



**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 November 16, 2012

**ZONING ADMINISTRATOR ACTIONS
NOVEMBER 14, 2012**

- Item 1: 721 Poppy Avenue Parcel Map No. NP2012-008 (PA2012-134)
721 Poppy Avenue
Action: Approved by Resolution No. ZA2012-040 Council District 6
- Item 2: 214 Marguerite Avenue Condo Conversion No. CC2012-003 (PA2012-133)
214 Marguerite Avenue
Action: Approved by Resolution No. ZA2012-041 Council District 6
- Item 3: Alvino Residence Parking Modification Permit No. MD2012-014 (PA2012-116)
700 Poppy Avenue
Action: Approved by Resolution No. ZA2012-042 Council District 6
- Item 4: Orange Theory Fitness Minor Use Permit No. UP2012-022 (PA2012-130)
1040 Irvine Avenue
Action: Approved by Resolution No. ZA2012-043 Council District 3

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. ZA2012-040

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING TENTATIVE PARCEL MAP NO. NP2012-008 FOR A PARCEL MAP FOR TWO-UNIT CONDOMINIUM PURPOSES (PA2012-134)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Leonard C. Stiles, representing the property owner, CDM Village Properties, LLC, with respect to property located at 721 Poppy Avenue, and legally described as the northeasterly one-half of Lot 19 and all of Lot 21, Block 743, in the City of Newport Beach, County of Orange, State of California, as per map recorded in Book 3, Pages 41 and 42 of Miscellaneous Maps, in the Office of the County Recorder of said Orange County requesting approval of a Tentative Parcel Map.
2. The applicant requests a tentative parcel map for two-unit condominium purposes. No exceptions to the Title 19 (Subdivision Code) development standards are proposed with this application. The code required two-car parking per unit will be provided. The property was developed with duplex that has been demolished and a new duplex is currently under construction.
3. The subject property is 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 property is not located within the Coastal Zone.
5. A public hearing was held on November 14, 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.

1. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15315 of the California Environmental Quality Act under Class Class 15 (Minor Land Divisions) of the Implementing Guidelines of the California Environmental Quality Act.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the

parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the proposed parcel map is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding

1. The proposed Parcel Map is for two-unit condominium purposes. An existing duplex was demolished and is being replaced with a new duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current General Plan Land Use Designation "Two-Unit Residential".

Finding

- B. *That the site is physically suitable for the type and density of development.*

Facts in Support of Finding

1. The lot is regular in shape, has a slope of less than 20 percent, and is suitable for two-unit development.

Finding

- C. *That the design of the subdivision or the proposed improvements will not cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding

1. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 15 (Minor Land Divisions) which allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

Finding

- D. *That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding

1. The proposed Parcel Map is for residential condominium purposes. All construction for the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding

- E. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to easements previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding

1. 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 as there are no public easements that are located on the property.

Finding

- F. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding

1. The property is not subject to the Williamson Act since the subject property is not designated as an agricultural preserve and is less than 100 acres.

Finding

- G. *That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding

1. The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code.
2. The project is not located within a specific plan area.

Finding

- H. *That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding

1. The proposed Parcel Map and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Department enforces Title 24 compliance through the plan check and inspection process.

Finding

- I. *That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the*

public service needs of the City's residents and available fiscal and environmental resources.

Facts in Support of Finding

1. The residential density on the site will remain the same, which allows two units in the R-2 Zoning District. Therefore, the parcel map for condominium purposes will not affect the City in meeting its regional housing need.

Finding

- J. *That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding

1. Wastewater discharge into the existing sewer system has been designed to comply with the Regional Water Quality Control Board (RWQCB) requirements.

Finding

- K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding

1. The subject property is not located within the Coastal Zone.

Finding

- L. *That public improvements will be required of the Applicant per the Municipal Code and the Subdivision Map Act.*

Facts in Support of Finding

1. The project has been conditioned to require public improvements including the dedication of a corner cutoff at the corner of Poppy Avenue and Fifth Avenue, reconstructing existing broken or otherwise damaged sidewalks, curbs, and gutters, and the planting of a street tree.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Parcel Map No. NP2012-008, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. Tentative Parcel Map applications do not become effective until 10 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 14TH DAY OF NOVEMBER, 2012.

By:



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
2. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. Prior to recordation of the parcel map, the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Poppy Avenue and Fifth Avenue frontages shall be reconstructed. The limits of reconstruction are at the discretion of the Public Works Inspector.
4. Prior to recordation of the parcel map, all existing overhead utility connections shall be undergrounded.
5. Prior to recordation of the parcel map, all private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
6. Prior to recordation of the parcel map, new curb drains shall be installed per City Standard STD-184-L.
7. Prior to recordation of the parcel map, a Public Works Department encroachment permit inspection is required. At the time of Public Works Department inspection, if any of the existing public improvements surrounding the site is damaged, new concrete sidewalk, curb and gutter, and alley/street pavement will be required and 100 percent paid by the owner. Said determination and the extent of the repair work shall be made at the discretion of the Public Works Inspector.
8. Prior to recordation of the parcel map, one (1) new 36-inch boxed Hymenosporum Flavum "Sweet Shade" Street Tree shall be planted along the Fifth Avenue frontage per Chapter 13 of the City Municipal Code, unless otherwise approved by the Municipal Operations Department.

9. Prior to recordation of the parcel map, a 10-foot radius corner cutoff at the corner of Poppy Avenue and Fifth Avenue shall be dedicated to the City for street purposes. A Grant of Easement for Utilities and Street Purposes shall be submitted for City review and County of Orange recording. All drawings and exhibits submitted for said dedication purposes shall conform to the City's CADD Standards. Scanned images will not be accepted. The Public Works Department plan check approval will not be issued until said document has been submitted. The Certificate of Occupancy will not be issued until said Map has been recorded by the County of Orange.
10. Prior to recordation of the parcel map, a 4-foot-wide, full-width concrete sidewalk shall be constructed along the entire Fifth Avenue property frontage per City Standard STD-180-L.
11. Prior to recordation of the parcel map, the existing curb access ramp at the Poppy Avenue and Fifth Avenue curb return shall be upgraded to be ADA compliant.
12. Prior to recordation of the parcel map, the existing driveway approach along Fifth Avenue shall be replaced with a new driveway plug per City Standard STD 165-L.
13. All improvements shall be constructed as required by Ordinance and the Public Works Department.
14. Additional public works improvements, including street and alley reconstruction work, may be required at the discretion of the Public Works Inspector.
15. Fifth Avenue and Poppy Avenue are part of the City's Moratorium List. As such, additional surfacing requirements are applicable to work on said roadways per City Standard STD 105-L-F.
16. All above ground improvements shall stay clear of the 5-foot rear alley setback.
17. All improvements shall comply with the City's sight distance requirement (City Standard STD-110-L).
18. All on-site drainage shall comply with the latest City Water Quality requirements.
19. An approved encroachment permit is required for all work activities within the public right-of-way.
20. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. Water meter and the sewer cleanout shall be located within the Public right-of-way.
21. Each dwelling unit shall be served with individual gas and electrical service connection and shall maintain separate meters for the utilities.

22. Two-car parking, including one enclosed garage space, shall be provided on site for each dwelling unit per requirements of the Zoning Code.
23. In compliance with the requirements of Chapter 9.04, Section 505.1 (Premises Identification), of the Newport Beach Municipal Code, approved street numbers or addresses shall be placed on all new and existing buildings in such a location that is plainly visible and legible from the street or road fronting the subject property. Said numbers shall be of non-combustible materials, shall contrast with the background, and shall be either internally or externally illuminated to be visible at night. Numbers shall be no less than four inches in height with a one-inch wide stroke. The Planning Division Plan Check designee shall verify the installation of the approved street number or addresses during the plan check process for the new or remodeled structure.
24. Subsequent to recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from “duplex” to “condominium.” **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.
25. 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 721 Poppy Avenue Parcel Map including, but not limited to, Parcel Map No. NP2012-008 (PA2012-134). 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.
26. This Parcel Map shall expire if the map has not been recorded within three years of the date of approval, unless an extension is granted by the Planning Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

RESOLUTION NO. ZA2012-041

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING CONDOMINIUM CONVERSION NUMBER CC2012-003 FOR A TWO-UNIT CONDOMINIUM DEVELOPMENT LOCATED AT 214 MARGUERITE AVENUE (PA2012-133)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Frank Ultimo on behalf of Marguerite Development, LLC, with respect to property located at 214 Marguerite Avenue, and legally described as Parcel 1 of Parcel Map No. 2007-229, in the City of Newport Beach, County of Orange, State of California, as per map recorded in Book 374, Pages 39 through 41 of Parcel Maps, in the office of the County Recorder of said county.
2. The applicant requests a condominium conversion to convert an existing duplex that was remodeled to condominium standards in 2012 to a two-unit condominium project.
3. The subject property is located within the R-2 (Two-Unit Residential) Zoning District and the General Plan Land Use Element category is RT (Two-Unit Residential).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two-Unit Residential).
5. A public hearing was held on November 14, 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 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 division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;
2. The proposed project involves the conversion of an existing duplex into a two-unit condominium development.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 19.64.070 (Standards for Condominium Conversions) of the Newport Beach Municipal Code, the following finding is set forth:

Finding

- A. *The minimum number, and the design and location of off-street parking spaces shall be provided in conformance with the provisions of the Zoning Ordinance in effect at the time of approval of the conversion.*

Facts in Support of Finding

1. The existing, remodeled duplex consists of 3,666 square feet including two, single-car garages and two covered spaces.
2. The four spaces provided meet the number of spaces required (2 per unit) by the Chapter 20.40 (Off-Street Parking) of the Zoning Ordinance.

Finding

- B. *Each dwelling unit within a building shall have a separate sewer connection to the City sewer.*

Facts in Support of Finding

1. The remodeled duplex was altered such that it has two separate sewer connections to the City sewer.

Finding

- C. *Each sewer lateral shall be retrofitted/fitted with a cleanout at the property line.*

Facts in Support of Finding

1. The remodeled duplex was altered such that it has two separate sewer cleanouts located at the property line.

Finding

- D. *Each unit shall maintain a separate water meter and water meter connection.*

Facts in Support of Finding

1. The remodeled duplex was altered such that it has two separate water meters and water meter connections.

Finding

- E. The electrical service connection shall comply with the requirements of Chapter 15.32 (Underground Utilities) of the Newport Beach Municipal Code.*

Facts in Support of Finding

1. The remodeled duplex was altered such that the electrical service connection complies with the requirements of Chapter 15.32.

Finding

- F. The applicant for a condominium conversion shall request a special inspection from the Building Division for the purpose of identifying any building safety violations. The applicant shall correct all identified safety violations prior to approval of a final map for the condominium conversion.*

Facts in Support of Finding

1. A special inspection was completed by the Building Division on October 22, 2012, and no violations were identified.

Finding

- G. Permanent lot stakes and tags shall be installed at all lot corners by a licensed surveyor or civil engineer unless otherwise required by the City Engineer.*

Facts in Support of Finding

1. Condition of approval for Parcel Map No. NP2007-035 (PA2007-250) required stakes and tags to be installed at all lot corners prior to recordation. Satisfaction of this condition of approval was verified prior to release of the parcel map for recordation.

Finding

- H. For residential conversions, the project shall be consistent with the adopted goals and policies of the General Plan, particularly with regard to the balance and dispersion of housing types within the City.*

Facts in Support of Finding

1. The project is consistent with the adopted goals and policies of the Land Use Element and other Elements of the General Plan and the Local Coastal Program Land Use Plan. The project site is designated as RT (Two-Unit Residential) by the Land Use Element of the General Plan and as RT-E (Two-Unit Residential) by the Coastal Land Use Plan (CLUP). The proposed project is consistent with the RT land use category, which is intended to provide for a range of two-family dwelling units such as duplexes and townhomes.

2. An existing, remodeled two-unit dwelling rental will be converted into a two-unit condominium project. The residential density on the site will remain the same.

Finding

1. *The establishment, maintenance or operation of the use or building applied for shall not, under the circumstances of the 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.*

Facts in Support of Finding

1. The application of the project conditions will ensure the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood and the City.
2. The proposed project is to convert and existing, remodeled duplex into two condominiums on property located within the R-2 zoning district.
3. Public improvements were required of the applicant per the Municipal Code and the Subdivision Map Act during the tentative parcel map approval process in 2008. Said improvements were reviewed and verified by the Public Works Inspector prior to release of the parcel map for recordation.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Condominium Conversion No. CC2012-003 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 Community Development Department in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 14TH DAY OF NOVEMBER, 2012.

By:



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. Prior to final of the description change permit, the brick pavers in the area between sidewalk and property line shall be removed.
2. Prior to final of the description change permit, the concrete panels within the parkway area shall be removed or replaced with a standard concrete carriage walk; otherwise an encroachment agreement will be required.
3. Prior to final of the description change permit, the applicant shall cap the unused sewer lateral at property line and remove existing sewer cleanout.
4. Prior to final of the description change permit, A Public Works Department encroachment permit inspection is required before the Building Division permit final can be issued. At the time of Public Works Department inspection, if any of the existing public improvements surrounding the site are damaged, new concrete sidewalk, curb and gutter, and alley/street pavement will be required and 100% paid by the owner. Said determination and the extent of the repair work shall be made at the discretion of the Public Works Inspector.
5. An approved encroachment permit is required for all work activities within the public right-of-way.
6. Each unit shall be served by its individual water meter and sewer lateral and cleanout located within the public right-of-way. Each water meter and sewer cleanout shall be installed with a traffic-grade box/frame and cover. Water meter and the sewer cleanout shall be located within the Public right-of-way.
7. Two-car parking, including one enclosed garage space, shall be provided on site for each dwelling unit per requirements of the Zoning Code.
8. In compliance with the requirements of Chapter 9.04, Section 901.4.4, of the Newport Beach Municipal Code, approved street numbers or addresses shall be placed on all new and existing buildings in such a location that is plainly visible and legible from the street or road fronting the subject property. Said numbers shall be of non-combustible materials, shall contrast with the background, and shall be either internally or externally illuminated to be visible at night. Numbers shall be no less than four inches in height with a one-inch wide stroke. The Planning Division Plan Check designee shall verify the installation of the approved street number or addresses during the plan check process for the new or remodeled structure.
9. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees,

disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Marguerite Avenue Condo Conversion including, but not limited to, the PA2012-133. 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.

RESOLUTION NO. ZA2012-042

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2012-014 TO ALLOW AN APPROXIMATE 15 PERCENT ADDITION TO AN EXISTING SINGLE-FAMILY RESIDENCE THAT IS NONCONFORMING TO THE PARKING REQUIREMENTS AT 700 POPPY AVENUE (PA2012-116)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by John McNeely representing the property owner, Susan Alvino, with respect to property located at 700 Poppy Avenue, and legally described as Lot 9, Block B, Tract 673, requesting approval of a modification permit.
2. The applicant requests a modification permit to allow an approximate 15 percent (372 square feet) addition to an existing nonconforming single-family residence where the Zoning Code limits additions up to 10 percent of the existing gross floor area when two garage spaces are not provided. One garage space and one driveway parking space are provided on the subject property. The existing structure is also nonconforming because the left side yard setback projects 6 inches into the required 3-foot side yard setback.
3. The subject property is located within the R-1 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single-Unit Residential Detached).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on November 14, 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.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. 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 square footage to an existing 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. A number of older residences within Old Corona Del Mar do not provide the required number of on-site parking spaces. Particularly in the 700 block of Poppy Avenue and adjacent to Buck Gully, at least four of nine properties provide only one garage parking space where the current parking standard requires two. This development pattern may be due to variations in topography that occur adjacent to the gully.
2. The subject property has a one-car garage. This configuration will not change with the proposed project. A second parking space is provided on the 20-foot driveway in front of the garage. Pursuant to Section 20.40.090.C.3.a (Parking Located in Required Setback Areas) of the Zoning Code, parking in front setback areas in front of a garage set back a minimum of 20 feet is allowed.
3. The neighborhood is comprised of a development pattern of single-unit and two-unit (duplex) dwellings. One garage parking space per residential unit was the parking requirement in 1952, when the existing residence was constructed.
4. The existing structure is also nonconforming because the left side yard setback projects 6 inches into the required 3-foot side yard setback. Nonconforming structures are limited to a 50 percent addition of the existing gross floor area. The approximate 15 percent addition proposed for the existing residence falls within this limitation and is thus permitted by right.

Finding:

- B. *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 provision of a second garage parking space would require a significant expansion of the scope of the work, since the garage addition would require excavation into the higher grade adjacent to the existing grade, retaining walls, and underpinning to accommodate a second vehicle.
2. The buildable area utilized to accommodate a garage expansion would require a new entry location to the residence and reorientation of the existing kitchen area to accommodate a new entry.

Finding:

- C. *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 topography of the lot precludes development of a wider garage to accommodate two vehicles. The grade of the front yard area adjacent to the garage increases by 4 to 5 feet and is currently developed with planters and landscaping. The side property line adjacent to this area has a retaining wall where the grade then drops onto the adjacent property to the south at 624 Poppy Avenue.

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. Without this approval, the applicant would be required to expand the existing one-car garage to accommodate a second vehicle at a significant cost, which would require excavation of the grade adjacent to the garage, a new retaining wall, and underpinning. In addition, a new entry to the existing residence would be required that would result in reorientation of the existing kitchen area to accommodate a new entry.
2. The Zoning Code recognizes that driveways are an appropriate location to park a vehicle by allowing parking in front setback areas in front of a garage set back a minimum of 20 feet. The requested deviation is for size of the addition to the existing nonconforming residence, which does not provide two enclosed parking spaces within a garage. The proposed project would not further contribute to demand for parking on the street since the required number of parking spaces is provided on-site.

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.*

Fact in Support of Finding

1. The existing development on the property is a single-family residence and the proposed development is a single-family residence. As such, there is no change to the density or intensity.
2. The proposed addition will result in a residence that is similar in scale to others in Corona Del Mar.
3. The design of the development shall not conflict with any easements acquired by the public at large for access through or use of property within the proposed development.
4. Public improvements shall be required per the Municipal Code.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2012-014 (PA2012-116), 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.

PASSED, APPROVED, AND ADOPTED THIS 14th DAY OF NOVEMBER, 2012.



Brenda Wisneski, AICP, Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. Modification Permit No. 2012-014 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.
3. One parking space within a garage and one parking space on the 20-ft driveway shall be provided for the subject property. All parking spaces shall be maintained clear of obstructions for the parking of vehicles at all times.
4. A copy of the resolution with conditions of approval shall be incorporated into the Building Division and field sets of plans prior to the issuance of building permits.
5. 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.
6. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. 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.
8. The Zoning Administrator may add to or modify conditions of approval to this Modification Permit or revoke this Modification Permit upon a determination that the operation, which is the subject of this Modification Permit, causes injury, or is detrimental to the health, safety, peace, comfort, or general welfare of the community.
9. 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 the property owner.

10. 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 Alvino Residence Parking Modification Permit including, but not limited to, Modification Permit No. MD2012-014 (PA2012-116). 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 and Fire Department Conditions

11. 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.
12. Fire rated walls shall be provided due to the project's proximity to the property line.
13. Projections need to meet the 2010 California Building Code, Chapter 7.
14. Openings, protected or non-protected need to satisfy 2010 California Building Code Chapter 7.
15. The residence is located in a High Fire hazard Area. Therefore, construction/building materials must comply with the construction requirements from the 2010 California Building Code Chapter 7a and City of Newport Beach Amendments to 7a.
16. Smoke detectors will be required for the new addition in the sleeping areas.
17. Fire sprinklers will be required if:
 - a. An addition and reconstruction is 2,000 square feet or more and exceeds 50 percent of the area of the existing structure.
 - b. An addition, when the existing building is already provided with automatic sprinklers.

Public Works Conditions

18. County Sanitation District fees shall be paid prior to the issuance of any building permits.
19. All improvements shall be constructed as required by Ordinance and the Public Works Department.
20. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Poppy frontage.
21. Poppy Avenue is part of the City's Moratorium List. Work performed on said roadway will require additional surfacing requirements. See City Standard 105-L-F.
22. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
 - a. The existing brick pavers within the parkway are considered non-standard improvements. Remove and replace with low growing ground cover or lawn.
23. An encroachment permit is required for all work activities within the public right-of-way.
24. The existing street tree(s) along Poppy Avenue shall be protected in place. Unauthorized tree removal(s) will trigger substantial penalties for all the parties involved.
25. A new sewer cleanout shall be installed on the existing sewer lateral per STD-406-L.
26. Existing low planter walls appear to be on private property. However, if they are in the public right-of-way, an Encroachment Agreement will be required and installation shall comply with Council Policy L-6.
27. 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.

RESOLUTION NO. ZA2012-043

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2012-022 FOR A HEALTH AND FITNESS FACILITY LOCATED AT 1040 IRVINE AVENUE (PA2012-130)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Orange Theory Fitness, with respect to property located at 1040 Irvine Avenue, and legally described as Lot 11 of Tract 4824, requesting approval of a minor use permit.
2. A minor use permit to allow a 2,915-square-foot health and fitness facility, Orange Theory Fitness, in a currently vacant tenant space within the Westcliff Plaza Shopping Center. The facility would have a maximum of 24 students and four instructors. Required parking is provided within the shopping center at a rate of one parking space per 200 square feet of gross floor area. The facility utilizes a mix of treadmills, rowing machines, benches, free weights, and suspension unit training within the tenant space. Both private and group fitness sessions will be available to patrons of the facility and the proposed hours of operation are from 5:00 a.m. to 10:00 p.m., Monday through Friday, and from 6:00 a.m. to 5:00 p.m., Saturday and Sunday.
3. The subject property is located within the CN (Commercial Neighborhood) Zoning District and the General Plan Land Use Element category is CN (Neighborhood Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on November 14, 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.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. This exemption allows for the operation, repair, maintenance and minor alteration of existing buildings. The proposed business is located within an existing building where only minor interior alterations are required to accommodate the new use.

SECTION 3. REQUIRED FINDINGS.

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 use permit 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 General Plan land use designation for this site is CN (Neighborhood Commercial). The CN designation is intended to provide for a range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. The Neighborhood Commercial (CN) designation of the General Plan allows health and fitness facilities.
2. The subject property is not part of a specific plan area.

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. The site is located in the CN (Commercial Neighborhood) Zoning District. The CN zoning district is intended to provide for areas appropriate for a range of retail and service uses developed in one or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The proposed health and fitness facility is consistent with land uses permitted by the CN Zoning District.
2. The proposed use will comply with all applicable development and parking standards.

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. Retail uses such as health and fitness facilities are common in the vicinity along Westcliff Drive and serve visitors and residents. The establishment is compatible with the land uses permitted within the surrounding neighborhood.

2. The proposed use is located within the Westcliff Plaza Shopping Center. A Hallmark card store operated in this location between 1985 and 2010 and the tenant space has since been vacant.
3. The Westcliff Plaza Shopping Center abuts residential land uses to the north and east; however, the project site is located along the eastern edge of the shopping center and is separated from these and other uses by parking lots, roadways and other commercial uses.
4. The surrounding commercial uses along Irvine Avenue and Westcliff Drive contain various retail and visitor commercial uses. The proposed health and fitness facility is compatible with the existing and permitted uses in the vicinity
5. The project has been reviewed for compliance with the parking requirements and landscaping standards as provided in Section 20.40.070 (Development Standards for Parking Areas).
6. The hours of operation for the health and fitness facility will be from 5:00 a.m. to 10:00 p.m., Monday through Friday, and from 6:00 a.m. to 5:00 p.m., Saturday and Sunday.

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. Adequate circulation and code required parking are provided within the Westcliff Plaza Shopping Center to accommodate the existing and proposed uses. The shopping center is currently developed with 107,895 square feet total gross floor area and 553 parking spaces are currently provided on site. The number of total parking required for the shopping center, based on the general commercial rate of one parking space per 250 square feet, is 446 parking spaces ($107,895/250 = 432$ spaces). Several of the existing uses on the property have additional parking requirements. The requirement for the shopping center, including the proposed use (15 spaces) is 522 parking spaces where 553 spaces are provided.
2. Adequate public and emergency vehicle access, public services, and utilities are provided.
3. The tenant improvements to the project site 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

- E. *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.
2. The proposed use and hours of operation are compatible with existing uses within the Westcliff Plaza Shopping Center.
3. A health and fitness facility is a common retail use that can be expected within retail/commercial shopping centers such as the Westcliff Plaza Shopping Center.
4. The proposed health and fitness facility will serve the surrounding residential community. This will revitalize the project site and provide an economic opportunity for the property owner to update the retail tenants and services, which best serve the quality of life for the surrounding residential 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. UP2012-022 (PA2012-130), 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.

PASSED, APPROVED, AND ADOPTED THIS 14TH DAY OF NOVEMBER, 2012.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"
CONDITIONS OF APPROVAL

PLANNING

1. Minor Use Permit No. UP2012-022 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, or an extension is otherwise granted.
2. The Zoning Administrator may add to or modify conditions of approval to this Minor Use Permit or revoke this Minor Use Permit upon a determination that the operation, which is the subject of this Minor Use Permit, causes injury, or is detrimental to the health, safety, peace, comfort, or general welfare of the community.
3. The project shall be in substantial conformance with the approved plot plan, floor plan, and elevations dated October 12, 2012.
4. 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.
5. 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.
6. The project and all tenant improvements must comply with the most recent, City-adopted version of the California Building Code.
7. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use will be cause for revocation of this Permit.
8. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of this health and fitness facility that would attract large crowds, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
9. All signs on the subject property shall be in conformance with the conditions of approval for the Comprehensive Sign Program as approved per Modification Permit No. MD2001-008 (PA2001-010), Modification Permit No. MD2011-006 (PA2011-050), and the provisions of Chapter 20.67 of the Newport Beach Municipal Code.
10. The use shall be limited to a maximum of four instructors and 24 students at any time during the business hours 5:00 a.m. to 10:00 p.m., daily.
11. The doors and windows shall remain closed at all times that the facility is open for business.

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12. The operator of the facility shall be responsible for the control of noise generated on the subject facility. Pre-recorded music may be played in the tenant space, provided exterior noise levels do not exceed the provisions of Chapter 10.26 of the Newport Beach Municipal Code.
 13. Prior to implementation of the proposed operation, the applicant shall install noise-abating material to both the interior walls and ceiling of the tenant space which abuts any neighboring tenant space that may be adversely impacted by daytime operations of the facility. The proposed material shall be reviewed and approved by both the Planning and Building Departments for installation requirements.
 14. Prior to issuance of building permits, the applicant shall submit to the Planning Department an additional copy of the approved architectural plans for inclusion in the use 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 Planning Director's Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
 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 Orange Theory Fitness Minor Use Permit including, but not limited to, Minor Use Permit No. UP2012-022 (PA2012-130). 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

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

Public Works Conditions

17. County Sanitation District fees shall be paid prior to the issuance of any building permits.