



**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, and/or Planning Division staff for the week ending October 26, 2012

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**ZONING ADMINISTRATOR ACTIONS  
OCTOBER 24, 2012**

- Item 1: Birch Heights Professional Condominiums Minor Use Permit No. UP2012-019 (PA2012-112)  
20311 SW Birch Street
- Action: Approved by Resolution No. ZA2012-038 Council District 3
- Item 2: Rogers Lot Merger - Lot Merger No. LM2012-001 (PA2012-117)  
3200 Ocean Front W and 105 32nd Street
- Action: Approved by Resolution No. ZA2012-039 Council District 1

**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. ZA2012-038

**A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2012-019 TO REPLACE UP2005-024 (PA2005-111) TO INCREASE THE SQUARE FOOTAGE ALLOWED FOR MEDICAL OFFICE USE FROM 5,000 SQUARE FEET TO 14,150 SQUARE FEET WITHIN THE EXISTING FIVE-BUILDING, OFFICE-CONDOMINIUM DEVELOPMENT LOCATED AT 20321, 20311, 20301, 20281, AND 20271 SW BIRCH STREET. PARKING PROVIDED WILL BE CONSISTENT WITH ZONING CODE REQUIREMENTS. (PA2012-112)**

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

### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Aliece Pickett, with respect to property located at 20311 SW Birch Street, and legally described as Parcel 1 of Parcel Map 89-341, as recorded in Book 268, Page 37 requesting approval of a Minor Use Permit.
2. The property is an office complex consisting of five, two-story buildings constructed in a “U-shape” around an open area facing Birch Street. The floors of the buildings (10) are individually owned office-condominiums. Each floor consists of approximately 4,575-net-square-feet of floor area (total 45,750 net square feet). Pursuant to Use Permit No. UP2005-024 (PA2005-111), approved in 2005, the second floor of the property located at 20311 SW Birch Street (5,000 gross square feet) is currently used for medical office use. The remaining office-condominiums are currently general office uses. Parking is provided within shared parking areas below each building and within the open area of the “U-shape” facing Birch Street. There are currently 189 parking spaces existing on the site.
3. The applicant proposes a Minor Use Permit to amend UP2005-024 (PA2005-111) to increase the square footage allowed for medical office use from 5,000 square feet to 14,150 square feet within the existing five building, office-condominium complex. Parking provided will be consistent with Zoning Code requirements.
4. Pursuant to Section 20.40.05, Table 3-10: Off-Street Parking Requirements of the Zoning Code, the additional 9,150-net-square-feet of floor area requested is equal to 20 percent of the net square footage of floor area of the five building, office-condominium complex that may be used for medical office use.
5. Of this total, 4,575-net-square-feet of floor area would be allocated to the first floor office-condominium located at 20311 SW Birch Street. The remaining 4,575-net-square-feet of floor area would be allowed within any of the office-condominiums located in the office complex. All parking will be provided on-site consistent with the requirements of Zoning Code.

6. The subject property is located within the Santa Ana Heights Specific Plan, Business Park (SP-7, BP) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
7. The subject property is not located within the coastal zone.
8. A public hearing was held on October 24, 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 Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION

1. The subject project qualifies for Class 1 (Existing Facilities) categorical exemption, Section 15301 of the California Environmental Quality Act.
2. The project would allow a minor change in use from general office use to medical office use within an existing, office-condominium development. The change could involve issuance of building permits for interior tenant improvements requiring minimal construction.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020F of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

### Finding:

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

### Facts in Support of Finding:

1. The office-condominium complex has a General Plan land use designation of General Office Commercial (CO-G) which is intended to provide for administrative, professional, and medical offices with limited accessory retail and service use. The change of use from general office to medical office use is consistent with this designation.
2. The site is located in the Santa Ana Heights Specific Plan District within the Business Park area (SP-7, BP). Medical office uses are allowed within this area with approval of a minor use permit.

### Finding:

*B. 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. Medical office uses are allowed within the Business Park area of the Santa Ana Heights Special Plan District (SP-7, BP) with approval of a minor use permit.
2. In 2005, Use Permit UP2005-024 was approved to allow 5,000-gross-square-foot of medical office uses within the 45,750-net-square-foot, office-condominium complex. The proposed minor use permit would allow an additional 20 percent (9,150 net square feet) to be used for medical office purposes.
3. Parking for the five building, office-condominium development is provided within shared parking areas on the site. The existing lots provide 189 parking spaces, which is adequate to accommodate the additional medical office use square footage requested.

USE	FLOOR AREA	PARKING SPACES
Per Zoning Code: 1st 50,000 net sf: 20% medical office (applicant's request)	<u>9,150</u> net sf	
+general office	+ <u>31,600</u> net sf 40,750 net sf	<u>163</u> (1/250 net sf)
Medical office over 20% (UP2005-024)	+ 5,000 gross sf	+ <u>25</u> (1/200 gross sf)
TOTAL		188 required (189 existing)

Finding:

- C. 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 subject site is located in the Business Park (BP) area of the Santa Ana Heights Specific Plan District (SP-7) between Birch and Acacia Streets. Medical office uses are allowed in this area with approval of a minor use permit. Development on the subject site and surrounding properties consist of office buildings developed for various office uses.
2. The additional square footage of medical office use is similar in operation to those permitted with approval of UP2005-024 and currently existing on the site. The design of the buildings and site provides adequate access and parking spaces to accommodate the increase to the medical office use square footage.

Finding:

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

Facts in Support of Finding:

1. The subject site is located between Birch and Acacia Streets in the Business Park area of the Santa Ana Heights Specific Plan District. The surrounding area consists of properties developed for various office uses.
2. The site consists of five, two-story buildings developed as office-condominiums. The buildings are constructed on the site in a “U-shape” with the opening in the “U” facing Birch Street. Parking spaces are located below each building and also within the opening of the “U”. Adequate parking and access to accommodate the additional square footage for medical office uses is provided.
3. Tenant improvements to the existing general office space will require a building permit. All Fire and Building Code regulations will be verified during the plan check process.
4. There is adequate access to development on the site for fire and medical emergency vehicles.

Finding:

*E. The Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

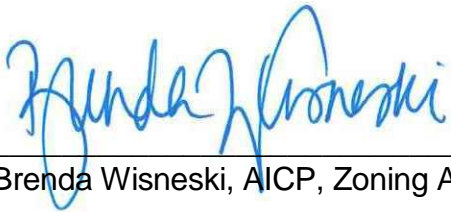
1. The increase in the square footage of medical office uses proposed fits well with the existing medical and general office uses on the site and in the surrounding vicinity.
2. There is adequate parking existing on the site to accommodate the increased medical office use square footage. Adequate access to the site for emergency vehicles is provided from Birch Street. Access to the second floor of the five buildings is provided via ramps and an elevator.
3. Any tenant improvements to accommodate the increased medical use will be minor in nature and will not impact the overall operation of the existing general office and medical office uses on the site.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2012-019, 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 UP2005-024, which upon vesting of the rights authorized by Minor Use Permit No. UP2012-019 (PA2012-112) shall become null and void.

**PASSED, APPROVED AND ADOPTED THIS 24TH DAY OF OCTOBER, 2012.**



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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

**PLANNING**

1. This approval supersedes Use Permit No. UP2005-024 (PA2005-111). The maximum square footage devoted to medical use shall not exceed 14,150 square feet of medical office use within the 5-building, office-condominium development unless an amendment to this Use Permit is approved.
2. The second floor office-condominium located at 20311 SW Birch Street (5,000 gross square feet) shall be allowed for medical office uses, as previously approved. The additional 9,150-net-square-feet of floor area approved for medical office use shall be allocated as follows: 4,575-net-square-feet of floor area to the first floor office-condominium located at 20311 SW Birch Street. The remaining 4,575-net-square-feet of floor area shall be allowed within any of the office-condominiums located in the five-building office complex.
3. Prior to issuance of building permits or approval of a business license for medical office use within this office-condominium complex, a revised plan, which indicates the locations of medical office floor area approved with this use permit shall be provided to the Planning Division to include in the use permit file.
4. The total number of parking spaces provided for all uses on site will be consistent with requirements of the Zoning Code.
5. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
6. 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.
7. The Zoning Administrator may add to or modify the Conditions of this Use Permit approval; or they may revoke this permit 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.
8. Any expansion in area approved for medical office use shall require an amendment to this Use Permit or the processing of a new use permit.
9. Fair share fees to convert square footage from general office to medical office use shall be calculated at plan check and paid prior to building permit issuance.

10. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
11. 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 **Birch Heights Professional Condominiums Minor Use Permit** including, but not limited to **UP2012-019 (PA2012-112)**. 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.

#### **Building Division Conditions**

12. 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.



## RESOLUTION NO. ZA2012-039

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT MERGER NO. LM2012-001 FOR A LOT MERGER LOCATED AT 3200 WEST OCEAN FRONT AND 105 32<sup>ND</sup> STREET (PA2012-117)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brion Jeanette Architecture, with respect to property located at 3200 West Ocean Front and 105 32<sup>nd</sup> Street, and legally described as the northeasterly 40 feet and the southwesterly 50 feet of Lot 1, Block 32, Newport Beach Tract, requesting approval of a Lot Merger.
2. The applicant proposes a lot merger and requests to waive the parcel map requirement for two properties, under common ownership, located on Balboa Peninsula.
3. The subject properties are located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject properties are located within the coastal zone and the Coastal Land Use Plan category is Two Unit Residential (RT-E).
5. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development.
6. Public improvements will be required of the Applicant per the Municipal Code and the Subdivision Map Act.
7. A public hearing was held on October 24, 2012, in the Community Development Conference Room (Building/Trailer I), 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.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 5 (Minor Alterations in Land Use Limitations).
2. Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 19.68.030 and 19.08.030 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

- A-1. The lot merger to combine two existing legal lots by removing the interior lot line between them will not result in the creation of additional parcels.
- A-2. The two lots were originally one lot when the Newport Beach Tract was developed.
- A-3. The project is in an area with an average slope of less than 20 percent.
- A-4. Redevelopment of the property will require vehicular access from the alley and the curb cuts along 32<sup>nd</sup> Street will be removed resulting in more on-street parking.
- A-5. The lot merger is consistent with the purpose and intent of Title 19 (Subdivisions). The proposed merger will protect land owners and surrounding residents, and will preserve the public health, safety, and general welfare of the City.

Finding:

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

Facts in Support of Finding:

- B-1. The two lots to be merged are under common fee ownership.

Finding:

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

Facts in Support of Finding:

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- C-1. The merged lot will retain the Two-Unit Residential zoning designation, consistent with the surrounding area. The R-2 Zoning District is intended to provide for areas appropriate for a maximum of two residential dwelling units located on a single lot.
- C-2. Each lot is developed with a single-unit dwelling and the merged lot with two dwelling units will not exceed the maximum number of dwelling units allowed in the R-2 Zoning District.
- C-3. Section 20.18.030 of the Zoning Code requires a minimum lot area of 6,000 square feet for R-2 corner lots. The proposed lot merger will create one 2,250 square foot lot that will be more consistent with the minimum lot area requirement.
- C-4. The required setbacks for the merged lot will be more consistent with the setbacks required for the surrounding development.
- C-5. The Land Use Element of the General Plan designates the subject site as Two-Unit Residential (RT), which applies to a range of two family residential dwelling units. The Coastal Land Use Plan designates this site as Two-Unit Residential (RT-E) which provides for density ranges from 30.0-39.9 dwelling units per acre. The land use will remain the same and the merger is consistent with policies of the General Plan and Coastal Land Use Plan.
- C-6. Future redevelopment of the property will provide vehicular access from the alley, and the curb cuts along 32<sup>nd</sup> Street will be removed resulting in more on-street parking, consistent with General Plan and Coastal Land Use Plan policies.

Finding:

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

Facts in Support of Finding:

- D-1. The lots as merged will not be deprived of legal access as the merged lot will abut a street, an alley, and a beach front walk.
- D-2. No adjoining parcels will be deprived of legal access as a result of the merger. The public alleys were developed to provide vehicular access for the properties located in the area. Vehicular access to and from the subject site and adjacent properties would remain via the public alleys.

Finding:

*E. The lots as merged will be consistent with the surrounding pattern of development and will not create an excessively large lot that is not compatible with the surrounding development.*

Facts in Support of Finding:

- E-1. The proposed merger will combine the two portions of Lot 1, Block 32 of the Newport Beach Tract into a single lot consistent with the original subdivision.
- E-2. The lots as merged will be the same size and shape as nearby lots along West Ocean Front.

Finding:

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

Facts in Support of Finding:

- F-1. Future improvements on the site will be required to comply with the development standards of the Municipal Code, General Plan, and Coastal Land Use Plan.
- F-2. The proposed lot merger combines the properties into a single parcel of land and does not result in the elimination of more than one lot.
- F-3. Approval of the proposed lot merger would remove the existing interior lot line, and allow the property to be used as a single site. The proposed lot would comply with all design standards and improvements required for new subdivisions by Title 19, General Plan, and Coastal Land Use Plan.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

- 1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Merger No. LM2012-001, 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 ten 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 19 Subdivisions, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 24<sup>th</sup> DAY OF OCTOBER, 2012.**

  
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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
3. 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 property owner or the leasing agent.
4. The applicant shall file a document, approved by the City in writing, specifying the names of the record owners of the fee interest and particularly describing the real property with a site map for recordation with the County Recorder.
5. Prior to the issuance of any building permit for construction to cross the interior lot line, recordation of the lot merger documents with the County Recorder shall be required.
6. All improvements shall be constructed as required by Ordinance and the Public Works Department.
7. The reconstruction of the existing broken and/or otherwise damaged concrete curb and gutter along the 32<sup>nd</sup> Street frontage shall be required.
8. The existing driveway approaches along 32<sup>nd</sup> Street shall be replaced with a new driveway plug per City Standards STD-165-L. Per Council Policy L-2, future development shall obtain garage access from the adjacent alley.
9. Each of the properties is currently serviced by an individual water meter. Any water meter to be abandoned shall be capped at corporation stop.
10. A new cleanout shall be installed on all new and existing sewer laterals. Otherwise, laterals to be abandoned shall be capped at property line.
11. An encroachment permit is required for all work activities within the public right-of-way.
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. All on-site drainage shall comply with the latest City Water Quality requirements.

14. Lot Merger No. LM2012-001 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
  
15. 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 Rogers Lot Merger including, but not limited to, the Lot Merger No. LM2012-001. 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.