



**Contra  
Costa  
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: July 30, 2019

Subject: Appeal of the County Planning Commission's approval of a land use permit to establish a Social Rehabilitation Facility

### **RECOMMENDATION(S):**

1. OPEN the public hearing on an appeal of the County Planning Commission's approval of a land use permit to establish a social rehabilitation facility at 2181 Tice Valley Boulevard in the unincorporated Walnut Creek area, RECEIVE testimony, and CLOSE the public hearing.
2. DETERMINE that the proposed project is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines sections 15301 (existing facility).
3. DENY the appeals of Amy Majors and Linda Uhrenholt.
4. APPROVE a land use permit to establish a social rehabilitation facility operating a short-term crisis residential treatment program at 2181 Tice Valley Boulevard in the unincorporated Walnut Creek area, County File #LP18-2020.
5. APPROVE the attached findings and conditions of approval for County File #LP18-2020.
6. DIRECT the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.

### **FISCAL IMPACT:**

The applicant has paid the initial deposit and is responsible for any additional associated

☒ APPROVE

☐ OTHER

☐ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

Action of Board On: **07/30/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

#### **VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor

Candace Andersen, District II  
Supervisor

Diane Burgis, District III  
Supervisor

Karen Mitchoff, District IV  
Supervisor

Federal D. Glover, District V  
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: July 30, 2019

David Twa, County Administrator and Clerk of the Board of Supervisors

By: Jami Napier, Deputy

Contact: 925-674-7867

cc:

with processing the application.

## **BACKGROUND:**

### **Summary**

This hearing is an appeal of the County Planning Commission's approval of a land use permit to establish a social rehabilitation facility at 2181 Tice Valley Boulevard in the unincorporated Walnut Creek area. The Zoning Administrator originally approved a land use permit for the proposed project on November 5, 2018. Amy Majors and Tim Nykoluk appealed the Zoning Administrator's decision. On May 22, 2019, the County Planning Commission denied the appeals, and approved a land use permit for the proposed project with modified findings and conditions. Amy Majors and Linda Uhrenholt have appealed the County Planning Commission's decision.

### **Project Description**

The applicants, Dr. Gregory Braverman and National Psychiatric Care and Rehabilitation Services, request approval of a land use permit to establish a social rehabilitation facility at 2181 Tice Valley Boulevard in the unincorporated Walnut Creek area. The previous occupants at 2181 Tice Valley Boulevard operated an elderly care facility under a land use permit for the treatment of up to 12 elderly patients. The proposed project would convert the existing elderly care facility to a social rehabilitation facility for adults. The proposed social rehabilitation facility will provide a short-term crisis residential treatment program for up to 12 clients initially, and the applicant would be allowed to request an increase to 16 clients after 6 months of operation.

The proposed facility and program will provide 24-hour non-medical care and supervision in a residential environment to clients recovering from emotional crises and mental illnesses. Care and supervision will occur in a group setting and include counseling and ongoing assessment, development of support systems in the community, a day program that encourages various types of interactions, and an activity program to encourage and promote socialization skills. The applicant operates several similar facilities in northern California, including locations in San Jose and Sacramento.

The program will be administered and managed by a program director and the facility will employ two licensed therapists, a licensed nursing staff, and a licensed social worker. Not fewer than four staff members will be present during daytime hours and not fewer than three staff members will be present during evening and nighttime hours.

Clients admitted to the facility must have a primary diagnosis of mental illness that can be expected to improve significantly through a residential psychiatric rehabilitation program. Under the applicant's admission criteria required by the State for licensing and certification, the facility will not admit clients actively using alcohol or other illicit drugs or clients with a primary diagnosis of substance abuse disorder. Additionally, clients must be medically cleared by the referring medical unit and must not have a fragile or unstable medical condition that requires intensive nursing intervention or medical evaluation or management.

Social rehabilitation facilities are licensed and regulated by the California Department of Social Services. Short-term crisis residential treatment programs, like that proposed by the applicant, are certified and reviewed annually by the Department of Health Care Services. Standards for State licensing and certification include medication plan requirements, treatment/rehabilitation plans and documentation, admission and discharge criteria, physical environment requirements, staff qualifications and duties, and administrative policies and procedures. Both State departments conduct initial and unannounced annual inspections to ensure compliance with State regulations. Facilities licensed by the Department of Social Services are also subject to periodic unannounced inspections at any time. The results of these inspections are publicly available on the Community Care Licensing Division website. The proposed conditions of approval require the applicant to maintain its State license and certificate at all times, and to report to the County any citations or notices of violations issued by the State.

A client's length of stay at the facility is regulated by the State. Length of stay will be in accordance with the client's assessed needs, but not to exceed 30 days, unless circumstances require a longer length of stay to ensure successful completion of the treatment plan and appropriate referral. Under no circumstances may a client's length of stay exceed 3 months. The applicant estimates that the average length of stay is approximately 18 days.

Facility clients will not be allowed to have personal vehicles on the premises. Transportation will be provided by the facility operator via a company van or through a taxi/ride share service. All meals will be catered daily, limiting the use of the existing kitchens at the facility.

### **Site Description**

The subject lot is located at 2181 Tice Valley Boulevard in the unincorporated Walnut Creek area. The lot is located within a Single-Family Residential (R-20) zoning district and within a Single-Family Residential, Low Density (SL) General Plan land use designation. The lot is 22,215 square feet in size. Three buildings currently exist on the lot including two residential units and an accessory building that is not permitted for independent living. A large paved area at the front of the lot (adjacent to Tice Valley Boulevard) provides 7 off-street parking spaces.

The main residential unit is located near the front of the lot and meets the required minimum setbacks. The second residential unit, approved under County File #LP90-2060, is located approximately 117 feet from the front property line and was approved with a variance to the required side yard (10-feet approved, 15-feet required). The accessory building on the lot is a 451 square-foot office building approved by the building inspection department in 1989 (permit #155737). The accessory building is not permitted for independent living and may only be used as office space by facility staff.

Much of the surrounding area is populated by single-family homes in an R-20 zoning

district. Most of the lots host ranch-style homes on half-acre parcels. The structures on the subject lot appear residential in nature and blend in well with the surrounding neighborhood. To the west of the subject lot is a residential project currently under development within the boundaries of the City of Walnut Creek.

### **County Planning Commission Hearing**

The County Planning Commission heard the appeals of the Zoning Administrator's approval of the proposed social rehabilitation facility at the May 22, 2019 hearing. Public testimony at the hearing included comments both in favor and against the facility. Those in favor of the facility commented on the need for more community treatment facilities within Contra Costa County and the importance of addressing mental health issues. Those against the facility argued that a social rehabilitation facility would be more suitable near other medical type facilities, would cause a decline in property values, was inconsistent with the General Plan, required auditing, would cause traffic impacts, and would pose a safety risk due to the nature of the clients. The County Planning Commission voted 6-1 to deny the appeals and to approve a land use permit to establish a social rehabilitation facility at 2181 Tice Valley Blvd, in the unincorporated Walnut Creek area, with modifications to the conditions of approval. These modifications included allowing the applicant to request after 6 months of operation an increase in the number of patients from 12 to 16, requiring two additional parking spaces with one space being handicap accessible, requiring the implementation of a parking policy to reduce the use of on-street parking for those visiting the facility, not allowing outpatient services, and requiring the facility to comply with the fire district's requirements for the change in occupancy.

### **Staff Analysis**

The proposed social rehabilitation facility is consistent with the General Plan as a "small residential care facility" and consistent with the Zoning Code as a "convalescent home."

General Plan: The proposed project is within a Single-Family Residential, Low Density (SL) General Plan land use designation. The (SL) designation allows for single-family homes and accessory buildings and structures. The General Plan Land Use Element identifies "small residential care facility" as a secondary use that is compatible with the SL designation. The subject property was previously occupied by a 12-bed elderly care facility, a type of small residential care facility. The proposed social rehabilitation facility is a community care facility licensed and regulated by the State. The California Community Care Facilities Act, the act that regulates social rehabilitation facilities and other community care facilities, defines a social rehabilitation facility as a residential facility that provides social rehabilitation services in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling. Goal 4 of the Housing Element of the General Plan calls for an increase in the supply of appropriate and supportive housing for special needs populations. The proposed project will provide short-term residential services for individuals recovering from a mental illness, a special

needs population. The proposed social rehabilitation facility will not conflict with the underlying Single-Family Residential, Low Density (SL) General Plan land use designation and is consistent with the County Housing Element.

**Zoning:** The subject property is located within the Single Family Residential (R-20) zoning district. The R-20 district allows for the establishment of a convalescent home with the approval of a land use permit. Staff interprets “convalescent home” as any institution for the care of patients recovering health and strength gradually after sickness or weakness. The former occupants of the subject property operated a residential elderly care facility, a type of convalescent home, at the property pursuant to a land use permit, #LP01-2045. The proposed social rehabilitation facility will provide 24-hour non-medical care and supervision in a residential environment to clients recovering from emotional crises and mental illnesses. Staff has determined that the proposed use is a type of convalescent home that may be established in the R-20 district after a land use permit is approved. Accordingly, the proposed use is consistent with the intent and purpose of the R-20 Zoning District and is an appropriate use for this property.

**Environmental Review:** This project is categorically exempt under CEQA Guidelines Class 1, Section 15301 – Existing Facilities. Section 15301 exempts projects that involve interior or exterior alterations of an existing structure and that involve negligible or no expansion of existing or former use. The proposed social rehabilitation facility will utilize the existing facilities on the property. No development is proposed as part of this project. Any alterations to the existing facilities will be internal. No expansion of any existing building and no new buildings will be constructed for the proposed project. The conditions of approval require fencing repairs, but the repair is anticipated to be a minor repair to existing fencing that will have no impact on the surrounding environment. Moreover, both the existing elderly care facility and the proposed social rehabilitation facility are 24-hour, non-medical residential care facilities. The proposed project will not be of greater intensity and will involve negligible or no expansion of the former use at the site.

### **Appeal of the County Planning Commission's Decision**

The County received two appeals of the County Planning Commission's approval of a land use permit to establish a social rehabilitation facility at 2181 Tice Valley Boulevard in the unincorporated Walnut Creek area. The Department received Amy Majors appeal on May 31, 2019, and Linda Uhrenholt's appeal on June 3, 2019. Below is a summary of each appeal point and staff's response.

***Appeal Point 1:** Previous staff reports for the project, upon which the approval is based, wrongly equate a social rehabilitation facility with a residential care facility for the elderly and convalescent home, which the R-20 district allows with an approved land use permit. There is no language in the zoning code that allows for a residential psychiatric*

*facility, even with a land use permit.*

**Response:** The proposed social rehabilitation facility is a type of convalescent home, which is allowed in the R-20 district with a land use permit.

**Appeal Point 2:** *The Zoning Administrator approval incorrectly references and misapplies the transitional and supportive housing ordinance.*

**Response:** Transitional Housing and Supportive Housing are allowed uses in the R-20 zoning district after approval of a land use permit, but the proposed project is neither Transitional Housing nor Supportive Housing.

**Appeal Point 3:** *The County's environmental review is inadequate by way of the California Environmental Quality Act (CEQA) categorical exemption given to the project.*

**Response:** See the Environmental Review section under Staff Analysis, above.

**Appeal Point 4:** *There is concern about the staffing levels for the facility, and the qualification of and amount of staff present at the facility.*

**Response:**

Staffing levels of community care facilities and personnel qualifications are regulated by the State. A social rehabilitation facility operating a short-term crisis residential treatment program is required to have at least two direct care staff persons on duty, on the premises, any time clients are in the facility. Facility personnel must be competent to provide the services necessary to meet individual client needs and shall, at all times, be employed in numbers necessary to meet such needs. Additionally, the Department of Social Services may require any licensee to provide additional staff if it determines that additional staff are required to meet client needs.

The proposed facility will provide 24-hour non-medical care. A full-time licensed doctor is not required to facilitate the needs of the clients of the facility. The program will have licensed medical doctors available, but they will not always be on site. The program will be administered and managed by a program director and the facility will employ two licensed therapists, a licensed nursing staff, and a licensed social worker. Not fewer than four staff members will be present during daytime hours and not fewer than three staff members will be present during evening and nighttime hours.

**Appeal Point 5:** *Concern over the Public Protection finding and the finding that "The proposed project shall not create a nuisance and/or enforcement problem within the neighborhood or community."*

**Response:** Facility clients will be supervised by qualified staff members as required by State law. Clients will be accompanied by staff members whenever clients leave the facility property. Pursuant to its State license and certification, the proposed facility is not

authorized to admit clients with a primary diagnosis of substance use disorder or clients that have a fragile or unstable medical condition that requires intensive nursing intervention or medical evaluation or management. Conditions related to ongoing monitoring, maintenance of State licenses, reporting requirements, and a neighbor complaint policy will ensure that the facility is operated in a safe manner.

Licensed facilities are required to report any issue or complaint directly to the State. These complaints are viewable on the DSS licensing website. The applicant currently operates two other facilities in the State, located in Sacramento and San Jose. Between these two facilities (31 beds total), one citation has been issued due to a client being locked out of the facility, and no complaints have been filed.

Staff contacted the Sacramento Police Department for call-for-service data between January 2013 and October 2018 related to the applicant's Sacramento location. The applicant began operating its Sacramento location in August 2015. An unknown type of residential treatment facility was operated at the location before the applicant began operating its Sacramento facility. Before the applicant's Sacramento facility opened, there were 17 calls for service in 2013, 29 calls in 2014, and 16 calls up until August 2015 (approximately 21 calls per year). There was a significant drop-off in calls for service after the applicant began operating its facility. There were no calls for the remainder of 2015, 7 calls in 2016, 10 calls in 2017, and 13 calls through October of 2018 (approximately 10 calls per year). Calls for service for the Sacramento facility are typically related to missing person reports. The applicant files a report whenever a client leaves the premises without informing facility staff. The proposed conditions of approval require closed-circuit cameras at all facility exits and monitoring by 24-hour security staff. The proposed conditions will help address potential safety and enforcement concerns.

National Psychiatric Care and Rehabilitation Services is also accredited through the Commission on Accreditation of Rehabilitation Facilities (CARF). CARF is an independent, nonprofit organization focused on advancing the quality of services for rehabilitation programs. Accreditation through CARF is an ongoing process, meaning that the facility has to continually maintain a high level of care in order to retain their accreditation. Accreditation through CARF demonstrates that the facility provides a high level of care, is committed to improving their services, and has experience in appropriately managing risk.

***Appeal Point 6:*** *There is confusion over length of stay for clients of the facility.*

***Response:*** A client's length of stay at a social rehabilitation facility operating a short-term crisis residential treatment program is regulated by the State. Length of stay will be in accordance with the client's assessed needs, but not to exceed 30 days, unless circumstances require a longer length of stay to ensure successful completion of the treatment plan and appropriate referral. Under no circumstances may a client's length of stay exceed 3 months. The applicant estimates that the average length of stay is approximately 18 days.



***Appeal Point 7: Where is the neighborhood complaint policy? How do individuals contact the facility in case of emergencies?***

***Response:*** The proposed conditions of approval require that prior to the operation of the facility, the applicant must submit to the Department a neighbor complaint policy that provides a procedure for immediate response to incidents and complaints. The policy must include, at a minimum, the following:

- The applicant, facility operator, or person designated by the applicant or facility operator is notified of the incident.
- The applicant, facility operator, or person designated by the applicant or facility operator personally investigates the matter.
- The person making the complaint or reporting the incident receives a written response of action taken or a reason why no action needs to be taken.
- In order to assure the opportunity for complaints to be made directly to the applicant, facility operator, or person designated by the applicant or facility operator, and to provide the opportunity for applicant, facility operator, or person designated by the applicant or facility operator to meet residents and learn of problems in the neighborhood, the policy shall establish a fixed time on a weekly basis when the applicant, facility operator, or person designated by the applicant or facility operator will be present.
- Documentation of all complaints received, and any response or action taken by the applicant, facility operator, or person designated by the applicant or facility operator to address a complaint, shall be included in the quarterly reports provided to DCD.

Staff will make the neighbor complaint policy available to neighbors upon request. Additionally, the conditions of approval require the applicant to submit a quarterly report to the Department including any incidents involving the operation of the facility and any complaints that arise from members of the community, and the steps the facility operator took to address the incidents or complaints

***Other points brought up in the appeals:*** Several other items were raised in the appeal letters that do not relate to the land use findings or the County Planning Commission approval of the project, but are mentioned here: the lack of cellular connectivity in the area, the facility's social media policy, potential client privacy violations within the facility due to social media, how the applicant will utilize the *Nextdoor* application network, and facility client education about the surrounding community and specifically the number of growing homeless encampments in the area.

#### **CONSEQUENCE OF NEGATIVE ACTION:**

If the Board of Supervisors grants the appeal, a land use permit to establish a social rehabilitation facility at 2181 Tice Valley Boulevard in the unincorporated Walnut Creek area will not be approved.

#### **CHILDREN'S IMPACT STATEMENT:**

The proposed project will not impact children's programs within the County

### CLERK'S ADDENDUM

**Public speakers: Jonathan Marsh, Valerie Sloven, Kathy Colliau, Oscar Cuzzani, Robin Smith, Miriam Glickman, Gigi Crowder, Steve Hatch, Elizabeth King, Karen Cohen, Shauna McGlynn, Ronda Depluzes, Judy Weatherly, Rosemarie Frydman, Sally Sweetser, Penny Nemped, Geraldine Field, Clave Beckner, Douglas Dunn, Daniel Raemer, Daina Glasson.**

Opened the public hearing on an appeal of the County Planning Commission's approval of a land use permit to establish a social rehabilitation facility at 2181 Tice Valley Boulevard in the unincorporated Walnut Creek area, received testimony, and closed the public hearing.

Determined that the proposed project is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines sections 15301 (existing facility). Denied the appeals of Amy Majors and Linda Uhrenholt. Approved a land use permit to establish a social rehabilitation facility operating a short-term crisis residential treatment program at 2181 Tice Valley Boulevard in the unincorporated Walnut Creek area, County File #LP18-2020. Approved the attached findings and conditions of approval for County File #LP18-2020. Directed the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.

### ATTACHMENTS

Findings and Conditions of Approval

Appeal Letter to Board - Amy Majors

Appeal Letter to Board - Linda Uhrenholt

Program Description

Maps

Project Plans

Powerpoint