

November 27, 2009

SENT VIA ELECTRONIC MEAN

David Hunt, Esquire
City Attorney
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

Re: Appeal of Yellowstone Women's First Step House, Inc.
RA 09-004-007

Dear Mr. Hunt,

On November 25, 2009 (the night before Thanksgiving), counsel for Yellowstone Women's First Step House, Inc.(hereinafter "Yellowstone") was served with the City of Newport Beach's staff report to the City Council in reference to the appeal mentioned above. Catherine Wolcott of your staff emailed me at approximately 7:46 p.m. (e.s.t.) to advise me that the reports and attachments were available for downloading at the City of Newport Beach's website.

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

- Yellowstone is requesting a reasonable accommodation that will allow it to maintain a maximum occupancy of 12 residents at 1561 Indus Street, 1621 Indus Street; 1571 Pegasus Street; 20172 Redlands Drive, plus a live in manager for 1621 Indus Street and 20172 Redlands Drive. 1561 Indus and 1571 Pegasus are chartered as Oxford Houses and in accordance with the Oxford House model, the house is democratically run, financially self-supported, and immediately expels any resident that relapse. The democratic aspect of an Oxford House prohibits the use of a house manager as the residents make all the decisions relating to the household, including the filling of vacancies.

- Yellowstone is requesting as a reasonable accommodation that the City will treat each of houses of its as a "single housekeeping unit" by waiving the requirement that all of the residents be on a single lease as required in the definition of that term in NBMC §20.03.030.

- Yellowstone is requesting that the City apply all building, zoning, fire and life safety codes to each of houses (other than those codes that are applicable to state licensed six and under residential treatment facilities) in the same manner those code provisions are applied to either "single

housekeeping units” or “single family uses.” In addition, Yellowstone is requesting that the City grandfather in the fire clearances Yellowstone received from Orange County for its houses prior to the City’s annexation of the Santa Ana heights in January, 2008.

- Yellowstone requests waiver of the occupancy limitation of two persons per bedroom plus one staff member to determination maximum occupancy per house.¹

Yellowstone offers its residents fellowship and the existence of a structured setting where zero tolerance of alcohol and drug use is enforced. Moreover, residence at Yellowstone offers the residents the sense of community with similarly situated persons in recovery and the opportunity to reside in a stable alcohol and drug free environment. In addition, Yellowstone offers its residents a self-paced recovery option and which gives each resident sufficient time for personal psychological growth while avoiding the use of alcohol and other mood altering substances. Yellowstone differ from other recovery programs because it allows each resident to gain stability in their lives, and sufficient time for change and personal growth at their pace as long as they follow the rules of residency. Residency in at Yellowstone gives the recovering alcoholic and drug addict an opportunity to become a responsible, productive member of society, which is a goal the City should embrace. Those not stricken with the disease of alcoholism or drug addiction often do not understand the need to be around others who are striving for the same thing, learning to live on life’s terms without the need to use alcohol or drugs. “Little things” most members of society take for granted are often new or relearned behavior for persons in recovery. These “little things” often include learning that getting up every morning and going to work on time every day will result in getting a pay check at the end of the week. This new or relearned behavior is embraced as a cornerstone of the residents’ recovery. Without a housing program such as that offered by Yellowstone it is highly doubtful that its residents could live independently without relapsing into active alcoholism and drug addiction.

Oxford House, Inc. assists in the establishment of housing for recovering addicts and alcoholics that is financially self-supported, democratically run, and immediately expels anyone who uses drugs or alcohol, inside or outside the house. There is no paid staff, counseling, therapy, or house manager involved in the operation of the house. In an Oxford House the group behaves like any family and makes group decision based on democratic procedures. Oxford House is nothing more than a single family residence.

Oxford House residents are encouraged to rent single family dwellings located in good neighborhoods. This means Oxford Houses are usually located in areas zoned for single family dwellings.

¹Such a limitation is a violation of the Fair Housing Act since this occupancy requirement is not applied to related persons. *City of Edmonds v. Oxford House, Inc.* 514 U.S. 725(1995)

Oxford Houses are not substance abuse centers, halfway houses, shelters nor community care facilities. There is not treatment, counseling, therapy, or any type of health care service provided. Oxford Houses are not licensed by the State of California nor are they required to be licensed. In an Oxford House, as opposed to a halfway house, residents live there by choice. There is no house manager, paid staff or other type of institutional personnel involved in the supervision or management of the house. All decisions relating to the functioning of an Oxford House are made democratically. An Oxford House manages its own finances and has its own bank account. There is no testing for alcohol or drug use, nor are there any rules relating to curfews. Oxford Houses are not halfway houses, nor are they a substitute for halfway houses.

Oxford Houses are neither rooming nor boarding houses. The residents of Oxford House-Keystone Manor (1561 Indus) and Oxford House-Pegasus (1571 Pegasus) rent the entire premises rather than a single room. They have access to the entire house and all of the household facilities, and live in the house as any other group of unrelated persons functioning as a single housekeeping unit. The residents of the house share all household responsibilities, including financial responsibility for the rent and utilities, which they pay out of a single household checking account. They also share in the cooking, shopping, cleaning and general care of the premises. The residents live together purposefully to create a "family" atmosphere, where all aspects of domestic life are shared by the residents. There are no special locks on the doors of the bedrooms. There is not staff, paid or otherwise, living in the house or overseeing the house, and no treatment or professional services provided at the premises.

Physically, the house is no different from any other single family house in the neighborhood. It is simply a single family dwelling that is being rented by a group of individuals. The lease is between the landlord and the residents of Oxford House. Oxford House-Keystone Manor and Oxford House-Pegasus is in effect, an unincorporated association composed of the residents who reside each Oxford House. Thus, there is a direct landlord-tenant relationship between the actual residents of the premises and the landlord.

More important, there is no third party making any decision regarding the way these houses operate, who resides in the house or how the houses are to be run. On the contrary, it is the residents themselves who are making all of these decisions. Moreover, is there not an owner or operator at the premises who makes decision regarding who lives in premises and how the premises would function. Further, all of the household expenses, including rent, utilities and basic household supplies, are paid for by only the residents. The payments are all equal, regardless of the size of the room, since each resident is leasing the entire house, not just a room. The landlord is paid one monthly check for rent, which reflects the rent for the entire house. Finally, if there is a vacancy, the residents decide if they wish to fill it, and if so, the identity of the new occupant.

As should be obvious, not only is there no "operator" making decision regarding the running of the premises but rather the owner has absolutely nothing to do with the identity of the new individuals residing at the house, or how long the individuals stay at the house (other than simply

establishing the lease for the entire property)). All of these decisions are made exclusively by the tenants who are renting the premises.

In sum, for the same reasons asserted, we submit that the use of Oxford House-Keystone Manor and Oxford House-Pegasus, (which is based on the same model of self-run, self-supported shared living as an intentional "family") is likewise not a community care center, rooming or boarding house, group home or halfway-house under any applicable definition. *See Oxford House - Evergreen v. City of Plainfield*, 769 F. Supp. 1329 (D. N.J. 1991)(Oxford House is not a halfway house. Residents share more than "household responsibilities" and meals. The residents make all house decisions in a democratic fashion. But even more important, the support they lend each other is therapeutic, in the same manner as that of a well-functioning family. The relationship is not analogous to that between residents of a boarding house).² Oxford House, Inc. has a charter which certifies that the house is conducting itself according to these principles.

Oxford House residents are considered to be the "functional equivalent" of a family for several reasons. First, all the residents have access to the entire house. Second, all the residents participate equally in the housekeeping functions of the house, *i.e.*, house chores, house finances. Each resident, however, is responsible for his own food and cooking. Third is the quality of the relationship among the residents. The emotional and mutual support and bonding given each Oxford House resident in support of his/her recovery from drug addiction and alcoholism is the equivalent of the type of love and support received in a traditional family. Finally, the living arrangement is not based upon a profit motive. It is necessary that each of the Oxford Houses to be able to have a

²Also, *See Oxford House, Inc., et al. v. Township of Cherry Hill*, 799 F. Supp. 450 , 452 (D.N.J. 1992), wherein the Court stated:

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

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

maximum of twelve residents in order for the residents to ameliorate the effects of the diseases of alcoholism and drug addiction.

In addition, residents live in an Oxford House by choice. The choice is usually motivated by the individual's desire not to relapse into drug and/or alcohol use again after that individual has bottomed out, *i.e.*, lost jobs, home or family. It is also motivated by the desire that one must change their lifestyle, the manner in which they conduct their affairs, and the need to become a responsible, productive member of society. The final factor in determining that Oxford House residents are the "functional equivalent" of a family is the fact that there are no limits as to how long a resident can stay in Oxford House. Conceivably, an individual can stay in Oxford House a lifetime if he/she does not relapse into drug and/or alcohol use, pay his/her rent on time, and does not engage in disruptive behavior.

The requested accommodations are necessary so that this particular group of recovering alcoholics and drug addicts may have an equal opportunity to use and enjoy the dwelling of their choice. As the court in *Smith & Lee Associates, Inc. v. City of Taylor* pointed out, equal opportunity under the FHA in the zoning context is defined "as giving handicapped individuals the right to choose to live in single-family neighborhoods." 102 F.3d 781, 794-95 (6th Cir. 1996). Here, there is substantial evidence that the requested accommodation is necessary to achieve an opportunity for the disabled residents of the Orange Avenue properties to live in a residential area of the City of Newport Beach. Absent the sober house setting, the individual residents of Yellowstone would not be able to live in a supportive environment in a residential area, let alone a single-family residential area. *See also Oconomowoc Residential Prog.*, 300 F.3d at 784 ("When a zoning authority refuses to reasonably accommodate these small group living facilities, it denies disabled persons an equal opportunity to live in the community of their choice."); *Sharpvisions, Inc. v. Borough of Plum*, 475 F. Supp. 2d 514, 526 (W.D. Pa. 2007) (holding that request for accommodation to definition of "family" was necessary for a resident "to enjoy the housing of his or her choice").

Yellowstone's requested accommodations, to allow 12 residents plus a live in manager at the two non Oxford Houses and 12 at the Oxford Houses, is necessary to afford the disabled residents of the Yellowstone houses the equal opportunity to use and enjoy a dwelling. It has been found that individuals who decide to live in sober housing programs, such as that offered by Yellowstone, are allowed to engage in the process of recovery from alcoholism and substance abuse, at their own pace that the effects of the disease of alcoholism and drug addiction are alleviated. By living with other persons who are in recovery, the residents do not have to face an alcoholic's or addict's deadliest enemy: loneliness.³ The requested accommodations are necessary since it will enhance the residents'

³Congress has also endorsed group homes as a tool in the fight against addiction. Specifically, the federal government gives the states block grants to fight substance abuse. The statute regulating states' use of this federal money expressly allows them to use their grants to "establish and maintain the ongoing operation of a revolving fund . . . to support group homes for recovering substance abusers[.]" 42 U.S.C. § 300x-25(a). (loans for sober housing based on the

recovery from alcoholism and drug addiction. See *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 749 (7th Cir. 2006) (en banc) ("[T]he statute requires only accommodations necessary to ameliorate the effect of the plaintiff's disability so that she may compete equally with the non-disabled in the housing market."); *Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of Twp. of Scotch Plains*, 284 F.3d 442, 460 (3d Cir. 2002) ("[I]f the proposed accommodation provides no direct amelioration of a disability's effect, it cannot be said to be necessary.") (quotation marks omitted); *Forest City Daly Hous., Inc. v. Town of N. Hempstead*, 175 F.3d 144, 152 (2d Cir. 1999) (explaining that the relevant inquiry is whether "the non-complying features of the proposed residence are 'necessary' in light of the disabilities of proposed residents"); *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775, 784 (7th Cir. Wis. 2002) (An accommodation is "necessary" if it will "affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability.") See also, *Developmental Servs. of Neb. v. City of Lincoln*, 504 F. Supp. 2d 714, 723 (D. Neb. 2007) and *New Hope Fellowship, Inc. v. City of Omaha*, 2005 U.S. Dist. LEXIS 39174 (D. Neb. 2005). Without the required accommodation residents of Yellowstone will be denied the equal opportunity to live in a residential neighborhood." *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d at 784 (citations omitted).

In addition, a minimum of twelve residents per address is necessary so that Yellowstone may be economically viable. Yellowstone is required to make mortgage payments, pay property taxes, insurance, utilities as well as expenses related to maintenance and upkeep on the properties. The cost of the Yellowstone program also includes providing "scholarships" for some residents who need a safe and sober residence but can not afford the rent, absorbing the costs of bad checks or failures to pay rent. Any household is entitled to bring in sufficient income to cover its living expenses. In addition, Yellowstone as a provider of housing and services to recovering substance abusers is also entitled to generate enough income to pay its business expenses. Even if there is a "commercial nature" to the operation of the Yellowstone houses, this is not a basis for denying its request for a reasonable accommodation. (The nature of group home living for the handicapped often requires alternative living arrangements to effectuate the purpose of the FHA. The disabled are not able to live safely and independently without organized, and sometimes commercial group homes. *Groome Resources Ltd. v. Parish of Jefferson*⁴, 234 F.3d 192, 206 (5th Cir. 2000). The fact that the Glendora

Oxford House concept). "The purpose of the fund is to make loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than 6 individuals," and these group homes must operate under rules similar to the rules each resident agrees as a condition of living at Yellowstone Id. § 300x-25(a)(1). *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1227 n. 16 (11th Cir. Fla. 2008)

⁴The *Groome* Court also held: "In addition to the commercial aspect of purchasing the home, it must be noted that the granting of reasonable accommodations to Alzheimer's group homes and other homes for disabled individuals also affects the commercial viability of care organizations like Groome Resources. The district court found that the zoning ordinance, with its

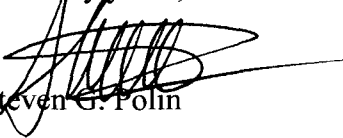
David Hunt, Esquire
November 27, 2009

Page 7

home is a business should not be the basis for denying an accommodation when reasonable and necessary. *Avalon Residential Care Homes, Inc. v. City of Dallas*, 130 F. Supp. 2d 833, 841 (N.D. Tex. 2000))⁵. Yellowstone's requests for a reasonable accommodation is reasonable and necessary based on its need to pay normal household expenses as well as its business and operational expenses.

For the reasons stated above, it is requested that the City Council find that there does not exist substantial evidence to support the findings of the hearing officer. It is further requested that the City Council approve Yellowstone's modified requests for a reasonable accommodation.

Sincerely yours,



Steven G. Polin

cc: Christopher Brancart
Yellowstone Properties, LLC
Patrick Bobko
Dana Mulhauser
Paul E. Smith

limitation on four unrelated persons, "will make it economically unfeasible for plaintiff to operate the proposed home." The court recognized that the economic viability of this care facility was impeded by the refusal to grant an accommodation" *Groome Resources, Ltd. v. Parish of Jefferson*, 234 F.3d 192, 206 (5th Cir. La. 2000)

⁵Other circuits have also recognized that commercial group homes may be the only way for disabled individuals to live in a residential community. See *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1105 (3d Cir. 1996); *Smith & Lee Assocs., Inc. v City of Taylor, Mich.*, 13 F.3d 920, 931 (6th Cir. 1993).