PLANNING COMMISSION AGENDA REPORT

MEETING DATE: NOVEMBER 14, 2016 **ITEM NUMBER:** PH-6

SUBJECT: **APPEAL OF THE DENIAL OF SPECIAL USE PERMIT TO OPERATE A SOBER LIVING HOME AT 647 JOANN STREET (SL-15-0041)**

DATE: **NOVEMBER 1, 2016**

FROM: **COMMUNITY IMPROVEMENT DIVISION/DEVELOPMENT SERVICES DEPARTMENT**

PRESENTATION BY: **SHERI VANDER DUSSEN, INTERIM ASSISTANT DIRECTOR/COMMUNITY IMPROVEMENT DIVISION**

FOR FURTHER INFORMATION CONTACT: **KATIE ANGEL, MANAGEMENT ANALYST**
(714) 754-5618 katie.angel@costamesaca.gov

PROJECT DESCRIPTION

The applicant applied for a Special Use Permit (SUP) to operate a group home with six or fewer residents at 647 Joann Street on June 24, 2015. The Director of Economic and Development Services/Deputy CEO denied the SUP and the applicant has appealed that decision to the Planning Commission.

APPLICANT

The applicant is Richard Perlin.

ENVIRONMENTAL DETERMINATION

The request is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15268 (ministerial projects), 15270 (disapproved projects) and 15301 (existing facilities).

RECOMMENDATION

Uphold the Director's denial of the SUP by adoption of a resolution.

BACKGROUND

Under state law, a Department of Health Care Services (DHCS) licensed drug or alcohol treatment facility serving six or fewer residents is considered to be a residential use of property. Under Health & Safety Code section 11834.23, the City generally cannot apply standards to such a licensed facility that differ from those standards applicable to a single family dwelling. However, these prohibitions do not apply to facilities that are not state licensed.

The City Council adopted Ordinance 14-13 on October 21, 2014 revising Title 13 of the Costa Mesa Municipal Code (CMMC) to add Chapter XV which established conditions for granting a SUP to group homes with six or fewer residents in an R1 zone. The ordinance became effective on November 20, 2014. A sober living home is a type of group home for persons who are recovering from drug and/or alcohol addiction. Persons recovering from addiction who are currently not abusing drugs and/or alcohol are considered disabled under state and federal law. Group homes serving disabled persons 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. Upon adopting the ordinance, the City Council found that without some regulation there is no way of ensuring that the individuals entering into a group home are disabled individuals and entitled to reasonable accommodation under local and state law or that a group home is operated professionally to minimize impacts to the surrounding neighborhood. A purpose of the land use regulations provided in the ordinance is to mitigate the secondary impacts from an over concentration of both group homes in a neighborhood. SUPs are granted to a group home operator as a ministerial matter if the facility is in compliance with the operating requirements found in CMMC sections 13-311 (a)(1) through (a)(9).

In enacting the ordinance, the City Council made the finding that housing inordinately large numbers of unrelated adults in a single-family home or congregating sober living homes 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 types of institutional/campus/ dormitory living. Further, the City Council found that a 650-foot distance requirement between sober living facilities provides a reasonable market for the purchase and operation of sober living homes within the City and still results in preferential treatment for sober living homes in that non-disabled individuals in a similar living situation (i.e., in boardinghouse style residences) cannot reside in the R1 zone. Specifically, CMMC section 13-311(b)(6) provides in relevant part:

> A special use permit for a sober living home shall also be denied, and if already issued, any transfer shall be denied or revoked, upon a hearing by the director under any of the following additional circumstances:
>
> **iii. The sober living home, as measured by the closest property lines, is located within six hundred fifty (650) feet of any other sober living home or state licensed alcoholism or drug abuse**

recovery or treatment facility. If a state licensed alcoholism or drug abuse recovery or treatment facility moves within six hundred fifty (650) feet of an existing sober living home this shall not cause the revocation of the sober living home's permit or be grounds for denying a transfer of such permit.

Under section 13-312(b), "Group homes that are in existence upon the effective date of this chapter shall have one (1) year from the effective date of this chapter to comply with its provisions". The operator submitted the SUP application for 647Joann Street on June 24, 2015. During the first year of the implementation of the ordinance, approximately 60 group home applications were received. The majority of those applications were missing items as required by the CMMC. Staff worked with the all of the applicants to request complete information. Upon the one-year compliance deadline, staff determined which locations had fully complied with the application requirements. Staff began to prepare for the issuance of permits to locations which complied with the City's adopted criteria and to prepare for Director's Hearings to consider the facts surrounding facilities that did not meet the approval criteria established in the ordinance. The Director's Hearings provide the applicant with an opportunity to present any reasons and/or evidence why the SUP should not be denied. Following the conclusion of the hearing, the Director provides a written notice to the applicant or permittee setting forth the decision within ten (10) days. The decision of the Director is appealable to the Planning Commission pursuant to the procedures set forth in Chapter IX of Title II of the CMMC.

The implementation of ordinance 14-13 (including processing applications) was delayed by the issuance of an injunction by the 9th Circuit Court in *Solid Landings v. City of Costa Mesa* on December 9, 2015. Once the injunction was dissolved in May, 2016 staff reviewed the current status of all the SUP applications for group homes on file. Group homes that met the requirements of the ordinance were issued SUPs and Director's Hearings commenced for the facilities that did not comply with the City's standards.

The subject property is a four-bedroom single family home located in the west side of Costa Mesa and surrounded by other homes with an R1 (single family residential) zoning designation. The applicant describes the facility as a sober living home. According to the City's records, this sober living facility was existing when Ordinance 14-13 became effective.

There is an existing DHCS licensed alcoholism and drug abuse recovery treatment facility with six or fewer residents within 650 feet of the subject property. The facility is located at 670 Capital (521 feet from the property line). The facility located on Capital Street is operated by Safe Harbor Recovery and provides residential detoxification services to an all-female population. The operator of the facility at 670 Capital Street applied for a DHCS license on December 4, 2014; this license was issued on August 1, 2015. In addition, the facility at 670 Capital Street applied for a SUP on January 4, 2015. Safe Harbor subsequently withdrew its SUP application after receiving the DHCS license. As noted above, state licensed alcoholism and drug abuse recovery treatment facilities with six or fewer residents are considered residential uses pursuant to State law and are

exempt from land use restrictions that differ from those restrictions applicable to single family dwellings.

The Director of Economic and Development Services/Deputy CEO conducted a Director's Hearing for the subject application on September 7, 2016. After considering the facts pertaining to the application, the Director sent a letter to the applicant denying the SUP on September 12, 2016 due to the state licensed drug and alcohol treatment facility located within 650 feet of the subject property. On September 14, 2016, the applicant filed an appeal to the Planning Commission pursuant to CMMC Sections 2-305(2) and 2-307. This application was previously on the Planning Commission agenda of October 24, 2016. However, the applicant appeared to request that the hearing be continued to a future date. The Planning Commission voted 5-0 to continue the hearing to November 14, 2016.

ANALYSIS

In the application for appeal, Mr. Perlin wrote that he has owned the property since 2004 and he believes that his rights as a property owner are being are violated. In making the determination to deny Mr. Perlin's application, the Director found that the state licensed facility located at 670 Capital Street has precedence over the subject facility because the DCHS facility is considered a permitted use by definition. Therefore, the issuance of a SUP to allow a sober living home such as the facility located at 647 Joann to operate within 650 feet of the DCHS facility would be non-compliant with the separation requirement of the Zoning Code.

ALTERNATIVES

A draft resolution denying the appeal has been provided. Should the Planning Commission believe that findings exist to approve the special use permit application, this hearing should be continued to allow staff to prepare the appropriate resolution for consideration at a subsequent meeting.

CONCLUSION

The applicant has appealed the Director of Economic and Development Services/Deputy CEO's denial of the Special Use Permit application to operate a sober living home with six or fewer residents. There is a state licensed alcoholism or drug abuse recovery treatment facility within 650 feet of the subject property. Upholding the Director's decision and denying this SUP will reduce the over concentration of sober living homes in the immediate area, help to preserve the character of the neighborhood and provide the disabled with greater access to live in a typical residential environment.

SHERI VANDER DUSSEN, AICP
Interim Assistant Director
Community Improvement Division

for JAY TREVINO, AICP
Economic Development and
Development Services Director/
Consultant

Attachments:

1. Vicinity and Zoning Maps
2. Letter from Director dated September 12, 2016 denying Special Use Permit Application
3. Letter from Applicant dated September 14, 2016 appealing the Director's denial
4. Draft Resolution Upholding the Denial of Special Use Permit No. SL-15-0041

Distribution:

Director of Economic & Development Services/Constant
Interim Assistant Development Services Director, Planning Division
Interim Assistant Development Services Director, Community Improvement Division
Assistant City Attorney
Public Services Director
City Engineer
Transportation Services Director
Fire Protection Analyst

Applicant:
Richard Perlin, 234 2nd Street Huntington Beach, CA 92648

City of Costa Mesa

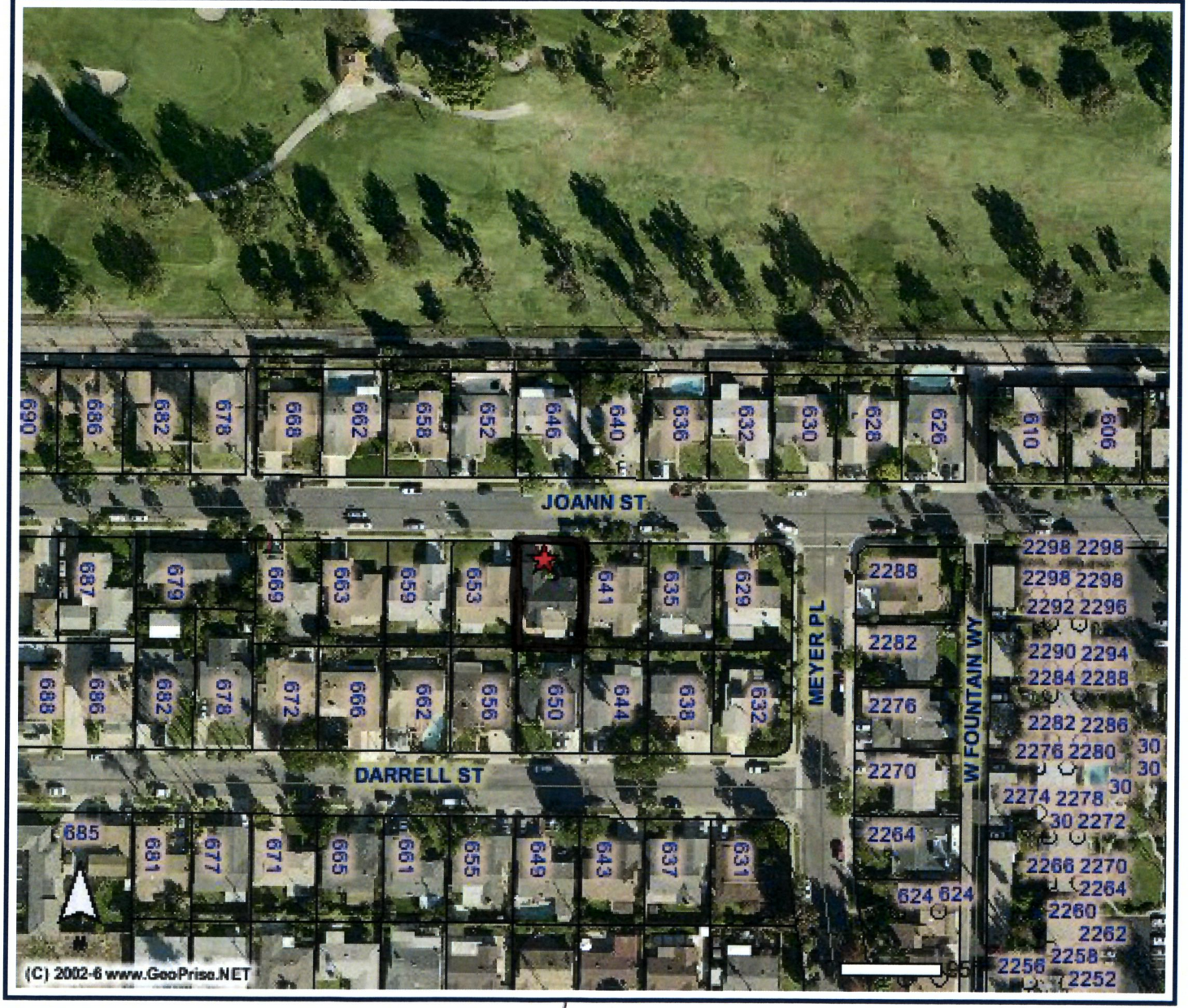
CITY OF COSTA MESA - [Created: 11/1/2016 5:21:05 PM] [Scale: 183.65]

Overview Map

Legend

- Address Medium
- Address Points
- Freeway
- Roads
- Collector (cont)
- Freeway
- Major
- Newport BLVD (cont)
- Primary
- SECONDARY
- Hydrology Channels

Map Display



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City of Costa Mesa

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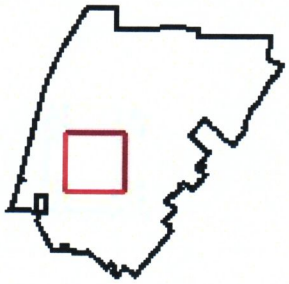
Overview Map



Legend

Address Medium

Address Points

Freeway

Roads

Collector

Freeway

Major (cont)

Newport BLVD

Primary

SECONDARY

Hydrology Channels

Street Names

Street Centerlines

Parcel Lines

Map Display

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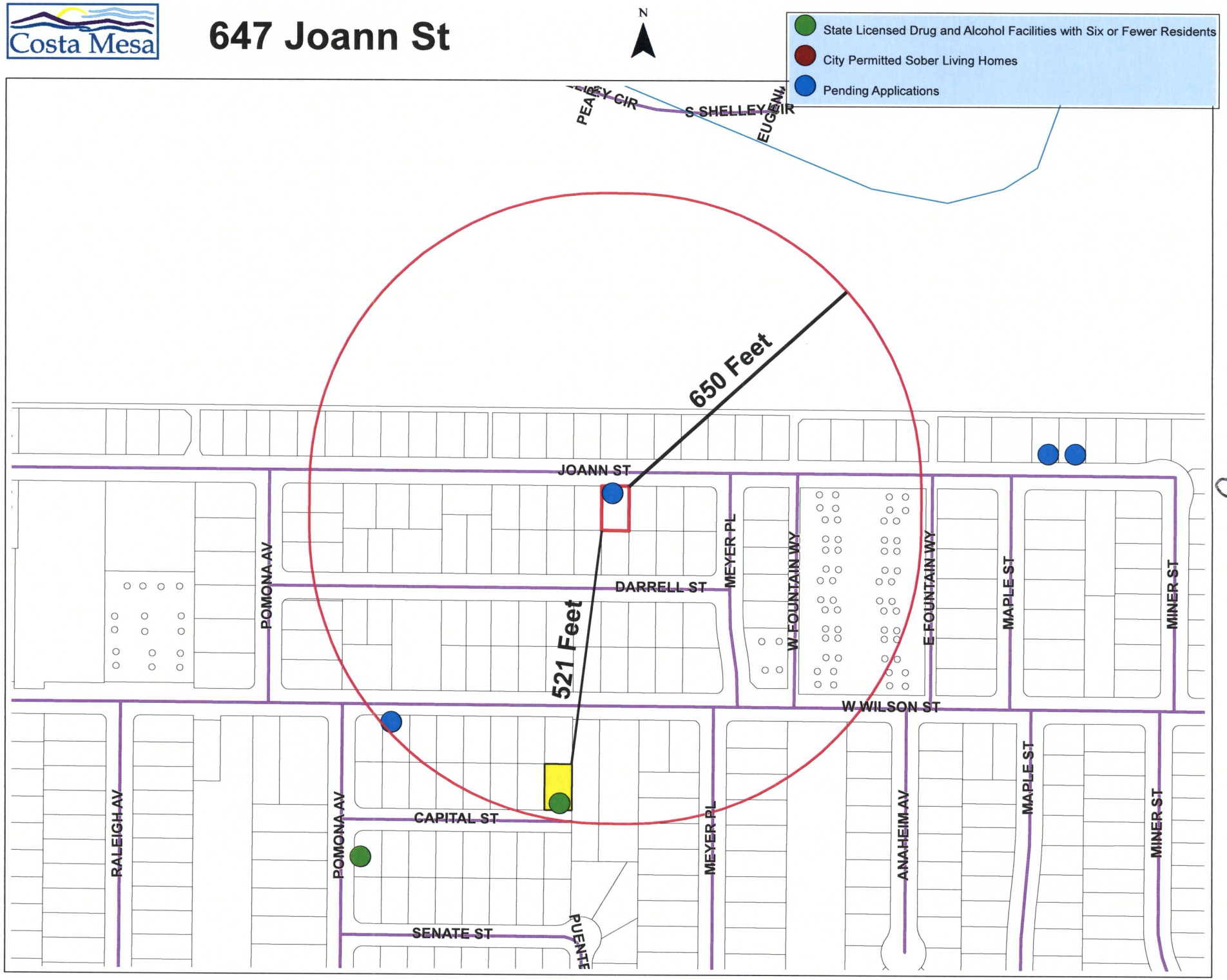
647 Joann St


N
State Licensed Drug and Alcohol Facilities with Six or Fewer Residents
City Permitted Sober Living Homes
Pending Applications
650 Feet
521 Feet
JOANN ST
DARRELL ST
W WILSON ST
CAPITAL ST
SENATE ST
POMONA AV
RALEIGH AV
MEYER PL
W FOUNTAIN WY
E FOUNTAIN WY
MAPLE ST
MINER ST
ANAHEIM AV
PUENTE
S SHELLEY CIR

CITY OF COSTA MESA

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

September 12, 2016

SENT VIA FEDEX EXPRESS & ELECTRONIC MAIL

Richard Perlin
234 2nd Street
Huntington Beach, CA 92648

Application: Special Use Permit No. SL-15-0041
Property Address: 647 Joann Street

Dear Mr. Perlin:

Thank you for submitting your application for the City of Costa Mesa's Sober Living Home Special Use Permit and attending the Director's Hearing on September 7, 2016. Present at that hearing were myself, Tarquin Preziosi, Deputy City Attorney and Sheri Vander Dussen, Assistant Development Services Director/Community Improvement Manager. I have thoroughly reviewed your application and the facts presented at the Director Hearing. Your application is denied pursuant to City of Costa Mesa Municipal Code (CMMC) requirements for group homes with six or fewer beds in an R1 (single family) zone. CMMC section 13-311(b)(6) provides in relevant part:

> A special use permit for a sober living home shall also be denied, and if already issued, any transfer shall be denied or revoked, upon a hearing by the director under any of the following additional circumstances:
>
> > **iii. The sober living home, as measured by the closest property lines, is located within six hundred fifty (650) feet of any other sober living home or state licensed alcoholism or drug abuse recovery or treatment facility. If a state licensed alcoholism or drug abuse recovery or treatment facility moves within six hundred fifty (650) feet of an existing sober living home this shall not cause the revocation of the sober living home's permit or be grounds for denying a transfer of such permit.**

There is an existing state licensed alcoholism and drug abuse recovery treatment facility with six or fewer residents located within 650 feet from your facility. The facility is located at 670 Capital Street. During the hearing, you inquired how staff determined the status of the state licensed facilities that would establish the 650-foot separation requirement. The California Department of Health Care Services (DHCS) publishes a list found at the following web address: http://www.dhcs.ca.gov/provgovpart/Documents/Satus_Report_August_2016.pdf. Staff reviewed this list to confirm the state license prior to finalizing the Director's Hearing Report. As of the date of this letter, the DHCS lists 670

Capital Street as a facility with an active license for alcoholism and drug abuse recovery residential treatment services.

The denial of your application can be appealed to the Planning Commission by filing an application for appeal with the City Clerk. Any appeal must be filed within seven (7) days of this date of denial, which is September 19, 2016 by 5:00 p.m., pursuant to Sections 2-305(2) and 2-307 of the Costa Mesa Municipal Code. Please see attached Chapter IX, Title II of the Costa Mesa Municipal Code regarding appeal and review procedures. A fee of $690.00 must accompany the application. In your request for an appeal, please summarize the reasons for the appeal. If the application for appeal is not submitted by the deadline, your time to appeal will have expired.

Should you have any questions, please do not hesitate to call Katie Angel at 714.754.5618 between the hours of 8:00 a.m. and 5:00 p.m.

Sincerely,

Gary Armstrong

Gary Armstrong, AICP
Director of Economic and Development Services/Deputy CEO

Attachment: Ordinance Number 14-13

cc: Sheri Vander Dussen, Interim Assistant Director/Community Improvement Division Manager
Fidel Gamboa, Acting Neighborhood Improvement Manager
Tarquin Preziosi, Esq., Deputy City Attorney
Katie Angel, Management Analyst

RECEIVED
CITY CLERK
16 SEP 14 PM 2:17
CITY OF COSTA MESA
BY BG

City of Costa Mesa

☐ Appeal of Commission Decision - **$1,220.00**
☒ Appeal of Zoning Administrator/Staff Decision - **$690.00**
(FEES MUST BE PAID IN FULL AT TIME OF FILING APPEAL)

APPLICATION FOR APPEAL OR REVIEW

Applicant Name* Victory House Enterprises (Richard Perlin)
Address: 19322 Beach Blvd Huntington Beach, CA 92648
Phone: 949-515-9191 (Edie) Representing:

REQUEST FOR: ☒ **APPEAL** ☐ **REVIEW****

Decision of which appeal or review is requested: (give application number, if applicable, and the date of the decision, if known.)

Special use Permit No. SL-15-0041
647 Joann Street Costa Mesa 92627 CA

Decision by:

Reasons for requesting appeal or review:

I have owned this property since 2004. I believe my right as a property owner are being violated

Date: 9-14-16 Signature:

*If you are serving as the agent for another person, please identify the person you represent and provide proof of authorization.
**Review may be requested only by Commissions, Commission Members, City Council, or City Council Members.

For office use only – do not write below this line **REV 9-1-15**

SCHEDULED FOR THE CITY COUNCIL/COMMISSION MEETING OF:

RESOLUTION NO. PC-16-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA TO UPHOLD THE DIRECTOR'S DENIAL OF SPECIAL USE PERMIT APPLICATION NO. SL-15-0041 TO OPERATE A SOBER LIVING HOME WITH SIX OR FEWER OCCUPANTS AT 647 JOANN AVENUE

WHEREAS, Richard Perlin (the "Applicant") operates a sober living home serving six males at 647 Joann Street, Costa Mesa; 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, 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, than to boardinghouses or any other type of group living 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 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 sober living homes within the City and still result in preferential treatment for sober living homes 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, Richard Perlin filed special use permit application no SL-15-0041 with the City's Development Services to operate a group home with six or fewer resident in an R1 zone; and

WHEREAS, Richard Perlin filed special use permit application no SL-15-0041 with the City's Development Services to operate a group home with six or fewer resident in an R1 zone; and

WHEREAS, there is an exisiting state licensed drug and alcohol facility within six or fewer residents located at 670 Capital within 650 feet of the facility at 647 Joann Street; and

WHEREAS, that applicant received notice of a scheduled Director's Hearing more than seven (7) business days prior and received a written report prepared by staff recommending denial of the special use permit based upon the criterion established in Section 13-311(b)(6)(iii); and

WHEREAS, a Director's Hearing was conducted on September 7, 2016 providing the applicant with the opportunity to present any reasons and/or evidence why the special permit should not be denied; and

WHEREAS, the Director provided a written notice to the applicant denying the special use permit pursuant to Section 13-311(b)(6)(iii) and included a statement of the right to appeal to the Planning Commission and the time-limits therefore; and

WHEREAS, the applicant appealed the denial of the application in a timely manner; and

WHEREAS, at its meeting of October 24, 2016, the Planning Commission voted unanimously to continue to this hearing to its meeting of November 14, 2016; and

WHEREAS, on November 14, 2016, the Planning Commission considered the appeal of the Director's determination at a regularly scheduled meeting open to the public, at which time interested persons had an opportunity to testify either in support of or in opposition to the Application and determined by a X-X vote to uphold the Director's denial of the SUP.

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

The facility located at 647 Joann Street is (the "Property") is a sober living home. The City of Costa Mesa Municipal Code Section CMMC section 13-311 sets forth the required findings to be used in the determination to approve or deny a SUP. There is an state licensed alcoholism and drug treatment facility located at 670 Capital Street within 650 feet of the Property. Pursuant to CMMC section 13-311(b)(6), the SUP shall be denied upon a hearing of the Director.

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**

DIRECTOR'S DENIAL of the Special Use Permit application SL-15-0041 to operate a sober living home at 670 Capital Street.

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 14th day of November, 2016.

_____

Robert L. Dickson Jr., Chair
Costa Mesa Planning Commission

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, Jay Trevino, Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on November 14, 2016 by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

_____

Jay Trevino, Acting Secretary
Costa Mesa Planning Commission