

STEVEN G. POLIN, ESQ.
Attorney At Law
Admitted to DC & MD

3034 TENNYSON ST. N.W.
WASHINGTON, D.C. 20015

TEL (202) 331-5848
FAX (202) 331-5849
SPOLIN2@EARTHLINK.NET

July 17, 2022

SENT VIA ELECTRONIC MEANS AND FIRST CLASS MAIL

Thanh Dang
Interim Zoning Administrator, AICP
City of Harrisonburg
Department of Planning and Community Development
409 South Main Street
Harrisonburg, VA 22801

Re: Reasonable Accommodation Request
Oxford House-Madison Valley
69 Middlebrook Street

Oxford House-Summit
760 Collicello Street

Oxford House-Trillium
339 W Water Street

Dear Mr. Dang:

I am General Counsel for Oxford House, Inc. and I am responding to the notice of violation concerning the use of the aforementioned dwelling Oxford Houses, residences for recovering alcoholics and substance abusers. Each notice of violation states that the premises are "Nonowner-occupied single-family dwellings, which may include rental of space for occupancy by not more than one (1) person, providing such rental space does not include new kitchen facilities. As this property is not owner-occupied, the above referenced property can only be occupied by two unrelated individuals.) Each of these dwellings is occupied by individuals who are recovering alcoholics and substance abusers, residing together as a family under the Oxford House concept.

On behalf of each of these Oxford Houses, its residents, Oxford House, Inc. and the property owners, I am making a reasonable accommodation request pursuant to the Federal Fair Housing Act, 42 U.S.C. 3604(f)(3)(B), to the City of Harrisonburg by requesting the following: a waiver on the limitations of the maximum number of unrelated persons who can reside together as a family under the City's definition of family, and equal treatment in the City's single family zoning laws that is applied to "residential facilities." Specifically, I am requesting that the City waive any state licensing

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requirements and staffing requirements that pertain to “residential facilities,” and treat the use of these Oxford Houses as the functional equivalent of a family, and the use of the property as a single family use.

I am writing this letter to explain the Oxford House concept, and to request pursuant to the Federal Fair Housing Act that the City of Harrisonburg make a reasonable accommodation in the application of its land use ordinances for the aforementioned Oxford House. I would appreciate the opportunity to discuss the Fair Housing Act implications of your proposed action and request that any contemplated enforcement actions be held in abeyance during this time period.

These Oxford Houses have been erroneously classified by the staff of the City as something other than a single family use. Residents of Oxford Houses, and the courts, have always treated their use as the equivalent of a family. It is requested, as a reasonable accommodation, that the City treat the use of each Oxford House as a single family use, and the residents as the functional equivalent of a family under the City’s definition of family as definition as that definition makes allowances for groups of disabled persons. The City’s zoning code defines family as follows:

FAMILY: One (1) or more persons occupying a dwelling and living as a single housekeeping unit, all of whom are related to each other by birth, adoption or marriage as distinguished from a group occupying a boardinghouse, roominghouse or hotel as herein defined.

The Commonwealth of Virginia requires municipalities to treat residential facilities with eight (8) or fewer disabled persons to be treated as single family uses.

Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, “residential facility” means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code.

Va. Code Ann. § 15.2-2291

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Notwithstanding that Oxford House is neither required to be licensed nor have staff for its houses, a reasonable accommodation would be to treat Oxford House in the same manner as the Commonwealth requires its municipalities to treat group homes: as single family uses as a reasonable accommodation.

I. THE OXFORD HOUSE CONCEPT

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

Each Oxford House provides safe and sober housing for persons in recovery from alcoholism and substance abuse. Only Oxford House-Madison has more than eight (8) residents, with 10 residents. In this regard, Oxford House, Inc., the national organization, assists in establishing housing for recovering addicts and alcoholics that is financially self-supported, democratically run, and immediately expels anyone who uses drugs or alcohol, inside or outside the house. There is no paid staff, counseling, therapy, or house manager involved in the operation of the house. In Oxford House, the group behaves like any family and makes group decisions based on democratic procedures. Oxford House is nothing more than a single-family residence.

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

Oxford Houses are not substance abuse centers, halfway houses, shelters nor community care facilities. There is no treatment, counseling, therapy, or any type of health care service provided. Oxford Houses are not licensed by the Commonwealth of Virginia, nor are they required to be licensed. In an Oxford House, as opposed to a halfway house, residents live there by choice. There is no house manager, paid staff or other type of institutional personnel involved in the supervision or management of the house. All decisions relating to the functioning of an Oxford House are made democratically. An Oxford House manages its own finances and has its own bank account. Oxford Houses are not halfway houses, nor are they a substitute for halfway houses.

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

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bedrooms. There is no staff, paid or otherwise, living in the house or overseeing the house, and no treatment or professional services provided at the premises. Oxford House, Inc. plays no role, whatsoever, in how the house functions.

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

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

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

For the same reasons asserted, we submit that the use of each Oxford House, (which is based on the same model of self-run, self-supported shared living as an intentional "family") is likewise not a community care center, rooming or boarding house, group home or halfway-house under any applicable definition. *See Oxford House - Evergreen v. City of Plainfield*, 769 F. Supp. 1329 (D. N.J. 1991)(Oxford House is not a halfway house. Residents share more than "household responsibilities" and meals. The residents make all house decisions in a democratic fashion. But even more important, the support they lend each other is therapeutic, in the same manner as that of a well-functioning family. The relationship is not analogous to that between residents of a boarding house).¹

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

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Oxford House residents are considered to be the "functional equivalent" of a family for several reasons. First, all the residents have access to the entire house. Second, all the residents participate equally in the housekeeping functions of the house, i.e. house chores and house finances. Each resident, however, is responsible for her own food and cooking. Third is the quality of the relationship among the residents. The emotional and mutual support and bonding given Oxford House residents in support of their recovery from drug addiction and alcoholism is the equivalent of the type of love and support received in a traditional family. Finally, the living arrangement is not based upon a profit motive. It has been found that individuals who decide to live in programs such as that offered by Oxford House are allowed to engage in the process of recovery from alcoholism and substance abuse at their own pace, which enhances their ability to advance and succeed in the recovery process. By living with other persons who are in recovery, the residents should never have to face an alcoholic's or addict's deadliest enemy: loneliness and isolation. It is necessary that Oxford House-Summit and Oxford House Trillium be able to have a maximum of eight (8) residents, and Oxford House-Madison Valley have 10 residents in order for the residents to ameliorate the effects of the diseases of alcohol and drug addiction. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1227 (11th Cir. Fla. 2008).

In addition, residents live in each Oxford House by choice. The choice is usually motivated by the individual's desire not to relapse into drug and/or alcohol use again after that individual has "bottomed out," i.e., lost jobs, home or family. It is also motivated by the desire that one must change their lifestyle, the manner in which they conduct their affairs, and the need to become a responsible, productive member of society. The final factor in determining that each Oxford House's residents are the "functional equivalent" of a family is the fact that there is no limit as to how long a resident

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

See, United States v. Borough of Audubon, 797 F. Supp 353, *aff'd* 968 F.2d 14 (3d Cir. 1992)(Oxford Houses are not health care facilities, rehabilitation centers, or supervised halfway houses. Unlike those facilities, no professional treatment or paid staff are provided. Instead, such houses are simply residential dwellings that are rented by a group of individuals who are recovering from alcoholism or drug addiction.). The Court also held that Oxford House residents are handicapped under the Federal Fair Housing Act, and that the residents drug and/or alcohol addictions did substantially impair one or more of their major life activities.

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can stay in Oxford House. Conceivably, an individual can stay in Oxford House for a lifetime if he/she does not relapse. The Surgeon General of the United States has recognized the Oxford House model as a leading example of "Recovery Housing." *Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health*. 2016.; <https://addiction.surgeongeneral.gov/>.

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

II. REASONABLE ACCOMMODATION REQUEST TO BE TREATED AS A FAMILY

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

Under Fair Housing Amendments Act of 1988, the City may not act to prevent those with handicaps from living in recovery housing within its boundaries. A reasonable accommodation in this instance would be for the City to accept the residents of Oxford House as the functional equivalent of a family and waive the limitation on the number of unrelated persons who may reside together under the City's zoning code, and apply all code provisions in the same manner as it applies

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to single family dwellings for single family purposes. This request is consistent with the mandates of Va. Code Ann. § 15.2-2291. The same holds true for Oxford House-Madison Valley, where the reasonable accommodation request would be to substitute residents for staff. In other words, Oxford House is seeking to be treated as a family under the express terms of the City's definition of family. *See, Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683, 693 (M.D. La. 2013)(finding that the proposed use of the Oxford Houses is similar to the uses already permitted by the zoning, and that it is reasonable to treat the uses as a family).

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

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

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

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

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

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

Reasonable accommodation requests are necessary to achieve an opportunity for the disabled residents of Oxford House to live in a residential area of the City of Harrisonburg. *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1226 (11th Cir. 2008) (Section 3604(f)(3)(B) (requires only accommodations necessary to ameliorate the effect of the plaintiff's disability so that the resident may compete equally with the non-disabled in the housing market.) Absent the group-home setting, the individual residents of the plaintiffs' programs would not be able to live in a supportive environment in a residential area, let alone a single-family residential area. See also *Oconomowoc Residential Prog.*, 300 F.3d at 784 ("When a zoning authority refuses to reasonably accommodate these small group living facilities, it denies disabled persons an equal opportunity to live in the community of their choice."); *Sharpvisions, Inc. v. Borough of Plum*, 475 F. Supp. 2d 514, 524-25

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(W.D. Pa. 2007) (holding that request for accommodation to definition of “family” was necessary for a resident “to enjoy the housing of his or her choice”). *Groome Resources, Ltd. supra; Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683 at 693 (residency in Oxford House has been shown to ameliorate the effects of alcoholism and drug addiction). *See also, Oxford House, Inc. v. Browning*, 266 F. Supp. 3d 896, 915 (M.D. La. 2017) (The residents of Oxford House comport themselves like a family and does not require additional fire safety requirements).

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

The residents of Oxford House are individuals who are handicapped by alcoholism or drug abuse and who cannot live independently without the risk of relapse. They cannot live with their families, friends or in the neighborhoods that contributed to their use of drugs and alcohol. Oxford House can demonstrate that the ability of recovering alcoholics and drug addicts to live in a supportive drug free environment in a quiet residential area is critical to their recovery since they are not able to live independently at this time without the fear of relapse. These individuals are more likely to need a living arrangement such as provided by Oxford House, wherein groups of unrelated individuals reside together in a residential neighborhood for mutual support during the recovery process so as to prevent the possibility of resumption of the use of drugs and/or alcohol. This type of living arrangement provides the tools to the residents to enable them at a future time to be a sober responsible, productive member of society. *Township of Cherry Hill*, 799 F. Supp. at 450. "When that home is also a therapeutic environment critical to maintaining continued recovery from alcohol or drug addiction, eviction is life threatening. Depriving such individuals of housing, or evicting

²Other programs similar to Oxford House have successfully demonstrated the need of recovering individuals to reside in quiet residential areas in order to enhance the recovery process. *See Borough of Audubon*, 797 F. Supp at 360 (“Based on the testimony, we find that the OH-Vassar residents' addictions substantially limit their ability to live independently and to live with their families. Accordingly, we find that the residents are "handicapped" under the Act, and are entitled thereby to the protections of the Act. We do not think that the list of major life activities set forth in the regulation was meant to be all-inclusive. Even if it were, the residents would still satisfy the definition because their inability to live independently constitutes a substantial limitation on their ability to ‘care for themselves.’”); *City of Plainfield*, 769 F. Supp at 1339-40. (“In addition to losing their residence, which may in itself be an irreparable injury, plaintiffs would also lose the benefit of their therapeutic and supportive living environment, and may relapse. . . For a non-handicapped individual, the disintegration of a family unit is traumatic for recovering alcoholics and drug addicts, it may be devastating.”)

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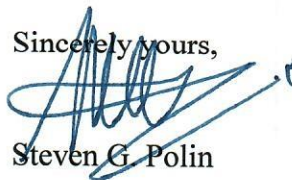
them, would constitute irrational discrimination that may seriously jeopardize their continued recovery." *See City of Plainfield*, 769 F. Supp at 1345.

Each resident of Oxford House is a recovering alcoholic and/or substance abuser. The Oxford House residents' status as persons in recovery from alcoholism and/or substance abuse limits one or more major life activities as that term is defined under both the Fair Housing Act, 42 U.S.C. § 3602(h), and the Americans with Disabilities Act, 42 U.S.C. § 12102(2). Major life activities have been limited because they are unable to live independently without the fear of relapse; that they need to live in a structured sober living environment; their inability to reside with their families or significant others leads to the risk of relapse; their lack of knowledge and ability to live without the use of drugs and alcohol; the lack of a stable living environment; the possibility of becoming homeless or incarcerated; and, the need to be surrounded with other men who are learning to live productively without the use of drugs or alcohol. *See, Oxford House, Inc. v. City of Baton Rouge*, 932 F. Supp. 2d 683, 689 (M.D. La. 2013); *Reg'l Econ. Cmty. Action Program v. City of Middletown*, 294 F.3d 35, 47-48 (2d Cir. 2002); *McKivitz v. Twp. of Stowe*, 769 F. Supp. 2d 803, 821-822 (W.D. Pa. 2010).

I hope you find this information useful. I would like to discuss this matter with you or any other representative of the City of Harrisonburg before it contemplates any further action. I am requesting the City to reconsider its decision to classify Oxford House as something other than a single family use and discuss ways the City can grant our request for a reasonable accommodation so that the residents of each Oxford House be treated as a family or be given the same equal treatment as those group homes that are licensed by the Commonwealth of Virginia.

I look forward to discussing ways to resolve this matter with you.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Steven G. Polin", written over the typed name below.

Steven G. Polin

cc: Oxford House, Inc.