



**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 3, 2012

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**HEARING OFFICER ACTIONS  
FEBRUARY 1, 2012**

- Item 1: Abatement Period Extension Request - 500 Jasmine Avenue - Abatement Period Extension No. PA2011-012  
500 Jasmine Avenue
- This item was approved. Council District 6
- Item 2: Abatement Period Extension Request – 3355 Via Lido- Abatement Period Extension No. PA2011-153  
3355 Via Lido
- This item was approved. Council District 1
- Item 3: Abatement Period Extension Request – 1499 Monrovia Avenue- Abatement Period Extension No. PA2011-152  
1499 Monrovia Avenue
- This item was approved. Council District 2

**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. HO 2012- 001

**A RESOLUTION OF A HEARING OFFICER OF THE CITY  
OF NEWPORT BEACH APPROVING THE ABATEMENT  
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT  
500 JASMINE AVENUE (PA 2011-012)**

**WHEREAS**, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

**WHEREAS**, an application was filed by Ronald W. Yeo, the owner of property located at 500 Jasmine Avenue, and legally described as Lot 2, Block 537, Corona Del Mar Tract, requesting an extension of the abatement period specified by the NBMC Section 20.38.100. If granted, the extension will allow the continued operation of existing commercial use for ten years from the date of the Hearing Officer's approval (February 1, 2022). The property is located in the R-2 Zoning District, where such nonresidential uses are not permitted; and

**WHEREAS**, a public hearing was held on February 1, 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 NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

**WHEREAS**, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the findings and considerations of Section 20.38.100 (C.4(c)) of the NBMC and facts in support of the findings and considerations are as follows:

- 1. The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The one year abatement period specified by the Municipal Code is not of sufficient duration to amortize the property owner's investment in improvements and additions made to the building. The information submitted by the applicant supports staff recommendation that an extension of 10 years for the abatement of the current uses is necessary to avoid an unconstitutional taking of the applicant's property. Supporting information has not been presented to justify an extension period of more than ten years. Subsequently, the ten year period would allow the owner/tenant additional time to transition out of the building and to pursue other options to continue the use of the building beyond the 10 years recommended. An

extension period of ten years is necessary and adequate to avoid economic hardship that will result if the owner is required to abate his use of the property which is his source of income, and would suffer additional economic impacts by relocating and leasing an off-site location.

- 2. The length of time the use was operating prior to the date of nonconformity justifies the extension of the abatement period beyond the code specified one year.**

Facts in Support of Finding: The property became nonconforming with the General Plan in 2006, 6 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update". The existing structure and use conformed to the Land Use Element of the General Plan for 37 years prior to the 2006 update; and was not subject to abatement.

- 3. The existing structure is not suitable for conversion to an alternate use.**

Facts in Support of Finding: The building could be modified to accommodate other commercial or nonresidential uses. However, the current building is not suitable for conversion from the existing commercial use to a residential building without demolishing and building new, or major renovation to provide adequate living areas and provide the required two-car garage parking.

- 4. No harm to the public will result if the nonresidential use remains beyond the one year abatement period.**

Facts in Support of Finding: The property is located in an area that is occupied by other nonresidential uses; including office (across the street) and retail and restaurant uses across Jasmine Avenue and on Coast Highway. The office building has been in place for over 43 years, and it is anticipated the continued commercial use of the subject property is compatible with the surrounding uses and will not have any negative impact or pose harm on the neighboring residential and nonresidential uses in the vicinity.

- 5. The cost and feasibility of relocating the use to another site cannot be accommodated within the one-year abatement period.**

Facts in Support of Finding: The applicant indicates that the relocation of his present nonresidential use of the building would be costly since there are limited numbers of comparable vacant storefront units or buildings within the vicinity. Additionally, he would have to rent or purchase a new location, whereas he currently owns the subject building and pays no rent.

**WHEREAS**, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing

Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

**NOW THEREFORE, BE IT RESOLVED:**

**Section 1.** The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2011-012), subject to the findings and considerations set forth above.

**Section 2.** The Abatement Period Extension for the property located at 500 Jasmine Avenue, and legally described as Lot 2, Block 537, Corona Del Mar Tract, is hereby extended for ten years and will expire on February 1, 2022, at which time all nonresidential use of the property shall cease or the building be demolished, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District and the General Plan Land Use Designation are approved and adopted; or a change to the Zoning Regulations pertaining to nonconforming uses or their abatement are approved and adopted prior to that date.

**Section 3.** This action shall become final and effective fourteen (14) days after the adoption of this Resolution 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.

APPROVED AND ADOPTED THIS 1<sup>ST</sup> DAY OF FEBRUARY 2012.

By: \_\_\_\_\_

Hon. John C. Woolley, retired Judge  
(California Superior Court, Orange County)  
Hearing Officer for the City of Newport Beach

ATTEST:

  
City Clerk



RESOLUTION NO. HO 2012- 003

**A RESOLUTION OF A HEARING OFFICER OF THE CITY  
OF NEWPORT BEACH APPROVING THE ABATEMENT  
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT  
3355 VIA LIDO (PA 2011-153)**

**WHEREAS**, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

**WHEREAS**, an application was filed by New Port Townhouse LLLP, the owner of property located at 3355 Via Lido, and legally described as Portion of Lot 4, Lot 5, and Portion of abandoned alley of Tract 1117, requesting an extension of the abatement period specified by the NBMC Section 20.38.100. If granted, the extension will allow the continued operation of existing commercial use for ten years from the date of the Hearing Officer's approval (February 1, 2022). The property is located in the RM (2178) Zoning District, where such nonresidential uses are not permitted; and

**WHEREAS**, a public hearing was held on February 1, 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 NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

**WHEREAS**, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the findings and considerations of Section 20.38.100 (C.4(c)) of the NBMC and facts in support of the findings and considerations are as follows:

- 1. The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The one year abatement period specified by the Municipal Code is not of sufficient duration to amortize the property owner's investment, since the current owner recently purchased the property and was recently made aware of the abatement requirements. The information submitted by the applicant supports that a 10 year abatement period is necessary to avoid an unconstitutional taking of the applicant's property. The ten year period would allow the owner to recover any remaining investment in the property to avoid an unconstitutional taking, will allow additional time

to process the proposed residential project, and maintain rental income during the time required to obtain building permits. The 10 year extension period is also consistent with the period of extension approved in similar applications.

- 2. The length of time the use was operating prior to the date of nonconformity justifies the extension of the abatement period beyond the code specified one year.**

Facts in Support of Finding: The property became nonconforming with the General Plan in 2006, 6 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update". The existing structure and use conformed to the Land Use Element of the General Plan for 49 years prior to the 2006 Update; and was not subject to abatement until 2010.

- 3. The existing structure is not suitable for conversion to an alternate use.**

Facts in Support of Finding: The building could be modified to accommodate other commercial or nonresidential uses. However, the current building is not suitable for conversion from the existing commercial use to a residential building without demolishing and building new, or major renovation to provide adequate living areas and residential parking.

- 4. No harm to the public will result if the nonresidential uses remain beyond the one year abatement period.**

Facts in Support of Finding: The property is located in an area that is occupied by other nonresidential uses and churches; including office (across the street), and restaurant and retail uses across Via Oporto and Via Malaga. Continued commercial use of the subject property is compatible with the surrounding uses and will not have any negative impact or pose harm on the neighboring residential and nonresidential uses in the vicinity.

- 5. The cost and feasibility of relocating the uses to another site cannot be accommodated within the one-year abatement period.**

Facts in Support of Finding: The applicant's submittal indicates that the relocation of the existing uses would be costly since there are limited numbers of comparable vacant storefront units or buildings available in the vicinity to accommodate the 31,413 square feet of on-site tenant space. Consequently, relocation of the existing uses would result in the additional costs to existing tenants that would be required to enter into new and potentially less favorable leases or lease terms.

**WHEREAS**, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

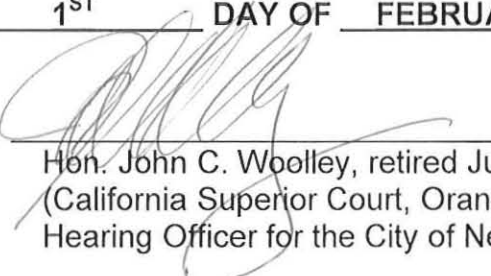
**NOW THEREFORE, BE IT RESOLVED:**

**Section 1.** The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2011-153), subject to the findings and considerations set forth above.

**Section 2.** The Abatement Period Extension for the property located at 3355 Via Lido, and legally described as Portion of Lot 4, Lot 5, and Portion of abandoned alley of Tract 1117, is hereby extended for ten years and will expire on February 1, 2022, at which time all nonresidential use of the property shall cease or the building be demolished, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District and the General Plan Land Use Designation are approved and adopted; or a change to the Zoning Regulations pertaining to nonconforming uses or their abatement are approved and adopted prior to that date.

**Section 3.** This action shall become final and effective fourteen (14) days after the adoption of this Resolution 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.

APPROVED AND ADOPTED THIS 1<sup>ST</sup> DAY OF FEBRUARY 2012.

By:   
Hon. John C. Woolley, retired Judge  
(California Superior Court, Orange County)  
Hearing Officer for the City of Newport Beach

ATTEST:

  
City Clerk



RESOLUTION NO. HO 2012- 002

**A RESOLUTION OF A HEARING OFFICER OF THE CITY  
OF NEWPORT BEACH APPROVING THE ABATEMENT  
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT  
1499 MONROVIA AVENUE (PA 2011-152)**

**WHEREAS**, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

**WHEREAS**, an application was filed by Kenneth M Kaplan, the owner of property located at 1499 Monrovia Avenue, and legally described as Parcel 2 of Lot Line Adjustment 2007-002, requesting an extension of the abatement period specified by the NBMC Section 20.38.100. If granted, the extension will allow the continued operation of existing commercial use for ten years from the date of the Hearing Officer's approval (February 1, 2022). The property is located in the RM (2420) Zoning District, where such nonresidential uses are not permitted; and

**WHEREAS**, a public hearing was held on February 1, 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 NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

**WHEREAS**, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the findings and considerations of Section 20.38.100 (C.4(c)) of the NBMC and facts in support of the findings and considerations are as follows:

- 1. The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The one year abatement period specified by the Municipal Code is not of sufficient duration to amortize the property owner's investment and the ability: to negotiate leases (which currently expire in September 2012), or to renegotiate the financing of the property (which will come due within the next year). Based on the information submitted by the applicant, staff recommends that an extension of 10 years for the abatement of the current use is necessary to avoid an unconstitutional taking of



the applicant's property; and to avoid the economic hardship that will result by the abatement of the nonresidential use which provides rental income.

- 2. The length of time the use was operating prior to the date of nonconformity justifies the extension of the abatement period beyond the code specified one year.**

Facts in Support of Finding: The property became nonconforming with the General Plan in 2006, 6 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update". The existing structure and use conformed to the Land Use Element of the General Plan for the 49 years prior to the 2006 update; and was not subject to abatement until 2008.

- 3. The existing structure is not suitable for conversion to an alternate use.**

Facts in Support of Finding: The building could be modified to accommodate other commercial or nonresidential uses. However, the age and configuration of the current building is not suitable for conversion from the existing commercial use to a residential building without demolishing and building new, or major renovation to provide adequate living areas and residential parking.

- 4. No harm to the public will result if the nonresidential uses remain beyond the one year abatement period.**

Facts in Support of Finding: The property is located in an area that is occupied nonresidential uses, residential uses and public institutions; including the Coastline Community College Project and Banning Ranch Project, and residential and mobile home park uses (across Monrovia Avenue). Continued commercial use of the subject property is compatible with the surrounding uses and will not have negative impact or pose harm on the neighboring residential and nonresidential uses in the vicinity.

- 5. The cost and feasibility of relocating the uses to another site cannot be accommodated within the one-year abatement period.**

Facts in Support of Finding: The relocation of the existing uses would be costly since there are no buildings of comparable size (17,000 square feet) in the Newport Mesa Area to accommodate the tenant's needs. Consequently, relocation of the existing uses would result in the additional costs to the existing tenant and result in a substantial loss of revenue to the property owner.

**WHEREAS**, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing

Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

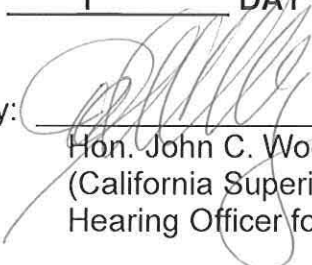
**NOW THEREFORE, BE IT RESOLVED:**

**Section 1.** The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2011-152), subject to the findings and considerations set forth above.

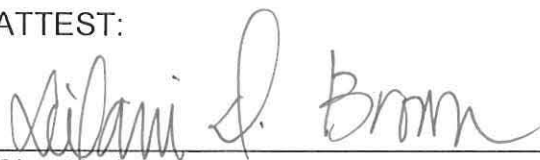
**Section 2.** The Abatement Period Extension for the property located at 1499 Monrovia Avenue, and legally described as Parcel 2 of Lot Line Adjustment 2007-002, is hereby extended for ten years and will expire on February 1, 2022, at which time all nonresidential use of the property shall cease or the building be demolished, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District and the General Plan Land Use Designation are approved and adopted; or a change to the Zoning Regulations pertaining to nonconforming uses or their abatement are approved and adopted prior to that date.

**Section 3.** This action shall become final and effective fourteen (14) days after the adoption of this Resolution 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.

APPROVED AND ADOPTED THIS 1<sup>ST</sup> DAY OF FEBRUARY 2012.

By:   
Hon. John C. Woolley, retired Judge  
(California Superior Court, Orange County)  
Hearing Officer for the City of Newport Beach

ATTEST:

  
\_\_\_\_\_  
City Clerk

