

Material(s) received after the Hearing Officer packets were distributed, or received at the meeting. These material(s) were distributed to staff and made available to the public.

CITY OFFICIALS	AGENDAS & MINUTES	CALENDAR	DEPARTMENTS	PROJECTS	NBTV	JOBS	e-onlineservices
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RETURN HOME

-permitinfo

Street Address = 3315 CLAY ST

ACTIVITY	STATUS	TYPE	APP DATE	TITLE	WORK DESCRIPTION
MD4097	APPROVED	PDA		HISTORIC CASE LOG	APPROVED WITH CONDITIONS
A2007-0021	CLOSED	INVS	02/23/2007	VIOLATION - GENERAL SERV	
X2007-0172	FINAL	BLDG	01/24/2007	COMBINATION PERMIT	RETAINING WALL 4' HI X 60' LONG
0163-2007	APPROVED	PROJ	01/24/2007	PLAN CHECK - BUILDING	RETAINING WALL 4' HI X 60' LONG
2144-2006	APPROVED	PROJ	09/07/2006	PLAN CHECK - BUILDING	INSTALL NEW SPRINKLER SYS @ REAR UNIT
F2006-0307	FINAL	FIRE	09/07/2006	COMBINATION FIRE PERMIT	INSTALL NEW SPRINKLER SYS @ REAR UNIT
B2006-1872	FINAL	BLDG	07/12/2006	MULTI-FAMILY PROJECT	ADD 995F @ 3RD FL OF NEW DWELLING UNIT
1604-2006	APPROVED	PROJ	06/30/2006	PLAN CHECK - BUILDING	INSTL NEW FIRE SPRINKLER SYSTEM
F2006-0241	FINAL	FIRE	06/30/2006	COMBINATION FIRE PERMIT	INSTL NEW FIRE SPRINKLER SYSTEM
D2006-0181	APPLIED	DEV	06/30/2006	DEVELOPMENT	
H2006-0264	FINAL	MECH	03/08/2006	MECHANICAL PERMIT	MECH/NEW DET UNIT
E2006-0567	FINAL	ELEC	03/08/2006	ELECTRICAL PERMIT	ELEC/NEW DET UNIT
B2006-0540	FINAL	BLDG	03/08/2006	MULTI-FAMILY PROJECT	NEW DWELLING ATT TO REAR UNIT W/GAR 4251 & 370 SF
P2006-0322	FINAL	PLUM	03/08/2006	PLUMBING	PLUM/NEW DET UNIT
G2005-0104	FINAL	GRAD	04/12/2005	GRADING/DRAINAGE PERMIT	PRECISE GRADING/NEW SFR
0934-2005	APPROVED	PROJ	04/12/2005	PLAN CHECK - BUILDING	NEW ATTACHED 3 STORY SFR 4565 SF W/ATT GAR 374 SF
P2005-0303	FINAL	PLUM	03/03/2005	PLUMBING	SEWER ABANDONMENT
B2005-0660	FINAL	BLDG	03/03/2005	BUILDING PERMIT	DEMO SFR 1818 LIV SF/5 BDRMS
H2005-0197	FINAL	MECH	03/01/2005	MECHANICAL PERMIT	ADD 2ND DWELLING (3364 SF/345 SF GAR), REM. EXISTING.
E2005-0330	FINAL	ELEC	03/01/2005	ELECTRICAL PERMIT	ELEC/NEW ATT UNIT
P2005-0281	FINAL	PLUM	03/01/2005	PLUMBING	PLUM/NEW DEWLLING
C2005-0107	CLOSED	STOP	02/09/2005	---CODE ENFORCEMENT VIOL	WORK STARTED W/O PMT "WORK IN PROGRESS"
P2004-1959	FINAL	PLUM	11/18/2004	PLUMBING	SEWER ABANDONMENT/DET DUPLEX UNIT

B2004-3975	FINAL	BLDG	11/18/2004	BUILDING PERMIT	DEMO DETACHED DUPLEX UNIT, 1180 LIV SF
G2004-0337	FINAL	GRAD	10/01/2004	GRADING/DRAINAGE PERMIT	DRAINAGE /NEW ATT RES
B2004-3430	FINAL	BLDG	10/01/2004	MULTI-FAMILY PROJECT	ADD NEW DWELLING ATT TO FRONT UNIT (3364 SF/345 SF GAR)
2717-2004	APPROVED	PROJ	10/01/2004	PLAN CHECK - BUILDING	ADD 2ND DWELLING (3364 SF/345 SF GAR), REM. EXISTING.
I2004-0749	CLOSED	INVS	06/11/2004	INVESTIGATION	OWNER REQU'D TO TRIM BRANCHES, NUISANCE
PA2004-066	APPROVED	PDA	04/05/2004	PLANNING DEPARTMENT PROJ	CITY INITIATION OF AN AMENDMENT TO THE DISTRICTING MAP NO. 25 TO ESTABLISH A 10- FOOT STREET SIDE YARD SETBACK FOR A PROPERTY LOCATED AT 3315 CLAY STREET.
CA2004-003	APPROVED	PDA	04/05/2004	CODE AMENDMENTS	ESTABLISH A SIDE YARD SETBACK FOR ORANGE AVENUE
R2003-1624	CLOSED	RBR	10/01/2003	RESIDENTIAL BUILDING	DUPLEX **INSPECTION DECLINED**
2349-2002	APPROVED	PROJ	10/10/2002	PLAN CHECK - BUILDING	R/R MEMBERS ON DECKS & STAIRS ON FRONT UNIT
B2002-2992	FINAL	BLDG	10/10/2002	SINGLE FAMILY PROJECT	R/R MEMBERS ON DECKS & STAIRS ON FRONT UNIT
R2002-1392	CLOSED	RBR	09/05/2002	RESIDENTIAL BUILDING	DUPLEX
I2001-0484	CLOSED	INVS	06/11/2001	INVESTIGATION	NO ENCROACHMENT PERMIT FOR LANDSCAPING ON CITY PROPERTY. COMPLAINT - 06/11/01
I2001-0457	CLOSED	INVS	05/30/2001	INVESTIGATION	DUPLEX CONVERTED TO FOUR UNITS. COMPLAINT - 05/30/01
R2001-0162	CLOSED	CODE	05/01/2001	P.W. ENCROACHMENT PERMIT	
R2001-0412	CLOSED	RBR	04/09/2001	RESIDENTIAL BUILDING	DUPLEX
I2000-0177	CLOSED	INVS	12/12/2000	INVESTIGATION	REMOVE ALL VEGETATION, DIRT, BRICKS AND ANY OTHER ITEMS INSTALLED IN THE PUBLIC RIGHT-OF-WAY CONTIGUOUS TO YOUR PROPERTY. ISSUE NOV - 12/12/2000
97007169	AUTO	PROJ	12/01/1997	AUTOMATIC PROJECT	T/O EXTG/APPLY 25YR COMP SHINGLE
B9703711	FINAL	BLDG	12/01/1997	SINGLE FAMILY PROJECT PE	T/O EXTG/APPLY 25YR COMP SHINGLE
E9500394	FINAL	ELEC	04/06/1995	ELECTRICAL PERMIT	ELEC/OUTLETS, FIX,SUB PANEL
P9500278	FINAL	PLUM	04/06/1995	PLUMBING PERMIT	PLUM/WC,TUB,LAV,BAR SINK,WH,GAS SYSTEM
H9500272	FINAL	MECH	04/06/1995	MECHANICAL PERMIT	MECH/WALL HTR,BTH FAN,RES HOOD
G9500061	FINAL	GRAD	03/24/1995	GRADING PERMIT	GRADING/TIE BACK TO REINFORCE RET WALL
2052-94	APPROVED	BLDG	10/26/1994	PLAN CHECK LOG	RES ADD"AS BUILT" 1200 SF/REMODEL EXTG
94005415	AUTO	90	10/26/1994	AUTOMATIC PROJECT	RESIDENTIAL ADDITION 1768 SF

89402862	FINAL	BLDG	10/26/1994	SINGLE FAMILY PROJECT PE	TIE BACK TO RET WALL/AS BUILT ADD 612
1485-93	VOID	BLDG	08/12/1993	PLAN CHECK LOG	1200 SQ.FT UNDER 1ST FLR/PLUS LOFT
93004114	AUTO	90	08/13/1993	AUTOMATIC PROJECT	"AS BUILT" 1200 SQFT ADD/+ GARAGE LOFT
89302406	EXPIRED	BLDG	08/13/1993	SINGLE FAMILY PROJECT PE	"AS BUILT" 1200 SQFT ADD/+ GARAGE LOFT
93004103	AUTO	90	08/12/1993	AUTOMATIC PROJECT	1200 SQ.FT UNDER 1ST FLR/PLUS LOFT
89329565	VOID	BLDG	08/12/1993	SINGLE FAMILY PROJECT PE	1200 SQ.FT UNDER 1ST FLR/PLUS LOFT

53 Records Found.

City of Newport Beach - 3300 Newport Blvd - Newport Beach - California - 92663 - 949.644.3309

**CITY OF NEWPORT BEACH
CITY COUNCIL STAFF REPORT**

Agenda Item No. 20
May 25, 2004

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Planning Department
Rosalinh M. Ung, Associate Planner
(949) 644-3208
rung@city.newport-beach.ca.us

SUBJECT: Code Amendment No. 2004-003 (PA2004-066)
Request to amend Districting Map No. 25 to establish a 10-foot setback on Orange Avenue for a property located at 3315 Clay Street (PA2004-066)

INITIATED BY: City of Newport Beach

ISSUE:

Should the City Council approve an amendment to Districting Map No. 25 to establish a 10-foot setback along Orange Avenue for a property located at 3315 Clay Street?

RECOMMENDATION:

Staff recommends that the City Council hold a public hearing and approve the amendment by introducing Ordinance No. 2004-____, and pass the ordinance to second reading on June 8, 2004.

DISCUSSION:

The subject property is a rectangular-shaped lot and is approximately 6,405 (61'x105') square feet in size. Located on the southwest corner of Orange Avenue and Clay Street, the property is surrounded with commercial developments to the north and west and residential developments to the north, south, and east.

The General Plan Land Use designation for the property is Two Family Residential and the lot is zoned R-2 (Two Family Residential). The recently approved street vacation on Orange Avenue between Old Newport Boulevard and Clay Street increases the property's lot width by 10 feet, from 61 feet to 71 feet.

The proposed amendment is to address a concern with regard to the placement of future development at the subject property, which now could be closer to Orange Avenue. This amendment would change the building setback on Orange Avenue by establishing the location of a main building 6 feet further from Orange Avenue than would otherwise be allowed with a regular 4-foot setback as set forth in the Code.

On May 6, 2004, the Planning Commission voted unanimously to recommend the City Council approve the amendment to Districting Map No. 25 to establish a 10-foot setback along Orange Avenue for the subject property.

The attached Planning Commission Staff Report (Attachment D) includes a discussion of the proposed request.

Should the City Council wish to accept the Planning Commission's recommendation to approve the proposed amendment, the City Council should approve and introduce the Draft Ordinance (Attachment A).

Environmental Review

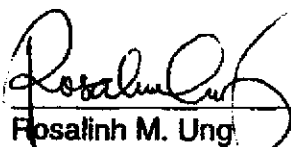
This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 5 (Minor Alterations in Land Use Limitations), pertaining to minor alterations in land use limitations which do not result in any changes in land use or density of the property.

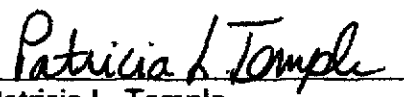
Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners 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:


Rosalinh M. Ung
Associate Planner


Patricia L. Temple
Planning Director

Exhibits:

- A. Draft City Council Ordinance**
- B. Planning Commission Resolution No. 1360**
- C. Excerpt of the draft minutes from the May 6, 2004,
Planning Commission meeting**
- D. Planning Commission Staff Report**
- E. Districting Map No. 25**

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EXHIBIT A
DRAFT CITY COUNCIL ORDINANCE

ORDINANCE NO. 2004_____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF NEWPORT BEACH APPROVING CODE AMENDMENT
NO. 2004-003 AMENDING DISTRICTING MAP NO. 25 TO
ESTABLISH A 10-FOOT SETBACK ON ORANGE
AVENUE FOR A PROPERTY LOCATED AT 3315 CLAY
STREET (PA2004-066)**

WHEREAS, a proposed amendment to the Zoning District maps was initiated by the City of Newport Beach on April 13, 2004, to amend Districting Map No. 25 to establish a 10-foot setback on Orange Avenue for a property located at 3315 Clay Street.

WHEREAS, a public hearing was held by the Planning Commission on May 6, 2004, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the aforesaid meeting was given in accordance with the Municipal Code. Evidence, both written and oral, was presented to and considered by the Planning Commission at this meeting. At the conclusion of this meeting, the Planning Commission adopted Resolution No. 1630, recommending that the City Council approve the proposed amendment to the zoning district map.

WHEREAS, the City Council held a public hearing on May 25, 2004, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the aforesaid meeting was given in accordance with the Municipal Code. Evidence, both written and oral, was presented to and considered by the City Council at this meeting.

WHEREAS, the General Plan Land Use designation for the property is Two Family Residential and the lot is zoned R-2 (Two Family Residential). The approved street vacation on Orange Avenue between Old Newport Boulevard and Clay Street increases the property's lot width by 10 feet, from 61 feet to 71 feet.

WHEREAS, the proposed amendment is to address a concern with regard to the placement of future development at the subject property, which could be now closer to Orange Avenue. This amendment would change the building setback on Orange Avenue by establishing the location of a main building 6 feet further from Orange Avenue that would otherwise be allowed with a regular 4-foot setback as set forth in the Code.

WHEREAS, the proposed request has been determined to be Categorically Exempt under the Class 5 (Minor Alterations in Land Use Limitations) requirements of the California Environmental Quality Act (CEQA).

Section 1: The City Council of the City of Newport Beach approves Code Amendment No. 2004-003 as depicted in Attachment "1".

Section 2: The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. This Ordinance shall be published once in the official newspaper of the City, and the same shall become effective thirty (30) days after the date of its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach, held on the ____ day of _____, 2004, and adopted on the ____ day of _____, 2004, by the following vote, to wit:

AYES, COUNCIL MEMBERS _____

NOES, COUNCIL MEMBERS _____

ABSENT COUNCIL MEMBERS _____

MAYOR

ATTEST:

CITY CLERK

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EXHIBIT B
PLANNING COMMISSION RESOLUTION

DRAFT

RESOLUTION NO. 1630

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF NEWPORT BEACH RECOMMENDING THE
CITY COUNCIL APPROVE CODE AMENDMENT NO.
2004-003, FOR PROPERTY IDENTIFIED AS 3315 CLAY
STREET (PA2004-066)**

**THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS,
RESOLVES, AND ORDERS AS FOLLOWS:**

WHEREAS, the City Council vacated a portion of Orange Avenue making the subject property 10 feet wider. In conjunction with the vacation, the City Council required that the setback on Orange Avenue be increased to 10 feet as opposed to the 4-foot standard setback. The Council did not want any future residence on the lot to be constructed within the vacated portion of Orange Avenue.

WHEREAS, the amendment was initiated by the City of Newport Beach, to amend Districting Map No. 25 to establish a 10-foot setback along Orange Avenue for the property located at 3315 Clay Street, legally described as Lot 1, Block 6, Tract 27.

WHEREAS, a public hearing was held on May 6, 2004, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the aforesaid meeting was given in accordance with the Municipal Code. Evidence, both written and oral, was presented to and considered by the Planning Commission at this meeting.

WHEREAS, the General Plan Land Use designation for the property is Two Family Residential and the lot is zoned R-2 (Two Family Residential). The proposed amendment does not impact the use of the property.

WHEREAS, the proposed 10-foot setback is appropriate considering the recent vacation of Orange Avenue. The setback in conjunction with the 10-foot vacation does not negatively impact the buildable area and floor area.

WHEREAS, the setback area fronting Orange Avenue is defined as a side yard pursuant to the Code. Nevertheless, for the purpose of implementing development standards, it would be considered as a front yard and is subject to the 3-foot height restriction.

WHEREAS, the project is categorically exempt under the requirements of the California Environmental Quality Act under Class 5 (Minor Alterations in Land Use Limitations).

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Newport Beach hereby recommends that the City Council approve Code Amendment No. 2004-003 (PA-2004-066).

PASSED, APPROVED AND ADOPTED THIS 6TH DAY OF MAY 2004.

AYES: Eaton, Cole, Toerge, McDaniel
Selich, Kiser and Tucker

NOES: None

BY: _____
Earl McDaniel, Chairman

BY: _____
Michael Toerge, Secretary

DRAFT

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EXHIBIT C
DRAFT MINUTES FROM MAY 6, 2004
PLANNING COMMISSION MEETING

Ms. Clauson answered that there is a general condition that the applicant has to comply with all state laws.

Commissioner Tucker noted that it is not enforceable. He then asked the Commission what in particular is the condition that makes it worth while the granting the intensity.

Commissioner Eaton answered that all of the conditions the police department had asked for and his impression was that a few of these other conditions did not apply to the site now.

Ms. Temple noted that these are all new conditions that will apply to the site. The changes were from the original proposed conditions.

Ms. Temple noted that condition 30 that was deleted is a standard condition for ABO use permits or for use permits for the Alcohol Beverage Outlet Ordinance. It was incorporated into these conditions for approval, however, we have noted there is no ABO Use Permit for you and thought it appropriate to eliminate it.

Ms. Clauson noted it is a nexus issue. You may not necessarily have to have an ABO use permit application before you to determine that there is a need for this condition for the operation of that business even as a restaurant. I suggest that if you want to put it in, you should.

Ms. Temple noted that she would like to put in an additional finding in the resolution that would indicate that conditions of this nature are necessary because of the increase in occupancy being granted.

The maker of the motion agreed.

Mr. Bill Hodge stated that these changes are acceptable noting the right to appeal to the City Council.

Ayes:	Eaton, Cole, Toerge, McDaniel, Selich, Kiser and Tucker
Noes:	None
Absent:	None
Abstain:	None

DRAFT

SUBJECT: Districting Map No. 25 (PA2004-066)
3315 Clay Street

ITEM NO. 5
PA2004-066

An amendment to Districting Map No. 25 to establish a 10-foot

Recommended for

//

setback for 3315 Clay Street from Orange Avenue. Public comment was opened. Public comment was closed. Motion was made by Commissioner Tucker recommending approval of Code Amendment 2004-003 (PA2004-066) to the City Council.		approval DRAFT
Ayes: Noes: Absent: Abstain:	Eaton, Cole, Toerge, McDaniel, Selich, Kiser and Tucker None None None	

ADDITIONAL BUSINESS: a. City Council Follow-up - Ms. Temple noted that the City Council initiated a General Plan Amendment for property located at San Miguel Drive and MacArthur Blvd., to multi-family residential as part of our Housing Element implementation plan; approved a Professional Services Agreement with Economic and Planning Systems, Inc. to conduct for the City an in-lieu housing fee analysis; they forwarded comments from EQAC on the EIR on a project in Irvine Business complex; a discussion of Measure S guidelines; and initiated a code amendment regarding city height and grade regulations. b. Oral report from Planning Commission's representative to the Economic Development Committee - no report. c. Report from Planning Commission's representatives to the General Plan Update Committee - there will be a meeting on Monday, May 10th at 3:30 p.m. d. Matters which a Planning Commissioner would like staff to report on at a subsequent meeting - none. e. Matters which a Planning Commissioner may wish to place on a future agenda for action and staff report - none. f. Status Reports on Planning Commission requests - none. g. Project status - There is no need for the special meeting on		ADDITIONAL BUSINESS

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EXHIBIT D
PLANNING COMMISSION STAFF REPORT

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

Agenda Item No. 5
May 6, 2004

TO: PLANNING COMMISSION

FROM: Planning Department
Rosalinh Ung, Associate Planner
(949) 644-3208
rung@city.newport-beach.ca.us

SUBJECT: 3315 Clay Street
Code Amendment No. 2004-003
(PA2004-066)

INITIATED BY: City of Newport Beach

ISSUE:

Should the Planning Commission recommend the City Council approve an amendment to the Districting Map No. 25 to establish a 10-foot setback along Orange Avenue for a property located at 3315 Clay Street?

RECOMMENDATION:

Staff recommends that the Planning Commission recommend approval of the amendment to the City Council by adopting the attached draft resolution.

DISCUSSION:

Background:

On March 23, 2004, the City Council approved vacation of a portion of Orange Avenue between Old Newport Boulevard and Clay Street in order to accommodate the medical office development at 494/496 Old Newport Boulevard. The street vacation will abandon approximately 10 feet along the southerly portion of Orange Avenue. The abandonment affects two properties 494/496 Old Newport Boulevard and 3315 Clay Street, and increases the lot width 10 feet.

[illegible]

Code Amendment No. 2004-003 (PA2004-066)

Current Development:	Single family residential
To the north:	Commercial and residential uses
To the east:	Residential
To the south:	Residential
To the west:	Commercial and uses including the recently approved medical office building

The City Council raised a concern with regard to the placement of future development at 3315 Clay Street, which could now be located much closer to Orange Avenue. To address this concern, the City Council voted to approve the vacation with a stipulation requiring the property to maintain a 10-foot setback from Orange Avenue as opposed to the standard 4-foot setback. The Council directed staff to implement the setback change. The only way to implement a specific setback rather than using the standard setback identified by the Code is to place the setback on the Districting Map. On April 13, 2004, the City Council initiated the amendment.

Site Overview:

Located on the southwest corner of Orange Avenue and Clay Street, the subject property is a rectangular-shaped lot and is approximately 6,405 (61'x105') square feet in size. Surrounding land uses include commercial developments to the north and west and residential developments to the north, south, and east.

Analysis:

The General Plan Land Use designation for the property is Two Family Residential and the lot is zoned R-2 (Two Family Residential). The vacation would increase the property's lot width from 61 feet to 71 feet. The proposed amendment will establish the location of a main building 6 feet further from Orange Avenue that would otherwise be allowed with a regular 4-foot setback as set forth in the Code.

The setback area fronting Orange Avenue is defined as a side yard pursuant to the Code. However, for the purpose of implementing development standards, it would be considered as a front yard and is subject to the 3-foot height restriction. Additionally, the setback annotated on the districting map does not affect the allowable building area because the Planning Commission has previously determined that the buildable area used for calculating permitted floor area should use the Code defined side yard of 4 feet. The following table illustrates this determination:

	Existing	Proposed
Front setback on Clay Street	20'	20'
Side yard setback	4'	4'
Side yard setback on Orange Avenue	4'	*10'
Rear yard setback	10'	10'
Buildable Area	4,725 sf.	4,725 sf.
Floor area limit (2.00)	9,450 sf.	9,450 sf.

* For siting of building only, all other regulations would apply.

Environmental Review:

This project has been reviewed, and it has been determined that it is categorically exempt under the requirements of the California Environmental Quality Act under Class 5 (Minor Alterations in Land Use Limitations).

Public Notice:

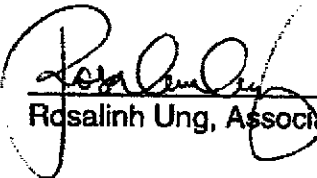
Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted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

Conclusion:

The proposed amendment is consistent with the Council's desire to provide an increased structure setback for this property. Staff recommends that the Planning Commission adopt the attached resolution (Attachment A).

Prepared by:

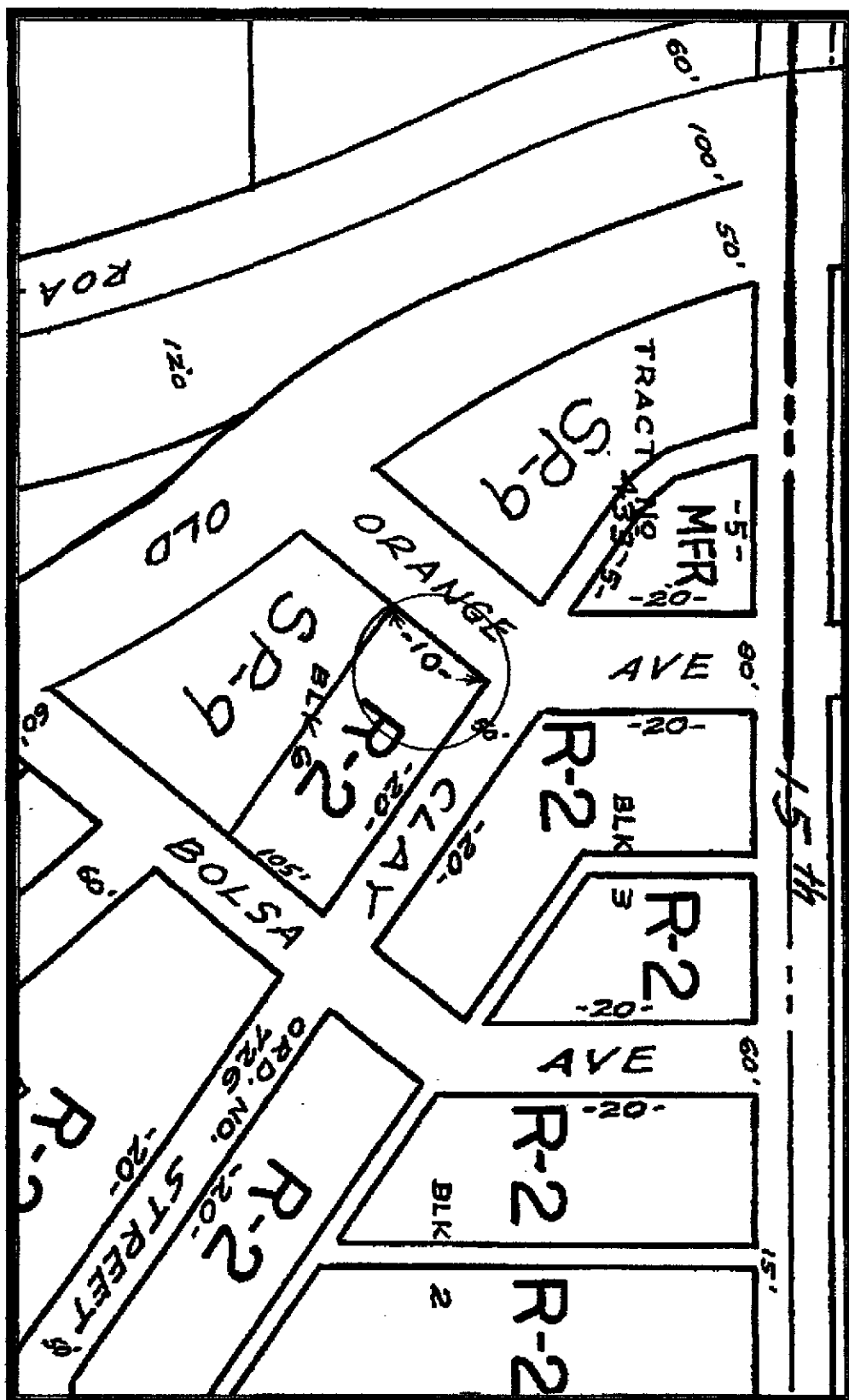
Submitted by:


Rosalinh Ung, Associate Planner
Patricia L. Temple, Planning DirectorAttachments:

- A. Resolution No. ____
- B. City Council Staff Report dated April 13, 2004
- C. Excerpt of Minutes dated April 13, 2004
- D. Districting Map No. 25

EXHIBIT E
DISTRICTING MAP NO. 25 18

**PROPOSED 10' SETBACK ALONG ORANGE AVENUE, AT 3315 CLAY STREET
(PA 2004-066)**





NOTICE OF PUBLIC HEARING

**Code Amendment No. 2004-003
(PA2004-066)**

NOTICE IS HEREBY GIVEN that the City Council of Newport Beach will hold a public hearing on the application of **City of Newport Beach**, for **Code Amendment No. 2004-003** on property located at **3315 Clay Street**. The property is located in the R-2 District.

Amend the Districting Map No. 25 to establish a 10-foot setback on Orange Avenue for property located at 3315 Clay Street.

This project has been reviewed, and it has been determined that it is categorically exempt under the requirements of the California Environmental Quality Act under Class 5 (Minor Alterations in Land Use Limitations)

NOTICE IS HEREBY FURTHER GIVEN that said public hearing will be held on **May 25, 2004**, at the hour of **7:00** p.m. in the Council Chambers of the Newport Beach City Hall, 3300 Newport Boulevard, Newport Beach, California, at which time and place any and all persons interested may appear and be heard thereon. If you challenge this project in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City at, or prior to, the public hearing. For information call (949) 644-3200.

*faxed to Daily Pilot - 5/12/04
faxed to Adolphia - 5/12/04
Posted at two locations - 5/12/04
Provided Plug w/ Site Notice - 5/12/04
Mailed Postcards - 5/13/04*

LaVonne M. Harkless
LaVonne M. Harkless, City Clerk
City of Newport Beach

RESIDENT
3315 CLAY ST
NEWPORT BEACH, CA 92663

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

RESIDENT
3304 CLAY ST A
NEWPORT BEACH, CA 92663

RESIDENT
3304 CLAY ST B
NEWPORT BEACH, CA 92663

RESIDENT
480 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
485 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
486 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
488 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
493 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
494 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
495 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
496 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
500 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
508 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
510 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

RESIDENT
522 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

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

RESIDENT
495 ORANGE AVE
NEWPORT BEACH, CA 92663

RESIDENT
497 ORANGE AVE
NEWPORT BEACH, CA 92663

RESIDENT
504 ORANGE AVE
NEWPORT BEACH, CA 92663

RESIDENT
507 ORANGE AVE
NEWPORT BEACH, CA 92663

RESIDENT
509 ORANGE AVE
NEWPORT BEACH, CA 92663

RESIDENT
511 ORANGE AVE
NEWPORT BEACH, CA 92663

RESIDENT
513 ORANGE AVE
NEWPORT BEACH, CA 92663

RESIDENT
515 ORANGE AVE
NEWPORT BEACH, CA 92663

RESIDENT
517 ORANGE AVE
NEWPORT BEACH, CA 92663

RESIDENT
519 ORANGE AVE
NEWPORT BEACH, CA 92663

RESIDENT
506 ORANGE AVE A
NEWPORT BEACH, CA 92663

RESIDENT
508 ORANGE AVE A
NEWPORT BEACH, CA 92663

RESIDENT
506 ORANGE AVE B
NEWPORT BEACH, CA 92663

RESIDENT
3301 15TH ST
NEWPORT BEACH, CA 92663

RESIDENT
3305 15TH ST
NEWPORT BEACH, CA 92663

RESIDENT
3311 15TH ST
NEWPORT BEACH, CA 92663

RESIDENT
3321 15TH ST
NEWPORT BEACH, CA 92663

RESIDENT
3331 15TH ST
NEWPORT BEACH, CA 92663

RESIDENT
407 BOLSA AVE
NEWPORT BEACH, CA 92663

RESIDENT
409 BOLSA AVE
NEWPORT BEACH, CA 92663

RESIDENT
411 BOLSA AVE
NEWPORT BEACH, CA 92663

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517 BOLSA AVE
NEWPORT BEACH, CA 92663

RESIDENT
521 BOLSA AVE
NEWPORT BEACH, CA 92663

RESIDENT
3251 BROAD ST
NEWPORT BEACH, CA 92663

RESIDENT
3253 BROAD ST
NEWPORT BEACH, CA 92663

RESIDENT
3256 BROAD ST
NEWPORT BEACH, CA 92663

RESIDENT
3262 BROAD ST
NEWPORT BEACH, CA 92663

RESIDENT
3238 CLAY ST
NEWPORT BEACH, CA 92663

RESIDENT
3239 CLAY ST
NEWPORT BEACH, CA 92663

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3244 CLAY ST
NEWPORT BEACH, CA 92663

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NEWPORT BEACH, CA 92663

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3300 CLAY ST
NEWPORT BEACH, CA 92663

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3301 CLAY ST
NEWPORT BEACH, CA 92663

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3303 CLAY ST
NEWPORT BEACH, CA 92663

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3305 CLAY ST
NEWPORT BEACH, CA 92663

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3307 CLAY ST
NEWPORT BEACH, CA 92663

RESIDENT
3308 CLAY ST
NEWPORT BEACH, CA 92663

RESIDENT
3309 CLAY ST
NEWPORT BEACH, CA 92663

RESIDENT
3312 CLAY ST
NEWPORT BEACH, CA 92663

RESIDENT
508 ORANGE AVE B
NEWPORT BEACH, CA 92663



Address Labels

Laser 5160®

PS-RA 00414

PROOF OF PUBLICATION

STATE OF CALIFORNIA)

) ss.

COUNTY OF ORANGE)

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

May 15, 2004

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

Executed on May 15, 2004
at Costa Mesa, California.


Signature

NOTICE OF PUBLIC HEARING Code Amendment No. 2004-

003

(PA2004-004)

NOTICE IS HEREBY GIVEN that the City Council of Newport Beach will hold a public hearing on the application of City of Newport Beach, for Code Amendment No. 2004-003 on property located at 3315 Clay Street. The property is located in the R-2 District.

Amend the Districting Map No. 25 to establish a 10-foot setback on Orange Avenue for property located at 3315 Clay Street.

This project has been reviewed, and it has been determined that it is categorically exempt under the requirements of the California Environmental Quality Act under Class 5 (Minor Alterations in Land Use Limitations).

NOTICE IS HEREBY FURTHER GIVEN that said public hearing will be held on May 25, 2004, at the hour of 7:00 p.m. in the Council Chambers of the Newport Beach City Hall, 3300 Newport Boulevard, Newport Beach, California, at which time and place any and all persons interested may appear and be heard thereon. If you challenge this project in court, you may be limited to raising only those issues you or someone else raised at the public hearing.

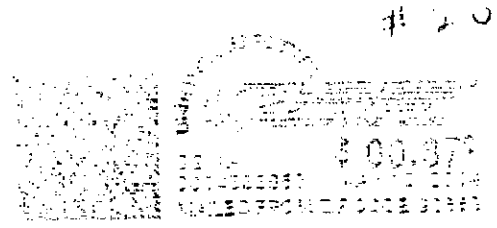
described in this notice or in written correspondence delivered to the City at, or prior to, the public hearing. For information call (949) 644-3200.

LaVonne M. Hurdless,
City Clerk

City of Newport Beach
Published Newport Beach/Costa Mesa Daily Pilot May 15, 2004 S628



Office of the City Clerk
CITY HALL
3300 Newport Blvd.
Newport Beach, CA 92663-3884



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OFFICE OF THE CITY CLERK
CITY OF NEWPORT BEACH

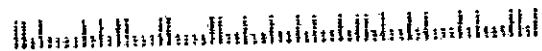
RESIDENT
495 ORANGE AVE
NEWPORT BEACH, CA 92663

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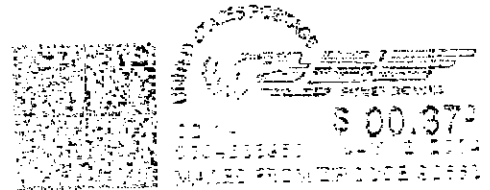
NSW
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IMPORTANT
PUBLIC HEARING NOTICE

32663-4223 07



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CITY HALL
3300 Newport Blvd.
Newport Beach, CA 92663-3884



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CITY OF NEWPORT BEACH



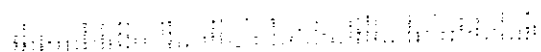
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RESIDENT
485 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

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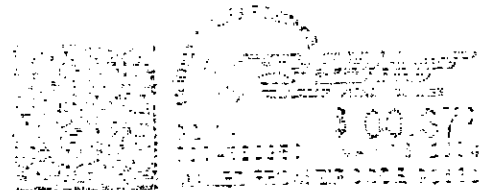
IMPORTANT
PUBLIC HEARING NOTICE

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3300 Newport Blvd.
Newport Beach, CA 92663-3884



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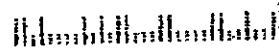
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RESIDENT
510 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

Vacant

**IMPORTANT
PUBLIC HEARING NOTICE**

92663-4212



Office of the City Clerk
CITY HALL
3300 Newport Blvd.
Newport Beach, CA 92663-3884



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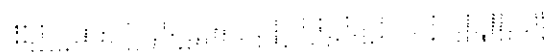
CITY OF NEWPORT BEACH
OFFICE OF THE CITY CLERK

RESIDENT
494 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

Vacant

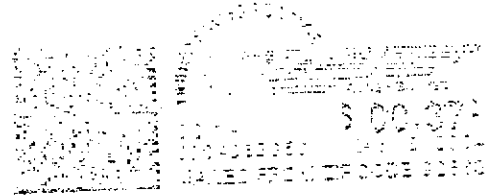
**IMPORTANT
PUBLIC HEARING NOTICE**

92663-4212





Office of the City Clerk
CITY HALL
3300 Newport Blvd.
Newport Beach, CA 92663-3884



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OFFICE OF THE CITY CLERK
CITY OF NEWPORT BEACH

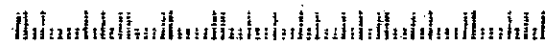
RESIDENT
496 OLD NEWPORT BLVD
NEWPORT BEACH, CA 92663

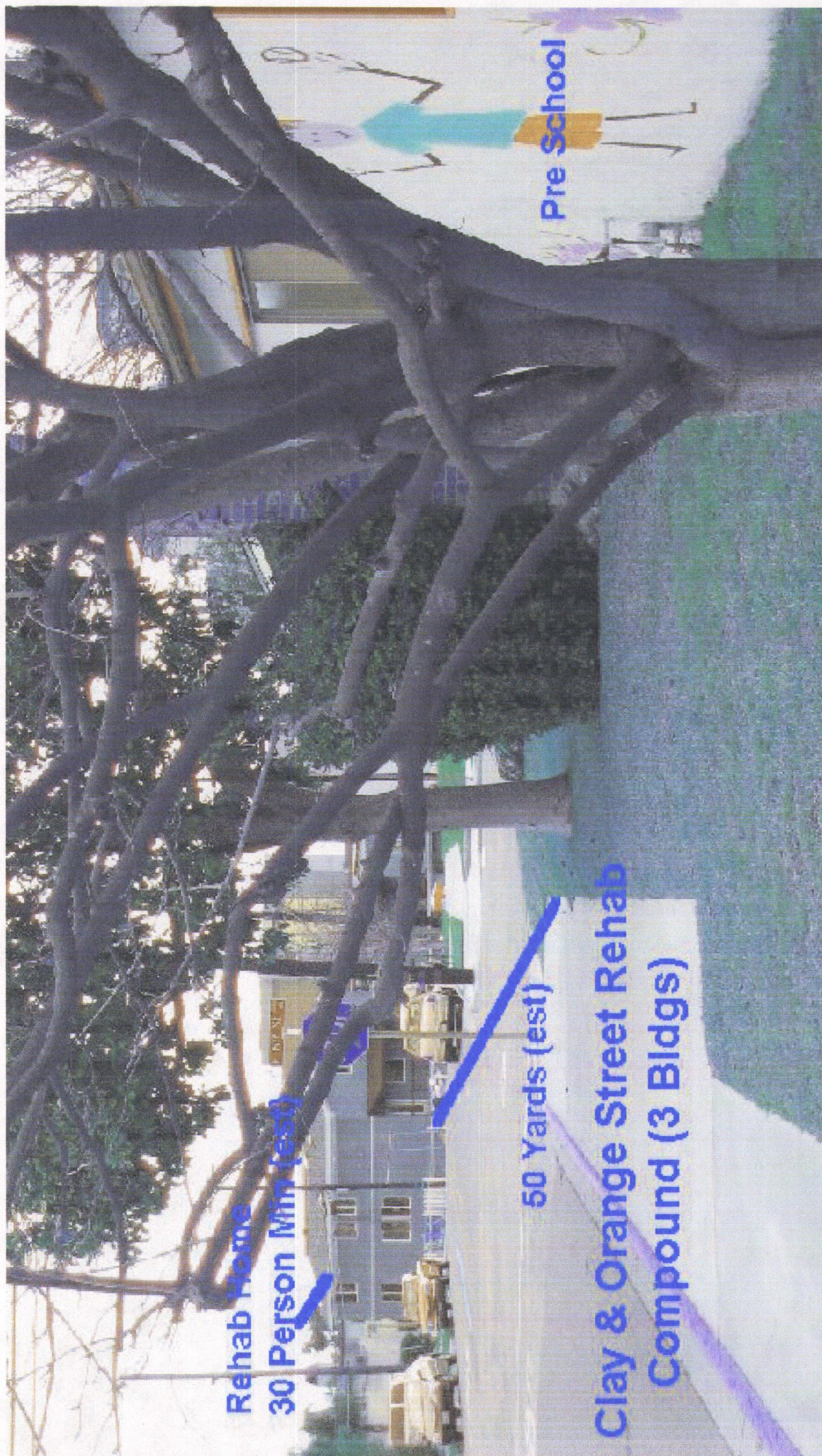
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**IMPORTANT
PUBLIC HEARING NOTICE**

92663-4228 03





Rehab Home
30 Person Min (est)

50 Yards (est)

Clay & Orange Street Rehab
Compound (3 Bldgs)

Pre School

ORDINANCE NO. 2004-16

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF NEWPORT BEACH, CALIFORNIA AMENDING
SECTIONS 20.03.030, 20.05.030, 20.05.040, 20.10.010
20.10.020 and Chapter 20.91 OF THE NEWPORT BEACH
MUNICIPAL CODE RELATING TO ALL CATEGORIES OF
GROUP LIVING USES**

WHEREAS, the City Council finds that the City's Zoning Code provisions regulating all group living regulations should be amended to ensure conformity with the Federal Fair Housing Act Amendments ("FHAA," 42 USC § 3601) and various provisions of State law including, without limitation, to provide procedures that allow the City to receive, evaluate and approve applications to accommodate uses protected by State and Federal law; and

WHEREAS, the City Council finds that the fundamental precept of the City's Zoning Code provisions relative to residential zones is that individual dwelling units are intended for the occupancy and use of "families" (now defined as "Single Housekeeping Units") and that persons who are not living together as a Single Housekeeping Unit should be prohibited from residing in the same dwelling unit in all the City's residential zones; and

WHEREAS, the City Council further finds that when persons are living together as a single housekeeping unit, they are entitled to live together in a dwelling unit within the City's residential zones, regardless of whether they are related by blood, marriage or otherwise; and

WHEREAS, the City has, because of provisions of State and Federal law, made an exception to the requirement that dwelling units in residential districts be occupied only by a Single Housekeeping Unit by defining groups of six or fewer persons with physical or mental impairments that substantially limit one or more of that person's major life activities who are living together as a Single Housekeeping Unit; and

WHEREAS, the City has obtained the opinion of Dr. Michael Gales, a medical doctor specializing in recovery from chemical dependency, that the recovery of persons suffering from drug or alcohol dependency is properly accomplished in residential groups of between four and six persons, which, under the proposed code amendments, can locate in any residential zone of the City without the need for any discretionary permits; and

WHEREAS, the City finds that this ordinance complies with, and implements, the FHAA by establishing a reasonable accommodation process, initiated by filing an application for a "Federal Exemption Permit", that is available to any person who desires to establish a residential facility serving 7 or more persons with physical or mental impairments that substantially limit one or more major life activities; and

WHEREAS, the City Council finds that, except for the provisions of this ordinance that permit or conditionally permit persons with physical or mental impairments that substantially limit one or more major life activities to live in residential districts as other than a Single Housekeeping Unit, the City does not desire to permit or conditionally permit other groups of persons not living together as a Single Housekeeping Unit to reside together in a single dwelling unit in any of the City's residential zones; and

WHEREAS, during the public hearings preceding adoption of this ordinance, substantial evidence has been presented that confirms there is a high degree of transiency among group home residents, that transiency (due to the failure of an occupant to comply with rules or the successful completion of a program) is an important element of certain group living arrangement, that group home residents often come from outside of Newport Beach with the intent to reside here for a very limited period of time and to leave Newport Beach upon completion of the program or treatment that caused them to become residents; and

WHEREAS, the City Council finds that persons who occupy dwelling units without the intent to reside long-term in the community have, on average, less incentive than persons who intend to make the community their permanent residence to engage in conduct that contributes to the neighborhood and its residents and to refrain from conduct that annoys or disturbs neighbors; and

WHEREAS, the City Council has received extensive testimony during the public hearings preceding adoption of this ordinance and has received evidence on other occasions that dwelling units with short term or transient occupants, when compared to occupants of dwelling units who intend to permanently reside at that location, generate more frequent complaints related to noise, profanity, trash, illegal parking and other conduct that would disturb a person of ordinary sensitivity; and

WHEREAS, the City Council has adopted an ordinance (Chapter 5.95 of the Newport Beach Municipal Code) that regulates the conduct of property owners and occupants of dwelling units that are occupied by short term lodgers to address the problems caused by this type of occupancy; and

WHEREAS, the City Council finds that, based on testimony received during the public hearings preceding adoption of this ordinance, individual group residential facilities within 300 feet of one another have been used to provide services to the occupants of other similar facilities creating a "campus" effect resulting in the short term intensification of uses in the neighborhood that is now serving the occupants of the other dwelling units and resulting in adverse impacts related to noise, traffic and parking.

NOW, THEREFORE, the City Council of the City of Newport Beach hereby ordains as follows:

SECTION 1. The following definitions contained in Section 20.03.030 of the Newport Beach Municipal Code are hereby amended to read as follows:

"Campus" means three or more buildings in a residential zone within a 300 foot radius of one another that are used together for a common purpose where one or more of the buildings provides a service for the occupants of all the buildings such as when one building serves as a kitchen/food service area for the occupants of the other buildings.

"Dwelling, multifamily" means a building containing three or more dwelling units, each of which is for occupancy by one family.

"Dwelling, single-family" means a building containing one dwelling unit for occupancy by one family.

"Dwelling, two family" means a building containing two dwelling units, each of which is for occupancy by a one family.

"Family" means one or more persons living together as a Single Housekeeping Unit. The term "Family" shall include "Residential Care-Limited" facilities for six or fewer mentally disabled, mentally disordered or otherwise handicapped persons regardless of whether they are living together as a Single Housekeeping Unit, but shall not include any other living group that is not living together as a Single Housekeeping Unit.

"Single Housekeeping Unit" means the functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit including the joint use of common areas and sharing household activities and responsibilities such as meals, chores, and expenses. For purposes of the R-A and R-1 zones, a Single Housekeeping Unit's members shall also be a non-transient group.

SECTION 2. The following definitions contained in Section 20.05.030 of the Newport Beach Municipal Code are hereby amended to read in their entirety as follows:

"Day-Care, Limited" means non-residential, non-medical care and supervision of twelve (12) or fewer persons on a less than twenty-four hour basis. This classification includes, but is not limited to, nursery schools, preschools, and day-care centers for children (large and small family day-care homes) and adults.

"Group Residential" means shared living quarters, occupied by more than one person, which lack separate kitchen and bathroom facilities for each room or unit, as well all shared living quarters occupied by two or more persons not living together as a Single Housekeeping Unit. This classification includes boarding houses, dormitories, fraternities, sororities, and private residential clubs, but excludes residential hotels (see Single-Room Occupancy (SRO) Residential Hotels, Section 20.05.050(EE)(4)).

"Residential Care, Limited" means shared living quarters (without separate kitchen and bathroom facilities for each room or unit) for six or fewer persons with physical or mental impairments that substantially limit one or more of such person's major life activities. This classification also includes, but is not limited to, group homes, sober living environments, recovery facilities, and establishments providing non-medical care for persons in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living.

"Residential Care, General" means shared living quarters (without separate kitchen or bathroom facilities for each room or unit) for seven or more persons with physical or mental impairments that substantially limit one or more of such person's major life activities when such persons are not living together as a Single Housekeeping Unit. This classification includes but is not limited to group homes, sober living environments, recovery facilities and establishments providing non-medical care for persons in need of personal services, supervision, protection or assistance essential for sustaining the activities of daily living.

"Single-Family Residential" means a building or buildings containing one dwelling unit located on a single lot for occupancy by one family. This classification includes mobile homes and factory built housing.

"Two-Family Residential" means a building or buildings containing two dwelling units located on a single lot, each unit limited to occupancy by a single family. This classification includes mobile homes and factory built housing.

SECTION 3. The definition of "Residential Care, General" contained in Section 20.05.040 of the Newport Beach Municipal Code is hereby amended to read in its entirety as follows:

"Residential Care, General" means shared living quarters (without separate kitchen or bathroom facilities for each room or unit) for seven or more persons with physical or mental impairments that substantially limit one or more of such person's major life activities when such persons are not living together as a Single Housekeeping Unit. This classification includes but is not limited to group homes, sober living environments, recovery facilities and establishments providing non-medical care for persons in need of personal services, supervision, protection or assistance essential for sustaining the activities of daily living.

SECTION 4. Subsection H of Section 20.10.010 of the Newport Beach Municipal Code is hereby amended to read in its entirety as follows:

H. Provide public services and facilities to accommodate planned population and densities.

The specific residential districts and their purposes are as follows:

Residential-Agricultural (R-A) District. Provides areas for single-family residential and light farming uses.

Single-Family Residential (R-1) District. This is the City's most restrictive residential zoning district, established to provide for a stable, social neighborhood for single-family residential land uses by limiting occupancy to one family.

Restricted Two Family Residential (R-1.5) District. Provides areas for single-family and two family residential land uses with the total gross floor area of all buildings limited to a maximum floor area ratio of 1.5 times the buildable area.

Two Family Residential (R-2) District. Provides areas for single-family and two family residential land uses.

Multifamily Residential (MFR) District. Provides areas for single-family, two-family, and multiple family residential land uses.

SECTION 5. Section 20.10.020 of the Newport Beach Municipal Code is hereby amended to read in its entirety as follows:

20.10.020 Residential Districts: Land Use Regulations.

The following schedule establishes the land uses defined in Chapter 20.05 as permitted or conditionally permitted in residential districts, and includes special requirements, if any, applicable to specific uses. The letter "P" designates use classifications permitted in residential districts. The letter "L" designates use classifications subject to certain limitations prescribed under the "Additional Use Regulations" which follows. The letters "UP" designate use classifications permitted on approval of a use permit, as provided in Chapter 20.91. The letters "PD/U" designate use classifications permitted on approval of a use permit issued by the Planning Director, as provided in Chapter 20.91. The letters "P/UP" designate use classifications which are permitted when located on the site of another permitted use, but which require a use permit when located on the site of a conditional use. The letters FEP designate use classifications for which a Federal Exception Permit must first be obtained pursuant to Chapter 20.91. Letters in parentheses in the "Additional Regulations" column refer to "Additional Use Regulations" following the schedule. Where letters in parentheses are opposite a use classification heading, referenced regulations shall apply to all use classifications under the heading.

Residential Districts: Land Use Regulations						
P = Permitted UP = Use permit PD/U = Use permit issued by the Planning Director L = Limited (see Additional Use Regulations) FEP = Federal Exception Permit — = Not Permitted						
	R-A	R-1	R-1.5	R-2	MFR	Additional Regulation
RESIDENTIAL						(A), (B), (C)
Day-Care, Limited	P	P	P	P	P	
Group Residential	—	—	—	—	—	
Residential Care, Limited	P	P	P	P	P	
Residential Care, General	—	—	FEP	FEP	FEP	
Single-family Residential	P	P	P	P	P	(D), (E) (M)
Multifamily Residential	—	—	—	—	P	(D)
Two-Family Residential	—	—	P	P	P	(D)

PUBLIC AND SEMI-PUBLIC						(A), (B), (C)
Cemeteries	---	L-1	L-1	L-1	L-1	
Clubs and Lodges	---	L-2	L-2	L-2	L-2	
Convalescent Facilities	---	UP	UP	UP	UP	
Day-Care, General	---	UP	UP	UP	UP	
Government Offices	---	UP	UP	UP	UP	
Hospitals	---	UP	UP	UP	UP	
Park and Recreation Facilities	UP	UP	UP	UP	UP	
Public Safety Facilities	UP	UP	UP	UP	UP	
Religious Assembly	UP	UP	UP	UP	UP	
Schools, Public and Private	UP	UP	UP	UP	UP	
Utilities, Major	UP	UP	UP	UP	UP	
Utilities, Minor	P	P	P	P	P	
COMMERCIAL USES						(A), (B), (C)
Horticulture, Limited	P	---	---	---	---	
Nurseries	PD/	---	---	---	---	
Vehicle/Equipment Sales and Services						
-Commercial Parking Facility	---	L-3	L-3	L-3	L-3	
Visitor Accommodations						
-Bed and Breakfast Inns	---	---	---	UP	UP	(F)
-SRO Residential Hotels	---	---	---	---	UP	
AGRICULTURAL AND EXTRACTIVE USES						(A), (B), (C)
Animal husbandry	PD/		---	---	---	(G)
Crop Production	P	---	---	---	---	
Mining and Processing	L-4	L-4	L-4	L-4	L-4	(H)
ACCESSORY USES						(A), (B), (C)
Accessory Structures and Uses	P/U	P/U	P/UP	P/U	P/UP	(I)
TEMPORARY USES						(A), (B), (C)

Circuses and Carnivals	P	P	P	P	P	(K)
Commercial Filming, Limited	P	P	P	P	P	(K)
Personal Property Sales	P	P	P	P	P	(L)
Heliports, Temporary	L-5	--	--	--	L-5	(J)
Real Estate Offices, Temporary	L-5	L-5	L-5	L-5	L-5	(B)

Residential Districts: Additional Land Use Regulations

L-1: Twenty (20) acres minimum.

L-2: Limited to yacht clubs, use permit required.

L-3: Public or no fee private lots for automobiles may be permitted in any residential district adjacent to any commercial or industrial district subject to the securing of a use permit in each case.

L-4: See Chapter 20.81, Oil Wells.

L-5: Subject to the approval of the Planning Director.

(A): See Section 20.60.025, Relocatable Buildings.

(B): See Section 20.60.015, Temporary Structures and Uses.

(C): See Section 20.60.050, Outdoor Lighting.

(D): With the exception of uses in the R-1 Zone, any dwelling unit otherwise permitted by this Code may be used for short term lodging purposes as defined in Chapter 5.95 of the Municipal Code subject to the securing of:

1. A business license pursuant to Chapter 5.04 of the Municipal Code.
2. A transient occupancy registration certificate pursuant to Section 3.16.060 of the Municipal Code.
3. A short term lodging permit pursuant to Chapter 5.95 of the Municipal Code.

(E): See Chapter 20.85, Accessory Dwelling Units.

(F): See Section 20.60.110, Bed and Breakfast Inns.

(G): Keeping of Animals in the R-A District. The following regulations shall apply to the keeping of animals in the R-A District:

1. Large Animals. The keeping of large animals (as defined in Section 20.03.030) shall be subject to the following regulations:
 - a. Horses. One horse may be kept for each ten thousand (10,000) square feet of lot area, up to a maximum of three horses; provided, the horse or horses are kept for recreational purposes only. The keeping of four or more horses for recreational uses shall require a use permit issued by the Planning Director. The keeping of horses for commercial purposes shall require a use permit issued by the Planning Commission.
 - b. Other Large Animals. Other large animals, including goats, sheep, pigs and cows, may be kept on lots of fifteen thousand (15,000) square feet or more and the number shall not exceed two adult animals of any one species.
 - c. Total Number Permitted. The total number of large animals shall not exceed six. Offspring are exempt until such time as they are weaned.
2. Domestic and Exotic Animals. The number of domestic and exotic animals (as defined in Section 20.03.030) shall not exceed six. Offspring are exempt up to the age of three months. The keeping of four or more dogs over the age of three months shall require a kennel license pursuant to Section 7.04.090 of the Municipal Code. The keeping of wild animals shall require a permit pursuant to Chapter 7.08 of the Municipal Code.

3. **Small Animals.** The number of small animals, other than domestic and exotic animals (as defined in Section 20.03.030), shall not exceed six. Offspring are exempt up to the age of three months.
4. **Control.**
 - a. **Domestic Animals.** No such animals, except for cats, shall be permitted to run at large, but shall be confined, at all times within a suitable enclosure or otherwise under the control of the owner of the property.
 - b. **Other Animals.** No animal, other than domestic animals, shall be permitted to run at large, but shall be confined, at all times within a suitable enclosure.

(H): See Chapter 20.81, Oil Wells.

(I): See Section 20.60.100, Home Occupations in Residential Districts.

(J): See Section 20.60.055, Heliports and Helistops.

(K): Special event permit required, see Chapter 5.10 of the Municipal Code.

(L): See Section 20.60.120, Personal Property Sales in Residential Districts.

(M): See Section 20.60.125, Design Standards for Mobile Homes on Individual Lots.

SECTION 6. Section 20.91.015 of the Newport Beach Municipal Code is hereby amended to read in its entirety as follows:

20.91.015 Use Permit, Variance, or Federal Exception Permit Requisite to Other Permits.

No building permit or certificate of occupancy shall be issued in any case where a use permit, variance, or Federal Exception Permit is required by the terms of this code unless and until such use permit, variance or Federal Exception Permit has been granted by the Planning Director or the Planning Commission or by the affirmative vote of the City Council on appeal or review and then only in accordance with the terms and conditions of the use permit, variance or Federal Exception Permit granted.

SECTION 7. Section 20.91.020 of the Newport Beach Municipal Code is hereby amended to read in its entirety as follows:

20.91.020 Application for Use Permit, Variance, or Federal Exception Permit.

An application for a use permit, variance, or Federal Exception Permit shall be filed in a manner consistent with the requirements contained in Chapter 20.90, Application Filing and Fees.

SECTION 8. Section 20.91.025 of the Newport Beach Municipal Code is hereby amended to read in its entirety as follows:

20.91.025 Duties of the Planning Director and the Planning Commission.

- A. **Authority.** The Planning Commission shall approve, conditionally approve, or disapprove applications for use permits, variances and Federal Exception Permits, unless the authority for an administrative decision on a use permit is specifically assigned to the Planning Director in the individual chapters of this code. ¹

Exception. The City Council shall have final decision-making authority on the applications for use permits, variances and Federal Exception Permits filed concurrently with amendments to the general plan, zoning code, or a planned community development plan or with a development agreement.

- B. **Rendering of Decision.** After the conclusion of the hearing on any application for a use permit, variance or Federal Exception Permit, the Planning Commission shall render a decision within thirty-five (35) days. Where the authority for an administrative decision on a use permit is assigned to the Planning Director, the Planning Director shall render a decision within fourteen (14) days of the acceptance of a completed application.
- C. **Report to the Planning Commission.** Upon rendering a decision on a use permit, the Planning Director shall report to the Planning Commission at the next regular meeting or within fourteen (14) days of the decision, whichever is appropriate.
- D. **Notice of Decision.** Upon the rendering of a decision on a use permit by the Planning Director, a notice of the decision shall be mailed to the applicant and all owners of property within three hundred (300) feet of the boundaries of the site.

SECTION 9. Section 20.91.030 of the Newport Beach Municipal Code is hereby amended to read in its entirety as follows:

20.91.030 Notice and Public Hearing.

- A. **Public Hearings.** The Planning Commission shall hold a public hearing on an application for a use permit, variance, or Federal Exception Permit. Public hearings are not required for applications where the authority for an administrative decision on a use permit is assigned to the Planning Director.
- B. **Timing of Hearings.** A public hearing shall be held on all use permit, variance, and Federal Exception Permit applications, except as otherwise provided in this chapter, within sixty (60) days after the acceptance of a completed application.
- C. **Required Notice.** Notice of a public hearing or an administrative decision shall be given as follows:
 - 1. **Mailed or Delivered Notice.**
 - a. **Residential Districts.** At least ten days prior to the hearing or an administrative decision, notice shall be mailed to the applicant and all owners of property within three hundred (300) feet of the boundaries of the site, as shown on the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses. It shall be the responsibility of the applicant to obtain

¹ The Planning Commission shall have the authority to initially review and approve or deny an application for a Federal Exception Permit regardless of whether this code specifically provides for a Federal Exception Permit under those conditions when otherwise required by state or federal law.

and provide to the City the names and addresses of owners as required by this section.

- b. **Nonresidential Districts.** At least ten days prior to the hearing or an administrative decision, notice shall be mailed to the applicant and all owners of property within three hundred (300) feet, excluding intervening rights-of-way and waterways, of the boundaries of the site, as shown on the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this section.
2. **Posted Notice.** Notice shall be posted in not less than two conspicuous places on or close to the property at least ten days prior to the hearing or the administrative decision.
3. **Published Notice.** Notice shall be published in at least one newspaper of general circulation within the City, at least ten days prior to the hearing.
- D. **Contents of Notice.** The notice of public hearing or of the decision of the Planning Director shall contain:
 1. A description of the location of the project site and the purpose of the application;
 2. A statement of the time, place, and purpose of the public hearing or of the purpose of the administrative decision;
 3. A reference to application materials on file for detailed information;
 4. A statement that any interested person or authorized agent may appear and be heard at the planning hearing and an explanation of their rights of appeal in the case of an administrative decision.
- E. **Continuance.** Upon the date set for a public hearing before the Planning Commission, the Planning Commission may continue the hearing to another date without giving further notice thereof if the date of the continued hearing is announced in open meeting.

SECTION 10. Section 20.91.035 of the Newport Beach Municipal Code is hereby amended by adding a new subsection C relating to Federal Exception Permits.

20.91.035 Required Findings.

The Planning Commission or the Planning Director, as the case may be, shall approve or conditionally approve an application for a use permit, variance, or Federal Exception

Permit if, on the basis of the application, plans, materials, and testimony submitted, the Planning Commission or the Planning Director finds:

A. For Use Permits.

1. That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located;
2. That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the general plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city;
3. That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.

B. For Variances.

1. That because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this code deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification;
2. The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the applicant;
3. The granting of the application is consistent with the purposes of this code and will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;
4. The granting of such application will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not under the circumstances of the particular case be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.

C. For Federal Exception Permits². 1. The Federal Exception Permit sought is handicapped-related.

² A "Federal Exception Permit" is the name of the permit and application process necessary to obtain a "reasonable accommodation" as that term is used in the Federal Fair Housing Act Amendments (FHAA) and the case law implementing the FHAA. The application for a Federal Exception Permit shall be approved unless there is substantial evidence in the administrative record that establishes that one or more of the findings for approval cannot be made. Federal

2. The living group is not residing in the Dwelling or Dwellings as a Single Housekeeping Unit.
3. The Federal Exception Permit, if approved, would not require a fundamental alteration in the nature of a municipal program nor impose an undue financial or administrative burden on the City. . To the extent authorized by law, the factors the Planning Commission or the City Council on review or appeal may consider in deciding whether to grant a Federal Exception Permit include, but are not necessarily limited to:
 - (i) whether the nature and/or extent of vehicular traffic, such as the frequency or duration of trips by commercial vehicles, would be altered to a such an extent that it would be contrary to, or violate, any relevant provision of the Newport Beach Municipal Code if the Federal Exception Permit was approved; or
 - (ii) whether development or use standards established in the Newport Beach Municipal Code and that are applicable to other residential uses in the neighborhood would be violated; or
 - (iii) whether a Campus would be established in a residential zone if the Federal Exception Permit were granted;

SECTION 11. Section 20.91.040 of the Newport Beach Municipal Code is hereby amended by adding a new subsection C relating to Federal Exception Permits.

20.91.040 Conditions of Approval.

The Planning Commission or the Planning Director, as the case may be, may impose such conditions in connection with the granting of a use permit, variance, or Federal Exception Permit as they deem necessary to secure the purposes of this code and may require guarantees and evidence that such conditions are being or will be complied with. Such conditions may include requirements for off-street parking facilities and prohibitions against assembly uses as determined in each case.

The following conditions shall be imposed upon the issuance of any Federal Exemption Permit:

- A. The permittee shall limit overnight occupancy of the Dwelling Units(s) to no more than the number of occupants permitted by the provisions of Title 15 of the Newport Beach Municipal Code.
- B. The permittee shall use best efforts to ensure that the occupants do not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of this Code or any law pertaining to noise, disorderly conduct, the consumption of alcohol, or the use of illegal drugs.

Exemption Permits are subject to the enforcement provision contained in Chapter 20.96.

- C. The permittee shall, upon notification that occupants and/or guests have created unreasonable noise or disturbances, engaged in disorderly conduct or committed violations of this Code or law pertaining to noise, disorderly conduct, the consumption of alcohol or the use of illegal drugs, promptly use best efforts to prevent a recurrence of such conduct.
- D. The permittee shall use best efforts to ensure compliance with all the provisions of Title 6 of the Municipal Code (garbage, refuse and cuttings).
- E. The permittee shall post, in a conspicuous place within the dwelling unit, a copy of this permit and/or the operational rules specified in this Section.

SECTION 12. Section 20.91.045 of the Newport Beach Municipal Code is hereby amended by adding a new subsection C relating to Federal Exception Permits.

20.91.045 Effective Date.

Use permits, variances, and Federal Exception Permits shall not become effective for fourteen (14) days after being granted, and in the event an appeal is filed or if the Planning Commission or the City Council shall exercise its right to review any such decision under the provisions of Chapter 20.95, the permit shall not become effective unless and until a decision granting the use permit, variance or Federal Exception Permit is made by the Planning Commission or the City Council.

SECTION 13. Section 20.91.050 of the Newport Beach Municipal Code is hereby amended by adding a new subsection C. relating to Federal Exception Permits.

20.91.050 Expiration, Time Extension, Violation, Discontinuance, and Revocation.

- A. Expiration. Any use permit, variance, or Federal Exception Permit granted in accordance with the terms of this code shall expire within twenty-four (24) months from the effective date of approval or at an alternative time specified as a condition of approval unless:
 - 1. A grading permit has been issued and grading has been substantially completed; or
 - 2. A building permit has been issued and construction has commenced; or
 - 3. A certificate of occupancy has been issued; or
 - 4. The use is established; or
 - 5. A time extension has been granted.

In cases where a coastal permit is required, the time period shall not begin until the effective date of approval of the coastal permit.

- B. Time Extension. The Planning Director may grant a time extension for a use permit, variance, or Federal Exception Permit for a period or periods not to exceed three years. An application for a time extension shall be made in writing to the Planning Director no less than thirty (30) days or more than ninety (90) days prior to the expiration date.
- C. Violation of Terms. Any use permit, variance, or Federal Exception Permit granted in accordance with the terms of this code may be revoked if any of the conditions or terms of such use permit, variance or Federal Exception Permit are violated, or if any law or ordinance is violated in connection therewith.
- D. Discontinuance. A use permit, variance, or Federal Exception Permit shall lapse if the exercise of rights granted by it is discontinued for one hundred eighty (180) consecutive days.
- E. Revocation. Procedures for revocation shall be as prescribed by Chapter 20.96, Enforcement.

SECTION 14. Section 20.91.055 of the Newport Beach Municipal Code is hereby amended relating to Federal Exception Permits.

20.91.055 Amendments and New Applications.

- A. Amendments. A request for changes in conditions of approval of a use permit, variance, or Federal Exception Permit or a change to plans that would affect a condition of approval shall be treated as a new application. The Planning Director may waive the requirement for a new application if the changes are minor, do not involve substantial alterations or additions to the plan or the conditions of approval, and are consistent with the intent of the original approval.
- B. New Applications. If an application for a use permit, variance, or Federal Exception Permit is disapproved, no new application for the same, or substantially the same, use permit, variance or Federal Exception Permit shall be filed within one year of the date of denial of the initial application unless the denial is made without prejudice.

SECTION 15. Severability.

If any provision or clause of this Chapter or the application thereof is held unconstitutional or otherwise invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, clauses or applications of this Chapter which can be implemented without the invalid provision, clause or application, it being hereby expressly hereby declared that this ordinance, and each section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, approved, adopted, and/or ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses, and/or phrases be declared invalid or unconstitutional.

SECTION 16: The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within fifteen (15) days after its adoption.

2

This Ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 14th day of September, 2004, and adopted on the 28th day of September, 2004, by the following vote, to-wit:

AYES, COUNCILMEMBERS Heffernan, Rosansky,
Bromberg, Webb, Daigle, Mayor Ridgeway

NOES, COUNCILMEMBERS Nichols

ABSENT, COUNCILMEMBERS _____

MAYOR *John W. Ridgeway*

ATTEST:

LaDonne M. Harkless
CITY CLERK



STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, LAVONNE M. HARKLESS, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2004-16 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 28th day of September 2004, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Heffernan, Rosansky, Bromberg, Webb, Daigle, Mayor Ridgeway

Noes: Nichols

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 29th day of September 2004.



Lavonne M. Harkless
City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

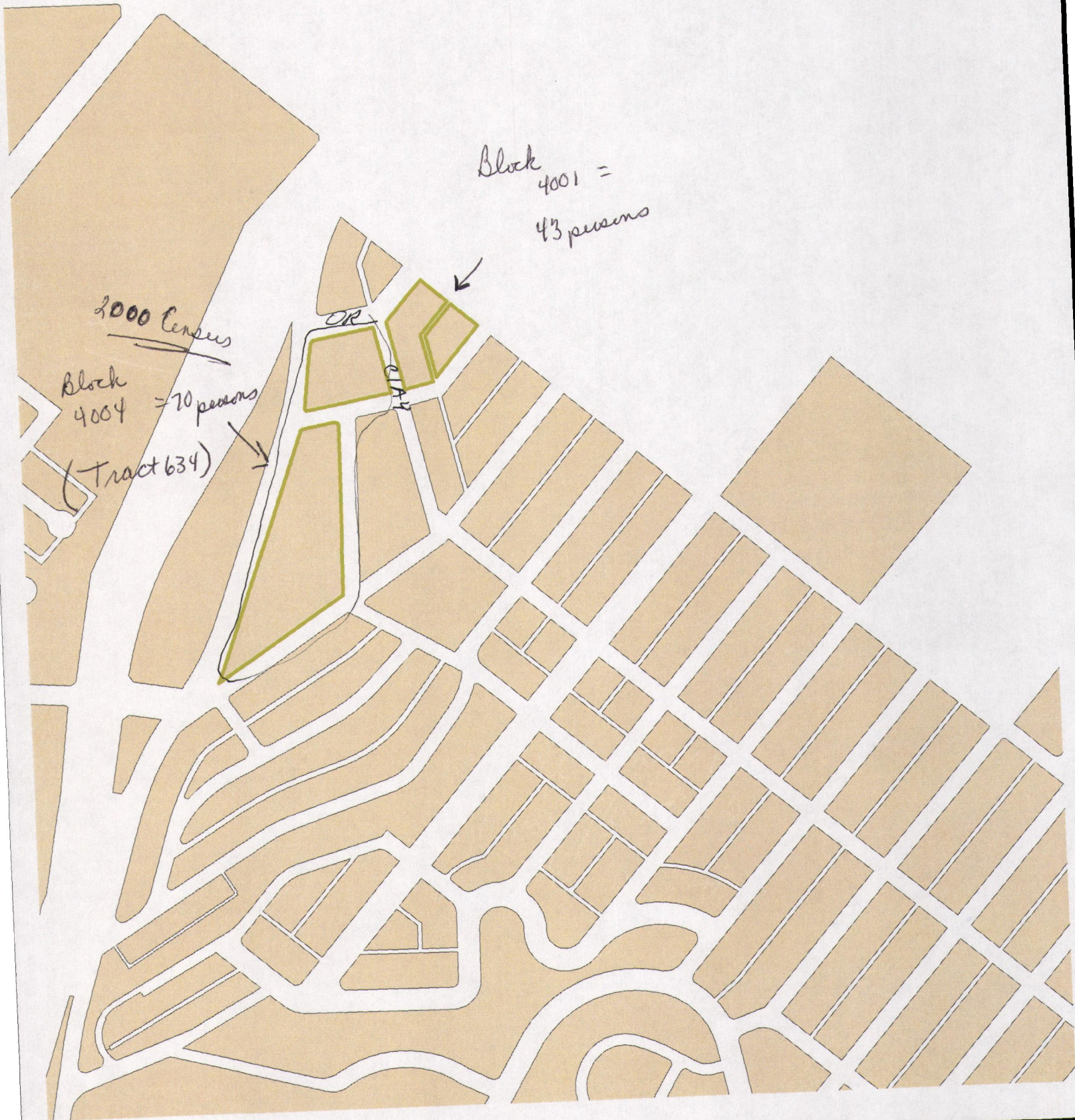
STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, LAVONNE M. HARKLESS, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2004-16 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in The Daily Pilot, a daily newspaper of general circulation on the following date, to wit: October 2, 2004.

In witness whereof, I have hereunto subscribed my name this _____ day of _____
2004.

City Clerk
City of Newport Beach, California

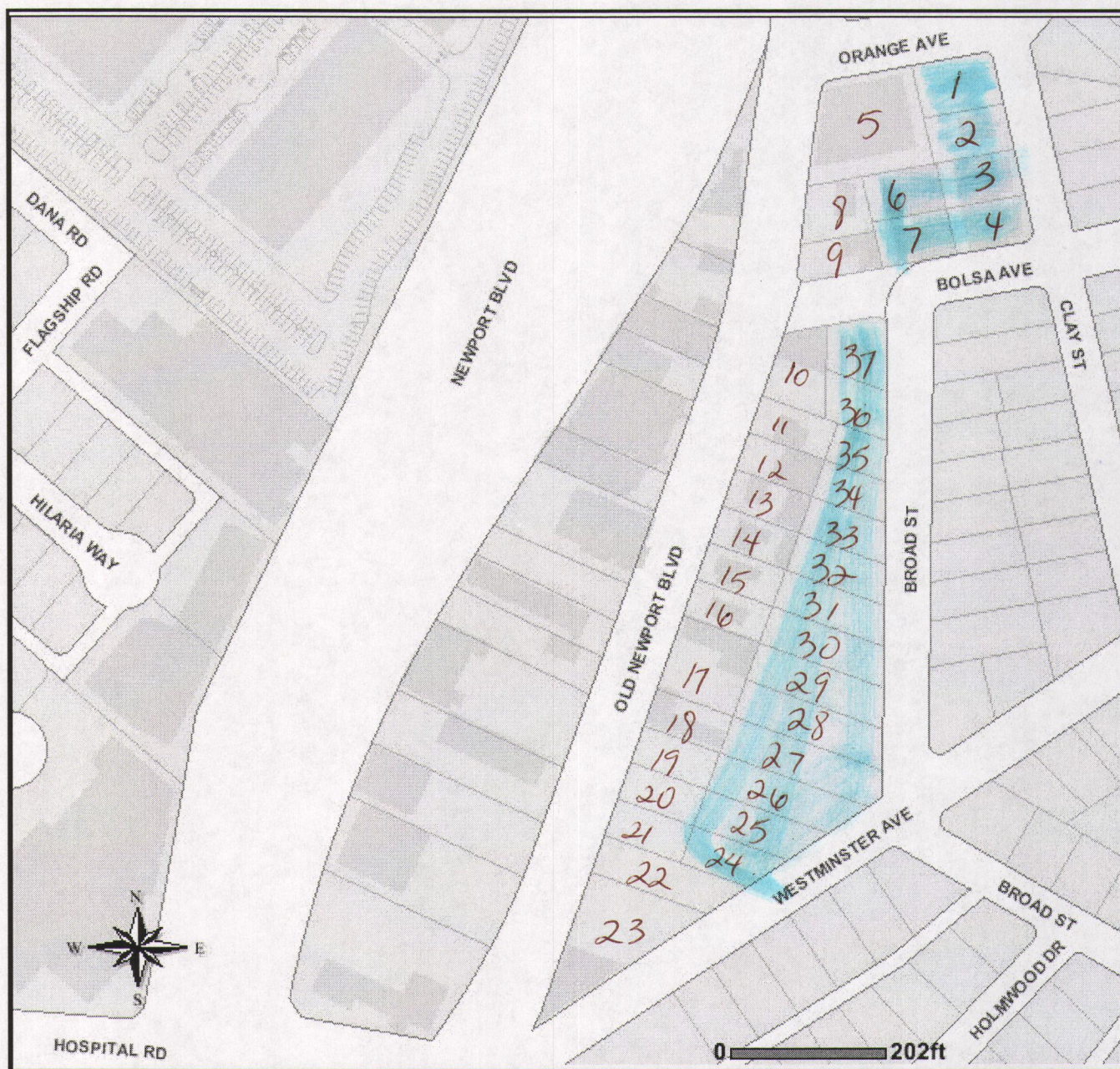
Part of record
3/25/09 Public Hearing





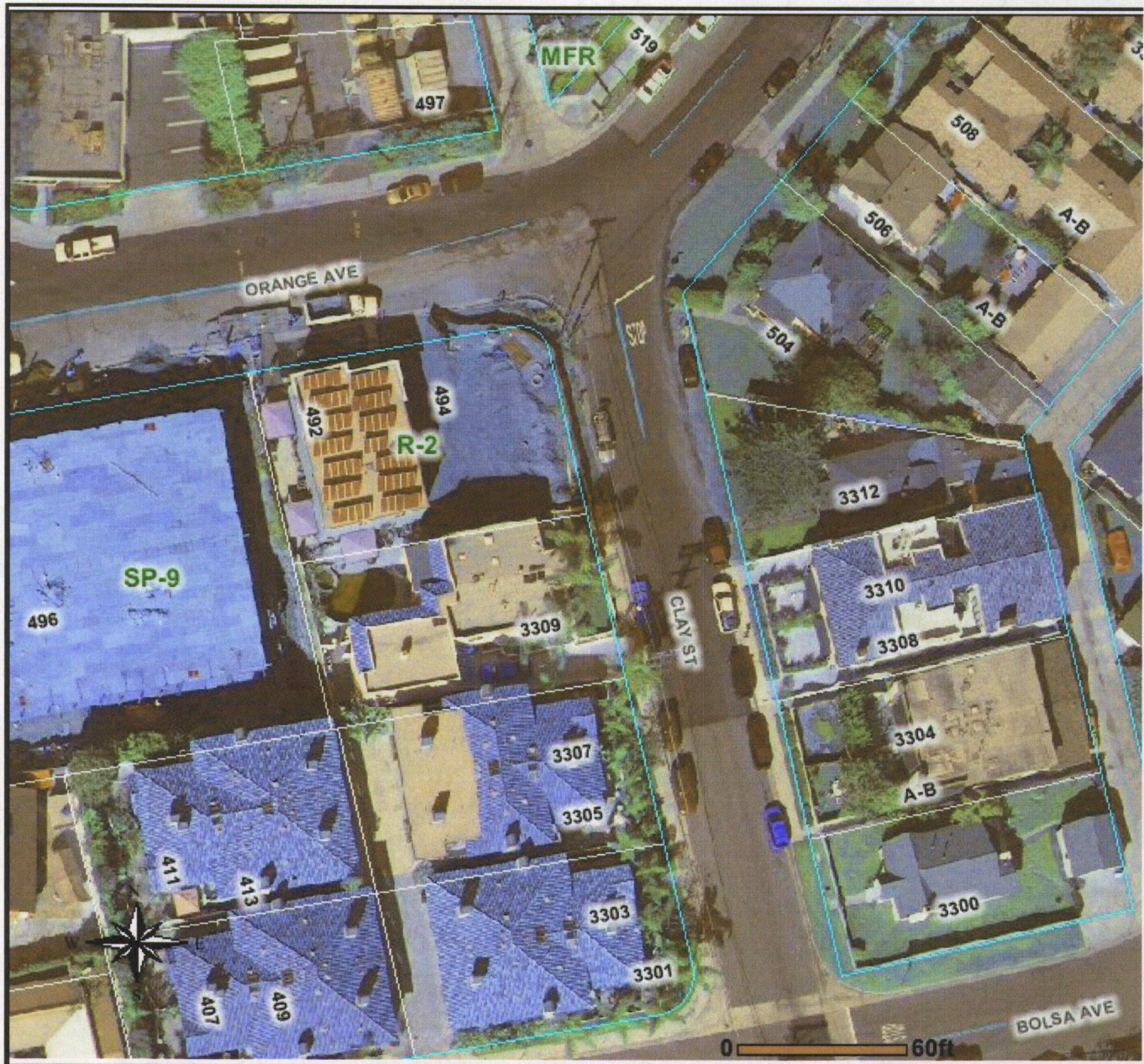
12 lots/parcels
43 persons = 3.58 per lot/parcel
all residential

Based on 2010 census



$$37 \text{ lots/parcels} \div 70 \text{ persons} = 1.89/\text{lot or parcel}$$

$$\underline{\underline{20 \text{ lots/parcels}}}_{\text{residential use}} \div 70 \text{ persons} = 3.5/\text{lot or parcel}$$



Aerial photo - Feb. 2006



Aerial photo - March, 2001

Submitted as public record of 3/25/09
Hearings

Here are some specific examples.

First - There is Always noise from these structures

Noise: At least 4 times in '08, I've walked over there to ask members to be quieter. On the one occasion that I asked for the person's name at the door, they refused. This happened in ^{late} July '08.

Second, there is often trash on the street out in front. And there is no one that can help over there: There's no super or manager ~~that I am aware of.~~

There is no Accountability by the owner's own words.

Third, we have Bolsa Park for children very close by. It is 40 by 50 feet long. Group home residents like to walk over there, smoke and then discard the butts in the sand, even in front of kids. I know these individuals are from the "complex" because I've seen them walk from the home to the park. Just today, as I was measuring the dimensions of the park, I found these. The pack was on the slide and the butt was in the sand.

There are more examples, but others will share them.

To close:

I ask the fancy, high-priced attorney/ies over there, how long did you spend at the properties really witnessing things? Did you spend years, months, weeks... even days? **OK, did you spend any time over there at all?** I highly doubt it. Same question for the owner. Well, **guess what**, I do live there, and I've been witnessing these things day and night for years.

As such, I believe any defense of the situation by the attorneys and operator **must** be heavily discounted. **Who's testimony is more material? Who's in a better position to account for the community impact?** Attorneys who fly in from DC the day of this hearing, or the people who actually, honestly and legally live there day in and day out?

As such, I hope you'll strongly consider my request to **NOT** grant this operator a reasonable accommodation permit.

My name is David Obbage and I live at 3307 Clay Street which is next door to the three building sober living Compound located at the corner of Clay Street and Orange Avenue in Newport Heights.

Over the past two years our community has expressed its concerns about the operation of this facility and the negative impacts that it has had on our neighborhood. The primary reason that we are opposed to this group home facility is based on facts and not speculation.

For example, on the morning of November 6, 2007, an officer from the Orange County Sheriff's Department came to my home looking for information about a resident from 3309 Clay Street which is the boarding house/sober living facility that we are reviewing today. The officer informed me that the individual they were looking for was being sought by law enforcement for misdemeanor and felony drug related charges. The officer also informed us that these type of suspects were elusive and hard to find because they move from house to house within the drug and alcohol group home network in Newport Beach.

What about the issue of overconcentration? We are not sure how many recovering addicts this facility can accommodate but we are estimating that almost ~~30~~ 40 people have been living in these 3 houses at any one time. This corner used to have two homes with two families living in them. Now we have 3 buildings with up to ~~30~~ 40 people living there. Is this what the City of Newport Beach intended when it established the R-2 Zoning District for this area?

Another legitimate concern we have is that this tri-plex of sober living homes is located one block from our local nursery school. Who is conducting background checks on the individuals that are living in this facility?

There have been several other instances of loud profanity, second hand smoke problems and suspicious activity have occurred since the Operator bought this property and started operating his boarding house and sober living facility.

I urge you to deny this application and force the Applicant to adhere to the zoning requirements and building codes that are in place for our community.

Thank you for giving me this opportunity to speak at today's hearing.

Brown, Janet

From: Kiff, Dave
Sent: Tuesday, March 24, 2009 4:44 PM
To: 'Tom Allen'; Wolcott, Cathy; Brown, Janet
Subject: FW: Pacific Shores

For the record.

From: brabara g [mailto:babs008@gmail.com]
Sent: Monday, March 23, 2009 7:53 PM
To: Kiff, Dave
Subject: Pacific Shores

Mr Kiff,

My name is Jacob. My wife Barbara and I live on Clay St with our two Pre-Teen children near the 3 Pacific Shores Re-Hab houses. My wife has been in contact with you for almost a year Re: these facilities. Barbara is currently at Hoag Hospital and is recovering from Surgery. She made me promise to contact you prior to the scheduled hearing on March 25th to voice our opinion as to these properties.

Some of the issues we have discussed are as follows:

The City has attributed 60 beds in the 3 properties (zoned R-2).
That is almost equal occupancy of the entire Block of Clay St which runs approx 150yds (a long block) (OVERCONCENTRATION?) **Much more I think, than any of the RE-HAB houses near the beach.**

The Property owner/operator is a convicted FELON just recently released from PRISON.

The tenants are not allowed to park on the property and must use street parking. (60 cars?) The 3 garages are full of building material and could only park 6 cars at best.

There are no less than 25 trash cans on trash days . Much more than any home in the area.

Tenants are sketchy at best and don't seem to sleep EVER.

It appears that with 60 beds and not offering any treatment it is nothing more than a **BOARDING HOUSE** with a very HIGH turn over rate. People don't seem to be there very long and new faces are always around.

The 3 properties use the property @ 3309 Clay as a Rec area as it has a pool. The 3 properties are actually connected and access to the pool from the other 2 properties is thru a rear chain link gate.

Most important seems to be that these RE-HAB houses were opened in direct **VIOLATION** of the **CITY MORATORIUM**. From what we were told the owner was notified by the city NOT TO OPEN and disregarded that order and opened anyway.

We had a family friend who's son was a resident there for a brief period but when he couldn't pay and fell behind 2 WEEKS he was asked to leave. I was never able to verify that information but, that's what we were told. It sure seems that these homes generate a very large monthly cash flow which explains the defiance to the city laws.

I bring my wife home from the Hospital Tomorrow. I am making a copy of this E-mail for her. I am sure i forgot some of the points she requested me to convey so she may re- connect with you in an additional E-mail later. I would like to mention that we were originally discussing attending the hearing on the 25th but decided against that idea for fear or retaliation.

Hopefully all of the points discussed in this E-mail have already been addressed in City Staff Reports.

Thank you Mr. Kiff for all your hard work in this highly POLITICAL ISSUE.

We do understand the position that the City is in with the **PROTECTED DISABLED** class.

We also know that we live in a bedroom community **FAMILY NEIGHBORHOOD** and are entitled to enjoy the comfort peace and tranquility of our family home and neighborhood.



3/25/2005

I have today received
this document dated 2005
at 1:45 pm 3/25/2009
from Tony Camacho.

To

From: Juan A Camacho
3305 CLAY ST.
NEWPORT BEACH CA 92663

Sometime in Aug. 2008 after an accident of
a drunk driver crashed into Manderson corner
property. I spoke with Manderson while he and
his son were cleaning the property of the crash.
He said he would not be surprised if the city had
sent /paid someone to crash into his property w/ a
drunk driver.

Juan A Camacho (Tony)



CITY OF NEWPORT BEACH
OFFICE OF THE CITY ATTORNEY

TO: Hearing Officer Thomas Allen

FROM: Catherine Wolcott, Deputy City Attorney, City of Newport Beach
Kit Bobko, Special Counsel, Richards, Watson & Gershon
A09-00147

RE: Reasonable Accommodation Issues – Necessity

DATE : March 25, 2009

This letter brief discusses the City of Newport Beach's interpretation of the federal Fair Housing Amendments Act's (FHAA) requirement that it make reasonable accommodation from its usual rules, policies, practices or services when such accommodation is necessary to afford a disabled individual an equal opportunity to use and enjoy a dwelling. Although the FHAA also requires that the request be *reasonable*, this letter will focus on the "necessity" prong of the analysis, and an analysis of the FHAA's requirement that disabled individuals have "an equal opportunity to use and enjoy a dwelling."

The FHAA defines discrimination in part as "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B) (bold added).

The FHAA's phrase "necessary to afford . . . an equal opportunity to use and enjoy a dwelling," has been reviewed by many courts, and Courts have been inconsistent in their interpretation of the term, "equal opportunity to use and enjoy a dwelling." Some courts have held that this requires cities and counties to accommodate disabled individuals who wish to reside in a group setting, to a degree that allows them to reside in a *specific* residence. Other courts have considered alternate similar housing options available to a disabled individual or group, and discussed the housing *type*, or residential zoning district desired, or a residence in a particular community, and found that the availability of these alternate similar forms of housing kept the disabled person from satisfying the necessity requirement.

Ninth Circuit Decisions

In the Ninth Circuit, the Court of Appeals has leaned towards the lower threshold for finding necessity, expanding the FHAA's "equal opportunity to use and enjoy a dwelling" to an equal opportunity "to use and enjoy a dwelling of their choice." ***City of Edmonds v. Washington State Building Council***, 18 F.3d 802 (9th Cir. 1994) stated that Congress intended the FHAA to protect the right of handicapped persons to live in the residence of their choice in the community, and that the question was not whether any housing was available, but whether housing that the individual desired was denied on impermissible grounds. 18 F.3d at 806. The court indicated that the sober living home had made a preliminary showing of necessity because it required six or more residents to ensure financial self-sufficiency, and to provide a supportive atmosphere for successful recovery. *Id.* at 803. The standard the court applied for a showing of necessity (financial viability and therapeutic benefit for the residents) is similar to that applied in other circuits, discussed below.

When a disabled individual is already living in a dwelling and requires accommodation to remain in that specific dwelling, it is likely the courts will find the requested accommodation necessary, although the requesting party must still satisfy the "reasonableness" prong. In ***McGary v. City of Portland***, 386 F.3d 1259 (9th Cir. 2004), a man with AIDS was cited by the City for maintaining a nuisance for failure to maintain his yard free of garbage and debris. After receiving an order to clean the property, the man asked for additional time due to his health (he had AIDS-related meningitis). The City ignored the request, hired a contractor to clean the property, sent the man a bill for the cost, and placed a lien on his property. The Ninth Circuit held that the man had stated a reasonable accommodations claim under the FHAA and the ADA.

The City argued that it had not denied the man the use and enjoyment of his home because it had neither excluded him from his home nor created less of an opportunity for him to live in the neighborhood of his choice. The court disagreed, and found that granting the additional compliance time requested was necessary to allow the disabled resident to comply with the law and avoid the lien. The Court also held that the imposition of a financial burden can sufficiently interfere with the use and enjoyment of a handicapped person's home to a degree that might require a reasonable accommodation. *Id.* at 1262-1263.

Similarly, in ***Giebeler v. M & B Associates***, 343 F.3d 1143 (9th Cir. 2003), the Court of Appeals found that a property management firm had failed to reasonably accommodate a disabled man who wished to reside in a specific apartment building, because he could not meet their financial qualification requirements. As his financially qualified mother was willing to act as his cosignor, the court found that it would have been a reasonable accommodation to modify the firm's no-cosignor policy. They also found the accommodation necessary, since without it the plaintiff would be denied a housing opportunity for which he was otherwise qualified. The court found that refusal to make

the accommodation was the direct cause of the erstwhile tenant being unable to reside in the building. 343 F.3d at 1155-1156.

Decisions in Other Circuits

In a situation similar to that of many residential care facility operators in Newport Beach, a Fourth Circuit court found that when alternative accommodations for the disabled already exist in a jurisdiction, providing a financial benefit to a facility operator by allowing them to operate a facility of larger size was not necessary to provide disabled residents with housing, and therefore was not a situation in which the FHAA required that a county grant the requested accommodation. In *Bryant Woods Inn, Inc. v. Howard County*, 124 F.3d 597 (4th Cir. 1997) the court analyzed the necessity prong of the reasonable accommodation analysis in detail. In this case, the operator of a group home for elderly and infirm requested a variance from the County to expand from 8 to 15 disabled and elderly residents. The County denied the variance and the operator sued, claiming intentional discrimination and failure to make a reasonable accommodation.

The court held that the plaintiff did not carry its burden to show that the requested accommodation was *necessary* to provide the disabled with an equal opportunity to use and enjoy a dwelling. In support of its finding that the plaintiff facility operator failed to make the required "necessity" showing, the court noted that 30 other similar facilities housing eight or fewer residents were already operating in the County. The plaintiff failed to present any evidence that the requested expansion was necessary to make the home economically viable or that the expansion would be therapeutically meaningful for facility residents. *Id.* at 605.

Furthermore, the court noted that the larger facility, "would provide not an *equal* opportunity to the Bryant Woods Inn's residents, but a financial advantage to the Bryant Woods Inn. Yet, the FHAA requires only an 'equal opportunity,' not a superior advantage." *Id.*

The *Bryant Woods Inn* court appeared to regard the "equal opportunity to reside in a dwelling" requirement of the FHAA to mean an opportunity to live in a certain type of facility, in a certain area or jurisdiction. "A handicapped person desiring to live in a group home in Howard County can do so now at Bryant Woods Inn under existing zoning regulations, and, if no vacancy exists, can do so at the numerous other group homes at which vacancies exist. The unrefuted evidence is that the vacancy rate was between 18 to 23% within Howard County. We hold that in these circumstances, Bryant Woods Inn's demand that it be allowed to expand its facility from 8 to 15 residents is not 'necessary,' as used in the FHAA, to accommodate handicapped persons." *Id.* Bryant Woods Inn sought to house 15 residents; alternative available accommodations offering similar services to groups of eight residents were considered an acceptable substitute by the court.

In a statement that could be applied to the City of Newport Beach as well as Howard County, Tennessee, the court said, "If Bryant Woods Inn's position were taken to its limit, it would be entitled to construct a 10-story building housing 75 residents, on the rationale that the residents had handicaps." *Id.*

This reasoning has been incorporated into City staff's approach in analyzing residential care facilities' reasonable accommodation requests. In the view of this court and many others, "necessary to afford such person equal opportunity to use and enjoy a dwelling" means "necessary to afford a disabled person an equal opportunity to live in the type of facility they choose within the city."

Smith & Lee Assocs. v. City of Taylor, 102 F.3d 781 (6th Cir. 1996) reviewed the necessity argument in a situation in which a city was lacking a sufficient supply of accommodations for the disabled. In *Smith & Lee Assoc.*, a residential home for the elderly and disabled sought to rezone its property to enable its expansion from 6 to 9 residents. The Sixth Circuit Court of Appeals held that the City failed to provide a reasonable accommodation when it denied the request. The expanded facility was necessary because (1) disabled seniors cannot live in residential areas without assistance; and (2) there was an insufficient supply of assisted living facilities in the area.

The *Smith & Lee Associates* court also analyzed Congress' legislative intent, and did not come up with the same conclusion as the *City of Edmonds*' court. The *Smith & Lee Associates* court said, "We find persuasive the analysis of courts that define equal opportunity under the FHAA as giving handicapped individuals the right to choose to live in single family neighborhoods, for that right serves to end the exclusion of handicapped individuals from the American mainstream." 102 F.3d at 794-795. It also quoted with approval from *Bryant Woods Inn, Inc. v. Howard County*, 911 F.Supp. at 946, repeating that the FHAA prohibited local government from applying land use regulations in a manner that would give people with disabilities a reduced opportunity to, or exclude people with disabilities entirely from, *zoning neighborhoods*, particularly residential neighborhoods. 102 F.3d at 795.

In another case that is factually similar to the Pacific Shores reasonable accommodation request, *Lapid-Laurel, LLC v. Zoning Bd. of Adjustment of the Township of Scotch Plains*, 284 F.3d 442 (3rd Cir. 2002), the Third Circuit Court of Appeals held that it was the plaintiff's burden to show necessity. "*The 'necessary' element requires the demonstration of a direct linkage between the proposed accommodation and the 'equal opportunity' to be provided to the handicapped person.*" 284 F.3d at 460 (italics added). In order to show necessity, the plaintiff must show that, but for the accommodation, they would be denied an equal opportunity to enjoy the housing of their choice. Disabled elderly residents, in the view of the *Lapid-Laurel* court, had the right to an equal opportunity to live in a single-family residential area. In that case, the court found that the plaintiff had demonstrated the necessity of the accommodation as to the elderly disabled individuals the plaintiff developer proposed to

house. Therefore, it held that a use variance was necessary for the elderly disabled to live in a residential area of the town.

However, the *Lapid-Laurel* court did not make a similar finding of necessity as to the size of the 95-bed elder care facility the plaintiff proposed. The town's land use board objected that the facility would be too large for the site on which it was proposed, and too large for the surrounding neighborhood. The court observed that a strict interpretation of the "necessity" requirements of Section 3604(f)(3)(B) would require the plaintiff to show that a building that size is required to provide the disabled with an equal opportunity to live in a residential neighborhood. The court said that to show necessity for the size of the facility, the plaintiff would have to show either that 1) the size of the facility was necessary for the facility's financial viability (which the court appeared to equate with giving the disabled an equal opportunity to live in a residential neighborhood), or 2) that the size of the facility would serve a therapeutic purpose (and would therefore ameliorate an effect of the handicap.) The court found that the plaintiff had not demonstrated that the proposed size of the facility was necessary for either financial viability or therapeutic effect. *Id.* at 460-461.

In *Erdman v. City of Fort Atkinson*, 84 F.3d 960 (7th Cir. 1996), the operator of a proposed group home for persons who were elderly and disabled requested a CUP to operate in a residential zone. The City denied the request on grounds that the application failed to show development plans for the entire 9-acre parcel and showed a cul-de-sac that was inconsistent with the City's master zoning plan. The Seventh Circuit held that the City did not fail to make a reasonable accommodation, because waiving the requirement of complete plans that are consistent with the master zoning plan was not necessary to provide the handicapped with an equal opportunity.

In *Schwarz v. City of Treasure Island*, 544 F.3d 1201 (11th Cir. 2008) examined the necessity requirement closely with regard to specific residences for alcohol and drug recovery facilities. The *Schwarz* court followed the "dwelling of his or her choice" analysis, and concluded that the availability of another dwelling somewhere within the city's boundaries was not germane to the analysis. 544 F.3d at 125-126. However, the court agreed with the City's argument that necessity had not been proved because the plaintiff had not shown the accommodation requested actually alleviated the effects of the handicap. *Id.* at 126. The court remanded. The case was remanded to the District Court for further review of the necessity issue.

In *U.S. v. Village of Palatine*, 37 F.3d 1230 (7th Cir. 1994), the Seventh Circuit held that a Village did not fail to provide a reasonable accommodation when it subjected a group home for persons recovering from substance abuse to a special use permit requirement. In a variation of the necessity argument, the facility operator argued that the SUP process would subject them to public hearings, vocal opposition, and unfair scrutiny based on their disability. *Id.* at 1233. The Seventh Circuit refuted this argument: "Public input is an important aspect of municipal decision making; we cannot

impose a blanket requirement that cities waive their public notice and hearing requirement since all cases involving the handicapped." *Id.* at 1234.

District Court Decisions

The decision in *U.S. v. City of Chicago Heights*, 161 F.Supp.2d 819 (N.D.Ill. 2001) reached a different decision on whether the right to live in a specific residence was supported by the FHAA. In that case, the U.S. government ("Government") alleged under the FHAA that the City failed to provide mentally disabled persons a reasonable accommodation from the City's requirement that group homes be separated from each other by 1000 feet.

The District Court held that the proposed accommodations had to be both *necessary* and *reasonable*. *Id.* at 833-834.

The concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability. Plaintiffs must show that but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice. *Id.* at 834 (internal quotes and citations omitted).

The *Chicago Heights* court held that the FHAA requires only a showing that the requested accommodation is one way of ameliorating the plaintiff's disability. The City argued that the Government had failed to show that a specific location for a group home was necessary. The court responded that while the Seventh Circuit had never expressly held that a handicapped person had an absolute right to the residence he or she chose, the FHAA makes it unlawful to 'make unavailable or deny a *dwelling* to any buyer or renter because of the handicap of . . . a person intending to reside in *that dwelling* after it is made available.' 42 U.S.C. § 3604(f)(1)(B). The statute thus speaks to the denial of the opportunity to live in particular dwellings." 161 F.Supp.2d at 835-836.

In *Community Services, Inc. v. Heidelberg Township*, 439 F.Supp.2d 308 (M.D.Pa. 2006), a healthcare company sought a variance to classify the residents of a group home for the mentally disabled as a "family" for purposes of the town's zoning code. The variance would have allowed the group home to operate as a single-family residence as a matter of right in an agricultural zone. The town denied the variance request and the operator sued on behalf of the patients under the FHAA and sought a preliminary injunction against the town.

The District Court held that the operator had a substantial likelihood of success on its reasonable accommodations claim. *Id.* at 398. The record showed that the plaintiffs required around-the-clock care to help them with their everyday living and that assisted living facilities were not allowed anywhere in the Town as a matter of right. *Id.* Thus, the operator was likely to meet its initial burden of showing that the variance was

necessary to allow the residents an equal opportunity to live *in the Town*. At the same time, there was nothing in the record to suggest that the requested variance was unreasonable. *Id.* (italics added)

In *Howard v. City of Beavercreek*, 108 F.Supp.2d 866 (S.D.Ohio 2000), a man who suffered from post traumatic stress disorder requested a variance to erect a fence which exceeded the City's height limit so as to block his neighbor's view onto his property. (The man believed that the neighbors were spying on him, which contributed to his stress and heart condition.) The City denied the variance and the man sued claiming the City failed to reasonably accommodate his disability.

The District Court held that the height variance for the fence was not a necessary accommodation because the plaintiff had lived in his home for 15 years without the fence and only stated that he might be forced to move from his home if he cannot build the fence. *Id.* at 873.

In *Means v. City of Dayton*, 111 F.Supp. 2d 969 (S.D. Ohio 2000), a residential care facility for the mentally disabled was granted a CUP to operate in a residential area subject to provision of additional off-street parking that was not required of other residential uses. The operator claimed that these conditions caused her to incur additional expenses and should have been eliminated as a reasonable accommodation. The District Court disagreed, holding that the Fair Housing Act does not override local zoning controls merely because they might make housing more expensive for the disabled absent a showing that the expense actually prevent the disabled from living in a residence. *Id.* at 978-979.