

**ADMINISTRATIVE RECORD FOR  
PACIFIC SHORES REASONABLE  
ACCOMMODATION APPEAL**

**TAB 1**

**Pacific Shores' Supplemental Information for  
Reasonable Accommodation**

(September 24, 2008)



**CITY OF NEWPORT BEACH**

RECEIVED BY  
PLANNING DEPARTMENT

**Supplemental Information  
for  
Reasonable Accommodation**

SEP 24 2008

**CITY OF NEWPORT BEACH**

Planning Department  
3300 Newport Boulevard  
Newport Beach, California 92658-8915  
(949) 644-3200

Application Number \_\_\_\_\_

PA2008-181 for RA2008-001  
492 & 492 1/2 ORANGE AVE AND 3309 CLAY ST  
Pacific Shores Properties, LLC

To aid staff in determining that the necessary findings can be made in this particular case as set forth in Chapter 20.98 of the Municipal Code, please answer the following questions with regard to your request (Please attach on separate sheets, if necessary):

**Pacific Shores Properties, LLC**

Name of Applicant

**Pacific Shores**

If provider of housing, name of facility, including legal name of corporation

**177 Riverside Avenue, Newport Beach, California 92637**

(Mailing Address of Applicant)

(City/State)

(Zip)

**949-574-2510**

**949-722-1135**

(Telephone)

(Fax number)

**Pacific Shores00@yahoo.com**

(E-Mail address)

**492 1/2 Orange Avenue, 492 Orange Avenue, 3309 Clay Street**

(Subject Property Address)

Assessor's Parcel Number (APN)

1. Is this application being submitted by a person with a disability, that person's representative, or a developer or provider of housing for individuals with a disability?

**Pacific Shores Properties, LLC is a provider of housing to persons in recovery from alcoholism and substance abuse.**

2. Does the applicant, or individual(s) on whose behalf the application is being made, have physical or mental impairments that substantially limit one or more of such person's major life activities? If so, please state the impairment(s) and provide documentation of such impairment(s)

**All residents of housing provided by Pacific Shores Properties, LLC are persons in recovery from alcoholism and substance. Most residents of Pacific Shores are referred**

after completing a residential substance program. Those individuals who are not referred directly from a residential treatment program have either completed a treatment program, or have been in recovery from alcoholism and substance abuse after completing a substance abuse treatment program or a detoxification program, or have been sober for a sustained period of time but are in need of safe and sober housing because they cannot live independently without fear of relapse.

3. From which specific Zoning Code provisions, policies or practices are you seeking an exception or modification?

**Pacific Shores is requesting the City of Newport Beach treat its residents as a single housekeeping unit as defined in Section 20.03 of the Newport Beach Municipal Code.**

4. Please explain why the specific exception or modification requested is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence. Please provide documentation, if any, to support your explanation.

**As individuals in recovery from alcoholism and substance abuse present and prospective residents of Pacific Shores seek to live in a family type environment which would provide them with emotional and therapeutic support during recovery process. The residents are individuals who cannot live independently without the fear or threat of relapse into active alcoholism and substance abuse. The requested accommodation is necessary to achieve an opportunity for the disabled residents of Pacific Shores to live in a setting which is a self-paced recovery option and it gives them sufficient time for personal psychological growth while avoiding the use of alcohol and other substances. Absent the sobriety setting, the individual residents of Pacific Shores would not be able to live in a supportive environment in a residential area, let alone a single-family residential area. Residency in Pacific Shores provides a useful and often times essential public service by providing a safe and sober living environment, so that its residents can be reintegrated in the world and workforce. A request for accommodation to definition of "family" is necessary for the present and future residents of Pacific Shores "to enjoy the housing of his or her choice". The residents of Pacific Shores are not "transient" by nature and function and interact with each other much in the same way as "the functional equivalent of a traditional family." By living together as the "functional equivalent of a traditional family" and by living with other persons who are in recovery, the residents of Pacific Shores never have to face an alcoholics or addicts deadliest enemy: loneliness.**

5. Please explain why the requested accommodation will affirmatively enhance the quality of life of the individual with a disability. Please provide documentation, if any, to support your explanation.

**As individuals in recovery from alcoholism and substance abuse present and prospective residents of Pacific Shores seek to live in a family type environment which would provide them with emotional and therapeutic support during recovery process. The residents are individuals who cannot live independently without the fear or threat of relapse into active alcoholism and substance abuse. The requested accommodation is necessary to achieve an opportunity for the disabled residents of Pacific Shores to live in a setting which is a self-paced recovery option and it gives them sufficient time for personal psychological growth while avoiding the use of alcohol and other substances. Absent the sobriety setting, the**

individual residents of Pacific Shores would not be able to live in a supportive environment in a residential area, let alone a single-family residential area. Residency in Pacific Shores provides a useful and often times essential public service by providing a safe and sober living environment, so that its residents can be reintegrated in the world and workforce. A request for accommodation to definition of "family" is necessary for the present and future residents of Pacific Shores "to enjoy the housing of his or her choice". The residents of Pacific Shores are not "transient" by nature and function and interact with each other much in the same way as "the functional equivalent of a traditional family." By living together as the "functional equivalent of a traditional family" and by living with other persons who are in recovery, the residents of Pacific Shores never have to face an alcoholics or addicts deadliest enemy: loneliness.

6. Please explain how the individual with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation? Please provide documentation, if any, to support your explanation.

As individuals in recovery from alcoholism and substance abuse present and prospective residents of Pacific Shores seek to live in a family type environment which would provide them with emotional and therapeutic support during recovery process. The residents are individuals who cannot live independently without the fear or threat of relapse into active alcoholism and substance abuse. The requested accommodation is necessary to achieve an opportunity for the disabled residents of Pacific Shores to live in a setting which is a self-paced recovery option and it gives them sufficient time for personal psychological growth while avoiding the use of alcohol and other substances. Absent the sobriety setting, the individual residents of Pacific Shores would not be able to live in a supportive environment in a residential area, let alone a single-family residential area. Residency in Pacific Shores provides a useful and often times essential public service by providing a safe and sober living environment, so that its residents can be reintegrated in the world and workforce. A request for accommodation to definition of "family" is necessary for the present and future residents of Pacific Shores "to enjoy the housing of his or her choice". The residents of Pacific Shores are not "transient" by nature and function and interact with each other much in the same way as "the functional equivalent of a traditional family." By living together as the "functional equivalent of a traditional family" and by living with other persons who are in recovery, the residents of Pacific Shores never have to face an alcoholics or addicts deadliest enemy: loneliness.

7. If the applicant is a developer or provider of housing for individuals with a disability, please explain why the requested accommodation is necessary to make your facility economically viable in light of the relevant market and market participants. Please provide documentation, if any, to support your explanation.

Pacific Shores objects to this request. An applicant for a request for a reasonable accommodation is not required to compare or make an assessment of economic viability in light of the relevant market and market participants. Accordingly, Pacific Shores is not required to obtain economic data concerning the relevant market and market participants in order for this request to be considered and granted.

8. If the applicant is a developer or provider of housing for individuals with a disability, please explain why the requested accommodation is necessary for your facility to provide individuals with a disability an equal opportunity to live in a residential setting taking into consideration the existing supply of facilities of a similar nature and operation in the community. Please provide documentation, if any, to support your explanation.

**Pacific Shores objects to this request. An applicant for a reasonable accommodation is not required to assess whether a request for a reasonable accommodation is necessary to provide persons with disabilities an equal opportunity to live in a residential setting by providing evidence regarding the existing supply of facilities of a similar nature and operation in the community. Without waiving this objection, see the Answer to Number 4**

9. Please add any other information that may be helpful to the applicant to enable the City to determine whether the findings set forth in Chapter 20.98 can be made (Use additional pages if necessary.)

**Pacific Shores has been the provider of housing for recovering alcoholics and substance abusers since 2000.**



**CITY OF NEWPORT BEACH**

**Supplemental Information  
for  
Reasonable Accommodation  
for  
Providers of Housing**

Planning Department  
3300 Newport Boulevard  
Newport Beach, California 92658-8915  
(949) 644-3200

Application Number  
PA2008-181 for RA2008-001  
492 & 492 1/2 OCEAN AVE AND 3300 CLAY ST  
Pulsed Chores Properties LLC

**If you are a provider or developer or provider of housing for individuals with a disability and are seeking a reasonable accommodation, please provide the following information with regard to your request. If you have already submitted this information to the City in conjunction with a different application, you can submit copies of the information previously provided.**

**A. Your Firm's Current Uses.** Do you or your firm (or any entity or person affiliated with you or your firm) currently operate, manage, or own other group residential uses in Newport Beach?

Yes                       No

If yes, cite address(es) of facility(ies) (attach more pages if necessary):

**EXAMPLE:**

|                                 |                           |     |
|---------------------------------|---------------------------|-----|
| 1234 Main Street, Newport Beach | Unlicensed "Sober Living" | 7   |
| Site Address                    | Type of Use               | Bed |
| Capacity                        |                           |     |
| Site Address                    | Type of Use               | Bed |
| Capacity                        |                           |     |
| Site Address                    | Type of Use               | Bed |
| Capacity                        |                           |     |
| Site Address                    | Type of Use               | Bed |
| Capacity                        |                           |     |
| Site Address                    | Type of Use               | Bed |
| Capacity                        |                           |     |



**TAB 2**

**Public Notice of March 25, 2009 Reasonable  
Accommodation Hearing**

(March 15, 2009)

**AFFIDAVIT OF PUBLICATION**

STATE OF CALIFORNIA, )  
 ) ss.  
County of Orange )

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of The Orange County Register, a newspaper of general circulation, published in the city of Santa Ana, County of Orange, and which newspaper has been adjudged to be a newspaper of general circulation by the Superior Court of the County of Orange, State of California, under the date of 1/18/52, Case No. A-21046, that the notice, of which the annexed is a true printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

Mar 15, 2009

"I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct":

Executed at Santa Ana, Orange County, California, on

Date: Mar 15, 2009

Adelle Thuo  
Signature

**The Orange County Register**  
625 N. Grand Ave.  
Santa Ana, CA 92701  
(714) 796-7000 ext. 2209

**PROOF OF PUBLICATION**

RECEIVED BY  
PLANNING DEPARTMENT

MAR 24 2009

CITY OF NEWPORT BEACH

*[This section contains a very faint and illegible document, likely a copy of the notice mentioned in the affidavit.]*

### PROOF OF PUBLICATION

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

I am a Citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the below entitled matter. I am a principal clerk of the NEWPORT BEACH - COSTA MESA DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa, County of Orange, State of California, and that attached Notice is a true and complete copy as was printed and published on the following dates:

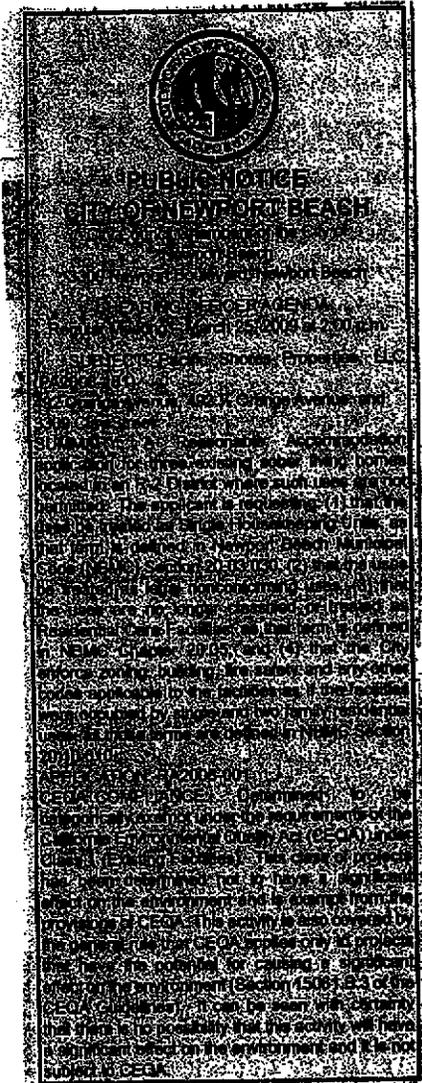
March 14, 2009

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on March 17, 2009 at Costa Mesa, California.

*Sandra J. Quinn*  
Signature

# FILE COPY



*Dinger*

**FILE COPY**

*2.25"*



**PUBLIC NOTICE  
CITY OF NEWPORT BEACH**

City Council Chambers of the City of  
Newport Beach  
3300 Newport Boulevard, Newport Beach

HEARING OFFICER AGENDA  
Regular Meeting - March 25, 2009 at 2:00 p.m.

1. **SUBJECT:** Pacific Shores Properties, LLC  
(PA2008-181)  
492 Orange Avenue, 492 1/2 Orange Avenue, and  
3309 Clay Street

**SUMMARY:** A Reasonable Accommodation application for three existing sober living homes located in an R-2 District where such uses are not permitted. The applicant is requesting: (1) that the uses be treated as Single Housekeeping Units, as that term is defined in Newport Beach Municipal Code (NBMC) Section 20.03.030, (2) that the uses be treated as legal nonconforming uses, (3) that the uses are no longer classified or treated as Residential Care Facilities, as that term is defined in NBMC Chapter 20.06, and (4) that the City enforce zoning, building, fire safety and any other codes applicable to the facilities as if the facilities were occupied by single and two family residential uses, as those terms are defined in NBMC Section 20.10.010.

**APPLICATION:** RA2008-001

**CEQA COMPLIANCE:** Determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061.B.3 of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA.

*5.75"*

*Daily Pilot  
ad  
3-14*

## NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that on **March 25, 2009, at 2:00 p.m.**, a public hearing will be conducted in the City Council Chambers (Building A) at 3300 Newport Boulevard, Newport Beach, California. A Hearing Officer designated by the City of Newport Beach will consider the application of Pacific Shores Properties, LLC for Reasonable Accommodation Permit No. 2008-001 for properties located at 492 Orange Avenue, 492 ½ Orange Avenue, and 3309 Clay Street, for the following:

A Reasonable Accommodation application for three existing sober living homes located in an R-2 District where such uses are not permitted. The applicant is requesting: (1) that the uses be treated as Single Housekeeping Units, as that term is defined in Newport Beach Municipal Code (NBMC) Section 20.03.030, (2) that the uses be treated as legal nonconforming uses, (3) that the uses are no longer classified or treated as Residential Care Facilities, as that term is defined in NBMC Chapter 20.05, (4) that the City enforce zoning, building, fire safety and any other codes applicable to the facilities as if the facilities were occupied by single and two family residential uses, as those terms are defined in NBMC Section 20.10.010, (4) that the City enforce zoning, building, fire safety and any other codes applicable to the facilities as if the facilities were occupied by single and two family residential uses, as those terms are defined in NBMC Section 20.10.010, and (5) an exemption from those portions of NBMC Section 20.10.020 that require Residential Care Facilities, General and Small Unlicensed to be established only in residential districts zoned Multi Family Residential (MFR) with a use permit.

**NOTICE IS HEREBY FURTHER GIVEN** that this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061.B.3 of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA.

All interested parties may appear and present testimony in regard to these applications. If you challenge these projects in court, you may be limited to raising only those issues you or someone else raised at the public hearing (described in this notice) or in written correspondence delivered to the City, at, or prior to, the public hearing. The staff report may be reviewed at the Planning Department, City of Newport Beach, 3300 Newport Boulevard, Newport Beach, California, 92663 or at the City of Newport Beach website at [www.city.newport-beach.ca.us](http://www.city.newport-beach.ca.us) beginning on the Monday prior to the hearing. For more information, call (949) 644-3200 or (949) 644-3002. To be added to a permanent notification list of these hearings, e-mail [dkiff@city.newport-beach.ca.us](mailto:dkiff@city.newport-beach.ca.us) and ask to receive these notices.

**Project File No.:** PA2008-181

**Activity No.:** RA2008-001

Dave Kiff, Assistant City Manager, City of Newport Beach

930 590 43  
FRANK L & ENNA E DOYLE  
3262 BROAD ST  
NEWPORT BEACH, CA 92663

930 590 44  
LINDA M JOVANELLY  
3245 CLAY ST  
NEWPORT BEACH, CA 92663

930 590 45  
BROWNING  
3256 BROAD ST  
NEWPORT BEACH, CA 92663

930 590 46  
ADAMS G T/T K FAMILY TRUST  
24652 STEFFY DR  
LAGUNA NIGUEL, CA 92677

937 350 61  
WILLIAM JR & BONNIE CRAWFORD  
3233 CLAY ST  
NEWPORT BEACH, CA 92663

937 350 62  
CLAIRE STEELE  
3231 CLAY ST  
NEWPORT BEACH, CA 92663

937 350 96  
TRISH COURY  
3251 BROAD ST  
NEWPORT BEACH, CA 92663

937 350 97  
MATTHEW & DINA SAENZ  
3253 BROAD ST  
NEWPORT BEACH, CA 92663

937 350 98  
JILL C DONAHUE  
3245 BROAD ST  
NEWPORT BEACH, CA 92663

937 350 99  
NEAL DOFELMIER  
3247 BROAD ST  
NEWPORT BEACH, CA 92663

937 351 08  
RYAN TOLLNER  
507 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 09  
MARK B HIROMOTO  
509 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 10  
HANNA MARY L TRUST  
511 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 11  
EVA C MAUCK  
513 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 12  
JIM MADDEN  
515 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 13  
MARK MORTON  
517 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 14  
DONNA MURATALLA  
519 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 17  
LISA MARIE FABIAN  
3301 CLAY ST  
NEWPORT BEACH, CA 92663

937 351 18  
RANDY E OLSHEN  
741 MARTINGALE LN  
PARK CITY, UT 84098

937 351 19  
CAMACHO SAY FAMILY TRUST  
3305 CLAY ST  
NEWPORT BEACH, CA 92663

937 351 20  
OBBAGE TRUST  
3307 CLAY ST  
NEWPORT BEACH, CA 92663

937 351 21  
LYNN C SOYLEMEZ  
407 BOLSA AVE  
NEWPORT BEACH, CA 92663

937 351 22  
RAIDY FAMILY TRUST  
PO BOX 155  
PAUMA VALLEY, CA 92061

937 351 23  
RONALD & PAMELA LOPEZ  
411 BOLSA AVE  
NEWPORT BEACH, CA 92663

937 351 24  
KEETON FAMILY TRUST  
300 RIALTO ST  
NEWPORT BEACH, CA 92663

937 351 29  
DEBRA LEITNER  
3308 CLAY ST  
NEWPORT BEACH, CA 92663

937 351 30  
MARCO BUFFETTI  
3310 CLAY ST #B  
NEWPORT BEACH, CA 92663

PACIFIC SHORES PROPERTIES LLC  
177 RIVERSIDE AVE, SUITE 212  
NEWPORT BEACH, CA 92663

PA2008-181 for RA2008-001  
492 & 492 1/2 Orange Ave and 3309 Clay St  
Pacific Shores Properties, LLC

425 271 01  
HUNG ONG  
307 PLACENTIA AVE #205  
NEWPORT BEACH, CA 92663

425 271 02  
HUNG ONG  
307 PLACENTIA AVE #205  
NEWPORT BEACH, CA 92663

425 281 17  
CLEWORTH BRUCE K TRUST  
3250 BROAD ST  
NEWPORT BEACH, CA 92663

425 282 01  
ALICE CONNER  
611 CLIFF DR  
NEWPORT BEACH, CA 92663

425 282 02  
ALICE CONNER  
611 CLIFF DR  
NEWPORT BEACH, CA 92663

425 282 12  
LAURA CAPPELLETTI  
486 N NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 282 13  
BGR VISIONS LLC  
2064 PHALAROPE CT  
COSTA MESA, CA 92626

425 283 33  
CARLTON JOHN J TRUST  
1362 GALAXY DR  
NEWPORT BEACH, CA 92660

425 291 01  
EVAN B THOMAS  
522 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 291 02  
DAMIR AUJAGHIAN  
318.5 JASMINE AVE  
CORONA DEL MAR, CA 92625

425 291 03  
508 ONB LLC  
415 30TH ST #B  
NEWPORT BEACH, CA 92663

425 291 10  
OTOLITH LLC  
7300 W OCEANFRONT  
NEWPORT BEACH, CA 92663

425 292 01  
RICHARD H ALLRED  
3331 E 15TH ST  
NEWPORT BEACH, CA 92663

425 292 02  
KIRK C STRODEL  
508 ORANGE AVE  
NEWPORT BEACH, CA 92663

425 292 03  
JOHN LYNN HART  
49 BALBOA CVS  
NEWPORT BEACH, CA 92663

425 292 04  
VOIGNE YVONNE DES  
504 ORANGE AVE  
NEWPORT BEACH, CA 92663

425 292 05  
3312 CLAY STREET LLC  
3187 AIRWAY AVE #H  
COSTA MESA, CA 92626

425 292 07  
WILLIAM J WINTER  
1905 FULLERTON AVE #W  
COSTA MESA, CA 92627

425 292 08  
DIANA D SPRINGER  
3300 CLAY ST  
NEWPORT BEACH, CA 92663

425 292 09  
WILLIAM BELDEN GUIDERO  
342 62ND ST  
NEWPORT BEACH, CA 92663

425 292 10  
NEIL J POWERS  
3408 MARCUS AVE  
NEWPORT BEACH, CA 92663

425 292 11  
NEIL POWERS  
3408 MARCUS AVE  
NEWPORT BEACH, CA 92663

425 292 12  
BREWER SHERYL L REV TRUST  
214 FERNLEAF AVE  
CORONA DEL MAR, CA 92625

425 293 02  
DANIEL & KIMBERLY MCDONOUGH  
518 BOLSA AVE  
NEWPORT BEACH, CA 92663

425 293 03  
MCELFRESH FAMILY TRUST  
514 BOLSA AVE  
NEWPORT BEACH, CA 92663

425 293 04  
SUSAN; IRANI  
51 CORONADO POINTE  
LAGUNA NIGUEL, CA 92677

425 293 05  
CHRISTOPHER E & AIDA O HOBSON  
3242 E COAST HWY  
CORONA DEL MAR, CA 92625

425 293 06  
TERRY A TRAMBLIE  
3244 CLAY ST  
NEWPORT BEACH, CA 92663

425 293 07  
CAROLAN FAMILY TRUST  
3238 CLAY ST  
NEWPORT BEACH, CA 92663

425 293 08  
BAILEY FAMILY TRUST  
22322 HARWICH LN  
HUNTINGTON BEACH, CA 92646

937 351 08  
RESIDENT  
507 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 09  
RESIDENT  
509 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 10  
RESIDENT  
511 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 11  
RESIDENT  
513 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 12  
RESIDENT  
515 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 13  
RESIDENT  
517 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 14  
RESIDENT  
519 ORANGE AVE  
NEWPORT BEACH, CA 92663

937 351 17  
RESIDENT  
3301 CLAY ST  
NEWPORT BEACH, CA 92663

937 351 18  
RESIDENT  
3303 CLAY ST  
NEWPORT BEACH, CA 92663

937 351 19  
RESIDENT  
3305 CLAY ST  
NEWPORT BEACH, CA 92663

937 351 20  
RESIDENT  
3307 CLAY ST  
NEWPORT BEACH, CA 92663

937 351 21  
RESIDENT  
407 BOLSA AVE  
NEWPORT BEACH, CA 92663

937 351 22  
RESIDENT  
409 BOLSA AVE  
NEWPORT BEACH, CA 92663

937 351 23  
RESIDENT  
411 BOLSA AVE  
NEWPORT BEACH, CA 92663

937 351 24  
RESIDENT  
413 BOLSA AVE  
NEWPORT BEACH, CA 92663

937 351 29  
RESIDENT  
3308 CLAY ST  
NEWPORT BEACH, CA 92663

937 351 30  
RESIDENT  
3310 CLAY ST  
NEWPORT BEACH, CA 92663

NO AP #  
RESIDENT  
497 ORANGE AVE  
NEWPORT BEACH, CA 92663

NO AP #  
RESIDENT  
495 ORANGE AVE  
NEWPORT BEACH, CA 92663

NEWPORT HEIGHTS  
IMPROVEMENT ASSOCIATION  
2916 CLAY STREET  
NEWPORT BEACH, CA 92663

PA2008-181 for RA2008-001  
492 & 492 1/2 Orange Ave and 3309 Clay St  
Pacific Shores Properties, LLC

425 292 04  
RESIDENT  
504 ORANGE AVE  
NEWPORT BEACH, CA 92663

425 292 05  
RESIDENT  
3314 CLAY ST  
NEWPORT BEACH, CA 92663

425 292 05  
RESIDENT  
3312 CLAY ST  
NEWPORT BEACH, CA 92663

425 292 07  
RESIDENT  
3304 CLAY ST A  
NEWPORT BEACH, CA 92663

425 292 07  
RESIDENT  
3304 CLAY ST B  
NEWPORT BEACH, CA 92663

425 292 08  
RESIDENT  
3300 CLAY ST  
NEWPORT BEACH, CA 92663

425 292 09  
RESIDENT  
513 BOLSA AVE  
NEWPORT BEACH, CA 92663

425 292 10  
RESIDENT  
517 BOLSA AVE  
NEWPORT BEACH, CA 92663

425 292 11  
RESIDENT  
521 BOLSA AVE  
NEWPORT BEACH, CA 92663

425 292 12  
RESIDENT  
3301 15TH ST  
NEWPORT BEACH, CA 92663

425 292 12  
RESIDENT  
3311 15TH ST  
NEWPORT BEACH, CA 92663

425 292 12  
RESIDENT  
3305 15TH ST  
NEWPORT BEACH, CA 92663

425 293 02  
RESIDENT  
518 BOLSA AVE  
NEWPORT BEACH, CA 92663

425 293 03  
RESIDENT  
514 BOLSA AVE  
NEWPORT BEACH, CA 92663

425 293 04  
RESIDENT  
512 BOLSA AVE  
NEWPORT BEACH, CA 92663

425 293 05  
RESIDENT  
510 BOLSA AVE  
NEWPORT BEACH, CA 92663

425 293 06  
RESIDENT  
3244 CLAY ST  
NEWPORT BEACH, CA 92663

425 293 06  
RESIDENT  
3244 CLAY ST 1/2  
NEWPORT BEACH, CA 92663

425 293 07  
RESIDENT  
3238 CLAY ST  
NEWPORT BEACH, CA 92663

425 293 08  
RESIDENT  
3232 CLAY ST  
NEWPORT BEACH, CA 92663

930 590 43  
RESIDENT  
3262 BROAD ST  
NEWPORT BEACH, CA 92663

930 590 44  
RESIDENT  
3245 CLAY ST  
NEWPORT BEACH, CA 92663

930 590 45  
RESIDENT  
3256 BROAD ST  
NEWPORT BEACH, CA 92663

930 590 46  
RESIDENT  
3239 CLAY ST  
NEWPORT BEACH, CA 92663

937 350 61  
RESIDENT  
3233 CLAY ST  
NEWPORT BEACH, CA 92663

937 350 62  
RESIDENT  
3231 CLAY ST  
NEWPORT BEACH, CA 92663

937 350 96  
RESIDENT  
3251 BROAD ST  
NEWPORT BEACH, CA 92663

937 350 97  
RESIDENT  
3253 BROAD ST  
NEWPORT BEACH, CA 92663

937 350 98  
RESIDENT  
3245 BROAD ST  
NEWPORT BEACH, CA 92663

937 350 99  
RESIDENT  
3247 BROAD ST  
NEWPORT BEACH, CA 92663

425 271 01  
RESIDENT  
495 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 271 01  
RESIDENT  
493 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 271 01  
RESIDENT  
495 OLD NEWPORT BLVD 1/2  
NEWPORT BEACH, CA 92663

425 271 01  
RESIDENT  
485 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 271 02  
RESIDENT  
481 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 281 17  
RESIDENT  
3250 BROAD ST  
NEWPORT BEACH, CA 92663

425 282 01  
RESIDENT  
492 ORANGE AVE  
NEWPORT BEACH, CA 92663

425 282 01  
RESIDENT  
494 ORANGE AVE  
NEWPORT BEACH, CA 92663

425 282 02  
RESIDENT  
3309 CLAY ST  
NEWPORT BEACH, CA 92663

425 282 12  
RESIDENT  
486 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 282 13  
RESIDENT  
488 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 282 16  
RESIDENT  
496 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 283 33  
RESIDENT  
480 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 291 01  
RESIDENT  
522 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 291 02  
RESIDENT  
510 OLD NEWPORT BLVD B  
NEWPORT BEACH, CA 92663

425 291 02  
RESIDENT  
510 OLD NEWPORT BLVD C  
NEWPORT BEACH, CA 92663

425 291 02  
RESIDENT  
514 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 291 02  
RESIDENT  
512 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 291 02  
RESIDENT  
510 OLD NEWPORT BLVD E  
NEWPORT BEACH, CA 92663

425 291 02  
RESIDENT  
510 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 291 02  
RESIDENT  
510 OLD NEWPORT BLVD A  
NEWPORT BEACH, CA 92663

425 291 02  
RESIDENT  
510 OLD NEWPORT BLVD D  
NEWPORT BEACH, CA 92663

425 291 03  
RESIDENT  
508 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 291 10  
RESIDENT  
500 OLD NEWPORT BLVD  
NEWPORT BEACH, CA 92663

425 292 01  
RESIDENT  
3331 15TH ST  
NEWPORT BEACH, CA 92663

425 292 01  
RESIDENT  
3321 15TH ST  
NEWPORT BEACH, CA 92663

425 292 02  
RESIDENT  
508 ORANGE AVE A  
NEWPORT BEACH, CA 92663

425 292 02  
RESIDENT  
508 ORANGE AVE B  
NEWPORT BEACH, CA 92663

425 292 03  
RESIDENT  
506 ORANGE AVE B  
NEWPORT BEACH, CA 92663

425 292 03  
RESIDENT  
506 ORANGE AVE A  
NEWPORT BEACH, CA 92663



PLANNING DEPARTMENT  
3300 NEWPORT BOULEVARD  
NEWPORT BEACH, CALIFORNIA 92663

PHONE: 949/644-3200

FAX: 949/644-3229

Please see the attached radius map and mailing labels created for properties within a 300-foot radius, excluding roads and waterways for non-residentially zoned properties, of the subject parcels located at 492 Orange Avenue, 494 (292½) Orange Avenue, and 3309 Clay Street in the City of Newport Beach, County of Orange. The property information was acquired through the Newport Beach GIS Web Mapping system. Further, the information is based upon the most up-to-date records of the county tax assessor and is deemed reliable, but is not guaranteed.

  
\_\_\_\_\_  
Signature of Preparer

3/12/09  
\_\_\_\_\_  
Date Prepared

PA2008-181 for RA2008-001 -- 300' Radius -- Owner Listing

| Rec | Tag     | AP Number  | Owner Name                    | Address | Street             | City             | State | Zip   |
|-----|---------|------------|-------------------------------|---------|--------------------|------------------|-------|-------|
| 50  | H1A_030 | 425 271 01 | HUNG ONG                      | 307     | PLACENTIA AVE #205 | NEWPORT BEACH    | CA    | 92863 |
| 46  | H1A_218 | 425 271 02 | HUNG ONG                      | 307     | PLACENTIA AVE #205 | NEWPORT BEACH    | CA    | 92863 |
| 47  | H1A_180 | 425 281 17 | CLEWORTH BRUCE K TRUST        | 3250    | BROAD ST           | NEWPORT BEACH    | CA    | 92863 |
| 43  | H1A_128 | 425 282 01 | ALICE CONNER                  | 611     | CLIFF DR           | NEWPORT BEACH    | CA    | 92863 |
| 26  | H1A_126 | 425 282 02 | ALICE CONNER                  | 611     | CLIFF DR           | NEWPORT BEACH    | CA    | 92863 |
| 11  | H1A_238 | 425 282 12 | LAURA CAPPELLETTI             | 488     | N NEWPORT BLVD     | NEWPORT BEACH    | CA    | 92863 |
| 10  | H1A_236 | 425 282 13 | BGR VISIONS LLC               | 2064    | PHALAROPE CT       | COSTA MESA       | CA    | 92628 |
| 42  | H1A_212 | 425 283 33 | CARLTON JOHN J TRUST          | 1382    | GALAXY DR          | NEWPORT BEACH    | CA    | 92860 |
| 31  | H1A_032 | 425 291 01 | EVAN B THOMAS                 | 522     | OLD NEWPORT BLVD   | NEWPORT BEACH    | CA    | 92863 |
| 22  | H1A_034 | 425 291 02 | DAMIR AUJAGHIAN               | 318 1/2 | JASMINE AVE        | CORONA DEL MAR   | CA    | 92625 |
| 21  | H1A_036 | 425 291 03 | 508 ONB LLC                   | 415     | 30TH ST #B         | NEWPORT BEACH    | CA    | 92863 |
| 12  | H1A_038 | 425 291 10 | OTOLITH LLC                   | 7300    | W OCEANFRONT       | NEWPORT BEACH    | CA    | 92863 |
| 9   | H1A_048 | 425 292 01 | RICHARD H ALLRED              | 3331    | E 15TH ST          | NEWPORT BEACH    | CA    | 92863 |
| 51  | H1A_050 | 425 292 02 | KIRK C STRODEL                | 508     | ORANGE AVE         | NEWPORT BEACH    | CA    | 92863 |
| 54  | H1A_052 | 425 292 03 | JOHN LYNN HART                | 48      | BALBOA CVS         | NEWPORT BEACH    | CA    | 92863 |
| 27  | H1A_054 | 425 292 04 | VOIGNE YVONNE DES             | 504     | ORANGE AVE         | NEWPORT BEACH    | CA    | 92863 |
| 6   | H1A_056 | 425 292 05 | 3312 CLAY STREET LLC          | 3187    | AIRWAY AVE #H      | COSTA MESA       | CA    | 92628 |
| 13  | H1A_060 | 425 292 07 | WILLIAM J WINTER              | 1905    | FULLERTON AVE #W   | COSTA MESA       | CA    | 92627 |
| 55  | H1A_062 | 425 292 08 | DIANA D SPRINGER              | 3300    | CLAY ST            | NEWPORT BEACH    | CA    | 92863 |
| 56  | H1A_064 | 425 292 09 | WILLIAM BELDEN GUIDERO        | 342     | 62ND ST            | NEWPORT BEACH    | CA    | 92863 |
| 45  | H1A_068 | 425 292 10 | NEIL J POWERS                 | 3408    | MARCUS AVE         | NEWPORT BEACH    | CA    | 92863 |
| 14  | H1A_066 | 425 292 11 | NEIL POWERS                   | 3408    | MARCUS AVE         | NEWPORT BEACH    | CA    | 92863 |
| 28  | H1A_070 | 425 292 12 | BREWER SHERYL L REV TRUST     | 214     | FERNLEAF AVE       | CORONA DEL MAR   | CA    | 92625 |
| 57  | H1A_234 | 425 293 02 | DANIEL & KIMBERLY MCDONOUGH   | 518     | BOLSA AVE          | NEWPORT BEACH    | CA    | 92863 |
| 41  | H1A_076 | 425 293 03 | MCSELFRESH FAMILY TRUST       | 514     | BOLSA AVE          | NEWPORT BEACH    | CA    | 92863 |
| 40  | H1A_078 | 425 293 04 | SUSAN; IRANI                  | 51      | CORONADO POINTE    | LAGUNA NIGUEL    | CA    | 92677 |
| 44  | H1A_080 | 425 293 05 | CHRISTOPHER E & AIDA O HOBSON | 3242    | E COAST HWY        | CORONA DEL MAR   | CA    | 92625 |
| 5   | H1A_082 | 425 293 06 | TERRY A TRAMBLIE              | 3244    | CLAY ST            | NEWPORT BEACH    | CA    | 92863 |
| 25  | H1A_084 | 425 293 07 | CAROLAN FAMILY TRUST          | 3238    | CLAY ST            | NEWPORT BEACH    | CA    | 92863 |
| 39  | H1A_086 | 425 293 08 | BAILEY FAMILY TRUST           | 22322   | HARWICH LN         | HUNTINGTON BEACH | CA    | 92648 |
| 18  | H1A_178 | 930 590 43 | FRANK L & ENNA E DOYLE        | 3282    | BROAD ST           | NEWPORT BEACH    | CA    | 92863 |
| 17  | H1A_178 | 930 590 44 | LINDA M JOVANELLY             | 3245    | CLAY ST            | NEWPORT BEACH    | CA    | 92863 |
| 4   | H1A_232 | 930 590 45 | BROWNING                      | 3256    | BROAD ST           | NEWPORT BEACH    | CA    | 92863 |
| 3   | H1A_232 | 930 590 46 | ADAMS G T/T K FAMILY TRUST    | 24852   | STEFFY DR          | LAGUNA NIGUEL    | CA    | 92677 |
| 49  | H1A_182 | 937 350 61 | WILLIAM JR & BONNIE CRAWFORD  | 3233    | CLAY ST            | NEWPORT BEACH    | CA    | 92863 |
| 48  | H1A_182 | 937 350 62 | CLAIRE STEELE                 | 3231    | CLAY ST            | NEWPORT BEACH    | CA    | 92863 |
| 16  | H1A_130 | 937 350 96 | TRISH COURY                   | 3251    | BROAD ST           | NEWPORT BEACH    | CA    | 92863 |
| 15  | H1A_130 | 937 350 97 | MATTHEW & DINA SAENZ          | 3253    | BROAD ST           | NEWPORT BEACH    | CA    | 92863 |
| 2   | H1A_132 | 937 350 98 | JILL C DONAHUE                | 3245    | BROAD ST           | NEWPORT BEACH    | CA    | 92863 |
| 1   | H1A_132 | 937 350 99 | NEAL DOFELMIER                | 3247    | BROAD ST           | NEWPORT BEACH    | CA    | 92863 |
| 33  | H1A_044 | 937 351 08 | RYAN TOLLNER                  | 507     | ORANGE AVE         | NEWPORT BEACH    | CA    | 92863 |
| 34  | H1A_044 | 937 351 09 | MARK B HIROMOTO               | 509     | ORANGE AVE         | NEWPORT BEACH    | CA    | 92863 |
| 32  | H1A_044 | 937 351 10 | HANNA MARY L TRUST            | 511     | ORANGE AVE         | NEWPORT BEACH    | CA    | 92863 |
| 37  | H1A_044 | 937 351 11 | EVA C MAUCK                   | 513     | ORANGE AVE         | NEWPORT BEACH    | CA    | 92863 |
| 35  | H1A_044 | 937 351 12 | JIM MADDEN                    | 515     | ORANGE AVE         | NEWPORT BEACH    | CA    | 92863 |

492 Orange Avenue  
494 (492½ ) Orange Avenue  
3309 Clay Street

PA2008-181 for RA2008-001 -- 300' Radius -- Owner Listing

| Rec | Tag     | AP Number  | Owner Name               | Address | Street        | City          | State | Zip   |
|-----|---------|------------|--------------------------|---------|---------------|---------------|-------|-------|
| 38  | H1A_044 | 937 351 13 | MARK MORTON              | 517     | ORANGE AVE    | NEWPORT BEACH | CA    | 92863 |
| 38  | H1A_044 | 937 351 14 | DONNA MURATALLA          | 519     | ORANGE AVE    | NEWPORT BEACH | CA    | 92863 |
| 24  | H1A_122 | 937 351 17 | LISA MARIE FABIAN        | 3301    | CLAY ST       | NEWPORT BEACH | CA    | 92863 |
| 23  | H1A_122 | 937 351 18 | RANDY E OLSHEN           | 741     | MARTINGALE LN | PARK CITY     | UT    | 84098 |
| 53  | H1A_124 | 937 351 19 | CAMACHO SAY FAMILY TRUST | 3306    | CLAY ST       | NEWPORT BEACH | CA    | 92863 |
| 52  | H1A_124 | 937 351 20 | OBBAGE TRUST             | 3307    | CLAY ST       | NEWPORT BEACH | CA    | 92863 |
| 30  | H1A_120 | 937 351 21 | LYNN C SOYLEMEZ          | 407     | BOLSA AVE     | NEWPORT BEACH | CA    | 92863 |
| 29  | H1A_120 | 937 351 22 | RAIDY FAMILY TRUST       |         | PO BOX 155    | PAUMA VALLEY  | CA    | 92061 |
| 19  | H1A_118 | 937 351 23 | RONALD & PAMELA LOPEZ    | 411     | BOLSA AVE     | NEWPORT BEACH | CA    | 92863 |
| 20  | H1A_118 | 937 351 24 | KEETON FAMILY TRUST      | 300     | RIALTO ST     | NEWPORT BEACH | CA    | 92863 |
| 8   | H1A_058 | 937 351 29 | DEBRA LEITNER            | 3308    | CLAY ST       | NEWPORT BEACH | CA    | 92863 |
| 7   | H1A_058 | 937 351 30 | MARCO BUFFETTI           | 3310    | CLAY ST #B    | NEWPORT BEACH | CA    | 92863 |

PA2008-181 300' Radius Resident Listing

| Rec | Tag     | AP Number  | Resident | Address | Street               | City          | State | Zip   |
|-----|---------|------------|----------|---------|----------------------|---------------|-------|-------|
| 66  | H1A_030 | 425 271 01 | RESIDENT | 495     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 67  | H1A_030 | 425 271 01 | RESIDENT | 493     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 68  | H1A_030 | 425 271 01 | RESIDENT | 495     | OLD NEWPORT BLVD 1/2 | NEWPORT BEACH | CA    | 92663 |
| 69  | H1A_030 | 425 271 01 | RESIDENT | 485     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 62  | H1A_218 | 425 271 02 | RESIDENT | 481     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 63  | H1A_180 | 425 281 17 | RESIDENT | 3250    | BROAD ST             | NEWPORT BEACH | CA    | 92663 |
| 58  | H1A_128 | 425 282 01 | RESIDENT | 492     | ORANGE AVE           | NEWPORT BEACH | CA    | 92663 |
| 59  | H1A_128 | 425 282 01 | RESIDENT | 484     | ORANGE AVE           | NEWPORT BEACH | CA    | 92663 |
| 39  | H1A_126 | 425 282 02 | RESIDENT | 3309    | CLAY ST              | NEWPORT BEACH | CA    | 92663 |
| 15  | H1A_238 | 425 282 12 | RESIDENT | 486     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 14  | H1A_238 | 425 282 13 | RESIDENT | 488     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 7   | H1A_114 | 425 282 18 | RESIDENT | 496     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 57  | H1A_212 | 425 283 33 | RESIDENT | 480     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 46  | H1A_032 | 425 291 01 | RESIDENT | 522     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 27  | H1A_034 | 425 291 02 | RESIDENT | 510     | OLD NEWPORT BLVD B   | NEWPORT BEACH | CA    | 92663 |
| 28  | H1A_034 | 425 291 02 | RESIDENT | 510     | OLD NEWPORT BLVD C   | NEWPORT BEACH | CA    | 92663 |
| 29  | H1A_034 | 425 291 02 | RESIDENT | 514     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 30  | H1A_034 | 425 291 02 | RESIDENT | 512     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 31  | H1A_034 | 425 291 02 | RESIDENT | 510     | OLD NEWPORT BLVD E   | NEWPORT BEACH | CA    | 92663 |
| 32  | H1A_034 | 425 291 02 | RESIDENT | 510     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 33  | H1A_034 | 425 291 02 | RESIDENT | 510     | OLD NEWPORT BLVD A   | NEWPORT BEACH | CA    | 92663 |
| 34  | H1A_034 | 425 291 02 | RESIDENT | 510     | OLD NEWPORT BLVD D   | NEWPORT BEACH | CA    | 92663 |
| 26  | H1A_036 | 425 291 03 | RESIDENT | 508     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 16  | H1A_036 | 425 291 10 | RESIDENT | 500     | OLD NEWPORT BLVD     | NEWPORT BEACH | CA    | 92663 |
| 12  | H1A_048 | 425 292 01 | RESIDENT | 3331    | 15TH ST              | NEWPORT BEACH | CA    | 92663 |
| 13  | H1A_048 | 425 292 01 | RESIDENT | 3321    | 15TH ST              | NEWPORT BEACH | CA    | 92663 |
| 70  | H1A_050 | 425 292 02 | RESIDENT | 508     | ORANGE AVE A         | NEWPORT BEACH | CA    | 92663 |
| 71  | H1A_050 | 425 292 02 | RESIDENT | 508     | ORANGE AVE B         | NEWPORT BEACH | CA    | 92663 |
| 75  | H1A_052 | 425 292 03 | RESIDENT | 508     | ORANGE AVE B         | NEWPORT BEACH | CA    | 92663 |
| 76  | H1A_052 | 425 292 03 | RESIDENT | 508     | ORANGE AVE A         | NEWPORT BEACH | CA    | 92663 |
| 40  | H1A_064 | 425 292 04 | RESIDENT | 504     | ORANGE AVE           | NEWPORT BEACH | CA    | 92663 |
| 8   | H1A_056 | 425 292 05 | RESIDENT | 3314    | CLAY ST              | NEWPORT BEACH | CA    | 92663 |
| 9   | H1A_056 | 425 292 05 | RESIDENT | 3312    | CLAY ST              | NEWPORT BEACH | CA    | 92663 |
| 17  | H1A_060 | 425 292 07 | RESIDENT | 3304    | CLAY ST A            | NEWPORT BEACH | CA    | 92663 |
| 18  | H1A_060 | 425 292 07 | RESIDENT | 3304    | CLAY ST B            | NEWPORT BEACH | CA    | 92663 |
| 77  | H1A_062 | 425 292 08 | RESIDENT | 3300    | CLAY ST              | NEWPORT BEACH | CA    | 92663 |
| 78  | H1A_064 | 425 292 09 | RESIDENT | 513     | BOLSA AVE            | NEWPORT BEACH | CA    | 92663 |
| 61  | H1A_068 | 425 292 10 | RESIDENT | 517     | BOLSA AVE            | NEWPORT BEACH | CA    | 92663 |
| 19  | H1A_068 | 425 292 11 | RESIDENT | 521     | BOLSA AVE            | NEWPORT BEACH | CA    | 92663 |
| 41  | H1A_070 | 425 292 12 | RESIDENT | 3301    | 15TH ST              | NEWPORT BEACH | CA    | 92663 |
| 42  | H1A_070 | 425 292 12 | RESIDENT | 3311    | 15TH ST              | NEWPORT BEACH | CA    | 92663 |
| 43  | H1A_070 | 425 292 12 | RESIDENT | 3308    | 15TH ST              | NEWPORT BEACH | CA    | 92663 |
| 79  | H1A_234 | 425 293 02 | RESIDENT | 518     | BOLSA AVE            | NEWPORT BEACH | CA    | 92663 |
| 56  | H1A_078 | 425 293 03 | RESIDENT | 514     | BOLSA AVE            | NEWPORT BEACH | CA    | 92663 |
| 55  | H1A_078 | 425 293 04 | RESIDENT | 512     | BOLSA AVE            | NEWPORT BEACH | CA    | 92663 |

492 Orange Avenue  
 494 (492½) Orange Avenue  
 3309 Clay Street

PA2008-181 300' Radius Resident Listing

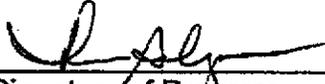
| Rec | Tag     | AP Number  | Resident | Address | Street      | City          | State | Zip   |
|-----|---------|------------|----------|---------|-------------|---------------|-------|-------|
| 60  | H1A_080 | 425 293 05 | RESIDENT | 510     | BOLSA AVE   | NEWPORT BEACH | CA    | 92663 |
| 5   | H1A_082 | 425 293 06 | RESIDENT | 3244    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 8   | H1A_082 | 425 293 08 | RESIDENT | 3244    | CLAY ST 1/2 | NEWPORT BEACH | CA    | 92663 |
| 37  | H1A_084 | 425 293 07 | RESIDENT | 3238    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 54  | H1A_086 | 425 293 08 | RESIDENT | 3232    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 23  | H1A_178 | 930 590 43 | RESIDENT | 3262    | BROAD ST    | NEWPORT BEACH | CA    | 92663 |
| 22  | H1A_178 | 930 590 44 | RESIDENT | 3245    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 4   | H1A_232 | 930 590 45 | RESIDENT | 3256    | BROAD ST    | NEWPORT BEACH | CA    | 92663 |
| 3   | H1A_232 | 930 590 46 | RESIDENT | 3239    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 65  | H1A_182 | 937 350 61 | RESIDENT | 3233    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 64  | H1A_182 | 937 350 62 | RESIDENT | 3231    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 21  | H1A_130 | 937 350 86 | RESIDENT | 3251    | BROAD ST    | NEWPORT BEACH | CA    | 92663 |
| 20  | H1A_130 | 937 350 97 | RESIDENT | 3253    | BROAD ST    | NEWPORT BEACH | CA    | 92663 |
| 1   | H1A_132 | 937 350 98 | RESIDENT | 3245    | BROAD ST    | NEWPORT BEACH | CA    | 92663 |
| 2   | H1A_132 | 937 350 99 | RESIDENT | 3247    | BROAD ST    | NEWPORT BEACH | CA    | 92663 |
| 51  | H1A_044 | 937 351 08 | RESIDENT | 507     | ORANGE AVE  | NEWPORT BEACH | CA    | 92663 |
| 48  | H1A_044 | 937 351 09 | RESIDENT | 509     | ORANGE AVE  | NEWPORT BEACH | CA    | 92663 |
| 49  | H1A_044 | 937 351 10 | RESIDENT | 511     | ORANGE AVE  | NEWPORT BEACH | CA    | 92663 |
| 53  | H1A_044 | 937 351 11 | RESIDENT | 513     | ORANGE AVE  | NEWPORT BEACH | CA    | 92663 |
| 52  | H1A_044 | 937 351 12 | RESIDENT | 515     | ORANGE AVE  | NEWPORT BEACH | CA    | 92663 |
| 50  | H1A_044 | 937 351 13 | RESIDENT | 517     | ORANGE AVE  | NEWPORT BEACH | CA    | 92663 |
| 47  | H1A_044 | 937 351 14 | RESIDENT | 519     | ORANGE AVE  | NEWPORT BEACH | CA    | 92663 |
| 35  | H1A_122 | 937 351 17 | RESIDENT | 3301    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 36  | H1A_122 | 937 351 18 | RESIDENT | 3303    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 73  | H1A_124 | 937 351 19 | RESIDENT | 3305    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 74  | H1A_124 | 937 351 20 | RESIDENT | 3307    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 46  | H1A_120 | 937 351 21 | RESIDENT | 407     | BOLSA AVE   | NEWPORT BEACH | CA    | 92663 |
| 44  | H1A_120 | 937 351 22 | RESIDENT | 409     | BOLSA AVE   | NEWPORT BEACH | CA    | 92663 |
| 24  | H1A_118 | 937 351 23 | RESIDENT | 411     | BOLSA AVE   | NEWPORT BEACH | CA    | 92663 |
| 25  | H1A_118 | 937 351 24 | RESIDENT | 413     | BOLSA AVE   | NEWPORT BEACH | CA    | 92663 |
| 11  | H1A_058 | 937 351 29 | RESIDENT | 3308    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 10  | H1A_058 | 937 351 30 | RESIDENT | 3310    | CLAY ST     | NEWPORT BEACH | CA    | 92663 |
| 38  | H1A_042 | NO AP #    | RESIDENT | 497     | ORANGE AVE  | NEWPORT BEACH | CA    | 92663 |
| 72  | H1A_040 | NO AP #    | RESIDENT | 495     | ORANGE AVE  | NEWPORT BEACH | CA    | 92663 |



**PLANNING DEPARTMENT  
3300 NEWPORT BOULEVARD  
NEWPORT BEACH, CALIFORNIA 92663**

**PHONE: 949/644-3200      FAX: 949/644-3229**

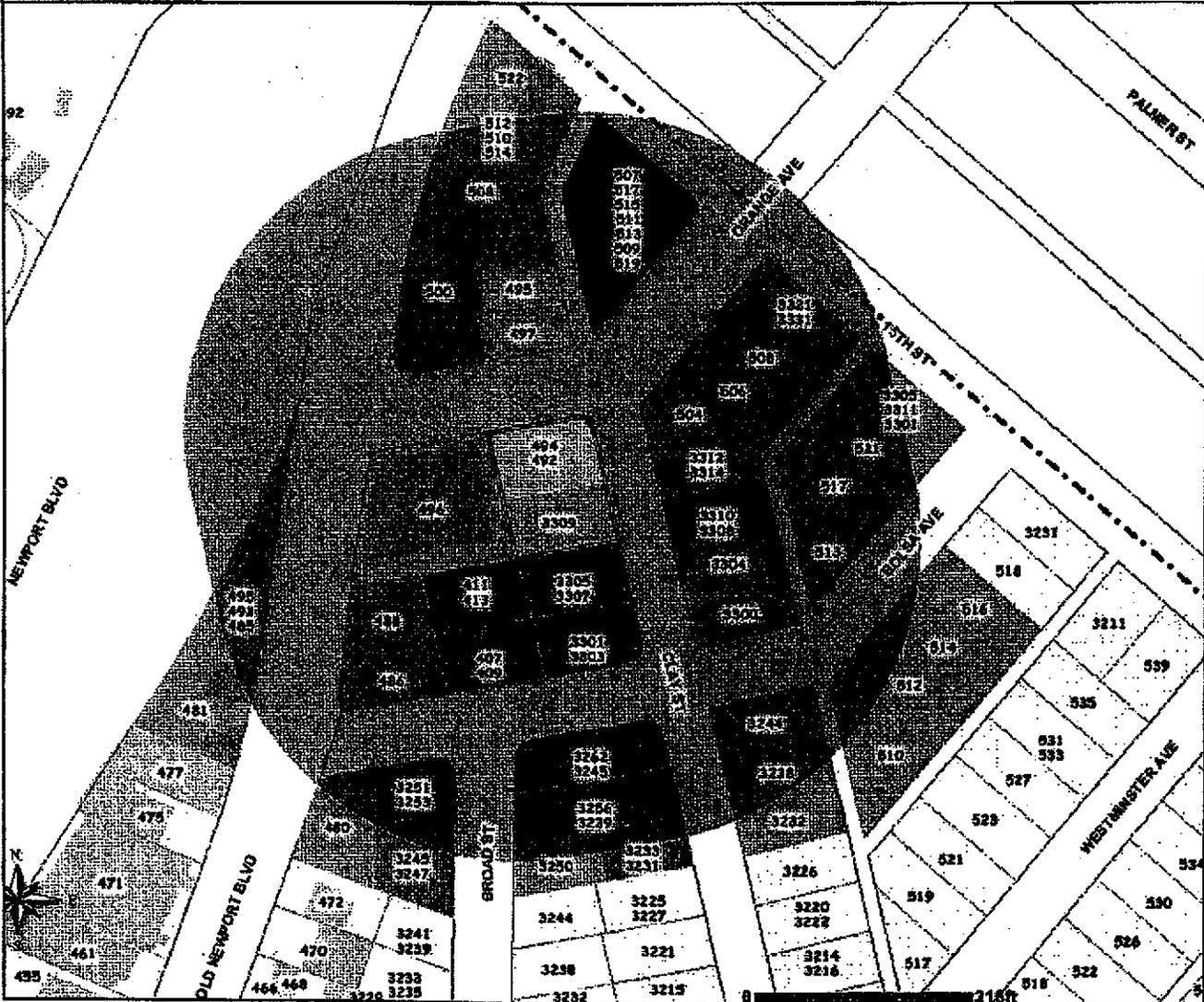
Please see the attached radius map and mailing labels created for properties within a 300-foot radius, excluding roads and waterways for non-residentially zoned properties, of the subject parcels located at 492 Orange Avenue, 494 (292½) Orange Avenue, and 3309 Clay Street in the City of Newport Beach, County of Orange. The property information was acquired through the Newport Beach GIS Web Mapping system. Further, the information is based upon the most up-to-date records of the county tax assessor and is deemed reliable, but is not guaranteed.

  
\_\_\_\_\_  
Signature of Preparer

3/12/09  
Date Prepared

# Radius Map

492 Orange Avenue  
494 (492½) Orange Avenue  
3309 Clay Street  
PA2008-181 for RA2008-001



**TAB 3**

# Correspondence



CITY OF NEWPORT BEACH  
PLANNING DEPARTMENT  
3300 NEWPORT BOULEVARD  
NEWPORT BEACH, CA 92658  
(949) 644-3200; FAX (949) 644-3229

March 17, 2009

Pacific Shores Properties, LLC  
177 Riverside Avenue, #212  
Newport Beach, CA 92663

To whom it may concern:

**Subject: REQUEST FOR ADDITIONAL INFORMATION**  
Reasonable Accommodation No. 2008-001 (PA 2008-181)  
Properties located at 492 Orange Avenue, 492 ½ Orange Avenue and  
3309 Clay Street

This letter is regarding your Reasonable Accommodation application submittal for properties located at the above referenced addresses. Upon further review of the submitted application and subsequent correspondence, we have determined that additional information is necessary in order to complete the analysis of this request per the provisions of Chapter 20.98 of the Newport Beach Municipal Code. Please provide the following clarifications and/or additional information:

1. **Property Owner Affidavit:** Please provide written authorization from the legal owner of record authorizing filing of this application.
2. **Affirmation of Resident(s) Disability:** Please provide a written statement, signed by the facility administrator or other credible individual, certifying under penalty of perjury that all residents of this facility meet the definition of disabled, as that term is defined by the federal and state housing laws.
3. **Description of Use:** In order to assist staff in understanding the accommodation request, please provide a brief written description of the facility operation in each building, including:
  - a. The maximum occupancy requested in each building;
  - b. The number of bedrooms and beds within each building;
  - c. The population in each building (male or female);
  - d. Is on-site staffing provided or does a resident manager reside in each building?  
If so, how many staff members are on-site at any one time?
  - e. The month and year the use was established in each building.
  - f. How many parking spaces are provided on-site for each building?
  - g. Are resident clients allowed to use their personal vehicles at any time while living at the facility, and if so, where the vehicles are parked?

PS-RA 00027

- h. Does the facility provide transportation services for the clients? If so, where is the transportation van parked? To what location is transportation provided and how frequently is the transportation provided?
  - i. Are there house rules? If so, please provide a copy.
  - j. What are the curfew and quiet hours?
  - k. Who determines the population of each building?
  - l. What is the typical duration of stay of the clients residing in the facilities?
  - m. Is the interaction between the residents of one building with another? Do residents of one building have access to the other buildings and/or building grounds?
4. Facility Administrator: Please provide the name and contact information for the facility administrator or manager. If the facility provides 24/7 on-site staffing, please provide contact information for that staff person(s).
5. Site Plan/Floor Plan: Please provide a site plan showing the location of the buildings on the lots, the location and number of on-site parking spaces. Please also provide a floor plan identifying the number bedrooms and residents per bedroom.

Should you have any questions regarding the requested clarifications or additional information, please do not hesitate to contact me at (949) 644-3236.

Sincerely,

By   
Janet Johnson Brown  
Associate Planner

Cc: Alice Connor, property owner

**Brown, Janet**

---

**From:** Chris Brancart [cbrancart@brancart.com]  
**Sent:** Thursday, March 19, 2009 10:49 AM  
**To:** "Pierce, T. Peter" <; Wolcott, Cathy; Brown, Janet  
**Cc:** "Manderson, Mark" <; "Polin, Steve" <  
**Subject:** Newport -Pacific Shores RA information request  
**Attachments:** Pacific Shore's response to request for additional information (served).pdf

Counsel, City Staff,

Please find attached to this email information requested by the City in its March 17 letter. As indicated on the document, certain information has not been provided as unnecessary or duplicative based on my call with Mr. Pierce on March 18.

Please contact Steve Polin, email above, if you have any questions regarding this email.

Christopher Brancart  
Brancart & Brancart  
(650) 879-0141 (voice)  
(650) 879-1103 (fax)

**CONFIDENTIALITY NOTICE:** This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, please call me. Thank you.

## Pacific Shore's Response to Request for Additional Information

*The following information is provided in response to the City's letter, dated March 17, 2009, as modified by telephone conversation with defense counsel Peter Pierce on March 18, 2009.*

| Dwelling   | 3(a) - Max Occupancy | 3(b) - Bedrooms <sup>1</sup>                                       | 3(d) - On site staff <sup>2</sup> | 3(g) - Vehicles & Parking  | 3(h) - Transportation Provided | 3(i) - House Rules <sup>3</sup> | 3(j) - curfew and quiet  | 4 - Manager 24/7 <sup>4</sup>                                |
|------------|----------------------|--|-----------------------------------|--|--------------------------------|---------------------------------|--|--|
| 492 Orange | 20                   | 10<br><i>2 offices<br/>6 bedrooms<br/>"sewing"<br/>"Comp room"</i> | Yes.                              | Yes. A few residents own cars. All park along Old Newport or along the commercial park area on Orange. No resident | No.                            | Yes.                            | Yes. Curfew is 10p on weekdays; 11 pm weekends. <sup>5</sup> Quiet hours are the same for all residents. | Yes. Mark Manderson; tels: (949) 574-2510 or (949) 394-9120. |

<sup>1</sup> Each bedroom contains two or fewer beds.

<sup>2</sup> Pacific Shores is a sober house. It does not have "staff" per se. There are, however, two residents designated in each house to make sure that tenants do not use drugs or alcohol and to ensure the quiet enjoyment of the dwelling.

<sup>3</sup> A copy of the house rules are attached hereto.

<sup>4</sup> Pacific Shores is a sober house. It does not have a "manager" or "administrator" per se. There are, however, two residents designated in each house to make sure that tenants do not use drugs or alcohol and to ensure the quiet enjoyment of the dwelling. Mark Manderson, who assists in the maintaining the homes, is available on a 24/7 basis.

<sup>5</sup> Curfew applies only to new members of the household during the first 30 days of tenancy. Quiet hours apply to all tenants.

| Dwelling   | 3(a) - Max Occupancy | 3(b) - Bedrooms <sup>1</sup>                         | 3(d) - On site staff <sup>2</sup> | 3(g) - Vehicles & Parking   | 3(h) - Transportation Provided | 3(i) - House Rules <sup>3</sup> | 3(j) - curfew and quiet   | 4 - Manager<br>24/7 <sup>4</sup>         |
|--|----------------------|--|-----------------------------------|---|--------------------------------|---------------------------------|---|--|
| 492 1/2<br>Orange<br><i>Est. during construction</i> | 18                   | 9<br><i>5 bedrooms<br/>2 offices<br/>1 game room</i> | Yes.                              | parks along Clay or the non-commercial parking area along Orange (i.e., Orange NE of Clay).<br>Yes. A few residents own cars. All park along Old Newport or along the commercial park area on Orange. No resident parks along Clay or the non-commercial parking area along | No.                            | Yes.                            | Yes. Curfew is 10p on weekdays; 11 pm weekends. Quiet hours are the same. | Yes. Mark Manderson; tel: (949) 574-2510 |

| Dwelling  | 3(a) - Max Occupancy | 3(b) - Bedrooms <sup>1</sup>   | 3(d) - On site staff <sup>2</sup> | 3(g) - Vehicles & Parking   | 3(h) - Transportation Provided | 3(i) - House Rules <sup>3</sup> | 3(j) - curfew and quiet   | 4 - Manager<br>24/7 <sup>4</sup>         |
|-----------|----------------------|--------------------------------|-----------------------------------|---|--------------------------------|---------------------------------|---|--|
| 3309 Clay | 12                   | 6<br><i>Orville<br/>upto 9</i> | Yes.                              | Orange (i.e., Orange NE of Clay).<br>Yes. A few residents own cars. All park along Old Newport or along the commercial park area on Orange. No resident parks along Clay or the non-commercial parking area along Orange (i.e., Orange NE of Clay). | No.                            | Yes.                            | Yes. Curfew is 10p on weekdays; 11 pm weekends. Quiet hours are the same. | Yes. Mark Manderson; tel: (949) 574-2510 |

**3m. Interaction.** There is interaction between the persons who reside in the dwellings located at 492 Orange, 492 ½ Orange, and 3309 Clay, as there would be among any other group of neighbors: They visit, occasionally share meals, and sometimes attend events together.

### HOUSE RULES

- 1) I choose to remain clean and sober today
- 2) I choose to be of Service today
- 3) I choose to do my chores today
- 4) I choose to make my bed and have my room picked up and clean today
- 5) I choose to keep my bathroom clean today
- 6) I choose to keep the kitchen clean and free of dishes today
- 7) I choose not to park on Clay Street and will ask all visitors not to as well today
- 8) I choose not to use profanity today
- 9) I choose to maintain a full time job and be out of the house on weekdays
- 10) I choose to attend a minimum of 1 meeting today, to arrive early, to stay seated throughout the meeting and to sit with housemates and not potential dates
- 11) I choose to not smoke, loiter, or hang out in front of the house today
- 12) I choose to turn off any and all fans, lights, and TV's that are not being used today
- 13) I choose not to litter and to put my cigarette butt in the ashtray today
- 14) I choose not to take any food that is not mine today
- 15) I choose to have a sponsor and work the steps today
- 16) I choose to let my housemates know where I am and check in daily
- 17) I choose to be grateful and to build those up around me today
- 18) I choose to wash my bedding and do my laundry weekly
- 19) I choose to honor our quiet time after 10 p.m. and will have all lights out by 12 a.m.
- 20) I choose to take direction from House Coordinators today
- 21) I choose to honor the House Rules and understand I can be asked to leave for not doing so

**STEVEN G. POLIN, ESQ.**  
*Attorney At Law*

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

TEL (202) 331-5848  
FAX (202) 537-2986  
SPOLIN2@EARTHLINK.NET

March 13, 2009

**SENT VIA ELECTRONIC MEANS AND FIRST CLASS MAIL**

T. Peter Pierce, Esquire  
Richards | Watson | Gershon  
355 South Grand Avenue, 40th Floor  
Los Angeles, California 90071-1469

RE: Pacific Shores Properties v. City of Newport Beach  
CV-08-00457 JVS (RNB)

Dear Peter:

Please be advised that Pacific Shores Properties is hereby amending its request for a reasonable accommodation as follows:

Pacific Shores Properties is requesting as a reasonable accommodation that the City of Newport Beach waive the requirement that "Residential Care Facilities" be located only in MFR with a "use permit". Newport Beach Zoning Code ("NBZC") §20.10.020. To that end, Pacific Shores Properties is also requesting that the City of Newport Beach as a reasonable accommodation "grandfather" in the use of the dwellings located at 492 ½ Orange Avenue, 492 Orange Avenue, 3309 Clay Street as a legal nonconforming uses, consistent with R-2 zoning and that the City of Newport Beach will no longer classify or treat these dwellings as "Residential Care Facilities" as that term is defined by the NBZC §20.05.010. Pacific Shores further requests as a reasonable accommodation that the City enforce all codes provisions, zoning, building, fire safety and any other applicable code to the use of 492 ½ Orange Avenue, 492 Orange Avenue, 3309 Clay Street in the same manner that those codes are employed and enforced to single family and two family residential land uses located in the R-2 zone as those terms are defined by the NBZC, §20.10.010.

If you have any questions or need additional information, please call me at 202-331-5858.

Sincerely yours,

  
Steven G. Polin

cc: Christopher Brancart  
Mark Manderson  
Dana Mulhauser

PS-RA 00035



**RICHARDS | WATSON | GERSHON**  
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101  
Telephone 213.626.8484 Facsimile 213.626.0078

November 4, 2008

VIA FACSIMILE AND U.S. MAIL

Steven G. Polin, Esq.  
Law Offices of Steven G. Polin  
3034 Tennyson Street, NW  
Washington, D.C. 20015

Christopher Brancart, Esq.  
Brancart & Brancart  
Post Office Box 686  
Pescadero, California 94060

Re: Pacific Shores Properties, LLC - Request for Reasonable  
Accommodation

Gentlemen:

City of Newport Beach planning staff has reviewed the reasonable accommodation application filed in parts by way of letter dated December 10, 2007 and supplemental information dated September 24, 2008. Before moving to the next step in the process, one piece of additional documentation is required. Item 2 on the supplemental form requests documentation of the disability giving rise to the request for a reasonable accommodation. That documentation has not yet been provided. Please provide documentation that the individuals on whose behalf the application is made are disabled under the governing law.

The City leaves to the discretion of Pacific Shores and/or the individuals the nature of the documentation to be submitted. Understanding the concerns about privacy, the City will accept documentation disclosing only the person's first name or initials (with all other identifying information redacted).

- RICHARD RICHARDS  
(1928-1988)
- GLENN R. WATSON  
(RETIRED)
- HARRY L. GERSHON  
(1922-2007)
- STEVEN L. DORSEY
- WILLIAM L. STRAUSS
- MITCHELL E. ABBOTT
- GREGORY W. STEPANICH
- ROCHELLE BROWNE
- WILLIAM B. RUDELL
- QUINN M. BARROW
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- LAURENCE S. WHEELER
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- SARINA T. ASAMURA
- KAYSEE O. SUME
- PETER M. THORSON
- JAMES L. HARDMAN
- CHRIS L. STEELE
- T. PETER PIERCE
- TENENCE R. BORG
- USA BOND
- JANET E. COLESON
- RODANNE M. DIAZ
- SHI W. GRAYSON
- ROY A. CLARKE
- WILLIAM P. CUNLEY III
- MICHAEL F. YOSHIDA
- REGINA N. DANNER
- PAULA GUTIERREZ BAZZA
- TERESA HO-URANG
- BRUCE W. GALLOWAY
- DIANA E. CHURINA
- PATRICK L. BOGRO
- SHI D. DUNSMORE
- AMY GREYSON
- DEBORAH R. HAZEMAN
- D. CRAIG FOX
- ALDANDEE ADDE
- SUSAN E. KUSHAK
- DAVID B. STOW
- LOLLY A. ENRIQUETA
- KIRSTEN R. BOWMAN
- S. HIDER KHANSA
- SINETA L. GIOVINCO
- TRISHA GUTZ
- CANDICE K. LEE
- DAVID G. ALDERSON
- MELISSA E. CROSTHWAITE
- MARICELA E. MARRUQUIN
- KEHA N. STINNETT
- JENNIFER PETRUSIS
- STEVEN L. FLOWER
- CHRISTOPHER S. DIAZ
- MATTHEW E. COHEN
- DEBBIE Y. CHO
- GEOFFREY WARD
- ERIN L. POWERS
- TOUSSAINT S. BAILEY
- WHITNEY G. McDONALD
- SERRA S. YOUNG
- VERONICA S. SUNDERSOHN
- OF COUNSEL
- MARK L. LANGEN
- SAYRE WEAVER
- NORMAN A. DUPONT
- JIN R. KASPIAK
- SAN FRANCISCO OFFICE  
TELEPHONE 415.421.8484
- ORANGE COUNTY OFFICE  
TELEPHONE 714.990.0901

RICHARDS | WATSON | GERSHON

Steven G. Polin, Esq.  
Christopher Brancart, Esq.  
November 4, 2008  
Page 2

Also, there was no documentation submitted in response to items 4, 5 and 6 on the supplemental form, nor was any required. Nevertheless, besides the letter dated December 10, 2007, did you want the City to consider any of the documents submitted by Pacific Shores in response to the City's written discovery requests (i.e. the rules and regulation forms produced)? Please let me know one way or the other.

I look forward to hearing from you shortly.

Very truly yours,

T. Peter Pierce

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operated by an individual or a for-profit or nonprofit entity, which houses two or more parolees - probationers unrelated by blood, marriage, or legal adoption, in exchange for monetary or non-monetary consideration given and/or paid by the parolee - probationer and/or any public or private entity or person on behalf of the parolee - probationer. A parolee - probationer includes: (i) any individual who has been convicted of a federal crime, sentenced to a United States prison, and received conditional and revocable release in the community under the supervision of a federal parole officer; (ii) any individual who has served a term of imprisonment in a State prison and who is serving a period of supervised community custody, as defined in Penal Code Section 3000, and is under the jurisdiction of the California Department of Corrections, Parole and Community Services Division; (iii) an adult or juvenile sentenced to a term in the California Youth Authority and who has received conditional and revocable release in the community under the supervision of a Youth Authority Parole Officer; or (iv) any individual who has been convicted of a felony, sentenced to any correctional facility, including County correctional facilities, and is under the jurisdiction of any federal, state, or County parole or probation officer. For the purposes of this paragraph, "felony" means a felony as defined by any California or United States statute.

- H. Residential Care Facilities, General. Any place, site or building, or groups of places, sites or buildings, licensed by the state or unlicensed, in which seven or more individuals with a disability reside who are not living together as a single housekeeping unit and in which every person residing in the facility (excluding the licensee, members of the licensee's family, or persons employed as facility staff) is an individual with a disability.
- I. Residential Care Facilities, Small Licensed. State licensed facilities that provide care, services, or treatment in a community residential setting for six or fewer adults, children, or adults and children and which are required by State law to be treated as a single housekeeping unit for zoning purposes. Small licensed residential care facilities shall be subject to all land use and property development regulations applicable to single housekeeping units.
- J. Residential Care Facilities, Small Unlicensed. Any place, site or building, or groups of places, sites or buildings, which is not licensed by the State of California and is not required by law to be licensed by the State, in which six or fewer individuals with a disability reside who are not living together as a single housekeeping unit and in which every person residing in the facility (excluding persons employed as facility staff) is an individual with a disability.
- K. Single-Family Residential. "Single-Family Residential" means a building or buildings containing one dwelling unit located on a single lot for occupancy by one family. This classification includes mobile homes and factory built housing.
- L. Two-Family Residential. "Two-Family Residential" means a building or buildings containing two dwelling units located on a single lot, each unit limited to occupancy

02/21/08

**STEVEN G. POLIN, ESQ.**  
*Attorney At Law*

2034 TRINSON ST. N.W.  
WASHINGTON, D.C. 20015

Tel: (202) 331-5346  
Fax: (202) 537-2986  
SPOLIN2@FARTHLINE.NET

October 7, 2008

**SENT VIA ELECTRONIC MEANS AND FIRST CLASS MAIL**

T. Peter Pierce, Esquire  
Richards | Watson | Gershon  
355 South Grand Avenue, 40th Floor  
Los Angeles, California 90071-1469

RE: Pacific Shores Properties v. City of Newport Beach  
CV-08-00457 JVS (RNB)

Dear Mr. Pierce:

Plaintiff, Alice Connor, has been the recipient of two notices of administrative citations (see attached) by the City of Newport Beach. The issues surrounding the issuance of the citations revolve around a continuous issue of building or construction without a permit at 3309 Clay Street.

The genesis of this problem predates the moratorium lawsuit filed by the City and the lawsuit filed by Ms. Connor and the other plaintiffs. Apparently, the issue is whether Ms. Connor and Pacific Shores have submitted current architectural plans. I am told that this problem concerning the plans dates back to 2003 when the previous owner of 3309 Clay Street began to make alterations to the property. Ms. Connor bought the property in 2005. According to the information that I have been provided, she made application to the City for building permits on July 17, 2007. The City inspected the property in August, 2007 as well as the Orange Avenue sober houses. On or about August 2, 2007, the City issued a stop work order. I am informed that the reason the stop work order was issued was that Ms. Connor and Pacific Shores had to revise the plans and resubmit them to the City for approval. Apparently the inspection revealed work that was done that was not in the plans submitted by Ms. Connor. Ms. Connor and Pacific Shores advised the City that this work was not their plans, nor was it work they had performed. Nevertheless, this has been an ongoing issue since that date.

Ms. Connor and Pacific Shores is seeking a resolution of this problem wherein the City will give them 30 additional days to submit the new plans. In the event the City agrees to this proposal, Ms. Connor and Pacific Shores would not commence any work on the premises until the issues of the litigation are resolved. In addition, Ms. Connor and Pacific Shores is also requesting that the City abate or dismiss the notices of administrative citations and the fines contained therein. Mr. Manderson has been in contact with Assistant City Attorney Steve Hook about this matter.

PS-RA 00039

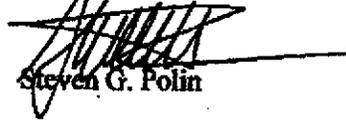
T. Peter Pierce, Esquire  
October 7, 2008

2

Please do not hesitate to contact me if you need additional information or if you have any questions.

I look forward to an early and successful resolution of this problem.

Sincerely yours,



Steven G. Polin

cc: Pacific Shores Properties  
Christopher Brancart  
Mark Manderson  
Alice Connor

PS-RA 00040

### NOTICE OF ADMINISTRATIVE CITATION

CITY OF NEWPORT BEACH  
BUILDING DEPARTMENT

Citation No. C2008-0450

3300 Newport Blvd.  
Newport Beach, CA 92663  
(949) 643-3275

Citation/Correction Date 9-20-08 Time 8:00 A.M.

An inspection of the premises located at 3309 Clay St.

in the City of Newport Beach, revealed a violation(s) of the Newport Beach Municipal Code.

|                                     |  |
|-------------------------------------|--|
| Name of owner or business           | <u>Alice Conner</u>  |
| Address if different than violation | <u>611 Cliff Dr.</u><br><u>Newport Beach, CA</u><br><u>92663</u> |

- 1ST. CITATION \$100.00..... **IS NOW DUE AND PAYABLE** to City of Newport Beach
- THE NEXT LEVEL CITATION IS NOW FINEING AND YOU MAY BE CITED EACH DAY THE VIOLATION CONTINUES. OTHER ENFORCEMENT ACTION AND PENALTIES MAY ALSO RESULT IF COMPLIANCE IS NOT ACHIEVED OR IF YOU CONTINUE TO IGNORE THE CITATION.
- 2ND. CITATION \$200.00..... **IS NOW DUE AND PAYABLE**
- 3RD. CITATION \$500.00..... **IS NOW DUE AND PAYABLE**

THIS VIOLATION(S) WAS ORIGINALLY BROUGHT TO YOUR ATTENTION ON 8-2-07 AND YOU HAVE NOT CORRECTED OR RESOLVED THE VIOLATION(S).

| NEWPORT BEACH MUNICIPAL CODE SECTION(S) | DESCRIPTION OF VIOLATION(S)   |
|---|---|
|   | <u>105.1 NIBAC - Alterations in progress w/o permits</u><br><u>(Plan checks is now expired)</u> |

CORRECTION(S) REQUIRED: Obtain permits and inspections

Mail To: Alice Conner, 611 Cliff Dr., Newport Beach, CA  
RECEIPT ACKNOWLEDGED BY \_\_\_\_\_ DATE 9-30-08

|   |  |                    |
|---|--|--------------------|
| SIGNATURE OF OFFICER<br><u>St. Hook</u> | POST NAME OF OFFICER<br><u>Steven Hook</u> | ID#<br><u>2901</u> |
|---|--|--------------------|

VIOLATION(S) CLEARED AS OF \_\_\_\_\_ (DATE INSPECTED).  
WHITE (Violation Copy) CANARY (Hearing Copy) PINK (Officer Copy)

### NOTICE OF ADMINISTRATIVE CITATION

CITY OF NEWPORT BEACH  
BUILDING DEPARTMENT

Citation No. C2008-0450

3308 Newport Blvd.  
Newport Beach, CA 92658  
(949) 644-3375

Citation/Correction Date 9-30-08 Time 8:00 A.M.

An inspection of the premises located at 3309 Clay St.

in the City of Newport Beach, revealed a violation(s) of the Newport Beach Municipal Code.

|                                      |  |
|--------------------------------------|--|
| Name of owner or business:           | <u>Alice Conner</u>  |
| Address if different than violation: | <u>611 Cliff Dr.</u><br><u>Newport Beach, CA</u><br><u>92663</u> |

- 1ST. CITATION \$100.00.....**IS NOW DUE AND PAYABLE** to City of Newport Beach
- THE NEXT LEVEL CITATION IS NOW ENDED AND YOU MAY BE CITED EACH DAY THE VIOLATION CONTINUES. OTHER ENFORCEMENT ACTION AND PENALTIES MAY ALSO RESULT IF COMPLIANCE IS NOT ACHIEVED OR IF YOU CONTINUE TO IGNORE THIS CITATION.
- 2ND. CITATION \$200.00.....**IS NOW DUE AND PAYABLE**
- 3RD. CITATION \$500.00.....**IS NOW DUE AND PAYABLE**

THIS VIOLATION(S) WAS ORIGINALLY BROUGHT TO YOUR ATTENTION ON 8-2-07 AND YOU HAVE NOT CORRECTED OR RESOLVED THE VIOLATION(S).

| NEWPORT BEACH MUNICIPAL CODE SECTION(S) | DESCRIPTION OF VIOLATION(S)   |
|---|---|
|   | <u>105.1 NBAC - Alterations in progress w/o permits.</u><br><u>(Plan check is now expired.)</u> |

CORRECTION(S) REQUIRED: Obtain permits and inspections

Mail To: Alice Conner, 611 Cliff Dr., Newport Beach, CA  
RECEIPT ACKNOWLEDGED BY \_\_\_\_\_ DATE 9-30-08

|   |   |                    |
|---|---|--------------------|
| SIGNATURE OF OFFICER<br><u>St. Hook</u> | FIRST NAME OF OFFICER<br><u>Steven Hook</u> | ID#<br><u>2901</u> |
|---|---|--------------------|

VIOLATION(S) CLEARED AS OF \_\_\_\_\_ (DATE INSPECTED)



**RICHARDS | WATSON | GERSHON**  
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101  
Telephone 213.626.8484 Facsimile 213.626.0078

February 7, 2008

**VIA FACSIMILE AND U.S. MAIL**

Steven G. Polin, Esq.  
3034 Tennyson St., N.W.  
Washington, D.C. 20015

Re: Reasonable Accommodation Request, Pacific Shores Properties, LLC,  
492 and/or 494 Orange Avenue

Dear Mr. Polin:

I write in response to your letter of December 10, 2007 to Robin Clauson, City Attorney of the City of Newport Beach, California. As you are aware, your letter did not come to Ms. Clauson's attention until just last week. Subsequently, your letter was forwarded to me for response, as I am the attorney who filed the pending state court action against Pacific Shores Properties ("Pacific Shores"). Until I received your letter, I was not aware that Pacific Shores had retained counsel other than its local counsel who has filed a motion to dismiss the City's lawsuit.

Turning to the content of your letter, the City's pre-lawsuit background inquiries revealed information leading it to conclude that the residential use at 492 and/or 494 Orange Avenue is not a "single housekeeping unit" as defined in the Newport Beach Municipal Code. The City's research also revealed that the residential use includes activities that fall within the definition of "alcoholism or drug abuse recovery or treatment service" as defined in section 10501(a)(5) of the California Code of Regulations. Those activities trigger the requirement for a license issued by the California State Department of Alcohol and Drug Programs under California Health and Safety Code section 11834.09. As you admit in your letter, Pacific Shores Properties has not obtained any license from the State. Because Pacific Shores is operating an unlicensed facility and is providing services as defined above, its operation constitutes a transitory use that was subject to the City's moratorium on such uses at the time Pacific Shores established the use.

- RICHARD RICHARDS  
(1916-1988)
- GLENN R. WATSON  
(RETIRED)
- HARRY L. GERSHON  
(1922-2007)
- STEVEN L. DORSEY
- WILLIAM L. STRAUSS
- MITCHELL E. ABBOTT
- GREGORY W. STEPANICH
- ROCKELLE BROWNE
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- QUINN M. BARSON
- CAROL W. LYNCH
- GREGORY W. KIMBLY
- THOMAS M. JIMBO
- ROBERT C. CECORE
- STEVEN H. KAUFMANN
- KEVIN D. ENNIS
- ROBIN D. HARRIS
- MICHAEL ESTRADA
- LAWRENCE S. WIEBER
- STEVE E. ORR
- S. THOMAS KIM
- SASKIA T. ASAMURA
- KATYER D. BUME
- PETER M. THORSON
- JAMES L. HAZENMAN
- CHRIS A. STEELE
- T. PETER PIERCE
- TERENCE R. BOSLA
- LISA BOND
- JANET E. COLESON
- ROHANNE M. ORZ
- JIM C. GRAYSON
- ROY A. CLARKE
- WILLIAM F. CROSBY III
- MICHAEL F. YOSHIDA
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Steven G. Polin, Esq.  
February 7, 2008  
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Although you extensively analyze the Fair Housing Amendments Act of 1988, the American With Disabilities Act, and case law applying those statutes, the crux of your letter appears to be a request under federal fair housing law that the City make a reasonable accommodation in applying its laws to the use at 492 and/or 494 Orange Avenue. Before addressing the reasonable accommodation process, I note that Pacific Shores has always been free to apply for a reasonable accommodation. Before the City adopted its temporary moratorium on the establishment of new transitory uses, Pacific Shores could have applied for a Federal Exception Permit (then the City's vehicle for reasonable accommodation) as was provided for in the Newport Beach Municipal Code.

Even after the City adopted the moratorium on April 24, 2007, Pacific Shores could have sought a reasonable accommodation. The City adopted the moratorium as part of Ordinance No. 2007-8. Section 4 of that Ordinance expressly provided: "In compliance with Fair Housing Laws [citations], it is the City's policy to provide reasonable accommodation in the application of this interim urgency ordinance to any person with a disability who seeks fair access to housing." The Ordinance then proceeded to explain the process of applying for a reasonable accommodation. Yet, Pacific Shores did not request any reasonable accommodation until more than seven months after the moratorium was adopted, and not until a month after the City filed its enforcement action.

The City's express provision for reasonable accommodation carried over into its recently adopted Ordinance amending local regulation of group uses. That Ordinance added Chapter 20.98 to the Newport Beach Municipal Code. That Chapter, entitled "Reasonable Accommodation," is attached for your convenience, and your client may initiate the reasonable accommodation process as described therein.

Unless and until a reasonable accommodation application is approved, the use of 492 and/or 494 Orange Avenue remains in violation of local law. The recently adopted Ordinance retains the provision that a use that was not lawfully established in the first place (e.g., established in violation of the now expired moratorium) is unlawful.

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If you have any questions, please do not hesitate to contact me.

Very truly yours,

T. Peter Pierce

Enclosure

1128700061030553.1

cc: Robin Clauson, City Attorney  
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December 10, 2007

Robin Clauson, City Attorney  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, CA 92663

Re: Reasonable Accommodation Request  
Pacific Shores Properties, LLC  
492 and/or 494 Orange Avenue

Dear Ms. Clauson:

I have been retained by Pacific Shores Properties concerning the recent actions of the City to find the presence of Pacific Shores Properties its location at 492 and/or 494 Orange Avenue to be a violation of the City's ordinance regarding the moratorium on the opening of new sober houses. I do not believe the use of 492 and/or 494 Orange Avenue was a new use as defined by the moratorium ordinance. I would request that enforcement of this alleged notice of violation be held in abeyance until the City makes a determination of my request under the Federal Fair Housing Act for an accommodation which would permit the residents to continue the single family use of the premises without fear of prosecution by the City.

I am writing this letter to explain to you the Pacific Shores concept, and to request pursuant to the Federal Fair Housing Act and the moratorium legislation by waiving any potential violations of the moratorium. I would appreciate the opportunity to discuss the Fair Housing implications of your proposed action and request that the contemplation of any civil penalties or actions to enforce be held in abeyance until we have had an opportunity to discuss ways to resolve this matter.

The use of 492 and/or 494 Orange Avenue has been erroneously deemed to be a new use for purposes of the moratorium legislation. Notwithstanding the prohibition of allowing new sober houses to open in the City during the pendency of the moratorium, such a prohibition is illegal and is direct contradiction to other provisions of the City's zoning code which allow groups of unrelated non disabled persons to occupy a dwelling without prosecution from the City. The City's Zoning Code within its definition of family includes the classification of "single housekeeping unit." A "single housekeeping unit" is defined as "*Single Housekeeping Unit*" means the functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, under no more than one written or oral rental agreement, including the joint use of common areas and sharing household activities and responsibilities such as meals, chores and expenses. The City has made a decision to deny those individuals who are

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recovering alcoholics and substance abusers from being considered a family as is the right of other similarly situated non-related, no-related and disabled and non-related groups desiring to live together as a family.

As you already are aware, the residents of 492 and/or 494 Orange Avenue are recovering alcoholic and addicts. Therefore, for the reasons stated below, Pacific Shores requests pursuant to the Federal Fair Housing Act that The City of Newport Beach make a reasonable accommodation in the application of its zoning ordinances and other municipal codes so that a group of recovering addicts and alcoholics residing together as a family can be afforded an equal opportunity to use and enjoy a single family dwelling

492 and/or 494 Orange Avenue is being used as alcohol and drug free housing for recovering alcoholics and addicts. 492 and/or 494 Orange Avenue is a sober living environment designed to increase self-responsibility and support for persons in recovery. Pacific Shores does not provide a "recovery program" or services. There is no counseling, or therapy offered to the residents. The group behaves like any family and makes group decision based on democratic procedures. Pacific Shores is nothing more than a single family residence.

492 and/or 494 Orange Avenue is not a substance abuse treatment facility, a halfway house, a shelter, a group home nor a residential care facility. There is no treatment, counseling, therapy, or any type of health care service provided. 492 and/or 494 Orange Avenue are not licensed by the State of California nor are licenses required. 492 and/or 494 Orange Avenue, as opposed to a halfway house, residents live there by choice. 492 and/or 494 Orange Avenue is not a halfway house, nor is it a substitute for halfway houses.

492 and/or 494 Orange Avenue is neither a rooming nor a boarding house. The residents of 492 and/or 494 Orange Avenue rent the entire premises rather than a single room. They 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. 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 all aspects of domestic life are shared by the residents. There are no treatment or professional services provided at the premises.

Physically, the house is no different from any other single family house in the neighborhood.

In sum, for the same reasons asserted, we submit that the use of 492 and/or 494 Orange Avenue is not a residential care facility, rooming or boarding house, group home nor halfway-house under any applicable definition. Ses 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

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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).<sup>1</sup>

Residents of houses 492 and/or 494 Orange Avenue 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, house finances. Each resident, however, is responsible for his own food and cooking. Third is the quality of the relationship among the residents. The emotional and mutual support and bonding given each resident in support of his recovery from drug addiction and alcoholism is the equivalent to the type of love and support received in a traditional family.

In addition, residents live in a house operated by Pacific Shores 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 residents of houses 492 and/or 494 Orange Avenue is the "functional equivalent" of a family is the fact that there is no limit as to how long a resident can stay. Conceivably, an individual can stay in a house operated by Pacific Shores a lifetime if he does not relapse into drug and/or alcohol use, pays his rent on time, and does not engage in disruptive behavior.

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

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

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

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The residents of 492 and/or 494 Orange Avenue are considered "handicapped" under the 1988 amendments to the Federal Fair Housing Act. 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); See 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. City 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. Requiring the closure of 492 and/or 494 Orange Avenue 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, plaintiffs are individuals with handicaps within the meaning of the Fair Housing Act. City of Plainfield, at 1342.<sup>2</sup>

Under 42 U.S.C. 3604(f)(1) it is unlawful

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.

As members of a protected class under the Federal Fair Housing Act, the issue of whether the residents of 492 and/or 494 Orange Avenue are in violation of the local zoning ordinances is not relevant to the question of federal law. United States v. Borough of Audubon, 797 F. Supp. 353, aff'd 968 F.2d 14 (3d Cir. 1992). Thus, any allegation that 492 and/or 494 Orange Avenue have

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<sup>2</sup>With respect to individuals with disabilities, violation of the Fair Housing Act may be shown by either intentional discrimination, discriminatory effect, or a failure to reasonably accommodate. Oxford House - Evergreen v. City of Plainfield at 1343; Oxford House - C v. City of St. Louis, 843 F. Supp. 1556 (E.D. Mo. 1994); Carson v. Rochester Housing Authority, 748 F. Supp 1002, 1007 (W.D. N.Y. 1990).

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violated a local zoning ordinance does not abrogate its rights in claiming discrimination under the Federal Fair Housing Act. It is well established that the Federal Fair Housing Act prohibits discriminatory land use decision by municipalities, when such decisions are "ostensibly authorized by local ordinance." Oxford House - Evergreen v. City of Plainfield, supra. (on motion for a preliminary injunction: city's enforcement of zoning ordinance so as to prevent operation of local Oxford House in area zoned for single family residences violated the Federal Fair Housing Act); Association of Relative and Friends of AIDS patients v. Regulation and Permits Administration, 740 F.Supp. 95 (D.P.R. 1990)(government agency's denial of land use permit to open AIDS hospice violated Fair Housing Act); Baxter v. City of Belleville, 720 F.Supp. 720 (S.D. Ill 1989)(on motion for preliminary injunction: city's refusal to issue special use permit under zoning law to develop to remodel building into residence for persons with AIDS violated Fair Housing Act). See also 42 U.S.C. Section 3615 ("any law of a State, a political subdivision, or other jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid [under the Fair Housing Act]").

In addition, for purposes of this section, 42 U.S.C. 3604(f)(3)(B) defines discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such [handicapped] person equal opportunity to use and enjoy a dwelling."

The legislative history to the Fair Housing Amendments Act of 1988 ("House Judiciary Report") is explicit as to the effect of the amendments on state and local land use practices, regulations or decisions which would have the effect of discriminating against individuals with handicaps. The amendments prohibit the discriminatory enforcement of land use law to congregate living arrangements among non-related persons with disabilities, such as 492 and/or 494 Orange Avenue, when these requirements are not imposed on families.

[Section 804(f)] would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of unrelated people, these requirements have the effect of discriminating against persons with disabilities.

House Report, p. 24 (footnote omitted). Based on this clear expression of legislative intent, the courts have enjoined the application and enforcement of zoning and health and safety regulations

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which have a discriminatory impact on group homes for persons with disabilities. City of Plainfield, 769 F. Supp. at 1343-44; City of Cherry Hill, 799 F. Supp. at 462; Oxford House, Inc. v. Town of Babylon, 819 F. Supp 1179 (E.D.N.Y. 1993); Marbrunak, Inc. v. City of Stowe, 974 F.2d 43 (6th Cir. 1992); A.F.A.P.S. v. Regulations & Permits Admin., supra at 106-07; Tsombanidis v. City of West Haven, 180 F.Supp. 2d 262, *aff'd in part, rev'd in part*, 352 F.3d 565 (2d Cir. 2003).

It is quite apparent that The City of Newport Beach's efforts to interfere with 492 and/or 494 Orange Avenue through its enforcement activities -- "not imposed on families" -- is a failure to make reasonable accommodations in its zoning ordinances. Thus, 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 492 and/or 494 Orange Avenue as the functional equivalent of a family and treat the number of unrelated persons as a family as defined in Section B of the City's definition of family and apply all building and fire codes in the same manner as it applies to single family dwellings for single family purposes.

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 decision about land use")

Reasonable accommodation has been interpreted by the Courts in cases involving zoning ordinances to mean that a municipality must change some rule that is generally applicable to everyone so as to make its burden less onerous on the person with disabilities. City of Cherry Hill at 465, ft. 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. City 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

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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; City 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.

Here, accommodating 492 and/or 494 Orange Avenue would not cause the City any undue financial or administrative burdens nor would it undermine the purpose which the requirement seeks to achieve. See, Village of Marshall, supra at 877-78 (accommodation is unreasonable if it "undermine[s] the basic purpose which the requirement seeks to achieve"). The Fair Housing Act places an affirmative duty on the municipality to accommodate the needs of persons with disabilities. The Act demands that municipalities such as The City of Newport Beach to 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 492 and/or 494 Orange Avenue 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. 492 and/or 494 Orange Avenue is not requesting that The City of Newport Beach build housing, rather, 492 and/or 494 Orange Avenue is requesting that the City 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, Pacific Shores 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.) The City of Newport Beach, by classifying 492 and/or 494 Orange Avenue as something other than a single family use, 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 or a group of unrelated non-disabled persons. 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) aff'd in part, aff'd in part, rev'd in part, 352 F.3d 565 (2d Cir. 2003). (Stringent enforcement of the City's three person rule has a greater adverse impact on disabled persons than non-disabled persons).

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492 and/or 494 Orange Avenue residents are individuals who are handicapped by alcoholism or drug abuse. 492 and/or 494 Orange Avenue 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.<sup>3</sup> These individuals are more likely to need a living arrangement such as the one 492 and/or 494 Orange Avenue provides, wherein groups of unrelated individuals reside together in a residential neighborhood for mutual support during the recovery process. City of Cherry Hill, 799 F. Supp. at 450. "When that home is also a therapeutic environment critical to maintaining continued recovery from alcohol or drug addiction, eviction is life threatening. Depriving such individuals of housing, or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery," Tsombanidis at 284. See City of Plainfield, 769 F. Supp at 1345.<sup>4</sup> This action by The City of Newport Beach would completely preclude the opportunity of 492 and/or 494 Orange Avenue to exist within the City and to reside in the dwelling of their choice. It would also prohibit Pacific Shores from providing housing to handicapped persons in recovery from alcoholism and drug abuse. I hope you find this information useful. I would like to discuss this matter with you or any other representative of The City of Newport Beach before it contemplates any further action.

The moratorium imposes terms, conditions and requirements on sober homes that are not imposed on other groups of persons, related or unrelated. In addition, these burdens are not imposed on other groups of disabled persons, as the ordinance specifically contains such exclusions.

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<sup>3</sup>Other programs similar to 492 and/or 494 Orange Avenue 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.)

<sup>4</sup>Therefore, any action jeopardizes the recovery process for a group of alcoholics and threatens to push them into relapse causes irreparable harm that justifies preliminary injunctive relief. Sullivan v. City of Pittsburgh, 811 F. 2d 171, 179-80 (3d Cir.), cert. denied, 484 U.S. 180-81 (1987).

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The moratorium is not facially neutral. It bars from living within the borders of the City of Newport Beach a protected class of persons as defined by the Federal Fair Housing Act. What would the reaction in the community be if the City had enacted the moratorium to bar from living in single family dwellings families based on race or national origin? However, this is not the case with the ordinance.

The ordinance intentionally discriminates against the protected class, recovering addicts and alcoholics because it singles them out for disparate treatment. The issue of whether the City had a discriminatory motive in enacting the ordinance is irrelevant to analyzing the ordinance under the FFHA and the ADA. Bangerter v. City of Orem, 46 F.3d 1491, 1501 (10th Cir. 1995)(the statute discriminates on its face by allowing conditions to be placed on group housing for the handicapped which would not be permitted for non-handicapped housing.). Since the moratorium imposes special conditions on those providers wishing to provide housing to a protected class, i.e., recovering alcoholics and substance abusers, and are imposed only on facilities for recovering addicts and alcoholics, the ordinance is facially discriminatory. Differential treatment on the face of ordinance demonstrates an intent to discriminate additional evidence of discriminatory animus is not required. Id. at 1500-1501; Children's Alliance, 950 F. Supp. at 1496. Potomac Group Homes Corp. v. Montgomery County, 823 F. Supp. 1285, 1296 n. 9 (D. Md. 1993)("The fact that the notice regulation 'may also incidentally catch in its net some group homes that serve individuals without handicaps does not vitiate the facial invalidity of the rule which clearly restricts the housing choices of people based on their handicaps.'").

Since the moratorium only applies to recovery homes, which house only recovery alcoholics and addicts, and not to living arrangement for other groups of disabled non-related persons, a violation of the FFHA and the ADA is committed. Statutes that single out for regulation, such as a ban of opening group homes for the handicapped are facially discriminatory. Larkin v. State of Michigan Dept. of Social Services, 89 F.3d 285, 289 (6th Cir. 1996)(Striking down 1500 foot spacing requirement which prohibits the licensing of a new facility). Horizon House v. Township of Upper Southampton, 804 F. Supp. 683, 694 (E.D. Pa. 1992)(1000-foot spacing requirement is facially discriminatory.). The result of this requirement is to restrict the housing choices of recovering addicts and alcoholics.

The courts have repeatedly found discriminatory intent where municipal officials have taken actions to appease the viewpoint of private citizens motivated in part by animus toward a protected group. United States v. Borough of Audubon, 797 F. Supp. 353, 359-62 (D. N.J. 1991); aff'd without opinion, 968 F.2d 14 (3d Cir. 1992); Support Ministries v. Village of Waterford, 805 F. Supp. 120, 133-35 (N.D.N.Y. 1992); Stewart B. McKinney Foundation v. Town of Fairfield, 790 F. Supp. 1197, 1211-16 (D. Conn. 1992); Oxford House - Evergreen, 769 F. Supp. at 1343; Baxter v. City of Belleville, Ill., 720 F. Supp. 720, 732 (S.D.II. 1989); A.F.A.P.S. v. Regulation & Permits Admin., 740 F. Supp. 95, 104 (D.P.R. 1990). "[I]f an official act is performed simply in order to appease the

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discriminatory viewpoints of private parties, that act itself becomes tainted with discriminatory intent even if the decisionmaker personally has no strong views on the matter." Id.

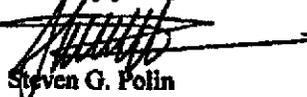
While it is not known what the City's rationale is in promoting a moratorium against the opening of any new sober houses, it is unlawful under the FFHA and ADA. It creates an explicit classification based on disability with no rational basis or legitimate government interest. The motive of drafters of a facially discriminating ordinance, whether benign or evil, is irrelevant to a determination of the lawfulness of the ordinance. International Union, United Auto Workers v. Johnson Controls, Inc., 11 S.Ct. 1196, 1204 (1991) ("the absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect. Whether an employment practice involves disparate treatment through explicit facial discrimination does not depend on why the employer discriminates but rather on the explicit terms of the discrimination. ) Thus, a requirement banning the opening of the is indistinguishable from a ceiling quota imposed on minorities for integration maintenance purposes, practice which has been rejected by the courts. Horizon House, 804 F. Supp at 694 (citations omitted).

The ordinance is facially invalid because it excludes, restricts and/or limits the choices of recovering addicts and alcoholics of they can live within the City of Newport Beach. It limits their access to essential community resources, and thwarts the efforts to treat people recovering from alcoholism or addiction equally in the community negatively, thus affecting their self esteem, and stigmatizing them because of their disability. There does not exist similar limits on choices of biological families, unrelated group of persons, or persons residing in group homes for the handicapped.

Please consider the foregoing objections carefully. Please me advise either in writing or over the telephone prior to whether the City is willing to stay enforcement of the ordinance for the purpose of bringing it into compliance with the FFHA and ADA in face of these objections. Unless we can reach a resolution of the issues I have outlined above, my client will have no choice but to seek injunctive relief in federal court.

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

Sincerely yours,



Steven G. Polin

cc: Mark Manderson

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Patrick K. Bobko  
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June 1, 2009

Steven G. Polin  
Law Offices of Steven G. Polin  
3034 Tennyson Street, NW  
Washington, D.C. 20015

Re: *Newport Coast Recovery - Use Permit Hearing*

Dear Mr. Polin:

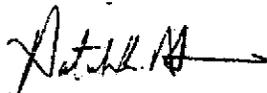
I write this letter to follow-up on the City's attempts to schedule your client's Use Permit hearing.

As you recall, the City Council remanded the hearing on Newport Coast Recovery's use permit to the Hearing Officer at its April 14, 2009 meeting. More than a month has passed since the City Council remanded the matter, and we have not been able to agree upon a date for the hearing.

To avoid any further delay, the City will conduct the Use Permit hearing on either June 15<sup>th</sup> or 16<sup>th</sup> at 4:00 p.m. at the Newport Beach City Hall council chambers. Kindly let me know which of these two dates you prefer not later than 5:00 p.m., on **Wednesday, June 3, 2009**. If we have not heard from you by then the City will unilaterally select the hearing date.

If you have any questions or concerns, please do not hesitate to contact me at the number listed above.

Sincerely,



Patrick K. Bobko

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Steven G. Polin  
September 3, 2009  
Page 2

bcc: Janet Johnson Brown  
Dave Kiff  
Cathy Wolcott  
Kyle Rowen  
T. Peter Pierce

**TAB 4**

**Staff Report for March 25, 2009 Reasonable  
Accommodation Hearing**

(Including Exhibits 1 – 11)

**CITY OF NEWPORT BEACH  
HEARING OFFICER STAFF REPORT**

March 25, 2009

Agenda Item 2

**TO:** Thomas W. Allen, Hearing Officer

**SUBJECT:** Pacific Shores Properties, LLC (PA2008-181)  
3309 Clay Street, 492 Orange Avenue, and 492 ½ Orange Avenue  
• Reasonable Accommodation No. 2008-001

**APPLICANT:** Pacific Shores Properties

**CONTACT:** Janet Johnson Brown, Associate Planner  
(949) 644-3236, [jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)

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**PROJECT SUMMARY**

A reasonable accommodation application requesting five separate accommodations from requirements of the Newport Beach Municipal Code (NBMC) and the California Building Code (CBC).

1. The applicant requests that residents of its facility at 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue (hereinafter, "the Pacific Shores facility") be treated as a single housekeeping unit as defined in Section 20.03.030 of the Newport Beach Municipal Code;
2. The applicant requests that the City no longer classify or treat the properties at 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue as "Residential Care Facilities," as defined by NBMC Section 20.05.010;
3. The applicant requests that the City classify the use of the dwellings at 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue as a legal nonconforming use;
4. The applicant requests that all code provisions applicable to the use of 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue (including Zoning Code, Building Code, fire safety and any other applicable code) be applied to those properties in the same manner that those codes are applied and enforced to single family and two family residential uses located in residential districts zoned R-2;
5. The applicant requests that the City waive the requirement of NBMC Section 20.91A.020 that unlicensed residential care facilities may be located only in a residential district zoned MFR with a use permit.

## **RECOMMENDATION**

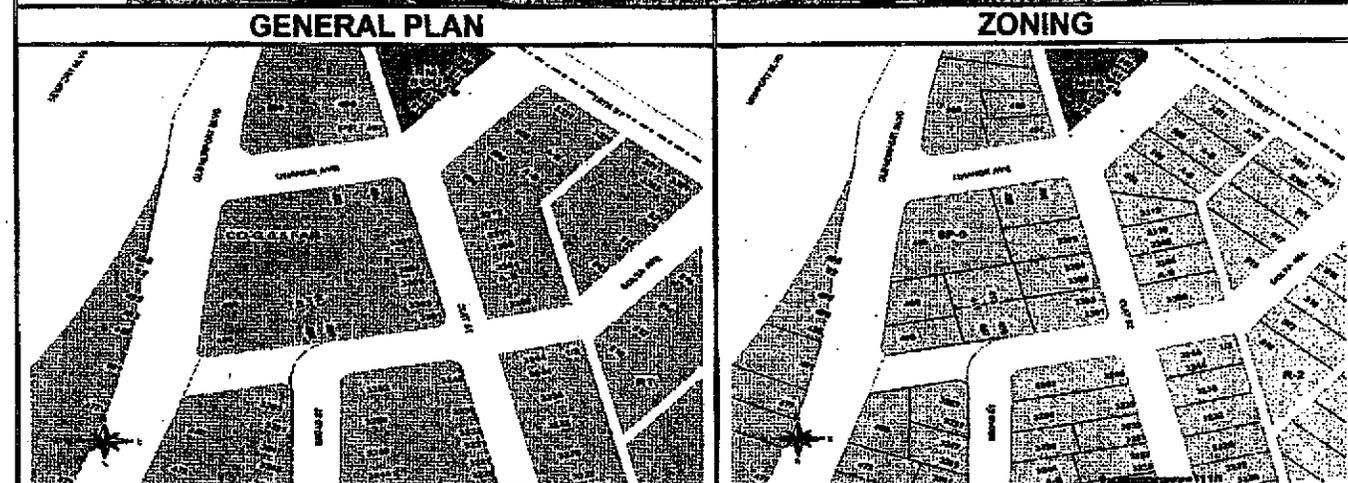
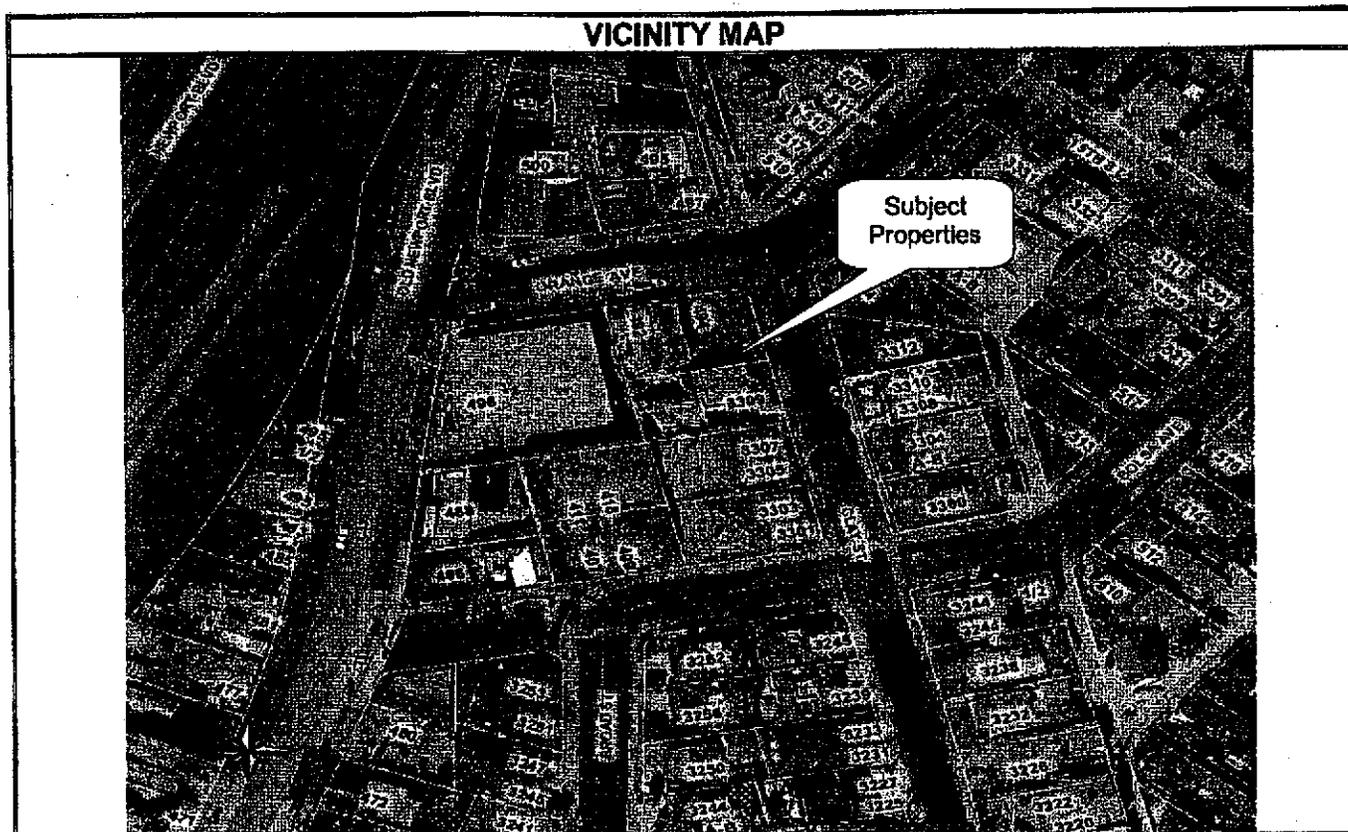
Staff recommends the Hearing Officer conduct a public hearing, receive testimony from the applicant, the City of Newport Beach and its legal counsel, and members of the public. At the conclusion of the public hearing, staff recommends the Hearing Officer:

1. Deny with Prejudice Reasonable Accommodation No. 2008-001, Request No. 1 based on the findings discussed in this report, and
  2. Deny with Prejudice Reasonable Accommodation No. 2008-001, Request No. 2 based on the findings discussed in this report, and
  3. Grant Reasonable Accommodation No. 2008-001, Request No. 3 based on the findings discussed in this report, and
  4. Deny with Prejudice Reasonable Accommodation No. 2008-001, Request No. 4 based on the findings discussed in this report, and
  5. Grant Reasonable Accommodation No. 2008-001, Request No. 5 with conditions proposed by staff, pending receipt of additional information from the applicant (although, in light of conditions proposed by staff, if the applicant wishes to request a continuance on this portion of the hearing to review and present additional information, staff will not oppose it); and
4. Direct staff to prepare a Resolution for Denial with Prejudice of Reasonable Accommodation No. 2008-001, Requests No. 1, 2, and 4, and continue the hearing to a date certain for approval and adoption of the Resolution by the Hearing Officer.
  5. Direct staff to prepare a Resolution for Approval with Conditions for Reasonable Accommodation No. 2008-001, Requests No. 3 and 5, and continue the hearing to a date certain for approval and adoption of the Resolution by the Hearing Officer.

## **INTRODUCTION**

The subject properties are located at the southwest corner of Orange Avenue and Clay Street in a neighborhood referred to as Newport Heights, and are zoned R-2 (Two-Family Residential). The parcel located at 492 Orange Avenue and 492 ½ Orange Avenue is developed with two dwelling units. The parcel located at 3309 Clay Street is developed with a single-family dwelling. The neighborhood is characterized by single-family and two-unit residential uses, with a mixture of rental and owner-occupied properties. The westerly property line of each parcel abuts a site developed with a commercial medical office building.

The properties are owned by Alice Connor, an individual. Pacific Shores Properties, LLC operates a sober living facility for adults in recovery from alcohol and/or drug abuse in the dwellings.



| LOCATION | GENERAL PLAN             | ZONING                   | CURRENT USE                                   |
|----------|--------------------------|--------------------------|---|
| ON-SITE  | RT, Two-Unit Residential | RT, Two-Unit Residential | Duplex, w/ Sober Living Facility in two units |
| NORTH    | RT, Two-Unit Residential | RT, Two-Unit Residential | Residential use                               |
| SOUTH    | RT, Two-Unit Residential | RT, Two-Unit Residential | Residential use                               |
| EAST     | RT, Two-Unit Residential | RT, Two-Unit Residential | Residential use                               |
| WEST     | RT, Two-Unit Residential | RT, Two-Unit Residential | Residential use                               |

## **BACKGROUND**

### **Facility Establishment Dates**

**3309 Clay** - Staff is not certain when the single-family dwelling at 3309 Clay was converted to residential care or group residential use. However, when City staff inspected the building in response to complaints about unpermitted construction in 2007, the building appeared to be in use as either a residential care or boarding house use. This dwelling is currently unoccupied, pending resolution of ongoing code compliance issues.

**492 ½ Orange** – Final building inspection necessary for occupancy occurred in September 2005, and the facility was occupied thereafter.

**492 Orange** - Final building inspection necessary for occupancy occurred on April 24, 2007, and the facility manager was observed moving furniture and tenants into the building on May 8, 2007.

### **Code Enforcement Issues**

A number of issues with the Pacific Shores facility have arisen since early 2007. In Spring 2007, City Code Enforcement staff received reports of illegal construction occurring at the 3309 Clay Street address. Inspection showed substantial unpermitted construction to the building, including a number of illegally constructed bedrooms that were inhabited by facility occupants.<sup>1</sup> The City issued a Notice of Violation. To comply with City and state Building Code requirements, the City requires that violators remove unpermitted construction and/or obtain approved building plans for the unpermitted construction. The property owner submitted plans to the Building Department for plan check of the work soon after the stop work order was issued. In this situation, it is the Building Department's standard practice to delay further enforcement action to give the property owner a chance to complete the plan check process.

Over a year later, the property owner had made no further attempts to complete the plan check process. As is the City's standard practice, enforcement efforts resumed in October 2008, and an administrative citation was issued. In the process of reviewing plans submitted by the property owner in response to the administrative citation, staff noted the building was incorrectly classified as an R3 occupancy (single-family or duplex) for Building Code purposes, rather than the R4 occupancy that includes residential care facilities with more than six residents.

On February 23, 2007, City Code Enforcement staff requested information about the type of use at the Pacific Shores facility. The manager of the property at the time, Mark Manderson, Sr., informed Code Enforcement verbally and in writing that the facility

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<sup>1</sup>Including an open porch surrounded by plastic sheeting, which appeared to house one resident.

leased room to tenants, was "merely rentals . . . for any person who is looking to reside in a custom house in Newport Beach," and was not a recovery facility. (Exhibit 1)

On May 8, 2007, a complaint investigator with the California Department of Alcohol and Drug Programs (ADP) attempted to investigate allegations of unlicensed treatment at the Pacific Shores facility. She reported to City staff that Mark Manderson told her that the Pacific Shores facility was not a recovery facility, and just rented rooms to tenants. At her request, Mr. Manderson provided her with copies of sample leases with individual tenants. She determined that the Pacific Shores facility was likely a sober living facility, but that the sort of treatment services that required licensing did not appear to be occurring on-site. (Exhibit 2)

In July 2007, the new facility manager, Mark Manderson, Jr., told City Code Enforcement staff that the Pacific Shores facility was a sober living home.

In October 2007, the City filed a lawsuit in state court for injunctive and declaratory relief against Pacific Shores, LLC and other parties for violations of the City's moratorium ordinance. The City dismissed Pacific Shores from that suit in early 2009.

In January 2008, the City received two pages of a fax from Pacific Shores attorney Steve Polin, dated December 10, 2007, which requested a reasonable accommodation for Mr. Polin's client but did not state specific exemptions required. Upon request by the Office of the City Attorney, the text of the entire reasonable accommodation request was sent to the City, arriving in late January 2008.

On February 23, 2008, the City received notice that Pacific Shores Properties, LLC, had filed a complaint against the City with the Department of Housing and Urban Development (HUD). Following the City's response, the complaint was referred to the Department of Justice (DOJ), which has delayed further action pending the processing of Pacific Shores' requests for reasonable accommodations.

On April 28, 2008, Pacific Shores filed a federal lawsuit against the City, alleging violations of the federal Fair Housing Act, the Americans with Disabilities Act, the Equal Protection and Due Process clause of the Fourteenth Amendment, as well as state law violations of the California Fair Employment and Housing Act, California Government Code Section 65008 and the privacy, equal protection and due process provisions of the California Constitution. Although most claims were dismissed when the judge granted the City's Motion for Summary Judgment, some are still pending in federal court.

On September 24, 2008, the applicant submitted an Application for Reasonable Accommodation to the City requesting that the City treat the residents of its facility as a Single Housekeeping Unit, as defined by NBMC Chapter 20.03. (Exhibit 3)

On March 10, 2009, the applicant's attorney submitted an amended request for reasonable accommodation, requesting that the City treat the facility as a legal nonconforming use, that the City no longer treat or classify the facility as a residential

care facility, and that the City enforce all zoning, building, fire safety and other codes applicable to the facility as if the facility were a single- or two-family residential use. (Exhibit 4)

On March 13, 2009, the applicant's attorney submitted a second amended request for reasonable accommodation, requesting an accommodation from the requirements of NBMC Section 20.10.020 (Residential Districts: Land Use Regulation) to enable the facility to remain in its current location. (Exhibit 5)

On March 17, 2009, staff wrote to the applicant requesting additional information. (Exhibit 6) Written responses from the applicant are included as Exhibit 7, and the information in the verbal responses is included in the description of operations below.

### Description of Operations

The applicant intends to house up to 50 resident clients in the single-family dwelling at 3309 Clay Street and the adjacent two building located at 492 and 492 ½ Orange Avenue. (See Exhibits 8 , 9 and 10 for most recent floor plans on file with the City).

Individual clients reside at the facility under a separate written agreement with the operator, and abide to a set of house rules, (Exhibit 11) such as:

- I choose to remain clean and sober today
- I choose to do my chore today
- I choose to attend a minimum of 1 meeting today, to arrive early, to stay seated throughout the meeting and to sit with housemates and not potential dates
- I choose not to smoke, loiter, or hang out in front of the house today
- I choose to honor the House Rules and understand I can be asked to leave for not doing so.

### Parking

The building at 3309 Clay Street provides two on-site parking spaces in an enclosed tandem two-car garage. The building addressed as 492 Orange Avenue has a tandem two-car garage, and the building addressed as 492 ½ Orange Avenue includes a two-car garage (side-by-side parking spaces).

### Staffing

Pacific Shores reports that it does not have a "manager" or "administrator," but that there are two residents designated in each house to make sure that tenants do not use drugs or alcohol and to ensure the quiet enjoyment of the dwelling. They also reported that "Mark Manderson, who assists in the maintaining the homes, is available on a 24/7 basis."

### Client stays

The applicant did not report the average length of resident stay. However, other sober living facilities have reported that their resident stays range from 45 days to 180 days, with an average stay of 90 days.

#### Curfew and Quiet Hours

Curfew hours for residents are 10:00 p.m. on weekdays, and 11:00 p.m. on weekends. Pacific Shores states that "curfew applies only to new members of the household during the first 30 days of tenancy. Quiet hours apply to all tenants"

#### Treatment Services

The applicant states that no treatment services are provided on-site. Residents attend 12-Step meetings at various locations offsite.

#### Transportation

The applicant states that not all residents have personal vehicles, but that residents are permitted to have personal vehicles while residing at the facility, or use public transportation. No transportation services are provided by the facility operator. The applicant states that all residents "park along Old Newport or along the commercial park area on Orange. No resident parks along Clay or the non-commercial parking area along Orange (i.e., Orange NE of Clay.)"

#### Deliveries

No information was supplied by the applicant on this topic.

#### Medical Waste

No information was supplied by the applicant on this topic.

### **DISCUSSION**

The federal Fair Housing Amendments Act (FHAA), adopted in 1988, prohibits housing discrimination based on a resident's disability. Under the FHAA, it is discriminatory for government entities to refuse to make reasonable accommodations from rules, policies, and practices when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling (42 U.S.C. § 3604(f)(3)(B)).

The Ninth Circuit has repeatedly emphasized this requirement, stating that under the Fair Housing Act, *"unlawful discrimination includes refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. We have repeatedly interpreted this language as imposing an affirmative duty on landlords and public agencies to reasonably accommodate the needs of disabled*

individuals." *McGary v. City of Portland*, 386 F.3d 1259, 1261 (9<sup>th</sup> Cir. 2004) (italics added).

Cases interpreting the FHAA have held that a government agency has an affirmative duty to grant a requested reasonable accommodation if: (1) the request is made by or on behalf of a disabled individual or individuals, (2) the accommodation is necessary to afford the disabled applicant an equal opportunity to use and enjoy a dwelling, and (3) the request is reasonable.

Cities may find an accommodation request unreasonable if granting the request would: (1) result in a fundamental alteration in the nature of a City program (often described as undermining "the basic purpose which the requirement seeks to achieve"), or (2) would impose undue financial or administrative burdens on the city (See *U.S. v. Village of Marshall*, 787 F.Supp. 872, 878 (W.D. Wisc. 1991).

Whether a requested accommodation is reasonable and necessary must be determined on a case-by-case basis. Because Request No. One and Request No. Two are similar, staff will analyze them together. Staff will analyze each of the other requests separately.

- **Reasonable Accommodation Analysis No. 1 – Request to be Treated as a Single Housekeeping Unit, and**
- **Reasonable Accommodation Analysis No. 2 – Request to not be classified or treated as a Residential Care Facility.**

In its September 24, 2008 application for reasonable accommodation, the applicant requested its facility be treated as a Single Housekeeping Unit, as that term is defined in NBMC Section 20.03.030. Section 20.03.030 (Definitions) defines a Single Housekeeping Unit as:

"The functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities such as meals, chores, household maintenance, and expenses, and where, if the unit is rented, all adult residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager."

The applicant said the accommodation requested is necessary to enable residents of Pacific Shores to live in a setting with a self-paced recovery option which gives them sufficient time for personal psychological growth while avoiding the use of alcohol or other substances. Applicant stated that, absent the sober living setting, residents of Pacific Shores would not be able to live in a supportive environment in a residential area, let alone a single-family residential area. (Note: the facility is located in a Two Family Residential [R-

2] District; not a Single-Family Residential [R-1] District.) The applicant said a request for accommodation to be defined as a "family" is necessary for the current and future residents of Pacific Shores to enjoy the housing of their choice. The applicant further stated that the residents of Pacific Shores are not transient by nature, and function and interact with each other in much the same way as the functional equivalent of a traditional family.

In its first amended request, dated March 10, 2009, the applicant requested to not be classified or treated as a Residential Care Facility, as that term is defined in NBMC Section 20.05.010. Section 20.05.030 defines the various Residential Care use classifications as follows:

**Residential Care Facilities, General.** Any place, site or building, or groups of places, sites or buildings, licensed by the State or unlicensed, in which seven or more individuals with a disability reside who are not living together as a single housekeeping unit and in which every person residing in the facility (excluding the licensee, members of the licensee's family, or persons employed as facility staff) is an individual with a disability.

**Residential Care Facilities, Small Licensed.** State-licensed facilities that provide care, services, or treatment in a community residential setting for six or fewer adults, children, or adults and children and which are required by State law to be treated as a single housekeeping unit for zoning purposes. Small licensed residential care facilities shall be subject to all land use and property development regulations applicable to single housekeeping units.

**Residential Care Facilities, Small Unlicensed.** Any place, site or building, or groups of places, sites or buildings, which is not licensed by the State of California and is not required by law to be licensed by the State, in which six or fewer individuals with a disability reside who are not living together as a single housekeeping unit and in which every person residing in the facility (excluding persons employed as facility staff) is an individual with a disability.

The applicant's facility is also considered an Integral Facility. Integral Facility residential use classifications are defined as follows:

**Integral Uses.** Any two or more licensed or unlicensed residential care programs commonly administered by the same owner, operator, management company or licensee, or any affiliate of any of them, in a manner in which participants in two or more care programs participate simultaneously in any care or recovery activity or activities so commonly administered. Any such integral use shall be considered one use for purposes of applying Federal, State and local laws to its operation.

The residential use classifications listed in Section 20.10.020 of the NBMC are limited to:

- Day Care, Limited (*Large and Small Child Care Homes – not applicable*)

- Group Residential (*Not Single Housekeeping Units – prohibited in all residential districts*)
- Multifamily Residential (*Single Housekeeping Units a prerequisite to be considered MFR use*)
- Parolee/Probationer Homes (*Prohibited in all residential districts*)
- Residential Care (General Licensed, General Unlicensed, Small Licensed, Small Unlicensed) (*Not Single Housekeeping Units, but not prohibited Group Residential because residents disabled*)
- Integral Facilities/Integral Uses (*Two or more residential care facilities that are integrated components of one operation*)
- Single-Family Residential (*Single Housekeeping Unit a prerequisite to be considered a single family residential use of a dwelling*)
- Two-Family Residential (*Single Housekeeping Units a prerequisite to be considered a two-family residential use of a dwelling.*)

If the facility is not treated and classified as a Residential Care or Integral Facility land use, the closest land use classification for a use of this type is a Group Residential use, as defined in NBMC Section 20.05.030(C). The Group Residential use classification is defined as:

Group Residential. Shared living quarters, occupied by two or more persons not living together as a single housekeeping unit. This classification includes, without limitation, boarding or rooming houses, dormitories, fraternities, sororities, and private residential clubs, but excludes residential care facilities (general, small licensed, and small unlicensed) and residential hotels (see Single-Room Occupancy (SRO) Residential Hotels, Section 20.05.050(EE)(4)).

Group residential uses include boarding houses, rooming houses, dormitories, fraternities, sororities, and private residential clubs but expressly exclude residential care facilities. However, Group Residential uses are not permitted in any residential district in the City. Therefore, being treated as a Group Residential use is not a helpful accommodation for the applicant, and staff doubts it is what the applicant intended. Parolee/Probationer homes are also prohibited in all residential districts.

The remaining applicable land use classifications provided by Section 20.10.020, Single-Family, Two-Family and Multifamily Residential are all land use classifications that only qualify as that land use classification because they are occupied by Single Housekeeping Units. If the occupants of a dwelling previously categorized as a Single-Family Residential use were not living as a Single Housekeeping Unit, they would transform the use of that dwelling to a prohibited Group Residential use.

Therefore, as it appears that Request No. 2 is an alternately worded request to be treated as a Single Housekeeping Unit, staff will analyze Request No. 2 as a repetition of Request No. 1.

Ordinance No. 2008-05 codified the procedures for requesting, reviewing and granting, conditionally granting, or denying all requests for reasonable accommodation in the City

of Newport Beach. The Hearing Officer is designate to approve, conditionally approve, or deny all applications for a reasonable accommodation. The ordinance also established required findings and factors the Hearing Officer may consider when making those findings.

Pursuant to Section 20.98.025(B) of the NBMC, the written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval.

1. ***Finding: That the requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.***

This finding can be made. The applicant submitted a statement signed by Mark Manderson, Jr., that every resident of the facility is in recovery from alcohol or drug addiction. Federal regulations and case law have defined recovery from alcoholism and drug addiction as a disability, because it is a physical or mental condition that substantially impairs one or more major daily life activities.

2. ***Finding: That the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.***

This finding cannot be made. Staff does not question the need for sober living homes, nor the fact that persons with a disability must have the opportunity to use and enjoy a dwelling. However, the exemption requested by the applicant is unnecessarily broad to achieve the goal of providing disabled housing. A request to be considered a Single Housekeeping Unit is essentially a request to be exempted from *all* of the provisions of Ordinance No. 2008-05 which place *any* sort of reasonable regulation on the operations of residential care facilities. This is not necessary, because there are many more narrowly tailored accommodations that could enable facility residents to enjoy the housing of their choice without depriving the surrounding neighborhood of reasonable conditions that mitigate the adverse secondary impacts that emanate from this facility.

The applicant asserts that being treated as a Single Housekeeping Unit is necessary because facility residents cannot live independently without the threat of relapse, and because the environment provided by the facility is necessary to achieve an opportunity for the residents to live in a setting which is a self-paced recovery option that gives them time for personal psychological growth while avoiding the use of alcohol and other substances. Without the sober living environment offered by the facility, applicant states, individual residents of the facility would not be able to live in a supportive environment in a residential area. However, a total exemption from the provisions of Ordinance No. 2008-05 is not necessary to afford its residents the opportunity to live in and enjoy a dwelling or a similar sober living setting.

As the applicant raised the issue of how the facility should be characterized in its necessity argument, and asserted the facility closely resembles a Single Housekeeping

Unit, staff has analyzed whether Pacific Shore's characterization of itself as a Single Housekeeping Unit is appropriate based on the applicant's submitted materials.

Staff has determined the nature of the applicant's facility operations most closely resembles a boarding house use. But for the fact residents are recovering alcoholics, the facility would be classified as a prohibited Group Residential use, or a Boarding or Rooming House as that term is defined in NBMC 20.05.030. (Residential Use Classifications) ("A residence or dwelling unit, or part thereof, wherein a room or rooms are rented under two or more separate written or oral rental agreements, leases or subleases or combination thereof . . .")

Copies of leases submitted to ADP, titled "Agreement to Stay in My House," indicate that each resident enters a separate written agreement with the applicant to reside at the facility. Based on the applicant's former characterization of the facility as "just leasing rooms to tenants," and the use pattern described by the individual leases, the description of operations is much closer to the NBMC's definition of a boarding house or group residential use than a single housekeeping unit.

This in no way resembles the NBMC definition of a Single Housekeeping Unit. As stated above, NBMC Section 20.03.030 (Definitions) defines a Single Housekeeping Unit as:

"The functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities such as meals, chores, household maintenance, and expenses, and where, if the unit is rented, all adult residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager."

Applicant's resident clients may be an interactive group of persons jointly occupying a single dwelling unit who share common areas, although the applicant has not submitted any evidence in support of this. However, it appears there is no joint responsibility for meals or expenses, no single written lease, and the makeup of the household is determined by the applicant rather than the residents. Staff also remains troubled by the contradictory information submitted by the applicant in 2008 regarding whether the facility was a sober living facility or a group of boarding houses.

Pursuant to NBMC Section 20.98.025(C), the City may consider the following factors in determining whether the requested accommodation is necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling:

- A. *Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.*

If the requested accommodation is granted, any number of the applicant's current and potential clients will be able to live in a home in an R-2 District with other individuals in recovery. This is a situation that can affirmatively enhance the quality of life of a person in recovery from addiction, unless overcrowding of the facility or institutionalization of the neighborhood interferes with the residents' re-integration into society.

*B. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.*

As stated above, the exemption requested by the applicant is broader than necessary to achieve the goal of enabling disabled individuals an equal opportunity to enjoy the housing type of their choice. The City has pointed out that more narrowly tailored exemptions could enable disabled individuals to reside at the applicant's facility, and the applicant has submitted additional requests as a result.

*C. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.*

The applicant does not state why being treated as a Single Housekeeping Unit is necessary to make its facilities viable in light of the current market for the type of services it provides. Instead, the applicant specifically objected to this request and chose not to answer it. This does not lead staff to the conclusion that being treated as a Single Housekeeping Unit is necessary to make applicant's facilities financially viable.

*D. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.*

In 2007, City staff estimated that there were approximately 315 sober living beds in the city, (These numbers are exclusive of the up to 213 ADP-licensed treatment beds.) Operators of many sober living facilities within the city have reported decreased census and vacant beds, which could provide potential Pacific Shores clients with an equal opportunity to live in a sober living environment without granting the accommodation. The evidence does not support the applicant's contention that treating residents of its facility as a Single Housekeeping Unit will change the availability of the existing supply of facilities of a similar nature, or afford them a substantially greater access to an equal opportunity to live in a residential setting.

Even if the applicant provides housing for the disabled, and even if the requested accommodation is necessary, the City is not required to grant a request for accommodation that is not reasonable. Cities may find a requested accommodation unreasonable if it either (1) imposes an undue financial or administrative burden on the city, or (2) results in a fundamental alteration in the nature of a city program, often described as undermining "the basic purpose which the requirement seeks to achieve."

**3. Finding: That the requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined in Fair Housing Laws and interpretive case law.**

This finding can be made. Treating the facility as a Single Housekeeping Unit would not impose a currently identifiable undue financial or administrative burden on the City. However, staff makes this finding with caution, because the applicant has a history of code violations at this property. Plans on file with the City indicate that approximately 56 to 58 individuals could be housed at the three facilities if some rooms not labeled as "bedrooms" on plans were used as bedrooms. If resident populations were unregulated and code violations continued, currently unidentifiable financial or administrative burdens could arise as a result.

**4. Finding: That the requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.**

This finding cannot be made. The purpose of the NBMC's definition of Single Housekeeping Unit is to allow staff to determine whether groups of related or unrelated individuals are living together in a dwelling as a single housekeeping unit. This definition is necessary because of the persistent attempts by landlords to establish illegal boarding houses and illegal units in dwellings within the City.

Groups living as a single housekeeping unit can live together in any residential zone in Newport Beach. Groups not living as a single housekeeping unit are prohibited from establishing residences in any of the City's residential zones. There is, however, an important exception to the total prohibition of groups not living as a single housekeeping unit -- groups not living as a single housekeeping unit in residential care facilities of any size.

Essentially, all residential care facilities in the City have *already* received a reasonable accommodation from the NBMC's restrictions on groups not living as a single housekeeping unit. The NBMC provides many opportunities for new facilities to establish, and has provisions for existing facilities to continue in their current locations with appropriate impact mitigation. Licensed facilities housing six or fewer residents can establish in any residential zone of the City.

Although the residents of residential care facilities receive preferential treatment because of their disabled status, the NBMC's Zoning Code also applies regulations to unlicensed and larger (more than seven residents) licensed facilities. These regulations are in place to ensure that the fundamental purposes of the Zoning Code can be achieved, and so the adverse secondary impacts higher density residential care facilities have on the surrounding neighborhood can be mitigated.

If the facility is treated as a Single Housekeeping Unit, it is entirely exempt from any of the reasonable controls the City might place on it. The City would be unable to make any reasonable effort to reduce the adverse secondary impacts such as noise, overcrowding, and unruly behavior by residents of applicant's facility to the detriment of neighbors, in addition to finding solutions to the applicant's disproportionate consumption of available on-street parking, and the overconcentration of facilities within a single block to the point of creating a quasi-institutional environment in this neighborhood. It is highly likely that most other similar facilities within the City would request a similar exemption, thus nullifying the Ordinance's effect entirely.

Pursuant to Section 20.98.025(D) of the NBMC, the City may also consider the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program:

*A. Whether the requested accommodation would fundamentally alter the character of the neighborhood.*

Since establishing the first of its dwellings as a sober living environment, a number of adverse secondary impacts have been reported by residents of neighboring properties. The impacts reported include but are not limited to:

- Meetings held at one or more of the applicant's facilities
- Excessive use of on-street parking by facility residents and their guests
- Second hand smoke
- Noise late at night

In many hearings for use permits and reasonable accommodations for nonconforming uses in residential areas, owners of neighboring properties have voiced concerns about affects on their property values if the permit or accommodation is granted. Due to a number of factors, including general fluctuations in the real estate market, staff is reluctant to speculate that any decline in property values is a direct result of the operation of applicant's facilities. Accordingly, this consideration was not factored into Staff's analysis.

*B. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.*

**Parking** – The applicant has stated that residents are permitted to have personal vehicles at the properties, but that few residents own cars. The applicant states

that "all park along Old Newport or along the commercial park area on Orange. No resident parks along Clay or the non-commercial parking area along Orange (i.e., Orange NE of Clay)."

Each building provides two enclosed parking spaces, consistent with the Zoning Code requirement for single-family and two-family residential development regulations. However, the Zoning Code requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. If the Pacific Shores facility provides housing for up to 50 resident clients, and the required 17 off-street parking spaces are not provided, granting the accommodation would result in insufficient on-site parking.

**Traffic and Generated Trips** – The Institute of Transportation Engineers (ITE) establishes and publishes standards for trip generation rates based on the use classification of a site. In the case of a single family dwelling, the standard trip rate is based on 9.57 average daily trips per dwelling, and for duplexes the standard trip rate is 6.72 average daily trips per dwelling. Trip rates for residential care facilities are based on 2.74 average daily trips per each occupied bed. Based on these standards, a 50-bed residential care facility would generate approximately 137 average daily trips. The evidence shows this facility will generate average daily trips substantially in excess of surrounding single- and two-family dwellings.

**5. Finding: That the requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.**

This finding can be made. A request for reasonable accommodation may be denied if granting it would pose "a direct threat to the health or safety of other individuals or result in substantial physical damage to the property of others." See 42 U.S.C. § 3604(f)(9). This is a very limited exception and can only be used when, based on the specific facts of a situation, a requested accommodation results in a significant and particularized threat. Federal cases interpreting this exception in the FHAA indicate that requested accommodations cannot be denied due to generalized fears of the risks posed by disabled persons.

## **SUMMARY**

In summary, with regard to the applicant's request to provide reasonable accommodation that treats the facility as a Single Housekeeping Unit, Findings Two and Four cannot be made. In accordance with the provisions of Section 20.98.025 of the NBMC, all five findings must be made in order for the Hearing Officer to approve a request for Reasonable Accommodation. Therefore, staff recommends that the Hearing Officer deny the Reasonable Accommodation request for the residents of the subject property to be treated as a Single Housekeeping Unit and to not be classified or treated as a Residential Care facility.

- **Analysis – Reasonable Accommodation Request No. 3 - requests that the City classify the use of the dwellings at 3309 Clay Street and 492 Orange Avenue and 492 ½ Orange Avenue as a legal nonconforming use.**

The City is already treating the dwellings as nonconforming uses. Pursuant to Ordinance No. 2008-05, owners and operators of all nonconforming uses in residential districts had the right to apply for a use permit after the ordinance became effective in February 2008 up until May 22, 2008. However, the applicant did not choose to submit an application for a use permit.

Per the ordinance, nonconforming uses in residential districts are subject to abatement at this time. Pursuant to NBMC Section 20.62.090 B, a property owner may request an extension of the abatement period so as to amortize the property's owner's investment.

The applicant may also apply for Reasonable Accommodation, which is the subject of this report.

- **Analysis – Reasonable Accommodation Request No. 4 – request that all code provisions applicable to the use of 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue (including Zoning Code, Building Code, fire safety and any other applicable code) be applied to those properties in the same manner that those codes are applied and enforced upon single family and two family residential uses located in residential districts zoned R-2.**

#### Zoning Code:

The applicant requests that the Zoning Code be applied to the uses at 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue as if these properties were in the residential use classifications Single-Family Residential or Two-Family Residential, as described in NBMC Section 20.10.020. Per NBMC Section 20.05.030, in order to be considered a Single-Family Residential or Two-Family Residential Use, the dwelling must be occupied by one or two Single Housekeeping Units, as defined by Section 20.03.030. (Although Section 20.10.020(K) and (L) refer to "occupancy by one family" and "each unit limited to occupancy by a single family," staff routinely substitutes the definition of "Single Housekeeping Unit" for "family" to comply with the rule of *City of Santa Barbara v. Adamson*, 27 Cal.3d 123 (1980), which precludes the City from defining families in terms of blood, marriage or adoption.)

Therefore, the applicant has essentially made a third, if differently worded, request to be treated as a Single Housekeeping Unit. In keeping with the analysis performed for Request No. One and Two, above, staff recommends denial of this request.

#### California Building Code:

The California Building Code (CBC) provides building standards and requirements for various types of occupancies that may be located in a building. The CBC is also the source of most fire and life safety requirements for different types of occupancies. Implementation and enforcement of some sections of the CBC are under the jurisdiction of the local Building Official, while others are under the jurisdiction of the State Fire Marshal. Enforcement of those sections under the jurisdiction of the State Fire Marshal is delegated to the local Fire Marshals.

Like the Zoning Code, the CBC focuses on the use to which a structure will be put when it sets standards. The CBC refers to the use types as "occupancy classifications," rather than "uses," but the CBC still focuses on the use, and whether the physical structure is appropriately built and sited on the property for a particular use or occupancy classification.

For buildings that will house certain occupancy classifications, the CBC sets standards for whether openings such as doors or windows are permitted within a certain distance from the property line, where a building is located in relation to the property line, smoke alarm and sprinkler system requirements, interior stairwell illumination, and other issues related to preventing the spread of fire from one structure to another, and to the occupants' ability to safely exit a building during a fire or other emergency. Fire-resistant types of construction are also required for certain occupancy classifications, or for occupancy classifications housing a certain number of residents, for fire safety purposes.

Residential care facilities are included in one of the occupancy classifications designated by the State Fire Marshal in the CBC. Since 1991, the CBC has included occupancy designations for alcohol and drug recovery facilities, with specific Code provisions put in place for the protection of those facilities' occupants. In the current version of the CBC, the 2007 CBC, single-family and duplex uses are R3 occupancies. Facilities such as the applicant's are R4 occupancies. The R4 occupancy classification includes residential care facilities housing seven or more clients in a single building. The CBC states that the R4 occupancy classification includes social rehabilitation facilities such as Halfway Houses, Community Correctional Facilities, Community Correction Reentry Centers, Community Treatment Programs, Work Furlough Programs, and Alcoholism and Drug Abuse Recovery or Treatment Facilities. (2007 Cal. Building Code § 310)

The City did not create the distinction between residential care facility occupancies and single- and two-family occupancies. Similarly, the City did not create the CBC requirements for how life safety is to be protected for residents of alcohol and drug recovery facilities, and how it is to be protected for other occupancy types. That distinction was created by the state's highest authority on fire and life safety issues, the State Fire Marshal. The State Fire Marshal's authority to establish life safety standards for various types of occupancies is based on authority expressly granted by the state legislature. California Health and Safety Code Section 13135 (Alcoholism or drug abuse treatment facilities; basis for regulations) states that the State Fire Marshal shall

adopt regulations for alcohol and drug recovery and treatment facilities. The State Fire Marshal reviews the characteristics and needs of each occupancy type, and sets varying degrees of protective regulations accordingly. It is these state regulations that the City is requiring the applicant to comply with.

The City does not have the authority to grant a waiver from the requirements of a state law of this type. When compliance with a CBC fire and life safety requirement is unduly burdensome, there are situations in which the Newport Beach Building Official or Fire Marshal has the authority to propose alternate fire and life safety protections (described in the CBC as "alternate materials and methods") that can provide an *equivalent* level of protection. The Newport Beach Fire Marshal does not, however, have the authority to waive or reduce life safety protection for the residents of the applicant's facilities when the State Fire Marshal has determined such protection is required. Similarly, the Building Official does not have the authority to *reduce* the standards required by the CBC. However, if the applicant disagrees with past or future decisions of either the Newport Beach Building Official or the Fire Marshal, the applicant's appropriate administrative remedy is to appeal that decision to the City's Building and Fire Board of Appeals. At this time, no appeal of any decision relative to 3309 Clay Street has been filed.

In the ongoing code enforcement activity with the applicant, the applicant has argued that the facility at 3309 Clay should be classified as an R3 (single-family or duplex) use. The filing of the applicant's reasonable accommodation request for this address confirmed that the property is properly classified as an R4 occupancy type. Even if it believed it had the authority to waive life safety protections for facility residents and neighbors, staff could not recommend waiving such protection. Staff believes that a responsible sober living home operator that is genuinely concerned for the well-being of its resident clients should not be seeking an accommodation that would allow it to cut corners in the crucial area of life safety, particularly when it seeks to densely populate its facility. Nevertheless, staff will analyze the request to underscore the reasons for its recommendation to deny this request.

1. ***Finding: That the requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.***

This finding can be made. The applicant has provided a signed statement certifying that all residents of the facility, excluding staff, are individuals in recovery from alcoholism or drug addiction. Federal regulations classify such individuals as disabled.

2. ***Finding: That the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.***

This finding cannot be made. Staff believes that the requested accommodation is not necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling. The Newport Beach Fire Marshal has indicated that the

changes needed to comply with the CBC are not impossible to achieve, and not prohibitively expensive.

NBMC Section 20.98.025(C) allows the City to consider the following factors in determining whether the requested accommodation is necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling:

*Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.*

Far from affirmatively enhancing the quality of life of the facility's disabled residents, granting the accommodation would place the life of the facility's residents at greater risk.

*A. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.*

Denying the accommodation will not deprive facility residents an opportunity to enjoy the housing type of their choice, assuming the facility residents have an interest in residing in a safe environment.

*B. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.*

The applicant has not argued that complying with the CBC's requirements for R4 occupancies is not financially feasible for them, or that the facility will not be economically viable if compliance is required.

*C. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.*

In 2007, City staff estimated that there were approximately 315 sober living beds in the city. Most of these beds are in facilities that have similar population density or less population density than the applicant's facility. As operators of other sober living facilities have reported decreased occupancy levels, prospective residents seeking a sober living environment of this type will not be deprived of an equal opportunity to live in a residential setting of similar type.

**3. Finding: That the requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or**

***administrative burden" is defined in Fair Housing Laws and Interpretive case law.***

This finding can be made. Granting the requested accommodation would not impose an undue financial or administrative burden on the City.

- 4. Finding: That the requested accommodation will not result in a fundamental alteration in the nature of a City program, as "fundamental alteration" is defined in Fair Housing Laws and Interpretive case law.***

This finding cannot be made. The State Fire Marshal made the determination that residential care occupancies with more than six residents have characteristics that require a certain degree of extra protection for their residents. Requirements for sprinklers, adequate egress, fire alarm pull stations and smoke alarms were adopted to allow a population of disabled individuals to live together with a greater degree of life safety protection. Waiving such requirements would result in a fundamental alteration of the CBC, because it undermines the basic purpose the CBC's life safety protections.

Extra protection for R4 occupancies is required in recognition of the fact that the same disabilities that require federal fair housing protection may also impact or impede the disabled individuals' ability to safety and quickly exit a building during a fire. Waiving those life safety protections for residents of this facility would fundamentally undermine the basic purpose which the California Building Code seeks to achieve - safety for the residents of applicant's facilities.

Granting the accommodation would also place neighboring properties at risk. The 2007 CBC requires that R4 occupancies have commercial sprinkler systems rather than residential sprinkler systems installed. Residential sprinklers are intended to protect the occupants of a residence and give them sufficient time to evacuate a building. Commercial sprinklers are intended to extinguish a fire and prevent it from spreading to other structures. Again, waiving this requirement would undermine the basic purpose the regulation seeks to achieve.

Pursuant to Section 20.98.025(D) of the NBMC, the City may also consider the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City program:

These sections will not be analyzed, as they pertain to zoning issues rather than CBC life safety issues.

- A. *Whether the requested accommodation would fundamentally alter the character of the neighborhood.*
- B. *Whether the accommodation would result in a substantial increase in traffic or insufficient parking.*

- C. *Whether granting the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable Specific Plan.*
  - D. *In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.*
5. ***Finding: That the requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.***

This finding cannot be made. As discussed above, some of the CBC requirements, such as those for commercial sprinkler systems, were adopted to protect neighboring structures as much as facility residents. Staff believes that granting the requested accommodation would result in a potential direct threat to the safety of neighboring properties, and could result in substantial physical damage to the property of others.

#### **SUMMARY**

Staff cannot make Findings Two, Four and Five of the required findings. In accordance with the provisions of Section 20.98.025 of the NBMC, all five findings must be made for the Hearing Officer to approve a request for Reasonable Accommodation. Therefore, staff recommends that the Hearing Officer deny Reasonable Accommodation Request No. Four.

#### **Analysis – Reasonable Accommodation Request No. 5 – Request to continue operation in a residential district zoned R-2, when such uses are permitted only in districts zoned MFR with a use permit.**

On March 13, 2009, the applicant requested exemption from the requirements of NBMC Section 20.10.020. NBMC Section 20.10.020 contains a schedule which establishes the land uses permitted or conditionally permitted in residential districts, and includes special requirements, if any, for specific uses.

Because of the limited time between this and other reasonable accommodation and use permit hearings, and the late date of this supplemental reasonable accommodation request, this staff report may not be available to the applicant in time for its counsel to prepare a full response. In the interest of due process, if the applicant wishes to request a continuance as to Request No. 5 only, staff will not oppose it.

The applicant's facility provides a sober living environment for individuals in recovery from alcohol and/or drug addiction. Although the single-family dwelling at 3309 Clay is currently unoccupied due to code compliance issues, the applicant has used it to house recovering residents in the past, and wishes to do so again in the future. With all three dwellings in

use, the applicant plans to house up to 50 residents at the facility. This land use would be classified as "Residential Care Facilities, General." Pursuant to NBMC Section 20.10.020, "Residential Care Facilities, Small Unlicensed" are permitted in MFR (Multi-Family Residential) Districts only, subject to approval of a use permit issued by a Hearing Officer. The applicant's facility is located in an R-2 District, where such uses are not conditionally permitted, or permitted by right. The applicant requests an exception from the requirements that facilities of this type be located only in MFR Districts with the approval of a use permit.

Ordinance No. 2008-05 codified the procedures for requesting, reviewing and granting, conditionally granting, or denying all requests for reasonable accommodation in the City of Newport Beach. The Hearing Officer is designated to approve, conditionally approve, or deny all applications for a reasonable accommodation. The ordinance also established required findings and factors the Hearing Officer may consider when making those findings.

Pursuant to Section 20.98.025(B) of the NBMC, the written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval.

1. ***Finding: That the requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.***

This finding can be made. The applicant submitted a signed statement that every resident of the facility is in recovery from alcohol and/or drug addiction. Federal regulations and case law define recovery from alcoholism and drug addiction as a disability, because it is a physical or mental condition that substantially impairs one or more major daily life activities.

2. ***Finding: That the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.***

As to current residents: This finding can be made. Staff does not question the need for sober living homes, nor the fact that persons with a disability must have the opportunity to use and enjoy a dwelling. There are currently no residents at 3309 Clay, but the duplex units are occupied. As the abatement period established by NBMC Section 20.62.090(A)(2)(a) has passed and the facility chose not to apply for a use permit at this location, this facility is now subject to abatement by the City. The facility currently houses residents at 492 and 492 ½ Orange who could be denied housing if abatement proceeds while they are still in residence at the facility.

As to prospective residents:

This finding cannot be made at the population level requested by the applicant

The applicant seeks to house up to 50 disabled individuals in three dwelling units. It proposes 12 residents in one six- (or three) bedroom single-family home, 20 in an adjacent duplex with one 10- (or six) bedroom unit, and 18 in the 9-(or six) bedroom unit.<sup>2</sup> Prospective residents seeking a large sober living environment in Newport Beach have an ample supply from which to choose. In 2007, City staff estimated there were approximately 315 sober living beds within the City, which could provide prospective residents of Pacific Shores with an equal opportunity to reside in this type of sober living environment.

Alternative finding – if the applicant reduces the number of beds and dwelling units, this finding can be made

If Pacific Shores reduces the size of its proposed facility from three dwelling units to one, and limits the population of that dwelling unit to no more than 12 resident clients, plus one on-site resident manager, City staff can accept an argument that granting the accommodation is necessary to afford disabled individuals an equal opportunity to use and enjoy a dwelling.

At this time, staff does not have sufficient information to make a final recommendation on which dwelling unit should be the designated residential care facility if the accommodation is granted. The duplex units have features not found in other known sober living facilities; 492 and 492 ½ Orange are large 6-bedroom (or 10- and 9-bedroom, according to the applicant) units that could probably accommodate up to 12 individuals in a comparatively spacious environment. Inspection by the City's building inspector or Fire Marshal would determine which buildings are currently compliant with California Building Code requirements for R4 occupancies. Staff can make a tentative recommendation that the Hearing Officer grant this accommodation to one of the dwelling units, but recommends that no final decision be made until the applicant has reviewed which dwelling unit would be best suited for this purpose. Immediate neighbors of the facility may also have input on this issue, and may have observed whether one unit is less likely to produce secondary impacts than others.

Although staff does not wish to make a final recommendation without applicant and neighbor input, it tentatively suggests choosing 492 ½ Orange as the dwelling unit for residential care use. 492 ½ Orange is a dwelling unit that has Pacific Shores dwelling units on two sides and an Orange Street frontage, which would reduce the negative secondary impacts that neighbors have reported in the Clay Street area. It is also closer to the streets that the applicant reports its residents use for on-street parking, Old Newport Blvd. and the commercial parking areas of Orange Avenue. It is the unit that is

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<sup>2</sup> Number of bedrooms reported by applicant. Plans filed with the City by the applicant show three rooms identified as bedrooms at 3309 Clay, and six bedrooms each in 492 and 492 ½ Orange Ave. Staff assumes that rooms identified on plans as "sewing room," "office," "computer room," etc. are being used as bedrooms. Compliance with Building Code requirements for bedrooms cannot be confirmed without inspection. Until this discrepancy is resolved, where the number of bedrooms is relevant to analysis, staff will supply analysis for both reported number of bedrooms, and number of bedrooms on the applicant's plans.

most likely to be in compliance with CBS requirements for R4 occupancies. In addition, it is one of two Pacific Shores dwelling units that was established before the 2007 moratorium.

NBMC Section 20.98.025(C) allows the City to consider the following factors in determining whether a requested accommodation is necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling:

- A. *Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.*

If the requested accommodation is granted, the applicant's current and potential clients will be able to live in a dwelling unit in an R-2 District with other individuals in recovery from alcoholism and addiction. This is a situation that can affirmatively enhance the quality of life of a person in recovery from addiction, unless overcrowding of the facility or institutionalization of the neighborhood interferes with the residents' re-integration into society.

At applicant's proposed population level: At the applicant's proposed population level of 50, with 20 residents in one dwelling, 18 in another, and 12 in a third, staff believes that overcrowding will not enhance the residents' quality of life. A 50-person facility appears to be a sober living institution. A single dwelling unit with 20 residents more closely resembles a sober living *dormitory* than a sober living *home*.

While living in a supportive environment with other recovering individuals has therapeutic benefits at certain population levels, living in a 50-person facility can also be detrimental to the recovery process of the residents. The purpose of community-based care is to allow residents to re-integrate into the community as their recovery progresses. If facility residents are surrounded primarily by others in recovery, they have reduced opportunities to interact with non-disabled neighbors and re-learn the norms and standards of living as fully functioning members of society.

At staff's proposed population level: If the requested accommodation is granted, the applicant's residents will be able to live in a large dwelling unit in an R-2 District with other individuals in recovery from alcoholism and addiction. Limiting the facility to 12 residents and an on-site resident manager in a large dwelling unit can provide therapeutic benefit to the residents while still allowing the process of reintegration into society to occur.

- B. *Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.*

**As to current residents:** The facility currently houses residents at 492 and 492 ½ Orange Ave. who could be denied housing if abatement proceeds while they are still in residence at the facility.

**As to prospective residents:**

**At the applicant's proposed population level:** Denial of the requested accommodation could result in abatement proceedings commencing against the facility. After abatement, current and potential residents of this facility would be denied the opportunity to live in a large three-dwelling sober living facility located in a residential district zoned for R-2 use. However, as stated above, there are a number of similar facilities located in the City that offer sober living in two dwelling units on a single parcel. Staff has been informed by the operators of those alternate facilities that they are currently occupied at approximately 50% of capacity. Therefore, recovering individuals who are denied housing at this specific facility can locate alternate housing opportunities of a similar type at other existing facilities.

**At staff's proposed population level:** As to the duplex units on Orange Street, staff is not aware of other facilities that have space and an interior floor plan that can accommodate up to 12 residents and still have room for offices, game rooms, computer rooms, multiple wet bars, and other common areas that provide a less compressed recovery environment. As to 3309 Clay, based on staff's inspection of its floor plan and size, it appears that a population of 12 would be more compressed, possibly to the same degree as residents of existing sober living facilities in the Peninsula and West Newport area that have up to six bedrooms in a sober living duplex.

- C. *In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.*

In its September 24, 2008 application for reasonable accommodation, the applicant objected to this request and declined to provide information. Therefore, staff is unable to analyze whether a particular number of residents are required to make the facility financially viable.

- D. *In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.*

In its September 24, 2008 application for reasonable accommodation, the applicant objected to this question, and referred to its answer to another application question containing general information about the importance and necessity of supportive sober living environments for recovering individuals. The

applicant concluded that the requested accommodation was necessary for the present and future residents of the facility to enjoy the housing of his or her choice.

At applicant's proposed population level: Staff is unable to reach the conclusion urged by the applicant. In 2007, City staff estimated that there were approximately 315 sober living beds in the City. There are many existing facilities that provide sober living environments that occupy more than one unit of a building, or are adjacent to other sober living facilities with a similar client/bedroom ratio (assuming all the bedrooms reported by the applicant prove to meet code requirements for bedrooms. If not, applicant's proposed population would be substantially more densely populated than the typical 12-person facilities scattered throughout the Peninsula and West Newport areas.)

At staff's proposed population level: If the size of the facility were reduced to 12 in one of the duplex units, staff could accept an argument that although there are many existing sober living facilities within the city that have a resident client population of 12, none are of a "similar nature and operation," which the Municipal Code authorizes staff to consider. Staff is not aware of any existing sober living facilities that are located in dwelling units as large as the duplex units on Orange Ave. The units in the duplex have a variety of rooms not identified on plans as bedrooms. City staff who reviewed and approved those plans believes those rooms could and should be returned to the uses that the applicant originally represented. When returned to their original stated purpose, these rooms could provide amenities that the typical 12-person sober living facility does not offer.

If the single family dwelling at 3309 Clay were selected as the site of the residential care facility, the argument is more problematic. According to plans on file with the City, 3309 Clay has only three bedrooms. If the applicant converts rooms identified on the plans as a library, exercise room, pool room and/or one of the storage rooms into bedrooms, the common areas that provide a less compressed interior living space are greatly reduced. In addition, there are currently four large sober living homes in single-family dwellings with beds for up to 60 residents in another area of the City, although they have been denied use permits and are currently subject to abatement. The operator of those homes has indicated an intent to appeal the use permit denial, and the outcome of that appeal has not been decided. The operator of that facility also has the option to apply for an extended abatement period under the NBMC. Therefore, the applicant's proposed facility at 3309 Clay is not currently the only facility of a similar nature and operation in the City, and residents will not necessarily be denied an opportunity for housing of a similar type and nature if this request is denied.

Even if the applicant provides housing for the disabled, and even if the requested accommodation is necessary, the City is not required to grant a request for accommodation that is not reasonable. Cities may find a requested accommodation

unreasonable if it either (1) imposes an undue financial or administrative burden on the city, or (2) results in a fundamental alteration in the nature of a city program, often described as undermining "the basic purpose which the requirement seeks to achieve."

3. ***Finding: That the requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined in Fair Housing Laws and interpretive case law.***

**As to current residents, this finding can be made:** The applicant did not report the average length of resident stay. However, other sober living facilities have reported that their resident stays range from 45 days to 180 days, with an average stay of 90 days. Assuming the applicant's facility has similar lengths of resident stays, allowing current residents to remain at the facility for the remainder of their stay will not impose an undue financial or administrative burden on the City.

**As to prospective residents:**

**At the applicant's proposed population level, this finding cannot be made.** In most cases, allowing a facility to remain at its current location when it is necessary to provide disabled individuals with an equal opportunity to use and enjoy a dwelling would not impose an undue financial or administrative burden on the City. However, due to the 2007 illegal construction at 3309 Clay, the ongoing delays in obtaining applicant's compliance with Building Code requirements, complaints received from neighbors about the intensity of facility use, the applicant's violation of the 2007 moratorium at 492 Orange, and the applicant's history of obfuscation regarding the type of use occurring at the facility, substantial financial and administrative burdens have already been incurred with regard to this facility.<sup>3</sup> If the facility continues at the same intensity of use, negative secondary impacts on neighboring properties seem likely, and the City will have to expend additional resources to get the applicant to reduce those impacts.

**At staff's proposed population level, this finding can be made.** At a reduced size and population level, staff anticipates fewer negative secondary impacts on neighboring properties. The City could spend fewer Code Enforcement, Building and Fire Department resources to keep this applicant in compliance with state and local law. Staff makes this finding with the cautiously optimistic belief the facility operator will behave differently going forward than it has in the past. This finding can be accurate only if the applicant ceases its past pattern of obfuscation, and operates its facility with considerate regard for its impacts on neighboring properties.

<sup>3</sup> In 2007, applicant's representative Mark Manderson, Sr. informed a City Code Enforcement officer verbally and in writing, and an ADP complaint officer verbally, that Pacific Shores was renting rooms to tenants and was not a recovery facility. Code Enforcement resources were required to clarify whether the property was being used as an illegal boarding house, or as housing for disabled individuals. In addition, the applicant's May, 2007 moratorium violation led the City to file a state court action against the applicant, which incurred additional financial burden.

4. ***Finding: That the requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.***

**As to current residents, this finding can be made:** The applicant did not report the average length of resident stay. However, other sober living facilities have reported that their resident stays range from 45 days to 180 days, with an average stay of 90 days. Assuming the applicant's facility has similar lengths of resident stays, allowing current residents to remain at the facility for the remainder of their stay will not impose an undue financial or administrative burden on the City.

**As to prospective residents:**

**At the applicant's proposed population level, this finding cannot be made.** (See below)

**At staff's proposed population level, this finding can be made.**(See below)

Ordinance No. 2008-05 places regulations on all groups not living in either a single housekeeping unit or a residential care facility classified as "Residential Care Facilities, Small Licensed." The basic purpose of these regulations is to ensure that the fundamental purposes of the Zoning Code can be achieved, and to mitigate adverse secondary impacts residential care facilities may have on the surrounding neighborhood.

**Basic purposes of providing two-family and multi-family residential districts:**

The basic purposes NBMC Chapter 20.10 seeks to achieve are set forth in NBMC Section 20.10.010. Those purposes include locating residential development in areas which are consistent with the General Plan and with standards of public health and safety established by the Municipal Code, ensuring adequate light, air and privacy for each dwelling, protecting residents from the harmful effects of excessive noise, population density, traffic congestion and other adverse environmental effects, and providing public services and facilities to accommodate planned population and densities.

As described in the printed and online versions of NBMC Section 20.10.010, the specific purposes of the Two-Family Residential (R-2) District and the Multifamily Residential (MFR) District are identical. The R-2 District "provides areas for single-family and two-family residential land uses," and the MFR District "provides areas for single-family and two-family residential land uses."

Staff has confirmed that this is an error in transcription of this portion of the Municipal Code by an outside service, and correction is underway. Planning Department staff notes that in the version of Section 20.10.010 of the Zoning Code which it uses, based on Ordinance No. 2004-01 which amended the Zoning Code effective January 1, 2008, the Multifamily Residential District is described differently: "Provides for medium-to-high density residential development up to approximately 36 dwelling units per gross acre,

including single-family (attached and detached), two-family and multi-family. " Residential districts zoned R-2 in the Newport Heights area provide for medium-density development.

At the applicant's proposed population level: The applicant wishes to house 50 residents in the three dwellings at the facility. Thirty-eight residents are proposed for a single parcel. This is a high level of population density. Permitting the facility to remain in its current location in the R-2 District at the applicant's proposed population level would undermine the zoning program's basic purpose of grouping uses of similar densities in the same zoning districts.

At staff's proposed population level: However, with a reduced resident population, staff feels that granting the accommodation with appropriate conditions would not undermine the basic purpose of this portion of the City's zoning program. Requiring two units to revert to Single Housekeeping Unit use, and allowing a maximum of 12 residents plus one resident manager in the remaining dwelling unit (preferably one of the large duplex dwelling units) is likely to bring the population of all three dwelling units into a medium-density range consistent with the R-2 zoning standards in place for this area of Newport Heights.

**Basic purpose of use permit requirement:**

Use permits are required for use classifications typically having operating characteristics that require special consideration, so that they may be located and operated compatibly with uses on adjoining properties and in the surrounding area. NBMC Section 20.91A.010 sets forth the purposes of requiring use permits in residential districts. The first stated purpose is:

. . .to promote the public health, safety, and welfare and to implement the goals and policies of the Newport Beach General Plan by ensuring that conditional uses in residential neighborhoods do not change the character of such neighborhoods as primarily residential communities.

The second purpose is:

. . . to protect and implement the recovery and residential integration of the disabled, including those receiving treatment and counseling in connection with dependency recovery. In doing so, the City seeks to avoid the overconcentration of residential care facilities so that such facilities are reasonably dispersed throughout the community and are not congregated or over-concentrated in any particular area so as to institutionalize that area.

Even if the facility is exempted from Section 20.10.020 and permitted to remain in its current location without a use permit, it is not exempt from reasonable controls the City might place on it. NBMC Section 20.98.015 states that the Hearing Officer shall approve, *conditionally approve* or deny applications for reasonable accommodation. The City can impose the same conditions through an accommodation that it could

impose under a use permit. A reasonable accommodation with appropriate conditions can mitigate adverse secondary impacts such as noise, overcrowding, parking and traffic impacts, excessive second-hand smoke, and unruly behavior by residents of applicant's facility to the detriment of neighbors.

Furthermore, unlike a use permit, a reasonable accommodation is not a land use entitlement that runs with the land to future owners and facility operators. A reasonable accommodation is a disability-related exemption that is specific to the housing provider or disabled individual(s) to whom it is granted, as well as specific to the dwelling. If this applicant decided to cease providing disabled housing at this location, the accommodation would no longer be necessary and would cease as well.

Staff is aware there can be situations where the reasonable accommodation mandates of fair housing laws require the Hearing Officer to grant an exemption from the use permit requirement. However, these situations should be limited to those in which the applicant can demonstrate that the accommodation would not undermine the basic purposes of the use permit requirement. Staff believes that the clearest way for an applicant to demonstrate this is for the applicant to show that:

- (a) the applicant's facility can meet all standards required for issuance of a use permit, including the operational standards of NBMC Section 20.91A.050, and the required findings of NBMC Sections 20.91A.060 and 20.91.035(A); or
- (b) if all standards required for issuance of a use permit can not be met, or required findings made, the applicant can demonstrate that in its particular case the inability to meet a specific standard or make a required finding does not undermine either of the two basic purposes of the use permit requirement; and
- (c) the applicant is willing to meet conditions that would have been required under a use permit to ensure that the character of the surrounding neighborhood is not changed, and that residential care facilities are reasonable dispersed throughout the community and are not congregated or overconcentrated in any particular area so as to institutionalize that area.

**As to current residents:** The applicant did not report the average length of resident stay. However, other sober living facilities have reported that their resident stays range from 45 days to 180 days, with an average stay of 90 days. Assuming the applicant's facility has similar lengths of resident stays, allowing current residents to remain at the facility for the remainder of their stay will not impose an undue financial or administrative burden on the City.

**As to prospective residents:**

**At the applicant's proposed population level,** staff does not believe a reasonable accommodation with conditions similar to those imposed through a use permit could ensure that the primarily residential character of this neighborhood is not changed. It also does not believe that, even with conditions, it could protect and implement the

recovery and residential integration of the disabled and avoid an overconcentration of residential care facilities in the neighborhood. With 50 people in three adjacent buildings, the facilities are not reasonably dispersed throughout the community, and are concentrated in a specific area to a degree that arguably institutionalizes that area. On the east and west side of this block of Clay Street, there are only nine parcels of land. By converting two of them to residential care facility use, the applicant has turned nearly a quarter of the block into a residential care facility.

Staff has difficulty making a finding that continued maintenance of the use would not create an overconcentration of residential care uses in the vicinity. Per NBMC Section 20.91A.060(D) and (D)(3), when the Hearing Officer is analyzing whether granting a use permit will result in an overconcentration of residential care uses in the vicinity, he or she shall consider, as appropriate, whether it would be appropriate to apply the APA standard of one or two such uses per block.

Staff recognizes that the applicant is not applying for a use permit, but to justify waiving the use permit requirement, staff must demonstrate that the purpose which the use permit requirement was meant to achieve is not undermined by waiving the requirement. One of the stated purposes of the use permit requirement is to prevent overconcentration and institutionalization of a neighborhood.

In addition, with 50 resident clients in three adjacent buildings, the findings required by NBMC Section 20.91A.060 could not be made. If staff accepts applicant's representations that all rooms converted to bedroom use meet all California Building Code requirements for bedrooms for this type of occupancy, 12 residents at 3309 Clay, 18 at 492 ½ Orange, and 20 at 492 Orange meet the requirements of NBMC 20.91A.050(C)(1) (maximum population of two residents per bedroom plus one). If any of the converted bedrooms are not legal for that purpose, the occupancy standards are not met. Furthermore, staff believes that rooms designated as offices, game rooms, etc. on the plans that the City approved should be returned to those uses.

Parking presents an even bigger problem. The Zoning Code requires that a residential care facility provide one on-site parking space for every three residential care beds. With 50 residents, 17 on-site parking spaces are required. Applicant's properties provide six on-site parking spaces. Even if not all residents have cars, with a population of 50 people on two parcels that provide only six on-site parking spaces, it is difficult to argue that the accommodation would not result in insufficient parking.

At staff's proposed population level, staff believes that a reasonable accommodation with conditions similar to those imposed through a use permit could ensure that the primarily residential character of this neighborhood is not changed. It also believes that by reducing the number of resident clients to 12, and the number of units used for recovery facility purposes to one, it can protect and implement the recovery and residential integration of the disabled and avoid an overconcentration of residential care facilities in the neighborhood.

In a six-bedroom facility, with 12 residents and one resident manager, the bed count would be within the operational standards of NBMC Section 20.91A.050(C)(2), which requires that a use permit allow no more than two residents per bedroom plus one additional resident. However, even with only 13 occupants, none of the buildings have on-site parking that conform to the NBMC's on-site parking requirements of one parking space for every three beds. With 13 occupants, five on-site parking spaces per unit are required; each dwelling unit has only two on-site spaces that conform to the City's parking requirements. The applicant has stated that not all of the residents have personal vehicles during their stay at the facility. If the Hearing Officer grants the accommodation, staff recommends including a condition that prohibits more than six residents from having personal vehicles while residing at the facility, and that those residents that are permitted personal vehicles continue to park on Old Newport Road and commercial areas of Orange Ave. if they do not park in the garage spaces provided by the unit in which they live.

Even if parking and occupancy levels are appropriately addressed, staff would have difficulty making all the findings required for issuance of a use permit for nonconforming use in a residential zone. This is because one of the required findings is that all operational standards of NBMC Section 20.91A.050 are met, and the applicant might not be able to meet the standard described in Section 20.91A.050(C)(4). This subsection establishes a requirement that all persons with an ownership or leasehold interest in the facility, or who will participate in the operation of the facility, shall not have a demonstrated pattern or practice of operating similar facilities in violation of state or local law.

In 2007, the dwelling at 3309 Clay Street housed either sober living residents or a prohibited Group Residential use in a dwelling with unpermitted construction. The dwelling at 3309 Clay Street appeared to be set up for use by more than six residents in 2007, in violation of the NBMC's requirement at that time that unlicensed facilities with more than six residents must apply for and receive a Federal Exception Permit (FEP) to establish such uses. The use at 492 Orange Ave. was established during 2007 the moratorium. Also in 2007, Mark Manderson, Sr., made false statements to both City and state code enforcement officers and inspectors. In addition, Mark Manderson, Sr., has a long-standing history of establishing illegal units in other areas of the city. The City regards illegal dwelling units as one form of prohibited Group Residential or boarding house use, as it results in groups not living as a single housekeeping unit in what was originally intended to be a single dwelling unit.

Since this is a reasonable accommodation application rather than a use permit application, however, the applicant has an opportunity to demonstrate why the fact that one of the individuals affiliated with the facility made material misstatements of fact to City and state officials does not undermine the basic purpose that the use permit requirement was put in place to achieve. The applicant will need to make a similar showing to show why Mr. Manderson's past practices of housing tenants in buildings with illegal construction and illegal units, as well as ignoring the City's moratorium ordinance, does not undermine the basic purpose of the use permit requirement.

If the applicant can make a compelling argument that demonstrates the purposes of the use permit requirement will not be undermined by Mr. Manderson's past business practices, staff believes conditions could be applied in several areas that would allow the accommodation to be granted consistent with the basic purposes of NBMC Sections 20.10.010, 20.10.020, and Chapter 20.91A. They include:

1. A bed cap of no more than 12 resident clients in one dwelling unit, plus one on-site resident manager;
2. Maintaining a weeknight curfew of 10:00 p.m. for all residents;
3. Maintaining a weekend curfew 11:00 p.m. for all residents;
4. Establishing quiet hours of 10:00 p.m. to 8:00 a.m.;
5. Establishing quiet hours for television use from 10:00 p.m. to 8:00 a.m.;
6. Requiring compliance with the standards of NBMC Section 20.91A.050(A), relating to secondhand smoke detectable from off the parcel upon which the facility is located;
7. Providing the names of all persons and entities with an ownership or leasehold interest in the facility; (Currently, other than establishing one dwelling unit of the facility during the 2007 moratorium and the ongoing building code violation, staff has no evidence suggesting that any known person affiliated with this facility has demonstrated a pattern or practice of operating similar residential care facilities in violation of State or local law.)
8. Providing a list of any similar facilities in the State of California owned or operated by the facility operator within the past five years, and certifying under penalty of perjury that none of such facilities have been found by State or local authorities to be operating in violation of State or local law;
9. Compliance with all applicable state and local laws, including California Building Code requirements for this occupancy type;
10. No more than six residents shall have personal vehicles at the facility or the surrounding neighborhood while residing at the facility. Those residents that are permitted personal vehicles shall park on Old Newport Road and commercial areas of Orange Ave. if they do not park in the garage spaces provided by the unit in which they live;
11. Residential care facility uses and services limited to a single dwelling unit;
12. All other dwellings returned to use as residences for Single Housekeeping Units, as that term is defined in NBMC 20.03.030.
13. Because of past practices of the applicant, annual inspection to confirm use and occupancy levels by City staff is required.

Essentially, these conditions would require that the facility comply with the development and operational standards required of similar facilities receiving a use permit under NBMC Chapter 20.91A. Staff believes that with these conditions (and an appropriate explanation of why the past illegal practices of one person affiliated with management and operation of the facility do not undermine the purpose of the use permit requirement,) the findings which NBMC Section 20.91A.060 requires for issuance of a use permit could be made with regard to this facility, and that the basic purpose of the use permit requirement would therefore not be undermined.

Pursuant to Section 20.98.025(D) of the NBMC, the City may also consider the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program:

- A. *Whether the requested accommodation would fundamentally alter the character of the neighborhood.*

At the population levels proposed by the applicant: As discussed above, staff feels that transforming nearly one-quarter of the block that fronts Clay Street into a large residential care facility with up to 50 residents would fundamentally alter the character of the neighborhood.

At the population levels proposed by staff, the requested accommodation would permit a maximum of 12 individuals plus an on-site resident manager to live in a relatively spacious dwelling in a neighborhood surrounded by single housekeeping units. It does not appear that allowing the facility to serve 12 resident clients in a single dwelling unit with appropriate conditions and supervision would fundamentally alter the character of the surrounding neighborhood.

- B. *Whether the accommodation would result in a substantial increase in traffic or insufficient parking.*

**Parking** – As described above, the dwelling addressed as 492 Orange Avenue includes an attached tandem two-car garage, and the dwelling addressed as 492 ½ Orange Avenue includes a two-car garage (side-by-side parking spaces). The parcel located at 3309 Clay Street is developed with a single-family dwelling with an attached tandem two-car garage. The on-site parking provided at each building is consistent with the Zoning Code requirement for single-family and two-family residential development. However, the Zoning Code requires that a residential care facility provide one on-site parking space for every three residential care beds.

At applicant's proposed population level: As discussed above, with 50 residents, 17 on-site parking spaces are required, and the facility provides only six. Even if not all residents have cars, a substantial increase in insufficient parking will result. The off-street parking requirements in R-2 zoning districts were not intended to accommodate this density of use, and the on-street parking was not designed to accommodate the degree of overflow parking that would result from a use of this density.

At staff's proposed population level: With 13 residents (resident clients plus manager), five parking spaces are required. None of the applicant's properties provide more than two on-site parking spaces, which would provide the on-site parking required by the Zoning Code for only six residents. If the Hearing Officer grants the accommodation, staff recommends including a condition that prohibits

more than six residents from having personal vehicles while residing at the facility, and that those six residents continue to park on Old Newport Road and commercial areas of Orange Ave. if they do not park in the garage spaces provided by the unit in which they live.

**Traffic and Generated Trips** – The Institute of Transportation Engineers (ITE) establishes and publishes standards for trip generation rates based on the use classification of a site. For a single-family home, the standard trip rate is based on 9.57 average daily trips per dwelling. For a duplex, the standard trip rate is based on 6.72 average daily trips per dwelling unit. Trip rates for residential care facilities are based on 2.74 average daily trips per each occupied bed.

At applicant's proposed population level: Based on these standards, a 50-bed residential care facility would generate approximately 137 average daily trips. A duplex would generate approximately 13.44 average daily trips. A single-family home would generate approximately 9.57 average daily trips per dwelling. If occupied by single housekeeping units, the ITE formula predicts a total of 23.01 average daily trips for one single-family dwelling and the two units of the duplex. The evidence shows this facility will generate trips substantially in excess of average daily trips of the single housekeeping units in surrounding duplexes and single-family homes.

At staff's proposed population level: Based on these standards, a 13-bed residential care facility (residents + staff) would generate approximately 35.62 average daily trips. A single unit in a duplex would generate approximately 6.72 average daily trips. A single-family home would generate approximately 9.57 average daily trips. This suggests that the facility will still generate trips substantially in excess of average daily trips as the single housekeeping units in surrounding duplexes and single-family homes. However, if the applicant limits the number of personal vehicles permitted at the facility to the six which the Zoning Code permits, the number of trips generated are more likely to be in the 16.44 average daily trips range, and the resulting impacts on traffic would not be considered substantial.

5. ***Finding: That the requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.***

This finding can be made. A request for reasonable accommodation may be denied if granting it would pose "a direct threat to the health or safety of other individuals or result in substantial physical damage to the property of others." See 42 U.S.C. § 3604(f)(9). This is a very limited exception and can only be used when, based on the specific facts of a situation, a requested accommodation results in a significant and particularized threat. Federal cases interpreting this exception in the FHAA indicate that requested accommodations cannot be denied due to generalized fears of the risks posed by disabled persons.

## **SUMMARY**

In accordance with the provisions of Section 20.98.025 of the NBMC, all five findings must be made in order for the Hearing Officer to approve a request for Reasonable Accommodation.

**As to current residents:** All five required findings can be made. The applicant did not report the average length of resident stay. However, other sober living facilities have reported that their resident stays range from 45 days to 180 days, with an average stay of 90 days. Staff recommends granting an accommodation that permits all current residents to reside at the facility for the remaining duration of their stay, to a maximum of six months. Staff recommends that as current residents complete their stay and move out, facility operations be consolidated into a single dwelling unit with 12 resident clients and one resident manager. This consolidation should occur as soon as possible, within a maximum period of six months from the day the resolution of approval is adopted by the Hearing Officer.

### **As to prospective residents:**

**At the applicant's proposed population level:** Staff cannot make all five required findings, and therefore cannot recommend that the Hearing Officer grant Request No. Five at the applicant's proposed population level.

**At staff's proposed population level:** Staff believes that with conditions that include limiting the facility population to 12 residents and one resident manager with only six personal vehicles, all five findings could possibly be made for Request No. 5. However, as of the date this report was prepared, the applicant has not had a chance to submit an explanation of why the applicant's inability to meet one of the required operational standards does not undermine the basic purpose of the use permit requirement, and has not had a chance to study its operations and consider which of the units is best suited for the remaining residential care use proposed by staff. If the applicant desires a continuance to prepare this information, staff recommends that the Hearing Officer continue the request for accommodation from the restrictions of NBMC Section 20.10.020. This will allow the applicant to provide the information required for a final staff recommendation, and staff to analyze the information.

### **Environmental Review**

This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.