

Case File Number CDV03-563

March 3, 2004

Location:	3003, 3015, and 3021 Fruitvale Avenue (See map on reverse)
Assessors Parcel Numbers:	026-0828-015-00, 026-0828-014-00, and 026-0828-013-00
Proposal:	To add 650 square feet to an existing skilled nursing facility converting it into an inpatient facility for diagnostic and short-term psychiatric treatment of HMO covered individuals. Two existing houses would be demolished to provide parking.
Applicant:	Robert Rittner (714) 832-5100, ext. 2
Owner:	Telecare Corporation, Leah Claire Guevarra, and Evaristo Q. Morales & Christine G Quinterio
Case File Number	CDV03-563
General Plan:	Mixed Housing Type
Zoning:	R-50, Medium Density Commercial Zone
Environmental Determination:	Exempt 15301 State CEQA Guidelines; Minor Alterations to existing structures
Historic Status:	Not Potentially Designated Historic Properties (PDHP); survey rating: X
Service Delivery District:	IV – Fruitvale
City Council District:	5
Finality of Decision	Appealable to the City Council
Date Filed:	11/14/03
Staff recommendation:	Staff recommends denial
For further information:	Contact case planner Chris Candell, 238-6986 or ccandell@oaklandnet.com

SUMMARY

The applicant wishes to establish a 21-bed inpatient facility within an existing structure built to house a 36 bed legal non-conforming skilled nursing use. The use will consist of the short-term evaluation and treatment. The facility will be operated daily around the clock with a high staff to patient ratio. Telecare operates a variety of healthcare facilities throughout the nation including three in the Fruitvale district. The nearby facilities are not directly comparable, as they are long term treatment facilities.

To convert the existing legal non-conforming facility the applicant proposes to expand the existing structure by replacing the existing 5 parking stalls with a 650 square foot addition. In addition, the interior would be reconfigured, air conditioning added, and the electrical generator replaced and relocated. To accommodate a parking lot, two existing, occupied 1920’s dwellings along Fruitvale Avenue would be removed. The cars using the lot would enter and exit Fruitvale Avenue. The applicant has submitted an alternative site plan with through traffic to Nicol Avenue to take advantage of the Fruitvale/Nicole Avenue intersection.

The application requires a Conditional Use Permit to convert the existing structure into a new inpatient, short term psychiatric evaluation and treatment facility and to expand the use onto adjacent lots. Skilled nursing and inpatient psychiatric treatment are different uses within the Health Care Civic Activity

classification. The addition requires both Design Review and a Minor Variance for the addition within the required front yard.

Staff feels the proposed use in this residential location is inappropriate and the use will cause adverse impacts some of which can not be mitigated through standard conditions of approval. Specifically, the short-term psychiatric use, the change in the residential nature of the neighborhood through the loss of occupied housing and replacement with parking, and the lack of parking during peak periods cannot be mitigated. Therefore, staff recommends denial of the Conditional Use Permit.

PROJECT DESCRIPTION

The applicant wishes to establish a short-term psychiatric health facility, which is considered a subcategory within the Health Care Civic Activity type classification. The use would be conducted within an existing structure that was built as a skilled nursing facility and is now considered a legal non-conforming use. In general, but not exclusively, these will be HMO covered individuals who have been referred to the facility by that HMO. This will be a locked down and monitored facility. Ambulance (without sirens) or private cars will be used transport patients. Police will not deliver patients to the facility. In some cases, patients will be transported by police to local hospitals first for initial stabilization prior to being transported to the facility. The program will not accept clients who are: “on criminal justice hold; are being charged with a crime; registered sex offenders; are pedophiles; are without funding; have drug or alcohol abuse as a primary diagnoses; have complex medical problems that cannot be treated on an outpatient basis; or have an eating disorder as a primary diagnosis.” The applicant project description is attached (See exhibit “C”).

The applicant will perform diagnostic and short-term (3-7 days) psychiatric evaluation and treatment of HMO covered individuals who have been referred to the facility. The facility will be operated daily with a high staff to patient ratio. At maximum capacity there would be 21 patients and between 5 and 22 staff for a maximum ratio of 1.1 staff per patient. Visitors are permitted but few are expected. The facility will be locked down at all times, monitored, and patients will not be allowed to exit the building.

To accommodate the program applicant the has proposed a number of physical changes:

- Add 650 square foot addition to accommodate the new use. The addition would be along the Nicol Avenue frontage and would replace the existing 5 parking stalls that currently serve the structure. The design will closely match the existing building.
- The applicant would add parking for the increased staff through the demolition of two houses along Fruitvale Avenue. The access would be along Fruitvale Avenue. The applicant has submitted an alternate site plan with through traffic to Nicol Avenue to take advantage of the existing intersection for safer left turns.
- Removing the existing propane tank.
- Replacing and relocating the electrical generator.
- Add an air conditioning unit.
- Adding landscaping in the new parking lot.

The original site plan proposed the removal of one occupied house on Nicol Avenue and one occupied house on Fruitvale Avenue with the parking lot arranged to allow cars exiting onto Nicol Avenue to take advantage of the existing intersection. The neighbors objected citing an increase in traffic and the erosion of the residential character of the street through the removal of the house and replacement of the house with a parking lot on Nicol Avenue. The applicant revised the plan to put the new parking entirely on the Fruitvale Avenue frontage and provided two options for traffic flow:

1. Traffic only entering and exiting along Fruitvale Avenue limiting both ingress and egress to right turns only; and
2. Adding a secondary point of ingress and egress along Nicol Avenue.

PROPERTY DESCRIPTION

The property is located at the northerly corner of Fruitvale and Nicole Avenues in an area with a mix of uses. This area marks the end of the commercial zone and there are a few commercial uses such as the car wash/auto detailing across Fruitvale Avenue. The primary character of the neighborhood is one and two story single family residential with some multifamily housing along Fruitvale Avenue. Nicol Avenue is a one block long block ending at Sausal Creek and is developed with one and two story single family homes and one apartment at the corner of Fruitvale Avenue.

The site is developed with a one-story structure made of split faced concrete block, stucco, glass and wood. The building permit was issued on June 24, 1959. There are a total of 5 off street parking stalls that back onto Nicol Avenue. The site contains mature landscaping along both frontages. There is also an onsite electrical generator, propane tank, and a loading area.

BACKGROUND

In October of 2003, the applicant met with staff to discuss the building, fire, and zoning code implications of re-using the existing 1959 legal non-conforming skilled nursing facility. The applicant submitted a formal application for a Minor Conditional Use Permit, Minor Variance and Design Review to staff on November 11, 2003. On December 12, 2003 staff members from the applicant, City Council office, and Planning staff met with the public on site to discuss the proposed project. As a result, the applicant revised the application submitting the current plans on January 20, 2004. Neighbors have met without staff or the applicant on a number of occasions to discuss the proposal. As noted in the letters from the public, the revised plans have not resolved the issues to the satisfaction of the neighbors who generally remain against the project. Telecare, the applicant, held a meeting with neighbors again on March 1, 2004 the results of which were not known at the time this report was written.

GENERAL PLAN ANALYSIS

This project is located in the Mixed Housing Plan Area. The General Plan is silent regarding Health Care Civic. The intent of this General Plan classification is to “create, maintain, and enhance residential areas typically located near the City’s major arterials and characterized by a mix of single family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate.” The desired character and uses section of the General Plan states that primary future uses should be residential. Other uses may include small commercial enterprises, schools, and other small-scale compatible civic uses in appropriate locations.

The proposed use would represent a small-scale civic use. However, this small-scale civic use does not appear to be compatible with the basic residential intent of the General Plan and would be more appropriate in a commercial location. Additionally, the use may create nuisance activity conflicting with Policy N1.6, (Reviewing Potential Nuisance Activity). The impacts would be greater than the existing legal non-conforming nursing home with respect to traffic generation, noise, and other offsite impacts. Parking added to handle the needs of increased staffing although meeting the code requirements, would not meet anticipated peak hour demands. Therefore, the proposed use does not conform to the intent of the General Plan Land Use Classification.

ZONING ANALYSIS

The proposed use is classified as Health Care Civic per Section 17.10.220 Activity under subsection F. “Facilities which provide inpatient and/or outpatient medical and/or psychological treatment for mental illness, substance abuse and addiction. The previous use was established in 1959 as a skilled nursing home

and is also considered a Health Care Civic use per Section 17.10.220 under subsection C. The previous use is considered a legal non-conforming use because the use was begun prior to current regulations.

In the R-50 Medium Density Housing Residential Zone, Health Care Civic Activities requires a Conditional Use Permit. This activity requires a Minor Conditional Use Permit as enumerated in Section 17.134.020(A) 2, Definition of major and minor conditional use permits. However, this application has been forwarded to the Oakland Planning Commission for review under as a Major Conditional Use Permit at the discretion of the Deputy Director of Planning and Zoning pursuant to Section 17.134.040 (B) 1. To permit the establishment of this use, the Planning Commission must make the regular Conditional Use Permit findings of Section 17.134.050. The decision is appealable to the Oakland City Council.

In addition, the proposed addition follows the existing building line and would be located within the required front yard. Therefore a Variance is required to reduce the front yard from 7.5 feet to 4 feet. To approve the minor variance, the variance findings at Section 17.148.050 must be made. If the application is to be denied the Minor Variance findings do not need to be made.

ENVIRONMENTAL DETERMINATION

No Environmental determination is required to deny the project. The application is exempt under Section 15270, Projects That Are Disapproved

KEY ISSUES AND IMPACTS

The main planning issues are:

- Inappropriate use within a residential context;
- The loss of housing along Fruitvale Avenue in a Mixed Housing Type General Plan area;
- Replacing houses with a parking lot in a residential context and parking impacts;
- Traffic flow/volume;
- Noise

After a number of neighborhood meetings and one major redesign of the project there is still significant neighborhood opposition. The main issue is the use. The objecting neighbors have submitted letters and do not want the use under any circumstances (See exhibit "A"). In addition to the planning issues above, the main issues brought up by neighbors thus far:

- Saturation of area with social programs;
- Drain on police services to control use;
- Lack of environmental review of creek drainage to Sausal Creek

Inappropriate use within a residential context

The proposed use would be located in a primarily residential neighborhood. The use would eliminate existing housing, increase traffic, exacerbate parking shortages, and may allow potentially violent patients with severe mental problems into the neighborhood. Although the applicant has stated that clients will be pre-screened and will "generally" referred by their HMO, be private-pay, or be served through a major HMO, the applicant is not stating that all patients will be. The applicant has admitted that patients who are violent will be stabilized at other locations prior to being transported to the site. This lack of specificity does not give residents a sense of security when their houses are adjacent to the site. Neighbors are

concerned that dangerous mentally ill people could escape the site and impact them. In addition, neighbors are worried about the real and assumed negative impacts the use will have on property values.

The loss of housing along Fruitvale Avenue in a Mixed Housing Type General Plan area

To accommodate staff parking, the applicant has proposed removing two houses. Parking is an inappropriate use of this residentially zoned property. The General Plan and zoning call for single and multifamily housing. Staff feels the removal of the houses is would unduly disrupt an existing land use pattern of single family residences on this block of Fruitvale Avenue leading to further erosion of the residential character of the neighborhood. The loss of two single-family residential houses could not be made up by the project because the project is not residential in nature. The structures to be removed represent good examples of 1920's residential architecture. However, they are not considered Potential Designated Historic Properties (PDHP) properties and no special findings need to be made to remove them.

The existing structure was built as a skilled nursing facility and is suitable for the proposed use with little modification. The structure was built in 44 years ago and is in good condition. Conforming uses would generally require the removal of the structure but would not require the removal of existing houses.

Replacing houses with a parking lot in a residential context and parking impacts

The proposal contains adequate parking pursuant to the parking code. However, as used, there will likely be parking shortages during peak shift changes when the number of employees on site exceeds the number of parking stalls.

The code specifies using the peak shift to calculate parking loads. At peak shift overlap, which occurs briefly in the afternoon, there will a parking surplus using Section 17.116.070:

30 staff @ 1 stall per 4 staff =	7.5 stalls
21 patients @ 1 stall per 4 patients =	5.25 stalls
1 Doctor @ 1 stall per Dr. =	1.00 stall
Total parking required =	13.75 rounded up per the code to 14 stalls
<u>Parking supplied =</u>	<u>21 conforming and 2 non-conforming</u>
Parking surplus =	7 stalls plus two non-conforming stalls

*This is a high estimate. The applicant says that in their experience, very few people visit.

However, staff doubts the assumptions in the code are correct for this situation. The code assumes most staff members would not drive to work. A more realistic set of assumptions would be that most employees drive single occupancy vehicles (.75 parking stall per staff including doctors), no patients drive, and one half the number of patients have visitors (.5 parking stall per patient). Staff assumes more realistic peak numbers to be:

30 staff @ .75 stall per staff =	22.5 stalls
21 patients @ 0 stall per patients =	0.00 stalls
1 Doctor @ .75 stall per Dr. =	.75 stall
<u>20 visitors @ .5 stall per visitor =</u>	<u>10.00 stalls</u>
Total parking required =	33.25 rounded down per code to 33 stalls
<u>Parking supplied =</u>	<u>21 conforming and 2 non-conforming</u>

Parking deficit = 12, 10 if the non-conforming stalls are used.

This means peak parking demands would exceed the 21 to 23 stalls available putting a burden on scarce on street parking.

Traffic flow/volume

Neighbors were concerned with the original proposal that had traffic flowing exclusively onto Nicol Avenue. This proposal was chosen by the applicant to make ingress and egress safer and easier by using the existing intersection, which has better sight lines than a driveway. The neighbors objected to the plan because it would add traffic on Nicol Avenue and create possible delays for exiting onto Fruitvale Avenue. The revised site plans present two options. The favored option provides ingress and egress only on Fruitvale Avenue and the other has the option for exiting on Nicol Avenue but with a primary entrance/exit on Fruitvale.

Neighbors are also concerned that the volume of traffic will increase exacerbating traffic on Fruitvale Avenue. The volume of traffic for the overall project would increase slightly due to the increased staff needed. Staff assumes that the elimination of two houses will also eliminate approximately 20 daily trips generated by the occupants. On the other hand, the staffing will increase from about 24 people per day for a skilled nursing facility to about 35 staff arriving and leaving over a 24 hour period. The number of deliveries should decrease as the number of patients that need linen, food, and other supplies will decrease from 36 to a maximum of 21.

Noise

Staff and neighbors have been concerned with noise generation. The applicant has responded to staff concerns by proposing to replace and relocate the emergency electrical generator. The location of the equipment in the middle of the building will move the source of noise far away from existing residences on Nicol Avenue. The proposed air-conditioning unit will also be located in a central ground level location. Any new equipment will be required to meet the current noise ordinance standards. The result should be a marked decrease in noise from the facility.

Some neighbors feel the project staff will make significant amount of noise on breaks and patients arriving will make intrusive amounts of noise (ambulance/police sirens) and will arrive at all hours of the day and night. Monitoring conditions related to employee breaks and transportation would be difficult.

Saturation of area with social programs

The authors of the letter in opposition to the project point out that the area has a large number of “social programs” of various types and that allowing additional programs poses an unfair burden on residents and police services and decreases property values. The attached map (Exhibit “B”) shows the location of known licensed and unlicensed facilities transitional residential care type facilities. The map shows no nearby locations. The Grace Joy Lodge (now closed) is shown on the map and is mentioned in the letter. This facility is the closest mapped site and was 2,400 feet away. There may be nearby unlicensed projects not shown on the map and there may be other mental health facilities not known close by.

Staff does not have mental health facilities mapped. However, the three sites noted by neighbors all operated by Telecare, are located far from the proposed site. Gladman Mental Health Rehabilitation is located at 2633 East 27th Street approximately 1,600 feet from the proposed site. The Sausal Creek

Stabilization Clinic for Crisis intervention is located on 26th Avenue and is adjacent to the Gladman facility. The Garfield Neurobehavioral Center is at 1451 28th Avenue, is located about one mile away.

Drain on police services to control use

The proposed use will be well supervised locked down facility with a high staff to patient ratio that varies from 1.1 staff to patient during the day to 4.2 patients to staff at night. There will also be a security officer on duty from 4:00 PM to 8:00 PM daily, coinciding with the highest number of staff, and visiting hours. The use is not comparable to activities such as the unlicensed Grace Joy Lodge or the other sites mentioned by the neighbors as this is a medical facility and the other locations are all residential facilities. Patients will not be allowed outside and will not leave the site unattended. Because the site may serve some violent patients, there is a possibility that some additional police services will be needed. Staff does not anticipate this will be a significant factor.

Lack of environmental review of creek drainage to Sausal Creek

The project site is located over 302 feet from Sausal Creek located at the end of Nicol Avenue and is therefore not subject to the Creek Protection Ordinance which affects projects within 100 feet of creeks. The addition of 650 square feet of building is unlikely to create any substantial runoff and will not add contaminants to the creek. No medical waste will be released from the site into the creek. Pursuant to existing building codes garbage containers must be stored in covered storage areas with drains connecting to the sanitary sewer rather than a storm water system. Any spilled contaminates would be captured by the sanitary system rather than running off site and into the creek.

The creation of a new parking lot will increase runoff in proportion to the amount of new impervious surface area. This area will be the net difference between the new surface and the existing residences/drives and other impervious surfaces removed to create the parking lot.

Summary

As outlined above, in staffs opinion, the project does not meet the regular Conditional Use Permit findings and conflicts with General Plan policy. Accordingly, the Minor Variance findings and design review criteria need not be addressed. The proposed use will not be compatible with existing activities and residential uses in the neighborhood. The activity would not enhance the neighborhood because it would disrupt the residential character of the neighborhood by removing existing houses, perpetuating a non-conforming use and would create adverse impacts related to traffic, noise, runoff, parking, and possibly police services. Therefore staff recommends denial of the Conditional Use Permit.

RECOMMENDATIONS:

1. Deny the Major Conditional Use Permit due to the inability to make the attached findings.

Prepared by:

Chris Candell
Planner II

Approved by:

GARY PATTON
Deputy Director of Planning and Zoning

Approved for forwarding to the
City Planning Commission:

CLAUDIA CAPPIO
Director of Planning, Building Services
Major Projects & OBRA

ATTACHMENTS:

- A. Letter from neighbors
- B. Map of licensed and unlicensed facilities
- C. Plans and applicant description of use

FINDINGS FOR DENIAL:

This proposal does not meet the required findings under Section 17.134.050, General Use Permit Criteria as set forth below. Required findings are shown in **bold** type; explanations as to why these findings can not be made are in normal type as well as in the staff report.

Section 17.134.050 (General Use Permit Criteria):

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The proposed parking would eliminate two existing houses disrupting the existing residential character of the neighborhood. Parking, traffic, security and property values would be negatively impacted by the creation of parking and the operation of the activity. The use may generate nuisance activities.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

The use would degrade the existing living environment. The use would generate traffic, parking and other impacts that would be greater than those generated by the existing non-conforming skilled nursing home or residential uses.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

By creating negative impacts and disrupting the existing residential neighborhood by removing existing housing, the proposed activity will not enhance the successful operation of the surrounding area.

- D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

The minor exterior changes will match the existing building with respect to height, bulk, design, and materials. As conditioned the exterior and landscaping will be maintained, Any exterior changes will be reviewed by the Zoning Administrator prior to issuance of any building permits.

- E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

The proposal is a Health Care Civic activity that does not conform to the intent of the General Plan. The activity would not be an appropriate small-scale civic activity. The proposed use does not meet the intent

FINDINGS FOR DENIAL

of the General Plan for this area because it does not provide a primarily residential environment. The use may generate nuisance activity in conflict with General Plan Policy N1.6. Reviewing Potential Nuisance.

DENIED BY: City Planning Commission: _____(date)_____ (vote)

City Council: _____(date)_____ (vote)