



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Kimberly Brandt, Community Development Director
Brenda Wisneski, Deputy Community Development Director

SUBJECT: Report of actions taken by the Zoning Administrator, Hearing Officer, and/or Planning Division staff for the week ending February 26, 2016

**ZONING ADMINISTRATOR ACTIONS
FEBRUARY 25, 2016**

- Item 1: W Café Minor Use Permit Amendment No. UP2015-050 (PA2015-218)
Site Address: 1703 Westcliff Drive
- Action: Approved by Resolution No. ZA2016-007 Council District 3
- Item 2: Newport Beach Country Club Sign Modification No. MD2015-012 (PA2015-221)
Site Address: 1600 E. Coast Highway
- Action: Approved by Resolution No. ZA2016-008 Council District 5

**HEARING OFFICER ACTIONS
FEBRUARY 23, 2016**

- Item 1: 806 Harbor Island Drive Reasonable Accommodation No. RA2015-002
(PA2015-202)
Site Address: 806 Harbor Island Drive
- Action: Approved by Resolution No. HO2016-001 Council District 5

APPEAL PERIOD: An appeal 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. ZA2016-007

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2015-050 TO ALLOW ALCOHOL SALES AT AN EXISTING EATING AND DRINKING ESTABLISHMENT LOCATED AT 1703 WESTCLIFF DRIVE (PA2015-218)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Omar Belkiz, with respect to property located at 1703 Westcliff Drive, and legally described as Parcel 1 of Resubdivision No. 153, requesting approval of an amendment to a minor use permit.
2. The applicant proposes to allow alcohol sales and service (ABC License Type 41, Beer and Wine for Bona Fide Public Eating Place) at an existing restaurant (food service, eating and drinking establishment) approved under Minor Use Permit No. UP2013-001 (PA2013-004). Late hours are not proposed (after 11:00 p.m.) and no other substantial operational changes are requested to the prior approval.
3. The subject property is located within the Commercial General (CG) Zoning District and the General Plan Land Use Element category is General Commercial (CG).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on February 25, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities).
2. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves minor interior alterations to remodel an existing eating and drinking establishment as well the sale of alcohol which is a negligible expansion of use.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

In finding that the proposed use is consistent with Section 20.48.030 of the Zoning Code, 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.*
1. The subject property is located in Reporting District 28 (RD 28). The Part One Crimes (Part One Crimes are the eight most serious crimes defined by the FBI Uniform Crime Report – homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson) crime rate in RD 28 is higher than adjacent Reporting Districts 25, 26 and 29. It should be noted, however, that RDs 25 and 26 cover more area and are primarily residential with a small area devoted to commercial. Furthermore, RD 29 generally encompasses the area eastward of Dover Drive and Irvine Avenue to the Back Bay which is entirely residential. The subject RD contains a larger proportion of commercial with dense, multi-family residential.
 2. Year to date, zero Part One Crimes have been reported at the subject property.
 3. The Police Department has reviewed the proposal, provided operating conditions of approval, and has no objection to the alcoholic beverage license type proposed at this location.
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
1. The total number of alcohol-related calls for service, crimes, or arrests in RD 28 is higher than adjacent Reporting Districts 25, 26 and 29, but significantly less than the City overall inasmuch as it does not account for a large portion of calls for service, crimes, or arrests. The Police Department has reviewed the proposal and has no objection.
 2. Year to date, zero alcohol-related calls for service, crimes, or arrests have been reported at the subject property.

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- 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.*
1. The site is developed with a commercial center, which is consistent with the General Plan designation, General Commercial (CG). Properties within the center consist of retail, service, eating and drinking establishment, office and medical office uses. The property is not located within close proximity to any day care centers, hospitals, park and recreation facilities, places of worship, schools, or similar uses that attract minors, with the nearest of those types being Bob Henry Park, nearly 900 feet away and buffered by several properties. Although it is adjacent to residential developments to the north and south, the property is bound and buffered by Sherington Place and Westcliff Drive. Eating and drinking establishments with incidental alcohol service have long existed near the subject location and the proposed Alcoholic Beverage Control license type is not anticipated to alter the operational characteristics of the use such that it becomes detrimental to the area.
- iv. *The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
1. Two other eating and drinking establishments within the commercial center sell and serve alcoholic beverages including Haute Cakes Caffe (Type 41) and Café Gratitude (Type 47). The subject eating and drinking establishment has requested to allow the sales and service of alcohol with a Type 41 (Beer and Wine Bona Fide Public Eating Place) license. There is no evidence suggesting these existing uses have been detrimental to surrounding properties or the neighborhood.
- v. *Whether or not the proposed amendment will resolve any current objectionable conditions.*
1. An eating and drinking establishment without alcohol sales and service has operated at the subject location since 2013.
 2. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the establishment. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will help to ensure compatibility with the surrounding uses and minimize alcohol-related impacts.
 3. The existing hours of operation of the establishment will minimize the potential effects on land use. The establishment closes by 10:00 p.m., daily, which will help to ensure the use does not become a late night bar, tavern, or nightclub.

4. The establishment is located within an existing commercial center which is developed with other commercial uses. Allowing the sales and service of alcohol will not substantially alter the existing operation, but will complement the food service and provide a convenience to customers.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings 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 General Plan designates the site as General Commercial (CG), which is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs.
2. The existing eating and drinking establishment is located within the Westcliff Court commercial center and serves those working, residing, or visiting the surrounding neighborhood, consistent with the CG land use designation.
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. The site is located in Commercial General (CG) Zoning District, which was intended to provide for areas appropriate for a wide variety of commercial activities oriented primarily to serve Citywide or regional needs. Eating and drinking establishments are permitted uses with the approval of a use permit when alcohol sales are proposed.
2. The existing eating and drinking establishment operates pursuant to Minor Use Permit No. UP2003-001, which allowed the sale and service of food and beverage and established hours of operation between 7:00 a.m. and 10:00 p.m., daily.
3. The use will remain an eating and drinking establishment and the allowance of an alcohol beverage control license will not substantially alter or intensify the existing use; however, staff acknowledges the sale and service of alcohol may change the nature of the operation from that limited under the prior use permit approval. As conditioned, the parking requirement will be increased to one parking space for every 40 square feet of net public area. Adequate parking exists on-site to accommodate the increase. The

commercial center provides 165 parking spaces. The total required parking for all uses, including the restaurant with the increased parking requirement, is 157 parking spaces.

4. The conditions of approval will help to ensure that potential conflicts with surrounding land uses are eliminated or minimized to the greatest extent possible.

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. Eating and drinking establishments with the service of alcohol have long operated near or within the commercial center and have not proven detrimental to the area.
2. The principal use will remain an eating and drinking establishment and addition of incidental beer and wine sales will not alter the design, size, or operating characteristics of the facility.
3. The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will help to ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to maintain the welfare of the surrounding community and that the eating and drinking establishment does not become a bar or tavern. The establishment is required to comply with the requirements of the Alcoholic Beverage Control Department to help ensure the safety and welfare of customers and employees of the establishment. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.

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 existing establishment is located within an existing commercial center and has demonstrated that it is suitable in terms of design, location, shape, and size to support the use.
2. Adequate public and emergency vehicle access, public services, and utilities are provided for on-site.

Finding:

- F. Operation of the use at the location proposed 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 proposed use.*

Facts in Support of Finding:

1. The project has been reviewed and includes conditions of approval to help 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 in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The eating and drinking establishment will continue to service patrons of the commercial center, surrounding commercial buildings, and provide dining services as a public convenience to the surrounding neighborhood. The service of alcohol will be incidental and will complement the principal use of the facility while providing an economic opportunity for the property owner to maintain a successful business in a way which best serves the community.
3. As conditioned, the owners, managers and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for selling alcohol.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2015-050, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. 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.
3. This resolution supersedes Zoning Administrator Resolution No. ZA2013-013, which upon vesting of the rights authorized by this Minor Use Permit, shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF FEBRUARY, 2016.



Patrick J. Alford, 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, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. 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 Use Permit.
4. This minor use 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.
5. *The hours of operation for the establishment shall be limited to 7:00 a.m. through 10:00 p.m., daily.*
6. *The interior net public area shall be limited to 810 square feet.*
7. *A minimum of 21 parking spaces (1 parking space per 40 square feet of net public area) shall be provided within the commercial center for the establishment.*
8. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and may require an amendment to this use permit or the processing of a new use permit.
9. A copy of the Resolution, including conditions of approval Exhibit "A", shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
10. 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.
11. No outside paging system shall be utilized in conjunction with this establishment.

12. All trash shall be stored within the building or within the existing dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
13. 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.
14. The exterior of the business shall be maintained free of 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 20 feet of the premises.
15. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
16. 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.
17. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
18. 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.
19. 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 W Café including, but not limited to, Minor Use Permit No. UP2015-050 (PA2015-218). 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.

Police Department

20. There shall be no dancing or live entertainment allowed on the premises.
21. 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.
22. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
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 reduced price alcoholic beverage promotions after 9:00 p.m.
25. Food service from the regular menu must be made available to patrons during all open hours.
26. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times 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.
27. Strict adherence to the maximum occupancy limit is required.
28. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. All noise generated by the proposed use shall comply with the provisions of Newport Beach Municipal Code Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.

Building Division

29. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

RESOLUTION NO. ZA2016-008

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2015-012 FOR AN ADDITIONAL MONUMENT SIGN AND INCREASED HEIGHT LOCATED AT 1600 EAST COAST HIGHWAY (PA2015-221)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Todd Pickup, on behalf of the Newport Beach Country Club, with respect to property located at 1600 East Coast Highway, and legally described as Parcels 1 and 3 of Parcel Map No. 79-704 and a Portion of Back Bay Drive as shown on Parcel Map No. 79-704, requesting approval of a modification permit.
2. The applicant proposes an additional ground-mounted monument sign at the project entrance on East Coast Highway and an increase in sign height. The proposed monument sign would have a maximum sign height of 6 feet 9 inches, whereas the Newport Beach Country Club Planned Community Development Plan sign standards limit sign height to 5 feet.
3. The subject property is located within the Newport Beach Country Club Planned Community (PC-47) Zoning District and the General Plan Land Use Element category is Parks and Recreation (PR).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Parks and Recreation (PR).
5. A public hearing was held on February 25, 2016 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15311, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 11 (Accessory Structures).
2. Class 11 consists of construction or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to signs.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.050 (Modification Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The requested modification will be compatible with existing development in the neighborhood.*

Facts in Support of Finding:

1. The proposed sign is a monument sign located at the primary project entrance, which is an area with heavy landscaping in front of the project parking lot. The proposed monument sign is complimentary to the landscaped areas and will not diminish or negatively impact the character of the existing development.
2. The proposed maximum sign height is 6 feet 9 inches, whereas the PC allows for a maximum sign height of 5 feet. The surrounding landscape enables a taller monument sign that is in scale with the project and able to identify the Country Club at its primary entrance to motorists on East Coast Highway. The proposed increase in maximum sign height is similar in height to existing monument signs for Fashion Island and Irvine Terrace, all of which are located nearby and facing East Coast Highway.
3. A monument sign for the Newport Beach Country Club previously existed at East Coast Highway entrance in a similar location as the proposed sign.

Finding:

- B. *The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

Facts in Support of Finding:

1. The proposed monument sign is located at the primary entrance to the Country Club on East Coast Highway on a large 128.5 acre lot. Additionally, the Country Club is set back from East Coast Highway approximately 320 feet, reducing visibility of the Country Club and making it difficult for visitors to locate.
2. The primary entrance is the only entrance to the Country Club on East Coast Highway. The location and height of the monument sign is necessary to alert visitors traveling on East Coast Highway of the Country Club's driveway and primary entrance.

Finding:

- C. *The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Facts in Support of Finding:

1. Given that the primary access to the site is from East Coast Highway, the PC previously permitted a monument sign at the proposed location for proper identification. However, it was unintentionally removed as part of the March 27, 2012 amendment that incorporated the Tennis Club. A strict application of the amended PC would leave the Country Club without an adequate identification sign at its primary entrance, which is inconsistent with the purpose and intent of the PC.
2. The proposed increase in maximum sign height does not interfere with the intent of the Zoning Code as it provides for adequate identification of the site while guarding against the excessive and confusing proliferation of signs. The proposed maximum height increase allows for greater visibility for motorists traveling in heavy vehicular traffic on East Coast Highway to identify the Country Club's primary entrance.
3. Although the PC allows the installation of a monument sign at its secondary driveway at Granville, this location is used less frequently by visitors because it is inconveniently located between several commercial office building parking lots.

Finding:

- D. *There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding:

1. The alternative location where the PC permits a monument sign is in front of the secondary entrance, located on Granville. A single monument sign at the secondary entrance does not provide similar benefits to the Country Club. The secondary entrance is located on a different street and is not used frequently due to its inconvenient location. The location of the sign at the primary entrance and its increase in maximum height will be essential for notifying visitors of the Country Club's primary entrance and will not be detrimental to any surrounding owners and occupants, the neighborhood, or to the general public.

Finding:

- E. *The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the*

City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.

Facts in Support of Finding:

1. Approval of the application to allow an additional monument sign and an increase in the size of the sign does not change the density or intensity of the use. The proposed sign will provide adequate visibility for visitors traveling on East Coast Highway and will identify the location of the primary entrance to the site.
2. The location of the additional sign on East Coast Highway does not impact the surrounding projects.
3. The size of the sign is within scale of the signs in the surrounding area and will not adversely affect or be detrimental to persons, property, or improvements in the surrounding neighborhood. Monument signs are typically limited to 6 feet in height in other zoning districts in the City, and a proposed maximum height of 6 feet 9 inches is not overly excessive.
4. The area of the sign does not exceed the 75 square feet maximum sign area permitted by the PC.
5. The project has been reviewed and conditioned to ensure the sign will be safely located outside the vehicular line of sight.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2015-012, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. 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 25th DAY OF FEBRUARY, 2016.



Patrick J. Alford, 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. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. 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 Use Permit.
4. This Modification 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.
5. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Modification Permit or the processing of a new Modification Permit.
6. The additional monument sign shall have a maximum height of 6 feet 9 inches.
7. The additional monument sign shall have a maximum sign area of 75 square feet.
8. There shall be a minimum separation of 50 feet between monument signs.
9. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
10. 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.
11. 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 Newport Beach Country Club Sign Modification including, but not limited to, Modification Permit No. MD2015-012 (PA2015-221). 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.

Public Works Division

12. Sign shall be located outside the vehicular line of sight area, per CIM Standards (STD-110-2).

Building Division

13. The applicant shall obtain building and electrical permits.

RESOLUTION NO. HO2016-001

A RESOLUTION OF A HEARING OFFICER OF THE CITY OF NEWPORT BEACH APPROVING REASONABLE ACCOMODATION NO. RA2015-002 FOR THE PROPERTY LOCATED AT 806 HARBOR ISLAND DRIVE (PA2015-202)

THE HEARING OFFICER OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Eric Papa, representing property owner, Vincent McGuinness, with respect to property located at 806 Harbor Island Drive, and legally described as Lot 7 of Tract 3867, being a Subdivision of a portion of Block 94 of Irvine's Subdivision as shown on a map thereof, recorded in Book 1, Page 88, of Miscellaneous Record Maps, Records of Orange County, and a portion of Bayside Drive as abandoned per Book 9568 Page 719 and Book 10126 Page 349 Official Records, Records of Orange County, California. The applicant requests approval of a reasonable accommodation for relief from certain zoning provisions that interfere with his use of his residence due to a disability as set forth more fully below.
2. The applicant has submitted a reasonable accommodation request seeking relief from the Newport Beach Municipal Code (NBMC) Section 20.40.090 (Parking Standards for Residential Uses) to remove one parking space and allow an elevator to be constructed within the required parking area of a non-conforming 2-car garage. The elevator is requested to provide access to the second floor of the residence for an individual with a disability.
3. The subject property is located within the R-1 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single-Unit Residential Detached).
4. The subject property is located within the coastal zone and the Coastal Land Use Designation is RSD-B (Single Unit Residential Detached).
5. Chapter 20.52.070 (Reasonable Accommodations) of the Newport Beach Municipal Code (NBMC) provides reasonable accommodation from the City's zoning and land use regulations, policies, and practices when needed to provide an individual with any disability an equal opportunity to use and enjoy a dwelling.
6. A public hearing was held on February 23, 2016, at 10:00 a.m., in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in

accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Hearing Officer at this meeting.

7. The hearing was presided over by William B. Conners, a licensed California attorney and a Hearing Officer for the City of Newport Beach.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities).
2. The project involves minor physical modifications to an existing single-family residence involving the addition of an elevator within an existing garage. The scope of work involves the addition of an elevator within the 2-car garage of an existing single-family residence.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.070(D)(2) of the Newport Beach Municipal Code, the following findings must be and are hereby made in order to approve the reasonable accommodation:

Finding:

- i. The requested accommodation is requested by or on the behalf of one of the owners of the residence, who is an individual with a disability protected under the Fair Housing Laws.*

Facts in Support of Finding:

1. A letter from Robert S. Gorab, MD, an Orthopedic Surgeon, has been submitted by the applicant supporting this claim and the need for convenient elevator access. The statement indicates that the property will be occupied by a person with medical challenges to the lower extremities restricting the ability to walk, and therefore to climb stairs. According to Dr. Gorab, the individual needs an elevator installed in the home due to these challenges.

Finding:

- ii. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling, and the suggested location is the best spot in the home to place the elevator.*

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Facts in Support of Finding:

1. As noted above, the applicant suffers from a disability and the elevator within the garage is needed to gain accessible access to the second floor level of the residence to allow this person with a disability to more fully enjoy the use of the upstairs living area of the home. The existing single-family residence has a series of steps at the first floor that prevent handicap accessibility through the first floor level. Only the garage and front study are accessible from a level surface without the use of stairs.
2. In a letter dated November 5, 2015, by Erik R Gibbs of South County Engineering, the project engineer explored many potential locations for the elevator in the building and after reviewing the framing plans, determined that the most practical location of the proposed elevator would be inside the existing garage to minimize the impact to the existing structure and floor plan.
3. Alternative elevator locations are infeasible due to the amount of structural alteration that would be necessary to accommodate this feature within the existing residence. If the elevator was located within the front study/bedroom, this would make two bedrooms unusable within the five bedroom single-family residence. The placement of the elevator in other locations would alter the existing floor plan significantly or require the elevator to extend outside or above the existing roofline. Additionally, the layout of the existing stairway does not offer sufficient landing area to install a chair lift.
4. With consideration of the factors provided by NBMC Section 20.52.070 (D-3), the requested accommodation is necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling. If the requested accommodation is granted, the disabled person will be able to access the second floor level of the residence by elevator, which will enhance their quality of life. Any modifications necessary to make the second floor level accessible cannot be accommodated within the existing residence without more significant disruption of the interior of the home.

Finding:

- iii. *The requested accommodation will not impose an “undue financial or administrative burden” on the City as that term is defined in Fair Housing Laws and interpretive case law.*

Facts in Support of Finding:

1. Allowing the construction of an elevator within the existing garage would not impose an undue financial or administrative burden on the City. The administrative costs of processing the building permit will be offset by normal building permit fees.

Finding:

- iv. *The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.*

Facts in Support of Finding:

1. The proposed accommodation would not result in any fundamental alterations to the character and use of the home or the neighborhood. The home will remain unaltered from external appearances.
2. The proposed elevator within the garage would not intensify the existing two-unit residential use and therefore would not undermine the express purpose or land use identified by the City's General Plan. The proposed improvements would occur within the existing residence and would not result in any exterior modifications to the building.
3. The existing residence is consistent with surrounding residential properties with similar sized structures that provide a nonconforming two-car garage where three garage spaces are required under the Zoning Code. The proposed elevator encroaches into the required parking area but will comply with all other applicable development standards, including the floor area limit, height, and setbacks. The residence will continue to provide adequate protection for light, air, and privacy to the residents and adjacent neighbors. The elevator and parking alteration will not preclude access to the dwelling and will be consistent in scale with other dwellings in the neighborhood. The proposed alterations will not change the bulk and scale of the existing residence. The proposed modifications will result in gross floor area that is less than the maximum allowed by the Zoning Code. The resulting reduced parking space in the garage will still allow for parking of a small vehicle.
4. The request to add an elevator within the existing garage would reduce parking availability to one full-sized garage space and one smaller substandard one. Given the scope of work, increasing the garage width to accommodate code required parking width (28 feet 3 inches) and an elevator would not be feasible by requiring significant structural alterations to the garage and entrance to the dwelling. While required parking within the front setback is not allowed under the Zoning Code, this private driveway accommodates sufficient parking on-site, consistent with the intent of the Zoning Code.

5. There is no intention to operate the dwelling as a residential care facility. Thus, the granting of the reasonable accommodation request will not create an institutionalized environment.

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Finding:

- v. *The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.*

Facts in Support of Finding:

1. The elevator would be constructed in accordance with the required Building and Safety Codes; therefore, the proposed project would not pose a threat to the health or safety of other individuals or substantial physical damage to the property of others. The approval of this reasonable accommodation is conditioned such that the applicant is required to obtain all necessary permits in accordance with the Building Code and other applicable Codes.
2. The existing garage provides two useable garage spaces, which is nonconforming to the Zoning Code requirement for three garage spaces on-site. The remainder substandard parking space will allow parking of a small vehicle. The driveway leading to the garage provides 24 feet in depth to the back of the public sidewalk where two vehicles can be parked without affecting the public's ability to use the sidewalk. However, the property line is 6 feet closer to the garage from the back of sidewalk. In the future, the sidewalk location could be moved to the property line. Parking or a driveway in front of a garage does not meet the minimum design standard for required parking of the Zoning Code, but parking on a driveway is allowed, provided vehicles do not block the sidewalk. Allowing the residents to park on the private driveway continues to fulfill the intent of the Zoning Code by providing adequate parking on site while allowing sufficient accessible access to the home. Pedestrian and vehicle access in the right-of-way will not be hindered if vehicles park in the front driveway. Approval of the application allows the applicant to continue the use of the remaining single garage space and private driveway available, which is not expected to be detrimental to the occupants or neighbors of the dwelling.
3. The existing nonconforming garage has not proven to be detrimental to the occupants of the property, nearby properties, neighborhood, or City the modifications will be adequate in width to park one (1) full-sized vehicle in the garage, one (1) small vehicle in the garage, and two (2) vehicles on the front driveway.

Finding:

- vi. *For housing located in the coastal zone, a request for reasonable accommodation under this section may be approved by the City if it is consistent with the findings provided in subsection (D)(2) of this section; with Chapter 3 of the California Coastal Act of 1976; with the Interpretative Guidelines for Coastal Planning and Permits established by the California Coastal Commission dated February 11, 1977, and any subsequent amendments; and the Local Coastal Program.*

Facts in Support of Finding:

1. In accordance with Section 30212 of the California Coastal Act, the proposed modifications to the interior of the existing residence are not classified as new development and are exempt from the California Coastal Act requirement for a Coastal Development Permit since the modifications to the existing residence do not result in an increase of gross floor area, height, or bulk to the of the structure by more than 10 percent.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Hearing Officer of the City of Newport Beach hereby approves the requested Reasonable Accommodation No. RA2015-002 (PA2015-202), subject to the findings and considerations set forth above and conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 25th DAY OF FEBRUARY, 2016.

BY: /s/ William B. Conners
William B. Conners
Hearing Officer for the City of Newport Beach

EXHIBIT "A"

CONDITIONS OF APPROVAL

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. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements.
3. Parking shall not encroach into the Harbor Island Drive public right-of-way. The private driveway and doors to the garage from Harbor Island Drive to the existing 2-car garage shall remain open for vehicle parking when necessary.
4. The elevator design shall be modified so that the doorway opens to the west side and does not further restrict the available substandard parking area.
5. The elevator will require a 1-hour rated enclosure.
6. The elevator door shall be self-closing and 20-minute rated.
7. If the person(s) initially occupying the residence vacates or conveys the property for which the reasonable accommodation was granted, the reasonable accommodation shall remain in effect due to the fact that the reasonable accommodation (elevator) will be physically integrated into the residential structure and cannot be easily or cost-effectively removed or altered to make the residence comply with the Zoning Code.
8. This approval shall expire and become void unless exercised within twenty-four (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.
9. 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 806 Harbor Island Drive reasonable accommodation including, but not limited to, Reasonable Accommodation No. RA2015-002 (PA2015-202), including the costs associated with the conduct of this Hearing. 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.