

1 side to present additional information relevant to the Application. Accordingly, pursuant
2 to the proposal of Applicant's counsel, Mr. Brancart, the parties agreed to provide
3 further briefing to the Hearing Officer within two weeks after the July 7, 2009 hearing,
4 that is, by July 21, 2009. The City of Newport Beach submitted additional written
5 information to the Hearing Officer within the two-week period; however, Newport Coast
6 Recovery did not file its letter brief until July 29, 2009. In response to the City's
7 objection to the late filing, the Hearing Officer accepted the Applicant's late filing but
8 allowed the City an additional period of 5 days to file a response. The Hearing Officer
9 considered these filings in rendering this Order and concludes further conferences or
10 hearings are not necessary.

11 This Decision is made based upon the Application for Reasonable
12 Accommodation, the Staff Report and Attachments dated July 7, 2009, the testimony
13 and argument presented at the hearings, and the letter briefs and filings made
14 subsequent to the hearing.

16 THE APPLICATION

17 The Applicant made its request for reasonable accommodation under the Federal
18 Fair Housing Act, as amended, and the Newport Beach Municipal Code by using a
19 multi-faceted approach. Subsequent to the Applicant's initial filing, City Staff urged the
20 Applicant to present its request in a more defined manner for purposes of analysis but
21 the Applicant declined. Thus, Staff independently determined, correctly, to analyze the
22 request in two separate parts, each within the framework established in Chapter 20 of
23 the Newport Beach Municipal Code (NBMC) by Ordinance No. 2008-05.

1 The Applicant's first approach was to request a Use Permit, which the Hearing
2 Officer had previously denied in separate proceedings, this time as a reasonable
3 accommodation for persons with disabilities.

4 The Applicant's second approach to its reasonable accommodation request was
5 to seek an exemption from the restrictions of NBMC §20.10.020, which requires that
6 Residential Care facilities, such as the Applicant's, be located only in Multi-Family
7 Residential zones with a Use Permit. The Application also requests a waiver of certain
8 operational standards required to receive a Use Permit under 20.91A.050, as well as a
9 waiver of requirements it erroneously alleged were requirements under NBMC Sections
10 20.91A.

11 City Staff has correctly pointed out that under either approach, even if the
12 requests and exemptions were granted, the facility could not remain in operation unless
13 a Use Permit was either granted to the Applicant or waived altogether.

14
15 **REQUIRED FINDINGS**

16 The Hearing Officer determines that the following findings, required by
17 §20.98.025 B. of the NBMC, for reasonable accommodation requests *cannot* be made
18 with respect to the continuation of the operation beyond the time when the intended stay
19 of the current residents is complete:

20 1) Required Finding: *The requested accommodation is necessary to provide one*
21 *or more individuals with a disability an equal opportunity to use and enjoy a dwelling.*

22 A primary element of the necessity analysis is to determine whether there are
23 alternative housing opportunities available for a disabled person to receive the desired
24 therapeutic benefits.

1 City Staff testified that there are many State ADP licensed beds available in
2 duplex and apartment buildings along the Balboa Peninsula and one resident of the
3 area testified at the hearing that the same type of treatment facility is located "right
4 across the street" from Newport Coast Recovery. Specific operations were identified.

5 Applicant's counsel contended in the hearing that: "Newport Coast Recovery is
6 the only facility -- it is the only facility which is an all-male residential primary treatment
7 facility" and that it is a "unique service" in the community. When challenged to explain
8 how the facility's service was different than in other facilities, counsel requested the
9 record be left open to give the Applicant the opportunity to document its unique
10 services. The record was left open but this information was not provided, leading the
11 Hearing Officer to conclude that Newport Coast Recovery does not provide a unique or
12 specialized therapeutic value to the disabled in the community, not generally available
13 in other similar facilities in the Balboa Peninsula area.

14 For these reasons, together with the additional Staff Report analysis, the finding
15 of necessity cannot be made.

16 2) Required Finding: *The requested accommodation will not result in a*
17 *fundamental alteration in the nature of the City's zoning program, as "fundamental*
18 *alteration" is defined in Fair Housing Laws and interpretive case law.*

19 NBMC Section 20.91A.010 sets forth the purposes for requiring Use Permits in
20 residential districts. The City seeks to avoid the overconcentration of residential care
21 facilities so that such facilities are reasonably dispersed throughout the community and
22 are not congregated or over-concentrated in any particular area so as to institutionalize
23 that area. A primary therapeutic benefit for those in recovery is integration into
24 residential settings in the community. Such dispersal of facilities to avoid
25

1 institutionalization of residential areas is therefore a fundamental part of the Use Permit
2 process in the R-2 zone.

3 In adopting Ordinance No. 2008-05, the City Council developed flexible
4 standards for analysis and evaluation of the issue of overconcentration. These more
5 flexible standards are recommended by the American Planning Association to be
6 applied on a case by case basis to maintain the family setting and avoid
7 institutionalization in the residential neighborhoods while affording the disabled an equal
8 opportunity to reside there. In a January 12, 2009 Use Permit hearing, the Hearing
9 Officer determined that allowing more than one such facility within a calculable median
10 block length in a nonstandard subdivision area would create an overconcentration of
11 such uses in the neighborhood, to the detriment of the individuals in recovery at the
12 facility. The same analysis applies in the reasonable accommodation context and is
13 equally applicable as a basis for denial. Accordingly, the Resolution should contain the
14 finding that the Applicant's requested reasonable accommodation would result in an
15 overconcentration of recovery facilities in the area. An accommodation request is
16 unreasonable if it fundamentally alters the character of the neighborhood and/or
17 undermines the purpose of the City's zoning scheme. This accommodation would
18 fundamentally alter the City's purpose of avoiding clustering and preserving the
19 residential character of the mid-Balboa Peninsula neighborhood.

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

23 The finding cannot be made that the Applicant's request, if granted, will not
24 impose an undue administrative burden on the City. Numerous residents in the vicinity
25 of this use testified at the hearings regarding conduct of the Newport Coast Recovery

1 operation that has in the past and may in the future necessitate administrative and code
2 enforcement staff time. In particular, City representatives testified that administrative
3 staff and the Police Department were required to devote substantial time assisting
4 complainants about the operation and, in one case, locate a minor entrusted to Newport
5 Coast Recovery's care.

6 On April 1, 2009, California Department of Social Services Officer Michael
7 Valentine investigated allegations of minors being admitted to treatment at the facility
8 and confirmed that Newport Coast Recovery had provided unlicensed care and
9 supervision of minors at its 1216 West Balboa Boulevard facility. Officer Valentine
10 issued a Notice of Operation in Violation of Law to Newport Coast Recovery for housing
11 minors without a required license. Such a determination constitutes a basis for a finding
12 that the Applicant does not operate its facility in accordance with applicable law and
13 also establishes an undue administrative burden on the City.

14 15 **ORDER**

16 The reasonable accommodation application of Newport Coast Recovery is
17 hereby **DENIED**.

18 The City of Newport Beach is requested to prepare a Resolution of Denial for
19 review and adoption by the Hearing Officer. The Resolution shall implement this Order
20 and provide findings and analysis consistent with the Staff Report and the testimony
21 presented at the hearings conducted by the City involving the applications and requests
22 made by Newport Coast Recovery LP.

23 The Resolution shall include a condition permitting current residents residing in
24 the Newport Coast Recovery facility under a contract to receive treatment services to
25 remain until they choose to leave, or until their original intended stay is complete,

1 whichever occurs first. This determination is made based upon the finding that the
2 request is reasonable and necessary as to current residents.

3 The Resolution shall also contain a brief description of the efforts of the City
4 Council of the City of Newport Beach in adopting Ordinance No. 2008-05 and confirm
5 that this legislative effort, in itself, constitutes an unmistakable recognition by the City of
6 its obligation to address and accommodate the rights of an individual with a disability to
7 an equal opportunity to occupy and enjoy a dwelling in a residential setting in the City.

8 This purpose of this Decision is to direct the City to prepare a Resolution to be
9 adopted by the Hearing Officer which shall constitute the Final Decision in this matter.

10
11 August 18, 2009

/s/ Thomas W. Allen, Hearing Officer