



## CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER, AND PLANNING COMMISSION  
FROM: Seimone Jurjis, Assistant City Manager/Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator and Community Development Director for the week ending March 29, 2024.

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### ZONING ADMINISTRATOR PUBLIC HEARING ACTIONS MARCH 28, 2024

- Item 1: McGinnis Residence Coastal Development Permit (PA2023-0169)  
Site Address: 4901 Seashore Drive, Units A & B
- |   |                  |   |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2024-018 | Council District | 1 |
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- Item 2: Baja Sharkeez Limited Term Permit and Coastal Development Permit (PA2023-0247)  
Site Address: 110 and 114 Mc Fadden Place
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2024-019 | Council District | 1 |
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### COMMUNITY DEVELOPMENT DIRECTOR OR ZONING ADMINISTRATOR ACTIONS (Non-Hearing Items)

- Item 1: Project Name – Birch Street Office Complex Parking Reduction Staff Approval (PA2023-0001)  
Site Address: 3620 Birch Street
- |                  |                  |   |
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| Action: Approved | Council District | 3 |
|------------------|------------------|---|
- Item 2: The Village Inn Temporary Outdoor Dining Patio Limited Term Permit (PA2024-0040)  
Site Address: 123 Marine Avenue
- |                  |                  |   |
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| Action: Approved | Council District | 5 |
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**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2024-018

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING A COASTAL DEVELOPMENT PERMIT FOR THE DEMOLITION OF AN EXISTING NONCONFORMING DUPLEX AND THE CONSTRUCTION OF A NEW THREE-STORY, 2,403-SQUARE-FOOT, SINGLE-UNIT RESIDENCE WITH A 182-SQUARE-FOOT JUNIOR ACCESSORY DWELLING UNIT (JADU) AND A 387-SQUARE-FOOT ATTACHED TWO-CAR GARAGE LOCATED AT 4901 SEASHORE DRIVE (PA2023-0169)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Eric Trabert and Associates (Applicant) on behalf of Lisa McGinnis (Owner), with respect to property located at 4109 Seashore Drive, and legally described as Lot 1 of Block 49 of the Ocean Front Tract (Property), requesting approval of a coastal development permit (CDP).
2. The Applicant proposes to demolish an existing 2,473-square-foot nonconforming duplex and to construct a new three-story, 2,403-square-foot, single-unit residence with a 182-square-foot junior accessory dwelling unit (JADU) and a 387-square-foot attached two-car garage. The design also includes appurtenances such as walls, hardscape, and landscaping (Project).
3. The Property is located within the Single-Unit Residential (R-1) Zoning District and the Single Unit Residential Detached (RS-D) General Plan Land Use Element category. The R-1 Zoning District permits single-unit residences. The existing duplex is considered nonconforming due to density as it was constructed in 1982 when the property was previously zoned as Two-Unit Residential (R-2).
4. The Property is located within the coastal zone. The property is within the Single-Unit Residential (R-1) Coastal Zoning District and within the Single Unit Residential Detached (RSD-D 20.0 – 29.9 DU/AC) Coastal Land Use Plan category.
5. A public hearing was held on March 28, 2024, online via Zoom. A notice of time, place, and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or

Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition of up to 3 single-unit residences and additions of up to 10,000 square feet to existing structures. The Project is to demolish an existing duplex and construct a new single-unit residence with a JADU in the R-1 Coastal Zoning District within a developed neighborhood. Therefore, the Class 3 exemption is applicable.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015(F) (Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *Conforms to all applicable sections of the certified Local Coastal Program.*

#### Facts in Support of Finding:

1. The Project complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 3,043 square feet and the proposed floor area is 2,973 square feet.
  - b. The proposed development complies with the required setbacks, which are 5 feet from West Ocean Front, 0 feet from Seashore Drive, and 3 feet along each side property line. The second and third story balconies facing West Ocean Front encroach up to 36 inches into the required setback as allowed by NBMC Section 21.30.110(D)(5).
  - c. The highest guardrail/parapet measured 24 feet from the established grade and the highest ridge measures 29 feet from the established grade. The Project complies with all height requirements.
  - d. The Project provides a two-car garage, complying with the minimum garage requirement for a single-unit residence. The proposed JADU does not require additional parking.

- e. The Project includes one JADU, where one JADU is allowed as part of new construction within a proposed single-unit residence. The maximum floor area for a JADU is 500 square feet and the proposed JADU is 161 square feet.
  - f. The Project proposed a minimum top slab elevation of 13.76 feet based on the North American Vertical Datum of 1988 (NAVD 88) which complies with the minimum 9.0-foot NAVD 88 top of slab elevation requirement for interior living areas of new structures.
2. The Project proposes to demolish the existing nonconforming duplex on-site to construct a single-unit residence and JADU. As a result, the Project complies with the Housing Crisis Act of 2019 and Senate Bill 8 (Skinner) because it does not result in the loss of residential density. The State Department of Housing and Community Development (HCD) has verified with the City in an email dated March 23, 2022, that an ADU is considered a housing unit under Government Code Section 66300 provisions to replace existing units. The Owner has certified that the units are not "protected" units under Section 66330 Subdivision (d)(2). The Project is consistent with the General Plan, Local Coastal Program, and Zoning designations that allow the single-unit and accessory dwelling unit land uses. Under Coastal Land Use Plan Table 2.1.1-1, the Single-Unit Residential Detached (RSD-D) category is intended to provide for single-unit residential development. Implementation Program (IP) Table 21.18-1 shows "Single-Unit Dwellings – Detached" and "Junior Accessory Dwelling Units" as allowed uses in the R-1 Coastal Zoning District. Therefore, the Project of a single-unit residence and junior accessory dwelling unit to replace the existing duplex is consistent with the R-1 zoning and land use designations and does not result in a loss of residential density.
  3. The neighborhood is predominantly developed with two- and three-story single- and two-unit residences. The proposed three-story residence's design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
  4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated August 23, 2023. The Property abuts the Pacific Ocean beach and thus may be subject to coastal hazards such as flooding, runup, and erosion. The report concludes that the Project is reasonably safe from shoreline erosion due to the lack of waves or wakes that can erode sand from the beach. The report also concludes that the Project will be reasonably safe from future sea level rise assuming an increase up to 10.9 feet based on the North American Vertical Datum of 1988 (NAVD 88) (the likely range for sea level rise over the 75-year design life of the structure based on low-risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). The finished floor elevation of the first floor of the proposed structure is 13.76 NAVD 88, which complies with the minimum 9.0-foot NAVD 88 elevation standard for new structures and exceeds the minimum requirements for sea level rise (10.9 feet NAVD 88). Based on the data provided, the study concludes that coastal hazards will not impact the Property over the next 75 years and there is no anticipated need for a shore protection device over the life of the proposed development.

5. Pursuant to NBMC Section 21.30.030(C)(3)(i) (Natural Landform and Shoreline Protection) of the NBMC, the Owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The Owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) (General Site Planning and Development Standards). These requirements are included as Condition of Approval No. 7 and 8 that will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.
6. The Property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and the CBC prior to building permit issuance.
7. The Property is not located adjacent to a coastal view road or public accessway, as identified in the Coastal Land Use Plan. The Project is located approximately 1,000 feet southwest of Sunset Ridge Park, which is identified as a Public View Point by the Coastal Land Use Plan. Additionally, the Project may be located within the viewshed of other distant public viewing areas. Site evaluation revealed that the proposed three-story design is consistent with the existing neighborhood pattern of development and will not affect the existing views afforded from the surrounding streets. The Project will replace an existing duplex with a new single-unit residence and JADU that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Therefore, the Project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

Finding:

- B. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Facts in Support of Finding:

1. The Property is located between the nearest public road and the sea. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the Project's impact and be proportional to the impact. In this case, the Project replaces an existing duplex with a new single-unit residence and JADU. Therefore, the Project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the Project is designed and sited so as not to block or impede existing public access opportunities.

2. Fact in Support of Finding A.2 is hereby incorporated by reference.
3. The Property is located adjacent to a public beach and is approximately 275 feet from the mean high tide line. The Project is designed and sited to not block or impede existing public access opportunities, and all development occurs within the confines of private property. Existing coastal access conditions will not be affected by the Project. The Property is located between 49th and 50th Street, which are identified by the Coastal Land Use Plan as public beach access locations. The Project does not interfere with the existing nearby access to the beach. Lateral access to the bay is available at the street ends of 49th and 50th Street. Vertical access is not available near the project site.

#### SECTION 4. DECISION.

#### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (Conversion or Construction of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment and that the exceptions to the Class 3 Exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. PA2023-0169, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code (NBMC). Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 28<sup>TH</sup> DAY OF MARCH, 2024.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
4. The proposed landscaping shall be maintained within private property and shall not grow into or over the public right-of-way.
5. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
6. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the Property is operated or maintained so as to constitute a public nuisance.
7. Coastal Development Permit No. PA2023-0169 shall expire and become void unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.
8. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
9. Prior to the issuance of a building permit, the Owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation,

attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development.

10. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers.
11. This Coastal Development Permit does not authorize any development seaward of the private property.
12. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
13. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented before and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
14. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
15. Debris from demolition shall be removed from work areas each day and removed from the Property within 24 hours of the completion of the Project. Stock-piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
16. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
17. Prior to the issuance of building permits, the Applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
18. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
19. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of



the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:

- A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
  - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, 1 or 2 short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
- 20. Prior to issuance of building permits, a waterproofing curb or similar design feature shall be constructed around the proposed residence as an adaptive flood protection device up to a maximum of 10.9 feet (NAVD88). Flood shields (sandbags and other methods) can be deployed across the openings to protect and prevent flooding to the structure.
  - 21. Construction activities shall comply with Section 10.28.040 (Construction Activity – Noise Regulations) of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays, or Holidays.
  - 22. Prior to the issuance of building permits, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
  - 23. Should the Property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
  - 24. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **McGinnis Residence including, but not limited to, Coastal Development Permit No. PA2023-0169**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees,

and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division

25. Prior to the issuance of building permits, the Applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
26. Prior to issuance of the building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
27. Prior to the issuance of building permits, the Applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
28. Prior to issuance of building permits, the Applicant shall submit a soils report which include recommendations for construction on liquefiable soils. Additionally, the building foundation shall comply with the minimum requirements of the City of Newport Beach Building Code Policy CBC 1803.5.11-12.

## RESOLUTION NO. ZA2024-019

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING LIMITED TERM PERMIT AND COASTAL DEVELOPMENT PERMIT NO. PA2023-0247 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 110 AND 114 MCFADDEN PLACE**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Baja Sharkeez with respect to property located at 110 and 114 Mc Fadden Place, and legally described as Parcel 1 of Resubdivision No. 493 requesting approval of a limited term permit and a coastal development permit.
2. On June 5<sup>th</sup>, 2020, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-017 (PA2020-088) to allow a temporary outdoor dining area within the rear parking lot of the Baja Sharkeez restaurant. The patio was approximately 2,400 square feet and was authorized for a term of 60 days or 14 days after the expiration of Emergency Ordinance No. 2020-005, whichever comes first.
3. A public hearing was held on December 16<sup>th</sup>, 2021, online via Zoom. At the close of the public hearing, the Zoning Administrator authorized a Limited Term Permit and Coastal Development Permit for a reduced temporary outdoor dining area of approximately 900 square feet. The temporary outdoor dining patio occupied approximately half of the rear parking lot and was authorized from January 1, 2022 to December 31, 2022.
4. The applicant requests a limited term and coastal development permit to maintain an existing 765-square-foot maximum temporary outdoor dining area for up to one-year (January 1, 2024 through December 31, 2024).
5. The subject property is designated Mixed-Use Water 2 (MU-W2) by the General Plan Land Use Element and is located within the Mixed-Use Water (MU-W2) Zoning District.
6. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Water Related (MU-W) and it is located within the Mixed-Use Water (MU-W2) Coastal Zoning district.
7. Pursuant to Assembly Bill No. 1217, Gabriel (Business Pandemic Relief), temporary relief measures to suspend certain legal restrictions related to alcohol service, food service, and parking have been extended. As it relates to parking, a local jurisdiction that has not adopted an ordinance that provides relief from parking restrictions for expanded outdoor dining areas is authorized to reduce the number of required parking spaces for existing uses by the number of spaces that the local jurisdiction determines are needed to accommodate an expanded outdoor dining area.

8. A public hearing was held on March 28, 2024, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The proposed scope of work is to maintain an existing approximately 765-square-foot expanded outdoor dining patio at an existing restaurant for up to a one-year limited term and qualifies under the parameters of the Class 1 exemption.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

## SECTION 3. REQUIRED FINDINGS.

### *Limited Term Permit*

In accordance with Section 20.52.040.G (Limited Term Permits, Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

### Finding:

- A. *The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

### Facts in Support of Finding:

1. The limited term permit will allow an extended and expanded outdoor dining patio for up to a one-year term. The existing food service use is authorized through Use Permit No.

UP2017-034 (PA2017-255) and includes approximately 1,813 square feet of net public area plus a 203-square-foot outdoor dining patio at the front of the restaurant.

2. The expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit. The operation of the expanded dining area is limited to a one-year term beginning January 1, 2024 through December 31, 2024, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. Outdoor dining areas are common on the Newport Peninsula and Mc Fadden Square and have been used at the subject property during similar hours in the past. The existing patio use has not proven detrimental. Generally, the existing hours of operation for the restaurant are 9:00 a.m. through 1:30 a.m., daily (a portion of the space closes at 11:00 p.m.). The expanded outdoor dining area would close by 9:00 p.m., Monday through Thursday, and by 10:00 p.m., Friday through Sunday, as required by Condition of Approval No. 4. Therefore, no late hours are proposed for the expanded outdoor patio.
4. A condition of approval related to heaters is incorporated as Condition of Approval No. 33. If the proposed dining area is revised to include a tent or cover, the applicant must comply with the fire requirements outlined in Condition of Approval No. 34.
5. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
6. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
7. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
8. The project plans include appropriate delineation of outdoor use spaces with physical barriers or markers.

Finding:

- B. The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

1. The subject lot is approximately 0.18 acre in size and is relatively flat. The existing space has operated as a food service use at this location since the 1970s. Based upon the site

plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation and coastal access.

2. The lot is bounded by Mc Fadden Place to the northwest with the Mc Fadden Square parking lot and restaurants located across the street. To the south and southeast are residentially zoned properties. Many existing food service uses with outdoor dining and retail tenants are located throughout the Mc Fadden Square area. The expanded outdoor dining use will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and vibrant character of Mc Fadden Square.
3. The expanded patio area is located in the parking lot at the rear of the subject building. The patio has been significantly reduced in scale from the patio that was authorized under ETUP No. UP2020-155, from approximately 2,400 square feet to 765 square feet. Under the ETUP No. UP2020-155 approval, only the accessible stall (one parking space) was maintained as available for parking. Under the proposed project, the expanded dining area will occupy five standard parking spaces and the existing striped accessible space will remain in its approved location. The project will provide access to five parking stalls.
4. In order to reduce the number of vehicles driving or maneuvering near the patio, one lane of parking has been allocated to the patio with the available parking area located across the drive aisle separate from the patio. The Public Works Department has reviewed the design and determined it is acceptable on a limited term basis (one year). Based on the proposed configuration, no traffic or site circulation issues are anticipated.
5. The location of the patio has been pulled back from the property line and the five parking spaces would provide an additional buffer from the patio to the residential uses. The City has not received any complaints regarding the location or use of this patio.
6. The expanded patio area would be required to close at 9:00 p.m. on weekdays (Sunday to Thursday) and 10:00 p.m. on weekends (Friday and Saturday) which would reduce potential impacts related to nighttime noise emanating from the patio area.
7. The proposed parking configuration allows for access to the accessible stall and the adjacent alley, street, and sidewalk without impediment.

Finding:

- C. The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Fact in Support of Finding:

1. The subject lot is accessed from West Balboa Boulevard and Mc Fadden Place. A surface parking area is provided on-site with 10 parking spaces. The expanded dining area will occupy no more than five standard parking spaces (one row of parking stalls). The existing food service use, Baja Sharkeez, is located in a commercial plaza and proposes to operate

all day and into the evening hours with peak hours when other retail and office uses near the property are typically not operating. Sufficient parking is provided on-site and within the public parking lot and no traffic issues are anticipated with the continued use of the expanded dining area.

Finding:

*D. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Facts in Support of Finding:

1. The existing food service use with outdoor dining (Baja Sharkeez) has operated at the subject property since the 1990s, and the property has been used for food service uses since the 1970s. The existing surface parking lot has historically served as the employee parking supply with patrons parking in the public lot adjacent to the site or using alternative methods of transportation (rideshare, bike, walking). The surface lot is expected to adequately accommodate the temporary use for up to a one-year term. The applicant has continued to pay in-lieu parking fees to support the City's public parking lot and would continue to do so through the duration of the project.
2. The expanded dining area will not impede pedestrian access to the waterfront as there is adequate access via the sidewalk along the front of the building.

Finding:

*E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The General Plan land use designation for this site is MU-W2 (Mixed-Use Water 2) and the Coastal Land Use Plan designation is MU-W (Mixed-Use Water Related). The MU-W2/MU-W designations are intended to provide for waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the MU-W2 designation. Outdoor dining is a use that tends to foster additional pedestrian and visitor activity.
2. The site is located in the MU-W2 (Mixed Use Water) Zoning District and Coastal Zoning District. The MU-W2 designation is intended to provide for waterfront locations in which marine-related uses may be intermixed with buildings that provide residential on the upper floors. The MU-W2 Zoning District allows food service uses and the expanded dining area is a temporary use, authorized with a limited term permit.

3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the MU-W2 Zoning District of Mc Fadden Square in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU 2, below. Additional benefits include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

**Goal LU 2** *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

**Policy LU 2.4 Economic Development** *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Peninsula.
5. The site is not located within a specific plan area.

#### *Coastal Development Permit*

In accordance with Section 21.52.015 (F) (Coastal Development Permits, Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

#### Finding:

*F. Conforms to all applicable sections of the certified Local Coastal Program.*

#### Facts in Support of Finding:

1. The project site is not located adjacent to a coastal view road or coastal viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is on the end of the Newport Pier and not visible from the site due to distance and an intervening building that obstructs views. The proposed patio area is located within the existing on-site parking lot at the rear of the site. The outdoor dining patio improves the aesthetics of the site by providing a more active use than parking. The existing building would not be modified as



part of this limited term application. The expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Mc Fadden Square. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

2. The project is located adjacent to Mc Fadden Square which is accessible to the public and provides opportunities to view and access the beach as well as other amenities. As currently developed, the existing restaurant building and other business are located within the viewshed of the beach and shoreline. However, the outdoor patio is not visible from the beach due to its location behind the existing restaurant. Further, the project maintains an envelope consistent with the existing neighborhood pattern of development.
3. The Property is located in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements, Coastal Act Exemptions). The improvements constitute an increase of 10% or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area is considered a minor detached structure. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
4. Improvements are complementary to the area; the subject restaurant and adjacent neighbors have similar outdoor dining improvements within the walkways and parking areas of Mc Fadden Square.
5. The proposed outdoor dining area is located completely within private property.
6. Development authorized by this permit is not located in any environmentally sensitive habitat area (ESHA) and public access to the coast will not be blocked. Coastal access is increased by allowing providing an additional amenity to visitors. The proposed operation does not contain ESHA, wetlands, or sandy beach area.
7. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

Finding:

- G. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation

Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is a temporary outdoor patio that is located within the on-site parking lot. The project is designed and sited so as not to block or impede existing public access opportunities. The additional patio area would serve as an amenity to residents and visitors in the area.

2. Vertical access to the beach is available adjacent to the project within the Mc Fadden Place Plaza and Newport Pier. Lateral access is available to the beach to the west of the site. The public beach is also the start of a 6-foot-wide public sidewalk providing lateral access and views of the ocean. The project does not include any features that would obstruct access along these routes.
3. The existing 10-space parking lot is primarily used by employees of Baja Sharkeez. The reduction in parking of five spaces on a temporary basis would not create a substantial impediment to public access and parking opportunities in the coastal zone.

#### SECTION 4. DECISION.

#### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Limited Term Permit and Coastal Development Permit No. PA2023-0247 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning and Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 28<sup>TH</sup> DAY OF MARCH, 2024.**



Jaime Murillo  
Zoning Administrator

**EXHIBIT “A”****CONDITIONS OF APPROVAL**  
*(Project-specific conditions are in italics)***Planning Division**

1. The development shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective for up to a one-year term from January 1, 2024 to December 31, 2024. The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this Limited Term Permit on or before December 31, 2024. No extension of time shall be authorized under this Limited Term Permit and Coastal Development Permit.
3. *The expanded outdoor dining area shall not exceed 765 square feet in area.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 9 p.m., Monday through Thursday, and will close by 10:00 p.m., Friday through Sunday.*
5. *There shall be no use of amplified sound within the temporary outdoor dining area.*
6. *The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
8. *All owners, managers, and employees selling and serving alcohol shall comply with all ABC guidelines and regulations and shall further take all measures necessary to prevent over-service of alcohol and/or disorderly conduct from patrons. Increased calls for Police Department service to the establishment or complaints made to the City will cause a review of operations and may result in a revocation of this permit.*
9. The sale of alcohol “to go” to patrons that dine within the expanded outdoor patios shall be prohibited.
10. The establishment shall abide by all applicable Orange County Health Care Agency requirements.

11. The permittee shall provide adequate trash receptacles within the permitted patio and the operator shall provide for periodic and appropriate removal of trash, litter, debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
12. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
14. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.
15. This Limited Term Permit and Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
16. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
17. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this **Baja Sharkeez Limited Term Permit and Coastal Development Permit (PA2023-0247)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Building Division**

18. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
  - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
  - b. Access to restrooms shall be provided at all times.

- c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
  - d. At least one accessible seating area shall be provided.
  - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two.
19. All exiting paths shall be a minimum 48 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
  20. All tops of dining and work surfaces shall be 28 to 34 inches above the finish floor.
  21. A minimum of 5% of seating at tables and counters shall be accessible, with knee clearance of at least 27 inches high, 30 inches wide, and 19 inches deep.
  22. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
  23. Accessible routes, including under canopy(ies) and other overhead improvements shall maintain a minimum clear height of 80 inches.
  24. All electrical distribution lines shall be in good working order and shall be protected from pedestrian and vehicular traffic and shall accommodate accessibility.

### **Fire Department**

25. One 2-A: 10BC Fire Extinguisher shall be mounted in a conspicuous, readily accessible location.
26. Two exits shall be provided for any area with an occupant load exceeding 49.
27. Fire lane(s) shall be identified on the plan.
28. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
29. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
30. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a 3-foot clearance in all directions.
31. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
32. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.

33. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
- Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
  - Electric heaters must be UL listed for use within tents and/or canopies.
  - Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
  - All heating equipment installations shall be approved for the Fire Code official.
34. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (two or more walls) and/or canopies larger than 700 square feet (no walls or one wall):
- Post maximum occupant load.
  - Do not exceed posted occupant load inside the tent or canopy.
  - Visible and Mounted Fire Extinguishers with current service tags.
  - No Smoking Signs shall be installed.
  - Illuminated Exit Signs shall be installed.
  - Emergency Lighting shall be provided.
  - Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
  - All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
  - If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
  - LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
  - Tents and canopies shall have the State Fire Marshal tag indicating fire resistance.
  - Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

### **Public Works Department**

35. *The layout of the outdoor patio shall be consistent with the parking layout approved under PA2021-201.*
36. The Applicant shall install and maintain a substantial physical barrier (water-filled traffic barrier or K-rail between any area used and adjacent to any street, driveway, or parking area).

37. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
38. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
39. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
40. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided.



**COMMUNITY DEVELOPMENT DEPARTMENT**  
PLANNING DIVISION  
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915  
949-644-3200  
[www.newportbeachca.gov](http://www.newportbeachca.gov)

**COMMUNITY DEVELOPMENT DIRECTOR ACTION LETTER**

**Subject:** Birch Street Office Complex Parking Reduction (PA2023-0001)  
▪ Staff Approval

**Site Location:** 3620 Birch Street

**Applicant:** Government Solutions

**Legal Description:** Parcel 3 of Resub 867

On **March 29, 2024**, the Community Development Director approved a staff approval pursuant to Chapter 20.40.110(D) (Adjustments to Off-Street Parking Requirements - Reduction of Required Off-Street Parking by Director) of the Newport Beach Municipal Code (NBMC). In this case, the Director is authorizing a 11.35% reduction in required off-street parking for an existing office complex where a portion of business and professional office space will be converted into medical office space. The Director's decision is based on the following analysis of the evidence provided by the Applicant and is subject to all conditions of approval thereafter.

**LAND USE AND ZONING**

- **General Plan Land Use Plan Category:** CO-G (General Commercial Office)
- **Zoning District:** PC-11 (Newport Place, Industrial Site 3A)

**EXISTING CONDITIONS**

The project site is an existing office building, located north of State Highway 73, at the corner of Bristol and Birch Streets. The site is not within the coastal zone. A vicinity map showing the office complex is provided as Attachment No. CD 1.

The office building at 3620 Birch Street is part of a larger, three-building office complex approved pursuant to Use Permit No. UP3308 (Attachment No. CD 2). The other two buildings, 3600 and 3610 Birch Street, are located on separate individually owned parcels. All three buildings include two stories of office space above a single level of garage parking, and they share a surface parking lot that stretches across the three parcels. Access to the parking lot can be taken from either Bristol Street or Birch Street. Both the gross floor area and the net floor area for the three buildings are provided below in Table 1.



Table 1 – Existing Building Square Footage		
	Gross Floor Area	Net Floor Area
Building 1 – 3600 Birch	12,796	12,475
Building 2 – 3610 Birch	15,762	15,419
Building 3 – 3620 Birch ( <i>project site</i> )	12,381	12,060
TOTAL	40,939	39,954

Total available parking for the complex is provided below in Table 2.

Table 2 – Existing Office Complex Parking	
	Spaces Provided
Building 1 – 3600 Birch	11
Building 2 – 3610 Birch	18
Building 3 – 3620 Birch	10
Shared Lot	125
TOTAL	164

A site plan showing the existing buildings and parking layout is provided as Attachment No. CD 3.

### **PROPOSED PROJECT AND REQUESTED PARKING REDUCTION**

The project will convert 11,899 square feet of Building 3 from nonspecific business and professional office into medical office. The remaining 482 square feet of Building 3 will continue to operate as business and professional office space. The Applicant’s project description is included as Attachment No. CD 4.

The Newport Place (PC-11) Planned Community Development Plan lists various medical practices (e.g., dentists, doctors, oculists) as examples of professional office uses. However, Part II, Section II, Subsection D (Parking) of PC-11 requires more on-site parking be provided for medical related uses than what is otherwise required for other professional office uses. PC-11 requires five parking spaces be provided for each doctor, or one parking space for each 200 square feet of gross floor area, whichever is greater. All other business and professional offices require only one space for each 225 square feet of net floor area. At this time, there are no specific tenants proposed to occupy the newly converted medical office space. Applying the rate of one space per 200 square feet of gross floor area results in a parking requirement of 60 spaces. Alternatively, using the parking rate for number of doctors, up to 12 doctors could practice for the same 60 space parking requirement. Condition of Approvals No. 3 and 4 restrict the total square footage that can be used as medical office and the number of doctors.

Table 3 below provides a summary of the total number of parking spaces for the project and the difference from actual parking provided within the office complex.

Table 3 –Parking Requirement for Proposed Project versus Provided Parking	
	Spaces Required
Building 1 – 3600 Birch	55
Building 2 – 3610 Birch	68
Building 3 – 3620 Birch <i>11,899 sq. ft medical office</i> <i>482 sq. ft. professional office</i>	62
<b>Total Spaces Required</b>	<b>185</b>
<b>Total Spaces Provided</b>	<b>164</b>
<b>Difference</b>	<b>(21)</b>

To allow for this conversion, the applicant is requesting that the Director authorize an adjustment to the required parking by waiving 21 required parking spaces, or a 11.35% reduction. While the PC-11 Development Plan does not provide for a Director level adjustment to required parking, the PC-11 Development Plan does note that, except as otherwise stated, the requirements of the NBMC shall apply. Thus, the Applicant requests an adjustment pursuant to Chapter 20.40.110(D) of the NBMC.

The Applicant retained Pirzadeh & Associates, Inc. to prepare a parking assessment to support the request. The parking assessment, dated February 7, 2024, demonstrated that during peak parking demand, there is a surplus of 98 parking spaces. The surplus number of spaces can adequately accommodate the increased parking demand anticipated with converting 11,899 square feet into medical office. The parking assessment was reviewed and accepted by the City Traffic Engineer and is provided as Attachment No. CD 5.

**FINDINGS**

Pursuant to Section 20.40.110(D) (Adjustments to Off-Street Parking Requirements - Reduction of Required Off-Street Parking by Director) of the Newport Beach Municipal Code (NBMC), the Community Development Director may authorize a reduction of off-street parking by a maximum of 20% based on the following:

Finding:

- A. *The applicant has provided sufficient data, including a parking study if required by the Director, to indicate that parking demand will be less than the required number of spaces or that other parking is available.*

Facts in Support of Finding:

1. Based on the PC-11 parking requirement of one space per 225 square feet of net floor area for business and professional office and one space per 200 square feet of gross floor area for medical office, the project is required to provide 185 onsite parking spaces. As the office complex only provides 164 spaces, the project is deficient 21 parking spaces.
2. A parking assessment dated February 7, 2024, was prepared by Pirzadeh & Associates, Inc. (Pirzadeh) with guidance from the City's Traffic Engineer. To determine the existing parking demand for the office complex, Pirzadeh conducted two consecutive weekday surveys. The survey found that the peak parking demand occurred at 11 a.m. on Wednesday, with a total of 69 parking spaces occupied, resulting in a worst-case surplus of 98 parking spaces. The property manager reported to Pirzadeh that all tenant spaces within the office complex were leased during the observational counts. Therefore, there is no additional parking demand to estimate or add to the observational surveys.
3. The conversion of 11,899 gross square feet of business and professional office to medical office would increase the number of required parking spaces by 13. Adding 13 spaces to the observed parking demand of 69 spaces results in a total parking demand of 82 spaces. A total parking demand of 82 spaces leaves a surplus of 82 parking spaces. There is adequate onsite parking to accommodate the conversion with surplus parking left over.
4. The parking assessment was reviewed and accepted by the City's Traffic Engineer and demonstrates that the office complex has an adequate number of parking spaces to accommodate the project.
5. The project will generate 299 net daily trips. This is below the 300 average daily trip threshold provided in NBMC Chapter 15.40 (Traffic Phasing Ordinance) and no traffic study is required.

**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan attached hereto as Attachment No. CD 3 and stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Staff Approval shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Permit Implementation, Time Limits, and Extensions – Time Limits and Extensions) of the NBMC unless an extension is otherwise granted.

3. *A maximum of 11,899 gross square feet of Building 3 may be converted to medical office. The remaining 482 gross square feet of Building 3 cannot be used for medical office, cannot be associated with an on-site medical office, and cannot support an on-site medical office. The remaining 482 gross square feet of Building 3 shall be used as business and/or professional office, separate from any on-site medical offices.*
4. *A maximum of 12 doctors may use the 11,899 gross square feet of medical office space.*
5. *The Community Development Director and/or the City Traffic Engineer may add to, modify, or revoke this Staff Approval upon determination that the operations which are the subject of this staff approval cause injury or are detrimental to the public health, safety, peace, or general welfare of the community or if the property is operated or maintained in a way as to constitute a public nuisance.*
6. *A minimum of 164 parking spaces shall be maintained. Any change to the number of available parking spaces shall be subject to review by the Planning Division. Changes to the number of available parking spaces may require an amendment to this Staff Approval and/or the potential processing of a Conditional Use Permit to further adjust the required off-street parking.*
7. *The Applicant is required to obtain all applicable permits from the City Building Division and Fire Department. A copy of these conditions of approval shall be incorporated into the drawings approved for the issuance of permits.*
8. *Prior to the issuance of a building permit, Fair Share Traffic Fees shall be paid for the change of use, in accordance with the fee schedule in effect at the time of permit issuance.*
9. *To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Birch Street Office Complex Parking Reduction including, but not limited to, a Staff Approval (PA2023-0001)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.*

**Building Division**

10. The change of use from business and professional office to medical office may require a building permit for a tenant improvement. Improvements shall meet the requirements of Building Code Section 11B-202.2 and 11B202.4. This includes an elevator or ramp for accessible path of travel, as well as any other required improvements identified during the plan check process.

**Public Works Department**

11. Prior to the issuance of a building permit, project plans shall demonstrate that the parking layout complies with City Parking Lot standard STD 805. Dead-end drive aisle in public areas shall provide a dedicated turnaround space and minimum 5-foot drive aisle extension.
12. All improvements shall comply with the City's sight distance requirement per City Standard STD 105 including project driveway approaches. Planting within the limited use area shall be limited to 24-inches in height maximum. Structures within the limited use area shall be limited to 30-inches in height maximum.
13. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:

Approved by:

  
\_\_\_\_\_  
Joseph Perez  
Associate Planner

  
\_\_\_\_\_  
Assistant City Manager

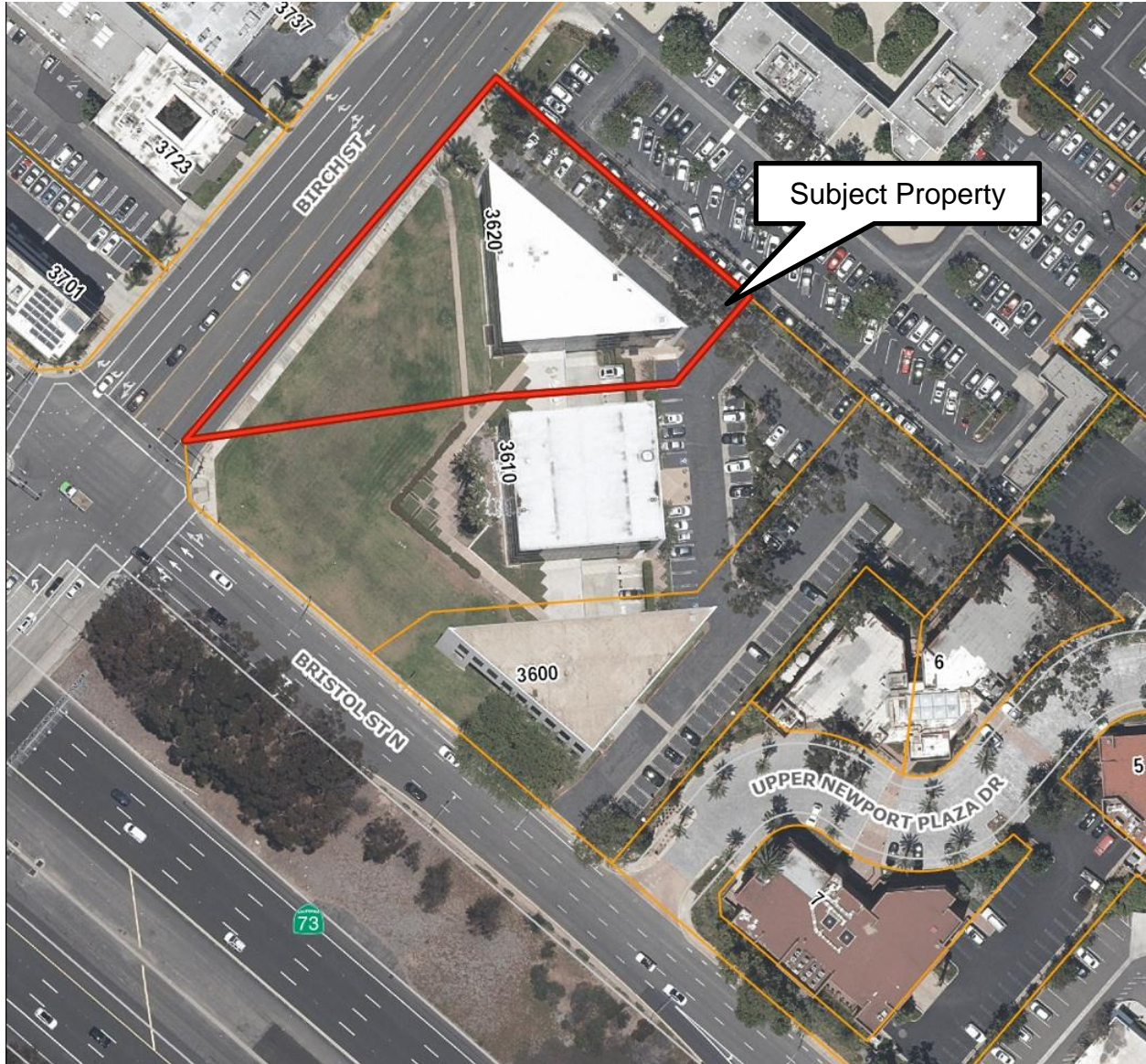
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- Attachments: CD 1 Vicinity Map  
CD 2 Use Permit No. UP3308  
CD 3 Site Plan  
CD 4 Applicant's Project Description  
CD 5 Parking Assessment prepared by Pirzadeh & Associates

# **Attachment No. CD 1**

Vicinity Map

# VICINITY MAP



Staff Approval  
3620 Birch Street  
PA2023-0001

# **Attachment No. CD 2**

Use Permit No. UP3308



USE PERMIT APPLICATION  
CITY OF NEWPORT BEACH

No. 3308  
Application Rec'd by DeTolosa  
Fee: \$ 826.00  
Date: January 8, 1988

PLANNING DEPARTMENT  
3300 Newport Boulevard  
P. O. Box 1768  
Newport Beach, CA 92658-8915  
(714) 644-3200

See UP 3308 (Amended)

Applicant (Print) STROCK ARCHITECTS, INC. (Jim Bickle) Phone (714) 756-1467  
Mailing Address 3300 Irvine Avenue, Suite 130, Newport Beach, California 92660  
Property Owner THE WATTSON COMPANY Phone (714) 759-1583  
Mailing Address 840 Newport Center Drive, Suite 655, Newport Beach, California 92660  
Address of Property Involved 3600, 3610 and 3620 Birch Street, Newport Beach, Ca, 92660

Purpose of Application (describe fully) To secure permission for the construction and subsequent occupancy of 3, 2 story office buildings to a height in excess of the current applicable limit.

Zone Industrial Present Use Vacant Site - No use

Planned Community - Newport Place  
Legal Description of Property Involved (if too long, attach separate sheet)  
In the City of Newport Beach, County of Orange, State of California, being a subdivision of parcel 1, as shown on a map filed in book 57, Page 2 and Parcels 1 and 2 as shown on a map filed in book 86, Pages 33 and 34 both of Parcel maps in the office.

OWNER'S AFFIDAVIT

(I) (We) Donald A. Wattson (THE WATTSON COMPANY) depose and say that (I am) (we are) the owner(s) of the property(ies) involved in this application. (I) (We) further certify, under penalty of perjury, that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of (my) (our) knowledge and belief.

Signature(s) [Handwritten Signature]

NOTE: An agent may sign for the owner if written authorization from the record owner is filed with the application.

DO NOT COMPLETE APPLICATION BELOW THIS LINE

Date Filed 1/8 Fee Pd. 826.00 Receipt No. 3075  
Hearing Date 2/4  
Posting Date 1/22 Mail Date 1/22  
P. C. Action Approved Date 2-4-88  
Appeal \_\_\_\_\_ C. C. Hearing \_\_\_\_\_  
C. C. Action Approved Date 3-14-88



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH AMENDING THE NEWPORT PLACE PLANNED COMMUNITY DEVELOPMENT STANDARDS SO AS TO ALLOW STRUCTURES LOCATED WITHIN A PORTION OF INDUSTRIAL SITE 3A TO BE CONSTRUCTED IN EXCESS OF THE 35 FOOT HEIGHT LIMIT UP TO A MAXIMUM OF 50 FEET, SUBJECT TO THE APPROVAL OF A USE PERMIT; AND THE ACCEPTANCE OF AN ENVIRONMENTAL DOCUMENT.

(Planning Commission Amendment No. 658)

WHEREAS, Section 20.51.045 of the Newport Beach Municipal Code provides that final amendments to a Planned Community Development Plan must be approved by a Resolution of the City Council, setting forth full particulars of the amendment; and

WHEREAS, the Planning Commission conducted a public hearing on February 4, 1988, at which time this amendment to the Planned Community Development Standards for Newport Place was discussed; and

WHEREAS, at said public hearing the Planning Commission adopted a Resolution recommending to the City Council the approval of this amendment to the Newport Place Planned Community Development Standards, as set forth in the minutes of the Planning Commission meeting of February 4, 1988; and

WHEREAS, the City Council finds and determines that said amendment to the Planned Community Development Standards for the Newport Place Planned Community, as set forth in the Planning Commission minutes of the February 4, 1988 meeting is desirable; and

WHEREAS, the City of Newport Beach has conducted a public hearing on the proposed amendment in accordance with all provisions of the law;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newport Beach hereby approves the proposed amendment to the Planned Community Development Plan for the Newport Place Planned Community Development Standards, as reflected in the minutes of the Planning Commission meeting of February 4, 1988.

ADOPTED this 14th day of March, 1988.

  
MAYOR

ATTEST:

  
City Clerk



WRL/kk

CC22

# CITY OF NEWPORT BEACH

**COUNCIL MEMBERS**

REGULAR COUNCIL MEETING  
 PLACE: Council Chambers  
 TIME: 7:30 P.M.  
 DATE: March 14, 1988

MEMBERS MINUTES

TURNER  
 PLUMMER  
 HART  
 COX  
 STRAUSS  
 SANSONE  
 MAURER

**ROLL CALL**

**INDEX**

	TURNER	PLUMMER	HART	COX	STRAUSS	SANSONE	MAURER		
Present	x	x	x	x	x	x	x	<p>Certificate honoring Hugh Barker for his outstanding work with the disabled veterans as an Employment Representative for the State of California regarding the OutReach Program for 1987, was presented by Mr. Charles Gray.</p> <p>A. ROLL CALL.</p> <p>B. Reading of Minutes of Meeting of February 22, 1988, was waived, approved as written, and ordered filed.</p> <p>C. Reading in full of all ordinances and resolutions under consideration was waived, and City Clerk was directed to read by titles only.</p>	
Motion All Ayes				x				<p>D. HEARINGS:</p> <p>1. Mayor Cox opened the public hearing regarding:</p> <p style="padding-left: 20px;"><u>PLANNING COMMISSION AMENDMENT NO 658 - Request of STROCK ARCHITECTS, INC., Newport Beach, to amend the Newport Place Planned Community Development Standards so as to establish provisions which would allow structures located within a portion of INDUSTRIAL SITE 3A to be constructed in excess of the 35 foot height limit up to a maximum of 50 feet, subject to the approval of a use permit. The proposal also includes the acceptance of an Environmental Document. Property located at 3600, 3610 Birch Street;</u></p> <p style="text-align: center;">AND</p> <p style="padding-left: 20px;">Public hearing and City Council review of <u>USE PERMIT NO. 3308</u>, a request of <u>STROCK ARCHITECTS, INC., Newport Beach, to permit the construction of three office buildings on property located in INDUSTRIAL SITE 3A of NEWPORT PLACE PLANNED COMMUNITY</u> which exceeds the 35 foot basic height limit. The proposal also includes a modification to the Zoning Code so as to allow the use of compact parking spaces for a portion of the required off-street parking.</p> <p style="padding-left: 20px;">Report from the Planning Department, was presented.</p> <p style="padding-left: 20px;">The City Manager commented that Mr. Strock was in the audience to introduce the subject project and illustrate with colored maps. The City Manager stated that the present PC text on the Birch/Bristol intersection permits a maximum height of 35 feet, and there are two things that the Council will act on</p>	<p>PCA 658 (94)</p> <p>U/P 3308 (88)</p>
Motion All Ayes				x					

CITY OF NEWPORT BEACH

COUNCIL MEMBERS

GREEN MINUTES

TURNER  
PLUMMER  
HART  
COX  
STRAUSS  
SANDONE  
MAURER

March 14, 1988

HILLIAM  
BROOKING  
QUARTZ  
COX  
HART  
SANDONE  
MAURER

ROLL CALL

INDEX

tonight; one is a zone change (amendment) to permit a structure of between 35 and 50 feet, subject to approval of a use permit; and two is the actual use permit to exceed the 35 feet on the three structures, varying from approximately 38 feet to 40 feet in height, which does not increase the density or square footage permitted, under the current PC text and the City's General Plan. He added that the subject development was unanimously approved at the February 4, 1988 Planning Commission meeting.

PCA 658/  
U/P 3308

Arthur V. Strock, Strock Architects, 3300 Irvine Avenue, addressed the Council and stated that he wanted to inform the Council the plans that were approved by the Planning Commission have since been changed slightly, which does not increase the allowable square footage on the site, but asks that they be permitted to build structures higher than are permitted by the PC text on Industrial Site #3. The reason for the increase in height, is to allow a portion of parking on the site to be placed under the buildings, and to allow a disproportionate amount of landscaping to be created on site.

In answer to Council inquiry, Mr. Strock stated that the plan is different from the plan submitted to the Planning Commission in that the specific architecture of the buildings has changed and has caused a slightly different relationship of two of the buildings with regard to the front yard setbacks, adding that they do not encroach, but they are in a different location. With the use of illustrations, he pointed out the differences between the two plans stating that Building #1 and Building #3, at their closest points, are 35 feet from the property line, and the legal required setback is 30 feet. The plan being presented to the Council tonight shows the same number of buildings, size, and location on site, the difference being that the buildings are now 30 feet from the property line, rather than 35 feet, which setback was specifically mentioned in the plan to the Planning Commission, but the overall net effect is the same, as well as the environmental quality that was presented to the Planning Commission.

# CITY OF NEWPORT BEACH

COUNCIL MEMBERS

MINUTES

TURNER  
PLUMMER  
HART  
COX  
STRAUS  
SANSONE  
MAURER

March 14, 1988

ROLL CALL

INDEX

PCA 658/  
U/P 3308

In answer to questions from the Planning Director as to the construction material to be used on the buildings, Mr. Strock stated high performance glass, that reflects heat but is not mirrored, and stone would be used, but the shape of the buildings (triangular and square) have been simplified for economic reasons.

Council Member Sansone inquired as to why a significant change such as that which is being presented now, has not gone before the Planning Commission.

The Planning Director explained that he was informed of the proposed changes on Friday, March 11, 1988, and advised Mr. Strock that the City Council could still go ahead and approve the amendment to the Development Standards, which would allow proposed buildings to go higher on the basis of use permit approval. He was further advised that he could make his presentation to the Council, wherein the Council could either approve the revised site plan, or refer the use permit back to the Planning Commission.

With regard to the inquiry of the increased height from 40 to 50 feet, the Planning Director stated that in the existing Zoning Code, the City is divided into Height Limitation Districts. In order to go to the higher height limit, the developer or architect is required to demonstrate to the City the findings that are required, and must apply for, and have an approved use permit. He added that the developer, in any case, is limited to the height of the building as shown on the plans approved by the Planning Commission, and the City Council, and they are further limited by the amount of square footage that the PC allows. Specifically, the subject development has buildings which vary from 38.45 feet up to 45 feet. In order to go to 50 feet, they would have to go back to the Planning Commission, or the Council.

Hearing no one else wishing to address the Council, the public hearing was closed.

CITY OF NEWPORT BEACH

March 14, 1988

COUNCIL MEMBERS

MINUTES

TURNER  
FLUMMER  
HART  
COX  
STRAUSS  
SANSONE  
MAJNER

ROLL CALL

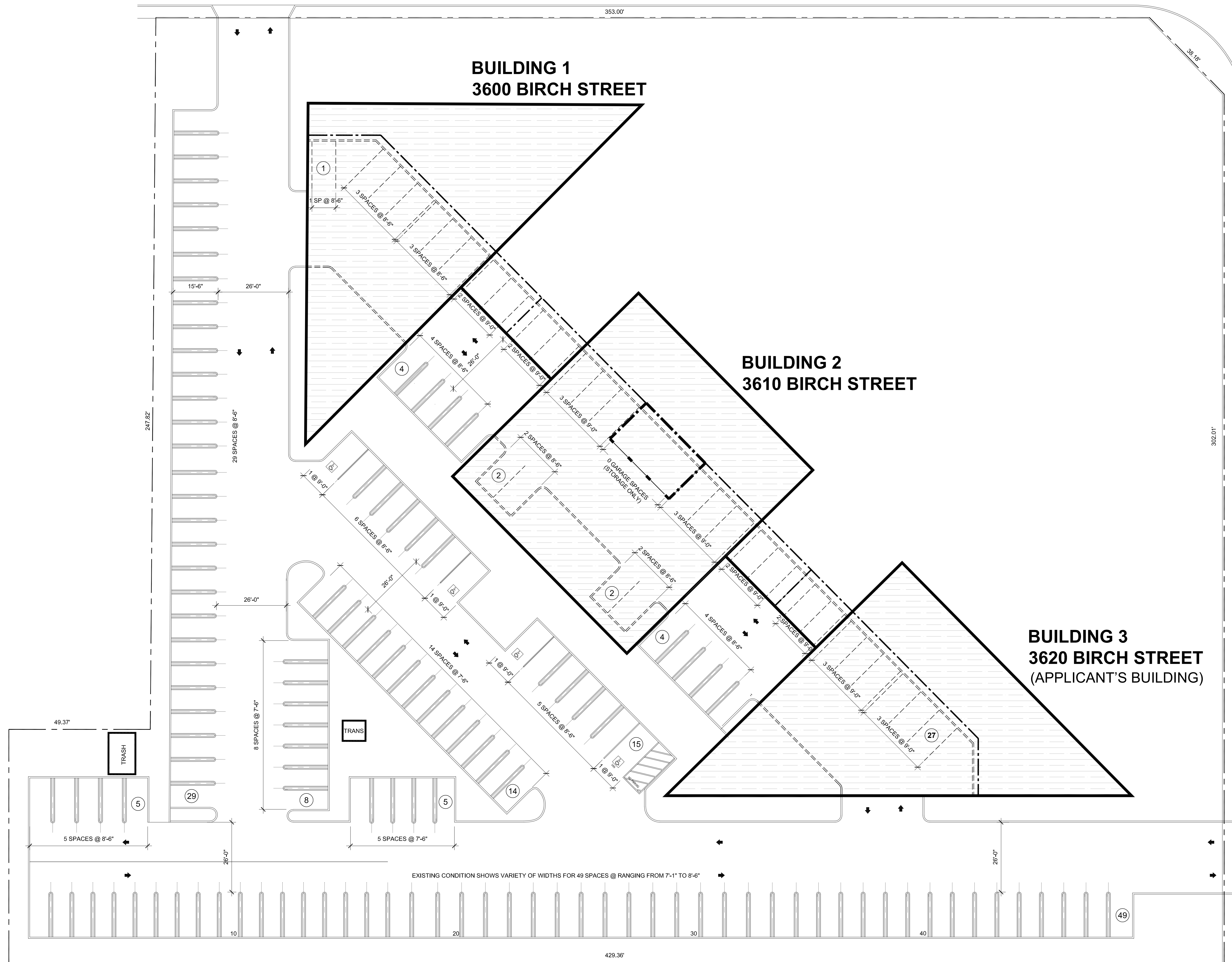
INDEX

	TURNER	FLUMMER	HART	COX	STRAUSS	SANSONE	MAJNER		
Motion	x							Motion was made to adopt Resolution No. 88-17, amending the Newport Place Planned Community Development Standards to allow structures located within a portion of Industrial Site 3A to be constructed in excess of the 35 ft. height limit up to a maximum of 50 ft., subject to the approval of a use permit; accept the Environmental Document; and sustain the action of the Planning Commission and approve Use Permit No. 3308.	Res 88-17
Ayes	x	x	x	x			x		
Noes									
Abstained						x			
								2. Mayor Cox opened the public hearing regarding proposed ORDINANCE NO. 88-6, being,  AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ADDING CHAPTER 20.77 OF THE NEWPORT BEACH MUNICIPAL CODE REGARDING AMATEUR RADIO ANTENNAS [PLANNING COMMISSION AMENDMENT NO. 627),  was presented for second reading with report from the Planning Department.  Letters received after the February 22, 1988 agenda was printed, in opposition to proposed ordinance from Anita Meister Boyd and Seaview Community Association, were presented.  Letter from student Jeremy Sparks, ham-radio operator, with suggestion regarding interference on TV's received from subject antennas, etc., was presented.  Letter from E. P. Garrison opposing adoption of proposed Ordinance No. 88-6, citing declining property values and interference with comfortable enjoyment of his property, was presented.  Letter from Raymond E. Berg in favor of proposed ordinance, was presented.  Letter from James B. (Jay) Stoddard of Amateur Radio Station KA6KIL, expressing his opinion regarding sanctioning the proposed antenna installation ordinance in the event of a disaster, was presented.  The City Clerk advised the Council that after the agenda was printed, a letter was received from Warren H. Clark (W6COK) in support of the subject ordinance.	Ord 88-6 Zoning/Radio Antennas (94)  PCA 627

# **Attachment No. CD 3**

Site Plan

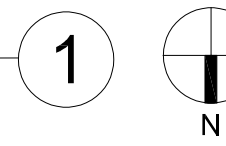
BRISTOL STREET



**PARKING**

ADA PARKING SPACES	4
REGULAR PARKING SPACES	160
TOTAL PARKING SPACES	164

SITE PLAN  
SCALE: 1/16"=1'-0"



PROJECT  
3620 BIRCH STREET  
PA2023-0001

NO.	ISSUE OR REVISION	DATE
1	SITE PLAN	09-22-2023
2	SITE PLAN	01-23-2024

PLANNING CASE NO.: PA2023-0001  
PLAN CHECK NO.:  
SCALE: SEE SHEET  
DATE:  
SHEET TITLE:  
**SITE PLAN**

SHEET NO.

**A-1**



# **Attachment No. CD 4**

Applicant's Project Description



March 26, 2024

**CITY OF NEWPORT BEACH  
ATTN: JOSELYN PEREZ, ASSOCIATE PLANNER  
COMMUNITY DEVELOPMENT DEPARTMENT  
100 CIVIC CENTER DRIVE  
NEWPORT BEACH, CA 92660**

**RE: 3620 BIRCH STREET  
PARKING WAIVER – FOR CONVERSION TO MEDICAL OFFICE**

Dear Ms. Perez,

Please let this letter serve as the project justification for a parking waiver to convert 11,899-SF of the 3620 Birch Street building to Medical Office use.

While our original application was for a Conditional Use Permit, through your guidance we have come to understand that because this parking waiver request is under 20% of the required parking, we could update our application accordingly to seek an administrative approval.

The project site is an existing 1980's office building, located within an office park shared by two other buildings, 3600 (Building 1) & 3610 (Building 2) Birch Street. Each building is two floors, which sit over assigned parking (39 assigned parking spaces). The remainder of the surface parking lot consists of shared parking (125 shared parking spaces).

The 3620 Birch Street building (Building 3) is 12,381-SF of Gross Floor Area. To prevent triggering a TPO study, we have opted to convert 11,899-SF which is slightly less than the total building square footage. The required parking spaces to convert that portion of the building to medical office (1 parking space per 200-SF of Gross Floor Area) would be 60 parking spaces. The residual 482-SF of the building is to remain Professional Office (1 parking space per 225-SF of Net Public Area) which would require 2 parking spaces. In total, the proposed medical office conversion requires 62 parking spaces for the building.

Building 1 (12,475-SF of NPA) and Building 2 (15,419-SF of NPA) are to remain Professional Office, which means that the required parking for these two buildings (1 parking space per 225-SF of Net Public Area) totals 123 parking spaces. The total required spaces for the entire business park is 185 parking spaces. With the existing parking on-site at 164 parking spaces the delta is 21 parking spaces. As such, we request the waiver of 21 required parking spaces, or 11.35% of the required parking spaces. Because this parking waiver is below 20% of the required parking spaces, it meets the requirement for administrative approval.

To support our requested parking waiver, we have conducted a Parking Utilization Study which concludes the available parking on-site exceeds the observed demands and is adequate for the required parking of the proposed Medical Office conversion.

We would like to address the staff's concern regarding ADA parking for the proposed medical office use. It should be noted that there are 4 existing ADA parking spaces. The Parking Utilization Study indicated there is adequate ADA parking as the peak usage observed in the study was 2 ADA parking spaces. Additionally, Eric Sharin, Senior Civil Engineer of your staff confirmed no additional ADA parking is required for medical office unless the building is providing outpatient clinical services for a hospital, Rehabilitation Services, or Physical Therapy facilities, none of which are proposed.

Finally, the parking zone map and conclusion have been updated within the Parking Utilization Study. We have also attached tables of the figures used in our justification, and corrected the Site Plan with a label, the correct parking space total within the assigned parking area under the buildings, as well as a table which breaks down ADA and regular parking space totals.

Thank you for your consideration of this proposal.

Sincerely,



Katie Newman  
Senior Associate  
Government Solutions, Inc.

**CC: DR. JOSEPH CERNI, BIRCH CORRIDORE LLC (OWNER)**

**BUILDING SQUARE FOOTAGE**

	Gross Floor Area (GFA)	Net Public Area (NPA)
Bldg 1 – 3600 Birch	12,796-SF	12,475-SF
Bldg 2 – 3610 Birch	15,762-SF	15,419-SF
Bldg 3 – 3620 Birch	12,381-SF	12,060-SF
<b>TOTAL</b>	<b>40,939-SF</b>	<b>39,954-SF</b>

**ASSIGNED BUILDING PARKING SPACES**

Bldg 1 – 3600 Birch	Bldg 2 – 3610 Birch	Bldg 3 – 3620 Birch
11 Parking Spaces	18 Parking Spaces	10 Parking Spaces
Shared Parking Spaces: 125 Parking Spaces		

**EXISTING VS REQUIRED PARKING SPACES**

	Existing	Required
Bldg 1 – 3600 Birch	N/A	55 Parking Spaces All Prof. Office
Bldg 2 – 3610 Birch	N/A	68 Parking Spaces All Prof. Office
Bldg 3 – 3620 Birch	N/A	62 Parking Spaces 11,899-SF Med. Office 482-SF Prof. Office
<b>TOTAL</b>	<b>164 Parking Spaces</b>	<b>185 Parking Spaces</b>
Professional Office Required Parking Ratio: 1 Space Per 225-SF of Net Public Area Medical Office Required Parking Ratio: 1 Space for 200-SF of Gross Floor Area		

# **Attachment No. CD 5**

Parking Assessment prepared by Pirzadeh & Associates

February 7, 2024

Dr. Joseph Cerni  
Birch Corridor, Inc.  
3620 Birch Street  
Newport Beach, California 92660

**Subject:** Parking Assessment Birch & Bristol Office Building  
3620 Birch Street, Newport Beach, CA

Dear Dr. Cerni:

Pursuant to your request, we are pleased to submit this parking assessment for the Birch & Bristol Office site. Specifically, this technical letter provides the results of a parking utilization survey conducted at the site to determine the potential availability of parking for conversion of 11,899 square feet of space at 3620 Birch (Building 3) from General Office to Medical Office Use.

### **Project Description**

The project, 3620 Birch, is an existing office building located at the southeast corner of the intersection of Bristol Street North and Birch, in the City of Newport Beach, California. The building is a two-story podium over at grade parking. This building is located on a site occupied by two other similar two-story podium buildings with underground parking. Additionally, the site includes a surface parking lot which is shared by all three buildings (see Exhibit A).

There are a total of 164 parking spaces on-site, with 39 reserved spaces located under the building and assigned to the tenants of respective buildings. The remaining 125 spaces are located in the open surface area of the lot. As shown in the table below, the total building square footage is 40,939 gross feet with 39,954 square feet of Net Public Area. Therefore, the site is parked at over 4 spaces per 1,000 square feet of Net Public Area of office uses.

### **Site Building Area**

Building	Use	Gross Floor Area	Net Public Area
Bldg. 1 - 3600 Birch	Office	12,796 SF	12,475 SF
Bldg. 2 - 3610 Birch	Office	15,762 SF	15,419 SF
Bldg. 3 - 3620 Birch	Office	12,381 SF	12,060 SF
<b>TOTAL</b>		<b>40,939 SF</b>	<b>39,954 SF</b>

Dr. Joseph Cerni  
Page 2  
February 07, 2024

### **Parking Utilization Survey**

A two-day parking utilization survey was conducted on Wednesday, June 7<sup>th</sup>, 2023, and Thursday, June 8<sup>th</sup>, 2023. Both surveys were conducted on 30-minute intervals from 7:00 AM to 6:00 PM. Based on information provided by the site management company, all offices are currently fully occupied. The survey was conducted to identify the utilization of parking spaces in different zones as shown on Exhibit A. The highest use of parking was in Zone 1 at 69 percent (27 spaces), which are reserved spaces and typically used by the building tenants (see Exhibit B, Count Sheet).

As shown in the attached Exhibit C, the highest number of utilized parking spaces during the survey periods was 69 spaces on Wednesday, June 7<sup>th</sup>. The most recurrent number of utilized spaces was 61 on the same day. Therefore, based on the highest number of utilized spaces, the total site has a parking utilization of 1.73 spaces per 1,000 square feet of office use.

### **Medical Office Use**

Medical office use requires one parking space per 200 square feet of gross floor area. This parking ratio would result in a requirement of 60 spaces for the 11,899 square feet of medical use. The remaining portion of the building would require 2 spaces for the general office. This would result in a total parking requirement of 62 spaces for 3620 Birch Street compared to 49 spaces for the general office. The difference in parking requirements is 13 spaces. Adding this additional requirement to the highest observed parking utilization at the site, the total demand would increase to 82 spaces (69 spaces observed on Wednesday, June 7, 2023, plus 13 spaces would be 82 spaces). This would increase the site parking utilization to 2.05 spaces per 1,000 square feet, which is still far below 4 spaces per 1000 square feet as provided on site. Therefore, it is reasonable to conclude that adequate parking would be available for the conversion of 11,899 square feet of building 3 from General Office to Medical Office use.

Sincerely,



Peter K. Pirzadeh, P.E.  
Principal

Attachments





Newport Beach  
 Birch & Bristol Office Buildings  
 3600, 3610, 3620 Birch St, Newport Beach, CA 92660

Wednesday, June 7th, 2023

Zone 1	Inventory	7:00 AM	7:30 AM	8:00 AM	8:30 AM	9:00 AM	9:30 AM	10:00 AM	10:30 AM	11:00 AM	11:30 AM	12:00 PM	12:30 PM	1:00 PM	1:30 PM	2:00 PM	2:30 PM	3:00 PM	3:30 PM	4:00 PM	4:30 PM	5:00 PM	5:30 PM	6:00 PM	
	Regular	39	6	9	12	16	21	25	27	27	27	26	25	23	24	27	26	26	23	22	18	17	12	7	5
	Subtotal	39	6	9	12	16	21	25	27	27	27	26	25	23	24	27	26	26	23	22	18	17	12	7	5
Total Occupancy	39	6	9	12	16	21	25	27	27	27	26	25	23	24	27	26	26	23	22	18	17	12	7	5	
Total Percent		15%	23%	31%	41%	54%	64%	69%	69%	69%	67%	64%	59%	62%	69%	67%	67%	59%	56%	46%	44%	31%	18%	13%	

Zone 2	Inventory	7:00 AM	7:30 AM	8:00 AM	8:30 AM	9:00 AM	9:30 AM	10:00 AM	10:30 AM	11:00 AM	11:30 AM	12:00 PM	12:30 PM	1:00 PM	1:30 PM	2:00 PM	2:30 PM	3:00 PM	3:30 PM	4:00 PM	4:30 PM	5:00 PM	5:30 PM	6:00 PM	
	Regular	38	8	5	2	5	16	20	18	16	18	17	16	13	15	14	17	17	17	16	20	16	14	14	10
	Handicap	4	1	1	1	1	1	1	1	2	2	1	1	1	1	1	1	0	0	0	0	0	0	0	0
Subtotal	42	9	6	3	6	17	21	19	18	20	18	17	14	16	15	18	17	17	16	20	16	14	14	10	
Total Occupancy	42	9	6	3	6	17	21	19	18	20	18	17	14	16	15	18	17	17	16	20	16	14	14	10	
Total Percent		21%	14%	7%	14%	40%	50%	45%	43%	48%	43%	40%	33%	38%	36%	36%	43%	40%	38%	48%	38%	33%	33%	24%	

Zone 3	Inventory	7:00 AM	7:30 AM	8:00 AM	8:30 AM	9:00 AM	9:30 AM	10:00 AM	10:30 AM	11:00 AM	11:30 AM	12:00 PM	12:30 PM	1:00 PM	1:30 PM	2:00 PM	2:30 PM	3:00 PM	3:30 PM	4:00 PM	4:30 PM	5:00 PM	5:30 PM	6:00 PM	
	Regular	54	0	0	1	1	5	9	10	15	18	17	20	19	15	17	15	16	17	13	11	12	8	7	7
	Subtotal	54	0	0	1	1	5	9	10	15	18	17	20	19	15	17	15	16	17	13	11	12	8	7	7
Total Occupancy	54	0	0	1	1	5	9	10	15	18	17	20	19	15	17	15	16	17	13	11	12	8	7	7	
Total Percent		0%	0%	2%	2%	9%	17%	19%	28%	33%	31%	37%	35%	28%	31%	28%	30%	31%	24%	20%	22%	15%	13%	13%	

Zone 4	Inventory	7:00 AM	7:30 AM	8:00 AM	8:30 AM	9:00 AM	9:30 AM	10:00 AM	10:30 AM	11:00 AM	11:30 AM	12:00 PM	12:30 PM	1:00 PM	1:30 PM	2:00 PM	2:30 PM	3:00 PM	3:30 PM	4:00 PM	4:30 PM	5:00 PM	5:30 PM	6:00 PM	
	Regular	29	1	2	4	4	4	6	6	5	4	4	4	5	5	4	4	4	2	0	0	0	0	0	0
	Subtotal	29	1	2	4	4	4	6	6	5	4	4	4	5	5	4	4	4	2	0	0	0	0	0	0
Total Occupancy	29	1	2	4	4	4	6	6	5	4	4	4	5	5	4	4	4	2	0	0	0	0	0	0	
Total Percent		3%	7%	14%	14%	14%	21%	21%	17%	14%	14%	14%	17%	17%	14%	14%	14%	7%	0%	0%	0%	0%	0%	0%	

Newport Beach  
 Birch & Bristol Office Buildings  
 3600, 3610, 3620 Birch St, Newport Beach, CA 92660

Thursday, June 8th, 2023

Zone 1	Inventory	7:00 AM	7:30 AM	8:00 AM	8:30 AM	9:00 AM	9:30 AM	10:00 AM	10:30 AM	11:00 AM	11:30 AM	12:00 PM	12:30 PM	1:00 PM	1:30 PM	2:00 PM	2:30 PM	3:00 PM	3:30 PM	4:00 PM	4:30 PM	5:00 PM	5:30 PM	6:00 PM	
	Regular	39	8	8	13	17	18	21	23	23	24	24	24	23	23	25	23	21	19	16	16	16	12	10	8
	Subtotal	39	8	8	13	17	18	21	23	23	24	24	24	23	23	25	23	21	19	16	16	16	12	10	8
Total Occupancy	39	8	8	13	17	18	21	23	23	24	24	24	23	23	25	23	21	19	16	16	16	12	10	8	
Total Percent		21%	21%	33%	44%	46%	54%	59%	59%	62%	62%	62%	59%	59%	64%	59%	54%	49%	41%	41%	41%	31%	26%	21%	

Zone 2	Inventory	7:00 AM	7:30 AM	8:00 AM	8:30 AM	9:00 AM	9:30 AM	10:00 AM	10:30 AM	11:00 AM	11:30 AM	12:00 PM	12:30 PM	1:00 PM	1:30 PM	2:00 PM	2:30 PM	3:00 PM	3:30 PM	4:00 PM	4:30 PM	5:00 PM	5:30 PM	6:00 PM	
	Regular	38	7	6	7	11	12	12	11	12	9	9	9	10	10	8	10	11	1	8	9	6	5	6	7
	Handicap	4	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0	0	0	0	0	0	0
Subtotal	42	8	7	8	12	13	13	12	13	10	10	10	11	11	9	11	12	2	8	9	6	5	6	7	
Total Occupancy	42	8	7	8	12	13	13	12	13	10	10	10	11	11	9	11	12	2	8	9	6	5	6	7	
Total Percent		19%	17%	19%	29%	31%	31%	29%	31%	24%	24%	24%	26%	26%	21%	26%	29%	5%	19%	21%	14%	12%	14%	17%	

Zone 3	Inventory	7:00 AM	7:30 AM	8:00 AM	8:30 AM	9:00 AM	9:30 AM	10:00 AM	10:30 AM	11:00 AM	11:30 AM	12:00 PM	12:30 PM	1:00 PM	1:30 PM	2:00 PM	2:30 PM	3:00 PM	3:30 PM	4:00 PM	4:30 PM	5:00 PM	5:30 PM	6:00 PM	
	Regular	54	0	0	0	3	5	9	9	10	6	6	6	5	4	4	5	5	5	5	5	5	4	5	6
	Subtotal	54	0	0	0	3	5	9	9	10	6	6	6	5	4	4	5	5	5	5	5	5	4	5	6
Total Occupancy	54	0	0	0	3	5	9	9	10	6	6	6	5	4	4	5	5	5	5	5	5	4	5	6	
Total Percent		0%	0%	0%	6%	9%	17%	17%	19%	11%	11%	11%	9%	7%	7%	9%	9%	9%	9%	9%	9%	7%	9%	11%	

Zone 4	Inventory	7:00 AM	7:30 AM	8:00 AM	8:30 AM	9:00 AM	9:30 AM	10:00 AM	10:30 AM	11:00 AM	11:30 AM	12:00 PM	12:30 PM	1:00 PM	1:30 PM	2:00 PM	2:30 PM	3:00 PM	3:30 PM	4:00 PM	4:30 PM	5:00 PM	5:30 PM	6:00 PM	
	Regular	29	1	1	2	4	4	6	6	5	4	4	4	5	5	4	4	4	2	2	2	2	1	1	0
	Subtotal	29	1	1	2	4	4	6	6	5	4	4	4	5	5	4	4	4	2	2	2	2	1	1	0
Total Occupancy	29	1	1	2	4	4	6	6	5	4	4	4	5	5	4	4	4	2	2	2	2	1	1	0	
Total Percent		3%	3%	7%	14%	14%	21%	21%	17%	14%	14%	14%	17%	17%	14%	14%	14%	7%	7%	7%	7%	3%	3%	0%	

# EXHIBIT B

(Count Sheet)

## PARKING UTILIZATION BY ZONES

Wednesday, June 7th, 2023

ZONE 1 (39)	
Time	Regular
7:00 AM	6
7:30 AM	9
8:00 AM	12
8:30 AM	16
9:00 AM	21
9:30 AM	25
10:00 AM	27
10:30 AM	27
11:00 AM	27
11:30 AM	26
12:00 PM	25
12:30 PM	23
1:00 PM	24
1:30 PM	27
2:00 PM	26
2:30 PM	26
3:00 PM	23
3:30 PM	22
4:00 PM	18
4:30 PM	17
5:00 PM	12
5:30 PM	7
6:00 PM	5

ZONE 2 (42)	
Time	Regular/HC
7:00 AM	8/1
7:30 AM	5/1
8:00 AM	2/1
8:30 AM	5/1
9:00 AM	16/1
9:30 AM	20/1
10:00 AM	18/1
10:30 AM	16/2
11:00 AM	18/2
11:30 AM	17/1
12:00 PM	16/1
12:30 PM	13/1
1:00 PM	15/1
1:30 PM	14/1
2:00 PM	14/1
2:30 PM	17/1
3:00 PM	17/0
3:30 PM	16/0
4:00 PM	20/0
4:30 PM	16/0
5:00 PM	14/0
5:30 PM	14/0
6:00 PM	10/0

ZONE 3 (54)	
Time	Regular
7:00 AM	0
7:30 AM	0
8:00 AM	1
8:30 AM	1
9:00 AM	5
9:30 AM	9
10:00 AM	10
10:30 AM	15
11:00 AM	18
11:30 AM	17
12:00 PM	20
12:30 PM	19
1:00 PM	15
1:30 PM	17
2:00 PM	15
2:30 PM	16
3:00 PM	17
3:30 PM	13
4:00 PM	11
4:30 PM	12
5:00 PM	8
5:30 PM	7
6:00 PM	7

ZONE 4 (29)	
Time	Regular
7:00 AM	1
7:30 AM	2
8:00 AM	4
8:30 AM	4
9:00 AM	4
9:30 AM	6
10:00 AM	6
10:30 AM	5
11:00 AM	4
11:30 AM	4
12:00 PM	4
12:30 PM	5
1:00 PM	5
1:30 PM	4
2:00 PM	4
2:30 PM	4
3:00 PM	2
3:30 PM	0
4:00 PM	0
4:30 PM	0
5:00 PM	0
5:30 PM	0
6:00 PM	0

ALL (164)	
Time	Regular/HC
7:00 AM	15/1
7:30 AM	16/1
8:00 AM	19/1
8:30 AM	26/1
9:00 AM	46/1
9:30 AM	60/1
10:00 AM	61/1
10:30 AM	63/2
11:00 AM	67/2
11:30 AM	64/1
12:00 PM	65/1
12:30 PM	60/1
1:00 PM	59/1
1:30 PM	62/1
2:00 PM	59/1
2:30 PM	63/1
3:00 PM	59/0
3:30 PM	51/0
4:00 PM	49/0
4:30 PM	45/0
5:00 PM	34/0
5:30 PM	28/0
6:00 PM	22/0

Minimum = 16
Maximum = 69
Most Recurrent = 61

Thursday, June 8, 2023

ZONE 1 (39)	
Time	Regular
7:00 AM	8
7:30 AM	8
8:00 AM	13
8:30 AM	17
9:00 AM	18
9:30 AM	21
10:00 AM	23
10:30 AM	23
11:00 AM	24
11:30 AM	24
12:00 PM	24
12:30 PM	23
1:00 PM	23
1:30 PM	25
2:00 PM	23
2:30 PM	21
3:00 PM	19
3:30 PM	16
4:00 PM	16
4:30 PM	16
5:00 PM	12
5:30 PM	10
6:00 PM	8

ZONE 2 (42)	
Time	Regular/HC
7:00 AM	7/1
7:30 AM	6/1
8:00 AM	7/1
8:30 AM	11/1
9:00 AM	12/1
9:30 AM	12/1
10:00 AM	11/1
10:30 AM	12/1
11:00 AM	9/1
11:30 AM	9/1
12:00 PM	9/1
12:30 PM	10/1
1:00 PM	10/1
1:30 PM	8/1
2:00 PM	10/1
2:30 PM	11/1
3:00 PM	1/1
3:30 PM	8/0
4:00 PM	9/0
4:30 PM	6/0
5:00 PM	5/0
5:30 PM	6/0
6:00 PM	7/0

ZONE 3 (54)	
Time	Regular
7:00 AM	0
7:30 AM	0
8:00 AM	0
8:30 AM	3
9:00 AM	5
9:30 AM	9
10:00 AM	9
10:30 AM	10
11:00 AM	6
11:30 AM	6
12:00 PM	6
12:30 PM	5
1:00 PM	4
1:30 PM	4
2:00 PM	5
2:30 PM	5
3:00 PM	5
3:30 PM	5
4:00 PM	5
4:30 PM	5
5:00 PM	4
5:30 PM	5
6:00 PM	6

ZONE 4 (29)	
Time	Regular
7:00 AM	1
7:30 AM	1
8:00 AM	2
8:30 AM	4
9:00 AM	4
9:30 AM	6
10:00 AM	6
10:30 AM	5
11:00 AM	4
11:30 AM	4
12:00 PM	4
12:30 PM	5
1:00 PM	5
1:30 PM	4
2:00 PM	4
2:30 PM	4
3:00 PM	2
3:30 PM	2
4:00 PM	2
4:30 PM	2
5:00 PM	1
5:30 PM	1
6:00 PM	0

ALL (164)	
Time	Regular/HC
7:00 AM	16/1
7:30 AM	15/1
8:00 AM	22/1
8:30 AM	35/1
9:00 AM	39/1
9:30 AM	48/1
10:00 AM	49/1
10:30 AM	50/1
11:00 AM	43/1
11:30 AM	43/1
12:00 PM	43/1
12:30 PM	43/1
1:00 PM	42/1
1:30 PM	41/1
2:00 PM	42/1
2:30 PM	41/1
3:00 PM	27/1
3:30 PM	31/0
4:00 PM	32/0
4:30 PM	29/0
5:00 PM	22/0
5:30 PM	22/0
6:00 PM	21/0

Minimum = 16
Maximum = 51
Most Recurrent = 44

## EXHIBIT C



COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915  
949-644-3200  
[www.newportbeachca.gov](http://www.newportbeachca.gov)

## **ZONING ADMINISTRATOR ACTION LETTER**

**Subject:** The Village Inn Temporary Outdoor Dining Patio (PA2024-0040)  
▪ Limited Term Permit (Less Than 90 Days)

**Site Location:** 123 Marine Avenue

**Applicant:** Dan Miller, Village Inn

**Legal Description:** Lot 14 of Block 1 of the Balboa Island Tract

On March 28, 2024, the Zoning Administrator approved a limited term permit to allow a temporary outdoor dining patio (temporary patio) within the front yard area of the property at 123 Marine Avenue (Property), which shares common ownership with the owners of the Village Inn restaurant property. The temporary patio is approximately 1,200 square feet with 6 tables and 26 total seats. As approved, it will be in place for less than 90 days and is permitted to operate from May 25, 2024 to August 21, 2024. The Zoning Administrator's approval is based on the following findings and is subject to all conditions of approval thereafter.

### **LAND USE AND ZONING**

- **General Plan Land Use Plan Category:** RT (Two Unit Residential)
- **Zoning District:** R-BI (Two-Unit Residential, Balboa Island)
- **Coastal Land Use Plan Category:** RT-E (Two Unit Residential – 30.0 – 39.9 DU/AC)
- **Coastal Zoning District:** R-BI (Two-Unit Residential, Balboa Island)

### **I. FINDINGS**

#### Finding:

- A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities) and Class 3 (New Construction or Conversion of Small Structures);*

#### Fact in Support of Finding:

1. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant,

or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The project includes an approximately 1,200-square-foot outdoor dining patio area expansion to an existing restaurant and is within the parameters noted for these exemptions and will not have a significant effect on the environment. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions.

Finding:

- B. The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

Facts in Support of Finding:

1. The Limited Term Permit will allow the temporary patio on a residential lot owned in common with the Village Inn restaurant, for less than 90 days, as conditioned (from May 25, 2024 to August 21, 2024). The temporary patio would serve as additional outdoor seating for restaurant guests and is fully located on private property.
2. The operation of the temporary patio is limited to the hours between 10 a.m. and 9 p.m., daily. This limited operation serves to help reduce the impact of noise and traffic for surrounding residents.
3. The temporary patio is approximately 1,200 square feet with 26 seats and is located within the front yard of the Property. An existing residence is located towards the rear of the lot, adjacent to the alley. There is an existing property line fence and landscaped area between the temporary patio and the neighboring residence, which help to serve as a physical barrier that contains the operation and buffers visibility. Other than seating for patrons, ambient lighting, heat lamps, and shade awnings, there are no temporary or permanent structures that are proposed to be constructed for the purpose of the temporary patio.
4. The proposed operation of the temporary patio includes alcohol service. As conditioned, the temporary patio shall be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
5. The Property is adjacent to the Village Inn restaurant to the north and additional residences to the south, to the east across Marine Avenue, and to the west across the alley in the rear. Conditions of approval require that the temporary patio be maintained daily for the removal of trash. All trash shall be stored within the trash enclosures of the Village Inn restaurant, screened from view of neighboring properties.

6. An identical temporary patio was previously permitted through Limited Term Permit No. PA2022-0313, which allowed for the patio to operate from May 25, 2023 to August 21, 2023. Code Enforcement has reviewed the proposed temporary patio and provided conditions of approval. Additionally, Code Enforcement confirmed that the previous allowance of the patio operated daily without incident.
7. The restaurant operates with Use Permit No. UP2016-012. As conditioned, all applicable conditions of approval from UP2016-012 shall be adhered to this temporary patio, unless otherwise modified by the conditions of approval contained herein. No live entertainment, exterior amplified music, sound systems, televisions, paging systems, etc. shall be permitted within the temporary patio.

Finding:

- C. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

1. The Property is approximately 2,550 square feet and is developed with a two-story, single-unit residence located on the rear portion. Based on the site plan, there is adequate area in the front of the Property for the proposed temporary patio.
2. The Property is improved with an existing wood fence and gate along the front property line and includes large trees and landscaping along the side property line adjacent to the neighboring residence at 121 Marine Avenue. These elements provide some visual screening of the patio from surrounding residences in the neighborhood. Additionally, the temporary patio is not visible from the alley, as the existing residence in the rear of the Property also serves as a noise barrier and visual screen.
3. Facts 2, 6, and 7 in support of Finding B are hereby incorporated as reference.

Finding:

- D. *The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Fact in Support of Finding:

1. The Property is located on Balboa Island, near the corner of Marine Avenue and Park Avenue. Since the Property is developed as a single-unit residence with alley access, vehicular access to the Property is available for residential occupants through the garage adjacent to the alley. Since the temporary patio is intended as additional dining area for the Village Inn restaurant, street parking is available on both Marine and Park Avenues for patrons of the restaurant. Additionally, there is a bicycle rack

located in front of the restaurant on Marine Avenue which provides additional transportation options for patrons of the restaurant. The temporary patio will temporarily occupy the Property for less than 90 days.

Finding:

- E. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Facts in Support of Finding:

1. The temporary patio is not expected to generate a significant amount of vehicular traffic, as it is intended to provide an additional outdoor dining option for patrons of the Village Inn during the summer season. The Property is located on Balboa Island, which is one of the most densely-populated neighborhoods in the County and pedestrian and bicycle travel is prominent year-round. A parking study conducted by the City in 2008 recognized parking limitations during peak periods. However, patrons of the restaurant are known to be local residents or vacation visitors who walk or bike. Additionally, street parking is available within the neighborhood, especially on Marine and Park Avenues. A large bicycle rack is also located in front of the restaurant on Marine Avenue.
2. An identical temporary patio was previously permitted through Limited Term Permit No. PA2022-0313, which allowed for the patio to operate from May 25, 2023, to August 21, 2023. During this time, there were no complaints made to Code Enforcement regarding any parking or traffic issues.

Finding:

- F. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The General Plan land use category for this site is RT (Two Unit Residential) and is located in the R-BI (Two-Unit Residential, Balboa Island) Zoning District. These designations apply to a range of two-unit residential dwellings, such as duplexes and townhomes. The Village Inn restaurant is located in the adjacent property at 127 Marine Avenue, which is designated as MU-W2 (Mixed-Use Water 2) and located within the MU-W2 (Mixed-Use Water) Zoning District. These designations are intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses. The proposed temporary patio serves as additional dining space for the Village Inn restaurant, which is a use that is consistent with the mixed-use designation. While the temporary patio for the restaurant would be located on a residentially designated property, temporary uses are permitted with the approval of a limited term permit

pursuant to Table 2-1 (Allowed Uses and Permit Requirements) in Section 20.18.020 (Residential Zoning Districts Land Uses and Permit Requirements) of the NBMC.

2. The Property is located within the Coastal Zone. However, a coastal development permit is not required as the proposed temporary patio is: (1) for a limited duration of less than 90 days; (2) does not increase the floor area or height of the existing residence on-site or the adjacent restaurant; and (3) does not include the construction of any temporary or permanent structures. Additionally, the temporary patio is located on private property and will not impact the public use of roadways or parking areas, or otherwise impact public use or access to coastal waters.
3. The Property is not located within a specific plan area.

## **II. CONDITIONS OF APPROVAL**

1. *All conditions of approval from Use Permit No. UP2016-012 shall be adhered to unless specifically modified by the following set of conditions.*
2. The development shall be in substantial conformance with the approved site plan except as noted in the following conditions.
3. Anything not specifically approved by this limited term permit is prohibited and must be addressed by a separate and subsequent review.
4. *Smoking shall be prohibited in the temporary patio area.*
5. *The exterior of the temporary patio shall be maintained free of trash, litter, and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 10 feet of the premises.*
6. *There shall be no trash receptacles located at the Property (123 Marine Avenue). All trash shall be disposed of in the screened trash enclosure of the Village Inn restaurant.*
7. *All lighting for the temporary patio shall be shielded or positioned to not create glare onto adjacent properties.*
8. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
9. *The temporary patio is permitted at the Property for a duration between May 25, and August 21, 2024 (89 days). Operation of the temporary patio outside of this duration is prohibited. Subsequent to the expiration of this Limited Term Permit, the applicant*

*shall remove the patio, clean, and restore the site to previous conditions within 30 days after expiration.*

10. *Hours of operation of the temporary patio shall be between 10 a.m. and 9 p.m., daily.*
11. *No temporary or permanent structures, other than the placement of tables and chairs as shown on the approved site plan, shall be constructed or placed within the temporary patio. Temporary heat lamps, shade awnings, and lighting shall be permitted.*
12. The temporary patio shall be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
13. *There shall be no food preparation within the temporary patio. All food shall be prepared within the Village Inn restaurant.*
14. A Special Events Permit is required for any event or promotional activity outside the normal operating characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the NBMC to require such permits.
15. No outside paging system shall be utilized in conjunction with this establishment.
16. *All doors and windows of the Village Inn restaurant shall be closed prior to the commencement of live entertainment within the restaurant. No live entertainment is permitted within the temporary patio.*
17. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified periods unless the ambient noise level is higher:

Location	Between the hours of 7:00 AM and 10:00 PM		Between the hours of 10:00 PM and 7:00 AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

18. *The temporary patio shall not obstruct the public right-of-way. Patrons shall be prohibited from standing or waiting within the public right-of-way on Marine Avenue.*
19. *Storage outside of the temporary patio in the front or at the rear of the Property shall be prohibited.*



20. *Should the temporary patio become a detriment to the public health, comfort, convenience, safety, and general welfare of the peace and quiet of the neighboring properties and their inhabitants, this permit may be revoked.*
21. *The Community Development Director may impose whatever reasonable conditions are deemed necessary to assure that the temporary patio is compatible with adjoining uses and does not result in significant negative impacts to the health, safety, peace, comfort and the welfare of persons residing or working in the general vicinity.*
22. *The temporary patio shall provide 5 percent (minimum of 1) accessible seating for each type of seating.*
23. An accessible path shall be provided to the temporary patio.
24. *The tops of dining surfaces and work surfaces shall be between 28 and 34 inches above the finished floor.*
25. *All exiting paths shall be a minimum 48 inches free and clear.*
26. All building exits shall remain free and clear of any obstacle that would impede exiting from a building or suite and accessing the nearest public right of way.
27. To the fullest extent permitted by law, applicant shall indemnify, defend, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Village Inn Outdoor Dining Patio** including, but not limited to, **Limited Term Permit No. PA2024-0040**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:

Approved by:



Jerry Arregui  
Planning Technician

DL/ja



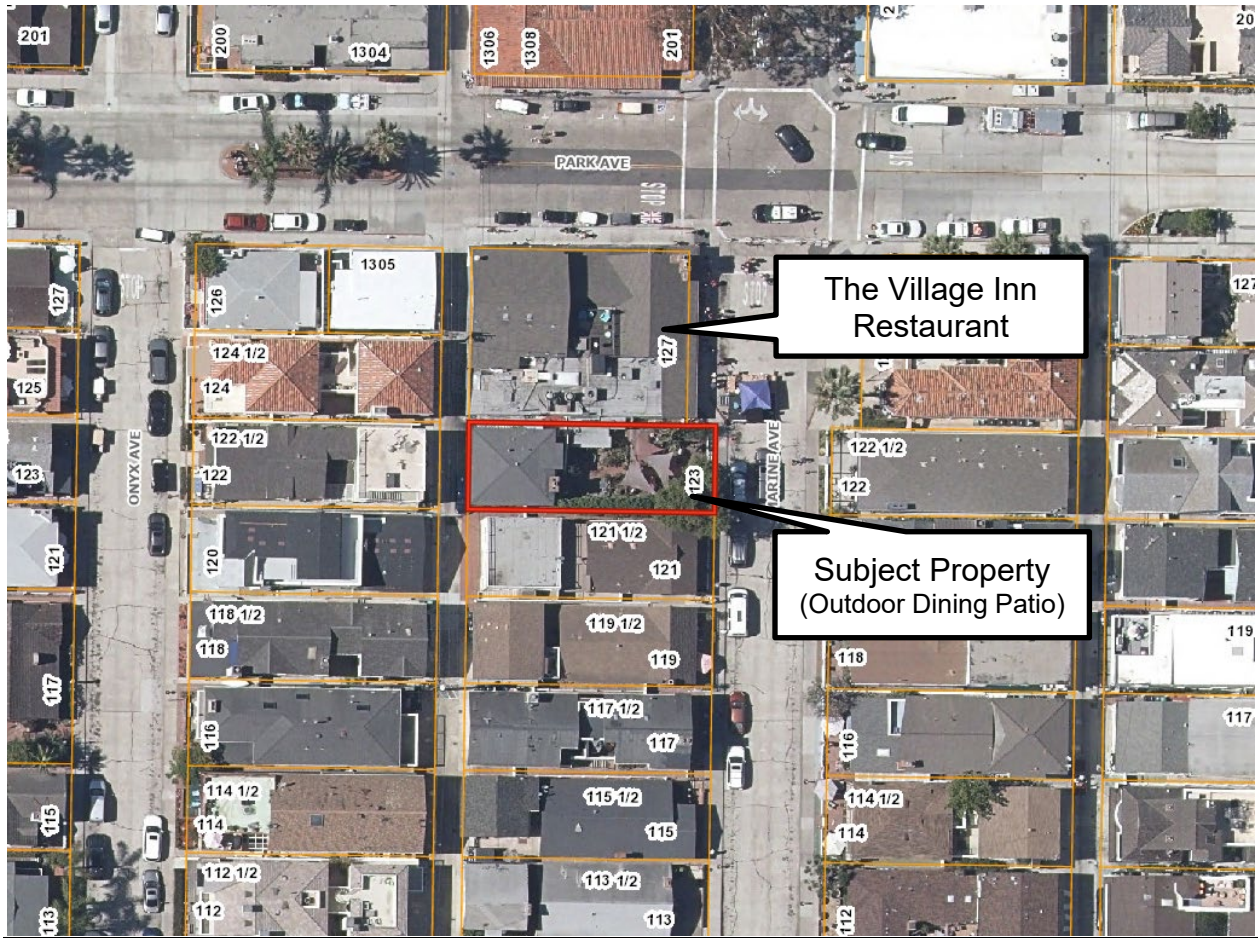
Jaime Murillo  
Zoning Administrator

Attachments: ZA 1 Vicinity Map  
ZA 2 Applicant's Project Description  
ZA 3 Site Plan

# **Attachment No. ZA 1**

Vicinity Map

# VICINITY MAP



Limited Term Permit  
(PA2024-0040)

**123 Marine Avenue**

# **Attachment No. ZA 2**

Applicant's Project Description

**PROJECT DESCRIPTION AND JUSTIFICATION**  
**Temporary Patio Dining on Adjacent Residential Property**  
**123/127 Marine Avenue, Balboa Island**  
**The Village Inn**

**Project Setting**

The Village Inn Restaurant, 127 Marine Avenue, is located at the southwest corner of Marine Avenue and Park Avenue on Balboa Island. The lot is approximately 4,252 square feet (SF) in area. The Village Inn currently operates from 10:00 AM to 12:00 AM daily and has many walk-in customers from Balboa Island. The property is designated MU-W2, Mixed-Use Water Related, by the City's General Plan and is zoned MU-W2, Mixed-Use Water Related.

Immediately adjacent to the Village Inn is 123 Marine Avenue, also owned by the property owner, with an apartment, and an open space (garden) area which was used for dining throughout the COVID emergency order without incident. The site is designated RT, Two-Unit Residential, by the City's General Plan and is zoned R-BI (Balboa Island).

**Project Description**

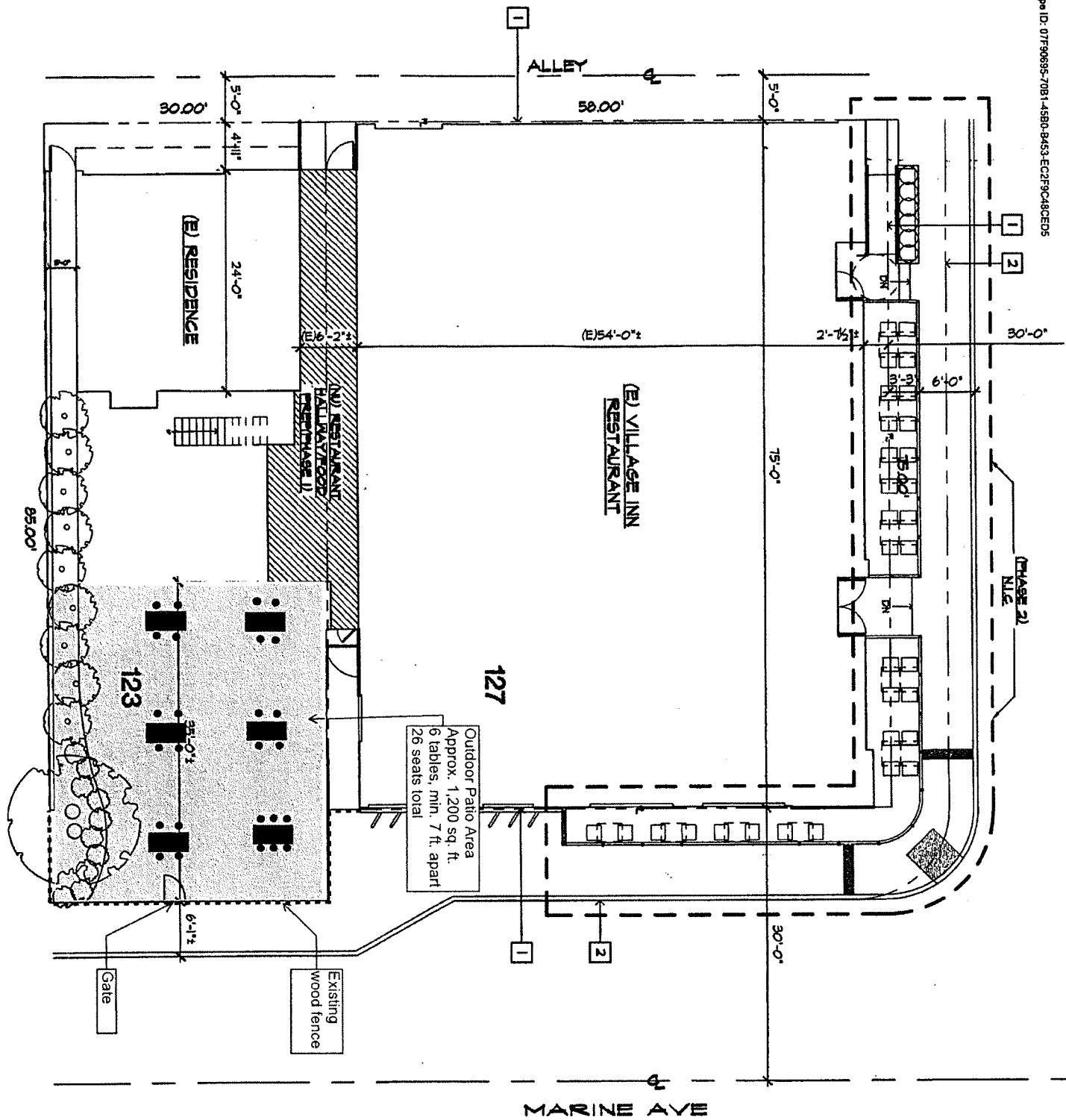
The applicant is requesting a limited term permit from May 25, 2024 to August 21, 2024 (89 days) of the garden patio located on 123 Marine Avenue. The patio hours of operation would be offered to guests from 10am to 9:30pm daily during this period. There would be a total of 26 seats added as noted in the plans. The garden is accessible directly through the Village Inn so as not to infringe on the public right-of-way, and would be operated and maintained by Village Inn staff and management. Marine and Park Avenue on Balboa Island support parking for the restaurant and this use.

**Use Permit Justification and Findings**

- (1) The operation will be maintained on private property adjacent to the Village Inn. The operation will flow directly from the Village Inn maintaining public convenience without hazards in the public right-of-way. The hours of operation will control use and maintain the general welfare of the community and employees.
- (2) The lot is of adequate size to maintain the number of seats requested providing adequate walkways and emergency exit through the rear fence as needed.
- (3) The lot is served by Marine Avenue and Park Avenue which will reasonably accommodate the traffic flow with minimal impact on current activity.
- (4) Marine and Park Avenue currently maintain parking for The Village Inn and would adequately provide for the limited number of seats on the patio.
- (5) The plan and its limited duration are in compliance with the General Plan and City regulation.

# **Attachment No. ZA 3**

Site Plan



MARINE AVE

ALLEY

PHASE 21  
N/L2

(E) VILLAGE INN  
RESTAURANT

(E) RESIDENCE

Outdoor Patio Area  
Approx. 1,200 sq. ft.  
6 tables, min. 7 ft. apart  
26 seats total

(N) RESTAURANT  
HALLWAY/STAIRS  
PHASE II

Gate

Existing  
wood fence

127

123

30'-0"

59'-0"

5'-0"

30'-0"

15'-0"

30'-0"

5'-0"

24'-0"

4'-11"

2'-7/8"

6'-0"

35'-0"

6'-1 1/2"

1

1

2

1

2