

NEWPORT COAST RECOVERY - 1/22/2009

1 MR. MATHENA: And I want that in the record.

2 Thank you.

3 MR. ALLEN: Sir, if you can't be here at the
4 next time, and if you have to have --

5 MR. LISKIN: You know, my name is Matt Liskin.

6 MR. ALLEN: We cannot have more argument on
7 continuing this matter. It's going to be continued.

8 MR. LISKIN: You know what? Sir, with due
9 respect, I, and all these citizens, came here. And just
10 because this gentleman and this organization -- it's
11 inconvenient and they are not prepared, I'm not going to
12 guess if I'm available next week. I'm here now, and I'd
13 like to make a comment.

14 And my comment, which I think is significant,
15 is that if you do review the file, which I have done, and
16 if you take today into context, it's consistent with this
17 operator really not doing a good job being responsible
18 just in the process.

19 And what I think is pertinent is, how can they
20 be responsible in the care of troubled people in the
21 community when, once again, they can't be responsive to
22 the City or to all these people who interrupt their day
23 to come here to get resolution to what is a difficult
24 issue?

25 That is a core competency issue in terms of

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1 running any business, and that's being responsible from a
2 regulatory point of view. And in the case of health
3 care, it's paramount. And I don't believe that the
4 argument of, "Well, I got this file today, because they
5 just hired me today," says very good things about this
6 operator's ability to work with this community -- and
7 I've made that comment about other operators -- but more
8 importantly, about how they must be caring for their
9 patients.

10 This is black-and-white stuff. You fill it
11 out. Drug patients have a multitude of problems which
12 have to be solved in a very careful and thoughtful way.
13 And I think careful and thoughtfulness is anything but
14 what we're seeing with the conduct of this operator.

15 MR. ALLEN: Okay. Thank you. That's a valid
16 comment.

17 MR. LISKIN: Thank you.

18 MR. ALLEN: All right. So there's been a
19 request by the applicant to continue this matter. Staff
20 and the applicant's attorney has spoken here on the
21 record here, and it's agreed that this matter, Kramer
22 Center, 28th Street, will be continued to January 29th at
23 4 p.m. And at that time, it will go forward.

24 All right. Any other business? I believe
25 there's some business about the Ocean Recovery matter

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1 that needs to be focused on.

2 MR. KIFF: Let me just briefly tell the
3 audience the upcoming group residential hearings.

4 Ocean Recovery is confirmed for February the
5 5th. So same room, 4 o'clock. They will have two
6 properties up at once, 1601 West Balboa and 1115 West
7 Balboa.

8 Yellowstone Recovery, and they have four
9 properties in Santa Ana Heights. This is a combined use
10 permit and reasonable accommodation hearing. That is
11 schedule for Thursday, February 12th. So a week later,
12 same location, same time.

13 And there are others pending. Pacific Shores
14 Recovery. That will -- they are approaching us with a
15 reasonable accommodation hearing.

16 There's an organization called Balboa Recovery
17 that has three unlicensed treatment homes they are
18 proposing to ask for reasonable accommodation.

19 And then finally, Morningside Recovery has told
20 us that they intend to ask for reasonable accommodation
21 on some locations, and then potentially involving a use
22 permit hearing for locations in a multi-family zone.
23 That would be new locations.

24 MR. ALLEN: Okay. So the certain times right
25 now are January 29th for Kramer, February 5th for Ocean

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1 Recovery, and February 12th for Yellowstone?

2 MR. KIFF: That's right.

3 MR. ALLEN: All right. Is there any other
4 business to come before the hearing officer or hearing
5 matters that the audience should be aware of?

6 MR. KIFF: I would make one final note,
7 Mr. Allen. A number of folks have asked for the
8 transcript from these hearings. And we're remiss in not
9 putting them up on the Web site. I will do that for each
10 of the hearings we've held and on a going-forward basis
11 when we receive those transcripts. Those are available
12 to the public, to the applicant, to anyone else who wants
13 to see them.

14 MR. ALLEN: Thank you. And with that, we're
15 adjourned.

16 (Ending time: 4:28 p.m.)

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2
3 I, the undersigned, a Certified Shorthand
4 Reporter for the State of California, do hereby certify:

5 That prior foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were placed under oath; that a verbatim
9 record of the proceedings was made by me using machine
10 shorthand which was thereafter transcribed under my
11 direction; further, that the foregoing is an accurate
12 transcription thereof.

13 I further certify that I am neither financially
14 interested in the action nor a relative or employee of
15 any attorney of any of the parties.

16 IN WITNESS WHEREOF, I have this date subscribed
17 my name.

18
19 Dated: 1-26-09

20
21 
22 Laura A. Millsap, RPR
23 CSR No. 9266
24
25

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WORD
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Signed, Final Resolution (2/4/09)

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NCR UP/RA 00713

713

RESOLUTION NO. HO-2009-001

**A RESOLUTION OF A HEARING OFFICER OF THE CITY
OF NEWPORT BEACH DENYING WITH PREJUDICE USE
PERMIT NO. 2008-033 TO ALLOW AN EXISTING GROUP
RESIDENTIAL USE TO CONTINUE AT 1216 WEST
BALBOA BOULEVARD, NEWPORT BEACH, CALIFORNIA
(PA2008-104)**

WHEREAS, Ordinance No. 2008-05 was adopted by the Newport Beach City Council on January 22, 2008, following noticed public hearings; and

WHEREAS, the adoption of Ordinance No. 2008-05 amended the City of Newport Beach's Municipal Code (NBMC) relating to Group Residential Uses; and

WHEREAS, Ordinance No. 2008-05 added Chapter 20.91A to the NBMC. Chapter 20.91A sets forth a process by which existing group residential care facilities, except for state-licensed drug or alcohol treatment homes serving six or fewer clients and not operating integrally with other uses, must apply for use permits to remain in operation beyond February 2009; and

WHEREAS, in order to allow an existing group residential care facility to remain in operation, a Hearing Officer must find, following a noticed public hearing, that all four of the findings identified in NBMC §20.91.035 (A) and all seven of the findings identified in §20.91A.060 can be met; and

WHEREAS, Newport Coast Recovery, located at 1216 West Balboa Boulevard ("Use Location") in Newport Beach, California is today a group residential care facility in an apartment complex housing seven units that is a state-licensed alcohol or drug residential treatment home for up 29 persons (ADP License No. 300156AP); and

WHEREAS, Newport Coast Recovery ("Use") applied for Use Permit No. 2008-033 to continue its operations as an 18 bed facility under Ordinance No. 2008-05 within the applicable time period, and a noticed public hearing was held on Monday, December 8, 2008, at the Newport Beach City Council Chambers where public testimony was taken, including testimony from the applicant, and this hearing was continued to Monday, January 12, 2009, also at the Newport Beach City Council Chambers where more public testimony was received including testimony from the applicant; and

WHEREAS, both hearings were presided over by Thomas W. Allen, Hearing Officer for the City of Newport Beach; and

WHEREAS, the Use Location is within the Nonstandard Subdivision Area as defined by Ordinance No. 2008-05; and

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City of Newport Beach
Hearing Officer Resolution
1216 West Balboa Boulevard (PA2008-104)
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WHEREAS, proximate to the Use Location are the following uses referred to in NBMC §20.91A.060 (D):

1. Within 300 feet: Balboa Horizons Recovery Services (11 bed licensed treatment facility located at 1132 West Balboa Boulevard, with an approved use permit) is one block east of the Use Location, on the same side of the street.
2. Within 300 feet and across the street: Newport Elementary School for students in grades Kindergarten through 5th grade at located 1327 West Balboa Boulevard.
3. Within 750 feet: Christ Church's large (44 children capacity) state-licensed day care center located at 1400 West Balboa Boulevard.
4. Within 1250 feet: Outlets for alcoholic beverages are the American Legion Hall located at 215 W. 15th Street and Fry's Market located at 115 E. 15th Street.

NOW THEREFORE BE IT RESOLVED:

Section 1. That Finding No. 3 of NBMC §20.91.035 (A) can be made for the following reasons:

NBMC §20.91.035 (A) Finding No. 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.

The facility, as conditioned through a use permit, would comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Findings A and B of the NBMC §20.91A.060 and as described in Section 2 below.

Section 2. That Findings A - C and Findings E - G of NBMC §20.91A.060 can be made for the following reasons:

NBMC §20.91A.060 Finding A: The use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows:

1. **No secondhand smoke can be detectable outside the property.**

The facility's current operational regulations restrict smoking to designated areas within a courtyard area of the facility. The courtyard area is enclosed on all sides by walls but is open to the sky. Smoking outside of the limits of the enclosed courtyard area is prohibited.

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- 2. Operations of the facility must comply with state and local law, and the submitted management plan, including any modifications required by this Use Permit.**

The operations of this facility are in compliance with the State ADP license, and as conditioned with approval of a use permit for the facility, would be required to comply with the approved management plan. Approval of a use permit for the facility would include a condition of approval requiring that the applicant obtain an amended State ADP license to allow a maximum of 14 residents and that within 60 days of the issuance of a use permit, the applicant confirm, in writing and with such information presented to the City, that the counseling of familial members not in residence at 1216 West Balboa Boulevard is acceptable under the terms of the current ADP license and any future ADP license.

- 3. A contact name and number must be provided to the City.**

Appropriate names and contact information numbers are provided within the application. Approval of a use permit for the facility would include a condition of approval requiring the applicant to provide the City with the appropriate "after hours" names and contact information numbers.

- 4. No services requiring a license can be provided if the facility does not have a license for those services.**

The operation plan for the facility provides that only those services permitted by the facility's ADP license are performed within the facility.

- 5. There shall be no more than two persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.**

The facility is licensed for a maximum occupancy of 29 residents. The facility contains 9 bedrooms currently occupied by two persons per bedroom for a total of 18 residents. Approval of a use permit for the facility would include a condition of approval requiring the applicant to obtain an amended ADP license establishing a maximum resident occupancy in treatment of 14 persons, the equivalent of two persons per dwelling unit. This occupancy is consistent with the residential occupancy design of the building and the occupancy standards of NBMC Section 20.91A.050.

- 6. If certification from an entity other than ADP's licensing program is available, applicants must get that certification.**

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Approval of a use permit for the facility would include a condition of approval requiring the applicant to consider the merits of additional certification available to it, including but not limited to an Orange County Adult Alcohol and Drug Sober Living certification.

7. All individuals and entities involved in the facility's operation and ownership must be disclosed.

All employees and management personnel have been disclosed in the application documentation.

8. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.

According to information provided in the application documentation the owners and managers of the facility do not own or operate any other similar facility in the City of Newport Beach or in the State of California, and there is no known record of state violations associated with the facility's operations. The facility's State of California ADP license is in good standing and is valid until January 31, 2010. While residents submitted evidence that the same operator managed an unlicensed adult recovery maintenance facility at 1219 West Balboa for a period of time, the City is not aware that this facility, which did not provide treatment onsite, was operated in violation of the law.

NBMC §20.91A.060 Finding B: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The facility provides a total of six off-street parking spaces; and therefore, would meet the NBMC requirements for off-street parking for 14 beds with the exception of weekend family counseling sessions as discussed below.

Residents completing their first phase of treatment, which includes 30 days of residency, are not allowed to have personal vehicles. Clients completing their second and third phase of treatment, which includes an additional 30 to 60 days of residency, are permitted have their personal vehicles at the facility if determined by the facility operator to be necessary (i.e. for use driving to and from work).

Newport Coast Recovery conducts regular family counseling sessions on weekends. Familial counseling for non-residents, while being an important part of the recovery of resident clients, can significantly impact on-street parking during busy weekends on the Balboa Peninsula. The use of on-street parking by

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the facility on weekends impacts the availability of on-street parking for use by residents of the neighborhood.

This finding could be made if a condition of approval is made part of the Use Permit requiring the applicant to : (1) purchase one master parking permit from the City to use for on-street parking by each client who is permitted to drive his personal vehicle to and from the facility; and (2) restrict the number of clients who reside at 1216 West Balboa who are permitted to have personal vehicles; (3) require that all on-site spaces remain permanently clear and open for parking; (4) require all staff members to use the on-site parking for personal cars and transport vans; and (5) regulate family counseling activities including prohibiting family members from using on-street parking when visiting the facility and requiring either the use of on-site parking by family members visiting the facility or the use by family members of alternative transportation modes to and from the facility.

NBMC §20.91A.060 Finding C: The property and existing structures are physically suited to accommodate the use.

The building is similar to many other residential structures along West Balboa Boulevard constructed on a lot parcel that measures approximately 62 feet wide by 100 feet deep. The building was constructed in 1949 when the subject property was zoned R-3. The property was later rezoned to an R-2 District in 1989 along with other properties in the area. As a result, the structure is nonconforming structure permitted to continue subject to the provisions of Chapter 20.62, "Nonconforming Structures and Uses," of the NBMC.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all group residential care facilities and residences. The subject property has an approved fire clearance from the City of Newport Beach Fire Department dated June 6, 2004, for a maximum occupancy of 29 residents, as well as staff. Separate from the use permit process, the applicant may be required to conduct an architectural code analysis of the facility to determine if the facility complies with existing current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially issued a "fire clearance."

NBMC §20.91A.060 Finding E: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.

A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and

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than the narrower alley access at the rear of the building. Approval of a use permit would include a condition of approval restricting loading and unloading of transportation van passengers to occur within open parking spaces along West Balboa Boulevard and prohibiting van drivers from stopping or double-parking in a traffic lane.

NBMC §20.91A.060 Finding F: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Business products and other packages and goods are delivered to the facility's business office located off-site. From this location, goods are delivered by staff members to the facility during weekdays between the hours of 9:00 a.m. to 5:00 p.m. These days and hours for deliveries are consistent with normal working hours and as such are compatible with and will not adversely affect the peace and quiet of neighboring properties.

NBMC §20.91A.060 Finding G: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

The applicant contracts with a commercial waste management company which collects trash twice a week on weekdays between the hours of 9:00 a.m. and 5:00 p.m. The hours of trash collection are within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Section 3. That Findings Nos. 1, 2, and 4 of NBMC §20.91.035 (A) cannot be made for the following reasons:

NBMC §20.91.035 (A) Finding No. 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.

This proposed project is only partially in accord with the objectives of this code and the purposes of the district in which the site is located. The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed application for Use Permit 2008-033 is in accord with the objectives and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

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The objectives of the code include provisions intended to reduce, through the use permit process, the potential for overconcentration of residential care facilities within a neighborhood and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The intensity of the use, if limited to 14 residents housed in 9 bedrooms with 2 persons per bedroom, would be consistent with a typical residential population factor of two persons per dwelling unit in the R-2 District and the surrounding properties within the R-2 District. However, the subject property's proximity to another residential care facility at 1132 West Balboa Boulevard, to a large state-licensed day care facility at 1400 West Balboa Boulevard, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages makes the proposed use incompatible with the surrounding residential character of the neighborhood. The discussion of incompatibility of the proposed use with the surrounding residential neighborhood is discussed in detail in Section 4 of this Resolution. The proposed location of the use is not in accord with all of the objectives of this code and the purposes of the district in which the site is located due to the proximity of the proposed use to another residential care facility at 1132 West Balboa Boulevard, to Newport Elementary School, to the large state-licensed day care facility, and to alcoholic beverage sales and service facilities; and therefore, this finding cannot be made.

NBMC §20.91.035 (A) Finding No. 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.

General Plan policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of a use permit for the facility would include conditions regulating the use and operational characteristics related to curfew hours, smoking, transportation of clients off-site, trash collection, delivery of goods, and types of services provided; however, the continued use of the subject property as a residential care facility in this location would be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

Testimony by an adjacent neighbor and other area residents includes statements that residents at this facility have been disrespectful to others in the neighborhood, including playing music loudly despite frequent requests not to do so, littering, using profanity, and allowing excessive secondhand smoke to

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permeate adjacent residences. From this testimony, it does not appear to the City staff that the operator can adequately control the facility's caseload of clients in a manner that allows the neighbors to have quiet enjoyment of their properties.

The subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

NBMC §20.91.035 (A) Finding No. 4: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.

This proposed project is only partially consistent with the purposes specified in Chapter 20.91A and does not conform to all the requirements of that Chapter. The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed application for Use Permit No. 2008-033 is in accord with the purpose and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The intended purpose of the code is to maintain the residential character of the neighborhood within which a facility is located, to reduce the potential for overconcentration of residential care facilities within a neighborhood, and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood and would result in an overconcentration of residential care facilities within the neighborhood.

It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as §20.91A.060 (D.3.) indicates median block lengths in different areas of Newport Beach widely range from 300

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Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The term "block" means an area bounded by streets, per Ordinance No. 2008-05 (Section 20.03.030). In this case, Balboa Boulevard is a major street that is a sufficient dividing line between each side of Balboa Boulevard. However, the Hearing Officer can extend beyond smaller streets like 12th and 11th Streets in an effort to "eliminate the differences in block lengths" per Section 20.91A.060 (D.3.) to achieve a 617-foot block standard.

Within the 617-foot block where the proposed use is located there is already one 11 bed residential care facility (Balboa Horizons). The proposed use located at 1216 West Balboa Boulevard, within the same block as Balboa Horizons, would result in an overconcentration of residential care facilities within the neighborhood.

The subject property's proximity to another residential care facility at 1132 West Balboa, to a large state-licensed day care facility at 1400 West Balboa, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages makes the proposed use incompatible with the surrounding residential character of the neighborhood. The discussion of incompatibility of the proposed use with the surrounding residential neighborhood is discussed in detail in Section 4 of this Resolution. The proposed location of the use is only partially consistent with the purpose of the code and does not conform to all the requirements of Section 20.91A; and therefore, this finding cannot be made.

Section 4. That Finding D of NBMC §20.91A.060 cannot be made for the following reasons:

NBMC §20.91A.060 Finding D: The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer shall consider, as appropriate, the following factors:

1. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;
2. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa

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2. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and
3. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.

The subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard, and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and frequently engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

The subject property is proximate (within 1250 feet) to two outlets for alcoholic beverages (American Legion Hall at 215 15th Street and Fry's Market at 115 15th Street) both within walking distance from the facility which allows residents of the use convenient access to alcohol sales and service which can affect the ability of the use to fully operate as an alcohol rehabilitation facility.

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It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as §20.91A 060 (D.3.) indicates median block lengths in different areas of Newport Beach widely range from 300 feet in the nonstandard subdivision areas to as much as 1,422 feet in standard subdivision areas, the Hearing Officer may establish a block length for the mid-Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The term "block" means an area bounded by streets, per Ordinance No. 2008-05 (Section 20.03.030). In this case, Balboa Boulevard is a major street that is a sufficient dividing line between blocks on each side of Balboa. However, the Hearing Officer can extend beyond smaller streets like 12th and 11th Streets in an effort to "eliminate the differences in block lengths" per Section 20.91A.060 (D.3) to achieve a 617-foot standard.

The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood. Within the 617-foot block where this use is located there is already one 11 bed residential care facility (Balboa Horizons).

Section 5. The Hearing Officer hereby denies with prejudice Use Permit No. 2008-033.

Section 6. The action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

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PASSED, APPROVED, AND ADOPTED this 4th day of February, 2009.

By: W. Allen

Thomas W. Allen, Hearing Officer

ATTEST:

Adriana P. Brown
City Clerk



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RESOLUTION NO. HO-2009-001

**A RESOLUTION OF A HEARING OFFICER OF THE CITY
OF NEWPORT BEACH DENYING WITH PREJUDICE USE
PERMIT NO. 2008-033 TO ALLOW AN EXISTING GROUP
RESIDENTIAL USE TO CONTINUE AT 1216 WEST
BALBOA BOULEVARD, NEWPORT BEACH, CALIFORNIA
(PA2008-104)**

WHEREAS, Ordinance No. 2008-05 was adopted by the Newport Beach City Council on January 22, 2008, following noticed public hearings; and

WHEREAS, the adoption of Ordinance No. 2008-05 amended the City of Newport Beach's Municipal Code (NBMC) relating to Group Residential Uses; and

WHEREAS, Ordinance No. 2008-05 added Chapter 20.91A to the NBMC. Chapter 20.91A sets forth a process by which existing group residential care facilities, except for state-licensed drug or alcohol treatment homes serving six or fewer clients and not operating integrally with other uses, must apply for use permits to remain in operation beyond February 2009; and

WHEREAS, in order to allow an existing group residential care facility to remain in operation, a Hearing Officer must find, following a noticed public hearing, that all four of the findings identified in NBMC §20.91.035 (A) and all seven of the findings identified in §20.91A.060 can be met; and

WHEREAS, Newport Coast Recovery, located at 1216 West Balboa Boulevard ("Use Location") in Newport Beach, California is today a group residential care facility in an apartment complex housing seven units that is a state-licensed alcohol or drug residential treatment home for up to 29 persons (ADP License No. 300156AP); and

WHEREAS, Newport Coast Recovery ("Use") applied for Use Permit No. 2008-033 to continue its operations as an 18 bed facility under Ordinance No. 2008-05 within the applicable time period, and a noticed public hearing was held on Monday, December 8, 2008, at the Newport Beach City Council Chambers where public testimony was taken, including testimony from the applicant, and this hearing was continued to Monday, January 12, 2009, also at the Newport Beach City Council Chambers where more public testimony was received including testimony from the applicant; and

WHEREAS, both hearings were presided over by Thomas W. Allen, Hearing Officer for the City of Newport Beach; and

WHEREAS, the Use Location is within the Nonstandard Subdivision Area as defined by Ordinance No. 2008-05; and

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WHEREAS, proximate to the Use Location are the following uses referred to in NBMC §20.91A.060 (D):

1. Within 300 feet: Balboa Horizons Recovery Services (11 bed licensed treatment facility located at 1132 West Balboa Boulevard, with an approved use permit) is one block east of the Use Location, on the same side of the street.
2. Within 300 feet and across the street: Newport Elementary School for students in grades Kindergarten through 5th grade at located 1327 West Balboa Boulevard.
3. Within 750 feet: Christ Church's large (44 children capacity) state-licensed day care center located at 1400 West Balboa Boulevard.
4. Within 1250 feet: Outlets for alcoholic beverages are the American Legion Hall located at 215 W. 15th Street and Fry's Market located at 115 E. 15th Street.

NOW THEREFORE BE IT RESOLVED:

Section 1. That Finding No. 3 of NBMC §20.91.035 (A) can be made for the following reasons:

NBMC §20.91.035 (A) Finding No. 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.

The facility, as conditioned through a use permit, would comply with the operational standards of 20.91A.050 of the NBMC, as outlined in Findings A and B of the NBMC §20.91A.060 and as described in Section 2 below.

Section 2. That Findings A - C and Findings E - G of NBMC §20.91A.060 can be made for the following reasons:

NBMC §20.91A.060 Finding A: The use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows:

1. **No secondhand smoke can be detectable outside the property.**

The facility's current operational regulations restrict smoking to designated areas within a courtyard area of the facility. The courtyard area is enclosed on all sides by walls but is open to the sky. Smoking outside of the limits of the enclosed courtyard area is prohibited.

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2. Operations of the facility must comply with state and local law, and the submitted management plan, including any modifications required by this Use Permit.

The operations of this facility are in compliance with the State ADP license, and as conditioned with approval of a use permit for the facility, would be required to comply with the approved management plan. Approval of a use permit for the facility would include a condition of approval requiring that the applicant obtain an amended State ADP license to allow a maximum of 14 residents and that within 60 days of the issuance of a use permit, the applicant confirm, in writing and with such information presented to the City, that the counseling of familial members not in residence at 1216 West Balboa Boulevard is acceptable under the terms of the current ADP license and any future ADP license.

3. A contact name and number must be provided to the City.

Appropriate names and contact information numbers are provided within the application. Approval of a use permit for the facility would include a condition of approval requiring the applicant to provide the City with the appropriate "after hours" names and contact information numbers.

4. No services requiring a license can be provided if the facility does not have a license for those services.

The operation plan for the facility provides that only those services permitted by the facility's ADP license are performed within the facility.

5. There shall be no more than two persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.

The facility is licensed for a maximum occupancy of 29 residents. The facility contains 9 bedrooms currently occupied by two persons per bedroom for a total of 18 residents. Approval of a use permit for the facility would include a condition of approval requiring the applicant to obtain an amended ADP license establishing a maximum resident occupancy in treatment of 14 persons, the equivalent of two persons per dwelling unit. This occupancy is consistent with the residential occupancy design of the building and the occupancy standards of NBMC Section 20.91A.050.

6. If certification from an entity other than ADP's licensing program is available, applicants must get that certification.

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Approval of a use permit for the facility would include a condition of approval requiring the applicant to consider the merits of additional certification available to it, including but not limited to an Orange County Adult Alcohol and Drug Sober Living certification.

7. All individuals and entities involved in the facility's operation and ownership must be disclosed.

All employees and management personnel have been disclosed in the application documentation.

8. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.

According to information provided in the application documentation the owners and managers of the facility do not own or operate any other similar facility in the City of Newport Beach or in the State of California, and there is no known record of state violations associated with the facility's operations. The facility's State of California ADP license is in good standing and is valid until January 31, 2010. While residents submitted evidence that the same operator managed an unlicensed adult recovery maintenance facility at 1219 West Balboa for a period of time, the City is not aware that this facility, which did not provide treatment onsite, was operated in violation of the law.

NBMC §20.91A.060 Finding B: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The facility provides a total of six off-street parking spaces; and therefore, would meet the NBMC requirements for off-street parking for 14 beds with the exception of weekend family counseling sessions as discussed below.

Residents completing their first phase of treatment, which includes 30 days of residency, are not allowed to have personal vehicles. Clients completing their second and third phase of treatment, which includes an additional 30 to 60 days of residency, are permitted have their personal vehicles at the facility if determined by the facility operator to be necessary (i.e. for use driving to and from work).

Newport Coast Recovery conducts regular family counseling sessions on weekends. Familial counseling for non-residents, while being an important part of the recovery of resident clients, can significantly impact on-street parking during busy weekends on the Balboa Peninsula. The use of on-street parking by

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the facility on weekends impacts the availability of on-street parking for use by residents of the neighborhood.

This finding could be made if a condition of approval is made part of the Use Permit requiring the applicant to : (1) purchase one master parking permit from the City to use for on-street parking by each client who is permitted to drive his personal vehicle to and from the facility; and (2) restrict the number of clients who reside at 1216 West Balboa who are permitted to have personal vehicles; (3) require that all on-site spaces remain permanently clear and open for parking; (4) require all staff members to use the on-site parking for personal cars and transport vans; and (5) regulate family counseling activities including prohibiting family members from using on-street parking when visiting the facility and requiring either the use of on-site parking by family members visiting the facility or the use by family members of alternative transportation modes to and from the facility.

NBMC §20.91A.060 Finding C: The property and existing structures are physically suited to accommodate the use.

The building is similar to many other residential structures along West Balboa Boulevard constructed on a lot parcel that measures approximately 62 feet wide by 100 feet deep. The building was constructed in 1949 when the subject property was zoned R-3. The property was later rezoned to an R-2 District in 1989 along with other properties in the area. As a result, the structure is nonconforming structure permitted to continue subject to the provisions of Chapter 20.62, "Nonconforming Structures and Uses," of the NBMC.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all group residential care facilities and residences. The subject property has an approved fire clearance from the City of Newport Beach Fire Department dated June 6, 2004, for a maximum occupancy of 29 residents, as well as staff. Separate from the use permit process, the applicant may be required to conduct an architectural code analysis of the facility to determine if the facility complies with existing current Building Codes for this occupancy type, or the Building Codes existing at the time the facility was initially issued a "fire clearance."

NBMC §20.91A.060 Finding E: The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.

A facility van provides transportation for the residents on a weekly schedule dispersed within the day and among the days of the week so that van transportation is not concentrated during peak traffic times. Van loading and

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than the narrower alley access at the rear of the building. Approval of a use permit would include a condition of approval restricting loading and unloading of transportation van passengers to occur within open parking spaces along West Balboa Boulevard and prohibiting van drivers from stopping or double-parking in a traffic lane.

NBMC §20.91A.060 Finding F: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Business products and other packages and goods are delivered to the facility's business office located off-site. From this location, goods are delivered by staff members to the facility during weekdays between the hours of 9:00 a.m. to 5:00 p.m. These days and hours for deliveries are consistent with normal working hours and as such are compatible with and will not adversely affect the peace and quiet of neighboring properties.

NBMC §20.91A.060 Finding G: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

The applicant contracts with a commercial waste management company which collects trash twice a week on weekdays between the hours of 9:00 a.m. and 5:00 p.m. The hours of trash collection are within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

Section 3. That Findings Nos. 1, 2, and 4 of NBMC §20.91.035 (A) cannot be made for the following reasons:

NBMC §20.91.035 (A) Finding No. 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.

This proposed project is only partially in accord with the objectives of this code and the purposes of the district in which the site is located. The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed application for Use Permit 2008-033 is in accord with the objectives and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

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The objectives of the code include provisions intended to reduce, through the use permit process, the potential for overconcentration of residential care facilities within a neighborhood and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The intensity of the use, if limited to 14 residents housed in 9 bedrooms with 2 persons per bedroom, would be consistent with a typical residential population factor of two persons per dwelling unit in the R-2 District and the surrounding properties within the R-2 District. However, the subject property's proximity to another residential care facility at 1132 West Balboa Boulevard, to a large state-licensed day care facility at 1400 West Balboa Boulevard, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages makes the proposed use incompatible with the surrounding residential character of the neighborhood. The discussion of incompatibility of the proposed use with the surrounding residential neighborhood is discussed in detail in Section 4 of this Resolution. The proposed location of the use is not in accord with all of the objectives of this code and the purposes of the district in which the site is located due to the proximity of the proposed use to another residential care facility at 1132 West Balboa Boulevard, to Newport Elementary School, to the large state-licensed day care facility, and to alcoholic beverage sales and service facilities; and therefore, this finding cannot be made.

NBMC §20.91.035 (A) Finding No. 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.

General Plan policy LU 8.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of a use permit for the facility would include conditions regulating the use and operational characteristics related to curfew hours, smoking, transportation of clients off-site, trash collection, delivery of goods, and types of services provided; however, the continued use of the subject property as a residential care facility in this location would be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the facility.

Testimony by an adjacent neighbor and other area residents includes statements that residents at this facility have been disrespectful to others in the neighborhood, including playing music loudly despite frequent requests not to do so, littering, using profanity, and allowing excessive secondhand smoke to

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permeate adjacent residences. From this testimony, it does not appear to the City staff that the operator can adequately control the facility's caseload of clients in a manner that allows the neighbors to have quiet enjoyment of their properties.

The subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

NBMC §20.91.035 (A) Finding No. 4: If the use is proposed within a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.

This proposed project is only partially consistent with the purposes specified in Chapter 20.91A and does not conform to all the requirements of that Chapter. The subject property is located in an R-2 District, and the proposed use as a residential care facility is a nonconforming use. Nonconforming uses in a residential district are subject to the provisions of Chapter 20.91A of the NBMC. The proposed application for Use Permit No. 2008-033 is in accord with the purpose and requirements of Chapter 20.91A with respect to the requirement for the submittal of an application for approval of a use permit to continue the use of the subject property as a residential care facility in the R-2 District.

The intended purpose of the code is to maintain the residential character of the neighborhood within which a facility is located, to reduce the potential for overconcentration of residential care facilities within a neighborhood, and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood and would result in an overconcentration of residential care facilities within the neighborhood.

It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as §20.91A.060 (D.3.) indicates median block lengths in different areas of Newport Beach widely range from 300

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Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The term "block" means an area bounded by streets, per Ordinance No. 2008-05 (Section 20.03.030). In this case, Balboa Boulevard is a major street that is a sufficient dividing line between each side of Balboa Boulevard. However, the Hearing Officer can extend beyond smaller streets like 12th and 11th Streets in an effort to "eliminate the differences in block lengths" per Section 20.91A.060 (D.3.) to achieve a 617-foot block standard.

Within the 617-foot block where the proposed use is located there is already one 11 bed residential care facility (Balboa Horizons). The proposed use located at 1216 West Balboa Boulevard, within the same block as Balboa Horizons, would result in an overconcentration of residential care facilities within the neighborhood.

The subject property's proximity to another residential care facility at 1132 West Balboa, to a large state-licensed day care facility at 1400 West Balboa, to Newport Elementary School, and to facilities either selling or serving alcoholic beverages makes the proposed use incompatible with the surrounding residential character of the neighborhood. The discussion of incompatibility of the proposed use with the surrounding residential neighborhood is discussed in detail in Section 4 of this Resolution. The proposed location of the use is only partially consistent with the purpose of the code and does not conform to all the requirements of Section 20.91A; and therefore, this finding cannot be made.

Section 4. That Finding D of NBMC §20.91A.060 cannot be made for the following reasons:

NBMC §20.91A.060 Finding D: The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer shall consider, as appropriate, the following factors:

1. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;
2. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa

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2. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and
3. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.

The subject property is proximate (within 300 feet) to Newport Elementary School located at 1327 West Balboa Boulevard, and proximate (within 750 feet) to Christ Church by the Sea's Children's Center, a large day care facility licensed by the State of California Department of Social Services located at 1400 West Balboa Boulevard with a capacity of 44 children. These facilities could be affected by the use due to residents of Newport Coast Recovery using the open recreational area associated with Newport Elementary School and the potential for residents of Newport Coast Recovery to loiter, smoke, and frequently engage in offensive and disruptive behaviors incompatible with nearby school and daycare uses.

The subject property is proximate (within 1250 feet) to two outlets for alcoholic beverages (American Legion Hall at 215 15th Street and Fry's Market at 115 15th Street) both within walking distance from the facility which allows residents of the use convenient access to alcohol sales and service which can affect the ability of the use to fully operate as an alcohol rehabilitation facility.

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It is appropriate to apply the American Planning Association standard to this application. The use is located in the mid-Balboa Peninsula area which is a part of the Nonstandard Subdivision Area. Inasmuch as §20.91A.060 (D.3.) indicates median block lengths in different areas of Newport Beach widely range from 300 feet in the nonstandard subdivision areas to as much as 1,422 feet in standard subdivision areas, the Hearing Officer may establish a block length for the mid-Balboa Peninsula area where this use is located. The calculable median block length of 617 feet is hereby established for purposes of the mid-Balboa Peninsula area. The term "block" means an area bounded by streets, per Ordinance No. 2008-05 (Section 20.03.030). In this case, Balboa Boulevard is a major street that is a sufficient dividing line between blocks on each side of Balboa. However, the Hearing Officer can extend beyond smaller streets like 12th and 11th Streets in an effort to "eliminate the differences in block lengths" per Section 20.91A.060 (D.3) to achieve a 617-foot standard.

The placement of more than one residential care facility per median block length in the densely populated mid-Balboa Peninsula area creates a strong likelihood of change to the character of the residential neighborhood. Within the 617-foot block where this use is located there is already one 11 bed residential care facility (Balboa Horizons).

Section 5. The Hearing Officer hereby denies with prejudice Use Permit No. 2008-033.

Section 6. The action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

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PASSED, APPROVED, AND ADOPTED this 4th day of February, 2009.

By: Thomas W. Allen
Thomas W. Allen, Hearing Officer

ATTEST:

Rebani L. Brown
City Clerk



NCR 00593

COUNCIL AGENDA
NO. 20
4/14/09

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

Agenda Item No. 10
March 24, 2009

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David R. Hunt, City Attorney
Ext. 3131, dhunt@city.newport-beach.ca.us

SUBJECT: APPEAL OF HEARING OFFICER'S DENIAL OF USE PERMIT
1216 WEST BALBOA (NEWPORT COAST RECOVERY)
• (UP 2008-033) (PA2008-104)

APPLICANT: Newport Coast Recovery, LLC

APPELLANT: Newport Coast Recovery, LLC

RECOMMENDATION:

The applicant/appellant has requested that the City Council continue this item to the April 14, 2009 meeting date due to a non-reconcilable conflict in its attorney's calendar. Based upon past practice in similar situations, staff recommends that this item be continued to the April 14, 2009 meeting date, with no further continuances to be allowed. Staff has informed the applicant/appellant that the hearing will not be continued beyond that date.

PUBLIC NOTICE:

Public notice was provided in accordance with all applicable laws.

ENVIRONMENTAL REVIEW: This is not a project under CEQA.

Prepared by:



David R. Hunt,
City Attorney

"RECEIVED AFTER AGENDA
PRINTED: #20 4.14.09

Newport City Council
c/o Ms. Leilani I. Brown
City Clerk, Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92661

Dear Ms. Brown and the Newport City Council,

I am requesting that this letter be provided to all City Council members and become part of the public record for the March 24, 2009 public hearing regarding the Group Residential Use Permits for both 1115 W. Balboa Blvd. (Ocean Recovery, LLC) and 1216 W. Balboa Blvd (Newport Recovery).

1115 W. Balboa Blvd (Ocean Recovery, LLC)

I am writing to object to the decision of the Hearing Officer to continue the public hearing to a date certain (i.e. 6 months). A total of 143 petition signatures were submitted to the City requesting denial of this application. Additionally, the City received numerous letters, pictures and public testimony from local neighbors that clearly highlight that this facility and its clients have consistently operated in a manner that is detrimental to the local neighborhood for the past five years. Noise, profanity, illegal gatherings, excessive second hand smoke on adjoining properties, no full time supervision, utilization of parking garages for meeting rooms were all substantiated by the neighbors. Additionally, this facility is within 100 feet of the residential care facility previously approved at 1132 W. Balboa Blvd., which represents an overconcentration of these businesses in our neighborhood, and importantly, the number of these businesses that are close to Newport Elementary School and playgrounds. I believe the local neighbors have provided the City with strong and compelling evidence that should have led the Hearing Officer and the City to deny this Ocean Recovery Use Permit. I am now asking the City Council to direct the Hearing Officer to make his decision now and deny this Use Permit without further delay. It is now time for the City to consider the safety and wellbeing of the neighborhood.

1216 W. Balboa Blvd. (Newport Recovery)

The Hearing Officer has already denied this application based upon its close proximity to Newport Elementary School and playgrounds, the long history of repeated nuisances (smoking, loitering, loud noise, profanity), and repeated permit and code violations by the Operator. The public's input, signed petition and letters of opposition provided to the City have substantiated this Operator's unacceptable performance record. Therefore, I am urging the City to uphold the prior decision made by the Hearing Officer and deny the Use Permit for this facility.

Drew Wetherholt
P.O. Box 2255
Newport Beach, CA 92656

"RECEIVED AFTER AGENDA
PRINTED:" #9 & #10
3-24-09

Brown, Leilani

From: paul lopez [p.lopez@adelphia.net]
Sent: Wednesday, March 18, 2009 9:49 PM
To: Brown, Leilani
Subject: Fw: 1115 W. Balboa and 1216 W. Balboa Sober Living Facilities—Appeal Hearings
Attachments: Letter to City Clerk Mar 16 09.doc

Ms. Brown,

Please forward to each City Council member and please make part of the permanent record for the upcoming March 24th City Council meeting. Please confirm receipt of this email

Sincerely,

Paul

Paul A. Lopez
1125 1/2 W. Balboa Blvd.
Newport Beach, CA 92661
949-673-0489
p.lopez@roadrunner.com

Newport City Council
c/o Ms. Leilani I. Brown
City Clerk, Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92661

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Name

Address

Brown, Leilani

From: Ronel Mathena [ronelis@pacbell.net]
Sent: Wednesday, March 18, 2009 10:15 PM
To: Brown, Leilani
Subject: City Council Submission for March 24th Hearing

Newport City Council

c/o Ms. Leilani I. Brown

City Clerk, Newport Beach

3300 Newport Blvd.

Newport Beach, CA 92661

Dear Ms. Brown and the Newport City Council,

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Newport City Council
c/o Ms. Leilani I. Brown
City Clerk, Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92661

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Sincerely,
Tom Taylor
901 W Balboa Blvd
Newport Beach, Ca.92661

19 March 2009

Newport City Council
c/o Ms. Leilani I. Brown
City Clerk, Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92661

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Victor and Wendela Sellier
1116 W. Oceanfront
Newport Beach, Ca. 92661

Mailing Address:
3 Clarks Branch Rd.
Great Falls, Va. 22066

Newport City Council
c/o Ms. Leilani I. Brown
City Clerk, Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92661

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Joseph & Kristi Verdugo

1113 W. Balboa Bl., Newport Beach, CA 92661

Newport City Council
c/o Ms. Leilani I. Brown
City Clerk, Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92661

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1115 W. Balboa Blvd (Ocean Recovery, LLC)

I am writing to object to the decision of the Hearing Officer to continue the public hearing to a date certain (i.e. 6 months). A total of 143 petition signatures were submitted to the City requesting denial of this application. Additionally, the City received numerous letters, pictures and public testimony from local neighbors that clearly highlight that this facility and its clients have consistently operated in a manner that is detrimental to the local neighborhood for the past five years. Noise, profanity, illegal gatherings, excessive second hand smoke on adjoining properties, no full time supervision, utilization of parking garages for meeting rooms were all substantiated by the neighbors. Additionally, this facility is within 100 feet of the residential care facility previously approved at 1132 W. Balboa Blvd., which represents an overconcentration of these businesses in our neighborhood, and importantly, the number of these businesses that are close to Newport Elementary School and playgrounds. I believe the local neighbors have provided the City with strong and compelling evidence that should have led the Hearing Officer and the City to deny this Ocean Recovery Use Permit. I am now asking the City Council to direct the Hearing Officer to make his decision now and deny this Use Permit without further delay. It is now time for the City to consider the safety and wellbeing of the neighborhood.

1216 W. Balboa Blvd. (Newport Recovery)

The Hearing Officer has already denied this application based upon its close proximity to Newport Elementary School and playgrounds, the long history of repeated nuisances (smoking, loitering, loud noise, profanity), and repeated permit and code violations by the Operator. The public's input, signed petition and letters of opposition provided to the City have substantiated this Operator's unacceptable performance record. Therefore, I am urging the City to uphold the prior decision made by the Hearing Officer and deny the Use Permit for this facility.

Name Terry and Laurie McKenzie

Address 1151 West Balboa Blvd.
Newport Beach, CA 92661

RECEIVED

"RECEIVED AFTER AGENDA
PRINTED" #910

3-24-09

Thomas A. Techentin

444 S. Flower Street, Suite 219, Los Angeles, CA 90071
Tel: 213-362-9200, ext. 219 Fax: 213-627-7463

March 23, 2009

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

Newport City Council
C/o Ms. Leilani I. Brown
City Clerk, Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92661

RE: Business Use/Residential Area

Dear Ms. Brown and the Newport City Council,

I have communicated to you earlier about the matter of conducting a business in residential areas on the Peninsula. I now sending you this draft created by my well-intended neighbors and I am requesting that this letter be provided to all City Council members and become part of the public record for the March 24, 2009 public hearing regarding the Group Residential Use Permits for both 1115 W. Balboa Blvd. (Ocean Recovery, LLC) and 1216 W. Balboa Blvd (Newport Recovery).

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Tom Techentin
640 Magnolia Avenue
Pasadena, CA 91106-3622

Brown, Leilani

From: BandCSisco@aol.com
Sent: Saturday, March 21, 2009 4:37 PM
To: lbrown@city.newport-beach.ca.us; p.lopez@adelphia.net
Subject: 1115 W. Balboa Sober Living Facility—

Newport City Council
c/o Ms. Leilani I. Brown
City Clerk, Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92661

Dear Ms. Brown and the Newport City Council,

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Name: Mr. and Mrs. George W. Sisco

Address: 1133 W. Balboa Blvd.
Newport Beach, CA

Feeling the pinch at the grocery store? Make dinner for \$10 or less.

RECEIVED

2009 MAR 24 AM 8:31

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

Newport City Council
c/o Ms. Leilani I. Brown
City Clerk, Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92661

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Kim Flores
1113 1/2 W. Balboa Blvd.
Newport Beach, Ca 92661

RECEIVED

Newport City Council
c/o Ms. Leilani I. Brown
City Clerk, Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92661

2009 MAR 24 AM 8:31

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

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Thank you,
Bob and Laura Keane
808 West Oceanfront
Newport Beach, CA 92661

Brown, Leilani

From: cynthia koller [gracenb1@yahoo.com]
Sent: Tuesday, April 14, 2009 3:22 PM
To: Brown, Leilani
Cc: Bludau, Homer; Curry, Keith; Wolcott, Cathy; Jeff Cole; Kiff, Dave; don2webb@earthlink.net; edselich@adelphia.net; Earl McDaniel; Susan/Barry Eaton; Gardner, Nancy; Henn, Michael; Robert Hawkins; JMarkman@rwglaw.com; Daigle, Leslie; Rosansky, Steven
Subject: Newport Coast Recovery Hearing

Gentlemen and Women:

As I am not sure I will be able to attend tonight's Council meeting I would like this entered in the record;

I am in total agreement with the Hearing Officer's determination of denial to Newport Coast Recovery.

If you read the staff reports, Mike Newman states that he is in precarious position because the "other facilities" permits were submitted and completed before his (Newport Coast Recovery). If he was this concerned with the process, he should have originally followed the city rules and applied for an FEP. Since he did not apply the first time for a permit it seems to me he feels he does not have to regard the rules and codes as stated by the city in the ordinance.

NCR stating a denial of the use permit would "adversely impact treatment" is misleading. If they are providing a "different benefit" why have they NOT produced the necessary paperwork to substantiate their assertion?

Below you will find a copy of one of NCR's web pages as of April 13, 2009. It states **NCR IS PROBATIONER APPROVED. WHY WOULD THEY GO THROUGH THE PROCESS TO GET APPROVED AND ADVERTISE THIS, IF THEY WERE NOT SERVING PROBATIONERS?**

It is in our ordinance this is not permitted. Why would they again not follow the ordinance?

Between the horrendous adverse impacts that the neighbors have had to live with, the burden of having to document these for the city process and the example after example of NRC flipping it's nose at the resident's and the city of Newport's ordinance it should be obvious that they have failed their clients, the city and the neighbors time and time again.

Thank you for your time and consideration.

Respectfully,
Cindy Koller



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- [Our Philosophy](#)
- [Program](#)
- [Resources](#)
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Talk to a Counselor Now

Treatment Guide

Enter your email below and press submit to join our newsletter and receive a guide to finding a good addiction treatment program

E-mail: []
[Submit]

Rehab Resources

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- [About Addiction](#)
- [Family Help](#)
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Staff Email

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53500 Visitors This Month

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Brochure PDF

A copy of our print brochure for your convenience



Activity Schedule

Wondering what you can expect from our program? Here's a sample rehab schedule. Schedules can be tailored to fit each client's needs



Info Request

Thinking about addiction treatment for yourself or a loved one? Fill out this confidential form to receive more information based on your individual situation.



Great Reputation

We're a state licensed treatment facility. We have a great BBB rating and we're a member of the NAATP



Info/FAQ

Facility Type	Men's Inpatient Chemical Dependency Treatment
Location	Newport Beach, CA
Programs offered	30 day, 60 day, 90 day+
Credentials	Licensed by the California ADP, member of the National Association of Addiction Treatment Providers
Probation Approved	Yes
Program Components	Individual therapy, group therapy, outside group meetings (AA, NA, etc.), psychological and medical evaluation, Access to church, recreational opportunities, 24 hour staff balanced

	diet, daily schedule
Confidentiality	All client records are kept confidential pursuant to California and Federal law. Your presence in our program is confidential; the client decides who has access.
Electronic Equipment	Electronics including laptops and cell phones are permitted in most situations, however you must be responsible for your own belongings.
Housing	Clients have their own bed in several shared apartments. Living with other people going through the same process as you is an important component of our program.
Payment	Credit cards, cash, checks or money orders are accepted as payment which is due upfront. Some insurance policies may cover part of the expense as well. Contact us and we'll help figure out the best way for you to pay for treatment.
Detox Option	Contact us for information regarding detox, which is often required before beginning the rehab program.
Interventions	Please contact us for help with staging an intervention, a qualified interventionist should always be consulted beforehand.
Contact Number	1(800)990-9691

Mike, Dave-

"RECEIVED AFTER AGENDA
PRINTED: #20 4/14/2009

RECEIVED

At City Council meeting tomorrow night, April 14th, we understand that the Council will consider the appeal of the operator of the Hearing Officer's denial of the ~~2009 APP 14 AND 13~~ CUP, and possibly other requests made by the applicant's recently retained counsel.

We are concerned with the staff writeup and ~~DETACHED~~ representations of facts, circumstances and testimony that do not reflect the situation of this Use accurately.

THE CITY CLERK
CITY OF NEWPORT BEACH

Several examples:

1. The report suggests that the "median block length for the mid Peninsula are should be defined as 617 ft." In fact, the blocks in this area are in the 300-360 ft range each.

2. The report suggests that "there is the potential for Over-concentration" in the area. There is ACTUAL Over-concentration in the immediate area.

-At 1132 W. Balboa Blvd.: an 11 bed facility

At 1115 W. Balboa Blvd.: a 22 bed facility

At 1216 W. Balboa Blvd: a 29 bed facility(subject applicant)

At 1129 W. Balboa Blvd.: a 12 bed facility(believe that this was just vacated)

At 1217 W. Bay : a 6 plus 6 bed facility pending

At 1120 W. Balboa Blvd.: sober living group

This list does NOT include other locations believed to be unlicensed 'sober living' facilities, or those several blocks away—this is 11th and 12th street alone.

3. The report makes general reference to "residents' complaints, but does not reflect the actual violations of physical and other codes which have been known to the City for as much as 5-6 years.

Specific examples:

-applicant failed to apply for or obtain previously required CUP, FEP permits.

-applicant made business license registration as a "Personal service" rather than "Residential Care and treatment" business.

-applicant operated an illegal facility at 1219 W. Balboa across the street from 1216 W. Balboa for some time, which he closed at an unspecified date.

-a number of physical code violations

4. This facility and its occupants have been the source of nuisances to neighbors for a number of years—not only when residents are in the facility, but also when they congregate in the area—on beach, alleys and sidewalks. These have been repeatedly reported to facility managers for years.

5. This operator per his own admission, and that of two of his onsite managers, has "trouble controlling the men in his facility". Family members of residents have reported serious behavioral ,substance abuse and frequent drop-outs associated with this operator's program.

6. The visitors to this facility regularly litter the streets, smoke on the beach, and take up already-constrained street parking—in addition to the residents of the facility.

7. The confrontational behavior of the facility's residents and manager has occurred repeatedly with no relief from the City—in and around the facility, on the beach and playground next to the school in front, and alleys ,sidewalks,boardwalk.

8. The managers of subject operator have repeatedly purchased cigarettes and alcohol for their residents from local stores—illegal.

Issues and complaints have been reported by multiple neighbors to : Code enforcement, the City attorney, the Police Dept, and City Mgr. over the past 6 years. Not once was there a citation, and most of the time, citizens were told" there is nothing that we can do".

The City has allowed this residential neighborhood and area

Around Newport Elementary School and playground to become so saturated that it is widely known as Rehab Beach. People go to this area regularly for drug activity.

At the December 2008 public hearing, 83 residents and local business owners attended, many of whom presented testimony concerning the applicant operator and requesting denial of this use. A group of 42 parents with children attending Newport Elementary and who use the playground and beach there submitted a letter petition into record at the hearing requesting that this establishment be denied a CUP due to problems and its close proximity to the elementary school and playground.

The City has a duty to protect its public's health and safety—and the integrity of its residential neighborhoods.

While all of these statements and facts were previously submitted into record, we note that many were omitted from previous reports. Therefore, we hereby request that this correspondence be entered into public record as reassertion of testimony and evidence previously submitted—and that this be distributed to the Mayor and Council members in advance of the April 14th hearing.

Denys H. Oberman, CEO



OBERMAN Strategy and Financial Advisors
2600 Michelson Drive, Suite 1700
Irvine, CA 92612
Tel (949) 476-0790
Cell (949) 230-5868 Fax (949) 752-8935
Email: d.oberman@obermanassociates.com

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**Attachment D to City Planning Dept.
Memorandum: Correspondence Received
between April 14, 2009 and July 7, 2009**

Attachment No. HO 4
Correspondence Received after April 14,
2009

Brown, Janet

From: Kiff, Dave
Sent: Monday, June 29, 2009 10:00 AM
To: Brown, Janet; 'Tom Allen'
Subject: Newport Coast Recovery - 1216 West Balboa Blvd

For the record.

From: Julie McBride [mailto:juliemcb22@gmail.com]
Sent: Saturday, June 27, 2009 11:31 AM
To: Kiff, Dave
Cc: Oborny, Shirley
Subject: Group Residential Use Permit 1216 West Balboa Blvd

Dear Dave,

As you know, both my father (Rich Francisco) and I (Julie McBride) showed up for the cancelled hearing on June 16th. After speaking with you, we learned the hearing had been rescheduled for Monday, July 7th. Unfortunately, we will not be able to attend the meeting on the 7th, so I wanted to let you know our position and concerns.

We are owners of the triplex at 1200 W. Balboa Blvd, Newport Beach, 92661. In addition to ownership, my husband, our three year old son and I live at this address. We are in favor of the hearing officer's rejection relating to the residential care facility at 1216 West Balboa Blvd. and we hope that the appeal will be denied.

Our concerns revolve around the direct and indirect effect that residents of this facility have on our three year old son. Directly, we do not like the foul language often overheard from residents. This is not the kind of language we want our son to hear and/or learn through open windows or when he is playing outside.

Indirectly, we are concerned about second hand smoke coming through our windows. Our kitchen sits on the alley, and I often smell smoke while fixing and eating meals. It doesn't seem fair that we have to close our windows to insure our son doesn't breathe this smoke.

Additionally, I am concerned that some of the residents are under the age of 21. I have heard that they are young, and their looks and activities (skateboarding, etc.) resemble that of high school students. I can't prove age, but it doesn't seem right.

All in all, I am concerned that the residents of this home are not good influences on my son.

Thanks for your consideration,

Julie McBride
949-675-0464

Brown, Janet

From: Kiff, Dave
Sent: Wednesday, July 01, 2009 10:06 AM
To: 'Tom Allen'; Brown, Janet; Wolcott, Cathy
Subject: FW: Newport Coast Recovery

For NCR

-----Original Message-----

From: Jeffrey Myers [mailto:jeff_myers@mac.com]
Sent: Wednesday, July 01, 2009 10:05 AM
To: Kiff, Dave
Subject: Newport Coast Recovery

Dave could you please share my letter and video with the hearing officer. Thank you

June 30, 2009

Dear Mr. Kiff,

We all try to get along in our neighborhood. I received notice from the city about another public meeting for Newport Coast Recovery. I find it ironic that the facility is requesting "reasonable accommodations" for breaking the rules that are in place that allow the neighborhood to coexist.

For example, the facility is asking for an exemption from on-site parking. This is ridiculous! I have noticed several cars illegally parked behind Newport Coast Recovery located at 1216 West Balboa. This is a frequent problem because the two double car garages at the facility are not used for parking. One double car garage is used for a recreation area that formerly included a weight room and currently a ping-pong party area. The other double car garage is never opened and I assume used for storage.

On Saturday June 27, 2009, I noticed the below pictured pickup truck being issued a parking ticket. I approached the officer and asked her to make note of the facility address as being Newport Coast Recovery at 1216 West Balboa. She mentioned that they normally place a general location on the ticket, but commented that she had issued many, many tickets to vehicles parked behind this specific location in the past. Could someone at the city interview the parking control department and learn if a specific address is used on citations or not. If not, please have the parking control officers interviewed to get a better understanding of how frequent of a problem this issue is at this address. I truly believe if you can determine the true numbers of this problem you can prove that item #3 on the reasonable accommodations should not be granted based on this historical

problem. One additional note on parking, many of the cars have out of state plates and therefore I assume that most of the cars are from clients or family of people in the facility. I believe the problem is compounded by the high turnover of visitors associated with this type of business.

My second comment applies to all the remaining items listed for reasonable accommodations. And this is the reason for my letter. When this individual learned he had received a ticket, he went crazy yelling and cussing. I could hear this rant from inside my living room which is located several hundred feet away facing West Bay Avenue. I take concern on this type of activity because I have two young children living in my home. Although, the yelling and profanity has lessened over the years, it is still a constant problem that the facility is unable to control.

Therefore, I believe it is not in the best interest of the city or this residential neighborhood to allow this facility reasonable accommodations to be exempt from NBMC 20.10.020. This facility has demonstrated an inability to control its customers and provide the neighbors with a stress free living environment and therefore should not be allowed a reasonable accommodation from operating without a Use Permit.

As for item # 2 of the RA, the facility has had several months during the city's hearing process to properly manage and control its clients. They also have had sufficient time to discuss concerns with neighboring residents and place new procedures in place to better accommodate the problems they create for the neighborhood, yet nothing has been done and the facility, that should be on it's best behavior during this period continues to spin out of control. Again, I oppose the RA on item #2 based on the facilities inability to control its client base at the current restricted occupancy levels.

Item #4, the city has no obligation to treat a licensed residential care facility as a legal nonconforming use. The group residential use permit process was created to allow the city some control of problem facilities. This facility has demonstrated an inability to operate within the confines of the use permit structure and therefore should not be permitted based on reasonable accommodations to circumvent the process.

Item #5 California building and fire codes were established to protect life. For this facility to request an exemption to not operate the facility under the current and best fire and safety codes is an example of corporate greed. They place their profits before their responsibility to protect and heal their customers. According to city records, this facility has a history of non-permitted building modifications. I believe that any facility in the business of health care would be proactive in making sure their facility is as safe as possible.

Mr. Kiff, please work with this facility to help them find a location in the city that is more suited for their business and their clients.

Thank you

Jeff Myers

1215 West Bay

Newport Beach, CA 92661

P.S. The attached video is an example of what we experience on an on-going basis.

Brown, Janet

From: Kiff, Dave
Sent: Wednesday, July 01, 2009 5:05 PM
To: 'Tom Allen'; Brown, Janet
Subject: 1216 West Balboa

From: Marie Zondler [mailto:mzondler@sbcglobal.net]
Sent: Saturday, June 13, 2009 5:55 PM
To: Kiff, Dave
Subject: Recovery House Balboa Blvd.

I will be out of town on July 7Th, but would like to make a comment.
I feel like there are more than the usual number of recovery houses allowed in other neighborhoods, plus they are all so close to the pier and weekend visitors. I am opposed to allowing the continuing number of recovery homes which were allowed before an ordinance was in place.
I did a little research on the success rate of moving on positively for the residents is too high, and this to me presents a problem, as to what is actually going on in these houses. I also noticed some of the staff, were just like baby sitters, I did check one out.
I want to go on notice, I am opposed to continuing granting new permits or renewing all of them, a few yes, but not the number that are in the neighborhood now, it is more than acceptable.
319 Fernando Balboa
Marie M. Zondler (Owner)

Brown, Janet

From: Kiff, Dave
Sent: Wednesday, July 01, 2009 7:25 PM
To: 'Tom Allen'; Brown, Janet
Subject: FW: 1216 W. Balboa Blvd., Newport Coast Recovery

For the record

From: Cindy McNeish [mailto:cindymcneish@gmail.com]
Sent: Wednesday, July 01, 2009 5:49 PM
To: Don Webb; Ed Selich; Daigle, Leslie; Curry, Keith; Kiff, Dave; Gardner, Nancy; Henn, Michael; Rosansky, Steven
Cc: ccnb@obermanassociates.com
Subject: 1216 W. Balboa Blvd., Newport Coast Recovery

Gentlemen:

I would like this letter to be placed in the minutes of the July 7, 2009 CUP Hearing for 1216 W. Balboa Blvd., Newport Coast Recovery.

My husband and I have attended several meetings regarding this facility and others near Newport Elementary School, and other areas of the city. It seems to me that common sense should prevail for this facility. They are less than 300 feet from an elementary school, the operator has been in violation several times, there have been noise, nuisance, loitering, vulgarity, poor neighbors in general, trash and smoking issues, and the operator has been confrontational with neighbors and others in the community. These ALONE should be reasons enough to abate this facility.

Recently we have learned that this facility houses/treats patients under age. The operator is clearly not supervising this facility properly as it continues to draw attention in the neighborhood with its' residents and their behaviors. This kind of operation is not what anyone had in mind when they originally thought of helping people with drug and alcohol addiction. This is the worst case scenario and the hearing officer has turned them down once before. There was good reason for his action in this matter and the City should begin to "act" on such facilities. To date, the City has not demonstrated its' right to deny this use, and is not obligated to tolerate individuals or businesses which continue to defy the rules with illegal practices.

It's time the City steps up to protect the community, its' citizens and schools. It's time the City abate this facility and show its' residents it is actually working for us, the residents and taxpayers.

Sincerely,

Cindy McNeish
1017 E. Balboa Blvd.
Newport Beach, CA 92661

Agenda for July 7, 2009 Group Residential Use Permit and Reasonable Accommodation Hearing

(July 7, 2009)

**City of Newport Beach
GROUP RESIDENTIAL USES
USE PERMIT and REASONABLE ACCOMMODATION
HEARING AGENDA**



This hearing is held in accordance with Newport Beach Municipal Code Chapters 20.61A (*Use Permits in Residential Districts*) and 20.98 (*Reasonable Accommodation*). This is a combined public hearing on a use permit and reasonable accommodation to allow the continued operation of an existing state-licensed treatment home for up to 29 male adult resident clients.

DATE: Tuesday, July 7, 2009
TIME: 3:00 p.m. – 5:45 p.m. (Hearing must be concluded/continued by 5:45 p.m.)
LOCATION: Council Chambers, Newport Beach City Hall @ 3300 Newport Boulevard
HEARING OFFICER: Thomas W. Allen

AGENDA ITEM #1

USE PERMIT No. 2008-033
APPLICANT: Newport Coast Recovery, LLC
SUBJECT PROPERTY: 1216 West Balboa Boulevard, Newport Beach

PROJECT SUMMARY: An application for a use permit requesting to allow a residential care facility to operate a licensed adult alcohol and/or drug abuse recovery treatment facility. This is a re-opened public hearing for this application which was remanded to the Hearing Officer on appeal to the City Council on April 14, 2009 for consideration of evidence acquired after the public hearing on January 12, 2009 closed and the Hearing Officer denied the application.

AGENDA ITEM #2

REASONABLE ACCOMMODATION No. 2009-009
APPLICANT: Newport Coast Recovery, LLC
SUBJECT PROPERTY: 1216 West Balboa Boulevard, Newport Beach

PROJECT SUMMARY: An application for Reasonable Accommodation requesting exemption from the Newport Beach Municipal Code (NBMC) to allow an existing residential care facility to operate a licensed adult alcohol and/or drug abuse recovery and treatment facility in an R-2 District, where such uses are not permitted. The applicant requests the following:

- An exemption from the portions of NBMC Section 20.10.020 (Residential Districts: Land Use Regulations) that require Residential Care Facilities, General to be established only in residential districts zoned Multi-Family Residential (MFR) with a use permit, subject to the operational conditions recommended by City staff in the January 12, 2009 staff report for Use Permit No. 2008-33, including a maximum occupancy of 14 residents, which was denied by the Hearing Officer;

or, in the alternative,

- An exemption from the requirements specified in NBMC Section 20.91A.050 (Development and Operational Standards), including:
 - A waiver of the occupancy restriction of two persons per bedroom plus one staff member, and to allow a total occupancy of 18 residents;
 - An exemption from parking requirements specified in NBMC Section 20.66.030 and to impose parking requirements that treat the residents and the visitors of the residents in the same manner as any other resident or visitor to Newport Beach, particularly those requirements that pertain to weekend visitation;
 - Treat the use of the licensed residential care facility as a legal nonconforming use;
 - Apply the California Building Code provisions that were applicable at the time the residential care facility was established as relates to life and fire safety matters; and
 - A waiver of the required finding specified in NBMC Section 20.91A.060 (D), relative to the compatibility of the use with the character of the surrounding neighborhood, which requires a finding that the continued use will not contribute to the changing of the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity, and waiving the impact analysis contained in the Factors A through C which the Hearing Officer must consider in making or sustaining the finding with regard to the proximity of the use to schools, churches, playgrounds, day care centers, and alcoholic beverage outlets, and the application of the American Planning Association standard of permitting one or two such uses per block.

AGENDA ACTION

1. Meeting Convened (Hearing Officer)

2. Agenda Item #1: Use Permit No. 2008-033 – Newport Coast Recovery, LLC

- a) Presentation of the evidence acquired after the close of the January 12, 2009 public hearing (Newport Beach city staff)
- b) Applicant comments, if any
- c) Public hearing re-opened (Hearing Officer)
 - i. Comments are limited to comments about the subject property's application; and
 - ii. Comments are limited to three minutes, unless otherwise ordered by the Hearing Officer
- d) Public hearing closed (Hearing Officer)
- e) Applicant may offer rebutting or clarifying comments (Applicant)
- f) Hearing Officer's questions of City staff or applicant.
- g) Hearing Officer determination. Options include continuance, approval of use permit with conditions, or denial. In the latter two cases, the Hearing Officer may instruct staff to prepare a Resolution for his signature.

CEQA: This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from CEQA's provisions.

3. Agenda Item #2: Reasonable Accommodation No. 2009-009 – Newport Coast Recovery , LLC

- a) Presentation of the reasonable accommodation request (Newport Beach city staff)
- b) Applicant comments, if any
- c) Public hearing opened (Hearing Officer)
 - i. Comments are limited to comments about the subject property's application; and
 - ii. Comments are limited to three minutes, unless otherwise ordered by the Hearing Officer
- d) Public hearing closed (Hearing Officer)
- e) Applicant may offer rebutting or clarifying comments (Applicant)
- f) Hearing Officer's questions of City staff or applicant.
- g) Hearing Officer determination. Options include continuance, approval of reasonable accommodation with conditions, or denial. In the latter two cases, the Hearing Officer may instruct staff to prepare a Resolution for his signature.

CEQA: This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from CEQA's provisions.

APPEAL PERIOD: Use Permits and Reasonable Accommodations do not become effective until 14 days after the date of approval and adoption of the resolution, during which time the decision of the Hearing Officer may be appealed to the City Council.

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**PowerPoint Slides Presented by Asst. City
Manager Dave Kiff at July 7, 2009 Group
Residential Use Permit and Reasonable
Accommodation Hearing**

Use Permit Hearing and Reasonable Accommodation Hearing
Tuesday, July 7, 2009

Newport Coast Recovery, LLC

Background

- On January 12, 2009, Hearing Officer Thomas Allen denied applicant's request for a Use Permit at 1216 West Balboa Boulevard.
- Operator Newport Coast Recovery appealed that decision to the City Council.
- On April 14, 2009, the City Council acted to return the issue to the Hearing Officer to consider evidence acquired after the 1-12-09 hearing.
- Part 1 of today's agenda is a re-opened Use Permit hearing to consider that evidence.
- Part 2 of today's agenda is a new "Reasonable Accommodation" hearing by the same applicant at the same location.

Use Permit Hearing

- Staff Presentation
 - After-acquired evidence (Dave Kiff)
 - Applicant's comments, if any
 - Public Hearing Opened
 - Testimony limited to facts or knowledge about the after-acquired evidence.
- Comments limited to 3 minutes unless Hearing Officer determines otherwise
- Public Hearing Closed
- Applicant can return to rebut or clarify comments made
- Questions from the Hearing Officer to the applicant or to City Staff
- Hearing Officer's determination – alternatives are:
 - Approve with conditions;
 - Deny; or
 - Continue the hearing to a date certain



**PowerPoint Slides Presented by Deputy City
Attorney Catherine Wolcott at July 7, 2009
Group Residential Use Permit and
Reasonable Accommodation Hearing**

Reasonable moderation

MS. D. D. D. D.
7/1/09 UP/RA
Power Point
(MS. Wolcott)

NEWPORT COAST RECOVERY

1216 W. BALBOA BLVD.

Reasonable Accommodation

- Under the Federal Fair Housing Act, “unlawful discrimination includes refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. [The court has] repeatedly interpreted this language as imposing an affirmative duty on landlords and public agencies to reasonably accommodate the need of disabled individuals.” *McGary v. City of Portland*, 386 F.3d 1259, 1261 (9th Cir. 2004)

Reasonable Accommodation

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

1. Request is made on behalf of disabled individual
2. Request is *reasonable*
3. Exception (accommodation) is *necessary* to afford disabled individual an equal opportunity to use and enjoy a dwelling

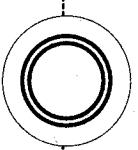
Source – 42 U.S.C. 3604(f)(3)(B)

“Reasonable”

Requests are considered unreasonable if granting the request would either:

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

Fundamental Alteration



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

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

“Necessary”

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

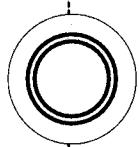
Applicant's Requests

- Applicant requests two alternative exemptions.
- Each request would require an exemption from the restrictions of NBMC Section 20.10.020, which requires that and Residential Care Facilities, General be located in MFR zones with a use permit.

Applicant's Request No. One

- An exemption from NBMC Section 20.10.020, with continued operation under terms recommended by January 12, 2009 staff report. Recommendation included:
 - 14 residents – maximum occupancy
 - Quiet hours
 - Parking onsite clear; three master parking permits purchased
 - Family counseling provided during specified hours only, unless family members park onsite or are transported to facility from off the Peninsula
 - Compliance with federal, state and local laws

Applicant's Request No. Two



- An exemption from NBMC Section 20.10.020, with continued operation at 18 residents, waiver certain NBMC requirements, and waiver of selected standards required to receive a use permit.

Applicant's Request No. Two

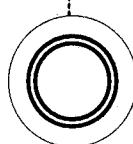
- 18 residents – maximum occupancy
- Waiver of use permit occupancy requirements
- Exemption from parking requirements of NBMC 20.66.030
- Residents and visitors – same parking requirements as other residential uses
- Treat NCR as legal nonconforming use
- Apply California Building Code requirements in place at time of facility establishment
- Waiver of overconcentration considerations involving APA standard of one or two residential care facilities per block
- Waiver of consideration of proximity of facility to schools, playgrounds, day care centers, and alcoholic beverage outlets

Staff Recommendations

- Request No. One.—Deny accommodation; permit current facility residents to complete their intended stay.
- Request No. Two— Deny accommodation.

Request No. One

Is Applicant's Request Necessary?



- “Necessary to afford a disabled individual an equal opportunity to use and enjoy a dwelling”

- Does the facility require the requested accommodation, at the requested population level to achieve financial viability or a supportive recovery environment?

City of Edmonds v. Washington State Building Council,
18 F.3d 802 , 803(9th Cir. 1994)

Necessity - Factors Considered

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

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

Necessity – Factors Considered

- Whether existing supply of facilities of similar nature and operation is sufficient to provide disabled individuals with equal opportunity to live in residential setting.
- Staff analyzed reasonableness and necessity of this request with regard to following categories:
 - Current residents of facility
 - Prospective residents of facility

Necessity of Requested Accommodation

- Current residents – Request necessary and reasonable
- Prospective residents – Request not necessary, and not reasonable
 - Applicant has not submitted evidence that it requires the requested accommodation to be financially viable
 - Applicant has not submitted evidence that it requires accommodation for therapeutic benefit

Necessity – Alternate Housing Opportunities

- NBMC authorizes consideration of availability of alternate facilities of a similar nature
- As of July 6, 2009, ample alternate licensed facilities are approved (not currently subject to abatement) within the city:
- 207 ADP-licensed beds – many in duplex and apartment buildings in Balboa Peninsula and West Newport

Necessity – Other Considerations

- Current residents – Use is subject to abatement, current residents would lose housing upon abatement
- Prospective residents – Future residents would lose ability to live in *this* duplex, but not in other similar existing facilities

“Reasonable Request” – Factors Considered

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

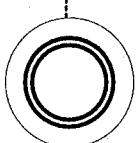
Request Reasonable – Required Findings

- Would granting the request impose an undue financial or administrative burden?
- Would granting the request result in a fundamental alteration in the nature of the City's zoning program?
 - 1. Would allowing use to continue in R-2 zone undermine basic purpose R-2 zoning seeks to achieve?
 - 2. Would allowing use to continue without a use permit undermine basic purposes the use permit requirement seeks to achieve?

Purposes of R-2 and MFR Zones

- R-2 - to provide areas for single- and two-family residential uses (NBMC Section 20.10.010) (medium to high density, depending on location)
- MFR - to provide for single-, two- and multi-family residential uses, up to 38 units per gross square acre (medium to high density)
- Under other conditions, this finding could be made with 14 residents in seven apartment units.

Purpose of Use Permit



- Required for uses with operating characteristics that require special conditions to enable them to operate compatibly with other uses in the area.

- Ordinance 2008-05 requires use permit for nonconforming uses in residential areas – purpose is to ensure purposes of Zoning Code are achieved, and adverse secondary impacts from nonconforming uses are mitigated.

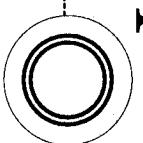
Purpose of Use Permit, cont'd.

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

Use Permit Purpose Undermined?

- Any reasonable controls which the Hearing Officer could impose through a use permit can also be imposed through reasonable accommodation.
- Under NBMC Chapter 20.98, all required findings must be made. Alternate conditions are proposed to meet needs of disabled.
- Staff analysis – because of applicant conduct, findings required to issue a use permit cannot be made for this facility.

Use Permit Purpose Undermined?



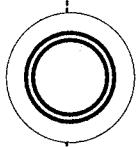
- For current residents, applicant's request determined reasonable.
 - - No basic purpose of zoning program undermined by allowing current residents to complete stay.
 - - No administrative or financial burden on City.
- For prospective residents:
 - - All required findings cannot be made.
 - - One of basic purposes of zoning program undermined.
 - - Staff anticipates administrative burden monitoring facility and prosecuting substantiated complaints.

Use Permit – Required Findings

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

- -Operated in compliance with state and local law, with management plan and 24-hour contact?
- -Name of managers and owners provided, none of whom have exhibited pattern or practice of operating similar facilities in violation of state or local law?

Use Permit – More Required Findings



- Property physically suited to accommodate use?
- Sufficient onsite parking; traffic and transportation impacts mitigated to insignificance?
- Use will not change character of surrounding residential neighborhood?