



CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER, AND PLANNING COMMISSION

FROM: Seimone Jurjis, Community Development Director

SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending August 12, 2022.

ZONING ADMINISTRATOR ACTIONS AUGUST 11, 2022

- Item 1: Cefalia Residential Condominiums Tentative Parcel Map No. NP2022-006 and Coastal Development Permit No. CD2022-022 (PA2022-061)
Site Address: 1027 West Bay Avenue, Units A, and B
- | | | |
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| Action: Approved by Resolution No. ZA2022-053 | Council District | 1 |
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- Item 2: Moriarty Residence Lot Merger No. LM2022-002 (PA2022-120)
Site Address: 20460 and 20462 Birch Street
- | | | |
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| Action: Approved by Resolution No. ZA2022-054 | Council District | 3 |
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- Item 3: 59th & Lex Café Alcohol License Upgrade Minor Use Permit No. UP2022-006 (PA2022-048)
Site Address: 701 Newport Center Drive
- | | | |
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| Action: Approved by Resolution No. ZA2022-055 | Council District | 5 |
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COMMUNITY DEVELOPMENT DIRECTOR OR PLANNING DIVISION STAFF ACTIONS (Non-Hearing Items)

- Item 1: Director's Determination Regarding Maximum Site Area Within Area 9 of the Harbor View Hills Planned Community Director's Determination (PA2022-0168)
Site Address: Area 9 of the Harbor View Hills Planned Community
- | | | |
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| Action: Approved | Council District | 7 |
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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 of time 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. ZA2022-053

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2022-006 AND COASTAL DEVELOPMENT PERMIT NO. CD2022-022 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 1027 WEST BAY AVENUE, UNITS A AND B (PA2022-061)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Cefalia Development (Applicant), with respect to property located at 1027 West Bay Avenue, and legally described as Lot 1 and the westerly one-half of Lot 2 of Block 6 of Tract No. 626, requesting approval of a tentative parcel map and a coastal development permit.
2. The Applicant proposes a tentative parcel map for two (2)-unit condominium purposes. A duplex has been demolished and a new two (2)-unit dwelling is currently under construction. No waivers of Title 19 (Subdivisions) are proposed. The Tentative Parcel map would allow each unit to be sold individually. The Tentative Parcel Map also requires the approval of a coastal development permit pursuant to Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC).
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two Unit Residential (RT).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two-Unit Residential) - (20.0-29.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
5. A public hearing was held on August 11, 2022, 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 15315 under Class 15 (Minor Land Divisions) 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 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning, no variances or exceptions are

required, all services and access to the proposed parcels are available. The parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

Tentative Parcel Map

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of NBMC Title 20 (Planning and Zoning) and is approved based on the following findings per NBMC Section 19.12.070 (Required Findings for Action on Tentative Maps):

Finding:

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

1. The Tentative Parcel Map is for two (2)-unit residential condominiums. A duplex has been demolished and a new duplex is currently under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the West Bay Avenue and 11th Street frontages and any damaged concrete alley panels consistent with NBMC Title 19.

Finding:

- B. *That the site is physically suitable for the type and density of development.*

Facts in Support of Finding:

1. The lot is physically suitable for a two (2)-unit residential development because it is flat and rectangular. An existing duplex has been demolished and a new duplex is currently under construction.
2. The subject property is accessible from the alley and is adequately served by all existing utilities.

Finding:

C. *That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

1. A duplex has been demolished and a new duplex is currently under construction.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3) of the CEQA Guidelines under Class 15 (Minor Land Alterations), as discussed in Section 2 of this Resolution.

Finding:

D. *That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Fact in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the NBMC and Section 66411 (Local Agencies to Regulate and Control Design of Subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

E. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by the judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to*

determine that the public at large has acquired easements for access through or use of property within a subdivision.

Fact in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public access easements located on the property.

Finding:

F. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The property was previously developed for residential use and is located in a Zoning District that permits residential uses.

Finding:

G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.

Facts in Support of Finding:

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a "land project" as previously defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land.
2. The project is not located within a specific plan area.

Finding:

H. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Code of Regulations (the California Building Code) which requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Fact in Support of Finding:

1. The two (2)-unit dwelling that is under construction is consistent with the intended uses of the R-2 Zoning District, which allows two (2) residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

- J. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Fact in Support of Finding:

1. The new two (2)-unit dwelling is designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

- K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Fact in Support of Finding:

1. The subject property is located within the Coastal Zone. A coastal development permit is requested in conjunction with the proposed tentative parcel map application. The project complies with the certified Local Coastal Program (LCP) and public access and recreation policies of Chapter Three of the Coastal Act. The Facts in Support of Findings

L and M for the *Coastal Development Permit* (below) are hereby incorporated by reference.

Coastal Development Permit

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for a two (2)-unit residential condominium. A duplex has been demolished and a new duplex is under construction. The duplex conforms to all applicable development standards, including floor area limit, setbacks, height, and off-street parking. The proposed subdivision and improvements are consistent with the density of the R-2 Coastal Zoning District.
2. The property is located in an area known for the potential for seismic activity. All projects are required to comply with the California Building Code and Building Division standards and policies.
3. The Tentative Parcel Map is for a property that is approximately 150 feet from the harbor and is not near any natural landforms or environmentally sensitive areas.

Finding:

M. Conforms to 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. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC 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 tentative parcel map for two (2)-unit condominium purposes. The project does not involve a change in land use, density, or intensity that will result in increased demand for public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

2. The project site is approximately 450 feet from a public beach between 9th and 10th Streets, as designated by the Coastal Land Use Plan. Additionally, the project site is located between public beach access points at 10th and 8th Streets. Approval of the parcel map will not affect public recreation, access, or views, as it is for condominium purposes of a duplex currently under construction.

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 15315 under Class 15 (Minor Land Divisions) 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 Tentative Parcel Map No. NP2022-006 and Coastal Development Permit No. CD2022-022, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. The approval of Tentative Parcel Map No. NP2022-006 and Coastal Development Permit No. CD2022-022 shall become final and effective 14 days following the date the Resolution is 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. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 11TH DAY OF AUGUST, 2022.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****Planning Division**

1. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
2. Subsequent to the recordation of the Parcel Map, the Applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is final.
3. The building permit for the new construction shall not be final until after the recordation of the parcel map.
4. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 (Subdivisions) of the NBMC.
5. 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 **Cefalia Residential Condominiums including, but not limited to, Tentative Parcel Map No. NP2022-006 and Coastal Development Permit No. CD2022-022 (PA2022-061)**. 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 the City's costs, attorneys' fees, and damages, which the 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.

Public Works Department

6. A Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of the map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

7. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of the construction project.
8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. An encroachment permit shall be required for all work activities within the public right-of-way.
10. The existing broken and/or otherwise damaged concrete curb, gutter, and sidewalk along the Bay Avenue West and 11th Street frontages shall be reconstructed per City Standard and all damaged alley panels.
11. Each unit shall be served by its water service/meter and sewer lateral/cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
12. All existing overhead utilities shall be undergrounded.
13. New sod or low groundcovers of the type approved by the City shall be installed throughout the Bay Avenue West reverse parkway fronting the development site.
14. The existing private improvements, including walls, within the West Bay Avenue right of way, shall be removed.
15. A 10-foot radius corner cut-off shall be dedicated for the street purpose to the City of Newport Beach at the corner of Bay Avenue West and 11th Street.
16. The proposed wall and infiltration bed shall be relocated outside the limits of the dedication.
17. A new curb ramp at the corner of Bay Avenue West and 11th Street shall be reconstructed to accommodate the new dedication area per City Standard.
18. All improvements shall comply with the City's sight distance requirement. See City Standard 110.
19. 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.

Building Division

20. Independent utility services shall be provided for each unit.
21. Independent fire risers shall be required for each unit.
22. Construction shall comply with the California Code of Regulations.

Fire Department

23. Fire sprinkler systems are required for each unit and no combined systems shall be allowed.

RESOLUTION NO. ZA2022-054

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LOT MERGER NO. LM2022-002, WAIVING THE PARCEL MAP REQUIREMENT, TO COMBINE TWO (2) LEGAL PARCELS INTO A SINGLE PARCEL LOCATED AT 20460 AND 20462 BIRCH STREET (PA2022-120)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Apex Land Surveying, Inc. (Applicant), with respect to property located at 20460 and 20462 SW Birch Street, and legally described as the Northeasterly 62 Feet of Lot 122 of Tract 706 and the Remaining Portion of Lot 122, respectively, requesting approval of a lot merger and a waiver of the parcel map requirement.
2. The Applicant proposes to merge two (2) contiguous properties under common ownership. The Lot Merger would combine the two (2) legal lots into a single parcel. The resulting parcel will meet all Zoning and Subdivision Code standards and no deviations are requested.
3. The properties are categorized as Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and are located within the Santa Ana Heights Specific Plan Residential Equestrian (SP-7 REQ) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on August 11, 2022, 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 15315 under Class 15 (Minor Land Divisions) 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 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning; no variances or exceptions are required; all services and access to the proposed parcels are available; the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the

parcel does not have an average slope greater than 20 percent. This exemption includes a minor lot merger that complies with the conditions specified above.

SECTION 3. REQUIRED FINDINGS.

Lot Merger

In accordance with Sections 19.68.030(H) (Lot Mergers – Required Findings) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

A. Approval of the merger will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot merger is consistent with the legislative intent of this title.

Facts in Support of Finding:

1. The property at 20462 Birch Street was developed with a single-family residence in 1949. It is currently being redeveloped with a new single-family residence. The property at 20460 Birch Street was developed with equestrian-related structures, which have since been demolished. The vacant property is intended to be used in conjunction with the new residence. Any future improvements are required to comply with all applicable NBMC regulations and City policies.
2. The proposed lot merger to combine two (2) existing parcels by removing the interior lot lines between them will not result in the creation of additional parcels or cause unorderly growth.
3. The project is in an area with an average slope of less than 20 percent.
4. The project is adequately served by existing utilities and should not have any negative impacts on traffic and circulation, or public health, safety, or general welfare.
5. The project is consistent with the purpose and intent of NBMC Title 19 (Subdivisions).

Finding:

B. The lots to be merged are under common fee ownership at the time of the merger.

Fact in Support of Finding:

1. The Properties are currently under common fee ownership by Richard Anton Moriarty and Marilyn Kayla Moriarty, as evidenced in the Title Report provided as part of the

notarized Lot Merger application. Condition of Approval No. 2 requires the properties to remain under common fee ownership until the recordation of the lot merger.

Finding:

C. The lots as merged will be consistent or will be more closely compatible with the applicable zoning regulations and will be consistent with other regulations relating to the subject property including, but not limited to, the General Plan and any applicable Coastal Plan or Specific Plan.

Facts in Support of Finding:

1. The properties are within the Santa Ana Heights Specific Plan Residential Equestrian (SP-7 REQ) Zoning District, which is intended to provide for the development and maintenance of a single-family residential neighborhood in conjunction with limited equestrian uses. A single-family residence and associated yard area is consistent with the purpose and intent of the zoning district.
2. The resulting parcel will retain its SP-7 REQ zoning and its Single Unit Residential Detached (RS-D) General Plan Land Use Element category, consistent with the surrounding area.
3. The project is consistent with General Plan Land Use Element Policy LU 4.2 (Prohibition of New Residential Subdivisions) as the project does not result in any additional dwelling units. It will revert the properties back to the original lot line configuration.
4. Subsection 20.90.060(F) (Site Development Standards) of the NBMC requires a minimum lot size of 19,800 square feet for any lot created after 1986. 20462 Birch Street is slightly substandard in size at 19,683 square feet and 20460 Birch Street is only 6,645 square feet in area. The Lot Merger results in one (1) compliant parcel of approximately 26,328 square feet.
5. As shown on Tract Map No. 21-25, the properties appear to have been originally subdivided as one lot: Lot 122. At some point between the recordation of Tract Map No. 21-25 in 1925 and 1967, Lot 122 was subdivided, and the northeasterly 62 feet of Lot 122 was sold independently. This is evidenced by a Grant Deed from 1967 for 20460 Birch Street. The Lot Merger will return the parcels to their original configuration

Finding:

D. Neither the lots as merged nor adjoining parcels will be deprived of legal access as a result of the merger.

Fact in Support of Finding:

1. Legal access for the merged parcel will be provided from Birch Street. The parcel to the east takes access from Mesa Drive. The parcel to the rear, developed with a medical office complex, is oriented toward Birch Street and takes access from Birch Street. No adjoining parcel will be deprived of legal access as a result of the merger.

Finding:

- E. The lots as merged will be consistent with the pattern of development nearby and will not result in a lot width, depth or orientation, or development site that is incompatible with nearby lots. In making this finding, the review authority may consider the following:*
- a. Whether the development of the merged lots could significantly deviate from the pattern of development of adjacent and/or adjoining lots in a manner that would result in an unreasonable detriment to the use and enjoyment of other properties.*
 - b. Whether the merged lots would be consistent with the character or general orientation of adjacent and/or adjoining lots.*
 - c. Whether the merged lots would be conforming or in greater conformity with the minimum lot width and area standards for the zoning district.*

Facts in Support of Finding:

1. The Project is located at the corner of Mesa Drive and Birch Street, within an existing block of single-family residences that orient toward Mesa Drive. The historic residence at 20462 Birch Street however oriented toward the Birch Street cul-de-sac. The new residence under construction also orients toward Birch Street. The Project will not result in a change to the existing pattern of development.
2. The Project will result in a lot size of approximately 26,328 square feet which is comparable to the adjacent property at 2141 Mesa Drive which is approximately 34,310 square feet in area.
3. The Project will result in a lot depth of 234 feet which is consistent with the surrounding properties on the 2000 block of Mesa Drive.

Waiver of Parcel Map

In accordance with Section 19.08.30(A)(3) (Waiver of Parcel Map Requirement) of the NBMC, the Zoning Administrator may approve a waiver of the parcel map requirement in cases where no more than three (3) parcels are eliminated. The following finding and facts in support of such findings are set forth:

Finding:

- F. *The proposed division of land complies with requirements as to area, improvement and design, flood water drainage control, appropriate improved public roads and property access, sanitary disposal facilities, water supply availability, environmental protection, and other applicable requirements of this title, the Zoning Code, the General Plan, and any applicable Coastal Plan or Specific Plan.*

Facts in Support of Finding:

1. Approval of the proposed Lot Merger would remove the existing interior lot line and allow the properties to be used as a single site. The proposed parcel would comply with all design standards and improvements required for new subdivisions by Title 19, the Zoning Code, and General Plan.
2. The project combines the two (2) properties into a single parcel of land and does not result in the elimination of more than three (3) parcels.
3. Any future improvements on the site will be required to comply with the development standards of the NBMC and General Plan.

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 15315 under Class 15 (Minor Land Divisions) 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 lot merger No. LM2022-002, 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 10 days after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the NBMC.

PASSED, APPROVED, AND ADOPTED THIS 11TH DAY OF AUGUST 2022.

Jaime Murillo
Zoning Administrator

EXHIBIT “A”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. *Until recordation of the lot merger, the two (2) lots shall be held entirely under one (1) common fee ownership.*
2. *The Lot Merger exhibits shall be submitted to the Public Works Department for final review and approval. All applicable fees shall be paid.*
3. Lot Merger No. LM2022-002 shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the NBMC.
4. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
5. 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 **Moriarty Residence including, but not limited to, Lot Merger No. LM2022-002 (PA2022-120)**. 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 the City’s costs, attorneys’ fees, and damages which the 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.

RESOLUTION NO. ZA2022-055

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2022-006 TO UPGRADE A CURRENT TYPE 41 (ON-SALE BEER AND WINE – EATING PLACE) ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE TO A TYPE 47 (ON-SALE GENERAL – EATING PLACE) ABC LICENSE AT AN EXISTING FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT LOCATED AT 701 NEWPORT CENTER DRIVE (PA2022-048)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Novel Spirits, LLC (Applicant) with respect to property located at 701 Newport Center Drive, and legally described as Parcel 1 of Lot Line Adjustment No. LA2012-003 requesting approval of a minor use permit.
2. The Applicant seeks Minor Use Permit No. UP2022-006 to allow an existing food service, eating and drinking establishment (59th & Lex Café) to upgrade its current Type 41 (On-Sale Beer and Wine – Eating Place) Alcoholic Beverage Control (ABC) License to a Type 47 (On-Sale General – Eating Place) ABC License. The café is located within the first-floor footprint of Bloomingdale’s retail store at the Fashion Island mall and operates an accessory outdoor dining patio within an adjacent common area. The request does not include any physical changes to the café. The hours of operation will remain from 10 a.m. to 8 p.m., daily.
3. The subject property is categorized as CR (Regional Commercial) by the General Plan Land Use Element and is located within the PC56 (North Newport Center Planned Community) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on August 11, 2022, online via Zoom. A notice of the 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 existing café is located within Bloomingdale's and has an associated outdoor dining patio within a common area of the mall. The proposed project is a request to upgrade an ABC license and does not include any interior or exterior alterations to the café and no increase in gross floor area or net public area.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030 (Alcohol Sales) of the NBMC, the Zoning Administrator shall consider the following findings prior to the approval of a new or amended alcohol sales establishment:

Finding

- A. *The use is consistent with the purpose and intent of NBMC Section 20.48.030 (Alcohol Sales).*

Facts in Support of Finding

In finding that the Project is consistent with Section 20.48.030 (Alcohol Sales) of the NBMC, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
 - a. The property is in an area the Newport Beach Police Department (NBPD) has designated as Reporting District (RD) 39. RD 39 is bordered to the north by San Joaquin Hills Road, to the east by MacArthur Boulevard, to the south by East Coast Highway, and to the West by Jamboree Road. The NBPD is required to report offenses of Part One Crimes combined with all arrests for other crimes, both felonies, and misdemeanors (except traffic citations) to the California Department of Alcoholic Beverage Control (ABC). Part One Crimes are the eight (8) most serious crimes defined by the FBI Uniform Crime Report: criminal homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson. RD 39 is considered a higher crime area, as compared to other RDs within the City. The RD 39 crime count for 2021 is 334, which is 81 percent over the citywide average of 140 crimes per RD. The higher crime rate is largely attributable to the concentration of commercial land uses and the high ratio of nonresidential to residential uses. For example, the RD to the southeast, RD 44, contains the entire commercial corridor along East Coast Highway within Corona del Mar. RD 44 is smaller in land area than RD 39 yet it maintains a comparable number of crimes due to the similarly high ratio of nonresidential to residential uses. The remaining neighboring RDs, 43 and 47, are primarily residential with few commercial uses. As a result, they have a significantly lower number of crimes. Their crime count is 37 and 50, respectively.

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- b. The NBPD has reviewed the project and has no objection to the upgraded Type 47 ABC license, subject to appropriate conditions of approval which have been incorporated into Exhibit "A" of this Resolution. These conditions include provisions such as the requirement that all owners, managers, and employees selling alcoholic beverages shall undergo and complete a certified training program in responsible methods and skills for selling alcoholic beverages, a prohibition on live entertainment, and no games or contests requiring or involving the consumption of alcoholic beverages.
- ii. The number of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
- a. Compared to the adjacent RDs, RD 39 had a higher percentage of alcohol-related crimes in 2021. The higher number of crimes is to be expected given the crime figure includes driving under the influence, public intoxication, and liquor law violations. These are crimes associated with commercial establishments. RD 43 and 47, which are primarily residential, are unlikely to have similar crime incidents. The alcohol-related crimes of RD 39 were slightly higher than that of its neighbor RD 44 however the difference was not substantial enough to warrant objection from the NBPD.
- iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*
- a. The café is located on the first floor of Bloomingdale's. The café features an interior dining space and an accessory outdoor patio within an adjacent common area of the mall. Fashion Island does not abut any sensitive land uses and is separated from other structures and uses by parking lots, a busy roadway, and other commercial uses. Residential uses are permitted in the northern sections of PC56; however, the café is separated from the nearest residential use by over 1,000 feet. There are no day care centers, hospitals, parks, places of worship, or schools within the mall. While some minors are expected to be present at the mall, the mall is intended to attract a variety of users and not specifically minors.
- b. Eating and drinking establishments with incidental alcohol service are common within the mall and the upgraded ABC license is not anticipated to alter the operational characteristics of the current café such that it becomes detrimental to the area.
- c. Condition of approval no. 21 prohibits the café from operating as a bar or tavern which should help ensure compatibility with the surrounding businesses. Late hours are not proposed as part of this project nor are they allowed by this use permit.
- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
- a. There are several other restaurants within the mall. These include Fleming's Steak House, True Food Kitchen, Back Bay Tavern at Whole Foods Market, Cheesecake Factory, and P.F. Chang's. Generally, these restaurants operate with either a Type 41 (On-Sale Beer and Wine) or a Type 47 (On-Sale General) ABC license. There is no evidence suggesting that

these uses have been detrimental to the surrounding vicinity. Additionally, there is no evidence to suggest that the approval of this upgraded alcohol sales license would create any new objectionable conditions.

- v. *Whether or not the proposed amendment will resolve any current objectionable conditions.*
 - a. No objectionable conditions are presently occurring at the Property.
 - b. Approving the Project will allow the existing café to diversify its offerings as a convenience to its patrons. The NBPD acknowledges the addition of liquor to the existing restaurant is a new privilege; however, the Project has been reviewed and conditioned to help ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC are maintained and that a healthy environment for residents and businesses is preserved.

Minor Use Permit

In accordance with Section 20.52.020(F) (Findings and Decision) of the NBMC, the following findings and facts in support of such findings for a use permit are set forth:

Finding

- B. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. The Land Use Element of the General Plan categorizes the project site as Regional Commercial (CR). The CR designation is intended to provide areas appropriate for retail, entertainment, service, and supporting uses that serve both local and regional residents. Typically, this land use category is integrated into multi-tenant developments that contain one or more “anchor” uses to attract customers. Fashion Island is the largest retail center in Newport Beach with multiple anchor tenants. A café with alcoholic beverage sales is a supportive use to the overall shopping destination. The café will ultimately serve both residents of the city and regional residents alike which is consistent with land uses in the CR land use category.
2. Land Use Element Policy LU 6.14.1 Fashion Island [“CR” designation] is intended to: *Provide the opportunity for an additional anchor tenant, other retail, and/or entertainment and supporting uses that complement, are integrated with, and enhance the economic vitality of existing development. A maximum of 213,257 square feet of retail development capacity specified by Table LU2 (Anomaly Locations) may be reallocated for other permitted uses in Newport Center, provided that the peak hour vehicle trips generated do not exceed those attributable to the underlying retail entitlement.*
The project does not include the addition of floor area, an increase in the number of seats for the café, or the transfer of development capacity to the project site. The project is the upgrading of an ABC license which results in additional menu choices for customers that would otherwise already be visiting the mall to shop and dine. The project is not expected to result in increased traffic.

3. The subject property is not a part of a specific plan area.

Finding

- C. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding

1. Fashion Island is the primary retail hub within Newport Center and is developed with retail, dining, and commercial entertainment uses. Permitted uses for Fashion Island include uses in support of the existing retail, dining, and commercial entertainment uses. Fashion Island is intended to be a vibrant regional retail and entertainment center and a day/evening destination with a wide variety of uses that will serve visitors, residents, and employees of the area. A café with alcoholic beverage sales is consistent with the purposes of the Fashion Island Sub-Area of PC56.
2. Eating and drinking establishments are a use that is allowed by right within the Fashion Island Sub-Area of PC56. The addition of the on-site sale of alcohol in conjunction with an eating and drinking establishment requires the approval of a minor use permit.
3. The café was originally permitted in 1996, as part of a larger tenant improvement that brought the anchor tenant Bloomingdale's to Fashion Island. In 1997, the café began operations and obtained a Type 41 ABC license. Prior to 2009, PC56 did not differentiate between eating and drinking establishments with or without the on-site sale and consumption of alcohol. Because the Applicant seeks to upgrade the ABC license now, the current permit requirements of PC56 are in effect and require the applicant to obtain a minor use permit for the on-site sale and consumption of alcohol.
4. No physical improvements are proposed as part of this project therefore no development standards from PC56 are applicable at this time.

Finding

- D. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding

1. The Fashion Island mall is developed around an internal pedestrian network and surrounded by parking lots, providing little or no connectivity to adjoining office, entertainment, or residential areas. The proposed project should have no interaction with the surrounding uses in the vicinity and therefore should be compatible.
2. Fact (iv)(a) in support of Finding 1 incorporated by reference.

Finding

- E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding

1. The application includes the upgrade of an ABC license at an existing café. There is no addition of floor area associated with the project. The size of the kitchen does not change as part of the project nor is there an increase in the number of seats
2. The Fashion Island mall is an existing development that is adequately served by utilities and can be accessed by emergency vehicles.
3. Fashion Island features a shared parking pool provided through on-site surface parking lots and parking structures. There should be no noticeable change in parking demand as a result of this project as the project is simply an enhanced menu for customers that would otherwise already be visiting the mall to shop and dine

Finding

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City or 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 proposed use.*

Facts in Support of Finding

1. The café has been in operation and serving beer and wine since 1997. The café has not proven detrimental to the surrounding businesses. Adding additional alcoholic beverage options to the menu is not expected to change this, given the included conditions of approval from the NBPD.
2. The Project was reviewed by the Code Enforcement and Water Quality Division. There were no ongoing issues identified as part of their review.
3. The café with expanded privileges should have a positive impact on the area. The café serves both the local shoppers and visitors to Fashion Island. It promotes economic activity in an area which the General Plan intends to be busy with a variety of commercial uses.
4. The Project includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots of the restaurant, during business hours, if directly related to the patrons of the establishment.

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 Minor Use Permit No. UP2022-006 (PA2022-048), 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, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 11TH DAY OF AUGUST 2022.



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 and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Any change in operational characteristics, expansion in area, or other modification to the approved plans, may require an amendment to this Use Permit or the processing of a new Use Permit.
3. *The hours of operation for the restaurant shall be limited to from 10 a.m. to 8 p.m., daily.*
4. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
5. The Applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
6. This Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed uses or conditions under which the use is being operated or maintained are 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. 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 time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	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

8. 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.

9. No outside paging system shall be utilized in conjunction with this establishment.
10. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three [3] walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
11. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
12. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for the daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
13. The Applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
14. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays unless otherwise approved by the Director of Community Development and may require an amendment to this Use Permit.
15. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
16. 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 Newport Beach Municipal Code to require such permits.
17. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.

Police Department

18. The approval is for an eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 (On-Sale General – Eating Place) license, in conjunction with the restaurant as the principal use of the facility.
19. All owners, managers, and employees must abide by all requirements and conditions of the Alcoholic Beverage License.
20. All owners, managers, and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
21. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the NBMC.
22. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall always maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
23. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
24. There shall be no live entertainment or dancing allowed on the premises.
25. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
26. There shall be no reduced-price alcoholic beverage promotions after 9 p.m.
27. Food service from the regular menu shall be made available to patrons until closing.
28. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.

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29. Any event or activity staged by an outside promoter or entity, where the Applicant, operator, owner or his employees or representatives share in any profits or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.
 30. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks, is prohibited (excluding charges for prix fixe meals).
 31. Strict adherence to maximum occupancy limits is required.
 32. The Applicant shall maintain a security recording system with 30-day retention and make those recordings available to police upon request.
 33. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
 34. No off-sales of alcohol shall be permitted.
 35. 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 **59th & Lex Café Alcohol License Upgrade** including, but not limited to, **Minor Use Permit no. UP2022-006 (PA2022-048)**. 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 the 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.



**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

100 Civic Center Drive
Newport Beach, California 92660

949 644-3200

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Director's Determination

To: Planning Division
From: Seimone Jurjis, Community Development Director
Date: August 12, 2022
Re: Director's Determination Regarding Maximum Site Area Within Area 9 of the Harbor View Hills Planned Community (PA2022-0168)

Summary

The Harbor View Hills Planned Community (PC-3) limits *Maximum Site Area* to 50 percent of the lot; however, the 50 percent limit is inconsistent with the actual development pattern of the community, inconsistent with the Spyglass Hills Architectural Standards of the Homeowners Association, and unfairly penalizes lots that do not include a rear slope within the boundaries of the property lines. PC-3 defines the Maximum Site Area as the aggregate building coverage of the lot, including all areas under the roof but shall not include trellis.

Background

Area 9 (Attachment A) consists of hillside single-family residential dwellings developed as Tracts 7432 and 7510 in 1972. A majority of lots within the hillside community include a vegetated slope at the rear of the lot, which is included when calculating the Maximum Site Area. However, a row of hillside lots facing the Pacific View Memorial Park to the west are shallow and do not include the slope with their lot boundaries. The absence of slope area within the lot boundaries negatively impacts the Maximum Site Area and unfairly reduces their buildable area within the flat portions of the lot as compared to the lots that include the unusable slope area. The properties within Area 9 were all originally permitted and developed in 1972 with the various models for the entire tract resulting in a compliant 50 percent lot coverage for those lots that include slopes and a lot coverage that exceeds the 50 percent standard for those lots that do not include slopes (Attachment B). For example, 31 Carmel Bay (Lot 29 of Tract 7510) was originally developed with site coverage of approximately 63 percent (Attachment C).

Furthermore, the Spyglass Hill Architectural and Landscaping Standards limit the Maximum Site Area (Lot Coverage) to 60 percent of the flat pad area of the lot. By excluding the slope, the Homeowner's Association standard equitably regulates Maximum Site Area and ensures each lot in the community maintains the same development rights (Attachment D).

Authority

Sections 20.12.020 (Rules of Interpretation) of the Newport Beach Municipal Code (NBMC) authorize the Community Development Director to interpret the meaning of provisions of the Zoning Code, including maps, and to apply and/or enforce the codes.

Director's Determination

The Community Development Director of the City of Newport Beach hereby determines that the development of lots within Area 9 of the Harbor View Hills Planned Community (PC-3) shall be permitted to exceed the *Maximum Site Area* of 50 percent of the lot, up to a maximum of 60 percent of the flat portion of the lot.

All decisions of the Community Development Director may be appealed to, or called for review by, the Planning Commission under NBMC Chapters 20.64 (Appeals and Calls for Review) and within fourteen (14) days following the date of this decision.


Seimone Jurjis, PE, CBO
Community Development Director

Attachments

- A- PC-3 Land Use Plan Boundaries (Area 9 Highlighted)
- B- Lot Comparison Exhibit
- C- 31 Carmel Bay Drive Site Area Calculations
- D- Excerpts from Spyglass Hill Architectural and Landscaping Standards

ATTACHMENT A
PC-3 Land Use Plan Boundaries (Area 9 Highlighted)



HARBOR VIEW HILLS
LAND USE PLAN

Amendment No. 14

LEGEND

- LOW MEDIUM DENSITY RESIDENTIAL
- LOW MEDIUM DENSITY RESIDENTIAL
- MEDIUM HIGH DENSITY RESIDENTIAL
- COMMERCIAL
- SCHOOL
- PARK AND OPEN SPACE
- RESERVOIR/CARSTATER'S RESIDENCE

ATTACHMENT B
Lot Comparison Exhibit



ATTACHMENT D

Excerpts from Spyglass Hill Architectural and Landscaping Standards (Rev. March 2017)

Subsection C (Building Envelope) of Section IV (Site Development)

C. Building Envelope:

1. The building envelope is defined on page 6, Section II(E)(1)(d) of these guidelines.
2. All improvements under roof, including overhangs, shall cover no more than 60 percent of the building envelope, as defined on page 6, Section II(E)(1)(d).

Subsection E (1) (Plot Plan and Lot Coverage) of Section II (The Submission Process)

1. Plot Plan and Lot Coverage:

- a. Show lot lines accurately, including length, angles and amount of curve.
- b. Show all improvements, both existing and proposed, including fences, walls, wall setbacks, sidewalks, top and toe of slopes, street right-of-way, and outline of structures on adjacent property.
- c. Show all dimensions of improvements to be reviewed (including heights of walls and perimeter improvements), distances between existing structures and proposed improvement, distances between proposed improvement and property lines, toe of slope, top of slope and distances from property lines to structures on adjacent properties.
- d. Show north compass arrow, curb grade, floor grade, dimensions, square foot of each floor, existing and proposed, percentage of the building envelope of the lot covered by the proposed and any existing improvements. The building envelope refers to the area in which ground level construction is allowed on the flat pad area of the lot and shall not exceed 60% of the building envelope. This does not include the slope area(s).