



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: JANUARY 26, 2015

ITEM NUMBER: CC-2

SUBJECT: A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA TO UPHOLD THE DENIAL OF A REASONABLE ACCOMMODATION REQUEST TO TREAT YELLOWSTONE RECOVERY, 3132 BOSTON WAY, AS A SINGLE HOUSEKEEPING UNIT AND ALLOW 15 INDIVIDUALS TO LIVE IN THE SINGLE FAMILY HOME

DATE: JANUARY 15, 2015

FROM: PLANNING DEPARTMENT/DEVELOPMENT SERVICES DIVISION

PRESENTATION BY: JERRY GUARRACINO, Assistant Director, CID

FOR FURTHER INFORMATION CONTACT: Jerry Guarracino, AICP (714) 754-5631
Jerry.guarracino@costamesaca.gov

DESCRIPTION

Applicant Yellowstone Recovery, located at 3132 Boston Way, requested an accommodation based on its residents' disabled status, seeking relief from the zoning code's limitation to allow up to six individuals to live in a residential care facility in an R1 zone, to be treated as a single housekeeping unit and to allow 15 residents.

BACKGROUND

Yellowstone Recovery,¹ located at 3132 Boston Way, Costa Mesa (the "Property") is a state licensed residential nonmedical alcoholism or drug abuse recovery or treatment facility, serving 15 adult males.² Under the City's Zoning Code, Yellowstone is a residential care facility, i.e., it is a residential facility licensed by the state where care, services, or treatment are provided to persons living in a community residential setting. CMMC § 13-6.

On June 5, 2014, Yellowstone requested the accommodation at issue in this appeal. On August 19, 2014, Gary Armstrong, Director of Development Services, denied Yellowstone's accommodation request. On September 22, 2014, Yellowstone timely filed a request for an appeal hearing. The hearing was originally set before the Commission for October 13, 2014,

¹ Yellowstone operates more than one facility in the City of Costa Mesa. For the purposes of this appeal, any reference to Yellowstone is limited to the facility located at 3132 Boston Way.

² Based on Applicant's existing state license, the Director assumes that Yellowstone Recovery only houses disabled individuals for the purposes of reviewing Applicant's reasonable accommodation request.

pursuant to mutual agreement with the Applicant. On October 2, 2014, Applicant requested a continuance to the December 8, 2014, meeting due to a scheduling conflict.

On December 8, 2014, the Planning Commission conducted a public hearing to consider Yellowstone's appeal of the denial of their reasonable accommodation request. The Planning Commission Staff Report can be found online via the following link:

<http://www.costamesaca.gov/ftp/planningcommission/agenda/2014/2014-12-08/PH-2.pdf>

Testimony both for and against granting the appeal, including public comments, were considered at that time, see Attachment No. 2 - Minutes for the December 8, 2014 Planning Commission meeting.

Based on the evidence in the record, and testimony and public comments received at the December 8, 2014 hearing, the Planning Commission, voted 5-0 to uphold the denial of the reasonable accommodation request to treat Yellowstone Recovery at 3132 Boston Way as a single-housekeeping unit and allow 15 individuals to live in a single-family home, finding that Yellowstone had not provided any evidence that 15 individuals living in a single family home are necessary for individuals in recovery to have the equal opportunity to the use and enjoyment of the housing of their choice. The Commission directed staff to work with the applicant to establish a reasonable amortization schedule to reduce the occupancy of the home from 15 people to 6 people plus a house manager and to return, in a month's time, with a resolution reflecting the findings made at the hearing.

Further Consideration

Deputy City Attorney, Elena Gerli, called Yellowstone's counsel a week after the hearing to request that he provide a suggested time line for compliance based on cycling people out of the home. He indicated he would provide the time line within the following week. The Deputy City Attorney has emailed Yellowstone's counsel twice since, the first email resulted in no response. After the second email their Counsel said he would provide something the week of January 12th - 16th, as of the writing of this staff report no response has been received.

Absent any response from the applicant the Resolution, Attachment No. 1 proposed a 6-month amortization period.

PUBLIC NOTICE

Code-required public notice was provided via the following methods:

1. Notice of this item was included in the Planning Commission Agenda for the January 26, 2015 Planning Commission Meeting and the Agenda was posted prior to the meeting per City standards.
2. Notice of the public hearing was mailed to the property owner.

ENVIRONMENTAL DETERMINATION

This project is categorically exempt under Section 15321 of the California Environmental Quality Act (CEQA) Guidelines – Class 21 (Enforcement Action by Regulatory Agencies).

LEGAL REVIEW

The City Attorney has reviewed this report and its attachments and has approved this report as to form.

RECOMMENDATION

Recommend that the Planning Commission adopt the attached resolution to uphold the denial of the Reasonable Accommodation Request.



JERRY GUARRACINO, AICP
 Assistant Director
 Community Improvement Division



GARY ARMSTRONG, AICP
 Director of Economic & Development
 Services/Deputy CEO

- Attachments:
1. Resolution No. PC-15-__
 2. Minutes for the December 8, 2014 Planning Commission meeting – Public Hearing Item No. 2

- Distribution:
- Director of Economic & Development/Deputy CEO
 - Assistant Development Services Director
 - Senior Deputy City Attorney
 - Public Services Director
 - City Engineer
 - Transportation Services Director
 - Fire Protection Analyst
 - Staff (6)
 - File (2)

Applicant c/o:
 Steven G. Polin, ESQ.
 3034 Tennyson Street N.W.
 Washington, D.C. 20015

Attachment No. 1

Resolution No. PC-15-xx

RESOLUTION NO. PC-15-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA TO UPHOLD THE DENIAL OF YELLOWSTONE RECOVERY'S REASONABLE ACCOMMODATION TO ALLOW 15 INDIVIDUALS TO RESIDE IN A RESIDENTIAL CARE FACILITY IN AN R1 ZONE

WHEREAS, Yellowstone Recovery operates an alcoholism or drug abuse recovery or treatment facility, licensed for 15 beds pursuant to Section 11834.01 of the California Health & Safety Code, at 3132 Boston Way, Costa Mesa; and

WHEREAS, Yellowstone Recovery filed an application with the City's Director of Economic and Development Services/Deputy CEO (the "Director") requesting an accommodation from the Costa Mesa Municipal Code's numerical limit of six tenants on residential care facilities that are located in single-family neighborhoods (the "Application"); and

WHEREAS, the Application was processed in the time and manner prescribed by federal, state and local laws, and the Director denied the request for the reasonable accommodation; and

WHEREAS, Yellowstone Recovery appealed the denial of the Application in a timely manner; and

WHEREAS, a duly noticed public hearing was scheduled for to October 13, 2014, before the Planning Commission to hear the appeal, and continued to December 8, 2014 at Yellowstone Recovery's request; and

WHEREAS, on December 8, 2014, 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 determined by a 5-0 vote to deny the Application.

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

Yellowstone Recovery, located at 3132 Boston Way, Costa Mesa (the "Property") is a state licensed residential nonmedical alcoholism or drug abuse recovery or treatment facility, serving 15 adult males. Under the City's Zoning Code, Yellowstone is a residential care facility, i.e., it is a residential facility licensed by the state where care, services, or treatment are provided to persons living in a community residential setting. CMMC § 13-6.

The Property is owned by Anna M. Thames, aka Dr. Honey Thames, and has been so owned since September 14, 2004. Dr. Thames's name appears as the property owner in City records as early as 2002. The Property has operated as a sober living home since as far back as May of 1998. County records show that the house on the Property is 2,500 square feet, and is built on a 6,098 square foot lot. The Property currently has six bedrooms. A dressing room had been converted to a bedroom without permits, but has been reconverted to its intended use.

Applicant admits they do not meet the City's definition of single housekeeping unit.

Applicant has not established that 15 tenants are necessary for individuals in recovery to have the equal opportunity to the use and enjoyment of the dwelling of their choice.

The Applicant contends that it needs 15 tenants to create the type of supportive structure that is necessary to enhance the chance for recovery, and that this supportive environment is necessary for individuals in recovery to have the equal opportunity to the use and enjoyment of the dwelling of their choice in the R1 zone.

Yellowstone argued that the City's actions constitute discriminatory enforcement of its zoning laws, and referred to an incident involving racial slurs tagged on the property around 2000. The home has been operated for 14 years without any complaints. It has 15 residents, 13 patients and 2 staff, and the number of residents is part of the recovery process. Yellowstone's counsel added that Boston Way residents don't have cars, and argue that the residents of the home are entitled to use the home as they see fit (referencing a complaint about people on the roof jumping into the swimming pool).

Yellowstone's counsel asserted that the home does not adversely impact the neighborhood. He stated that traditional families no longer exist. He stated that there is a benefit to having 15 people in a sober living home and that there is a powerful effect to living with others in recovery.

Yellowstone's evidence

Yellowstone submitted some documentary evidence and called 12 witnesses. The documentary evidence consisted of the following documents:

1. A letter from Yellowstone's counsel, Mr. Steven Polin, dated December 7, 2014. The letter summarized the background facts of the case, including the City's March 28, 2014 notice of violation that instructed Yellowstone to come into compliance with the zoning code by bringing the number of residents down from 15 to 6. As a result, Yellowstone made the request to be treated as a single family residence. Yellowstone asserts in the letter that they are the functional equivalent of a family, but that they do not meet the City's definition of single housekeeping unit. The letter summarized applicable reasonable accommodation laws and stated "The

mutual support that the residents receive from each other is critical to substance recovery. Persons recovering from addiction are far more often successful when living in a household with at least eight other persons in recovery, particularly in the early stages of recovery. Failure to treat the Boston Way residents as a single housekeeping unit, without regard to the size of the residential unit, interferes with the critical mass of individuals supporting each other in recovery.” Yellowstone also argued that the City’s determination (in its original denial letter) that the request is unreasonable because it fundamentally alters the nature of the neighborhood was unjustified: the City did not request that Yellowstone provide any information regarding its operation and thus did not make an individualized, fact-specific determination regarding the particular facility located at 3132 Boston Way. Finally, Yellowstone’s counsel argued that the City’s reliance on its experts’ opinions that 15 individuals is not necessary for individuals in recovery to have the equal opportunity to the use and enjoyment of a dwelling is misplaced.

2. Exhibit 1 consisted of copies of follow-up letters from the City dated October 4, 2011 and October 31, 2011 regarding a reasonable accommodation request for the property located at 3116 Van Buren Avenue. In the letters, the City requested additional information from the applicant.
3. Exhibit 2 is an unexecuted settlement agreement in Tracy P. v. Sarasota County, case no. 8:05-CV-927-T-27EAJ, a federal district court fair housing case out of the Middle District of Florida.
4. Exhibit 3: NIH Public Access Author Manuscript, *Counteracting ‘Not in My Backyard’: The Positive Effects of Greater Occupancy within Mutual-help Recovery Homes*, Leonard A. Jason et al., J Community Psychol. 2008 September 1; 36(7); 947-958; doi: 10.1002/jcop.20259. The article posits that Oxford Houses are more effective for recovery with 8 or more residents.
5. Exhibit 4: letter dated December 3, 2014, by Douglas L. Polcin, Ed.D. Polcin asserts that no evidence exists to show that larger size recovery homes create more problems or are less effective for recovery. Polcin states that “the critical question is not the size of the facility but the quality of the operations.” Polcin’s *curriculum vitae* was also included.
6. Exhibit 5: letter dated December 4, 2014, by Andrew T. Wainwright, expert witness, and included Wainwright’s resume. Wainwright states that groups of 10 to 14 individuals in recovery function best.
7. Exhibit 6: memorandum dated December 3, 2014, by Fried Wittman, President, CLEW Associates, to Dave Sheridan, Sober Living Network. In the memorandum, Wittman distinguishes between “harm reduction residences” and “sober living residences,” and points out that Dr. Zweben’s letter (attached to the City’s staff report) is referring to “harm reduction residences.”¹
8. Exhibit 7: 11 letters from current and former residents attesting to the effectiveness of Yellowstone’s program and the benefits they have received by living at the Boston Way property and its program.

¹ The distinction here appears to be the same distinction that the City makes between group homes/sober living homes and residential care facilities, on the one hand, and single housekeeping units, on the other hand.

Yellowstone's witness included a number of current and former residents of the Boston Way facility, and Honey Thames, the owner of Yellowstone. The former residents testified consistently with the letters submitted, that the Boston Way facility provided a great benefit for them, and continues to do so for its residents. When asked by Commissioner Sesler if, in her expert opinion, Thames believes that 15 people are necessary for recovery, Thames did not provide an answer.

In rebuttal, Yellowstone's counsel argued that 6 residents is "an urban myth." This number is drawn from state law, which provides that state licensed facilities of 6 or fewer residents must be treated as single family uses. This was corroborated by Ms. Shields, who stated that the number of residents was an exercise in legislative line drawing, and has now become the norm.

Finally, the average length of stay at the Boston Way property, according to appellant's counsel, is between 30 days and 1 year.

Determining the appropriate number of tenants in any particular sober living facility is fact-based. Obviously the size of the facility, the proportion of house managers and supervisors to tenants, and other factors as specified by the expert testimony will determine what might be an optimum size. But what might be the optimum to create a supportive living environment is not *de facto* what is reasonably necessary. Even Yellowstone, in its accommodation request letter, stated that only three people living in a supportive environment were necessary for therapeutic reasons. Yellowstone provided evidence to suggest that larger Oxford House-style (10-14 residents) might be more effective for recovery, but the Boston Way facility does not operate in the Oxford House/single housekeeping style.

The City's evidence

The City's evidence consisted of a staff report with attachments, two witnesses, and a presentation. The presentation's primary purpose was to clarify local law and the applicability of the fair housing laws. The staff report provided the factual background, legal analysis and the City's analysis supporting the denial of Yellowstone's reasonable accommodation request, based on Yellowstone not meeting its burden to demonstrate necessity, and that the request is unreasonable.

The following documents were attached to the staff report:

1. State of California, Department of Health Care Services, Licensed Residential Facilities and/or Certified Alcohol and Drug Programs listing, Orange County, as of March 17, 2014, pp. 2-3, 161.
2. 3132 Boston Way zoning map printout
3. Sec. 13-6 (Definitions) of Article 2 (Definitions) of Chapter I (General) of Title 13 (Planning, Zoning and Development) with Land Use Matrix (prior to November 20, 2014)
4. Ordinance 14-13 with updated Land Use Matrix (effective November 20, 2014)

5. RealQuest Property Detail Report for 3132 Boston Way
6. June 5, 2014 reasonable accommodation request letter
7. August 19, 2014 City's denial of reasonable accommodation request letter
8. August 26, 2014, Yellowstone Recovery appeal request
9. Emails between DCA Elena Q. Gerli and Yellowstone's counsel setting up hearing date for October 13, 2014
10. Letter from City to Yellowstone Recovery, dated September 22, 2014 setting appeal hearing for October 13, 2014
11. Emails between DCA Elena Q. Gerli and Yellowstone's counsel re continuing the hearing to December 8, 2014
12. Letter from City, dated October 8, 2014, continuing appeal hearing to December 8, 2014
13. General Plan 2000, Chapter 2, Land Use Element
14. California Quick Facts, US Census Bureau
15. Households and Families: 2010, 2010 Census Briefs
16. Patricia A. Shields, expert witness, resume, qualifications and references
17. Letter opinion from Joan Ellen Zweben, Ph.D.
18. Joan Ellen Zweben, Ph.D., *Curriculum Vitae*
19. Letter opinion from Michael N. Brant-Zawadzki, M.D., F.A.C.R.
20. Michael N. Brant-Zawadzki, M.D., F.A.C.R., *Curriculum Vitae*
21. *Community Context of Sober Living Houses*, Douglas L. Polcin, Ed.D., et al., NIH Public Access Author Manuscript, December 1, 2012 (published in final edited form as *Addict Res Theory*. 2012 December 1; 20(6): 480-491. doi: 10.3109/16066359.2012.665967)
22. *Residential Treatment of Substance Abuse Disorders, Core Therapeutic Elements and Their Relationship to Effectiveness*, Practice Committee Consensus Report, State Association of Addiction Services, April 2013
23. *Recovery Housing: Assessing the Evidence*, Sharon Reif, Ph.D. at al., Psychiatric Services, March 2014 Vol. 65 No. 3
24. *Residential Treatment for Individuals With Substance Use Disorders: Assessing the Evidence*, Sharon Reif, Ph.D. at al., Psychiatric Services, March 2014 Vol. 65 No. 3
25. *Sober living houses for alcohol and drug dependence: 18-Month outcomes*, Douglas L. Polcin, Ed.D., et al., *Journal of Substance Abuse Treatment* 38 (2010) 356-365

At the hearing, the City presented evidence, in the form of expert testimony that no "magic number" of residents exists to provide individuals in recovery the equal opportunity to the use and enjoyment of the dwelling of their choice. Expert testimony was provided by Patricia A. Shields, LCSW. Dr. Joan Zweben, Ph.D., and Dr. Brant-Zawadzki, M.D, M.A.C.R., provided written opinions based on their education, training and experience. All three of the City's experts concluded that there is no basis in experience or the medical records that 15 adults are necessary for supportive living. In fact, they concluded that this number of individuals might, under certain circumstances, be detrimental to recovery.

City also presented testimony by Code Enforcement Officer Mike Tucker that the Boston Way property has been the subject of intermittent code enforcement actions throughout the years of its operation. A number of years ago, the home was cited for housing too many residents. It came into compliance, but then some time later increased its number of residents again. The current case resulted from neighbor complaints about loud and obnoxious behavior of the residents.

Finally, the City argued that even if the Commission found that Yellowstone demonstrated necessity, allowing 15 adults to live in a single family home in an R1 zone, where the average size household is 2.74 people (approx. 2 adults) fundamentally alters the nature of the neighborhood.

Evidence in the record strongly suggests that supportive living is an essential element of many group home situations, and the City does not dispute this. The City further does not dispute the efficacy of Yellowstone's programs. State-licensed group homes in single-family neighborhoods, including those serving clients with addictions, are limited by their state licenses to six clients and a house manager. These group homes have successfully existed in single-family neighborhoods for decades. In fact, Yellowstone operates two such homes, state licensed residential facilities, which house 6 or fewer individuals in recovery, and did not assert that these homes are any less effective than the Boston Way property. There is no reason to believe that a similar number would not achieve the group support that is reasonably necessary at the Boston Way property.

BE IT RESOLVED, therefore, that based on the evidence in the record and the findings contained in this resolution, the Planning Commission hereby upholds the denial of Yellowstone's request to house 15 adult males in its residential care facility at 3132 Boston Way, as Yellowstone has provided no evidence that it is necessary to have 15 adults in a single family home for individuals in recovery to have an equal opportunity to the use and enjoyment of the housing of their choice.

BE IT FURTHER RESOLVED, based on the average length of stay of residents at 3132 Boston Way, that Yellowstone must come fully into compliance with the City of Costa Mesa's zoning code within 6 months of the effective date of this resolution; and

BE IT FURTHER RESOLVED, that Yellowstone must demonstrate compliance with the City of Costa Mesa's zoning code, to have six or fewer residents (excluding a house manager), through a physical inspection of the site by City staff or by other means acceptable to the Director within 6 months of the effective date of this resolution.

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.

DENIAL OF REASONABLE ACCOMMODATION REQUEST ZA 14-32 PASSED AND APPROVED at the Planning Commission meeting of December 8, 2014, by the following vote:

Attachment No. 2

*Minutes for the December 8, 2014
Planning Commission Meeting -
Public Hearing Item No. 2*

**REGULAR MEETING OF THE CITY OF
COSTA MESA PLANNING COMMISSION**

December 8, 2014

These meeting minutes represent an "action minute" format with a concise summary of the meeting. A video of the meeting may be viewed on the City's website at www.costamesaca.gov or purchased on DVD upon request.

Kohl Crecelius and Travis Hartanov from Krochet Kids, led in the Pledge of Allegiance, which was followed by a brief presentation regarding the Krochet Kids organization.

ROLL CALL:

Present: Chair Jim Fitzpatrick
Vice-Chair Dickson
Commissioner Colin McCarthy
Commissioner Jeff Mathews
Commissioner Tim Sesler

Staff: Gary Armstrong, Economic and Development Services Director / Deputy CEO
Claire Flynn, Assistant Development Services Director
Jerry Guarracino, Community Improvement Division Assistant Director
Yolanda Summerhill, Planning Commission Counsel
Elena Q. Gerli, Deputy City Attorney
Greg Palmer, Deputy City Attorney
Raja Sethuraman, Transportation Services Manager
Mel Lee, Senior Planner
Antonio Gardea, Senior Planner
Debbie Unmacht, Advanced Depositions Court Reporter
Martha Rosales, Recording Secretary

PUBLIC COMMENTS

Mary Spadoni, Costa Mesa resident, requested clarification regarding the City's Small Lot Ordinance.

Ann Parker, Costa Mesa resident, asked why Costa Mesa was the only city in Orange County to have a small lot ordinance. Ms. Parker asked Commissioner Sesler and Chair Fitzpatrick to recuse themselves from the Yellowstone item.

PLANNING COMMISSIONER COMMENTS AND SUGGESTIONS

Commissioner Sesler addressed the concerns raised by the public speakers and spoke about developments of the Small Lot Ordinance.

Vice-Chair Dickson addressed the concerns raised by the public speakers.

Commissioner McCarthy briefly addressed the concerns raised by the public speakers, spoke about the Small Lot Ordinance and encouraged the public to attend the Mesa-Verde Classic Golf Tournament on Monday, January 19, 2015.

Commissioner Mathews wished everyone a Merry Christmas and happy holiday season.

CONSENT CALENDAR:

Chair Fitzpatrick pulled Consent Calendar Item No. 2 for discussion. At the request of Mr. Jay Humphrey, Chair Fitzpatrick also pulled Consent Calendar Item No. 3 for discussion.

1. Minutes for the meeting of November 10, 2014.

MOTION: Approve the November 20, 2014 Planning Commission Minutes. Moved by Commissioner McCarthy, seconded by Chair Fitzpatrick.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

2. Update on CM Connect and Nuisance Abatement Ordinance, Sober Living Ordinance(s) for R2 and R3 Zones and the Recent Motel Inspection Data

Jerry Guarracino, Community Improvement Division Assistant Director, presented the staff report.

Chair Fitzpatrick spoke briefly about the Costa Mesa Connect application.

MOTION: Receive and file. Moved by Commissioner McCarthy, seconded by Chair Fitzpatrick.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

3. SOBECA Traffic and Parking Study.

Jay Humphrey, Costa Mesa resident, supported the studying of the SOBECA area for traffic and parking impacts from the changing dynamics and addressed his concerns.

MOTION: Authorize staff to propose the SOBECA Traffic and Parking Study to City Council. Moved by Commissioner McCarthy, seconded by Chair Fitzpatrick.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

PUBLIC HEARINGS:

1. **Application No.** PA-14-30: Conditional Use Permit for Motor Scooter Sales and Service at 1536 Newport Boulevard
Applicant: Marice White
Site Address: 1536 Newport Boulevard
Zone: C2
Project Planner: Antonio Gardea
Environmental

Determination: This project is categorically exempt under Section 15303 of the State CEQA (California Environmental Quality Act) Guidelines – Class 3 (construction of small structures) if approved, or the project is statutorily exempt under Section 15270 of the State CEQA (California Environmental Quality Act) Guidelines if denied.

Description: The proposed project involves:

1. Conditional Use Permit (CUP) for motor scooter sales and service including outdoor display of motor vehicles for sale within 200 feet of residentially-zoned properties. The CUP also includes a proposed use of storage containers that exceed the Floor Area Ratio standards and other development standards, as applicable;
2. Planned Signing Program for signs that deviate from the allowable sign area and sign location requirements.

PUBLIC COMMENTS - None

MOTION: Remove PA-14-30 from calendar. Moved by Commission McCarthy, seconded by Vice-Chair Dickson.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

2. **Application No.:** ZA-14-33: Reasonable Accommodation Request for Yellowstone Recovery at 3132 Boston Way

Applicant: Yellowstone Recovery

Site Address: 3132 Boston Way

Zone: R1

Project Planner: Jerry Guarracino

Environmental

Determination: This project is categorically exempt under Section 15321 of the California Environmental Quality Act (CEQA) Guidelines – Class 21 (Enforcement Action by Regulatory Agencies).

Description: Appeal the denial of a reasonable accommodation request pursuant to 42 U.S.C § 3604 to allow Yellowstone Recovery, located at 3132 Boston Way, to house up to 15 adult recovering alcoholics and substance abusers in a residential care facility in an R1 zone, where residential care facilities are limited to 6 residents and 1 house manager.

Commissioner Sesler disclosed his work on the Mayor's Preserve Our Neighborhood Task Force.

Yolanda Summerhill, Deputy City Attorney, outlined the process for the hearing.

Chair Fitzpatrick invited members of the Yellowstone team to present their case.

Steven Polin, Counsel for Yellowstone, requested Commissioner Sesler recuse himself on the basis that he served on the Task Force.

Chair Fitzpatrick called for a recess at 6:45 p.m. to allow Commissioner Sesler the opportunity to confer with Ms. Summerhill about recusing himself.

Chair Fitzpatrick resumed the meeting at 6:49 p.m.

Commissioner Sesler stated he did not recall specific involvement related to Yellowstone Recovery and indicated he could be fair and unbiased in this matter. Chair Fitzpatrick agreed with Commissioner Sesler that he too could be fair and unbiased.

Mr. Polin began his presentation. He stated the City's actions against the Boston Way House was discriminatory enforcement of its zoning laws and mentioned the house had been a target of vandalism. He stated the home has been in operation for 14 years, has 15 residents (13 patients and 2 staff) and no complaints. He stated their request to be considered a single housekeeping unit with up to 15 people. Under fair housing law, the City had an affirmative duty to consider reasonable accommodation requests, with certain exceptions. He stated that Mayor Righeimer announced several years ago that quality of life issues were rising as a result of group homes and the issue needed to be dealt with. Mr. Polin stated the number of residents was part of the recovery process and that the residents did not have cars. He stated the residents were entitled to use the home as they see fit, referencing a complaint about people on the roof jumping into the swimming pool. He refuted the staff report that referenced the expert opinions questioning the effectiveness of high-occupancy sober living homes. He said the home did not interfere with the neighborhood and disagreed with staff that this sober living home with 15 people adversely impacted the neighborhood. He stated that traditional families no longer existed and there was a benefit to having 15 people in a sober living home because there was a powerful effect to living with others in recovery. Mr. Polin stated he had 12 people willing to speak.

Martha Rosales, Recording Secretary/Notary Public, simultaneously swore-in the witnesses. Mr. Polin called the following witnesses to testify:

Dr. Honey Thames, Costa Mesa resident, spoke about the importance of increasing sobriety, the cheap cost of drugs particularly heroin; and the lower age of the population entering rehabilitation.

Ray Conrad read a letter supporting the Boston House and shared how Dr. Thames paid to fly him back to Costa Mesa when he relapsed after leaving the home the first time.

Grant McNiff, Costa Mesa Resident and President of the Sober Living Network, stated his support. He stated he looks to Yellowstone to house women in emergency situation for a single night. He also stated there were 3 other homes in the area of Boston Way within 450 feet of this location.

Larry Lopez stated his support. He stated he has been there for 10-years both as a resident and a staff member.

Marcel Sohl, counselor and former Manager of the Boston House, stated his support.

Ken McCracken, former Yellowstone resident, stated his support and said he was a member of mainstream society due to the skills he learned at Yellowstone.

Adel Omar, former resident, stated his support. He stated he manages a vegan restaurant and gives back to the home on Boston Way.

Robert Delira, Manager of Boston House, stated his support.

Ben Spencer, former resident, stated his support.

Matthew Mock, current resident, stated his support

Joshua Bush, former resident, stated his support.

Mike McCracken, former resident, stated his support.

Casey Hunter, former resident, stated his support, saying he would be dead from drugs if not for Yellowstone.

Paul Dumont, (non-sworn) Housing Rights advocate and volunteer with Sober Living Network, offered his assistance to the City. He stated that in his general experience (not affiliated with Boston House) many residents do not pay rent; homes need more occupants to cover the expenses of operating the house.

Mr. Polin stated the witnesses were proof that the residents of Boston House do not fundamentally alter the general neighborhood.

Chair Fitzpatrick called for a break at 8:05 p.m.

Chair Fitzpatrick resumed the hearing at 8:24 p.m.

Elena Gerli, Deputy City Attorney, clarified two significant points:

1. The newly adopted ordinance did not apply to Boston Way because the Zoning Code provisions for 6 or fewer had been in place since March 2000.
2. No one doubted the ethicality of Yellowstone's program.

Ms. Gerli presented the legal aspects of the item and presented her PowerPoint slides.

Greg Palmer, Deputy City Attorney, called two witnesses - Pat Shields, Expert Witness and Mike Tucker, Costa Mesa Code Enforcement Officer. Both witnesses for the City were sworn-in by Recording Secretary/Notary Martha Rosales.

Patricia Shields, expert witness for the City, outlined her experience in dealing with social services, including homeless and alcohol issues. She described her experience as an advocate for tenants in sober living environments and described her personal involvement in the recovery process being sober now for 32 years. She stated that 15 people living in a recovery home is not particularly effective. She described a sober living environment as one in which people can connect on an interpersonal level to learn paths to living successfully in mainstream society. She also stated the location of the home is 4.5 miles away from the nearest Alcoholics Anonymous Club, which is too far for the residents to walk.

Mr. Polin cross-examined Ms. Shields. She indicated she was paid a fee by the City to testify as an expert witness and that she had been a lawyer for 15 years. Ms. Shields reviewed the Yellowstone recovery website and was surprised to learn how many services were being performed at the one residence. She indicated she did not find any house rules on the Yellowstone website.

Chair Fitzpatrick called for a break at 9:40 p.m.

Chair Fitzpatrick resumed the hearing at 9:48 p.m.

Mike Tucker, Code Enforcement Officer, outlined his inspection of the property and code case. He said the city has investigated 8 code complaints at the property since July 2007. In 2005, a code enforcement action for excessive number of residents, was resolved when the number of residents was reduced to 6 in compliance with the local zoning regulations. He indicated that new complaints about the number for residents at the home resulted in an inspection of the site that revealed excessive beds (15) and the conversion of a dressing area to a bedroom without permits.

Mr. Polin did not cross-examine Mr. Tucker.

Elena Gerli, Deputy City Attorney, summarized the City's case.

PUBLIC COMMENTS

Debbie (withheld her last name), Boston Way resident, stated that a newspaper article from 2001, quoted the operator of the home (Dr. Thames) as stating that the perpetrator of the racially motivated attack was someone associated with the group home and not community based vandalism. Debbie is not comfortable with her 14 year old daughter walking in the neighborhood because she is being approached by the adult male residents of the home. She indicated the increasing number of group homes in their small residential tract has changed the character of the neighborhood.

Chuck Holtz, Boston Way resident, has no ill feeling toward people in recovery and is glad they are seeking a better life. He dislikes alcohol and drugs because he personally experienced their destructive power in his own family life. In his neighborhood the high occupancy limits in the group homes is resulting in excessive cars parked on the street that prevent street sweeping. There is an accumulation of trash in the streets including used syringes.

Richard Huffman, Costa Mesa resident, loved hearing about the success stories shared at the hearing and requested a reasonable balance between these group homes and the community's needs.

Cynthia McDonald, Costa Mesa resident, stated that the home needs to be more considerate of their neighbors.

Jay Humphrey, Costa Mesa resident, applauded the success stories. He noted Yellowstone had 2 managers for 13 residents (one manager for 6-people), which supported the reasonableness of the city requirements. He expressed concerns with the number of facilities clustering in this neighborhood because they were creating an institutionalized environment in the single-family neighborhood.

Chair Fitzpatrick closed the hearing and invited Mr. Polin for rebuttal comments.

Mr. Polin reiterated that the City's action to deny the reasonable accommodation was discriminatory. He stated the following:

1. 6-people in a group home is an urban myth.
2. Boston Way is the oldest of the Yellowstone's three homes in Costa Mesa.
3. It is the largest of the 3-homes
4. He referred to a court case in New Jersey that had to do with the need for a license if you rented out 5 or more rooms.

Dr. Thames returned to the podium for questions from Commissioner Sesler. She responded that small homes made sense for 6 or fewer, and that the Boston House was larger so it could accommodate more people. She reiterated that 15 people are needed for recovery but could not explain how people were recovering in Yellowstone homes with only 6-people. She stated she had no specific information/recollection related to the vandalism incident. She said she did not know how long it would take to reduce to 6 residents through normal attrition.

Mr. Polin stated if the request was not granted, they would not go away. This was not the end regardless of the Commission's decision and they would take the appropriate next steps.

Vice-Chair Dickson cited the testimony from the information presented by the experts in the staff report that there was no basis for granting reasonable accommodation and the applicant has not made the finding that 15 is a necessary number for recovery. He read passage from the evidence package in support of his assertions.

Commissioner Matthews stated that he was moved by the testimonials and stated that the applicant did not show the necessity for 15 people in a sober living environment and therefore did not prove their case.

Commissioner McCarthy clarified that the number of allowed beds had always been 6 and there was no reduction. He also stated no evidence was presented by the applicant as to why 15 beds were necessary.

Chair Fitzpatrick thanked the speakers for their stories.

Ms. Summerhill recommended the City Attorney work with Mr. Polin on an amortization date.

Chair Fitzpatrick referenced the findings per Ms. Gerli's slide as a basis for the denial.

Commissioner McCarthy made the motion to deny the appeal and work with the applicant on a date to reduce the number of residents to 6 and return with a resolution for denial including the findings present at this hearing, seconded by Vice-Chair Dickson.

MOTION: Based on the evidence of the record, the testimony received and public comments, move that the Planning Commission uphold the denial of a reasonable accommodation request to treat Yellowstone Recovery at 3132 Boston Way as a single-housekeeping unit and allow 15 individuals to live in a single-family home based on the finding that the applicant has not met its burden to show that the requested accommodation is necessary to afford individuals recovering from drugs and alcohol addiction the opportunity to the use and enjoyment of a dwelling in a single-family neighborhood. Moved by Commissioner McCarthy, seconded by Vice-Chair Dickson.

Chair Fitzpatrick asked the Maker and Second of the Motion if they would introduce language **directing staff to work with the applicant for an amortization schedule.** Commission McCarthy and Vice-Chair Dickson agreed.

The Commission asked staff to return in 1 month with the amortization schedule.

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

The Chair explained the appeal process.

3. **Application No.:** PA-14-25: Conditional Use Permit for a Proposed Church at 1901 Newport Boulevard
Applicant: Steve Camp, AIA
Site Address: 1901 Newport Blvd., Suites 100, 177, 261 and 271A
Zone: PDC
Project Planner: Antonio Gardea
Environmental Determination: This project is categorically exempt under Section 15301 of the California Environmental Quality Act (CEQA) Guidelines – Class 1 (Existing Facilities).

Description: Conditional use permit to establish a church within an existing office building with ground floor assembly areas with a deviation from the shared parking requirements due to off-set hours of operation. Saddleback Church is proposed to occupy 19,312 sq. ft. of tenant space within the 1901 Newport office building. Uses include a 10,651 sq. ft. assembly/worship hall in Suite 100; 3,690 sq. ft. religious education in Suite 177; 2,000 sq. ft. youth education in Suite 261; and 2,471 sq. ft. administrative offices in Suite 271A. The proposed hours of operation are weekday evenings Monday through Friday from 6:30 p.m. to 10:00 p.m., Saturday from 3:00 p.m. to 7:00 p.m. and Sunday from 8:00 a.m. to 2:00 p.m.

Antonio Gardea, Senior Planner, presented the staff report. The item was continued on September 27, 2014 to allow the applicant time to complete a parking and traffic management study.

PUBLIC COMMENTS

Moses Camacho, Saddleback Church Pastor, had reviewed the Conditions of Approval and was in agreement with them. Pastor Camacho lived in the area, looked forward to the possibility of being in the City of Costa Mesa and had made the effort of establishing communications with the tenants of the surrounding properties. Pastor Camacho responded to questions from the Commission.

Steve Camp, Elements Architecture, provided Part 2 of Saddleback Church's presentation.

Rev. Julie Elkins, United Methodist Church Pastor, addressed parking concerns if the current overflow agreements with The Triangle and 1901 Newport were terminated. Rev. Elkins responded to questions from the Commissioners regarding parking spaces.

Lee Ramos, Church Leadership, spoke about ingress and egress concerns.

Mr. Camp provided answers for the concerns raised by the public speakers.

MOTION: Approve PA-14-15 based on the evidence of the record and the Findings contained in Exhibit A and subject to the Conditions of Approval in Exhibit B with the following modifications:

Condition of Approval No. 8 – to read, “*The applicant/property manager shall post signs at the entry along 19th Street and at entry points to the parking structure indicating that parking structure is private property and no unauthorized parking is allowed. Ten parking spaces shall be reserved for the Methodist Church for the 10:00 a.m. Sunday Service.*”

Condition of Approval No. 6 – to read, “*Within 60 days of the operation of the church, the church operator shall provide a parking assessment which identifies underutilized spaces in the top two levels of the parking structure that could be made available for continued overflow parking by The Triangle. If a parking shortage is identified, the property manager shall make the necessary modifications to the lease agreement with the Triangle. This condition shall be completed under the direction and to the satisfaction of the Development Services Director.*”

Moved by Vice-Chair Dickson, seconded by Commissioner Sesler.

Chair Fitzpatrick referring to an aerial view picture depicting both properties, asked the Maker and Second of the Motion if they would add "corrective line of sight improvements to the satisfaction of the Transportation Manager". Vice-Chair Dickson added **new Condition of Approval No. 23** to read "**modifications be made for safety reasons to the street side landscaping on 19th Street and to the satisfaction of the**

Transportation Services Manager". Vice-Chair Dickson and Commissioner Sesler agreed to add Conditional of Approval No. 23.

RESOLUTION NO. PC-14-53 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA APPROVING PLANNING APPLICATION PA-14-25 FOR ESTABLISHMENT OF A CHURCH USE LOCATED AT 1901 NEWPORT BOULEVARD, SUITES 100, 117, 261 & 271A

The motion carried by the following roll call vote:

Ayes: Dickson, Mathews, Sesler
Noes: Fitzpatrick, McCarthy
Absent: None
Abstained: None

The Chair explained the appeal process.

4. **Application No.:** PA-14-16 & PM-14-107: Design Review for a Proposed Three-Unit, Two-Story Detached Residential Development and Tentative Parcel Map at 1817 Viola Place
- Applicant:** Jeffery V. Riggs
Site Address: 1817 Viola Place
Zone: R2-HD
Project Planner: Mel Lee
- Environmental Determination:** This project is categorically exempt under Section 15303 of the State CEQA (California Environmental Quality Act) Guidelines – Class 3 (New Construction).

Description: The proposed project involves:

- 1) Design Review to construct a 3-unit, 2-story, detached residential development on a 10,674 sq. ft. lot (.25 acres), including the following:
 - Variance from overall open space (40% required; 38% proposed);
 - Variance from parkway landscaping requirement (minimum 10 feet total with 3 feet on one side required; 5 feet total with 2.5 feet on one side proposed);
 - Administrative adjustment from second story rear yard setback (20 feet required; 15 feet proposed);
 - Administrative adjustment from front yard setback (20 feet required; 12 feet proposed);
 - Minor modification for distance between buildings (10 feet required; 8 feet proposed).
- 2) Tentative Parcel Map for a one-lot subdivision of the property for ownership units as part of a residential common interest development.

Mel Lee, Senior Planner, presented the staff report.

The Commission requested terminology clarification for open space and inquired about trash pick-up (curb side vs. onsite).

PUBLIC COMMENTS

Jeff Riggs, applicant and Architect, read the Conditions of Approval and was in agreement. Mr. Riggs was proud of the project, felt it would be an improvement to the cul-de-sac and hoped to obtain the Commission's approval. He responded to questions from the Commissioners regarding the exceptions on the project.

Jay Humprey, Costa Mesa resident, would like to see developers adhering to the rules instead of deviating from them.

MOTION: Based on the evidence of the record and the Findings set forth in Exhibit A and subject to the Conditions of Approval set forth in Exhibit B, approve PA-14-16 Design Review to construct a 3-unit, two-story detached residential development on a 10,674 sq. ft. lot and Tentative Parcel Map 14-107 for a one lot subdivision of the property for ownership units as part of a residential common interest development. Moved by Commissioner McCarthy, seconded by Vice-Chair Dickson with comment.

Vice-Chair Dickson thanked Mr. Lee for crafting the Condition of Approval pertaining to garages (No. 23) and added it was going to alleviate parking issues.

RESOLUTION NO. PC-14-54 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA APPROVING PLANNING APPLICATION PA-14-16 AND PARCEL MAP PM-14-107 FOR PROPERTY LOCATED AT 1817 VIOLA PLACE

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

The Chair explained the appeal process.

5. **Application No.:** PA-14-26 & TT-17791: Design Review for a Proposed Five-Unit, Two-Story Detached Residential Development and Tentative Tract Map at 2661 Orange Avenue
- Applicant:** Chris Kerstner
Site Address: 2661 Orange
Zone: R2-MD
Project Planner: Antonio Gardea
Environmental Determination: This project is categorically exempt under Section 15303 of the State CEQA (California Environmental Quality Act) Guidelines – Class 3 (New Construction).

Description: The proposed project involves:

- 1) Design Review to construct a five-unit, two-story detached, small lot single-family residential development on a 0.45-acre parcel, with the following specified deviations:
 - Variance from the parkway landscaping (minimum ten feet total required with a minimum of three feet on one side; eight feet total proposed with two feet proposed on one side);
 - Variance from the parking design standard for the interior garage dimension (minimum interior dimension of 20 feet required, minimum interior dimension of 19 feet, 4 inches proposed). The overall interior dimensions of the proposed two-car garages are 22 feet by 19 feet, 4 inches;
 - Minor modification to reduce the front setback requirement for main buildings (20 feet required, 16 feet proposed).
- 2) Tentative Tract Map for the subdivision of the 19,800 square foot property into five fee-simple lots in accordance with the small lot subdivision standards.

Antonio Gardea, Senior Planner, presented the staff report.

The Commissioners discussed and asked staff questions pertaining to landscaping footage and trash services.

PUBLIC COMMENTS

Chris Kerstner, applicant representing Premier Luxury Homes, agreed in full with the Conditions of Approval. In the interest of time, Mr. Kerstner gave a brief presentation regarding the project and addressed the Commissioner's concerns regarding trash services.

MOTION: Based on the evidence of the record and the Findings contained in Exhibit A and subject to the Conditions of Approval contained in Exhibit B, approve PA-14-26 and Tentative Tract Map 17791 and find that the project is exempt from the provisions of the California Environmental Quality Act under Section 15303 (Class 3) for new construction. Moved by Vice-Chair Dickson, seconded by Commissioner Mathews.

Chair Fitzpatrick asked the Maker and the Second of the Motion to add verbiage to Condition No. 20 regarding the trash hauler. Vice-Chair Dickson **modified Condition of Approval No. 20** to include the following at the beginning of the Condition, "***Unless an off-site trash hauler is being used***".

RESOLUTION NO. PC-14-55 – A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA APPROVING PLANNING APPLICATION PA-14-26 AND TENTATIVE TRACT MAP 17791 LOCATED AT 2661 ORANGE AVENUE

The motion carried by the following roll call vote:

Ayes: Fitzpatrick, Dickson, McCarthy, Mathews, Sesler
Noes: None
Absent: None
Abstained: None

The Chair explained the appeal process

DEPARTMENTAL REPORT(S)

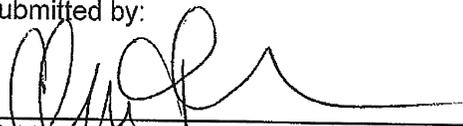
1. Public Services Report - None
2. Economic and Development Services Report - None

CITY ATTORNEY'S OFFICE REPORT(S)

1. City Attorney – None.

ADJOURNMENT: NEXT PLANNING COMMISSION MEETING AT 6:00 P.M. ON MONDAY, JANUARY 12, 2015.

Submitted by:



CLAIRE FLYNN, SECRETARY
COSTA MESA PLANNING COMMISSION