



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

3300 Newport Boulevard, Building C, Newport Beach, CA 92663

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www.newportbeachca.gov

CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

August 15, 2012

Agenda Item 2

SUBJECT: [REDACTED] (PA2012-083)

- Modification Permit No. MD2012-013

APPLICANT: [REDACTED]

PLANNER: Kay Sims, Assistant Planner
(949) 644-3237 or Ksims@newportbeachca.gov

ZONING DISTRICT/GENERAL PLAN

- **Zone:** R-1-6000 (Single-Unit Residential)
- **General Plan:** RS-D (Single-Unit Residential Detached)

PROJECT SUMMARY

A Modification Permit to allow a 34 percent addition (1,170 square feet) to an existing 3,461-square-foot, nonconforming single-unit residence. The Zoning Code limits additions to 10 percent of the existing floor area of the structure because the interior dimensions of the existing two-car garage (19 feet 3 1/2 inches deep by 19 feet 5 inches wide) are less than the minimum required by Code (20 feet by 20 feet). The proposed addition complies with all other development standards. The proposed addition complies with all other development standards.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Draft Zoning Administrator Resolution No. ZA2012- approving Modification Permit No. MD2012-013 (Attachment No. ZA 1).

DISCUSSION

- The property is currently developed with an existing 3,461-square-foot, single-unit residence that was built in 1957. At that time, the minimum clear interior dimensions of the two-car garage (19 feet 3 1/2 inches deep by 19 feet 5 inches wide) and the setbacks were compliant with the requirements of the Zoning Code.
- The current Zoning Code, effective in November of 2010, requires the minimum clear interior dimensions for a two-garage on lots wider than 40 feet to be 20 feet wide by 20 feet deep.
- Due to the change in the development standards related to minimum size of garage parking spaces required for lots 40 feet wide or more, the existing two-car garage is legal nonconforming. Additions to the existing residence are limited to 10 percent of the existing structure (Section 20.38.060.2.a and b: Nonconforming Parking – Dimensions or Type of Parking Spaces). A larger addition can be permitted with approval of a Modification Permit (Section 20.52.050).
- The design of the existing two-car garage is not square. One of the parking spaces (10 feet wide by 20 feet 3 1/2 inches) complies with the minimum clear interior dimensions required by the Zoning Code; the second space is substandard (9 feet 5 inches wide by 19 feet 3 1/2 inches deep). The clear interior space provided is adequate to park two vehicles and will not be decreased as a result of the design of the proposed additions.
- Since the existing residence encroaches into the front and side setbacks, additions are limited to 50 percent of the existing gross floor area and must comply with all development standards. The proposed addition complies with these requirements.
- Pursuant to the Zoning Code (Table 3-10: Off-Street Parking Requirements), the addition will not result in a single-unit residence over 4,000 square feet of liveable area; therefore, a third parking space is not required.
- The proposed addition will result in a residence that is comparable in size and scale to other single-unit residences in the neighborhood.

ENVIRONMENTAL REVIEW

This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) Guidelines, pursuant to Section 15301 (Class 1 – Existing Facilities), which consists of 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; and includes additions to existing structures up to 50 percent of the existing floor area or 2,500 square feet, whichever is less. This project involves the

addition of 1,170 square feet to an existing 3,461-square-foot single-unit residence and, therefore, qualifies for this exemption.

PUBLIC NOTICE

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

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. For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

Prepared by:



Kay Sims, Assistant Planner

GRR/ks

Attachments: ZA 1 Draft Resolution
 ZA 2 Vicinity Map
 ZA 3 Applicant's Project Description and Justification
 ZA 4 Project Plans

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2012-

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2012-013 TO ALLOW AN ADDITION TO A NONCONFORMING STRUCTURE LOCATED AT [REDACTED] (PA2012-083)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by [REDACTED] with respect to property located at [REDACTED] and legally described as [REDACTED]
2. A Modification Permit to allow a 34 percent addition (1,170 square feet) to an existing 3,461-square-foot, nonconforming single-unit residence. The Zoning Code limits additions to 10 percent of the existing floor area of the structure because the interior dimensions of the existing two-car garage (19 feet 3 1/2 inches deep by 19 feet 5 inches wide) are less than the minimum required by Code (20 feet by 20 feet). The proposed addition complies with all other development standards. The proposed addition complies with all other development standards.
3. The subject property is located within the R-1-6,000 (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 has a Coastal Land Use designation of RSD-A (Single Unit Residential Detached - 0.0 - 5.9 DU/AC)
5. A public hearing was held on August 15, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. 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.

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities). The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The proposed project involves the addition of 1,170 square feet to an existing, 3,461-square-foot single family residence. This exemption includes additions to the existing structure up to 50 percent of the existing floor area or 2,500 square feet, whichever is less. This project therefore qualifies for this exemption.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.050 E. (Required Findings, Modification Permits) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of the finding for a Modification Permit are set forth:

Finding

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

Facts in Support of Finding

1. The modification permit will allow an addition to a single-unit residence within a single-unit residential subdivision.
2. The applicant is proposing a 34 percent addition to the existing structure. The proposed addition will comply with all of the development standards, including lot coverage, height, and setbacks, and will not intensify or alter the existing nonconformities.
3. The resulting residence will consist of 4,440 square feet (3,998 square feet plus a 442-square-foot garage). Pursuant to Table 3-10: Off-Street Parking Requirements of the Zoning Code, it will not require the addition of a third garage parking space since the structure (not including the garage) is less than 4,000 square feet.
4. The residence will be similar in character and size to other residences located in the neighborhood.

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 residences in this area were constructed with garages and setbacks that were in compliance with the Zoning Code at the time of construction.
2. Given the design of the existing residence and proposed scope of work, bringing the garage into conformance would require a significant expansion in the scope of work.
3. The design of the existing two-car garage is not square. One of the parking spaces (10 feet wide by 20 feet 3 1/2 inches) complies with the minimum clear interior dimensions required by the Zoning Code; the second space is substandard (9 feet 5 inches wide by 19 feet 3 1/2 inches deep). The clear interior space provided is adequate to park

two vehicles and will not be decreased as a result of the design of the proposed additions.

4. Although the existing garage is deficient as to meeting the minimum clear interior dimensions required by the Zoning Code, it does provide two useable garage spaces and, therefore, meets the intent of the Zoning Code by providing adequate parking on the site.
5. Approval of the Modification Permit to allow the 34 percent addition is reasonable given the use of the structure as a single-unit residence and the fact that the proposed addition will not result in a residence that exceeds 4,000 square feet (not including the garage) which would require the addition of a third parking space.

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. The interior clear dimensions of the existing two-car garage were in compliance with the Zoning Code at the time of original construction. However, as a result of amendments to the Zoning Code, the two-car garage is now substandard in size, and is therefore legal nonconforming.
2. Bringing the existing two-car garage into conformance with the clear interior dimensions required by the current Zoning Code would result in a significant increase in the scope of the project and/or require approval of a Variance to encroach into the required front and/or side setbacks. Since the existing garage provides two useable spaces, the intent of the code is achieved.

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 alternatives would require that the applicant bring the existing two-car garage into conformance by significantly expanding the scope of the project or requesting a Variance for setback encroachments.
2. Approval of the Modification Permit allows the applicant to continue the use of the existing two-car garage, which has not proven detrimental to the occupants or neighbors.

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. Though the minimum clear interior dimensions will be less than the minimum required by the Zoning Code, it provides sufficient area for use as a two-car garage.
2. The two existing garage parking spaces have provided adequate space to park two vehicles and will continue to do so. The size of the spaces has not been detrimental to the occupants of the property, nearby properties, neighborhood, or City.
3. The Zoning Code (Section 20.38.040: Nonconforming Structures) would allow an addition up to 50 percent of the existing residence if the second garage parking space complied with the minimum clear interior dimensions currently required.
4. The project will not increase the nonconforming status of the existing structure and will comply with all other provisions of the R-1-6,000 Zoning District.
5. The addition will result in a residence similar or smaller in scale to other residences in the neighborhood and will not require a third garage parking space.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2012-013, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. Modification Permit applications do not become effective until 14 days following the date of action. Prior to the effective date, the applicant or any interested party may appeal the decision of the Zoning Administrator to the Planning Commission by submitting a written appeal application to the Community Development Director. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

PASSED, APPROVED, AND ADOPTED THIS 15TH DAY OF AUGUST, 2012.

By: _____
Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved plot plan, floor plans and elevations, except as noted in the following conditions.
2. If any of the existing public improvements surrounding the site are damaged by private work, new concrete sidewalk, curb and gutter, street pavement, and other public improvements will be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works inspector.
3. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Modification Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11-inches by 17-inches. The plans shall accurately depict the elements approved by this Modification Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
4. A building permit shall be obtained prior to commencement of the construction.
5. A copy of the conditions of approval shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
6. All non-standard improvements within the [REDACTED] right-of-way shall comply with Council Policy L-6. All non-compliant improvements shall be removed. The applicant shall obtain an encroachment permit and encroachment agreement from the Public Works department for all remaining non-standard improvements within the public right-of-way.
7. Reconstruct the existing broken and/or otherwise damaged concrete curb, gutter and driveway approach along the [REDACTED] frontage.
8. All existing drainage facilities in the public right-of-way, including the existing curb drain along the [REDACTED] frontage shall be retrofitted to comply with the City's on-site, non-storm runoff retention requirements.
9. A new sewer cleanout needs to be installed on the existing sewer lateral per STD-406-L adjacent to the property line in the [REDACTED] public right-of-way.
10. All on-site drainage shall comply with the latest City Water Quality requirements.

11. All improvements shall be constructed as required by Ordinance and the Public Works Department.
12. 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.
13. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050 (A) of the Newport Beach Municipal Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050 (B) of the Newport Beach Municipal Code. Requests for an extension must be in writing.
14. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the [REDACTED] Addition including, but not limited to, Modification No. MD2012-013013 (PA2012-083083). 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.

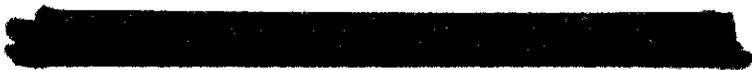
Attachment No. ZA 2

Vicinity Map

VICINITY MAP



Modification Permit No. MD2012-013
PA2012-083



Attachment No. ZA 3

Applicant's Project Description and Justification

Jeff Anderson
Licensed Architect - C-29294
State of California

**MODIFICATION PERMIT
INFORMATION & JUSTIFICATION**

June 13, 2012

Property Address:



The homeowner is requesting approval of a modification permit to allow an addition greater than 10% of the existing home area pursuant to zoning code section 20.38.060.A.2.b., when the home has a legally non-conforming garage size smaller than current requirements due to a zoning code amendment after the original construction of the home. The current zoning code now requires that 2-car garages be 20'Wx20'D (10'Wx20'D for each car). The previous zoning code required a 17'-6"Wx18'-6"D 2-car garage. When originally built, the existing garage exceeded the previous zoning code requirements; however it is slightly smaller than the current requirements. One garage space exceeds the current requirements (it is 10'Wx20'-3"D) and the other space is slightly too small (9'-5"Wx19'-3"D).

It is our belief that a 2-car garage that was adequately sized and met zoning standards 1-1/2 years ago should not unfairly limit the size of the residential addition to 10% of the existing home area. The homeowner would like to increase the existing house (including the garage) from 3,461 gsf to 4,440 gsf. The proposed square footage (excluding the garage) is 3,998 gsf which is under the 4,000 gsf limit for a home with a 2-car garage, per the current zoning code.

Pursuant to 20.52.050.E, all of the following findings can be made:

1. *The requested modification will be compatible with existing development in the neighborhood:* The size and massing of the proposed home is in keeping with the existing neighborhood. The addition completes the second story of the existing home – please refer to sheet A-4 which shows an existing photo and proposed elevations/aerial views. All of the homes surrounding the property have full two story massing on the street side.
2. *The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of use:* In order to enlarge the garage to 20'x20' it would unfairly require that the entire garage be rebuilt at a considerable expense to the homeowner. Since the north side and southwest corner of the garage are legally non-conforming with regard to setback, they cannot be enlarged without relocating the walls into compliance, thus shifting the entire garage and rendering the existing slab outline useless. The shared wall between the garage and kitchen has a structural footing that separates the slab-on-grade garage with the framed-floor-over-crawlspace of the kitchen. The garage cannot be made deeper without affecting this whole footing system, again at considerable expense. It is the homeowner's intent to keep as much of the existing home as possible to limit the scope and cost of the construction.

3. *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:* By requiring that the garage be enlarged less than a foot in both directions puts an unfair hardship that is inconsistent with the purpose and intent of the zoning code, especially given that the garage size was compliant 1-1/2 years ago. A slightly undersized 2-car garage has no impact on the useability of the garage and shouldn't unnecessarily limit the size of the addition to only 10% of the existing.
4. *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:* First, the requested modification permit will not provide any detriment to the surrounding neighborhood; and there are no reasonable alternatives.
5. *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:* Allowing the homeowner to add more than 10% to the existing home will have no negative impacts to the public or neighborhood, as the proposed addition is in keeping with the scale and density of the neighborhood. The size of the proposed home will be compatible with the existing neighborhood, as it is primarily completing the second floor of the existing home.

Additional pertinent existing information: The existing home as legally non-conforming side setbacks – the side setbacks used to be 5'-0" and now they are required to be 6'-0". The existing non-conforming walls are existing to remain. Two small corners of the front of the existing home also have non-conforming setbacks. As mentioned above, these are all existing to remain. All new construction will comply with current setbacks and height limits.

We appreciate your assistance in reviewing this application. Please feel free to contact me if you have any questions or comments.

Best Regards,
Jeff Anderson
Architect

Attachment No. ZA 4

Project Plans



- LEGEND:**
- 1/4" CONCRETE
 - 1/2" CONCRETE
 - 3/4" CONCRETE
 - 1" CONCRETE
 - 1 1/2" CONCRETE
 - 2" CONCRETE
 - 3" CONCRETE
 - 4" CONCRETE
 - 6" CONCRETE
 - 8" CONCRETE
 - 10" CONCRETE
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 - 72" CONCRETE
 - 76" CONCRETE
 - 80" CONCRETE
 - 84" CONCRETE
 - 88" CONCRETE
 - 92" CONCRETE
 - 96" CONCRETE
 - 100" CONCRETE

CURVE DATA:

Circle 100' Radius 100' 100'

Circle 150' Radius 150' 150'

Circle 200' Radius 200' 200'

Circle 250' Radius 250' 250'

Circle 300' Radius 300' 300'

Circle 350' Radius 350' 350'

Circle 400' Radius 400' 400'

Circle 450' Radius 450' 450'

Circle 500' Radius 500' 500'

Circle 550' Radius 550' 550'

Circle 600' Radius 600' 600'

Circle 650' Radius 650' 650'

Circle 700' Radius 700' 700'

Circle 750' Radius 750' 750'

Circle 800' Radius 800' 800'

Circle 850' Radius 850' 850'

Circle 900' Radius 900' 900'

Circle 950' Radius 950' 950'

Circle 1000' Radius 1000' 1000'

TOPOGRAPHIC SURVEY
OF

PREPARED BY:
DUCA-MCCOY
SURVEYING & ENGINEERING
1000 10th Street
San Francisco, CA 94103
TEL: 415.398.3000

BENCHMARK:
USED THE SOUTHWESTERLY CURB RETURN
CANTON AND EAST BAYVIEW CANTON, ED.
ST. MARY'S PLAIN
ELEV. = 207.74 TC

PROPERTY OWNER:
MR. & MRS. JOHNSON
1000 10th Street
San Francisco, CA 94103
949.233.0887

LOT AREA:
AREA = 31,088.0 S.F.
AREA = 0.276 ACRES

BASIS OF BEARINGS:
THE BEARINGS SHOWN HEREON ARE BASED ON THE
NAD 83 DATUM AND THE NORTH POINT OF THE
NAD 83 DATUM IS PER RECORD OF SURVEY NO. 2482-104
S.E.E. 256/04-47

NOTE: ALL DIMENSIONS OF RECORDS ARE IN METERS UNLESS OTHERWISE NOTED.