

RESOLUTION NO. 2009-78

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DENYING AN APPEAL, AND SUSTAINING AND AFFIRMING THE DECISION OF THE HEARING OFFICER TO DENY WITH PREJUDICE REQUEST NO. 2 OF A REQUEST FOR REASONABLE ACCOMMODATION NO. 2008-001 FOR AN EXISTING SOBER LIVING FACILITY LOCATED AT 3309 CLAY STREET, 492 ORANGE AVENUE, AND 492 ½ ORANGE AVENUE (PA 2008-181).

WHEREAS, Ordinance No. 2008-05 was adopted by the Newport Beach City Council on January 22, 2008, following noticed public hearings, and the ordinance amended the City of Newport Beach's Municipal Code (NBMC) relating to Group Residential Uses; and

WHEREAS, Ordinance No. 2008-05 added Chapter 20.98 to the NBMC, which sets forth a process to provide reasonable accommodations in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling; and

WHEREAS, Ordinance No. 2008-05 added Chapter 20.98 to the NBMC. Chapter 20.98 sets forth a process to provide reasonable accommodations in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling; and

WHEREAS, an application was filed by Pacific Shores Properties, with respect to properties located at 3309 Clay Street, 492 Orange Avenue, and 492 ½ Orange Avenue, and legally described as Lot 2 and Lot 1 in Block 6 of Tract No. 27 in the City of Newport Beach, County of Orange, State of California (APN 425-282-02 and 425-282-01), requesting approval of the following five requests for reasonable accommodation:

1. That residents of its facility at 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue be treated as a single housekeeping unit as defined in Section 20.03.030 of the Newport Beach Municipal Code;
2. That the City no longer classify or treat the properties at 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue as "Residential Care Facilities," as defined by NBMC Section 20.05.010;
3. That the City classify the use of the dwellings at 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue as a legal nonconforming use;
4. That all code provisions applicable to the use of 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue (including Zoning Code, Building Code, fire safety and any other applicable code) be applied to those properties in the same manner that those codes are applied and enforced to single family and two family residential uses located in residential districts zoned R-2; and

5. That the City waive the requirement of NBMC Section 20.91A.020 that unlicensed residential care facilities may be located only in a residential district zoned MFR with a use permit.

WHEREAS, a public hearing was held on March 25, 2009, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Municipal Code. Evidence, both written and oral, was presented and considered at this meeting; and

WHEREAS, the hearing was presided over by Thomas W. Allen, Hearing Officer for the City of Newport Beach, who determined not all of the five findings required pursuant to Section 20.98.025 (B) of the NBMC could be made to grant Request No. 2 of Reasonable Accommodation No. 2008-001, that the City no longer classify or treat the properties at 3309 Clay Street, 492 Orange Avenue and 492 ½ Orange Avenue as "Residential Care Facilities," as defined by NBMC Section 20.05.010 of the NBMC; and

WHEREAS, the Hearing Officer adopted Resolution No. HO-2009-018, denying Request No. 2 of Reasonable Accommodation No. 2008-001 with prejudice; and

WHEREAS, an appeal of the Hearing Officer's decision to deny with prejudice Request No. 2 of Reasonable Accommodation No. 2008-001 was filed by the applicant requesting that the City Council reconsider the denial; and

WHEREAS, pursuant to Section 20.98.025 A of the NBMC, the standard of review on appeal shall not be de novo and the City Council shall determine whether the findings made by the Hearing Officer were supported by substantial evidence presented during the evidentiary hearing. The City Council may sustain, reverse or modify the decision of the Hearing Officer; and

WHEREAS, a public hearing on the appeal of the Hearing Officer's decision to deny with prejudice Request No. 2 of Reasonable Accommodation No. 2008-001 was held on October 27, 2009, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place, and purpose of the aforesaid meeting was given, and evidence in the administrative record, including the analysis in the staff report, the March 25, 2009 public hearing transcript, and documents submitted by the public was presented to the City Council; and

WHEREAS, the City Council determined there is substantial evidence in the administrative record to support the Hearing Officer's decision, thereby denying the appeal, and sustaining and affirming the Hearing Officer's decision to deny with prejudice Request No. 2 of Reasonable Accommodation No. 2008-001; and

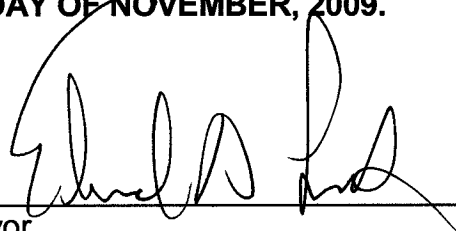
WHEREAS, the project qualifies for a Categorical Exemption pursuant to Section (Section 15061(b)(3) (Existing Facilities). This class of projects has been determined not to

have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

NOW THEREFORE, BE IT RESOLVED:

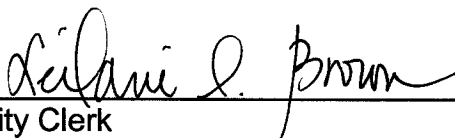
Section 1. The City Council of the City of Newport Beach hereby denies the appeal, and sustains and affirms the decision of the Hearing Officer to deny with prejudice Request No. 2 of Reasonable Accommodation No. 2008-001.

PASSED, APPROVED AND ADOPTED THIS 10th DAY OF NOVEMBER, 2009.



Mayor

ATTEST:



City Clerk



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

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2009-78 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 10th day of November, 2009, and that the same was so passed and adopted by the following vote, to wit:

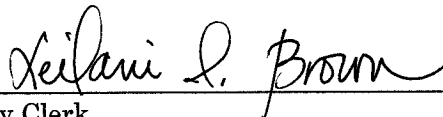
Ayes: Henn, Rosansky, Curry, Webb, Gardner, Daigle, Mayor Selich

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 11th day of November, 2009.



City Clerk
Newport Beach, California

(Seal)

