



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

NOTICE OF DECISION PLANNING COMMISSION ACTION

DATE: February 13, 2019

PROJECT NO: PA-17-10

SITE ADDRESS: 115 East Wilson Street, Units A through E

FINAL ACTION: At a noticed public hearing on February 11, 2019 the Planning Commission upheld the director's denial of reasonable accommodation and denied this application by adoption of Planning Commission Resolution PC-19-05. The final resolution is attached.

APPEAL PERIOD: This decision will become final unless appealed by 5 p.m., February 19, 2019 by the filing of the necessary form and fees with the City Clerk's office, located at 77 Fair Drive, Costa Mesa.

PLANNING CONTACT: Willa Bouwens-Killeen, Zoning Administrator, 714-754-5153
willa.bouwens-killeen@costamesaca.gov

If the Planning Commission decision is not appealed by the above referenced appeal deadline, the City requests that you cease operations of the subject group home by March 12, 2019 (30 days from decision date). Please contact City Code Enforcement staff member Winston Karuga at 714-754-5629 prior to this date to schedule an inspection. If your operations have not ceased within the allotted time, appropriate code enforcement action will commence which may result in civil citation(s), criminal prosecution and/or civil action to abate violations of the Municipal Code.

If you have any questions or comments regarding this notice of decision, please contact the project planner (above) or me at 714-754-5278.

Sincerely,

BARRY CURTIS, AICP
Director of Economic and Development Services

DISTRIBUTION:

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RESOLUTION NO. PC-19-05

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA UPHOLDING THE DIRECTOR'S DENIAL OF A REASONABLE ACCOMMODATION REQUEST TO DEVIATE FROM VARIOUS REQUIREMENTS OF THE ZONING CODE; AND TO DENY CONDITIONAL USE PERMIT PA-17-10 TO ALLOW A SOBER LIVING FACILITY OPERATED BY OHIO HOUSE HOUSING UP TO 45 OCCUPANTS AT 115 EAST WILSON STREET, UNITS A THROUGH E

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA
HEREBY RESOLVES AS FOLLOWS:

WHEREAS, Ohio House (the "Applicant") currently operates a sober living facility serving more than six persons at 115 East Wilson Street, Units A through E, Costa Mesa; and

WHEREAS, the Applicant filed a request for a Reasonable Accommodation to allow this facility to be located within 650 feet of a property that contains a group home, sober living home or state-licensed drug and alcohol treatment facility; and an application requesting approval of Conditional Use Permit PA-17-10, a Conditional Use Permit to allow the subject sober living facility to serve up to 35 male adults with 10 live-in managers within five existing units; and

WHEREAS, the City of Costa Mesa recognizes that while not in character with residential neighborhoods, when operated responsibly, group homes, including sober living homes and drug and alcohol treatment facilities, provide a societal benefit by providing disabled persons as defined by state and federal law the opportunity to live in residential neighborhoods, as well as providing recovery programs for individuals attempting to overcome their drug and alcohol addictions; therefore, providing greater access to residential zones to group homes, including sober living homes and drug and alcohol treatment facilities, than to boardinghouses or any other type of group living that provides a benefit to the City and its residents; and

WHEREAS, the City of Costa Mesa has adopted standards for the operation of group homes, residential care facilities and state-licensed drug and alcohol facilities that

are intended to provide opportunities for disabled persons, as defined by state and federal law to enjoy comfortable accommodations in a residential setting; and

WHEREAS, the City of Costa Mesa has found that congregating drug and alcohol treatment facilities and sober living homes in close proximity to each other does not provide disabled persons as defined in state and federal law with an opportunity to "live in normal residential surroundings," but rather places them into living environments bearing more in common with the types of institutional/campus/dormitory living that the FEHA and FHAA were designed to provide relief from for the disabled, and which no reasonable person could contend provides a life in a normal residential surrounding; and

WHEREAS, the City of Costa Mesa has determined that a separation requirement for such facilities will still allow for a reasonable market for the purchase and operation of drug and alcohol treatment and sober living facilities within the City and still result in preferential treatment for sober living and drug and alcohol treatment facilities in that non-disabled individuals in a similar living situation (i.e., in boardinghouse-style residences) have fewer housing opportunities than disabled persons; and

WHEREAS, the City of Costa Mesa has determined that a group home, sober living home or state-licensed drug and alcohol treatment facility shall be operated on a single parcel of land; and

WHEREAS, the Applicant filed an application with the City's Director of Economic and Development Services (the "Director") requesting an accommodation from the Costa Mesa Municipal Code's requirement that a group home, residential care facility or state licensed drug and alcohol facility is at least 650 feet from another property that contains a group home, sober living home or state licensed drug and alcohol treatment facility, as well as a request to deviate from various zoning code requirements; and

WHEREAS, the request for a Reasonable Accommodation and the Conditional Use Permit application were processed in the time and manner prescribed by federal, state and local laws, and the Director denied the request for the Reasonable Accommodation in a letter dated November 27, 2017; and

WHEREAS, the Applicant appealed the Director's decision to deny a Reasonable Accommodation on November 29, 2017; and

WHEREAS, a duly noticed public hearing was scheduled for February 11, 2019, before the Planning Commission to hear the conditional use permit and the appeal of the Director's denial of the Reasonable Accommodation request; and

WHEREAS, on February 11, 2019 the Planning Commission conducted a duly noticed public hearing, at which time interested persons had an opportunity to testify either in support of or in opposition to the application and voted to deny the application.

NOW THEREFORE, the Planning Commission of the City of Costa Mesa finds and resolves as follows:

BE IT RESOLVED, that based on the evidence in the record and the findings contained in this resolution, the Planning Commission hereby **UPHOLDS THE DIRECTOR'S DENIAL** of the Applicant's request for Reasonable Accommodation and hereby **DENIES** Conditional Use Permit PA-17-10.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the documents in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

The Secretary of the Commission shall attest to the adoption of this resolution and shall forward a copy to the applicant, and any person requesting the same.

PASSED AND ADOPTED this 11th day of February, 2019.



Chair **BYRON DE ARAKAL**
Costa Mesa Planning Commission

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, Barry Curtis, Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. PC-19-05 was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on February 11, 2019 by the following votes:

AYES: de Arakal, Harlan, Navarro Woods, Zich, Colbert

NOES: None

ABSENT: None

ABSTAIN: None

A handwritten signature in black ink, appearing to be 'BC' or similar initials, written over a horizontal line.

Barry Curtis, Secretary
Costa Mesa Planning Commission

EXHIBIT A

FINDINGS FOR DENIAL

The City's evidence consists of a staff report with attachments. The staff report provided the factual background, legal analysis and the City's analysis supporting the denial of the Applicant's request for a Reasonable Accommodation and the Conditional Use Permit, based on the Applicant not meeting its burden to demonstrate compliance with all required findings per the Costa Mesa Municipal Code (CMMC).

- A. The subject property is located approximately 550 feet from a state-licensed drug and alcohol treatment facility at 165 East Wilson Street. The City approved a Conditional Use Permit (CUP) in 2016 for this licensed facility (PA-16-03). The Applicant applied for Reasonable Accommodation on October 27, 2017 to allow the subject sober living facility to be located within 650 feet of the existing state-licensed drug and alcohol treatment facility (the Applicant's letter was dated September 12, 2017 but was received by the City on October 27, 2017). The CUP application was received for Unit E on March 23, 2017 with CUP applications for the remainder of the units received between October 27, 2017 and December 5, 2017. The applicant's request for a Reasonable Accommodation to allow this sober living facility to be located within 650 feet of the state-licensed drug and alcohol treatment facility was denied by the Director of Economic and Development Services on November 27, 2017. The applicant appealed the request on November 29, 2017, but gave no reasons for the appeal.
- B. The Application does not meet the findings required by the Costa Mesa Municipal Code for approval of a Reasonable Accommodation:
- The requested accommodation is necessary to provide one or more individuals with a disability with an equal opportunity to use and enjoy a dwelling.

The City recognizes that, while not in character with the residential neighborhoods, when operated responsibly, group homes, including sober living homes, provide a societal benefit by providing disabled persons the opportunity to live in residential neighborhoods. These facilities provide recovery programs for individuals attempting to overcome their drug and alcohol addictions. The City has established separation criteria to ensure that an overconcentration of sober living homes and licensed drug and alcohol treatment facilities does not occur in any neighborhood, thereby, preserving the residential character for all who choose to reside there.

The application established that the waiver of the separation requirement would allow one or more individuals who are recovering from drug and alcohol abuse to enjoy the use these dwellings. However, approval of the request is not necessary to allow one or more individuals who are recovering from drug and alcohol abuse to enjoy the use of a dwelling within the City.

The operation of a group home is inconsistent with the City's definition of a single housekeeping unit. The City has established procedures to allow group homes in residential neighborhoods; allowing a group to be considered a single housekeeping unit is not necessary to allow the disabled to reside in residential neighborhoods.

The City has adopted standards for sober living homes and licensed treatment facilities in residential zones to ensure the disabled have the opportunity to live in a typical residential neighborhood. The permit process ensures that sober living homes and licensed treatment facilities comply with the City's standards. The City specifically required all existing group homes to comply with the new regulations within one year. The applicant's letter failed to provide a basis to "grandfather" this facility when all other facilities in operation at the time the regulations were adopted are also required to comply.

- The requested accommodation is consistent with the surrounding uses in scale and intensity of use.

The subject facility does not operate as a single housekeeping unit, or even five single housekeeping units, making it dissimilar to the composition of households on surrounding properties. The facility is occupied solely by adults at a higher occupancy than is typical in Costa Mesa. Each resident is allowed to keep a car on the property. With 35 residents and 10 onsite managers, the facility provides opportunities for parking conflicts with owners of nearby properties who also rely on on-street parking. The City's intent in adopting its group home regulations was to ensure an overconcentration of group homes did not occur in any neighborhood. The facility would contribute to overconcentration given that it includes five units on five individual lots.

- Whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability and equal opportunity to live in a residential setting.

The City has received applications for 64 sober living homes and 11 licensed treatment facilities that are subject to compliance with Ordinance Nos. 14-13 and 15-11. Twelve sober living homes serving six or fewer residents have been approved by the City, and two sober living homes serving seven or more residents have been approved by the City. In addition, there are 74 existing state licensed drug and alcohol facilities in Costa Mesa that are exempt from City regulation, or have already obtained the required Conditional Use Permit. No evidence has been submitted to indicate that the number of sober living homes and drug and alcohol residential care facilities existing or potentially allowed in compliance with the City's standards is inadequate.

- *The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program.*

Ordinance 15-11 established requirements for sober living homes, group homes, and licensed drug and alcohol treatment facilities in multi-family zoning districts. When the City Council adopted this ordinance, it specifically included a provision requiring a separation of at least 650 feet between such facilities. The intent of this limitation is to ensure that sober living and drug and alcohol treatment facilities do not occupy a disproportionate number of homes in any neighborhood, and to avoid overconcentration of sober living and drug and alcohol treatment facilities in any area. The City also sought to ensure that disabled persons recovering from an addiction can reside in a comfortable residential environment versus in an institutional setting. The City determined that housing inordinately large numbers of unrelated adults in a single dwelling or congregating sober living and drug and alcohol treatment facilities in close proximity to each other does not provide the disabled with an opportunity to "live in normal residential surroundings" but, rather, places them into living environments bearing more in common with the types of institutional/campus/dormitory living that the state and federal laws were designed to avoid. The subject property consists of five units on five individual lots, which already contributes to an overconcentration of sober living homes in the area. The site's proximity to another sober living home serving more than six adults contributes to an overconcentration of sober living facilities in this neighborhood. Granting the accommodation to consider this facility as a single housekeeping unit and/or waive the separation standard will result in an overconcentration of sober living facilities in this area that is in conflict with the intent of the City's zoning program.

When the City adopted Ordinance 15-11, it specifically included provisions requiring all existing group home operators to come into compliance with the new regulations within one year of their adoption. The ordinance did not create or recognize any nonconforming uses. Given the intent of the ordinance, it is not appropriate to grant the reasonable accommodation to allow the subject facility to be "grandfathered" and exempted from compliance with current regulations.

The application for reasonable accommodation failed to justify any reason to waive compliance with the provisions of Section 9-374(b)(11) of the CMMC that require the applicant to have a house manager; ensure all occupants, other than the house manager, are actively participating in legitimate recovery programs; prohibit the use of any alcohol or non-prescription drugs by any recovering addict; have a policy regarding use and storage of prescription medications; post house rules in a common area inside the dwelling unit; prohibit visitors who are under the influence of any drug or alcohol; and maintain a good neighbor policy.

C. The Application does not meet the findings required by the Costa Mesa Municipal Code for approval of a Conditional Use Permit:

- The proposed use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.

The facility consists of five units on five parcels with a common lot to hold the project as a common interest development. Approval of this request will allow up to 45 adults to occupy the site. With the exception of minimum required lot width requirements, the site satisfies all applicable development standards.

The proposed occupancy of these units constitutes overcrowding pursuant to the Housing Element of the General Plan, page HOU-23, which states:

Overcrowding is defined as a housing unit occupied by more than one person per room. A severely overcrowded housing unit is one with more than 1.5 persons per room. A room is defined as a bedroom, living room, dining room, or finished recreation room, but excludes kitchen and bathroom.

This definition is consistent with the Federal HUD standards, which generally define "overcrowding" to mean housing units with 1.01 or more persons per room. See 42 USCS § 5302(a)(10). Under this standard, all the units would be overcrowded.

The subject property is located within approximately 550 feet of a state-licensed and city-approved drug and alcohol treatment facility located at 165 East Wilson Street. The facility on 18th Street is licensed to serve 10 adults and was issued a CUP by the City in 2016 (PA-16-10).

The operator of a group home may request reasonable accommodation when compliance with all of the standards is not possible. Section 13-200.62 (f) of the Zoning Code sets forth the required findings to be used in the determination to approve, conditionally approve, or deny a request for reasonable accommodation. The Code specifies that all findings must be made in order to approve such a request. The findings to deny this requested accommodation were enumerated above.

The CMMC establishes criteria for approval of group homes in multi-family zones. Group homes serving disabled persons as defined by state and federal law are not considered to be boardinghouses. Rather, these facilities offer disabled persons the opportunity to live in residential neighborhoods in compliance with state and federal laws. Recovering alcoholics and drug addicts, who are not currently using alcohol or drugs, are considered disabled under state and federal law. Standards for large

group homes are set forth in the Zoning Code. The intent of the regulations is to preserve the residential character of the City's neighborhoods while providing opportunities for the disabled to live in comfortable residential surroundings.

The City adopted standards for group homes in response to a proliferation of drug and alcohol treatment facilities in the community. The City found that an overconcentration of sober living homes and drug and alcohol treatment facilities in the City's residential neighborhoods could be deleterious to the residential character of these neighborhoods and could also lead to the institutionalization of such neighborhoods. Drug and alcohol treatment facilities and sober living homes generally do not function as a single housekeeping unit because they house extremely transient populations; the residents generally have no established ties to each other when they move in and typically do not mingle with other neighbors; the residents have little to no say about who lives or doesn't live in the home; the residents do not generally share expenses; the residents are often responsible for their own food, laundry and phone; when residents disobey house rules they are often just evicted from the house; and the residents generally do not share the same acquaintances. The City found that the size and makeup of the households in drug and alcohol treatment facilities is dissimilar and larger than the norm, creating impacts on water, sewer, roads, parking and other City services that are far greater than the average household. In addition, all the individuals residing in a drug and alcohol treatment facility are generally over the age of 18, while the average household in Costa Mesa has just 2.2 individuals over the age of 18.

Because of their transient populations, above-normal numbers of individuals/adults residing in a single dwelling and the lack of regulations, drug and alcohol treatment facilities and sober living homes present problems not typically associated with more traditional residential uses. These issues may include the housing of large numbers of unrelated adults who may or may not be supervised; disproportionate numbers of cars associated with a single housing unit, which causes disproportionate traffic and utilization of on-street parking; excessive noise and outdoor smoking, which interferes with the use and enjoyment of neighbors' properties; neighbors who have little to no idea who does and does not reside in the home; little to no participation by residents in community activities that form and strengthen neighborhood cohesion; disproportional impacts from the average dwelling unit to nearly all public services including sewer, water, parks, libraries, transportation infrastructure, fire and police; a history of residents congregating in the same general area; and the potential influx of individuals with a criminal record.

Nevertheless, the City recognizes that while not in character with residential neighborhoods, when operated responsibly, group homes, including drug and alcohol treatment facilities, provide a societal benefit by providing disabled persons the opportunity to live in residential neighborhoods. These facilities also provide recovery programs for individuals attempting to overcome their drug and alcohol addictions. The City's regulations provide group homes, including sober living homes and licensed drug and alcohol treatment facilities, greater access to

residential zones than to boardinghouses or other types of group living arrangements. This favorable access for group homes provides a benefit to the City and its residents.

In response to the needs and concerns described above, the City established a minimum separation of 650 feet between group homes, residential care facilities and/or state-licensed drug and alcohol facilities. The City found that a separation requirement will still allow for a reasonable market for the purchase and operation of sober living homes and drug and alcohol treatment facilities within the City. The requirement will still result in preferential treatment for sober living homes and drug and alcohol treatment facilities in that non-disabled individuals in a similar living situation (i.e., in boardinghouse-style residences) have fewer housing opportunities than the disabled. The City determined that housing inordinately large numbers of unrelated adults in a single dwelling or congregating sober living homes and drug and alcohol treatment facilities in close proximity to each other does not provide the disabled with an opportunity to "live in normal residential surroundings," but rather places them into living environments bearing more in common with the types of institutional/campus/dormitory living that the state and federal laws were designed to provide them relief from.

The Federal Housing Act Amendments (FHAA), 42 U.S.C. § 3601 et seq., provide that a city "commits discrimination under the FHAA if it refuses to make reasonable accommodations in rules, policies, practices, or services, when such accommodation may be necessary to afford [the disabled] equal opportunity to use and enjoy a dwelling." Budnick v. Town of Carefree, 518 F.3d 1109, 1119 (9th Cir. 2008).

The FHAA requires a city to provide a requested accommodation if such accommodation "(1) is reasonable, and (2) necessary, (3) to afford a handicapped person the equal opportunity to use and enjoy a dwelling." Oconomowoc Residential Programs, Inc. v. City of Milwaukee, 300 F.3d 775, 783 (7th Cir. 2002); 42 U.S.C. § 3604(f)(3)(B).

The applicant requested relief from the Zoning Code requirement that a sober living home or drug and alcohol treatment facility be located at least 650 feet from another property that contains a group home, sober living home or state-licensed drug and alcohol treatment facility. The request for a Reasonable Accommodation was denied by the Director of Development Services on November 27, 2017 because another sober living or drug and alcohol treatment facility exists within 650 feet of the subject property. The applicant appealed the decision on November 29, 2017 but gave no reason for the appeal.

The facility is located within approximately 550 feet of a City-approved state-licensed drug and alcohol treatment facility serving 10 occupants at 165 East Wilson Street, approved under PA-16-03.

Based on denial of a Reasonable Accommodation, the facility contributes to overconcentration and does not comply with the City's adopted standards for separation between group homes, residential care facilities and state-licensed drug and alcohol facilities. Therefore, this finding cannot be made.

- Granting the conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

The City has found that overconcentration of drug and alcohol treatment facilities and group homes changes the character of a residential neighborhood to one that is more institutional in nature. This change in neighborhood character can compound secondary effects related to noise, traffic, and parking. In these neighborhoods, street life is often characterized by large capacity vans picking up and dropping off residents and staff; staff in scrubs carrying medical kits going from unit to unit, and vans dropping off prepared meals in large numbers. The City has experienced frequent Fire Department deployments in response to medical aid calls. In some neighborhoods, Police Department deployments are a regular occurrence as a result of domestic abuse calls, burglary reports, disturbing the peace calls and parole checks at drug and alcohol treatment facilities. Large and often frequent Alcoholics Anonymous or Narcotics Anonymous meetings are held at some drug and alcohol treatment facilities. Attendees of these meetings contribute to the lack of available on-street parking and neighbors report finding an unusual amount of litter and debris, including beverage containers, condoms and drug paraphernalia in the wake of these meetings. These types of impacts have been identified in other communities as well. The facility will contribute to the overconcentration of sober living and drug and alcohol treatment facilities in this neighborhood, which could lead to negative impacts in the neighborhood. Code Enforcement has already received a complaint alleging trash and cigarettes in the alley abutting this site.

There are only 20 parking spaces on the site available to serve 35 adults as well as the 10 on-site managers. Approval of this CUP could result in conflicts with residents of nearby properties for the use of on-street parking spaces.

- Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation for the property.

The proposed use is consistent with the City's General Plan. However, an overconcentration of group homes, sober living homes and licensed treatment facilities for alcohol and drug addiction is not consistent with the General Plan. The City's regulations are intended to preserve the residential character of the City's neighborhoods. The City Council has determined that an overconcentration of drug and alcohol treatment facilities would be detrimental to the residential character of the City's neighborhoods. The proposed facility is located within 650 feet of another

sober living or drug and alcohol treatment facility, contributes to overconcentration, and is therefore, not consistent with the intent of the General Plan.

- D. The Costa Mesa Planning Commission has denied the requested Reasonable Accommodation and Conditional Use Permit PA-17-10. Pursuant to Public Resources Code Section 21080(b) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.
- E. The project is exempt from Chapter IX, Article 11, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.