a protected class. This prohibition includes discriminatory zoning decisions by local governments. The FHA defines discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such handicapped person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

Federal law requires a reasonable accommodation when the request is both reasonable and necessary. The law defines reasonable and necessary as follows:

"Reasonable". An accommodation is reasonable if it would not undermine the legitimate purposes of or fundamentally alter existing zoning regulations, and if it would not impose a significant financial and administrative burden upon the municipality.

"Necessary". An accommodation is necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing of their choice in residential districts of the municipality.

The reasonableness and necessity of the requested accommodation for Southeastern's use of 3148 Barr Road is as follows:

### **REQUEST IS REASONABLE**

Southeastern's use does not undermine the purposes of the KDO, nor does it impose any financial or administrative burden on the City. In fact, the Southeastern house provides a free benefit to the City by providing housing to men recovering from alcoholism and drug addiction.

Further, the Southeastern house does not fundamentally alter the City's zoning scheme. The KDO does not contain a definition of use that specifically addresses the Southeastern use.

The KDO definition of Residential Care Facility is, "A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes ( N.C.G.S. 131D), residential child-care facilities ( N.C.G.S. 131D-10.2), assisted living residences ( N.C.G.S. 131D-2), adult care homes ( N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes." This definition expressly excludes single family dwellings and does not include the handicapped.

However, the KDO defines Family as “An individual; or two or more persons related by blood, marriage, or law; or a group of not more than any five persons living together in a dwelling unit. Employees that provide basic household services to and share common housekeeping facilities with any family consisting of an individual or two or persons related by blood, marriage, or law, are a part of the family.” This definition encompasses the Southeastern use if the limitation on unrelated people is increased or lifted. It is also noteworthy that the KDO allows Family Care Homes (which are for the disabled) as a matter of right in residential districts.

### REQUEST IS NECESSARY

Living in a supportive and sober house is therapeutically beneficial to persons in early recovery from alcoholism or drug addiction. In fact, such safe sober living environments are salient to successful recovery and staying clean and sober. The quality of the relationship among the residents in the Southeastern house is one of mutual support and bonding, providing an ameliorative therapeutic benefit which aids each resident in their recovery from alcoholism or drug addiction. As a result of this therapeutic benefit, those living in a sober group setting are more likely to remain clean and sober than those living on their own.<sup>1</sup>

Additionally, the requested accommodation provides the residents an equal opportunity to use and enjoy housing of their choice.<sup>2</sup>

Based on the foregoing, Southeastern requests a reasonable accommodation pursuant to the Fair Housing Act for the City to treat the Southeastern use as the functional equivalent of a family for all applicable codes and waive the limitation of the number of unrelated persons who can reside together as a family. Southeastern appreciates the City’s consideration and I look forward to the City’s response to this request. Should you have any questions in the interim, please do not hesitate to contact me.

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<sup>1</sup> *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1227 (11th Cir. 2008) citing a series of federal decisions addressing the efficacy of group living arrangements for recovering substance abusers.

<sup>2</sup> The law requires equal opportunity for disabled persons to use and enjoy housing of their choice. *United States v. City of Jackson*, 318 F.Supp.2d 395, 416 (S.D. Miss. 2002) (FHA “guarantee[s] that the disabled be afforded equal opportunity to live, not in some residence in the community, but rather in the residence of their choice”); *ARC of New Jersey, Inc. v. State of New Jersey*, 950 F. Supp. 637, 645 (D. N.J. 1996) (“ceiling quotas imposed via group home spacing rules improperly limit the ability of handicapped persons ‘to live in the residence of their choice in the community,’ even if imposed in the name of integration or ‘declustering’”); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 n.10 (E.D. N.Y. 1993) (FHA “dictates that a handicapped individual must be allowed to enjoy a particular dwelling, not just some dwelling somewhere in the town”); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1344 (D. N.J. 1991) (defense based on existence of alternative locations in the city for group home held “without merit”).

Sincerely,

Greg Heafner

cc: Jamie Hoffman, Southeastern  
Walter Safrit, City Attorney



**KANNAPOLIS**  
Legal

January 17, 2024

*Sent Via US Mail and E-Mail*

Gregory Alan Heafner  
Gregory Alan Heafner, PA  
1510 Twisted Oak Drive  
Chapel Hill, North Carolina 27516  
[gsheafner@bellsouth.net](mailto:gsheafner@bellsouth.net)

Re: Response to Request for Reasonable Accommodation under Federal Fair Housing Act (“FHA”) for Southeastern Recovery Homes, LLC (“Southeastern”) at 3148 Barr Road, Concord, NC 28027 (the “Property”)

Dear Mr. Heafner:

Please accept this letter in response to your letter dated December 13, 2023, and subsequent emails, regarding a request for a reasonable accommodation under the FHA as it relates to your client’s occupation of the Property. More specifically, you request that the City of Kannapolis (“City”) “grant a reasonable accommodation to treat the Southeastern use as the functional equivalent of a family for all applicable codes, and grant a waiver on the limitation of the number of unrelated persons who can reside together as a family.”

As previously communicated, the Property is located in the Planning and Zoning jurisdiction of the City. The City classifies Southeastern’s use of the Property as a Residential Care Facility under the Kannapolis Development Ordinance (“KDO”). The KDO defines a Residential Care Facility as:

“A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes (N.C.G.S 131D), residential child-care facilities (N.C.G.S 131D-10.2), assisted living residences (N.C.G.S. 131D-2), adult care homes (N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes.”

Pursuant to the KDO, a Residential Care Facility requires a special use permit issued by the Board of Adjustment. As of the writing of this letter, Southeastern has not applied for a special use permit but has instead requested a reasonable accommodation from City staff. It is essential to clarify that City staff lacks the authority to circumvent the Board of Adjustment’s jurisdiction



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and grant this type of accommodation. The authority to issue special use permits rests solely with the Board of Adjustment.

Furthermore, the FHA does not allow Southeastern to be exempt from applying for a conditional use permit. *See Oxford House, Inc. v. City of Virginia Beach*, 825 F.Supp. 1251 (E.D.Va. 1993); *see also Oxford House-C v. City of St. Louis*, 77 F.3d 249 (8th Cir. 1996) (stating “Congress did not intend for [the FHA] to remove handicapped people from the normal and usual incident of citizenship, such as participation in the public components of zoning decisions, to the extent that participation is required of all citizens whether or not they are handicapped. In our view, Congress all did not intend the federal courts to act as zoning boards by deciding fact-intensive accommodation issues in the first instance.”) (internal citations omitted). In *City of Virginia Beach*, the court was asked to scrutinize a Virginia Beach zoning ordinance that required group homes to obtain special use permits like those required in the KDO. Oxford, the operators of a group home (like Southeastern, a home for recovering former alcohol and drug abusers), refused to apply for a special use permit. Oxford then sued Virginia Beach alleging, amongst other things, that Virginia Beach requiring that they apply for a special use permit constitutes a failure to make a reasonable accommodation in violation of the FHA. In dismissing Oxford's complaint in this regard, the court stated:

“In this regard, the court observes that, by defining discrimination under the [FHA] to include the ‘refusal to make reasonable accommodations in rules, policies, [and] practices,’ Congress obviously contemplated providing cities, among others, the opportunity to adjust their generally applicable rules to allow handicapped individuals equal access to housing. *See* 42 U.S.C. § 3604(f)(3)(B). The zoning process, including the hearings on applications for conditional use permits, serves that purpose. Indeed, were it otherwise, federal courts increasingly would become entangled prematurely in disputes regarding application of neutral zoning ordinances to the handicapped. Federal courts would thus become not zoning boards of appeals, but zoning boards of first instance, a result Congress surely did not intend.”

*Id.* at 1261 (citations omitted).

In line with this legal precedent, like all prospective operators of a Residential Care Facility, Southeastern must follow the prescribed procedure and apply for a special use permit as



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outline in the KDO. The “reasonable accommodation” sought by Southeastern cannot be granted by City staff.

Since your client has occupied the Property without acquiring a special use permit, it is necessary for the City to require submission of an application for the permit immediately. Please submit the enclosed Special Use Permit application on or before January 26, 2024. In the event you fail to do so, it will be deemed as your continued refusal to comply with the requirements of the Kannapolis Development Ordinance. Should you have any questions or concerns about the application process for a special use permit, City staff are available to guide you through that process.

Sincerely,



Walter M. Safrit, II  
City Attorney

WMS/jel

Encl: Special Use Permit

Cc: Richard Smith, City of Kannapolis Planning Director  
Tony Cline, City of Kannapolis Senior Code Enforcement Officer



## Special Use Permit

So that we may efficiently review your project in a timely manner, it is important that all required documents and fees listed on this form below are submitted with your application.

### SPECIAL USE PERMIT REQUEST

**Special Use Permit (SUP)** – Request for SUP as required by Table 4.3.B(3) of the Kannapolis Development Ordinance (KDO).  
*Approval authority – Board of Adjustment.*

Property Address: 3148 Barr Rd. Concord, Nc 28027

Applicant: Southeastern Recovery Center LLC / H2-1 LLC

### SUBMITTAL CHECKLIST

- Pre-Application Meeting – send an email to [planreviewappointment@kannapolisnc.gov](mailto:planreviewappointment@kannapolisnc.gov)
- SUP Checklist and Application – Complete with all required signatures
- Plot/Site Plan showing the proposed use
- Fee: \$625.00 (\$600 Application Fee + notification fee [see Fee Schedule])

### PROCESS INFORMATION

**Public Notification:** This is a quasi-judicial process that requires a public hearing and public notification including first-class mailed notice to adjacent property owners and a sign posted prominently on the property (Table 2.4.F(2) of the KDO).

**Review Process:** All applications will be reviewed for compliance and then forwarded to the Board of Adjustment for consideration at a public hearing which is held monthly on the 1st Tuesday at 6:00pm in City Hall Laureate Center. The application and all fees must be paid prior to scheduling the public hearing. Please review Section 2.4.D of the KDO.

**Action by Board of Adjustment:** After conducting a public hearing, the Board of Adjustment may: approve; approve with conditions; deny; or conduct an additional public hearing on the application. Per Section 2.5.A(5)c, the Board may approve a petition only if compliance with all standards is obtained.

**Scope of Approval:** Per Section 2.5.A(5)a.2 of the KDO, approval of a SUP does not authorize any development activity, but shall authorize the applicant to apply for final site plan approval. Zoning clearance permits will not be issued until the SUP and final site plan have been approved.

**By signing below, I acknowledge that I have reviewed the Submittal Checklist and have included the required submittal items and reviewed them for completeness and accuracy. I also acknowledge that my application will be rejected if incomplete.**

Applicant's Signature:

Date:

2/20/24





Planning Department  
401 Laureate Way  
Kannapolis, NC 28081  
704.920.4350

### SPECIAL USE PERMIT APPLICATION

Approval authority – Board of Adjustment

#### Applicant Contact Information

Name: Greg Heafner

Address: 1510 Twisted Oak Drive Chapel Hill, NC 27516

Phone: (919) 967-3800

Email: Gsheafner@bellsouth.net

#### Property Owner Contact Information same as applicant

Name: H2-1 LLC Jamie Hoffman

Address: 3148 Barr Rd, Concord NC 28027

Phone: (404) 771-9863

Email: Jamie@serecoverycenter.com

#### Project Information

Project Address: 3148 Barr Rd. Concord, NC 28027 Zoning District R1

Parcel PIN: 4692-76-8054-0000 Size of property (in acres): 1.41

Current Property Use: Recovery Residence

Proposed Use: Recovery Residence

The location of the above-mentioned proposed use is indicated on the accompanying site plan, and the nature of the proposed use is more fully described as follows (attach separate sheet if necessary):

See Attached

#### REVIEW STANDARDS

The Board of Adjustment does not have unlimited discretion in deciding whether to approve a Special Use Permit (SUP). Per Section 2.5.A(5)c of the Kannapolis Development Ordinance (KDO,) the applicant must demonstrate successful compliance with all standards to obtain a SUP. In the space provided below, indicate the **facts** that you intend to provide to convince the Board that it can properly reach the following conclusions:

- The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Comprehensive Plan.**  
See Attached

2. Adequate measures shall be taken to provide ingress and egress to minimize traffic hazards and traffic congestion on the public roads.

See Attached

3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

See Attached

4. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.

See Attached

5. The establishment, maintenance, or operation of the proposed use will not be detrimental to or endanger the public health, safety, or general welfare.

See Attached

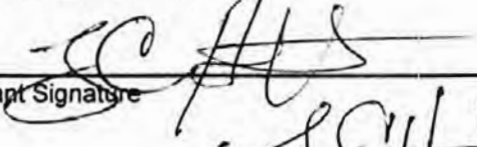
6. The proposed use complies with all applicable provisions of the KDO.


See Attached

7. The applicant consents in writing to all conditions of approval included in the approved special use permit.

See Attached

*By signing below, I certify that all of the information presented in this application is accurate to the best of my knowledge, information and belief. I acknowledge that the Board of Adjustment may add conditions on the requested use as part of the approval to assure that adequate mitigation measures are associated with the use. For example, landscaping or fencing may be required, or a shift of operations away from adjoining properties may be stipulated.*

Applicant Signature  Date 2/20/24

Property Owner Signature  Date 02/20/24

## ATTACHMENT

### INTRODUCTION

Southeastern Recovery Homes, LLC (“Southeastern”) operates a residence for persons in recovery from alcoholism or drug addiction at 3148 Barr Road, Concord, NC 28027.

The City of Kannapolis classifies Southeastern’s use of the property as a Residential Care Facility under Kannapolis’ Development Ordinance (“KDO”) which requires a special use permit.

Southeastern disputes the City’s classification as a Residential Care Facility. The reason for this is that Southeastern services persons with disabilities. The City’s definition of Residential Care Facility does not expressly include disabled persons. In fact, the definition expressly excludes certain homes, such as Family Care Homes, that do expressly serve persons with disabilities.

On December 13, 2023 Southeastern requested a reasonable accommodation pursuant to the Federal Fair Housing, Act 42 U.S.C. 3600 et. seq. to be exempt from the Residential Care Facility classification and be treated as the functional equivalent of a family without limitation of the number of unrelated persons who

can reside together as a family. (A copy of the December 13, 2023 letter making this request is attached hereto and incorporated herein by reference).

The City responded on January 17, 2024 (a copy of which response is also attached and incorporated herein by reference). The response stated that only the Board of Adjustment can grant such a reasonable accommodation, and that Southeastern must go through the Special Use Permit application process. Therefore, Southeastern submits this application for a Special Use Permit to exhaust its administrative remedies in seeking its requested accommodation and apply for a Special Use Permit.

## **DESCRIPTION OF SOUTHEASTERN USE**

The property at 3148 Barr Road is a 3000 square foot, six bedroom, three bath, two-story, single-family detached house. It has a driveway and extension providing parking for four vehicles. It sits on an approximately one and a half acres with a large backyard.

The house is home to men in recovery from alcoholism and/or drug addiction. The house is intended for up to sixteen (16) residents.<sup>1</sup> The home is a safe and supportive place for these men in early recovery to live in a sober

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<sup>1</sup> The number of residents in this particular home complies with North Carolina Association of Recovery Residences.

environment. The home is staffed by two live-in supervisors to assure the safe and sober environment. No treatment is provided in the home. The men receive treatment for their recovery at another location operated by Southeastern in Concord. This location is licensed as a partial hospital program and intensive outpatient treatment center by the North Carolina Department of Health and Human Services. Residents are at this clinic in Concord for treatment from 9:00 a.m. to 5:00 p.m., Monday through Friday.

The house at 3148 Barr Road is home to men. They return home after 5:00 p.m. after their treatment. They cook together and eat together, do their laundry, sleep, fellowship, and live together in a sober supportive environment. No visitors are allowed, this includes overnight guests.

The residents are not allowed to have vehicles on site. The only vehicles on site are the two supervisors' personal cars, and Southeastern's van for transporting the residents. All transportation is provided by the supervisors in the van. This includes daily transportation to Southeastern's off-site treatment facility referenced above, to Alcoholic Anonymous meetings, to the gym, and to weekend outings.

To live in the house, all residents must first pass a prescreening process. No sexual or violent crime offenders are allowed. Before living in the house all residents are detoxed and drug and alcohol free. While living in the house they are

drug tested several times a week. There is a zero tolerance for alcohol or drug use inside or outside the home. Any use or positive test results in immediate expulsion from the home.

The average length of stay in the home for a resident is 30 to 45 days. The residents range in age from 18 to 60. The home has operated since November 19, 2023 without incident.

### **REQUEST FOR REASONABLE ACCOMMODATION**

Southeastern's residents are a protected class under the Fair Housing Act (FHA), 42 U.S.C. § 3600 et. seq. Recovering alcoholics and addicts are specifically included within the definition of "handicapped individual" under the FHA. *City of Edmonds, WA v. Oxford House, Inc.* 514 U.S. 725 (1995). The FHA's prohibits discrimination against persons within a protected class. This prohibition includes discriminatory zoning decisions by local governments. The FHA defines discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such handicapped person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

Federal law requires a reasonable accommodation when the request is both reasonable and necessary. The law defines reasonable and necessary as follows:

“Reasonable”. An accommodation is reasonable if it would not undermine the legitimate purposes of or fundamentally alter existing zoning regulations, and if it would not impose a significant financial and administrative burden upon the municipality.

“Necessary”. An accommodation is necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing of their choice in residential districts of the municipality.

The reasonableness and necessity of Southeastern’s requested accommodation is as follows:

REASONABLE:

Southeastern’s use does not undermine the purposes of the KDO, nor does it impose any financial or administrative burden on the City. In fact, the Southeastern house provides a free benefit to the City by providing housing to men recovering from alcoholism and drug addiction.

The Southeastern house does not fundamentally alter the City's zoning scheme. As set forth above, Southeastern disputes that it falls under the KDO's definition of a Residential Care Facility.

The KDO definition of Residential Care Facility is: "A staffed premises (not a single-family dwelling) with paid or volunteer staff that provides full-time care to more than 6 individuals. Residential care facilities include dependent and/or independent living facilities, group homes ( N.C.G.S. 131D), residential child-care facilities ( N.C.G.S. 131D-10.2), assisted living residences ( N.C.G.S. 131D-2), adult care homes ( N.C.G.S. 131D2), retirement housing, congregate living services, assisted living services, continuing care retirement centers, skilled nursing services, and orphanages. This term excludes family care homes and nursing homes."

As described above Southeastern does not "provide full-time care" in its home.

Furthermore, the Residential Care Facility definition expressly excludes single family dwellings, and does not include the handicapped.

The KDO defines Family as "An individual; or two or more persons related by blood, marriage, or law; or a group of not more than any five persons living together in a dwelling unit. Employees that provide basic household services to and



share common housekeeping facilities with any family consisting of an individual or two or persons related by blood, marriage, or law, are a part of the family.”

The definition of family would apply to Southeastern if the limitation on unrelated people is increased or lifted.

It is also noteworthy that the KDO allows Family Care Homes (which are for the disabled) as a matter of right in residential districts.

And of course the KDO allows both Residential Care Facilities (which the City has classified Southeastern) and Cooperative Houses (which can also be homes for persons in recovery), each with a Special Use Permit, in the same residential districts where Southeastern is located.

Finally, a women’s recovery home is located at 1102 Lane St., Kannapolis.

NECESSARY:

Living in a supportive and sober house is therapeutically beneficial to persons in early recovery from alcoholism or drug addiction. Safe sober living environments are salient to successful recovery and staying clean and sober. The quality of the relationship among the residents in the Southeastern house is one of mutual support and bonding, providing an ameliorative therapeutic benefit which aids each resident in their recovery from alcoholism or drug addiction. As a result

of this therapeutic benefit, those living in a sober group setting are more likely to remain clean and sober than those living on their own.<sup>2</sup>

Additionally, the requested accommodation provides the residents an equal opportunity to use and enjoy housing of their choice.<sup>3</sup>

## **REVIEW STANDARDS FOR SPEICAL USE PERMIT**

**1. The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the City's Comprehensive Plan.**

The proposed use will be in harmony as evidenced by the City's KDO itself which allows Residential Care Facilities in the area with a Special Use Permit, allows Cooperative Houses in the area by Special Use Permit, allows Family Care Homes as a matter of right in the area, and allows Families of unlimited number of

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<sup>2</sup> *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1227 (11th Cir. 2008) citing a series of federal decisions addressing the efficacy of group living arrangements for recovering substance abusers.

<sup>3</sup> The law requires equal opportunity for disabled persons to use and enjoy housing of their choice. *United States v. City of Jackson*, 318 F.Supp.2d 395, 416 (S.D. Miss. 2002) (FHA "guarantee[s] that the disabled be afforded equal opportunity to live, not in some residence in the community, but rather in the residence of their choice"); *ARC of New Jersey, Inc. v. State of New Jersey*, 950 F. Supp. 637, 645 (D. N.J. 1996) ("ceiling quotas imposed via group home spacing rules improperly limit the ability of handicapped persons 'to live in the residence of their choice in the community,' even if imposed in the name of integration or 'declustering'"); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1185 n.10 (E.D. N.Y. 1993) (FHA "dictates that a handicapped individual must be allowed to enjoy a particular dwelling, not just some dwelling somewhere in the town"); *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329, 1344 (D. N.J. 1991) (defense based on existence of alternative locations in the city for group home held "without merit").

related persons as a matter of right in the area, and a women's recovery home is located at 1102 Lane St., Kannapolis.

**2. Adequate measures shall be taken to provide ingress and egress to minimize traffic hazards and traffic congestion on the public roads.**

The proposed use will not affect traffic at all. As explained above, Southeastern does not allow its residents to have cars on-site, nor are visitors allowed.

**3. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.**

This is not applicable. The proposed use produces none of the above.

**4. The establishment of the proposed use shall not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district.**

This too is not applicable. The use will not impede development or improvement of surrounding property, and there is not evidence to the contrary.

**5. The establishment, maintenance, or operation of the proposed use will no be detrimental to or endanger the public, health, safety, or general welfare.**

The is no evidence of any danger, and the fact that the home has operated since last year without out incident is further proof that the home is not a public danger.

**6. The proposed use complies with all applicable provisions of the KDO.**

The proposed use complies with the applicable provisions of the KDO because the KDO allows Residential Care Facilities in the area with a Special Use Permit, and further nothing about the proposed use does not comply with the applicable provisions of the KDO.

**7. The applicant consents in writing to all conditions of approval included in the approved special use permit.**

The applicant's response to this is premature pending any conditions of approval.

# Supportive Housing

## The Effect of Group Homes for the Mentally Ill on Residential Property Values

*(Hospital and Community Psychiatry, Boydell, K. M., M.H.Sc., J. N. Trainor, MSW, A. M. Pierrri, 1989)*

Determined that property values in a suburban area with a group home increase more than a similar area without one.

Summary by Non-Profit Housing Association of Northern California (NPH)

## Texas Department of Mental Health and Mental Retardation Questions and Answers

*(Johnson and Olson Associates of Austin, 1988)*

Summary finds no evidence of property values declining because of the location of a group home for the mentally ill and finds that there was less residential turnover near the group home than in other similar areas.

Summary by Non-Profit Housing Association of Northern California (NPH)

## The Impact of Group Homes on Residential Property Values

*(The Maryland-National Capital Park and Planning Commission, Prince George's County Planning Department, 1988)*

Study found that most areas around group homes appreciated more than other similar areas in the county. Determined that there is no correlation positive or negative between location of group homes and neighboring property values.

Summary by Non-Profit Housing Association of Northern California (NPH)

## Impacts on the Surrounding Neighborhood of Group Homes for Persons with Developmental Disabilities

*(Illinois Planning Council on Developmental Disabilities, Daniel Lauber, Springfield, Illinois, 1986)*

Research found that the location of group homes had no effect on property values, sales price or residential turnover rates.

Summary by Non-Profit Housing Association of Northern California (NPH)

## The Impact of Assisted Housing Developments on Concentrated Poverty

*(Freeman, L. Housing Policy Debate, 14(1-2), 2003)*

From Abstract: Findings imply that assisted housing developments do not typically contribute to concentration of poverty in surrounding neighborhoods and suggest that the negative reaction to assisted housing developments is unwarranted.

Available at: [http://www.mi.vt.edu/data/files/hpd%2014\(1,2\)/hpd%2014\(1,2\)\\_freeman.pdf](http://www.mi.vt.edu/data/files/hpd%2014(1,2)/hpd%2014(1,2)_freeman.pdf)

## Toward More Inclusive Neighbourhoods: Property Values Unaffected by Non-Market Housing

*(CitySpaces Consulting Ltd. for The Ministry of Housing, Recreation and Consumer Services, 1995)*

Studies examined the impact of non-market housing projects and group homes on the property values of nearby homes and concluded that there were "no negative impacts on the sale prices of homes in the immediate area. Additionally, they found no evidence of panic selling or an extraordinary length of time on the market of homes for sale within the area."

Available at: [http://www.housing.gov.bc.ca/housing/100\\_Jan\\_PropVal.html](http://www.housing.gov.bc.ca/housing/100_Jan_PropVal.html)

## The Question of Property Values

*(Dear, M. and Wilton, R. For Campaign for New Community, 1996)*

From Introduction: Annotated bibliography of 47 studies that focus on facilities such as group homes, outpatient facilities, affordable housing developments and foster homes. "An overwhelming majority of the reports indicate that facilities have little or no negative impact upon surrounding property values."

Available for \$10 at: <http://www.bettercommunities.org/index.cfm?method=bookstore>

## Financial Implications of Public Interventions on Behalf of a Chronically Homeless Family

*(Hart-Shegos, E. Prepared for Family Housing Fund, 1999)*

A report that demonstrates that supportive housing offers a solid, cost-effective solution by reducing public costs by fifty-one percent over time and helping families break the cycle of homelessness. The third report in the Fund's study "Supportive Housing for Families with Children."

Summary by Family Housing Fund

## Transitory Effects of Disamenities on residential Housing Values: The Case of Public and Senior Housing

*(Carroll, T.M. and Claretie, M., Journal of Real Estate Portfolio Management; 5(3); 1999)*

This study examined public and senior housing development and their impact on 6,321 surrounding residents. Their findings showed that, "public housing in general and senior housing in particular has an initial negative impact on nearby property values the effect is neither substantial nor long lasting."

Full text is available at: [http://findarticles.com/p/articles/mi\\_qa3759/is\\_199901/ai\\_n8846292/](http://findarticles.com/p/articles/mi_qa3759/is_199901/ai_n8846292/)

# **EXHIBIT I**

Proof of unsuccessful compliance with  
Standard #1 and #5



Sunday evening gathering  
>13 people



over 20 chairs stacked by fire pit

# KANNAPOLIS POLICE DEPARTMENT

## List of Events (Long Format)

Incident #	Date/Time	Street	City	Additional Location Info	Race	Sex	Age	Agcy	Dist	St/Bt	RA
Nature	Priority	Caller Name	Call Src	Business			Close	Prime Unit	Report #		
20240012625	03/12/2024 18:43:29	3148 BARR RD	CON					KPD	K1	KZ8	
GENERAL DISTURBANCE	1	BURGESS, [REDACTED]	PHONE				CSLP	3219			

Notes: On Tuesday March 3rd, I Officer Armstrong responded to 3148 Barr Rd in reference to a possible fight in progress.

Upon my arrival I began a conversation with [REDACTED] Burgess who lives at 3200 Barr Rd. Mr. Burgess informed me that the house beside him had opened as a halfway house. He stated that a group of males had been in a fight outside of the home. Mr. Burgess expressed to me his concern about the people coming in and out of the house, and his small children be exposed to these individuals.

After speaking with Mr. Burgess, I began a conversation with [REDACTED] Hoffman who is the owner of the facility. Mr. Hoffman was very vague about the incident. He stated a client had been in a fight with one of the employees. Mr. Hoffman told me that person was escorted off the property. I also spoke with [REDACTED] Henderson, who was the employee involved in the altercation. He advised me of the same and stated he did not wish to press charges.

[03/12/24 19:40:15 Unit:3219]

UNK WEAPONS [03/12/24 19:00:38 MMBAKER]

SECOND CALLER NOW ON THE LINE... AT 3211 ADV SHE CAN HEAR SCREAMING AND POSSIBLY TWO MALES FIGHTING [03/12/24 19:00:33 MMBAKER]

\*\*earlier [03/12/24 18:45:32 HCLAY]

a fight broke out early [03/12/24 18:45:29 HCLAY]

wants to speak to an officer ref a rehab house next door and his concerns [03/12/24 18:45:17 HCLAY]

21 caller [03/12/24 18:45:03 HCLAY]

\*not active at this time\* [03/12/24 18:45:00 HCLAY]

# Events      1



# **EXHIBIT J**

Proof of unsuccessful compliance with  
Standard #3



overflowing bins despite 2 in use



piled trash after filling 2 bins



leaving out entire week