

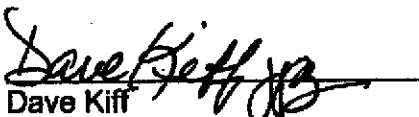
Public Notice

Notice of this hearing was published in the Daily Pilot and the Orange County Register, mailed to property owners and occupants within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting which was posted at City Hall and on the City website.

Prepared by:

Submitted by:


Catherine Wolcott
Deputy City Attorney


Dave Kiff
Assistant City Manager

EXHIBITS

1. Email with attachment from Mark Manderson, Sr. dated February 23, 2007
2. Letter from ADP Complaint Investigator Diane Plaza dated May 31, 2007 with sample tenant lease provided by Mark Manderson, Sr.
3. Reasonable Accommodation Application submitted September 24, 2008.
4. Amended Reasonable Accommodation Request submitted March 10, 2009
5. Second Amended Reasonable Accommodation Request submitted March 13, 2009
6. Staff Request for Additional Information dated March 17, 2009
7. Supplemental Information Submitted by Applicant
8. Floor Plan – 3309 Clay Street
9. Floor Plan – 492 Orange Avenue
10. Floor Plan – 492 ½ Orange Avenue
11. House Rules

Exhibit No. 1
Email with attachment from Mark
Manderson, Sr. dated
February 23, 2007

Spence, Cass

From: Mark Manderson (markmandy54@yahoo.com]
Sent: Friday, February 23, 2007 7:45 AM
To: Spence, Cass
Subject: Informational Letter
Attachments: 3068055209-Informational Letter.doc

Morning Cass, here is the letter with a few additions, anything else just let me know. Thanks again.

Mark

Sucker-punch spam with award-winning protection.
Try the free Yahoo! Mail Beta.

07/30/2007

PS-RA 00099

Informational Letter

This letter's intent is to inform you of the properties 492, 494, and 496 Orange located on the corner of Orange and Clay Street in Newport Beach. It has been brought to our attention that many refer to these rentals as a recovery residence when in fact they are merely rentals. We are not a licensed recovery house, we don't offer any form of recovery, and there are absolutely no "meetings" happening on our properties. We take pride in providing a safe and luxurious place to live for any person who is looking to reside in a custom house in Newport Beach. We have found over the years that by not allowing any drugs, alcohol, pets, or even smoking in our properties ensures that the properties retain their beautiful look while providing an excellent place to live. We never have noise complaints as our residents are your working class Americans who understand these simple agreements we ask and further agree to leave if alcohol or any forms of drugs are found. We also care for our neighbors and do not allow our residents to park on Clay Street or loiter in front of our buildings. In addition to this, most residents use only bicycles for transportation as a way to cut down on noise and pollution. For those who choose such lifestyles are happy to abide by these regulations as it provides a much more enjoyable life for these people. We want to assure you that we continue to take pride in our custom houses and enjoy providing a safe, quiet place to live for those who are considerate to others. We also believe in giving back to the environment and have recently installed solar panels to run these houses.

Exhibit No. 2
Letter from ADP Complaint Investigator
dated May 31, 2007 with sample tenant
lease provided by Mark Manderson, Sr.

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

1700 K STREET
SACRAMENTO, CA 95814-4037
TDD (916) 445-1942
(916) 322-2911



May 31, 2007

Mr. Mark Manderson, Property Manager
Pacific Shpres Recovery
177 Riverside Avenue #212
Newport Beach, California 92663

Dear Mr. Manderson:

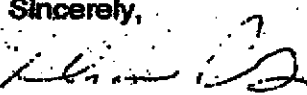
On May 3, 2007, I visited your facility located at 492 Orange Avenue, Newport Beach, California 92663 and 3309 Clay Street, Newport Beach, California 92663, to determine whether or not it is subject to licensure under the California Health and Safety Code, and California Code of Regulations, Title 9.

After a review of the information obtained, the Program Compliance Branch has determined that this facility is not subject to licensure at this time. This determination is based on evidence which shows that you are not currently providing any of the following services as defined in the California Code of Regulations, Title 9, Section 10501(a)(5): detoxification, group sessions, individual sessions, educational sessions, and recovery or treatment planning.

Health and Safety Code Section 11834.30 prohibits operating, establishing, managing, conducting, or maintaining an alcoholism or drug abuse recovery or treatment facility in California without first obtaining a current, valid license. Therefore, please be advised that if you wish to provide any of the above-defined services in the future, you must submit an application to our Branch prior to initiating the service(s).

Thank you for your cooperation in this matter. If you have any questions, please contact me at (916) 323-1806 or email me at dplaza@adp.state.ca.us.

Sincerely,


DIANE PLAZA
Complaint Investigator
Program Compliance Branch
Licensing and Certification Division



DO YOUR PART TO HELP CALIFORNIA SAVE ENERGY
For energy saving tips, visit the Flex Your Power website at
<http://www.flexyourpower.ca.gov>

May 18 07 10:36a

Robert Corner

949 642 3460

p.2

Diane 916 323 1806 324-4505 Fax

Agreement to stay in my house

I, _____, on this date, _____, agree to shared living in a sober environment. I understand that this is not any kind of recovery center, nor a recovery home. I understand that if payment is late, then a fee will be charged of 10%. I also agree that no drugs or alcohol are allowed at anytime on the property.

I agree to comply with the following rules:

_____. Initials. I agree to allow my belongings to be packed up and held if I owe money, and have a dirty or damaged room. I agree to submit to a urine test anytime, and if found positive, I further agree to pay \$25 fee for the test and to leave the premises immediately.

_____. Initials. I agree to do my daily chore and to keep my (and the community) room picked up, as well as the bathroom and kept clean at all times. I understand that parking on Clay street will result in a \$25 fee. Lost keys will result in a replacement fee. There are no weapons allowed on the premises.

_____. Initials. I agree to give a two week notice in writing in order for my security/cleaning deposit to be refunded. Upon giving my 2 week notice, I will be given a checkout list and will set up an appointment to complete my checkout. If no notice is given, I understand my belongings will be held for 30 days and then donated to charity.

Roommates are expected to actively participate in the local sober community in the spirit of healing and mutual support. Late hours, disruptive behavior, or any exclusive sort of pairing or harassment hinders this community spirit. Roommates are discouraged from lending or borrowing money, cars, clothing, jewelry, etc. to/from other roommates. This is a working house and I agree that I must have a full time job. Roommates are encouraged to actively seek employment during normal working hours and discouraged from "hanging out", sleeping in or otherwise isolating themselves during weekdays.

Gas, electric, water and (cable TV in living area) are paid. All kitchen and cooking utensils are supplied.

No smoking in the house. No burning of candles in the house.

No guests allowed after 9pm (Sunday - Thursday) and after 11pm Friday/Saturday.

Please turn off all lights and televisions when you see that they are not being used.

Parking is on a first come basis. No gathering in front of property.

There are no pets allowed of any kind.

Removal of or tampering with smoke detectors is not allowed.

Patio hours are 8 am to 10pm.

I agree to all of the above (Name): _____

Driver's License #: _____ SS#: _____

Cell #: _____ Drug of choice: _____

Work phone: _____ Supervisor Name: _____

In case of emergency please notify:

Name: _____ Phone: _____

Address: _____

Sponsors Name: _____ Phone: _____

Medical conditions: _____ Medication: _____

May 18 07 10:36a

Robert Conner

949 642 3460

p.3

To all roommates:

The following is a list of things that need a little attention.

- 1) CHORES: For people who will not do their chore, you may be asked to leave for the night. ____ Ini.
- 2) CIGARETTE BUTTS: Any person tossing cigarette butts anywhere on the property other than an ashtray, first offense is two weeks picking up butts around the property. Second time you may be asked to leave. ____ Initials
- 3) STEALING: This is a zero tolerance issue. Any person caught will be asked to leave. ____ Initials
- 4) PERSONAL BELONGINGS: Belongings will be held in storage for 30 days maximum and then will be given to the Good Will. Any balance due must be paid before entering storage to retrieve items. ____ Initials
- 5) To avoid any confusion two weeks notice must be given in writing to receive return of your deposit. Abandoning your room and left for others to pack up and clean will result in a \$40 deduction from your deposit. ____ Initials

These things are meant to improve our community.

Thank you.

Name: _____ Room: _____

Date In: _____ 2 weeks deposit: _____

Room cleanliness/damage: _____

Bedding/Furnishings: _____

Exhibit No. 3
Reasonable Accommodation Application
submitted September 24, 2008



CITY OF NEWPORT BEACH

RECEIVED BY
PLANNING DEPARTMENT

SEP 24 2008

**Supplemental Information
for
Reasonable Accommodation**

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 92627

(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

COPY

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 ORANGE AVE AND 3309 CLAY ST
Pacific Shores Properties, LLC

If you are a provider of 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		

B. Other Similar Uses. What uses, not operated by or affiliated with you or your firm, are of a similar type as your proposed use here in Newport Beach? Please 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		
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		

Exhibit No. 4
Amended Reasonable Accommodation
Request submitted March 10, 2009

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 10, 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)

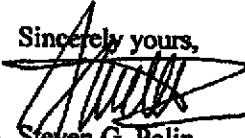
Dear Peter:

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

Pacific Shores Properties is requesting 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 Newport Beach Zoning Code ("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 00113

Exhibit No. 5
Second Amended Reasonable
Accommodation Request submitted
March 13, 2009

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)

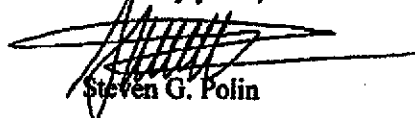
Dear Peter:

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 00115

Exhibit No. 6
Staff Request for Additional Information
dated March 17, 2009



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 00117

- 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 the 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

Exhibit No. 7
Supplemental Information Submitted by
Applicant

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 ¹	3(d) – On site staff ²	3(g) – Vehicles & Parking	3(h) – Transportation Provided	3(i) – House Rules ³	3(j) – curfew and quiet	4 – Manager 24/7 ⁴
492 Orange	20	10	Yes.	Yes. A few residents own cars. All park along Old Newport or along the commercial park area on Orange.	No.	Yes.	Yes. Curfew is 10p on weekdays; 11 pm weekends. ⁵ Quiet hours are the same for all residents.	Yes. Mark Manderson; tels: (949) 574-2510 or (949) 394-9120.

¹ Each bedroom contains two or fewer beds.

² 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.

³ A copy of the house rules are attached hereto.

⁴ 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.

⁵ 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 ¹	3(d) - On site staff ²	3(g) - Vehicles & Parking	3(h) - Transportation Provided	3(i) - House Rules ³	3(j) - curfew and quiet	4 - Manager 24/7 ⁴
492 1/2 Orange	18	9	Yes.	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 ¹	3(d) - On site staff ²	3(g) - Vehicles & Parking	3(h) - Transportation Provided	3(i) - House Rules ³	3(j) - curfew and quiet	4 - Manager 24/7 ⁴
3309 Clay	12	6	Yes.	Orange (i.e., Orange NE of Clay). 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.

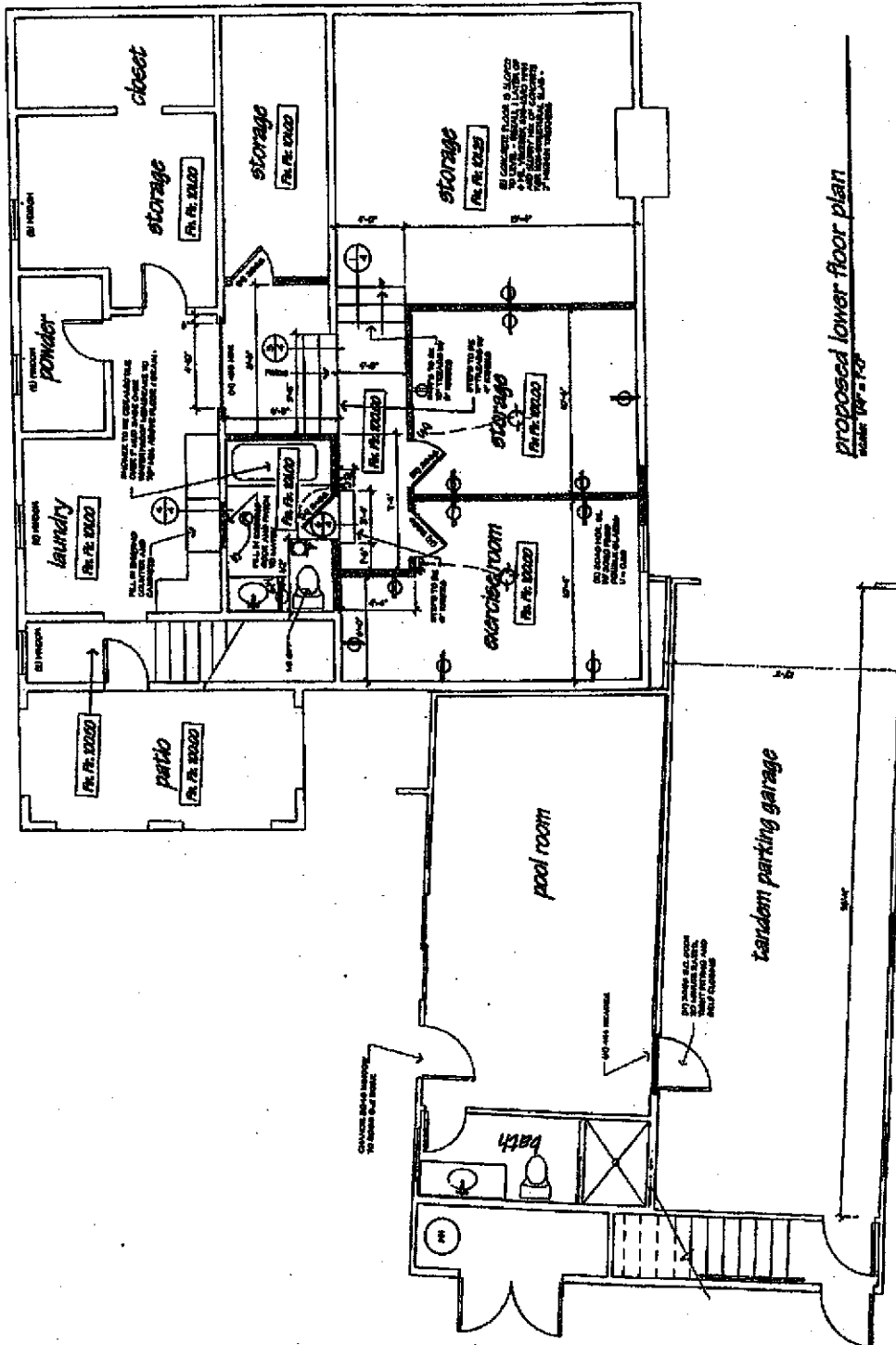
HOUSE RULES

- 1) I ~~choose~~ to remain clean and sober today
- 2) I ~~choose~~ to be of Service today
- 3) I ~~choose~~ to do my chore 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, kiffer, 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

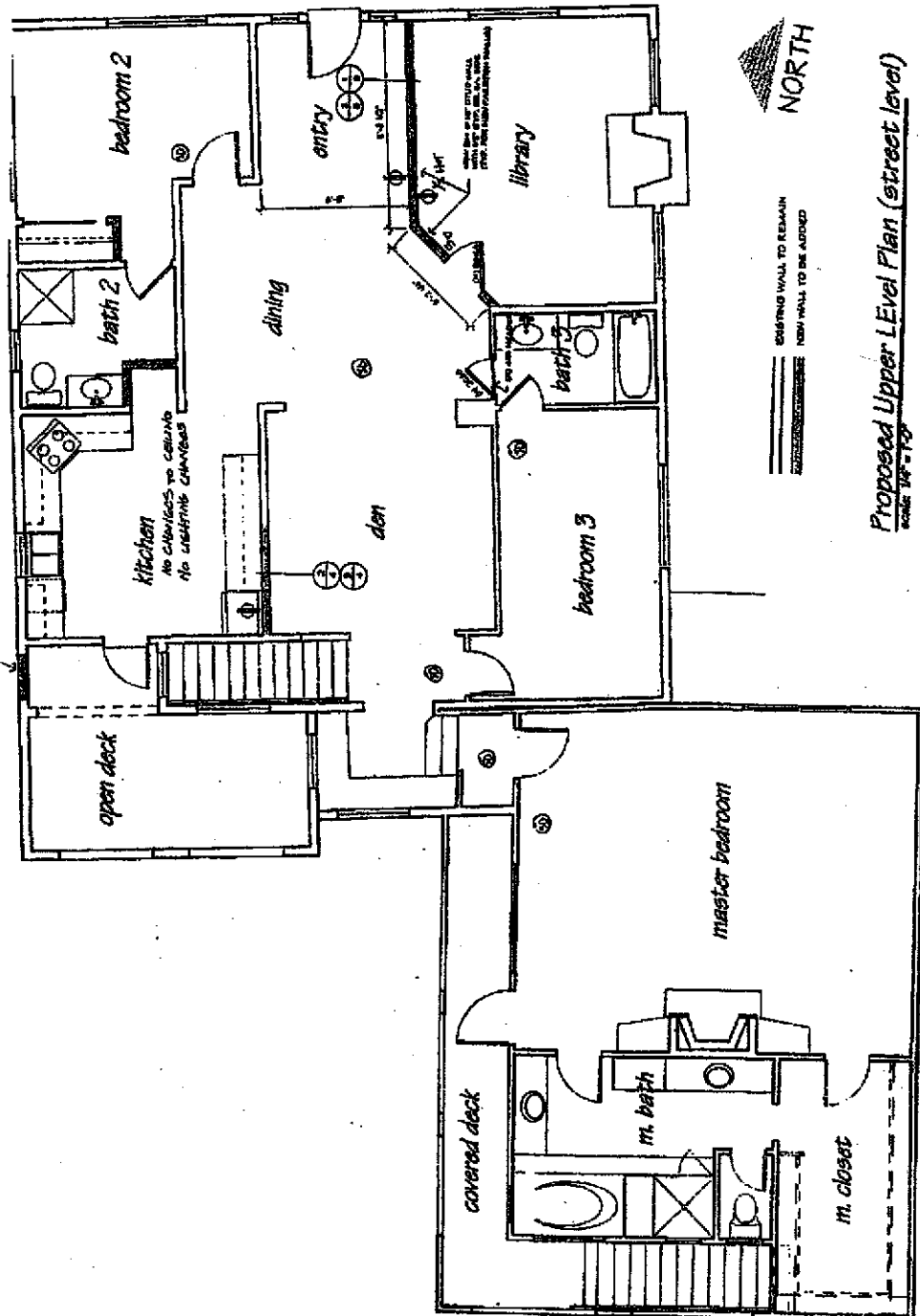
Exhibit No. 8
Floor Plan – 3309 Clay Street

OWNER
 Alice Conner
 3309 Clay Street
 Newport Beach, California

PROPOSED FLOOR PLANS
 SHEET TITLE



proposed lower floor plan
 SCALE 1/8" = 1'-0"



Proposed Upper Level Plan (street level)
DATE 10/15/10

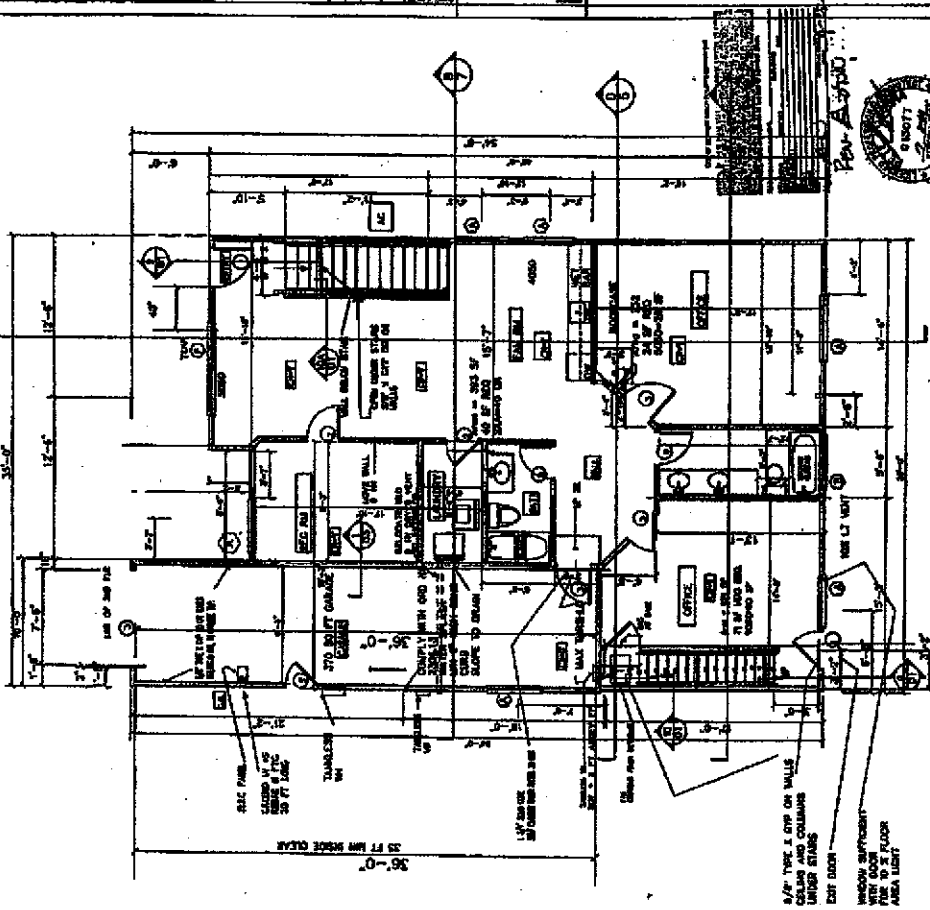
Exhibit No. 9
Floor Plan – 492 Orange Avenue

PETE VOLBEDA Architecture Planning
 615 N. BAYVIEW AVE., SUITE 200
 TEL. 909.373.1500 FAX 909.373.1501

UNIT NO. 2 ATTACHED SINGLE FAMILY DWELLING
 3315 CLAY ST. NEWPORT BEACH, CA 92660

1ST FLOOR PLAN

1ST FLOOR PLAN
 SCALE 1/8" = 1'-0"

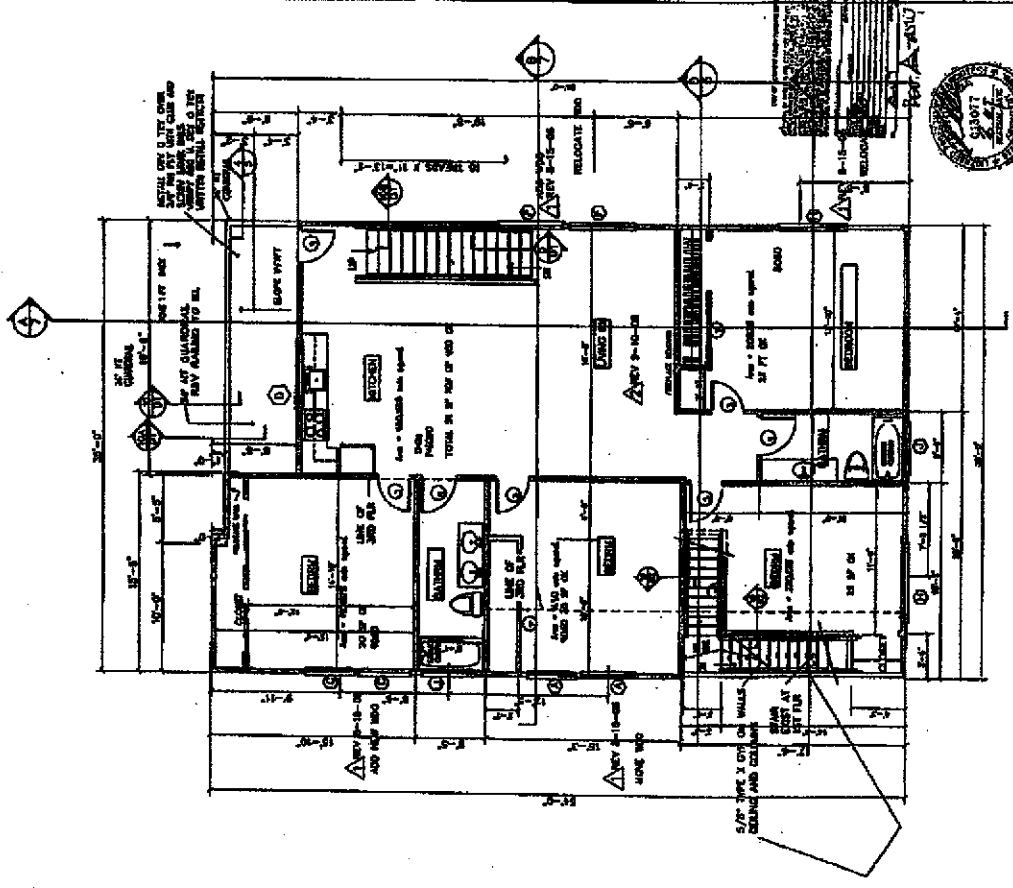


1st Floor Area = 1,343 SQ. FT.
 Garage Area = 310 SQ. FT.
 Total Area = 1,653 SQ. FT.

1. CONTRACTOR AND ARCHITECT SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF EXISTING STRUCTURES AND UTILITIES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
2. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE INTERNATIONAL RESIDENTIAL CODE BOOK (IRC) AND THE CALIFORNIA BUILDING CODE (CBC).
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
4. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT AND THE LOCAL AGENCIES.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
6. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE INTERNATIONAL RESIDENTIAL CODE BOOK (IRC) AND THE CALIFORNIA BUILDING CODE (CBC).
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
8. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT AND THE LOCAL AGENCIES.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
10. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE INTERNATIONAL RESIDENTIAL CODE BOOK (IRC) AND THE CALIFORNIA BUILDING CODE (CBC).
11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
12. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT AND THE LOCAL AGENCIES.
13. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
14. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE INTERNATIONAL RESIDENTIAL CODE BOOK (IRC) AND THE CALIFORNIA BUILDING CODE (CBC).
15. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
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18. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE INTERNATIONAL RESIDENTIAL CODE BOOK (IRC) AND THE CALIFORNIA BUILDING CODE (CBC).
19. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AGENCIES.
20. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT AND THE LOCAL AGENCIES.

PETE VOLBECH Architects
 415 N. BIRSON AVE. #C, IRVINE, CA 92614
 TEL. 909.573-1500 FAX 909.573-1501

2ND FLR PLAN
 2015 CLAY ST. NEWPORT BEACH, CA
 UNIT NO. 2 ATTACHED SINGLE FAMILY DWELING



2ND FLOOR PLAN
 2nd Floor Area = 1718 SF
 2ND FLOOR DECK 136
 SCALE 1/8" = 1'-0" N.E.
 PLOT 0751-2047 21 of 86

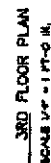


Exhibit No. 10
Floor Plan – 492 ½ Orange Avenue

1. CONSULTATIONS AND INFORMATION SHALL VERIFY ALL INFORMATION IS TRUE AND TO SATISFACTORY CONSTRUCTION STANDARDS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK.

2. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF SAN FRANCISCO, CALIFORNIA, AND THE STATE OF CALIFORNIA, AND THE LATEST EDITIONS OF THE BUILDING CODES AND REGULATIONS THEREOF.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK.

4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK.

5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK.

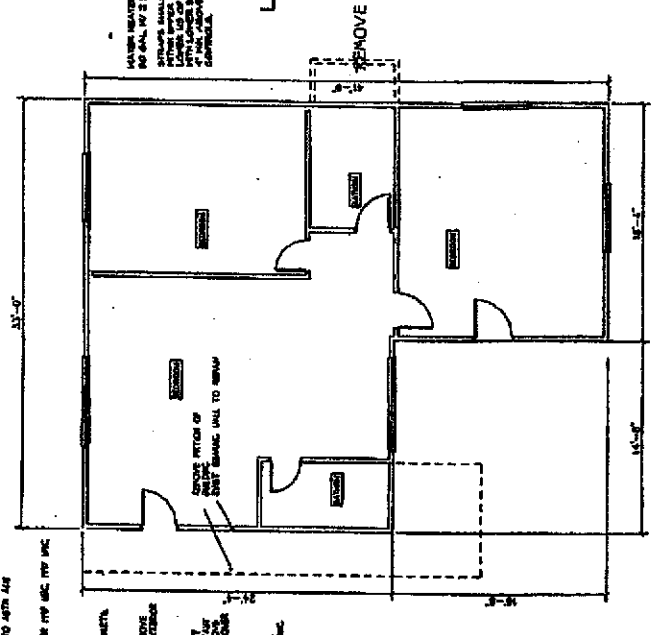
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK.

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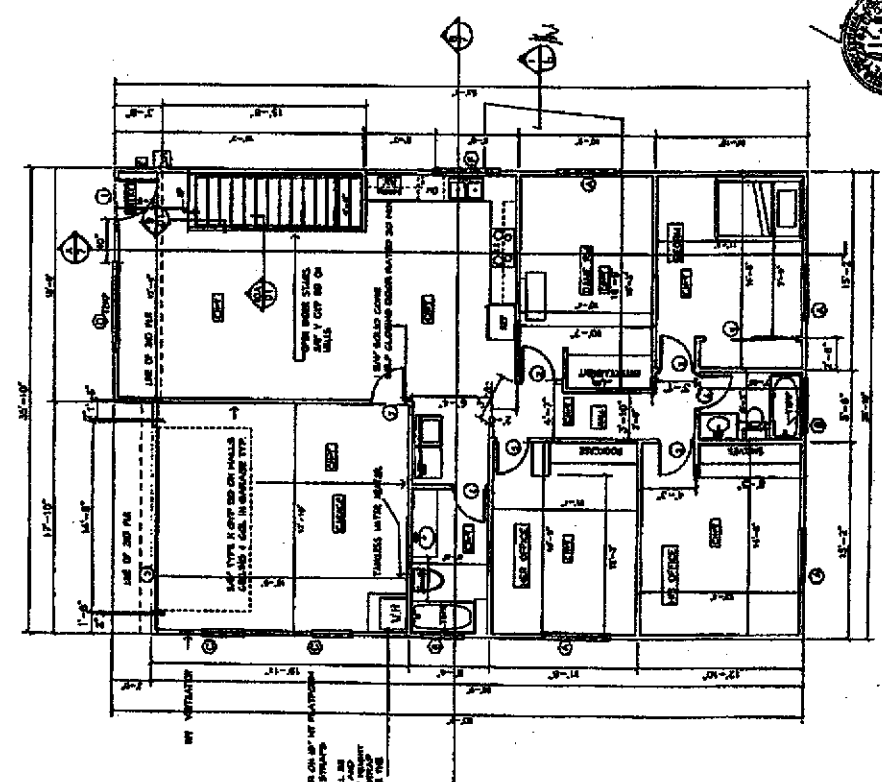
8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK.

9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK.

10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS PRIOR TO COMMENCEMENT OF WORK.



EXISTING BUILDING TO REMAIN
FLOOR PLAN



1st Floor Area = 1520 SQ FT
Garage Area = 345 SQ FT
Total Area = 1865 SQ FT



1ST FLOOR PLAN
SCALE: 1/8" = 1'-0"

1ST FLOOR PLAN

615 N. BAYVIEW AVE. #C, OAKLAND, CA 94612
TEL: 909 273-1500 FAX: 909 273-1501

3015 CLAY ST. NEWPORT BEACH, CA 92660

PS-RA 00134

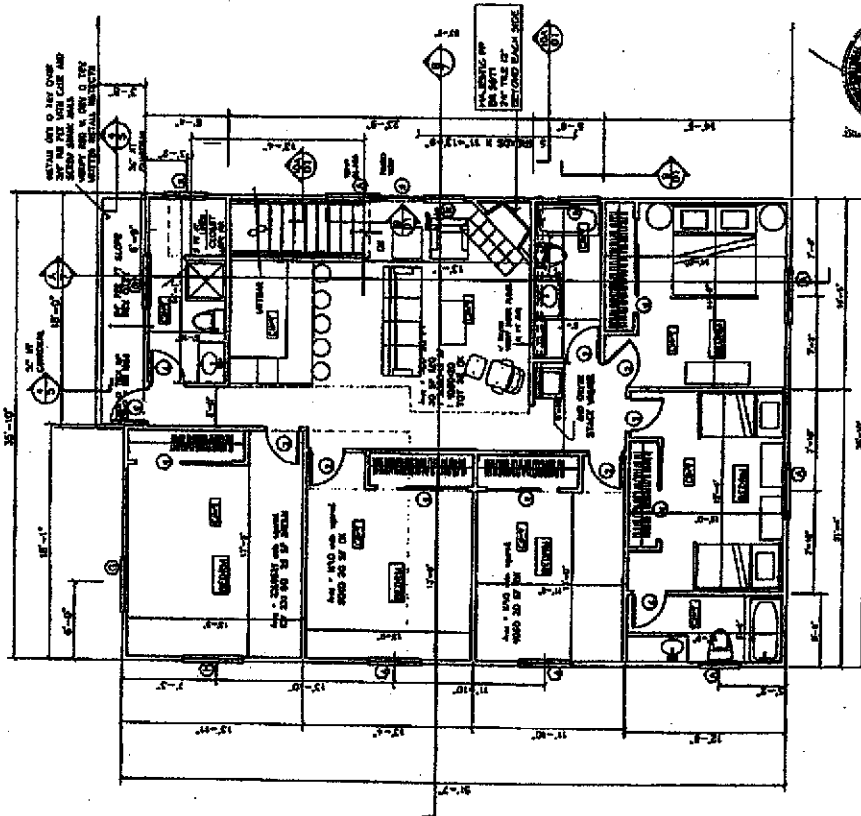
PETE VOLBEDA Architecture Planning

465 N. BAYVIEW AVE. #C, UPLAND, CA 91786

TEL. 909 373-1150 FAX 909 373-1151

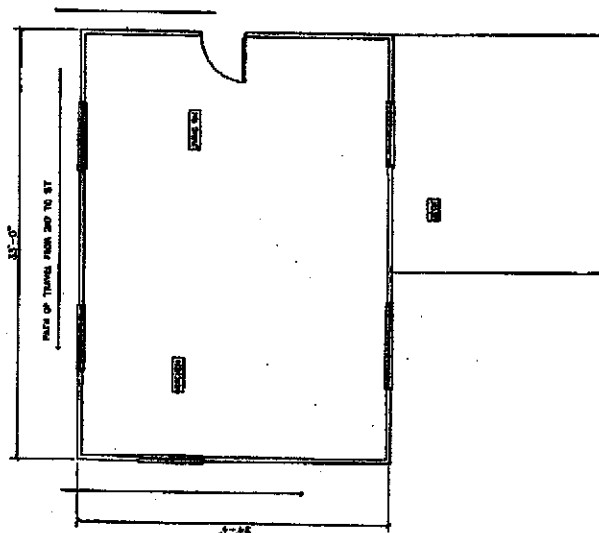
LUXURY APT. / PRIVATE OWNER
3315 CLAY ST NEWPORT BEACH

2ND FLR PLAN



2nd Floor Area = 1750 SF

2ND FLOOR PLAN SCALE 1/4" = 1'-0"



2ND FLOOR EXISTING BUILDING TO REMAIN NO CHANGE 802 SQ FT

Exhibit No. 11
House Rules

HOUSE RULES

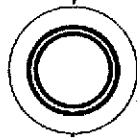
- 1) I ~~choose~~ to remain clean and sober today
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- 9) I ~~choose~~ to maintain a full time job and be out of the house on weekdays
- 10) I ~~choose~~ to attend a minimum of 1 meeting today, to arrive early, to stay seated throughout the meeting and to sit with housemates and not potential dates
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- 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
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- 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

TAB 5

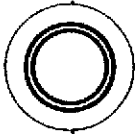
Power Point Presentation

(March 25, 2009)

Reasonable Accommodation

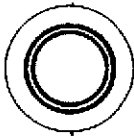


Reasonable Accommodation



- Under the Federal 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. [The court has] repeatedly interpreted this language as imposing an affirmative duty on landlords and public agencies to reasonably accommodate the need of disabled individuals.” *McGary v. City of Portland*, 386 F.3d 1259, 1261 (9th Cir. 2004)

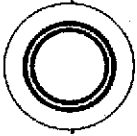
Reasonable Accommodation



The Federal Fair Housing Amendments Act (FHAA) requires cities to make exceptions from usual rules, policies and practices when:

- Request in made on behalf of disabled individual
- Request is *reasonable*
- Exception (accommodation) is *necessary* to afford disabled individual an equal opportunity to use and enjoy a dwelling
- Source – 42 U.S.C. 3604(f)(3)(B)

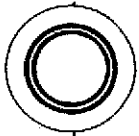
“Reasonable”



Requests are considered unreasonable if granting the request would either:

- Impose undue financial or administrative burden on the City; or
- Result in a fundamental change in the nature of a City program.

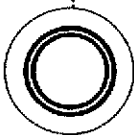
Fundamental Alteration



“Fundamental alteration” also described as “undermining the basic purpose which the requirement seeks to achieve.”

All reasonable accommodation requests are analyzed on a case-by-case basis.

“Necessary”



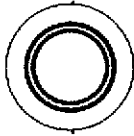
- Will the accommodation allow the disabled individual to live in the dwelling?
- Would the disabled individual be unable to live in the dwelling without the accommodation?
- Is there a direct link between the accommodation and the required “equal opportunity?”
 - Is the required accommodation necessary to make the facility financially viable?
 - Does the required accommodation provide therapeutic benefit?

Pacific Shores Properties' Requests



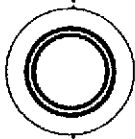
1. To be treated as a Single Housekeeping Unit;
2. To not be classified as a Residential Care facility
3. To be classified as a legal nonconforming use;
4. That all Zoning, Building, Fire and other applicable code provisions be applied to facility dwellings as they would to single- and two-family uses; and
5. To be exempt from requirements of NBMC Section 20.10.020 (Residential Districts: Land Use Regulation)

Request #1, #2, – Classification of use



- Request to be treated as a Single Housekeeping Unit (SHU)
- Request not to be classified as a Residential Care facility – only other land use classification that would be helpful is SHU
- Essentially same requests – the only groups not residing as a SHU that can live in any residential zone of the City are those in residential care facilities

Single Housekeeping Unit



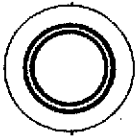
“The functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities such as meals, chores, household maintenance, and expenses, . . .

Single Housekeeping Unit, cont'd.

... 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.”

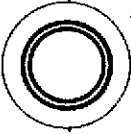
NBMC Section 20.03.030

Single Housekeeping Unit



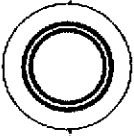
- SHUs can live in any residential district
- No occupancy restrictions under Zoning Code
- California Building Code restrictions apply

SHU – Request Reasonable?



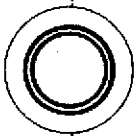
- Request to be treated as SHU is request to be exempted from all restrictions and conditions City might impose to reduce secondary impacts.
- One of basic purposes of Ordinance 2008-05 was to mitigate adverse secondary impacts of residential care facilities.

SHU – Request Reasonable?



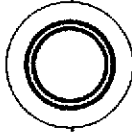
- All other groups not living as SHU prohibited, in all residential districts.
- City has essentially *already* made an accommodation for residential care facilities – they are the only non-SHU group that can reside in residential districts.
- If request granted, basic purpose of Ordinance 2008-05 nullified – creates fundamental alteration.

SHU - Request Necessary?



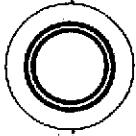
- Accommodation would allow disabled persons to live in the dwelling.
- Would disabled individuals be unable to live in the dwelling without this specific accommodation? No. (Request unnecessarily broad.)
- Necessity for financial viability or therapeutic benefit not shown.
- Alternative requests which are more reasonable could afford equal opportunity to disabled.

Request # 3 – Nonconforming Use



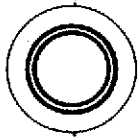
- Staff has recommended granting this request, because the City is already treating Pacific Shores as if it were a nonconforming use.
- Had opportunity to apply for use permit
- Has applied for reasonable accommodation
- Same opportunities as nonconforming uses in residential zones

Request #4 – Zoning, Building and Fire Codes



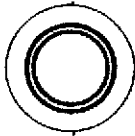
- Zoning – Staff applied analysis used in Requests 1 and 2, and recommended denial. Applying Zoning Code to residential care facility as if it were a residential use is the same as requesting to be treated as a SHU.
- California Building Code (CBC) – State law, adopted and enforced by City Building Official and Fire Marshal

Request #4 – Building Code



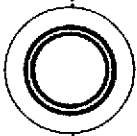
- Relevant occupancy types
 - - R3 – Single- and two-family occupancies
 - -R4 – Recovery facility occupancies housing seven or more in a building
 - -R3.1 – Recovery facility occupancies housing six or less in a building
- State law establishes construction standards and life safety requirements for different occupancy types, based on their operating characteristics and needs of residents.

Request #4 – Building Code

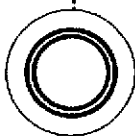


- Life safety requirements for Residential Care Facility uses established by State Fire Marshal, under authority of State Legislature.
- City has authority to allow substitute alternate materials and methods that will provide *equivalent* protection, but lacks authority to *wave* or change the level of protection.
- City Fire Marshal enforces State Fire Marshal's regulations.

Request # 5 – Waiver of requirement of
location in MFR with use permit

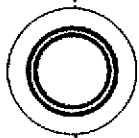


Request #5 Necessary?



- “Necessary to afford a disabled individual an equal opportunity to use and enjoy a dwelling”
 - Does the facility require the requested accommodation, and the requested population level to achieve financial viability *and* a therapeutic benefit?

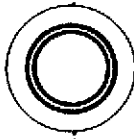
Necessity - Factors Considered



NBMC 20.98.025(C) allows City to consider four factors in determining necessity:

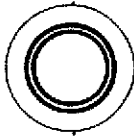
- Whether accommodation will affirmatively enhance quality of life of individuals with a disability
- Whether the disabled individuals will be denied an equal opportunity to enjoy the housing type of their choice without the accommodation
- Whether the accommodation is necessary for financial viability ... and

Necessity – Factors Considered



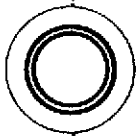
- Whether existing supply of facilities of similar nature and operation is sufficient to provide individuals with opportunity to use and enjoy a dwelling.
- Staff analyzed reasonableness and necessity of this request with regard to following categories:
 - ✦ Current residents of 492 and 492 1/2 Orange
 - ✦ Prospective residents of 492 and 492 1/2 Orange and 3309 Clay
 - -At requested population of 50
 - -At staff's recommended level – 12 residents, one dwelling unit

Reasonable – Factors Considered



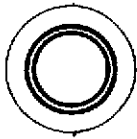
- Whether accommodation would fundamentally alter character of the neighborhood
- Whether accommodation would result in substantial increase in traffic or insufficient parking
- Whether granting would substantially undermine any express purpose of General Plan or Specific Plan
- Whether accommodation would create institutionalized environment due to number and proximity of similar uses
 - -NBMC Section 20.98.025(D)

Request Reasonable – Required Findings



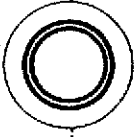
- Would granting the request impose an undue financial or administrative burden? No.
- Would granting the request result in a fundamental alteration in the nature of the City's zoning program?
 - Would allowing use to continue in R-2 zone undermine basic purpose R-2 zoning seeks to achieve?
 - Would allowing use to continue without a use permit undermine basic purposes the use permit requirement seeks to achieve?

Purposes of R-2 and MFR Zones



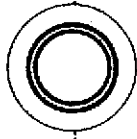
- R-2 - to provide areas for single- and two-family residential uses (NBMC Section 20.10.010) (medium to high density, depending on location)
- MFR - to provide for single-, two- and multi-family residential uses, up to 38 units per gross square acre (medium to high density)
- At staff's proposed level of density (12 residents in 6-9 bedroom facility), medium level of density achieved

Purpose of Use Permit



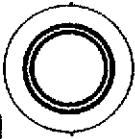
- Required for uses with operating characteristics that require special conditions to enable them to operate compatibly with other uses in the area.
- Ordinance 2008-05 requires use permit for nonconforming uses in residential areas – purpose is to ensure purposes of Zoning Code are achieved, and adverse secondary impacts from nonconforming uses can be mitigated.

Purpose of Use Permit, cont'd.



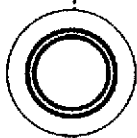
- NBMC Section 20.91A.010 – purpose is to promote the public health, safety and welfare, and implement goals of General Plan by ensuring that conditional uses do not change the character of residential neighborhoods.
- Second purpose is to protect and implement recovery and reintegration of the disabled, in part by avoiding overconcentration that would lead to institutionalization of an area.

Use Permit Purpose Undermined?



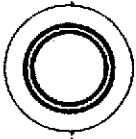
- Any reasonable controls which the Hearing Officer could impose through a use permit can also be imposed through reasonable accommodation.
- Reasonable accommodation does not run with land, specific to particular applicant.
- Staff analysis – with conditions, all findings required to issue a use permit can be made for this facility.

Proposed Conditions



- Bed cap – no more than 12 clients, one manager
- Facility will not occupy second or third unit
- Weeknight curfew – 10:00 PM
- Weekend curfew – 11:00 PM
- Quiet hours – 10:00 PM – 8:00 AM
- No secondhand smoke detectable off property
- 24-hour contact to address neighbor concerns
- Providing list of similar facilities owned or operated in past five years, and certifying that no person operating such facility has done so in violation of law

Conditions, cont'd.



- No more than six residents with personal vehicles
- Garages clear for parking
- Four residents park only on Old Newport Blvd. or commercial portions of Orange
- All other dwellings returned to SHU use
- Compliance with all state and local laws, including CBC
- Annual inspection to confirm occupancy for set period of years

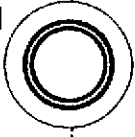
Use Permit – Required Findings



With conditions, use can conform to operational standards of 20.91A.050

- -No secondhand smoke detectable off property
- -Operated in compliance with state and local law, with management plan and 24-hour phone contact
- -No more than two residents per bedroom plus one (with three bedrooms, operating standards allow up to seven residents)
- -Name of managers and owners provided, none of whom have exhibited pattern or practice of operating similar facilities in violation of state or local law

Use Permit – Required Findings



- Property physically suited to accommodate use
- Use will not change character of surrounding residential neighborhood, and does not create overconcentration under APA standard of one or two such uses per block
- Operation of vans does not create additional traffic impacts – no vans
- No deliveries
- Regular trash collection

TAB 6

**Transcript of March 25, 2009 Reasonable
Accommodation Hearing**

CERTIFIED COPY

PUBLIC HEARING ON
PACIFIC SHORES PROPERTIES, LLC
BEFORE THOMAS W. ALLEN, ESQ., HEARING OFFICER
NEWPORT BEACH, CALIFORNIA
WEDNESDAY, MARCH 25, 2009



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Public hearing was taken on behalf of
the City of Newport Beach at 3300 Newport Boulevard,
Newport Beach, California, beginning at 4:00 p.m., and
ending at 6:05 p.m., on Wednesday, March 25, 2009, before
LAURA A. MILLSAP, RPR, Certified Shorthand Reporter No.
9266.

1 APPEARANCES:

2
3 For The City of Newport Beach:

4 RICHARDS, WATSON, GERSHON
5 BY: PATRICK K. BOBKO, ESQ.
6 355 S. Grand Avenue, 40th Floor
7 Los Angeles, CA 90071-3101
8 (213) 626-8484

9 CITY OF NEWPORT BEACH
10 BY: CATHERING WOLCOTT, DEPUTY CITY ATTORNEY
11 DAVE KIFF, Assistant City Manager
12 JANET BROWN, Associate Planner
13 SHIRLEY OBORNY, Assistant City Clerk
14 3300 Newport Boulevard
15 Newport Beach, CA 92658-8915
16 (949) 644-3002

17 For PACIFIC SHORES PROPERTIES, LLC:

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19 ATTORNEY AT LAW
20 3034 Tennyson St., NW
21 Washington, D.C. 20015
22 (202) 331-5848
23
24
25

PAGE

LOVE

PUBLIC HEARING - 3/25/2009

1 NEWPORT BEACH, CALIFORNIA; WEDNESDAY, MARCH 25, 2009

2 4:00 P.M. - 6:05 P.M.

3
4 MR. ALLEN: All right. We'll open the hearing
5 on the reasonable accommodation request made by Pacific
6 Shores.

7 For starters, my name is Thomas Allen. I'm a
8 Hearing Examiner that has been appointed by the City to
9 conduct hearings on group recovery facilities.

10 This first item today is Pacific Shores at Clay
11 and Orange Avenue, up in the Heights, right off Newport
12 Boulevard.

13 Prior to going into that matter, we have a
14 quick item of housekeeping. There's been a request by
15 the staff to continue the Resolution of the approval of
16 the 900 West Balboa Boulevard item from last meeting.
17 And the request is to continue that until the next
18 hearing.

19 And is there any reason to be concerned that
20 we're impairing anybody's rights or considerations in
21 that respect by continuing this?

22 MS. BROWN: No, sir, there's not.

23 MR. ALLEN: Would it effect the time for an
24 appeal to be filed?

25 MS. BROWN: The time for appeal would begin

1 upon adoption of the Resolution.

2 MR. ALLEN: When is our next hearing?

3 MR. KIFF: We're going to have to look at your
4 calendar, Mr. Allen, and discuss that with you. And the
5 next home -- next facility coming up is Balboa Recovery,
6 potentially, at Kramer Center. And we need to pull those
7 staff together. I don't think it's more than two weeks
8 away.

9 MR. ALLEN: Why don't we do this. If anybody
10 expresses any concerns about getting it done sooner, then
11 I would certainly be willing to come in and go through
12 it. There's no public hearing requirement or anything of
13 that sort to be concerned with, so if there is concern
14 over getting it done more quickly, let me know, and I'll
15 come in and go through it and approve it.

16 MR. KIFF: Yes, sir.

17 MR. ALLEN: And so with that commitment, we'll
18 continue that item.

19 And then back to the agenda, which is number
20 two, the reasonable accommodation request for Pacific
21 Shores.

22 Staff report?

23 MR. KIFF: Thank you, Mr. Allen.

24 As we did with the previous reasonable
25 accommodation hearings, this will be represented by three

1 of us. Myself, I'll do the quick background and speak
2 the most briefly. And then Janet Brown, from our
3 Planning Department, will speak more about the specific
4 application, and then Cathy Wolcott, our Deputy District
5 Attorney, will speak more about the reasonable
6 accommodation requests specifically.

7 So a reminder to the audience, this is a
8 hearing on reasonable accommodation requests. And for
9 the purpose of the hearing they are soon to be
10 consolidated. There are five that have been requested by
11 Pacific Shores Properties.

12 As I just stated, we'll do a brief background
13 on how the hearing works, then the application, then
14 Ms. Wolcott will speak about the reasonable accommodation
15 chapter in our Municipal Code, as well as presenting the
16 specific request of Pacific Shores.

17 Then the Applicant has an opportunity to stand
18 up and speak before the Hearing Officer, and the
19 applicant's time is not limited. The public hearing is
20 open then, and comments by the public are limited to
21 three minutes, unless the Hearing Officer determines
22 otherwise.

23 The Hearing Officer then can close the public
24 hearing, and the Applicant can return to clarify or rebut
25 comments made. And then a dialog could ensue between the

1 Hearing Officer and the Applicant and City staff.

2 And then the Hearing Officer has an opportunity
3 to make a determination, the alternatives being approving
4 the request, denying the request, or continuing the
5 hearing to a date certain.

6 So for the public's understanding, here is
7 where the Pacific Shores Properties are, 492 1/2, 492
8 Orange, as well as 3309 Clay. They are proposing that
9 there be 50 recovery beds in this community divvied up
10 this way, 18 at 492 1/2 Orange, 20 at 492 Orange, 12 at
11 3309 Clay.

12 And with that, I may leave this up on the
13 board, but I'll let Ms. Brown speak more about the
14 specific application.

15 MS. BROWN: Thank you, Mr. Kiff.

16 Good afternoon, Mr. Allen. I'm Janet
17 Johnson-Brown, Associate Planner from the Planning
18 Department.

19 The Pacific Shores facilities are comprised of
20 three buildings located on two parcels on the southwest
21 corner of Orange Avenue and Clay Street in the Newport
22 Heights neighborhood. The properties are zoned R-2,
23 which allows for single-family and two-family residential
24 development.

25 The property located at 3309 Clay Street is

1 developed with a single-family dwelling, and the Orange
2 Avenue property is developed with two dwelling units.

3 The Applicant is requesting reasonable
4 accommodation for relief from the Municipal Code to
5 continue an unlicensed sober living facility to provide
6 housing for up to 50 individuals in the three buildings.

7 With regards to establishment of use, staff is
8 not certain when the use of the dwelling at 3309 Clay
9 Street was converted to a residential care or group
10 residential use. However, in response to complaints made
11 to the City in the Spring of 2007 about unpermitted
12 construction, City staff inspected the building and found
13 that the building was occupied and appeared to be in use
14 as either a residential care facility or a boarding house
15 use.

16 The property located on Orange Avenue, 492 1/2,
17 was constructed in 2005. And the final inspection by the
18 Building Department to allow occupancy of this building
19 occurred on September 21, 2005.

20 The 492 Orange Avenue building was inspected by
21 the Building Department to allow occupancy on April 26,
22 2007. I did want to make a note for the record that the
23 date of final inspection is incorrectly stated in the
24 staff report on page 5 as April 24, 2007. This date
25 should be April 25th.

1 After that final building inspection, the
2 facility manager was observed moving furniture and
3 tenants into the moving on May 8, 2007.

4 Since early 2007, there have been a variety of
5 code enforcement issues brought to the attention the City
6 regarding the Pacific Shores facility. These issues are
7 discussed in detail in the staff report and include, but
8 are not limited to, the unpermitted construction at 3309
9 Clay Street.

10 Following the inspection of the building in
11 Spring of 2007, the City issued a notice of violation for
12 unpermitted construction. In order to comply with City
13 and State building code requirements, the City requires
14 that violators remove unpermitted construction and/or
15 obtain approval of plans and permits for the unpermitted
16 work.

17 In response to the notice of violation and stop
18 work order, the property owner submitted plans to the
19 Building Department for plan check. It is the Building
20 Department's standard practice to delay further
21 enforcement action to allow the property owner an
22 opportunity to complete the plan check process and obtain
23 permits for the unpermitted work.

24 Over a year later, no attempts to complete the
25 plan check process were made by the property owner. And,

1 therefore, following standard City practice, enforcement
2 efforts resumed and an administrative citation was
3 issued.

4 To date, this matter remains unresolved. In
5 the process of reviewing the plans, staff noted that the
6 building was incorrectly classified as an R-3 occupancy
7 for Building Code purposes rather than an R-4 occupancy.

8 An R-3 occupancy applies to single-family or
9 two-family structures, whereas an R-4 occupancy would
10 apply to structures for uses such as residential care
11 facilities for more than six residents.

12 The City's Fire Marshal is here at the hearing
13 today and can provide additional input as to the
14 significance of applying the correct occupancy rating to
15 the structures.

16 In February of 2007, Code Enforcement staff
17 requested information about the use of the Pacific Shores
18 facility. The manager of the facility at that time,
19 Mr. Mark Manderson, Sr., informed Code Enforcement staff
20 verbally and in writing that the facility leased rooms to
21 tenants.

22 In May of 2007, an ADP complaint investigator
23 looked into the allegation of unlicensed treatment being
24 provided at the Pacific Shores facility. The officer
25 reported to City staff that she was told by Mr. Manderson

1 that the Pacific Shores facility was not a recovery
2 facility, and that they just rented rooms to tenants. At
3 the investigator's request, Mr. Manderson provided copies
4 of sample leases with the tenants -- some of the tenants.

5 The ADP investigator determined that the
6 Pacific Shores facility was likely a sober living
7 facility, but the treatment services that would require
8 ADP licensing did not appear to be occurring on-site.

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

12 In October 2007, the City filed a lawsuit in
13 State Court against Pacific Shores, LLC, for violations
14 of the Moratorium Ordinance for establishing a sober
15 living facility while the moratorium was in effect. The
16 City dismissed Pacific Shores from that suit earlier this
17 year.

18 As stated, the Applicant has requested
19 reasonable accommodation for relief from provisions of
20 the Municipal Code to continue operating an unlicensed
21 sober living facility. An application was initially
22 submitted September 24, 2008. And subsequent
23 amendments -- amended requests were submitted to the City
24 on March 10 and March 13, 2009.

25 The operational characteristics as described by

1 Pacific Shores are as follows. And this is based on the
2 information that's been provided by the Applicant.

3 The clients reside at the facility under a
4 separate written agreement with the operator and are
5 expected to abide by a set of house rules, a copy of
6 which is attached to the staff report as Exhibit 11.

7 The Applicant states that it does not have a
8 manager or an administrator, but that there are two
9 residents in each house designated to make sure that
10 tenants do not use drugs or alcohol and to ensure the
11 quiet enjoyment of the dwelling. The Applicant has also
12 stated that Mark Manderson, who assists in the
13 maintenance of the homes, is available on a 24-7 basis.

14 According to the Applicant, the curfew and
15 quiet the hours are 10 p.m. on weekdays and 11 p.m. on
16 weekends. And the Applicant states that curfew applies
17 only to new members of the household during the first 30
18 days of tenancy, and that quiet hours apply to all
19 residents.

20 The Applicant has stated that treatment
21 services are not provided on-site, and that clients are
22 expected to attend 12-Step meetings. There are no
23 transportation services provided by the facility
24 operator; however, the Applicant states that all
25 residents are permitted to have personal vehicles while

1 residing at the facility, not all residents have
2 vehicles, and that some use public transportation.

3 The Applicant states that those residents who
4 do have personal vehicles park the vehicles along Old
5 Newport or along the commercial park area of Orange. And
6 that no residents park along Clay Street or on the
7 non-commercial parking area along Orange.

8 Each of the buildings do provide parking
9 on-site in the form of an attached enclosed two-car
10 garage.

11 And that concludes my portion of the
12 presentation. Catherine Wolcott, from our City
13 Attorney's Office, is here to discuss the specific
14 request as related to the reasonable accommodation and
15 the required findings that need to be made to grant the
16 request.

17 MS. WOLCOTT: Thank you, Mr. Allen.

18 To begin with some background on reasonable
19 accommodation in general, and anybody who's been to a
20 reasonable accommodation hearing before has heard this,
21 but we can go to the first slide.

22 Reasonable accommodation is something that is
23 required under the Federal Fair Housing Act Amendments.
24 Under Federal law, cities are required to -- Federal law
25 does define the failure to make reasonable accommodations

1 in rules, policies and practices or services when such
2 accommodations are necessary to afford a handicapped
3 person an equal opportunity to use and enjoy a dwelling.

4 The Court has repeatedly interpreted this
5 language as imposing an affirmative duty on landlords and
6 public agencies to reasonably accommodate the needs of
7 disabled individuals. This is not a system that the City
8 invented. This is something that is required under
9 Federal law, which all cities and counties and other
10 agencies -- other governmental entities have to comply
11 with.

12 The Fair Housing Act Amendment requires cities
13 to make exceptions from their usual rules, policies and
14 practices when necessary conditions are met. Those
15 conditions are:

16 The request is made on behalf of a disabled
17 individual or group of individuals;

18 The request is reasonable;

19 The exception or accommodation is necessary to
20 afford disabled individuals equal opportunity to use and
21 enjoy a dwelling, and we've also listed the source code
22 in the U.S. Code Regulations.

23 The request is considered unreasonable if
24 granting the request would either impose an undue
25 financial or administrative burden on the City, or it

1 result in the fundamental change in the nature of the
2 City's zoning program.

3 So just because a disabled individual makes a
4 request does not mean that the City is obligated to grant
5 that specific request. There is limits on that, and
6 staff does the analysis on whether or not a request is
7 reasonable or necessary.

8 When an Applicant has given a request that is
9 clearly cannot be granted, the City engages in an
10 interactive process when possible to give them the option
11 of what other requests they might ask for.

12 When courts have reviewed whether or not a
13 fundamental alteration is being proposed in a request,
14 what they look at is whether or not the request would
15 undermine the basic purpose which the requirement seeks
16 to achieve.

17 So in this case, we're looking at a number of
18 requests that have to do with our Zoning Code and our
19 Building Code. So we're going to be analyzing whether or
20 not the basic purpose or the fundamental purpose of the
21 Zoning Code, or Ordinance number 2008-05, or the
22 California Building Code would be undermined by those
23 requests.

24 As in all reasonable accommodation requests,
25 they are analyzed on a case-by-case basis under the facts

1 specific to that particular applicant, that particular
2 request, and the section they have asked to be exempted
3 from.

4 The first analysis that we would do when we are
5 looking at a reasonable accommodation is the -- actually,
6 first we look at is whether or not they are disabled. In
7 this case, the Applicant has submitted to us a signed
8 statement that everybody who would reside in this
9 property is a recovering alcoholic or addict.

10 And the Federal courts and the Code of Federal
11 Regulations has defined persons in recovery from alcohol
12 and drug addiction as disabled individuals. That's the
13 Federal definition.

14 Then we look at whether or not the
15 accommodation is necessary. Will the accommodation allow
16 the disabled individual to live in the dwelling? Will
17 the disabled individual be unable to live in the dwelling
18 without the accommodation?

19 And if there's a direct link between the
20 accommodation and the required equal opportunity -- I
21 should start with the fact that the way the U.S. Code
22 phrases it is important in the analysis of necessity.

23 You look at -- let's see. The language of the
24 Code, I believe, is we have to make the accommodation if
25 such accommodation is necessary to afford disabled

1 individuals an equal opportunity to use and enjoy a
2 dwelling.

3 And the wording of that becomes important if
4 you're looking at how different circuits have interpreted
5 that particular phrase.

6 Pacific Shores Properties has requested to be
7 treated as a single -- can we back up one, Dave? I'm
8 sorry.

9 MR. KIFF: Yes.

10 MS. WOLCOTT: One of the things that Court
11 cases, in interpreting the necessity prong, have looked
12 at is whether or not there's a direct link between the
13 specific accommodation requested and the equal
14 opportunity which the Federal Government requires us to
15 provide.

16 And the courts have come up with two
17 requirements that would show that there's a necessity for
18 equal opportunity. One is whether the required
19 accommodation is necessary to make the facility
20 financially viable. And two, whether the required
21 accommodation provides therapeutic benefit.

22 And these are both very important factors to
23 look at when you're analyzing the request from a large
24 group facility. Do they need a facility the size they
25 asked for and are they financial viable, which the courts

1 have said affords disabled individuals an equal
2 opportunity to live and enjoy the dwelling? And does the
3 required size that they say they need provide a
4 therapeutic benefit for the individuals?

5 Pacific Shores Properties has made five
6 separate requests. The first request submitted back in
7 September of 2008 was to be treated as a single
8 housekeeping unit.

9 The second request was to be classified as a
10 residential care facility.

11 The third -- not -- excuse me. -- not to be
12 classified as a residential care facility. Not to be
13 treated as one in our analysis.

14 The third request is to be classified as a
15 legal non-conforming use.

16 The fourth request was that all Zoning,
17 Building, Fire and other applicable Code provisions be
18 applied to the facility dwellings as if they were a
19 single or two-family use, rather than the use that our
20 land use classifications or the California Building Code
21 considers them to be;

22 The fifth request, which you received on March
23 13th, since the date of this staff report, is to be
24 exempt from the requirements of Newport Beach Municipal
25 Code Section 20.10.020, which is the land use matrix in

1 which we say the Code says that residential care
2 facilities -- that all residential care facilities that
3 are not six and under licensed must be located in MFR
4 residential districts with a use permit. As you know,
5 all licensed six and under facilities can be located in a
6 residential zone.

7 Request number one and number two will be
8 treated together. We analyzed it at the same time,
9 because the request to be treated as a single
10 housekeeping unit and the request not to be classified as
11 a residential care facility were basically rewordings of
12 the same request.

13 If you look at the land use classifications
14 entitled "20 and Residential Zones," of the land use
15 classifications available, other than single housekeeping
16 unit, there was no other land use classification that
17 would have been particularly helpful to this Applicant.

18 The only other available classifications were
19 day care homes, which was not applicable here, group
20 residential, which is not helpful to the Applicant,
21 because group residential uses, which is all other uses
22 not residential care that are not living as a single
23 housekeeping unit, all of those uses are provided in all
24 other residential zones -- all residential zones, period.
25 Let me correct that.

1 Integral facilities? We would analyze them as
2 an integral facility. That's another form of residential
3 care use. And the only remaining land use classification
4 was parolee/probation homes, which are also prohibited
5 throughout the residential zones.

6 Therefore, if we don't classify them as a
7 residential care facility, the only other land use
8 classification that they would fit into would be
9 single-family, two-family and multi-family.

10 And it's a prerequisite for that use to be
11 classified as that use, that the people living there be
12 living as a single housekeeping unit. So that's the long
13 way of saying we will treat those two requests the same
14 as one.

15 Single housekeeping unit. I'm not going to
16 read you the entire definition, but you can look at it on
17 the screen. There are certain aspects of the definition
18 that the facility may meet, including, probably, being an
19 interactive group jointly occupying a single dwelling,
20 may have joint use of and responsibility for common
21 areas, they may share household activities, they may
22 share meals and chores, although I believe the Applicant
23 reported that they are responsible for their own meals.

24 And our single housekeeping unit definition
25 goes on, however. If the unit is rented, all adult

1 residents -- see what happens when you don't proofread
2 your work? -- residents have chosen to jointly occupy
3 the entire premises of the dwelling unit under a single
4 written lease with joint use and responsibility for the
5 premises, and the makeup of the household occupying the
6 unit is determined by the residents of the unit rather
7 than the landlord or the property manager.

8 And the evidence that was submitted both to ADP
9 and to us in the past is that they are each on individual
10 leases with the landlord, and the landlord determines the
11 makeup of the unit.

12 The characteristics of single housekeeping
13 unit, outside of the definition, are single housekeeping
14 units can live in any residential district. There are no
15 occupancy restrictions within the home for a single
16 housekeeping unit, other than those imposed by -- under
17 the Zoning Code. There are some occupancy restrictions
18 under the California Building Code as to how many
19 individuals can live in a structure of a certain size.

20 So our analysis starts with, is the single
21 housekeeping unit request reasonable? A request to be
22 treated as a single housekeeping unit is essentially a
23 request to be exempted from all of our restrictions and
24 all of the conditions the City might impose on a large
25 facility to reduce the negative secondary impacts.

1 One the basic purposes of the Ordinance was to
2 mitigate the adverse secondary impacts which a
3 residential care facilities might cause in surrounding
4 neighborhoods.

5 As we mentioned, all other groups not living as
6 a single housekeeping unit are entirely prohibited in
7 other residential districts; therefore, in the City's
8 view, the City has essentially already made a reasonable
9 accommodation for residential care facilities.

10 We have allowed them a process in which, rather
11 than just being told, "You are not a single housekeeping
12 unit. You cannot locate in the City," we've made an
13 exemption. And we said, "Because of the special needs of
14 your handicapped residents, we have created a process, a
15 lengthy -- you know, many, many options by which a
16 residential care facility with disabled individuals may
17 locate within the City."

18 However, if the request is granted, if this
19 facility is treated as a single housekeeping unit, the
20 basic purpose of Ordinance 2008-05 is nullified entirely,
21 and that does create a fundamental alteration of what the
22 Zoning Code intends and what the Zoning Code has adopted
23 to achieve.

24 The next prong of the application -- excuse
25 me -- of the analysis is whether or not treating it as a