



**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 August 17, 2012

**ZONING ADMINISTRATOR ACTIONS
AUGUST 15, 2012**

- Item 1: Park Stone Kitchen + Taps Minor Use Permit No. UP2012-014 (PA2012-082)
5180 Birch Street
Action: Approved by Resolution No. ZA2012-030 Council District 3
- Item 2: Johnston Residence Addition - Modification Permit No. MD2012-013 (PA2012-083)
324 Morning Canyon Road
Action: Approved by Resolution No. ZA2012-031 Council District 6

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.

Brian Haas, NBPD (*ABC License*)
Sgt. Chuck Freeman, NBPD (*Massage Therapy - ABC License*)

RESOLUTION NO. ZA2012-030

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2012-014 TO ALLOW A TYPE 47 (ON-SALE GENERAL) ALCOHOLIC BEVERAGE LICENSE AT AN EXISTING RESTAURANT LOCATION WITH A DRIVE-THROUGH LOCATED AT 5180 BIRCH STREET (PA2012-082)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by CA Burger Partners, LLC, representing Park Stone Kitchen + Taps, with respect to property located at 5180 Birch Street, and legally described as Parcel 3 of Resubdivision No. 557 as recorded in Book 108 Pages 27-28 of Miscellaneous Maps in the County of Orange, California requesting approval of a minor use permit.
2. A minor use permit to allow a Type 47 (On-Sale General) Alcoholic Beverage Control (ABC) license in conjunction with a food service eating and drinking establishment with no late hours and a drive-through window, previously approved under Use Permit No. UP3635, and an outdoor dining patio, previously approved under Outdoor Dining Permit No. OD65. If approved, this Minor Use Permit would supersede Use Permit No. UP3635 and Outdoor Dining Permit No. OD65. The gross floor area of the establishment is 2,531 square feet, the interior net public area will be 973 square feet, and the outdoor patio will be 243 square feet in area. The establishment will provide a maximum of 74 interior seats and 12 seats on the outdoor dining patio. The requested hours of operation are from 6:00 a.m. to 11:00 p.m., daily.
3. The subject property is located within the Koll Center Planned Community (PC-15) Zoning District within the Office Site G sub-area and the General Plan Land Use Element category is Mixed-Use Horizontal (MU-H2).
4. The subject property is not located within the coastal zone.
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.

- This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
- The proposed project involves the addition of alcoholic beverages to an existing restaurant with an outdoor dining patio. Therefore, both the interior use and outdoor dining patio qualify for a categorical exemption under Class 1.

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 the findings for a use permit 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

- i. The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
1. Due to the high concentration of commercial land uses, the calls for service, number of arrests, and crime rate are greater than adjacent residential Reporting Districts; however, the Newport Beach Police Department does not consider the number significant given the type of development within this Reporting District.
- ii. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
1. Due to the high concentration of commercial land uses, the calls for service, number of arrests, and crime rate are greater than adjacent residential Reporting Districts; however, the Newport Beach Police Department does not consider the number significant given the type of development within this Reporting District.
- 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 General Plan designates the site as mixed-use where residential development is permitted above the first floor. The subject and surrounding properties are not currently developed with residential dwelling units. The nearest recreational facility, Newport Back Bay, is located approximately 6,000 feet to the east of the subject property. The nearest church, Temple Bat Yahm, is located approximately 10,700 feet to the south of the subject property. The project site is located across the street from UC Irvine property and a tutoring facility is located approximately 4,100 feet to the southwest of the subject property along Bristol Street but the project site is not in close proximity to any other daycare center or other school. The proposed use is surrounded by other commercial and office uses in the Koll Center area including several other eating and drinking establishments along Jamboree Road.
- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*

1. There are four comparable establishments along Jamboree which provide alcohol service to patrons. These include Kimera, The Melting Pot, The Daily Grill, and Phans55. The Type 47 (On Sale, General) alcohol license requested is the same as those obtained for said establishments and there is no evidence suggesting these uses have been detrimental to the neighborhood.
- v. *Whether or not the proposed amendment will resolve any current objectionable conditions*
 1. The property has historically been used by restaurants that did not include alcohol service. As such, there are no current objectionable conditions to be resolved since alcohol service has not previously been a part of the business operation at this location.
 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 restaurant. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.
 3. The hours of operation will minimize the potential effects on land use. The 11:00 p.m. closing hour will ensure the restaurant does not become a late night bar, tavern, or nightclub.
 4. The restaurant pad is adjacent to a highly-traveled commercial area that is occupied by a mixture of office and retail uses. It is anticipated that the establishment will serve employees of the nearby businesses and visitors to stop and eat within the airport area. Adding alcohol service to the menu will compliment the food service and provide for the convenience of customers.

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a minor use permit are set forth:

Finding

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

Facts in Support of Finding

1. The General Plan land use designation for this site is MU-H2 (Mixed-Use Horizontal). The MU-H2 land use category applies to properties located in the Airport Area. It provides for a horizontal intermixing of uses that may include regional commercial office, multifamily residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses. The proposed eating and drinking establishment is consistent with this land use category.

2. Eating and drinking establishments are common in the vicinity along Jamboree and are frequented by visitors and local employees alike. The establishment is compatible with the land uses permitted within the surrounding neighborhood.
3. The subject property is not 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 the PC-15 (Koll Center Planned Community) Zoning District within the Office Site G sub-area. The PC-15 district is planned for development with a hotel, banquet and convention facilities, a small retail and service center, service stations, restaurants, bars and theater/nightclubs, a site for the proposed Orange County Courthouse with the balance of the acreage developed as a business and professional office park emphasizing open space. The proposed eating and drinking establishment is consistent with this zoning district.
2. Site improvements, which are required by the conditions of approval for compliance with the Zoning Code, will be checked by the Community Development Department in conjunction with building permit inspections.

Finding

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

Facts in Support of Finding

1. The operation of the restaurant will be restricted to the hours between 6:00 a.m. and 11:00 p.m., daily.
2. The existing site provides ample parking (63 parking spaces) to accommodate the existing and proposed eating and drinking establishments on-site.
3. A restaurant has been operated in this location since 1979 pursuant to Use Permit No. UP1896, Use Permit No. UP3635, Accessory Outdoor Dining Permit No. OD 18, and Outdoor Dining Permit No. OD65. During this period, the use has not proven detrimental to the area. The tenant space has operated as an eating and drinking establishment in the past and demonstrated the location's capability of operating as a compatible use with other land uses in the vicinity.
4. The applicant is required to provide a solid roof cover for the existing trash enclosure and will control trash and litter around the subject property.

5. The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure that the business remains a restaurant and does not become a bar or tavern. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.
6. The applicant has a grease interceptor on-site and will obtain Health Department approval. The establishment will comply with the California Building Code and requirements of the Alcoholic Beverage Control Department to ensure the safety and welfare of customers and employees within the establishment.

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; and*

Facts in Support of Finding

1. The existing on-site vehicle circulation, including the drive-through, has functioned satisfactorily with the existing configuration.
2. The project site is located within an existing restaurant pad building and the tenant space is designed and developed for an eating and drinking establishment. The design, size, location, and operating characteristics of the use are compatible with the surrounding neighborhood.
3. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing tenant space.
4. The tenant improvements will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a 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 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 food service, eating and drinking establishment will serve the surrounding courthouse, office, and business park community. The proposed establishment provides dining services as a public convenience to the surrounding neighborhood. The service of alcohol will provide an economic opportunity for the property owner to maintain a successful business that is compatible with the surrounding community.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2012-014, 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 fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. UP3635 and Outdoor Dining Permit No. OD65, which upon vesting of the rights authorized by Minor Use Permit No. UP2012-014 (PA2012-082), shall become null and void.

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



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

PLANNING

1. This approval supersedes Use Permit No. UP3635 and Accessory Outdoor Dining Permit No. OD65.
2. 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.)
3. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new Use Permit.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
6. 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.
7. One parking space for each 40 square feet of interior net public area shall be provided on-site.
8. All employees shall park on-site.
9. The gross floor area of the food service, no late hours eating and drinking establishment shall be limited to a maximum of 2,531 sq. ft.
10. The net public area of the food service, no late hours eating and drinking establishment shall be limited to a maximum of 973 sq. ft.
11. The hours of operation for the restaurant and outdoor dining patio shall be limited to the hours of 6:00 a.m. and 11:00 p.m., daily.
12. The accessory outdoor dining area shall be used in conjunction with the related adjacent food establishment and shall be limited to 243 sq. ft. in area.
13. Alcohol service shall be limited to a Type 47 (On Sale General) Alcoholic Beverage Control License. Alcohol service shall be prohibited at the drive-thru.

14. There shall be no exterior advertising or signs of any kind or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.
15. Require all owners, managers, and employees selling alcoholic beverages to undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.
16. A special even permit may be required for any even or promotional activity outside the normal operational characteristics of the proposed operation. For example, events likely to attract large crowds, events for which an admission fee is charged, events that include any form or contract promoters, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
17. Approval does not permit the restaurant to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Municipal Code.
18. Full menu food service shall be available for ordering at all times that the restaurant establishment is open for business.
19. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
20. Food from the full service menu must be made available during any "happy hour" type of reduced price alcoholic beverage promotion. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.
21. VIP passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
22. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
23. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
24. 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.
25. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the

service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.

26. There shall be no live entertainment allowed on the premises.
27. There shall be no dancing allowed on the premises.
28. Strict adherence to maximum occupancy limits is required.
29. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
30. The boundary of the accessory outdoor dining area shall be marked through the use of a 36-inch high boundary rail, unless a higher rail or other marking is otherwise approved by the Community Development Director. Fences, walls, or similar barriers shall serve only to define the outdoor dining area and not constitute a permanent all weather enclosure.
31. Prior to issuance of building permits, plans for the outdoor dining/patio areas shall be reviewed and approved by the Planning Division. Final material, height, and location of the boundary rail shall be subject to approval by the Building and Planning Division staff.
32. The use of umbrellas for shade purposes shall be permitted. The use of any other type of overhead covering shall be subject to review and approval by the Community Development Director and may require an amendment to this permit.
33. 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.
34. All trash shall be stored within the building or within 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.
35. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes, which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
36. The size, design, and location of trash enclosures shall be subject to the review and approval of the Public Works and Planning Division prior to issuance of building permits.
37. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).

38. Trash generated by the establishment shall be adequately contained in sealed plastic bags to control odors prior to placement in the trash dumpster.
39. 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 Community Development Director, and may require an amendment to this Minor Use Permit.
40. No live entertainment or dancing shall be permitted in conjunction with the permitted use.
41. No outside loudspeaker or paging system shall be permitted in conjunction with the proposed operation and outdoor dining establishment.
42. Should problems arise with regard to noise associated with the outdoor dining areas, the Planning Division shall require the removal of all or a portion of the outdoor dining area seating in the areas which contribute to the noise problems or complaints.
43. A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Director and Public Works Director in conjunction with the approval of an alternate drainage plan.
44. The operator of the food service use shall be responsible for the clean-up of all on-site and off-site trash, garbage, and litter generated by the use and shall submit a detailed plan for the policing of the surrounding vicinity for compliance with this condition. Additionally, the area outside of the food establishment, including the public sidewalks, shall be maintained in a clean and orderly manner and may be subject to periodic steam cleaning of the public sidewalks as required by the Community Development Department.
45. Prior to the issuance of the Certificate of Occupancy, the applicant shall schedule an inspection by Planning Division to confirm that all landscaping was installed in accordance with the approved plan.
46. This Minor Use Permit may be modified or revoked by the Zoning Administrator should they determine 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.
47. Use Permit No. UP2012-014 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
48. 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 Park Stone Kitchen + Taps Minor Use Permit including, but not limited to, Minor Use Permit No. UP2012-014 (PA2012-082). 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.

Fire Department Conditions

49. Exiting requirements for A Occupancies per Chapter 10 CBC shall be met. Panic hardware, door swing and two means of egress shall be required.
50. Illuminated exit signs and emergency lighting shall be provided.
51. A fire extinguisher (2A 10BC) will be required in the seating area. If a hood fire suppression system is required, a "K" type extinguisher shall also be required in the kitchen area.
52. A hood fire suppression system will be required if cooking produces grease laden vapors. Plans will need to be submitted and approved prior to installation.
53. The canopy shall comply with C.B.C. Section 3105. Canopies shall be constructed of a rigid framework with an approved covering that meets the fire propagation performance criteria of NFPA 701 or has a flame spread index not greater than 25 when tested in accordance with ASTM E 84 or UL 723. The canopy shall be labeled by the State Fire Marshall or a certificate will be required indicating the fabric is flame retardant.
54. All fabrics and all interior decorative fabrics or materials shall be flame resistant in accordance with appropriate standards set forth in CCR, Title 19, Division 1, Chapter 8.
55. The use and storage of area heaters and propane containers shall be approved by the Building and the Fire Department prior to installation or use.
56. A "Knox Box" shall be required containing the building keys for emergency personnel use.
57. The trash enclosure shall be located a minimum of 5-feet from any structures.

Building Division Conditions

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58. 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.
 59. The proposed restaurant that will be renovated from an existing restaurant shall comply with the requirements of Chapter 10 of the California Building Code 2010.
 60. The project shall comply with State Disabled Access requirements.
 61. The restaurant shall provide the number of plumbing fixtures to satisfy the requirements of Chapter 4 of the California Building Code, 2010.
 62. The site plan shall clearly identify the parking, path of travel, entrance, restrooms, fixed seating, and bar seating to comply with accessibility requirements.
 63. Kitchen exhaust fans shall be installed in accordance with the Uniform Mechanical Code prior to the issuance of a Certificate of Occupancy for the subject business and approved by the Building Division. That issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
 64. Grease interceptors shall be installed on all fixtures in the restaurant where grease may be introduced into the drainage systems, unless otherwise approved by the Building Division.
 65. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

Public Works Conditions

66. A new sewer cleanout shall be provided on the existing sewer lateral, installed per STD-406-L.
67. County Sanitation District fees shall be paid prior to the issuance of any building permits.
68. The final design of all on-site parking, vehicular circulation, and pedestrian circulation systems shall be subject to the approval of the City Traffic Engineer.

RESOLUTION NO. ZA2012-031

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 324 MORNING CANYON ROAD (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 Jerry and Donna Johnston with respect to property located at 324 Morning Canyon Road, and legally described as Lot 77 of Tract 1116.
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.
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 or basement) 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 or basement) 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 Morning Canyon Road 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 Morning Canyon Drive frontage.
8. All existing drainage facilities in the public right-of-way, including the existing curb drain along the Morning Canyon Drive 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 Morning Canyon Drive 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 Johnston Residence 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.