



**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 29, 2013

**ZONING ADMINISTRATOR ACTIONS
November 27, 2013**

- Item 1: Mikelson Residence Tentative Parcel Map No. NP2013-026 (PA2013-194)
428 Marigold Avenue
Action: Approved by Resolution No. ZA2013-078 Council District 6
- Item 2: 1509 East Bay Avenue Tentative Parcel Map No. NP2013-028 (PA2013-208)
1509 East Bay Avenue
Action: Approved by Resolution No. ZA2013-079 Council District 1
- Item 3: Prun Residence Modification Permit No. MD2013-015 (PA2013-177)
3400 Ocean Boulevard
Action: Approved by Resolution No. ZA2013-080 Council District 6
- Item 4: Rafail Residence Modification Permit No. MD2013-021 (PA2013-213)
1246 Somerset Lane
Action: Approved by Resolution No. ZA2013-081 Council District 3
- Item 5: Krisp Fresh Living Minor Use Permit No. UP2013-022 (PA2013-205)
1651 Westcliff Drive
Action: Approved by Resolution No. ZA2013-082 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. ZA2013-078

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2013-026 FOR A PARCEL MAP FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 428 MARIGOLD AVENUE (PA2013-194)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by James and Janet Mikelson, with respect to property located at 428 Marigold Avenue, and legally described as Lot 20, Block 440, of the Corona del Mar Tract, requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. No waivers of Title 19 (Subdivision Code) development standards are proposed with this application. A single-family residence has been demolished and will be replaced with a two-unit duplex under construction that will provide the code required two-car parking per unit. The Parcel Map would allow each unit to be sold individually.
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 27, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. 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 15 (Minor Land Divisions).
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 2 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:

- A-1. The proposed Parcel Map is for two-unit residential condominium purposes. A single-family residence was demolished and is being replaced with a new two-unit duplex (3,348 square feet) currently under construction. The proposed subdivision and improvements are consistent with the Two-Unit Residential (R-2) Zoning District and the Two-Unit Residential (RT) General Plan Land Use Designation, which allows a maximum of two residential units on a single lot.
- A-2. The subject property is not located within a specific plan.
- A-3. The project has been conditioned to require public improvements, including the reconstruction of existing broken or otherwise damaged sidewalks, curbs, and gutters along the Marigold Avenue frontage consistent with Subdivision Code (Title 19).

Finding:

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

Facts in Support of Finding:

- B-1. The lot is physically suitable for two-unit density and development as the site is relatively flat and has demonstrated it is adequate to accommodate the residential use.
- B-2. The subject property is accessible from Marigold Avenue and the alley at the rear and is adequately served by existing utilities.

Finding:

- C. *That the design of the subdivision or the proposed improvements are not likely to 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:

- C-1. The site was previously developed with a single-family residence and the applicant will construct a new two-unit duplex, consistent with the land uses permitted in the R-2 (Two Unit Residential) Zoning District.
- C-2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
- C-3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

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:

- D-1. The proposed Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems.
- D-2. 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.
- D-3. 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 ones 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:

- E-1. There are no existing easements acquired by the public at large for access through, or use of the property. Therefore the Parcel Map will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development.

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:

- F-1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
- F-2. The site, developed for residential use, lies in a zone that permits such use.

Finding:

- G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) There is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

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

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:

- H-1. The proposed Parcel Map and any future 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 Division 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:

- I-1. The proposed Parcel Map 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. The residential development on the site will add one additional dwelling unit, which is consistent with the R-2 Zoning District that allows for two units. Therefore, the Parcel Map for condominium purposes will help 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:

- J-1. The new two-unit duplex will be designed so that wastewater discharge into the existing sewer system complies 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:

- K-1. The project is not located within the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2013-026, 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 10 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 27th DAY OF NOVEMBER, 2013.



Brenda Wisneski, AICP, Zoning Administrator

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

1. The 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. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. Prior to recordation of the Parcel Map, park dedication fees for one (1) dwelling unit shall be paid in accordance with Chapter 19.52 (Park Dedications and Fees) of the Newport Beach Municipal Code. This fee shall be paid at the time the Map is submitted to the Public Works Department for plan check.
5. All improvements shall be constructed as required by Ordinance and the Public Works Department.
6. The applicant shall reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb, and gutter along the Marigold Avenue frontage.
7. The applicant shall reconstruct the existing broken and/or otherwise damaged alley adjacent to the project site.
8. The 5-foot rear alley setback shall remain clear of any above ground improvements.
9. Marigold Avenue is part of the City's Moratorium List. Work performed on said roadways will require additional surfacing requirements pursuant to City Standard 10-L-F.

10. 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.
11. The applicant shall install new sod or low groundcovers of the type approved by the City throughout the Marigold Avenue parkway fronting the development site.
12. 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. The water meter and sewer cleanout shall be located within the public-right-of-way.
13. An encroachment permit is required for all work activities within the public right-of-way.
14. All improvements shall comply with the City's sight distance requirement pursuant to City Standard 110-L and Municipal Code Section 20.30.130 (Traffic Safety Visibility Area).
15. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector.
16. All on-site drainage shall comply with the latest City Water Quality requirements.
17. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at the property line.
18. County Sanitation District fees shall be paid prior to the issuance of any building permits.
19. 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.
20. Prior to the recordation of the Parcel Map, the applicant shall apply for a building permit for 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.
21. 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 Mikelson Residence Parcel Map including, but not limited to, the NP2013-026 (PA2013-194). 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.

22. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.

RESOLUTION NO. ZA2013-079

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2013-028 FOR A SUBDIVISION LOCATED AT 1509 EAST BAY AVENUE (PA2013-208)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jeri Kochis, with respect to property located at 1509 East Bay Avenue, and legally described as Lots 4,5 and West ½ Lot 6, Block 24, together with Lots 4,5 and West ½ Lot 6, Block O, together with Bay Avenue as vacated as shown on Bayfront Section, M.M. 6/15, requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map to create two separate parcels for single-family developments. The subject property currently consists of four legal lots, portions of two lots, and an abandoned right-of-way. It is currently developed with a single-family residence.
3. The subject property is located within the Single-Unit Residential (R-1) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached - (6.0 - 9.9 DU/AC) (RSD-B).
5. A public hearing was held on November 27, 2013 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. 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 is categorically exempt under Section 15315, of the State CEQA (California Environmental Quality Act) Guidelines - Class 15 (Minor Land Divisions).
2. Class 15 consists of 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 to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent. The project is a residential subdivision creating two parcels for single-family residential developments which will be in conformance with the General Plan and

zoning. Furthermore, the project site was not involved in a division of larger parcels and does not have an average slope of greater than 20 percent.

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 the purpose of subdividing property consisting of four legal underlying lots, portions of two lots, and an abandoned right-of-way into two parcels for single-family developments.
2. There is an existing single-unit dwelling located on the subject parcel which is required to be demolished prior to the recordation of the map to avoid violations of the Building and Zoning Codes.
3. Future development of the proposed lots is required to comply with the Municipal Code and must be consistent with the use and development standards of the R-1 (Single-Unit Residential) Zoning District. One unit on each newly created parcel is allowed consistent with the current Zoning and General Plan Land and Coastal Land Use Plan land use designations allowing "Single-Unit Residential Detached".
4. The new parcels do not meet the minimum lot width requirement of 50 feet and area requirement of 5,000 square feet set forth in Title 20 (Zoning) for new subdivisions; however, the width and area are consistent with typical lots in the area. Deviations from the lot design standards (lot width and area standards established by the Zoning Code) can only be approved by making specific findings in accordance with Section 19.24.050.A. Those findings and the facts that support them are enumerated below and are incorporated by reference. Conditions of approval have been incorporated to require all necessary public improvements including, but not limited to, street, drainage, sidewalk and utility laterals to support the proposed subdivisions in accordance with the Subdivision Code.

Finding:

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

Facts in Support of Finding:

1. The site is currently developed with a single-family structure that crosses over underlying legal lot lines. The proposed Parcel Map would subdivide the lot into two parcels for two single-family developments.
2. The site is sloped less than 20 percent and is suitable for the development of two residences.

Finding:

- C. *That the design of the subdivision or the proposed improvements are not likely to 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 to local standards are presently available, the property was not involved in a division of a larger parcel within the previous 2 years, and the property does not have an average slope greater than 20 percent. The project site does not contain significant biological resources as it is currently developed with a single residential unit.

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 would subdivide a property consisting of two full, legal lots, portions of two abutting lots, and an abandoned right-of-way into two lots for the purpose of developing two new single-unit dwellings. 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 of the Municipal Code and Section

66411 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 ones 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 project site is not subject to a Williamson Act contract as it is developed with a single-family residence where no agricultural resources are present.

Finding:

G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) There is an adopted specific plan for the area to be included within the land project; and (2) 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, and 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 Division 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 proposed Parcel Map 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. The residential density on the proposed lots is consistent with the number of units allowed in the R-1 Zoning District. No affordable housing units are being eliminated since the previously existing single-unit dwelling was not occupied by a low or moderate income household.

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 will not violate Regional Water Quality Control Board (RWQCB) requirements because a single-unit dwelling would be developed on each proposed lot.

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 located within the Coastal Zone, and there is no public access or recreation area located on the site. The proposed subdivision would be consistent with the policies of the certified Local Coastal Program Land Use Plan.

Deviation from Design Standards

Per Section 19.24.050.A of Title 19 (Lot Design, Lot Size), new subdivisions must meet the applicable zoning district regulations stated in Title 20 (Zoning Code). Deviation from the design standards set forth in Chapter 19 of Title 19 may be approved by the Zoning Administrator subject to specific findings stated per Section 19.24.130.C. The proposed subdivision would create lots which would not meet the lot width and lot area standards required by the Zoning Code for new subdivisions within the R-1 Zoning District. The Zoning Code requires new subdivision lots to be 50 feet wide, and have a lot area of 5,000 square feet. The proposed parcels of land are 35 feet wide with an area of 4,130 square feet. The required findings to deviate from the standards and facts in support of those findings are as follows:

Finding:

- A. The requested deviations will create a land plan or development design equal or superior to that under the baseline design standards in this Chapter.*

Facts in Support of Finding:

1. The proposed lots are comparable in width, length, and area to the original subdivision which was comprised of 30-foot-wide by 85-foot-deep lots.
2. The existing lot orientation with vehicular access from the alley and pedestrian access from East Bay Avenue is maintained.

Finding:

- B. The deviations will not negatively impact the carrying capacity of the local vehicular circulation network.*

Facts in Support of Finding:

1. The proposed subdivision would increase the density by one (1) single-unit residential structure. According to the City's Traffic Engineer, East Bay Avenue has sufficient capacity to accommodate the minor increase in traffic.

Finding:

- C. The deviations will not negatively impact pedestrian circulation.*

Facts in Support of Finding:

1. The subdivision will not reduce or encroach within the abutting public right-of-way (East Bay Avenue).
2. The subdivision will not eliminate or impede pedestrian circulation provided that the necessary improvements are provided in accordance with applicable Public Works design standards and permitting.

Finding:

D. The resulting subdivision will be compatible with the pattern of surrounding subdivisions.

Facts in Support of Finding:

1. The original subdivision established 30-foot-wide lots on both sides of East Bay Avenue and throughout the majority of the Peninsula. The development of single-unit dwellings after the consolidation of lots and/or re-subdivision of lots has occurred within the neighborhood. Although many of the original lots remain, lot consolidation and re-subdivisions have occurred resulting in lots that vary from 30 feet wide to 90 feet wide in the area.
2. The abutting lots to the east and west have been merged or re-subdivided and are 90 feet wide and 45 feet wide, respectively.

Finding:

E. The resulting subdivision design and improvements will not be materially detrimental to the residents or tenants of the proposed subdivision or surrounding properties, nor to public health or safety.

Facts in Support of Finding:

1. The proposed subdivision to re-subdivide the existing parcel in a comparable manner to the underlying, legal lots would allow a single-unit dwelling to be constructed on each lot in accordance with the General Plan. Approval does not introduce an incompatible land use, and the resulting subdivision design would not be detrimental to the residents as vehicular and pedestrian access would be maintained. Any new development must be in accordance with the conditions of approval and the Municipal Code. The resulting lot widths are not inconsistent with the variety of lot widths and development pattern of the neighborhood.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2013-028, 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 10 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 27TH DAY OF NOVEMBER, 2013.



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 demolition permit to remove all existing improvements on the site shall be inspected and deemed final by the Building Inspector.
4. Prior to issuance of building permits for the second single-family residence, Fair Share traffic fees shall be paid in accordance with the fee schedule in effect at the time.
5. All improvements shall be constructed as required by Ordinance and the Public Works Department.
6. The applicant shall reconstruct the existing broken and/or otherwise damaged concrete alley adjacent to the development site.
7. All above-ground improvements shall be setback a minimum of 5 feet from the property line abutting the alley. The 5-foot rear alley setback area shall contain concrete pavement and shall remain accessible to vehicular traffic at all times.
8. 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.
9. An encroachment permit is required for all work activities within the public right-of-way.
10. All improvements shall comply with the City's sight distance requirement pursuant to City Standard 110-L and Municipal Code Section 20.30.130.

11. 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.
12. All on-site drainage shall comply with the latest City Water Quality requirements.
13. Each new residence requires its own individual water service/meter and sewer lateral with cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover located within the public right-of-way.
14. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at the property line.
15. Pursuant to Chapter 13 of the Newport Beach Municipal Code, a 36-inch-box street tree is required for each development. However, because of the location and condition of the property, it is impractical to plant the tree at the project sites. Therefore, two 36-inch-box street trees shall be planted at locations designated by the City.
16. 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 1509 East Bay Avenue Parcel Map including, but not limited to, Tentative Parcel Map No. NP2013-028 (PA2013-208). 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.
17. This Parcel Map shall expire if the map has not been recorded within 24 months of the date of approval, unless an extension is granted by the Director of Community Development in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

RESOLUTION NO. ZA2013-080

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2013-015 FOR AN ENTRY STAIRWAY, RAMP, AND RETAINING WALL LOCATED AT 3400 OCEAN BOULEVARD (PA2013-177)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Miguel Fernandez, representing property owner, Jon Prun, with respect to property located at 3400 Ocean Boulevard, and legally described as Lots 7 and 8, Block 140 of the Resubdivision of Corona del Mar, as shown on a map recorded in Book 4, Page 67 of Miscellaneous Maps, records of Orange County, California, excepting the East 12 feet of Lot 7, requesting approval of a modification permit.
2. The applicant proposes a modification permit to allow a Building Code required guardrail of an as-built exterior entry stairway and a proposed access ramp in the side setback adjacent to Marigold Avenue to exceed the 6-foot height limit by 7 inches. The applicant also requests approval of an as-built 3-foot-3-inch-high retaining wall adjacent to the right-of-way within the front setback where the Zoning Code limits the height of the first retaining wall in a series to a maximum of 2 feet in height.
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 located within the coastal zone. The Coastal Land Use Plan category is RSD-B (Single-Unit Residential Detached).
5. A public hearing was held on November 27, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. 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 is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines - Class 5 (Minor Alterations in Land Use Limitations).

2. The Class 5 categorical exemption includes side yard and setback variances not resulting in the creation of any new parcel. The Modification Permit for the entry stair and ramp within the side setback and retaining wall within the front setback qualify under 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 findings 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 neighborhood is comprised of a development pattern of single-unit and two-unit (duplex) dwellings.
2. The adjacent property and other properties fronting Ocean Boulevard have similar retaining wall improvements adjacent to Ocean Boulevard. The height of the 3-foot-3-inch retaining wall is less than the typical 42 inch maximum typically allowed in the front yard setback for fences and walls that are not retaining.
3. The subject property is a corner lot where the as-built stairway and proposed ramp would provide required access to the dwelling along Marigold Avenue. These types of improvements are typical along a street side residential frontage. The guardrails consist of open wrought iron construction and the solid wall is 3 feet 1 inch in height at its highest point.

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 requested structures are over height as a result of the need to comply with Building Code requirements for a minimum 42-inch guardrail and grade changes along the adjacent street frontages.
2. The stair and ramp entry are designed in such a way to provide the required landing for the entry and accommodate the basement walls located below the main residence.
3. The granting of the Modification Permit would not constitute a special privilege inconsistent with the limitations upon other properties along Ocean Boulevard as it allows the property owner to maintain parity with the usable access and entry improvements enjoyed by nearby properties.
4. The front of the property adjacent to Ocean Boulevard has a grade differential of approximately 11 inches from the left side of the property to the right side of the property. The height of the wall in its as-built condition provides a consistent top of wall elevation across the Ocean Boulevard frontage.

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 property has a 4-foot grade differential from the finished floor elevation of the residence to the finished surface elevation at the adjacent sidewalk along Marigold Avenue. The as-built stairway is necessary to achieve proper access into the residence with the Building Code required guardrail.
2. The ramp is necessary to achieve wheel chair access into the home. Due to the 4-foot grade differential adjacent to Marigold Avenue, the ramp exceeds the 6-foot height limit because of the Building Code required guardrail.
3. The front of the property adjacent to Ocean Boulevard is part of a series of walls that retain the 5-foot-11-inch vertical change in the front yard leading up to the finished floor of the residence. The height of the wall in its as-built condition provides a consistent top of wall elevation across the Ocean Boulevard frontage. This retaining wall has a grade differential of approximately 11 inches from the left side of the property to the right side of the property.

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. Strict application of the code would require the existing improvements to be removed and reconstructed in such a way that all structures are constructed entirely on private property and guardrails are not required for the stairway and ramp to access the residence.
2. Strict application of the code would require the applicant to remove the existing front retaining wall and lower or step it so that it does not exceed 2 feet in height at any point along the entire Ocean Boulevard frontage. This retaining wall is part of a series of walls that retain the 5-foot-11-inch vertical change in the front yard leading up to the finished floor of the residence.

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 stair and ramp location adjacent to Marigold Avenue allows for adequate access for emergency personnel. The spatial relationships between existing development and the adjacent Marigold Avenue suggest that the light, air, and public use of the adjacent right-of-way will not be negatively affected.
2. The applicant/owner is required to obtain a building permit for the as-built and proposed work. The construction will then be inspected prior to final of building permits.
3. The existing development on the property is a single-family residence. As such, there is no change to the density or intensity resulting from the as-built entry stair, proposed ramp, and as-built retaining wall.
4. That 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.

5. Public improvements will be required of the Applicant per the Municipal Code and the Subdivision Map Act.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2013-015 (PA2013-177), 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 14 days after the adoption of this Resolution unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 27TH DAY OF NOVEMBER, 2013.



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. MD2013-015 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. 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.
4. Prior to the 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.
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 Modification Permit.
7. The Zoning Administrator may add to or modify the 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.
8. 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.
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 Prun Residence Modification Permit including, but not limited to, Modification Permit No. MD2013-015 (PA2013-177). 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

10. 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.
11. The structures shall comply with the 2010 California Residential Code for construction relative to the property line. Non combustible construction shall be required to the satisfaction of the Building Division. The ramp shall provide the minimum width required by the 2010 California Residential Code.

Public Works Conditions

12. The as-built stairway and existing planter walls along Marigold Avenue are encroaching approximately 6-8 inches into the public right-of-way. Prior to issuance of building permits, the applicant shall obtain approval of an encroachment agreement with a waiver of Council Policy L-6 to retain the entry stairway railing and wall adjacent to the alley as constructed.
13. Prior to the issuance of building permits, the planter wall in front of the stairway closest to Ocean Boulevard shall be lowered to 36 inches in height within the right-of-way and the applicant shall obtain an encroachment agreement for the 7-foot-10-inch-wide planter wall built within the public-right-of-way adjacent to Marigold Avenue.
14. Prior to issuance of building permits, the project plans shall demonstrate that the guardrail for the proposed ramp will be constructed entirely on private property.

15. The 5-foot parkway within the Marigold Avenue right-of-way shall be maintained as landscape/softscape without hardscape improvements.
16. County Sanitation District fees shall be paid prior to the issuance of any building permits.
17. All improvements shall be constructed as required by Ordinance and the Public Works Department.

RESOLUTION NO. ZA2013-081

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2013-021 TO ALLOW A 40 PERCENT ADDITION TO AN EXISTING SINGLE-FAMILY RESIDENCE LOCATED AT 1246 SOMERSET LANE (PA2013-213)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Sam Rafail, property owner, with respect to property located at 1246 Somerset Avenue and legally described as Lot 32 of Tract 3032, requesting approval of a modification permit.
2. The applicant proposes a modification permit to allow a 40 percent addition to an existing nonconforming single-family residence where the code limits additions up to 10 percent of the existing gross floor area when the required parking width is not provided. The garage provides a 19-foot-2-inch width is provided where 20 feet is required. The garage is also nonconforming because it provides a 2-foot-2-inch side setback and 3-foot-2-inch rear setback where 6-foot side and rear setbacks are required.
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 not located within the coastal zone.
5. A public hearing was held on November 27, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. 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 (CEQA) under Class 1 (Existing Facilities) of the Guidelines for CEQA.
2. 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. The proposed scope of work is below these limits.

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 findings 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 neighborhood is comprised of a development pattern of one- and two-story single-unit dwellings. The Modification Permit will allow a second-story addition to a one-story single-unit residence within the subdivision.
2. The applicant is proposing a 40 percent addition to the existing structures on the lot. 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 4,071 square feet (3,651 square feet plus a 420-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 livable floor area (not including the garage) is less than 4,000 square feet.
4. The proposed addition will result in a residence that is similar in bulk and scale to others in the Mariner's Community.
5. The existing development on the property is a single-family residence. As such, there is no change to the density or intensity under the proposed remodel and addition.

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 residences in this area were constructed with garages and setbacks that were in compliance with the Zoning Code at the time of construction. The Zoning Code requires 6-foot side setbacks. The lot was permitted to be developed with a single-family residence and detached garage in 1964. Therefore, the structure is considered legal nonconforming.

2. Although the existing garage does not provide 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. 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.
3. The existing garage provides clear interior dimensions of 19 feet 2 inches in width by 20 feet in depth and its location is conflicting with the existing 5-foot-wide public utilities easements along the northeasterly property line acquired by the public at large for utilities purposes. 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. A variance to allow an expansion to the garage would be required to allow encroachments into the rear yard setback. Additionally, the location of the addition would be within the existing 5-foot utilities easement.
4. The existing and proposed development will comply with the height limit, lot coverage, and residential design criteria as shown on the proposed plans.

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 clear interior 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. 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 expanding or relocating the existing garage. An addition in the

garages existing location would require a Variance for rear setback encroachments and a request for relief from the requirements limitations of the 5-foot utility easement.

2. The only other alternative is to maintain the existing residence without constructing the proposed addition.
3. The granting of the Modification Permit would not constitute a special privilege inconsistent with the limitations upon other properties zoned R-1-6,000 as it allows the property owner to maintain equity with other homes in the Mariner's Community, where similar additions have occurred. The proposed project is consistent with historic development in the neighborhood.
4. Strict compliance with 10 percent addition of the existing gross floor area pursuant to per Section 20.38.060.2.a (Nonconforming Parking) of the Zoning Code significantly limits the ability of the property owner to create a two-story home thereby depriving a substantial property right afforded by other R-1-6,000 lots in the Mariner's community.

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. 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. The size of the spaces has not been detrimental to the occupants of the property, nearby properties, neighborhood, or City.
2. 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.
3. The side and rear setbacks provide adequate access for emergency personnel.
4. The spatial relationships between existing development and the adjacent property suggest that the light, air, and privacy of the abutting home and property will not be negatively affected by the proposed addition. The proposed addition is approximately 24 feet 8.5 inches in height at its highest point. The height is well below the 29-foot height limit for sloped rooflines. The addition will comply with all applicable development standards.
5. The approval of this Modification Permit is conditioned such that the applicant is required to obtain all necessary permits in accordance with the Building Code and other applicable Codes. The applicant/owner is required to obtain a building permit. The construction will then be inspected prior to final of building permits.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2013-021, 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 14 days after the adoption of this Resolution unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 27th DAY OF NOVEMBER, 2013.



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. MD2013-021 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. 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.
5. The Zoning Administrator may add to or modify the 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.
6. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
7. 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.
8. 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 Rafail Residence Modification including, but not limited to, the Modification Permit No. MD2013-021 (PA2013-213). 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

9. 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.
10. Prior to the issuance of building permits, the wood shingle roofing shall comply with NBMC 15.04.200 (Amendment to Table 1505.1) and NBMC 15.04.220 (Amendment to Section 1505.1.3). Class A roofing is required for all new construction. When more than 50 percent of the existing roof is modified, the entire roof shall comply with Class A assembly.
11. Prior to the issuance of building permits, the residence shall comply with the new code as it relates to fire resistive rating per Section R302 and R302.1 to the satisfaction of the Building Division. If the sprinkler is proposed, the system shall be modified to include the entire structure and shall not be limited to the new addition.
12. Prior to the issuance of building permits, the window opening protective and eave projections shall comply with the California Residential Code (CRC).
13. The setback for the existing garage is nonconforming and any new work on the garage shall require the structure to comply with the new code as it relates to fire resistive rating per Section R302 and Table R302.1.

Public Works Conditions

14. All improvements shall be constructed as required by Ordinance and the Public Works Department.
15. The applicant shall reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb, and gutter along the Somerset Lane frontage.
16. The applicant shall remove the existing concrete between the curb and the sidewalk and replace with new sod or low groundcovers of the type approved by the City throughout the Somerset Lane parkway fronting the development site.

17. A new sewer cleanout shall be installed on the public side of the property line, with a traffic-grade box and cover.
18. An encroachment permit is required for all work activities within the public right-of-way.
19. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Section 20.30.130 (Traffic Safety Visibility Area) of the Zoning Code.
20. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way shall be required at the discretion of the Public Works Inspector.
21. All on-site drainage shall comply with the latest City Water Quality requirements.
22. The existing street tree shall be protected in place.
23. Prior to the issuance of building permits, the property owner shall obtain letters from utilities companies (Southern California Edison, Time Warner, The Gas Company, and AT&T) acknowledging the existing encroachment. Letters shall be scanned onto project plans.
24. County Sanitation District fees shall be paid prior to the issuance of any building permits.

RESOLUTION NO. ZA2013-082

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-022 FOR A TAKE-OUT SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT LOCATED AT 1651 WESTCLIFF DRIVE PA2013-205

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Krisp Fresh Living, with respect to property located at 1651 Westcliff Drive, and legally described as Parcel 1 of Resubdivision 0153, requesting approval of a Minor Use Permit.
2. The applicant requests a Minor Use Permit for a take-out service, limited eating and drinking establishment with six seats. The applicant proposes to convert the existing retail sales suite into a juice bar. No late hours (after 11:00 p.m.) or alcohol sales are proposed as part of this application.
3. The subject property is located within the Commercial General (CG) Zoning District and the General Plan Land Use Element category is General Commercial (CG).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on November 27, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. 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 pursuant to the State California Environmental Quality Act (CEQA) Guidelines under Class 1 (Existing Facilities).
2. Class 1 exempts minor alterations to existing facilities involving negligible expansion of use beyond that existing at the time of the lead agency's determination. The subject project is for a change of use in an existing building.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 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:

A-1. The proposed use is designated as CG (General Commercial) within the Land Use Element of the General Plan, which is intended to provide a wide variety of commercial activities oriented primarily to serve citywide or regional needs. An eating and drinking establishment is a commercial use that serves local and regional needs and is consistent with the CG designation.

A-2. The subject property is not located within 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:

B-1. The proposed use is located in the Commercial General (CG) Zoning District, which is intended to provide a wide variety of commercial activities oriented primarily to serve citywide or regional needs. Approval of a Minor Use Permit is required for a take-out service, limited eating and drinking establishment if the subject property is located within 500 feet of any residential zoning district, otherwise it is allowed by right. The subject property is located within 500 feet of residential zoning districts, which are located on the opposite side of Westcliff Drive to the north and Sherington Place to the south.

B-2. Pursuant to Zoning Code Section 20.40.030 (Requirements for Off-Street Parking), take-out service, limited eating and drinking establishments are required to provide one parking space for every 250 square feet of gross floor area, which is the standard parking rate that applies to the previous retail sales use and the proposed use. The parking demand is not increasing and the proposed use is consistent with the parking requirements.

B-3. The proposed project is subject to and would operate in compliance with Section 20.48.090 (Eating and Drinking Establishments). No outdoor activities, late operations, alcohol sales, or outdoor dining are proposed as part of this application, but future changes would be required to be consistent with the Municipal Code.

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:

- C-1. Commercial and residential uses are allowed in the vicinity, including retail sales, service, restaurant, office, and multiple residential uses. The subject suite is located among other commercial uses along Westcliff Drive, and residential uses are located nearby on Westcliff Drive to the north and Sherington Place to the south.
- C-2. The existing multiple-tenant commercial building is not changing as a result of this project. The existing building design, location, and size previously used for commercial uses have not proven detrimental to the nearby residential uses. The site is developed with adequate shared parking and trash storage facilities. The subject suite is 920 square feet in gross floor area with 356 square feet proposed as net public (customer serving) area. The proposed project would include a patron restroom and a maximum of six (6) seats.
- C-3. The operational characteristics of the proposed establishment would be that of a typical take-out service eating and drinking establishment that would serve residents, visitors, and employees. The proposed use would not increase the parking demand, have late hours of operation, include alcohol sales, nor create any adverse noise impacts outside of the establishment. The abutting properties are commercial and the abutting streets and parking areas provide adequate separation to residential uses. Therefore, the operating characteristics would be compatible with the allowed commercial and residential uses in the vicinity.

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:

- D-1 The lot is 23,040 square feet in area (80' X 288'), rectangular in shape, located in a commercial area, and is developed with a multiple-tenant building and surface parking lot. The site has street access from the front along Westcliff Drive and the rear along Sherington Place, and the streets provide added separation from residential uses. A walkway corridor is provided from the front of the building and parking area to the rear of the building and parking area.
- D-2 The site is developed with an existing multiple-tenant building that is not changing as a result of this project. The design, location, shape, and size have been suitable for the commercial uses on site and would continue the existing provision of emergency vehicle access, public services, and utilities.
- D-3 The Public Works Department, Building Division, and Fire Department have reviewed the application. The project is required to obtain all applicable permits from the City

Building and Fire Departments and must comply with the most recent, City-adopted version of the California Building Code.

Finding:

E. 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.

Facts in Support of Finding:

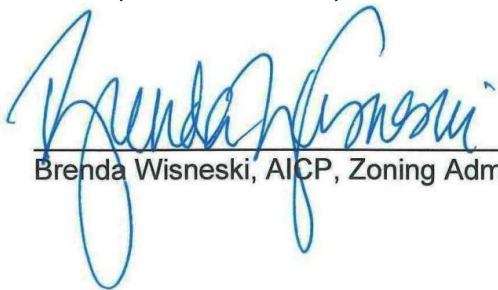
- E-1. The proposed use is similar to and compatible with other commercial uses in the vicinity, and complements the retail sales and service uses in the immediate area. The use will serve nearby residents, employees, and visitors to the area.
- E-2. The proposed use would sell food and beverages for primarily off-site consumption with up to six (6) seats provided.
- E-3. The proposed use would not increase the parking demand, have late hours of operation, include alcohol sales, nor create any adverse noise impacts outside the establishment.
- E-4. Compliance with the Municipal Code is required and will further ensure that the proposed use will not be detrimental.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-022, 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 14 days after the adoption of this Resolution unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 27TH DAY OF NOVEMBER, 2013.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

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. Minor Use Permit No. UP2013-022 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, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. 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 Minor Use Permit.
5. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined 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.
6. The hours of operation shall be limited to between 7:00 a.m. and 11:00 p.m., daily.
7. The project shall be limited to a maximum of six (6) seats.
8. 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 Minor Use Permit.
9. A copy of this Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
10. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
11. 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.
12. No outside paging system shall be utilized in conjunction with this establishment.

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13. 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. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
 14. The trash dumpsters and/or receptacles shall be 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).
 15. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
 16. 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 Director of Community Development, and may require an amendment to this Minor Use Permit.
 17. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
 18. 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 Krisp Fresh Living including, but not limited to, the Minor Use Permit No. UP2013-022. 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.