

RESOLUTION NO. HO2014-001

**A RESOLUTION OF A HEARING OFFICER OF THE CITY OF
NEWPORT BEACH DENYING REASONABLE
ACCOMMODATION NO. 2013-001 FOR A RESIDENTIAL CARE
FACILITY LOCATED AT 610 36th STREET AND OPERATED BY
OHIO HOUSE, INC. (PA2013-198)**

THE HEARING OFFICER OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Stump, as owner of Ohio House, LLC, with respect to property located at 610 36th Street, and legally described as Lot 6, Block 635 of Canal Section Tract, requesting accommodation from the requirements of Newport Beach Municipal Code (NBMC) Section 20.18.020 (Residential Zoning Districts Land Uses and Permit Requirements).
2. The applicant proposes to allow the continued operation of an existing unlicensed residential care facility for up to 10 clients in recovery from alcohol and/or drug addiction and one resident supervisor in a duplex.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (R-2).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two-Unit Residential (RT-D).
5. A public hearing was held on February 24, 2014, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Hearing Officer at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.070 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.*

Facts in Support of Finding:

1. The Ohio House submitted a statement signed under penalty of perjury that every client of the facility is in recovery from alcohol and/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.

Finding:

- B. *The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.*

Facts Do Not Support The Finding:

1. There are several other facilities in the City which provide a sober living environment for 6 or fewer persons and 7 or more persons in duplex structures located in the R-2 Zoning District. The number of sober living beds available in other previously authorized facilities provide ample alternatives to offer current and potential Ohio House clients with an opportunity to enter the housing type of their choice within the same Balboa Peninsula neighborhood as the subject property. Overcrowding of the facility or institutionalization of the neighborhood interferes with the clients' reintegration into society.
2. In February 2014 City staff estimated that there are 335 authorized residential care facility client beds with 201 of those beds currently operating in the 26 open facilities within the City. These residential care facilities within the City include several in R-2 Zoning Districts in the Balboa Peninsula area and could provide a person recovering from addiction with an equal opportunity to live in a sober living environment without granting the accommodation.
3. The applicant has not provided adequate evidence or information clearly demonstrating that the size or type of facility requested is necessary for the facility's financial viability. In addition, the information that has been provided by the applicant does not clearly state why exemption from the Residential District Land Use Regulations requirements is necessary to make its facilities viable in light of the current market for the type of services it provides. The applicant does state that Ohio House is more affordable than other facilities but does not provide evidence of this.
4. The applicant has not submitted any information that would demonstrate that clients of the facility will receive any greater therapeutic benefit from this unlicensed

large facility than several other large facilities licensed and authorized by the City within the Balboa Peninsula area.

Finding:

C. 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.

Facts Do Not Support The Finding:

1. The applicant states the clients are not transient, and has reported that the typical length of stay is eight months. However, to date there has been increased Code Enforcement activity associated with the large facility. Code Enforcement has been provided evidence of parking, littering, and noise violations discussed in detail on page 17 of the staff report. This could impose an undue financial or administrative burden on the City.

Finding:

D. 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.

Facts Do Not Support The Finding:

1. Authorizing the continued use by an operator who established a facility illegally would undermine a basic purpose of the City's General Plan and Zoning Code. Policy LU 6.2.7 of the City of Newport Beach General Plan requires the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law to minimize impacts on residential neighborhoods. The City adopted Ordinance No. 2008-5 in order to implement General Plan Policy LU 6.2.7.
2. To implement the stated purposes of the General Plan and Zoning Code, Ordinance No. 2008-5 placed regulations on all groups not living either as single housekeeping units or in a residential care facility classified as "Residential Care Facilities". These regulations are in place to ensure that the fundamental purposes of the Zoning Code can be achieved, and so that adverse secondary impacts that residential care facilities may have on the surrounding neighborhood can be mitigated. The Zoning Code requires that:
 - Unlicensed Residential Care Facilities are only allowed within the Multi-Family Residential Zoning Districts and may not operate without the approval of a conditional use permit.

- An express purpose of requiring operational standards for conditional use permits in residential zones is to ensure that conditional uses are operated in a manner consistent with federal, state, and local law; and
 - A required finding to grant approval of a conditional use permit in a residential zoning district is that the operator does not have a demonstrated pattern or practice of operating similar uses in violation of federal, state, or local law.
3. To support the General Plan's purpose of minimizing impacts of residential care facilities on residential neighborhoods, the Zoning Code regulates such facilities to the maximum extent permitted by law, even when granting reasonable accommodations. Waiving operational standards provided by a conditional use permit and permitting a large residential care facility where it is prohibited inhibits the City Council to provide the maximum protection required by the General Plan and would undermine a basic purpose of the General Plan and the Zoning Code. In the case of Ohio House, the operator has demonstrated a practice of operating a facility in violation of local laws.
 4. Ohio House established the facility in May 2013 without first applying for and receiving a reasonable accommodation from the City, which is a violation of Section 20.18.030 of the NBMC. The Hearing Officer found that given the violations of the NBMC, allowing Ohio House to continue operating at its current location would undermine one of the basic purposes and operational standards the Conditional Use Permit requirement was put in place to achieve. Specifically, the use does not conform to the operational standards established by Section 20.52.030(G.2.c).
 5. Overlooking the violations of local law by Ohio House, and waiving the Conditional Use Permit operational standards related to those violations is not consistent with the provisions of the General Plan. The establishment of "Residential Care Facility, General Unlicensed" uses in residential zoning districts where such uses are not permitted without first applying for and receiving a reasonable accommodation would be detrimental to the harmonious and orderly growth of the City.

Finding:

- E. 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.*

Facts In Support Of The Finding:

1. 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

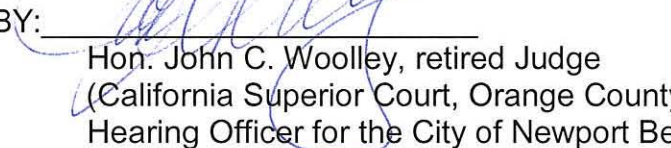
requested accommodation results in a significant and particularized threat. Federal cases interpreting this exception in the FHAA indicate that requested accommodations cannot be denied due to generalized fears of the risks posed by disabled persons. In this case, there are no facts that suggest granting the requested accommodation would result in a significant and particularized threat.

SECTION 4. DECISION.

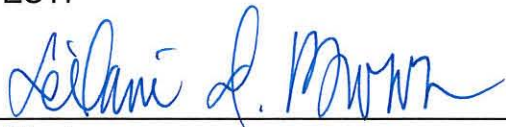
NOW, THEREFORE, BE IT RESOLVED:

1. The Hearing Officer of the City of Newport Beach hereby denies Reasonable Accommodation No. RA2013-001, and the operator shall abate the use in the lower unit by May 21, 2014, and shall abate the use in the upper unit by July 31, 2014. Both units are subject to the Abatement Operational Conditions set forth in Exhibit "A" attached hereto and made a part hereof.
2. This action shall become final and effective 14 days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 28th DAY OF FEBRUARY, 2014.

BY: 
Hon. John C. Woolley, retired Judge
(California Superior Court, Orange County)
Hearing Officer for the City of Newport Beach

ATTEST:



City Clerk



EXHIBIT "A"

ABATEMENT CONDITIONS ASSOCIATED WITH DENIAL OF REASONABLE ACCOMMODATION NO. RA2013-001

Ohio House, LLC
610 36th Street, Newport Beach

1. **Abatement Period.** This use shall abate no later than May 21, 2014, from the lower unit and no later than July 31, 2014, from the upper unit.
2. **Occupancy Level.** The Operator shall limit occupancy of the lower unit to five client beds and occupancy of the upper unit to five client beds and one on-site resident manager can reside in either of the units. Operator shall not accept any new resident clients for either of the units during the abatement period.
3. **Staffing.** Operator shall have one qualified manager on-site at all times clients are present at the facility to appropriately and responsibly manage the facility.
4. **Governmental Referrals.** Operator shall not provide any services to any client or house any client who has been referred or caused to be referred to this facility by any governmental agency, including but not limited to probationers or parolees.
5. **Assembly Uses.** Assembly uses, including meetings and gatherings with non-resident attendees, are prohibited at the facility, except those that are limited solely to client residents of the facility and facility staff.
6. **Medical Waste.** Any and all medical waste generated through the operation of the facility shall be disposed of in accordance with the Newport Beach Municipal Code, all other laws and best industry standards and practices.
7. **Trash.** Operator shall abide by the City's regulations regarding trash disposal including providing the proper amount of trash cans for the property's use (so that cans do not overflow), placing the cans out no earlier than 7:00 p.m. the evening prior to collection, and placing the cans back in the side yard (or other contained area) no later than 6:00 p.m. the day of collection.
8. **Smoking & Cigarette Litter.** No clients, guests, or any other users of the subject property may smoke in an area from which the secondhand smoke may be detected on any parcel other than the parcel upon which the use is located. Ohio House, LLC shall enforce house rules against litter, including prohibiting clients, staff, and/or residents from littering cigarette butts on the ground, sidewalk, gutter or street.
9. **Vehicles, Parking & Garages.** All vehicles associated with this facility, including the client transportation vehicle, shall park on site. This facility may

have a maximum of two vehicles associated with its use. The Operator shall keep the two designated garage parking spaces at the facility open and available for parking for the manager and resident clients at all times. Client move-out shall be accomplished in such a manner that traffic on area streets and/or neighboring driveways is not blocked.

10. **Transportation.** Facility residents and staff shall abide by and respect all City rules regarding parking, stopping and waiting to load and unload resident clients, and driving on City streets. All client transportation drivers are prohibited from stopping or double-parking in a traffic lane, or blocking a sidewalk.
11. **Quiet Hours.** The on-site facility manager shall maintain "Quiet Hours" between 10:00 p.m. to 8:00 a.m., daily, where persons on the street or on adjacent properties cannot hear any noise (including music, TV's, voices) from the facility except in an emergency.
12. **Profanity and Lewd Behavior.** Operator shall not tolerate lewd behavior, lewd speech, or profanity at the subject property. Profanity at a level audible to neighboring residents may result in an administrative citation issued by the City upon the property owner and operator.
13. **Deliveries.** Any deliveries of business products, or other packages, goods, or other tangible items to the facility shall be made during weekdays between the hours of 9:00 a.m. and 5:00 p.m.
14. **Contact Information.** Operator shall provide area residents and the City with a 24/7 contact name, phone number and e-mail address to assist residents and the City with problems or concerns arising from the facility. E-mails or messages left for the Operator's designated contact shall be responded to within the next 24-hour period.
15. **Building and Zoning.** Operator recognizes that the subject property has specific setbacks from the side yards, front yard, and/or back yard per the City's Building and Zoning Codes. Operator will keep these setbacks clear of obstructions, including building obstructions. The orderly storage of trashcans is acceptable in setbacks.
16. **Facility Nuisances.** The subject property shall not be unsafe, unsightly or poorly maintained. If Operator receives a nuisance violation from the City in regard to any of these issues, Operator shall correct the violation within seven (7) days or contact the City directly to negotiate a mutually agreeable timeline.
17. **Beaches and Other Common Gathering Areas.** Operator's use of the beaches and/or other common or public gathering places for meetings, prayer, conversation, or any other gatherings shall show due respect to non-resident

visitors, residents, and/or other beachgoers, thus allowing them to take full enjoyment of the beach and/or other common or public gathering places. Operator shall not conduct business on the beach and/or other common or public gathering places (per NBMC 10.08.030).

18. **Services to Facility's Clients or Residents.** Operator will use industry's best practices to ensure that the facility's clients or residents stay in recovery (including scheduled substance testing, random substance testing, and encouragement of 12-Step meetings or counseling). Operator shall ensure that any client or resident removed from Operator's program or facility has the resources necessary to return home.
19. **Federal, State and Local Laws.** Operator shall comply with all federal, state, and local laws. The issuance of this reasonable accommodation shall not constitute a waiver of the requirements of any federal, state or local law, including the requirements of the California Building Code and Fire Code.
20. **Compliance with Conditions.** Operator shall comply with these conditions during the conditional abatement period, which concludes on May 21, 2014, for the lower unit and on July 31, 2014, for the upper unit.

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