

# COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

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| <b>AGENDA ITEM NO.:</b> C.1.   | <b>SITE LOCATION:</b> Southwest corner of Westminster Avenue and Brookhurst Street, at 9856 Westminster Avenue |
| <b>HEARING DATE:</b> May 22, 2014  | <b>APN:</b> 098-361-22   |
| <b>CASE NO.:</b> CUP-011-2014  | <b>GENERAL PLAN:</b> Light Commercial  |
| <b>APPLICANT:</b> Evergreen World, Inc.<br>(Dr. Phil Cheng and Chia Cheng) | <b>ZONE:</b> C-1 (Neighborhood Commercial)   |
| <b>PROPERTY OWNER:</b> Southern Fortune, LTD                               | <b>CEQA DETERMINATION:</b> Exempt  |

**REQUEST:**

The applicant is requesting approval of a Conditional Use Permit in order to allow an existing state licensed Adult Day Health Care Facility, Evergreen World ADHC, to expand the facility and increase the occupancy from 100 to 200 persons.

**BACKGROUND:**

The site is improved with a retail commercial center, Mall of Fortune, consisting of retail stores and restaurants. The property is located in the C-1 (Neighborhood Commercial) Zone and has a General Plan Land Use Designation of Light Commercial. The property is located in an area improved with single-family homes, multiple-family, and commercial developments. The properties to the north, across Westminster Avenue, are zoned C-2 (Community Commercial) zone. The properties south of the subject site are developed with R-1 (Single-Family Residential) zoned properties. The properties adjacent to the west of the project site have a multi-family zoning Planned Unit Development No. PUD-112-77. In addition, there are properties to the north, adjacent to the commercial center that is also multi-family zoning Planned Unit Development No. PUD-103-71.

In 2002, a Conditional Use Permit (CUP-625-02) was approved to allow the operation of an adult day health care facility to operate with an approximately 7,500 square foot in-line commercial tenant space, with five (5) to ten (10) employees, and a 650 square foot outdoor patio. The property has been operating as a state licensed adult day care facility for 100 person occupancy.

In May 2013, a Director's Review (DR-105-13), for a temporary permit to allow Evergreen World ADHC to operate on a temporary basis for a period of eighteen (18) months, while the applicant submits an application to increase the occupancy from 100 to 200 persons, was approved.

The current proposal includes adding approximately 6,000 square feet to expand the facility into the adjacent in-line commercial tenant space to create a new large group

activity room, an isolation room, a group conference room, and a small group activity room. The applicant proposes to increase the facility occupancy from 100 to 200 persons (not including staff members that work at the facility). Title 9 of the Municipal Code requires approval of a Conditional Use Permit in order to increase the occupancy and change the floor plan in regards to expanding or intensifying the use.

**DISCUSSION:**

Site Design, Circulation, Floor Plan:

The existing tenant space is located at the west end of the center (Mall of Fortune) with the parking on the north and south sides of the tenant space. The applicant occupies the entire tenant space with an adult day care center, including the outdoor patio area. Currently, effective January 29, 2014, the facility obtained a new state license for an adult day care facility for 200 person occupancy for a period of one year due to the City's approval of a Director's Review for the temporary use permit.

The floor plan consists of a reception area, offices, a food prep area (but not full service kitchen), a physical therapy room, restrooms, large group activity room, small group activity room, dining/multi-purpose room, group conference room, isolation room, and an outdoor patio. The tenant space can be accessed from two sides, both of which have parking lot access. However, it is conditioned that the main access to the center be from the south side of the tenant space, with the north side for emergency exiting only. This is due to the ease of access from the south side, and available loading and unloading area for the shuttles that provide transportation for the seniors. In addition, there is new retail constructed on the north side of the building, therefore, parking and access is more limited from the north side of the shopping center.

Facility Operation:

The proposed hours of operation are 8:30 a.m. to 4:30 p.m. Monday through Friday. The business is closed on Saturday and Sunday. No overnight stay is available for clients and all clients are checked out by 3:30 p.m. The staff will stay the last hour from 3:30 pm to 4:30 p.m. to clean up and work on administrative tasks. The clients come to the site via personal transportation or by shuttle service offered by the facility located at the south side of the building. According to the applicant, Evergreen World contracts with OCTA and schedules pick up and drop off times at various locations including the client's residence if needed. On a daily basis, the clients enter only through the south side of the building and check in at the receptionist desk. The staff person at the front will document the time of arrival and departure for each client to assure that every client utilizes the facility for a minimum of four (4) hours.

Evergreen World ADHC employs approximately 35 staff members total working at one time. When clients check in at the registration desk they are first brought over to the medical stations where three (3) to four (4) registered nurses aid in taking blood pressure and provide assistance with prescription medication. The nurses will then direct the seniors to the physical therapy room and the therapists will assist them with the exercise machines for fitness and rehabilitation. Occupational therapists are available to assist the seniors with volunteer or part-time work opportunities, social workers support the seniors with recreational activities, finding places to live, discovering new hobbies and reading books from the library.

The adult day health care facility provides a meal program providing breakfast, lunch, and a snack in the later afternoon. The multi-purpose group activity room has tables and chairs for dining and is also used for the clients to watch videos/movies. The food preparation area is not a full service kitchen and is only used to heat up food in a microwave, serve, and wash the dishes afterward. No cooking or food storage is involved.

According to the applicant, the new proposed group activity room will encourage participation in mobile activities that include using equipment such as large bounce exercise balls and balloons to promote more body movement and interaction using balance and improve motor skills, in addition to stationary exercises.

The goal of the Evergreen World ADHC facility is to assist the seniors in staying active both mentally and physically and staying healthy while becoming self-reliant and as independent as possible so that they can live a more satisfying and productive life in their upcoming years.

Parking:

Title 9 of the Municipal Code requires a minimum of one (1) space for every six (6) children for a preschool/day care use. Currently the City does not have an adult day care use; therefore staff applies the parking requirements that are similar to child day care use to be appropriate.

An adult day care facility with 200 person occupancy will require a minimum of one (1) space for every six (6) seniors which will require a total of 33 parking spaces. The office use area is 3,016 square feet and will be calculated at one (1) space per 250 square feet of gross floor area. The office area will require a total of 12 parking spaces. For this use the parking would calculate to be 45 parking spaces. Although the total parking provided at the shopping center is 480 spaces, and total parking required based on each use per tenant space is 473 spaces, it has been determined that due to the nature of the operation, no additional parking spaces are necessary. For example, according to the applicant, none of the clients at this time have their own vehicle or drive themselves to the facility. All clients come to the site by OCTA shuttle or a facility shuttle offered by Evergreen World ADHC.

As part of the conditions of approval, the applicant is required to monitor the parking situation in relation to this use and should parking become a problem to surrounding businesses, then the applicant/operator of the facility shall address the situation to the satisfaction of the City. The applicant is also required to install additional landscaping within the front setback area and within the parking area, as needed.

The proposed facility will provide a good service and healthy program to the seniors in the community. The Community Development Department is in support of this proposal.

**RECOMMENDATION:**

Staff is recommending that the Zoning Administrator take the following action:

- Approve Conditional Use Permit No. CUP-011-2014, subject to the recommended conditions of approval.

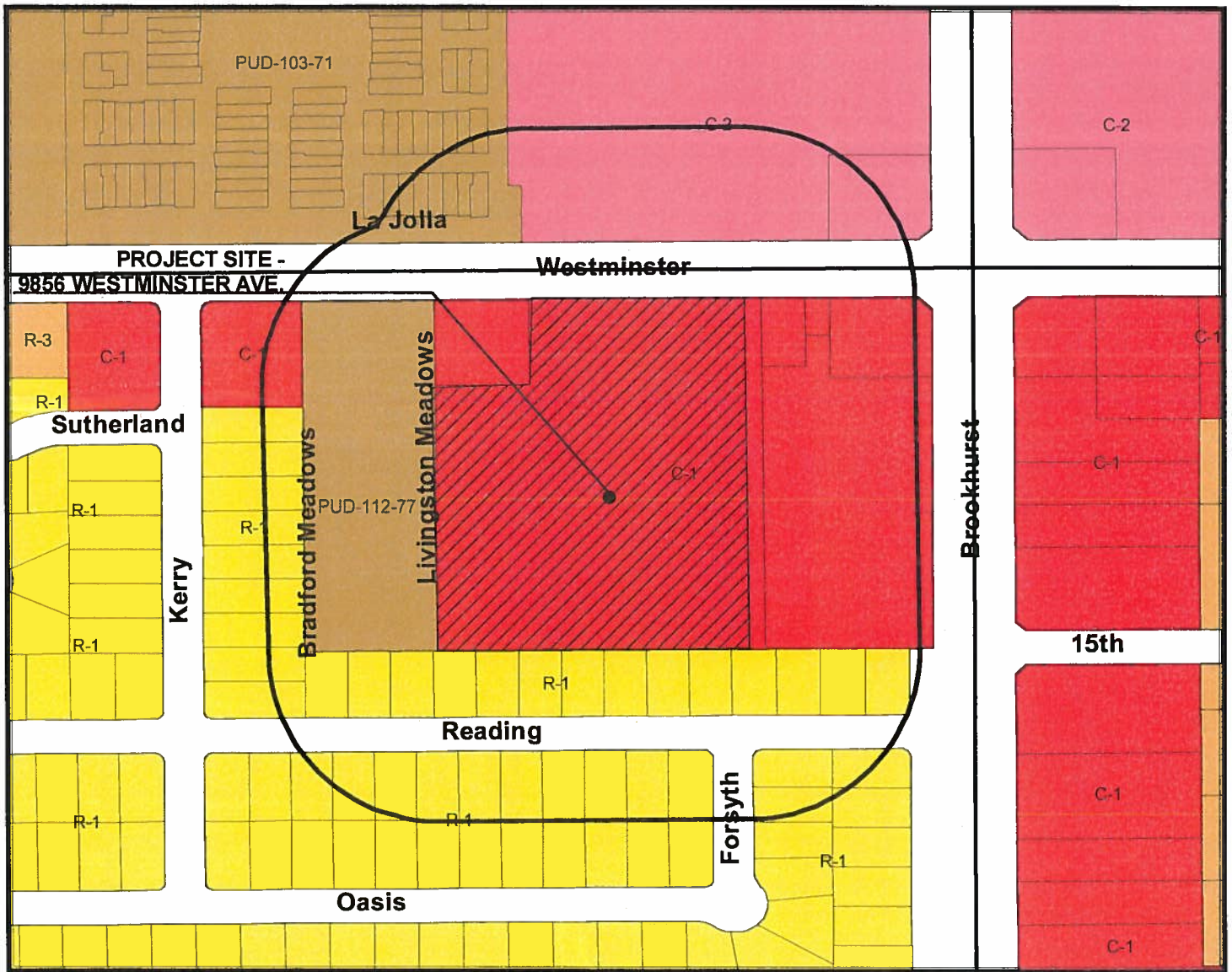
Karl Hill  
Planning Services Manager

By: Alana Cheng  
Assistant Planner




GARDEN GROVE

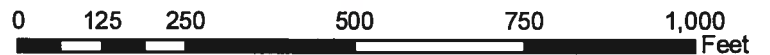
# CONDITIONAL USE PERMIT NO. CUP-011-2014



## LEGEND

 PROJECT SITE - 9856 WESTMINSTER AVENUE

 300 FEET RADIUS



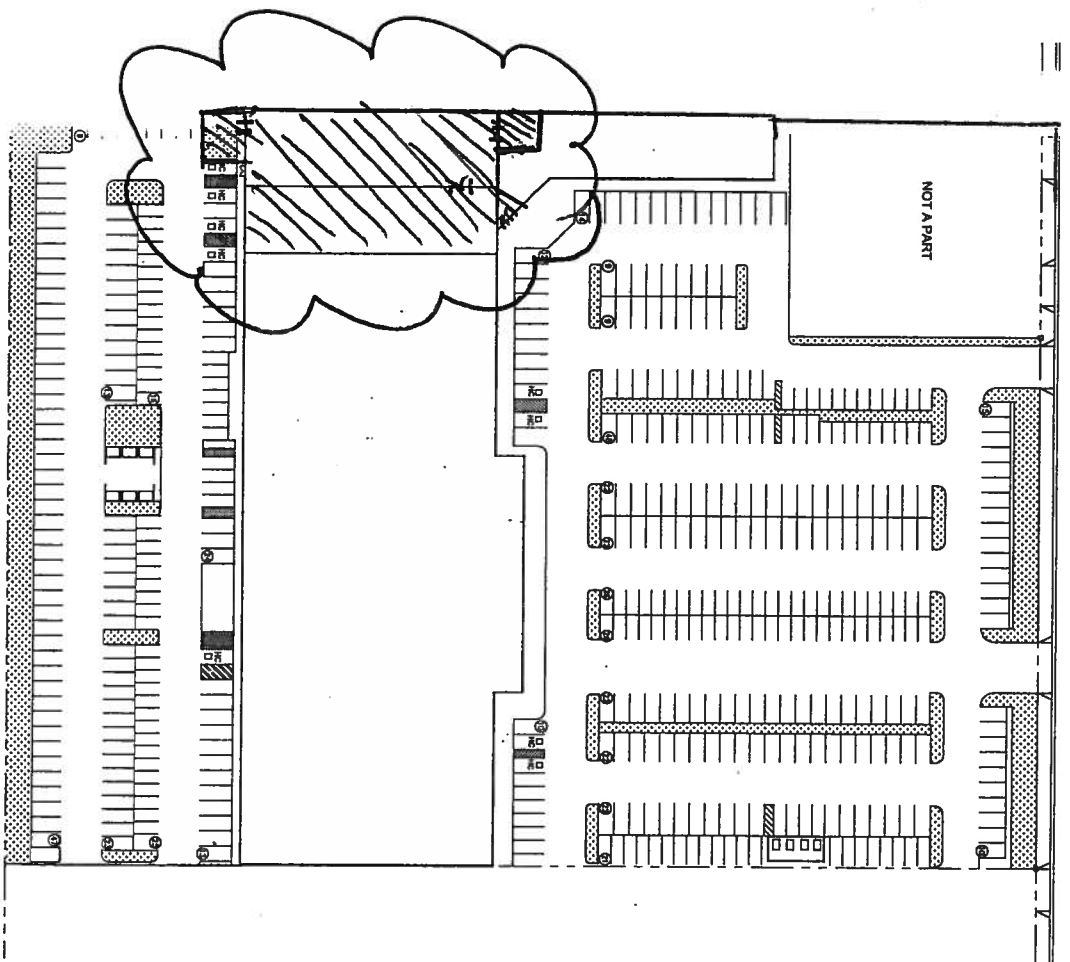
## NOTES

1. GENERAL PLAN: LIGHT COMMERCIAL
2. ZONE: C-1 (NEIGHBORHOOD COMMERCIAL)

CITY OF GARDEN GROVE  
 COMMUNITY DEVELOPMENT DEPARTMENT  
 PLANNING DIVISION  
 GIS SYSTEM  
 MAY 2014

SCALE: 1"=40'-0"

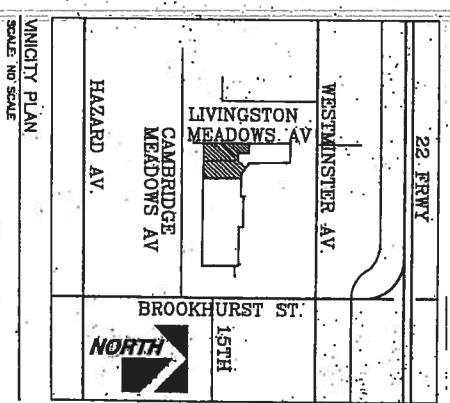
SITE PLAN



| No.       | Tenant                      | Sq. Ft. |
|-----------|-----------------------------|---------|
| 9856 #121 | Vacant Retail               | 1,148   |
| 9856 #122 | Vacant Retail               | 850     |
| 9856 #123 | Trim Pharmacy               | 425     |
| 9856 #124 | Room Office                 | 850     |
| 9856 #125 | Ida's Drug                  | 1,703   |
| 9856 #127 | Vacant Retail               | 358     |
| 9856      | Evergreen World ADHC Center | 12,000  |
| 9856A     | Evergreen World ADHC Office | 3,016   |
| 9862A     | Lodging                     | 1,500   |
| 9862B     | Hong An Restaurant          | 7,500   |
| 9872      | Big Save                    | 6,000   |
| 9872B     | Construction Office         | 3,000   |
| 9892 #311 | Lee Before Restaurant       | 1,970   |
| 9892 #312 | Proposed Bakery             | 1,035   |
| 9892 #315 | Proposed Cafe               | 2,018   |
| 9892 #317 | The Pasteur                 | 5,117   |
| 9892 #327 | Thank's T-Shirt             | 4,123   |
| 9892 #330 | Chi Man's Taylor            | 340     |
| 9892 #330 | Pardon for Las              | 200     |
| 9892 #331 | Phu's Jewelry               | 340     |
| 9892 #332 | Mad's Cosmetic              | 250     |
| 9892 #333 | Proposed Storage            | 340     |
| 9892 #335 | Weslon Equipment            | 340     |
| 9892 #340 | Mad's Music                 | 500     |
| 9892 #344 | Mad's Music                 | 250     |
| 9892 #R   | Barred Units                | 1,25    |
| 9902      | Barred Units                | 6,928   |
| 9902B     | Copied Images               | 1,500   |
| 9904      | Chi Chi Cafe                | 1,350   |
| 9904B     | Snow Palace                 | 675     |
| 9906      | The Office                  | 800     |
| 9906B     | Don Long Food To Go         | 575     |
| 9906C     | Chi Tom Ban                 | 1,500   |
| 9910      | Rich High Restaurant        | 2,675   |
| 9910B     | John Q. Hair Salon          | 1,320   |
| 9910C     | Vacant Office               | 840     |
|           |                             | 420     |
|           |                             | 1350    |
|           |                             | 2,700   |

Net of Permitted Parking Calculation

| Category                             | Value  |
|--------------------------------------|--------|
| Net of Permitted Parking Calculation | 72,482 |
| Required                             | 478,20 |
| Provided                             | 480,00 |
| Net of Permitted Parking Calculation | 289,32 |
| Required                             | 80,46  |
| Provided                             | 120,06 |



VICINITY PLAN

SCALE: NO SCALE

# EVERGREEN WORLD ADHC

## 2010 UBC CODE & CITY ORDINANCE REQUIREMENT

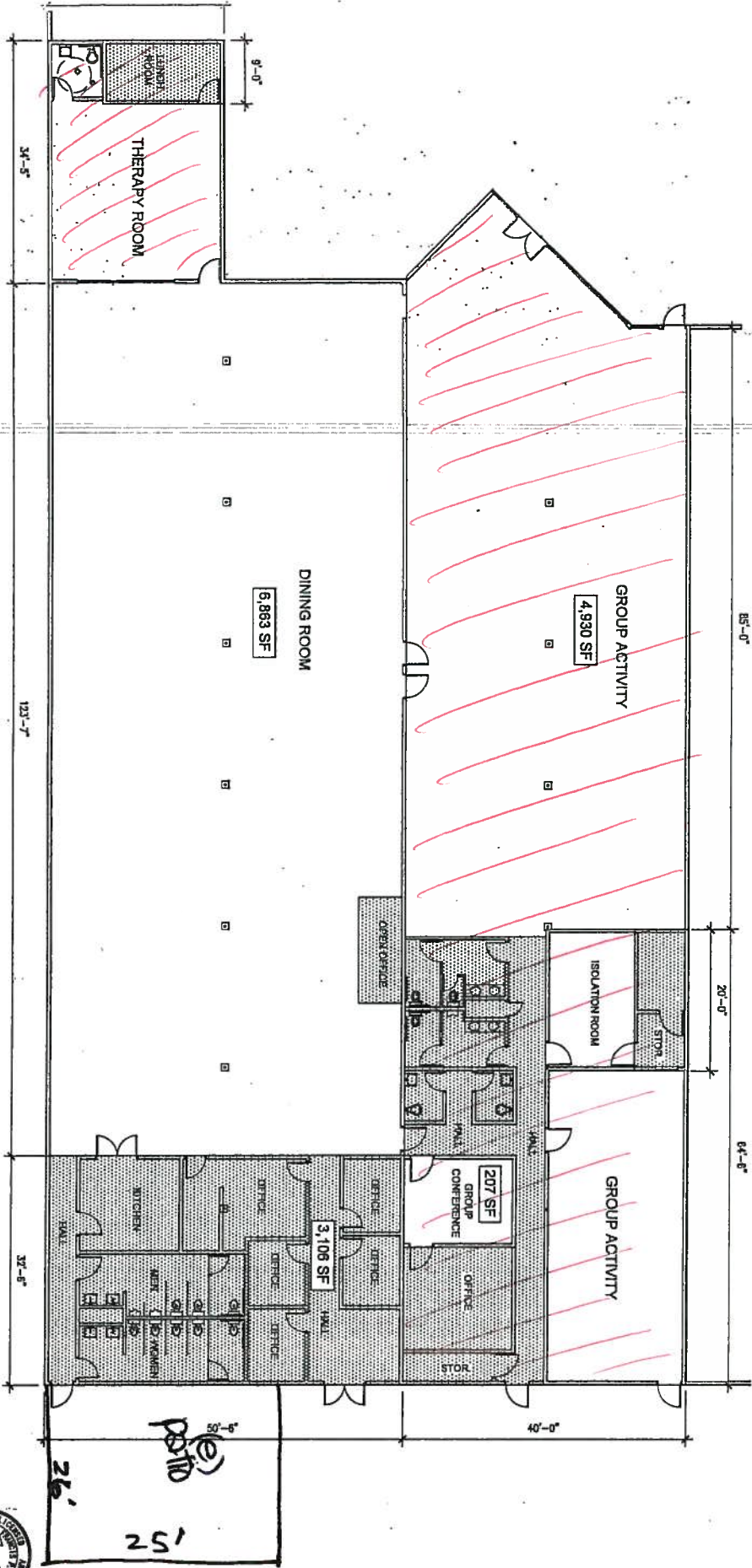
### CODE ANALYSIS

**OCCUPANCY:** I-4 Section 308.5.5 Adult Day Care Facility  
 Provides accommodations for less than 24 hours  
 For more than 5 unrelated adults.  
 Table 1004.1.1 Minimum floor Area Allowances per Occupant.

**1. BUILDING SIZE:**  
 2. THERAPY ROOM, DINING ROOM  
 15,106 SF  
 6,863 SF  
**GROUP ACTIVITY, INSULATION ROOM, GROUP CONFERENCE:** 4,930 SF  
**GROUP CONFERENCE:** 207 SF  
**TOTAL DAY CARE SPACE:** 12,000 SF  
**TOTAL OCC. DAY CARE:** 12,000 SF : 35 SF/PERSON = 343 PERSONS

**3. OFFICES, HALLWAYS, RESTROOMS & KITCHEN:** 3,106 SF : 100 SF/PERSON = 31 PERSONS  
**4. EGRESS WIDTH REQUIRED:** 342+30= 372 PERSONS X 2' = 744' EGRESS WIDTH PROVIDED : 35' X 8 DOORS = 280.0'

**PARKING REQUIRED**  
**1. ADULT DAY CARE PARKING REQUIRED:** 343 PERSONS / 8/Car = 57 PARKINGS  
**2. BUSINESS OFFICE PARKING REQUIRED:** 3,106 SF : 250 SF/PERSON = 12 PARKINGS  
**TOTAL PARKING REQUIRED = 69 PARKINGS**



FLOOR PLAN  
 SCALE: 1/8"=1'-0"



EVERGREEN WORLD ADHC  
 9856 WESTMINSTER AVENUE  
 GARDEN GROVE, CA 92644

CODE ANALYSIS AND PARKING REQUIREMENT



|         |                      |
|---------|----------------------|
| Date    | 11/20/14             |
| Scale   | AS SHOWN             |
| Sheet   | TI-1B                |
| Project | EVERGREEN WORLD ADHC |

|           |    |
|-----------|----|
| REVISIONS | BY |
|           |    |
|           |    |
|           |    |

DECISION NO. 1691-14

A DECISION OF THE ZONING ADMINISTRATOR OF THE CITY OF GARDEN GROVE APPROVING CONDITIONAL USE PERMIT NO. CUP-011-2014.

BE IT RESOLVED that the Zoning Administrator of the City of Garden Grove does hereby approve Conditional Use Permit No. CUP-011-2014 for a property located on the southwest corner of Westminster Avenue and Brookhurst Street at 9856 Westminster Avenue, Assessor's Parcel No. 098-361-22.

BE IT FURTHER RESOLVED in the matter of Conditional Use Permit No. CUP-011-2014, the Zoning Administrator of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by Dr. Phil Cheng and Chia Cheng (Evergreen World, Inc.)
2. The applicant is requesting Conditional Use Permit approval in order to allow an existing state licensed Adult Day Health Care Facility, Evergreen World ADHC, to expand the facility and increase the occupancy from 100 persons to 200 persons.
3. The City of Garden Grove has determined that this project is exempt pursuant to Article 19, Section 15301, Existing Facilities, of the California Environmental Quality Act.
4. The property has a General Plan Land Use designation of Light Commercial, and is zoned C-1 (Neighborhood Commercial).
5. Existing land use, zoning, and General Plan designation of property within the vicinity of the subject property have been reviewed.
6. Report submitted by City Staff was reviewed.
7. Pursuant to a legal notice, a public hearing was held on May 22, 2014 and all interested persons were given an opportunity to be heard.
8. The Zoning Administrator gave due and careful consideration to the matter during its meeting of May 22, 2014; and

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Zoning Administrator, as required under Municipal Code Section 9.24.030 (Conditional Use Permits), are as follows:



**FACTS:**

The applicant is requesting approval of a Conditional Use Permit in order to allow an existing state licensed Adult Day Health Care Facility, Evergreen World ADHC, to expand the facility and increase the occupancy from 100 to 200 persons.

In 2002, a Conditional Use Permit (CUP-625-02) was approved to allow the operation of an adult day health care facility to operate with an approximately 7,500 square foot in-line commercial tenant space, with five (5) to ten (10) employees, and a 650 square foot outdoor patio. The property has been operating as a state licensed adult day care facility for 100 person occupancy.

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The proposed hours of operation are 8:30 a.m. to 4:30 p.m. Monday through Friday. The business is closed on Saturday and Sunday. No overnight stay is available for clients and all clients are checked out by 3:30 p.m. The staff will stay the last hour from 3:30 pm to 4:30 p.m. to clean up and work on administrative tasks. The clients come to the site via personal transportation or by shuttle service offered by the facility located at the south side of the building.

The goal of the Evergreen World ADHC facility is to assist the seniors in staying active both mentally and physically and staying healthy while becoming self-reliant and as independent as possible so that they can live a more satisfying and productive life in their upcoming years.

**FINDINGS AND REASONS:**

1. That the proposed use will be consistent with the City's adopted General Plan and redevelopment plan.

The subject site has a General Plan Land Use Designation of Light Commercial, and is zoned C-1 (Neighborhood Commercial). Adult Day Care Facilities are conditionally permitted in this zone. This approval will allow the facility to

continue to operate as an adult day care, which was the original use, and expand into the adjacent tenant space to increase the occupancy from 100 to 200 persons. Provided that the conditions of approval are complied with, the use will be consistent with the General Plan.

2. That the requested use at the location proposed will not: adversely affect the health, peace, comfort, or welfare of the persons residing or working in the surrounding area, or unreasonably interfere with the use, enjoyment, or valuation of the property of other persons located in the vicinity of the site, or jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare.

The use will not adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area. The conditions of approval will minimize potential impacts to the adjoining area. Provided the conditions of approval are adhered to for the life of the project, the use will be harmonious with the persons who work and live in the area.

The use will not unreasonably interfere with the use, enjoyment or valuation of the property of other persons located within the vicinity of the site, provided the conditions of approval are adhered to for the life of the project. By operating as a senior care facility, licensed by the State, that provides assistance to elderly and helps them stay active both mentally and physically, the use will not constitute any type of menace to public health safety, or general welfare of the uses in the surrounding area.

3. That the proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title or as is otherwise required in order to integrate such use with the uses in the surrounding area.

The site, with the existing site improvements, modifications, and expansion to increase the activity area of the facility, is of adequate size to accommodate the proposed uses within the surrounding area.

4. That the proposed site is adequately served: by highways or streets or sufficient width and improved as necessary to carry the kind and quantity of traffic such as to be generated, and by other public or private service facilities as required.

The site is fronted by Westminster Avenue, which is a fully developed street that provides adequate traffic circulation and driveway access to public parking areas. The site is also sufficiently served by the public service facilities required such as public utilities: gas, electric, water, and sewer facilities.

INCORPORATION OF FACTS AND REASONS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Zoning Administrator incorporates herein by this reference, the facts and reasons set forth in the staff report.

BE IT FURTHER RESOLVED that the Zoning Administrator does conclude:

1. The Conditional Use Permit does possess characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.24.030 (Conditional Use Permits).
2. In order to fulfill the purpose and intent of the Municipal Code and thereby promote the health, safety, and general welfare, the following Conditions of Approval, attached as Exhibit "A", shall apply to Conditional Use Permit No. CUP-011-2014.

Dated: May 22, 2014

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SUSAN EMERY  
ZONING ADMINISTRATOR

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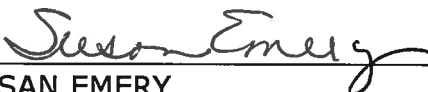
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2. In order to fulfill the purpose and intent of the Municipal Code and thereby promote the health, safety, and general welfare, the following Conditions of Approval, attached as Exhibit "A", shall apply to Conditional Use Permit No. CUP-011-2014.

Dated: May 22, 2014

  
\_\_\_\_\_  
SUSAN EMERY  
ZONING ADMINISTRATOR

**EXHIBIT "A"**

**Conditional Use Permit No. CUP-011-2014**

9856 Westminster Avenue

**CONDITIONS OF APPROVAL**

**General Conditions**

1. Each owner of the property shall execute, and the applicant shall record, a "Notice of Discretionary Permit Approval and Agreement with Conditions of Approval," as prepared by the City Attorney's Office, on the property within 30 days of approval. This Conditional Use Permit runs with the land and is binding upon the property owner, his/her/its heirs, assigns, and successors in interest.
2. The term "applicant," as referenced in the conditions of approval, shall refer to both the tenant (Phil Cheng and Chia Cheng) business operator (Evergreen World, Inc.) and the property owner (Southern Fortune, LTD), including subsequent purchasers and/or tenants. The applicant and subsequent owner/operators of such business shall adhere to the conditions of approval for the life of the project, regardless of property ownership. Any changes of the conditions of approval require approval by the Hearing Body.
3. Approval of this Conditional Use Permit shall not be construed to mean any waiver of applicable and appropriate zoning and other regulations; and wherein not otherwise specified, all requirements of the City of Garden Grove Municipal Code shall apply. Modifications which do not change the intent of the project may be approved by the Community Development Director.
4. If major modifications are made to the approved floor plan, site plan, or other related changes that result in the intensification of the project or create impacts that have not been previously addressed, the proper entitlements shall be obtained reflecting such changes.
5. All conditions of approval shall be implemented at the applicant's expense, except where specified in the individual condition.

**Building Services Division**

6. The building shall comply with the California Building Standard Code 2013 edition.

FINAL



7. The building shall comply (through the permitting process) to occupancy separation from adjacent space, exterior wall construction, sprinklers, allowable floor area, rated corridors, number of plumbing fixtures and ADA accessibility requirements.

**Fire Department**

8. All provisions of the Fire Department shall be complied with. Maximum occupancy approved for 200 persons (not including staff members) at one time.
9. Fire extinguishers shall be provided; locations and ratings shall be determined by the Fire inspectors.
10. Signage requirements for the Emergency Planning and Information Plan as required in C.C.R. Title 19, Section 3.09, shall be complied with prior to the granting of any occupancy of the tenant space.
11. Required fire lanes shall be posted and marked in accordance with Garden Grove Fire Department Fire Protection Specifications and Requirements.
12. The address shall be placed on the north side and south side of the tenant space and shall be visible with a minimum of 8-inch high letters in contrasting colors.

**Community Development Department**

13. The use shall operate as an adult day health care facility at all times. The number of senior adults (minimum 65 years old) shall not exceed 200 persons or clients at one time, not including staff members.
14. A valid City of Garden Grove business license shall be maintained for the facility.
15. A valid State of California Department of Public Health license shall be maintained for total capacity not to exceed 200 persons that participate in the program, not including staff members.
16. Hours of operation for the facility shall be limited to 8:30 a.m. to 4:30 p.m. Monday through Friday; closed Saturday and Sunday, however, in the event that problems arise and changing the hours of operation will reduce these problems, the facility shall modify the hours as prescribed by the City.

17. No storage shall be permitted outside the building or in the patio area.
18. All customer and employee drop-off and pick-up shall occur on-site, at the designated main entrance facing the parking lot on the south side of the shopping center.
19. The applicant is required to monitor the parking situation in relation to this use and should parking become a problem to the surrounding businesses, then the applicant/operator of the facility shall address the situation to the satisfaction of the City.
20. There shall be no uses or activities of an adult-oriented nature permitted on the premises as outlined in City Code Section 9.08.070.
21. There shall be no gaming tables or gaming machines as outlined in City Code Sections 8.20.010 and 8.20.050 on the premises at any time. Additionally, there shall be no gambling at any time.
22. Should the applicant have billiard/pool tables, there shall be no more than two (2) billiard/pool tables on the premises at any time.
23. Litter shall be removed daily from the premises, including adjacent public sidewalks and from all parking areas under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis, to control debris.
24. All landscaping on the property in the parking lot area and including the outdoor patio area shall be properly maintained.
25. Signs shall comply with the City of Garden Grove sign requirements, and shall require approval by the Community Development Department, Planning Services Division prior to issuance of a building permit.
26. The property owner shall provide sufficient trash bins to accommodate the use. Should the need arise; trash pickup shall increase, in order to handle the amount of trash generated by the proposed use.
27. Graffiti shall be removed from the premises and all parking lots under the control of the licensee and/or the property owner within 120 hours upon notification.

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28. No new exterior piping, plumbing or mechanical ductwork shall be permitted on any exterior façade and/or be visible from any public right-of-way or adjoining property.
29. No roof-mounted mechanical equipment shall be permitted unless a method of screening, complementary to the architecture of the building, is approved by the Community Development Department, Planning Division. Said screening shall block visibility of any roof-mounted mechanical equipment from the view of public streets and surrounding properties.
30. No satellite dish antennas shall be installed on said premises unless, and until, plans have been submitted to, and approved by, the Community Development Department, Planning Division. No advertising material shall be placed thereon.
31. The use shall comply with the City's adopted Noise Ordinance as set forth in the City of Garden Grove's Municipal Code Section 8.47.020.
32. The original Conditional Use Permit No. CUP-625-02 shall be null and void, and superseded in its entirety, by the approval of CUP-011-2014.
33. The Conditional Use Permit shall be reviewed one year from the date of this approval, and every three (3) years thereafter in order to determine if the business is operating in compliance.
34. The applicant shall, as a condition of project approval, at its sole expense, defend, indemnify and hold harmless the City, its officers, employees, agents and consultants from any claim, action, or proceeding against the City, its officers, agents, employees and/or consultants, which action seeks to set aside, void, annul or otherwise challenge any approval by the City Council, Planning Commission, or other City decision-making body, or City staff action concerning Conditional Use Permit No. CUP-011-2014. The applicant shall pay the City's defense costs, including attorney fees and all other litigation related expenses, and shall reimburse the City for court costs, which the City may be required to pay as a result of such defense. The applicant shall further pay any adverse financial award, which may issue against the City including but not limited to any award of attorney fees to a party challenging such project approval. The City shall retain the right to select its counsel of choice in any action referred to herein.