



**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 January 27, 2017

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**ZONING ADMINISTRATOR ACTIONS  
January 26, 2017**

- Item 1: Newport Beach Country Club Tentative Parcel Map No. NP2016-013 (PA2016-124)  
Site Address: 1602 E. Coast Highway (10 Clubhouse Drive)
- Action: Approved by Resolution No. ZA2016-006 Council District 5
- Item 2: 101 Bayside Drive Limited Term Permit No. XP2016-009 (PA2016-164)  
Site Address: 101 Bayside Drive Address
- Action: Removed from calendar Council District 5
- Item 3: Balboa Bakery and Donuts Minor Use Permit No. UP2016-046 (PA2016-190)  
Site Address: 706 E Bay Avenue
- Action: Approved by Resolution No. ZA2016-007 Council District 1
- Item 4: The Crab Cooker Lot Merger No. LM2016-007 (PA2016-186)  
Site Address: 2200 and 2202 Newport Boulevard
- Action: Approved by Resolution No. ZA2016-008 Council District 1
- Item 5: North Newport Center Planned Community Development Agreement Annual Review No. DA2007-002 (PA2009-023)  
Site Address: Block 100, 400, 500, 600 and 800 of Newport Center Drive and San Joaquin Plaza
- Action: The Zoning Administrator found that North Newport Center Planned Community Annual Review was in good faith compliance with the terms of the Development Agreement. Council District 5

**COMMUNITY DEVELOPMENT DIRECTOR  
OR PLANNING DIVISION STAFF ACTIONS**  
(Non-Hearing Items)

Item 1: 2742 and 2752 Bay Shore Drive Grade Determination Staff Approval No.  
SA2016-124 (PA2016-204)  
Site Address: 2742 and 2752 Bay Shore Drive

Action: Approved

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. ZA2017-006

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2016-013, SUBDIVIDING LAND FOR FINANCING AND CONVEYANCE PURPOSES LOCATED AT 1602 EAST COAST HIGHWAY AND 10 CLUBHOUSE DRIVE (PA2016-124)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Land Strategies, LLC on behalf of Golf Realty Fund - Managing Owner, with respect to property located at 1602 East Coast Highway and 10 Clubhouse Drive, and legally described as Parcels 1 and 2 of Parcel Map 94-102, requesting approval of a tentative parcel map for financing and conveyance purposes.
2. The tentative parcel map application to consolidate 11 parcels (Lots 1 through 7 and Lots A through D) of Vesting Tentative Tract Map No. NT2005-003 (County No. TTM15347) into four parcels for future financing and conveyance purposes. No development or improvements are proposed as a part of this application. Vesting Tentative Tract Map No. NT2005-003 was approved by the City Council on January 24, 2012, for the development on the subject property (Tennis Club Site of Newport Beach Country Club) which consists of twenty-seven (27) hotel units with a 2,170 square-foot concierge and guest meeting facility, five (5) single-unit residential dwellings, a 3,725 square-foot tennis clubhouse and 7,490 square-foot spa/fitness center and one lighted stadium-center tennis court.
3. The subject property is currently improved with 24 tennis courts, a 3,725 square-foot tennis clubhouse, and 125 surface parking spaces. No development or improvements are proposed as part of this application.
4. The subject property is located within the PC-47 (Newport Beach Country Club Planned Community) Zoning District and the General Plan Land Use Element category is MU-H3/PR (Mixed Use Horizontal/Parks and Recreation).
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is MU-H3/PR (Mixed Use Horizontal/Parks and Recreation). A coastal development permit application was submitted and a notice of intent was issued by the Coastal Commission in 2013. This notice however has expired. The applicant is currently working with Coastal Commission staff for re-approval of the notice of intent and ultimately issuance of the coastal development permit.
6. A public hearing was held on January 26, 2017, 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. All significant environmental concerns for the proposed project have been addressed in the previously adopted Mitigated Negative Declaration No. ND2010-008, and the City of Newport Beach intends to use said document for the above noted project. Furthermore, there are no additional reasonable mitigation measures that should be considered in conjunction with said project. Copies of the Mitigated Negative Declaration and supporting documents are available for public review and inspection at the Planning Division or at the City of Newport Beach website at [www.newportbeachca.gov/ceqadocuments](http://www.newportbeachca.gov/ceqadocuments).

## SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the proposed tentative 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 property has a General Plan designation of Mixed-Use Horizontal/Parks and Recreation (MU-H3/PR), and the property is part of the 145-acre Newport Beach Country Club Planned Community District (PC-47) which has been adopted to regulate development within the subject property and the Golf Club Site. The approval of PC-47 is in conformance with the General Plan designation pursuant to City Council Ordinance No. 2012-2.
- A-2. The proposed tentative parcel map will create four legal parcels to be conveyed to merchant builders for the future development on the subject property.
- A-3. No development or improvements are proposed with the proposed tentative parcel map. Any improvements will require future application submittals and approvals. Prior to development of the site pursuant to the PC-47, subsequent final map(s) to implement the proposed parcels and improvements shown on Vesting Tentative Tract Map No. NT2005-003 will be submitted to the City for review and approval.

### Finding:

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

Facts in Support of Finding:

B-1. No development or improvements are proposed with the proposed tentative parcel map. Any improvements will require future application submittals and approvals consistent with or as required pursuant to the PC-47 and the development agreement.

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. This project has been reviewed and is consistent with the previously adopted Mitigated Negative Declaration No. ND2010-008, for the development on the Tennis Club Site. Incorporation and implementation of the adopted mitigation measures in discretionary and ministerial actions to implement the project will ensure that no significant impact to the environment will occur.

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. No development or improvements are proposed with the proposed tentative parcel map. Any improvements will require future application submittals and approvals as required by the PC-47. All future development or construction will require compliance with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. 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. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.
- E-2. Easement for public emergency and security ingress/egress, weekly refuse service and public utility purposes on all private streets will be dedicated to the City with the proposed tentative parcel map.

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.

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. California Business and Professions Code Section 11000.5 was repealed by the Legislature. However, this project site is not considered a "land project" as previously defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land nor is it located within the boundaries of 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 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.
- H-2. The design of the proposed subdivision provides a southern solar exposure for both lots.
- H-3. The City of Newport Beach has not adopted an ordinance in accordance with Section 66475.3 Subdivision Map Act to require solar access easements; therefore Section 66475.3 is not applicable.

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 tentative parcel map proposes the lot consolidation of 11 parcels (Lots 1 through 7 and Lots A through D) of Vesting Tentative Tract Map No. NT2005-003 into four parcels for future financing and conveyance purposes. No development or improvements are proposed. Any improvements will require future application submittals and approvals. Therefore, the proposed tentative parcel map 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:

- J-1. No development or improvements are proposed. Existing wastewater discharge into the existing sewer system is 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:

- K-1. The subject property is located in the Coastal Zone, but not located in proximity to nor provides public access to any beaches, shoreline, coastal waters, tidelands, coastal parks or trails.
- K-2. A coastal development application was submitted and a notice of intent was issued by the Coastal Commission in 2013 for the proposed development at subject property. This notice of intent is now expired. A new coastal development application is being submitted for reconsideration. The configurations of the parcels within the subject map are consistent with the approved Vesting Tentative Tract Map No. NT2005-003 (TTM15347) which was included as part of the original submitted coastal development permit application and the new application as well. Additionally, the proposed project does not impact use of public recreational opportunities as no development or improvements are proposed as part of this application.

SECTION 4. DECISION.

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

- 1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2016-013, 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 or call for review 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 26th DAY OF JANUARY, 2017.**



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Patrick J. Alford, Zoning Administrator



**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

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. This tentative parcel map shall expire if the map is not recorded within 24 months from 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.
4. All improvements shall be constructed as required by Ordinance and the Public Works Department.
5. *The approval of Tentative Parcel Map No. NP2016-013 shall be for financing and conveyance purposes only. Development of each parcel shall be in accordance with the requirements of the Conditions of Approval of Site Development Permit No. SD2011-002 and Vesting Tentative Tract Map No. NT2005-003 for the Tennis Club Site.*
6. *Prior to recordation of Tentative Parcel Map No. NP2016-013, approval from the California Coastal Commission (CCC) shall be required; however, when the City of Newport Beach has a fully certified Local Coastal Program (LCP) and has the authority to issue coastal development permits (CDP), approval by the City of Newport Beach shall be required, unless otherwise determined by CCC.*
7. *Prior to development of the site pursuant to the PC-47, Final Map(s) to implement the proposed parcels and improvements shown on Vesting Tentative Tract Map No. NT2005-003 shall be submitted to the City for review and approval*
8. *Easement for public emergency and security ingress/egress, weekly refuse service and public utility purposes on all private streets shall be dedicated to the City.*

9. *Monumentation surety in a form acceptable to the City, guaranteeing the installation of the necessary monuments shall be provided prior to the recordation of the parcel map.*
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 Newport Beach Country Club – Tennis Club Site Tentative Parcel Map including, but not limited to, Tentative Parcel Map No. NP2016-013. 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. ZA2017-007

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-190 TO ALLOW OPERATION OF A BAKERY (TAKE-OUT SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT) LOCATED AT 706 E. BAY AVENUE (PA2016-190)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Win Nguyen Design Group with respect to property located at 706 E. Bay Avenue and legally described as Lot 4 as shown on a map of a resubdivision of Lots 1 to 7 inclusive of Block 98 of the Balboa Tract, as per map recorded in Book 8, Page 37, of Miscellaneous Maps, records of Orange County, California and all that portion of Lot 4 in Block "G" in bay front section of the Balboa Tract as shown on a map recorded in Book 6, Page 15 of Miscellaneous Maps, records of Orange County, California, lying Southwesterly of a straight line between the most Southerly corner of Lot 7 and a point in the Northwesterly line of said Lot 4 of said Block "G" in bay front section of the Balboa Tract aforesaid which point is 8.81 feet Northeasterly from the most Westerly corner of Lot 4 of said bay front section requesting approval of a minor use permit.
2. The applicant proposes a bakery (Take-Out Service, Limited Eating and Drinking Establishment) to operate in an existing 3,290 square foot single-story commercial tenant space within 500-feet of a residential Zoning District. The proposed bakery would include retail uses and primarily provide food services to-go with a maximum of six seats for customers. The project includes tenant improvements to create a kitchen area, seating area, retail shelving, and a waiting area. The proposed hours of operation are 8:00 a.m. to 8:00 p.m. daily.
3. The subject property is located within the Commercial Visitor-Serving (CV) Zoning District and the General Plan Land Use Element category is Visitor Serving Commercial (CV).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor Serving Commercial (CV-A) - (0.0 - 0.75 FAR).
5. A public hearing was held on January 26, 2017 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 is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3.
2. This exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves alterations to the interior floor plan of an existing commercial space with no expansion in use.

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:

1. The General Plan designates the site as Visitor Serving Commercial (CV), which is intended to provide for accommodations, goods, and services intended to primarily serve visitors to the City of Newport Beach.
2. The proposed establishment is a commercial use intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach and is consistent with the CV land use category.
3. A variety of small eating and drinking establishments exist nearby and the proposed take-out service would be complementary to the surrounding commercial, residential, and water related uses.
4. 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 property is located in the Commercial Visitor-Serving (CV) Zoning District. The proposed take-out service, limited eating and establishment, which includes kitchen facilities, no alcohol service, and no late hours, is a permitted use subject to the

approval of a minor use permit pursuant to Newport Beach Municipal Code Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements).

2. The proposed use would also comply with Section 20.38.060 Non-Conforming Parking of the Zoning Code. This section states that a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement occurs and the new use requires a parking rate of no more than one space per 250 square feet of gross building area. The proposed Take-Out Service – Limited use would require one parking space per 250 square feet. Therefore, the proposed use complies with Section 20.38.060 of the Zoning Code regardless of inclusion within the Balboa Village Parking Management Overlay District.
3. The property is also located within the Balboa Village Parking Management Overlay District. Pursuant to Municipal Code Section 20.28.030D, no off-street parking shall be required for any new nonresidential use or intensification of uses except the following uses as defined by the Zoning Code: assembly/meeting facilities, commercial recreation and entertainment, cultural institutions, all marine services uses, schools, and visitor accommodations. The proposed use is a take-out service, limited eating and drinking establishment, and based upon the proposed design with limited seating, no additional parking is required.
4. As conditioned, the proposed establishment will comply with Zoning Code standards for eating and drinking establishments, including those specific to the take-out service limited use classification, including a maximum of 6 seats.

Finding:

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

Facts in Support of Finding:

1. The location of the proposed use is appropriate given that the establishment will be accessible from Bay Avenue, which provides convenient access to motorists, pedestrians, and bicyclists. The site is also accessible from Edgewater Place, which provides convenient access for pedestrians.
2. The proposed establishment is located near visitor serving retail uses and small eating and drinking establishments. Thus, the proposed use is compatible with the existing commercial and residential uses in the area.
3. As conditioned, the allowed hours of operation will be 6:00 a.m. to 10:00 p.m. daily, which would minimize any nuisances to residents living near the property.

Finding:

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

Facts in Support of Finding:

1. The site would be served by existing utilities.
2. The Fire Department found no deficiencies with the proposed use and adequate public and emergency vehicle access is provided.
3. Any proposed site improvements must comply with applicable provisions of the Zoning Code and all Building, Public Works, and Fire Codes.

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:

1. Conditions of approval such as those which limit the hours of operation and deliveries, require trash receptacles, and prohibit alcohol sales and services are included to help ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The proposed food service, eating and drinking establishment will help revitalize the project site and provide an economic opportunity for the property owner to update the tenant space, and provide additional services to the residents and visitors alike.
3. The applicant is required to obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No.UP2016-046, 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 following the date this Resolution was adopted unless within such time an appeal or call for review 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 26<sup>TH</sup> DAY OF JANUARY, 2017.**



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Patrick J. Alford, 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. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. 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.
4. This 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.
5. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit unless determined to be in substantial conformance with the plans and conditions by the Community Development Director.
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. The hours of operation shall be limited to between 6:00 a.m. and 10:00 p.m. daily.
8. The maximum number of seats, including any stand-up counter areas for patrons shall be limited to a total of six (6).
9. There shall be no outdoor dining unless otherwise reviewed and approved by the Planning Division.
10. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
11. No outside paging system shall be utilized in conjunction with this establishment.



12. 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.
13. 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. Collection shall occur as frequently as necessary to prevent accumulation of trash.
14. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
15. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
16. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
17. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
18. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
19. 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.
20. 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 Balboa Bakery and Donuts Minor Use Permit including,

but not limited to, Minor Use Permit No. UP2016-046 This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Fire Department Conditions**

21. Cooking that produces grease laden vapors will require a Type I hood as per California Fire Code (CFC) Section 609.2.
22. Commercial cooking equipment with Type I hood shall have an automatic fire extinguishing system that is listed and labeled for its intended use. The fire extinguishing system shall be a wet chemical extinguishing system complying with UL 300. CFC Sec. 904.11.
23. A 2A10BC fire extinguisher will be required and will cover approximately 3,000 square feet of floor area. Additionally, a Class K fire extinguisher will be required and must be installed within 30 feet of the cooking area with the fire extinguishing system.

### **Building Division Conditions**

24. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. A building permit is required to allow the change in use to an eating and drinking establishment. 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.
25. Accessible Americans with Disabilities Act (ADA) compliant parking shall be provided.
26. Doors shall not swing over property line into right-of-way.

### **Public Works Conditions**

27. Install sewer clean outs on all existing sewer laterals per City Standard STD-406-L.
28. Any required upgrades to the existing on-site sewer system (i.e. grease interceptor) shall be accommodated on-site.

## RESOLUTION NO. ZA2017-008

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT MERGER NO. LM2016-007, WAIVING THE PARCEL MAP REQUIREMENT, AND COMBINING TWO LOTS INTO A SINGLE PARCEL FOR PROPERTY LOCATED AT 2200 AND 2202 NEWPORT BOULEVARD (PA2016-186)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by The Crab Cooker, with respect to property located at 2200 and 2202 Newport Boulevard, and legally described as Lots 15 and 16 of Tract No. 814 requesting approval of a lot merger.
2. The applicant proposes to combine two abutting lots under common ownership and to waive the parcel map requirement.
3. The subject property is located within the Mixed-Use Water Related (MU-W2) Zoning District and the General Plan Land Use Element category is Mixed-Use Water Related (MU-W2).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Water Related (MU-W).
5. A public hearing was held on January 26, 2017, 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. The Class 15 exemption includes the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) 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 parcel to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. This exemption includes a minor lot merger not resulting in the creation of any new parcel that complies with the conditions specified above.

### SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The subject lots are currently developed with a single-story nonresidential structure, which crosses the interior property lines of Lots 15 and 16 of Tract Number 814. Per Section 19.04.035 of the Municipal Code (Development Across Property Lines), structures cannot be constructed across property lines. With the approval of the lot merger, repair and renovation of the existing structure onsite can proceed in conformance with the Zoning and Building Codes.
2. The project is similar to the development of other properties in the McFadden Square area and on the Balboa Peninsula, where individual nonresidential buildings have been built on each lot and modified over time; these developments have not been detrimental to the health, safety, peace, comfort or general welfare of persons residing or working in the neighborhood or injurious to property and improvements in the neighborhood or the general welfare of the City.
3. Building alterations and improvements are required to comply with applicable Municipal Code regulations and City policies.

Finding:

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

Fact in Support of Finding:

1. Lots 15 and 16 of Tract Number 814 are under common fee ownership.

Finding:

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

Facts in Support of Finding:

1. The merged lots will be consistent with the applicable MU-W2 district regulations and other regulations relating to the subject property. The resulting parcel will be 5,400 square feet in area, exceeding the minimum lot area requirements of 2,500 square feet, and no setback nonconformities would be directly created by the proposed merger.
2. The Land Use Element of the General Plan designates the subject site as MU-W2 (Mixed-Use Water Related), which applies to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. The lot merger will help allow for the repair and renovation of the existing commercial and visitor-serving commercial use within the structure, consistent with the intent of the MU-W2 land use designation.
3. The existing building 2200 and 2202 Newport Boulevard is nonconforming to the 0.5 floor area ratio (FAR) limit. Any future redevelopment of the merged lots will be required to be consistent with MU-W2 (Mixed-Use Water Related) standards, including floor area, parking, and setback requirements and other applicable codes, regulations, and policies.
4. The lots are located within the coastal zone and the current use conforms to the MU-W (Mixed-Use Water Related) land use designation.
5. The merged lots will retain the MU-W2 designation, consistent with the surrounding area. The MU-W2 designation applies to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential units on the upper floors.
6. The Land Use Element of the General Plan designates the subject site as MU-W2, which applies to waterfront locations in which marine-related uses may be intermixed with buildings that provide residential on upper floors. The land use will remain the same and the merger is consistent with the designations of the General Plan.
7. The subject property is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

1. Neither of the merged lots, nor the adjoining parcels, will be deprived of legal access as a result of the merger. Legal access is provided from Newport Boulevard, 22<sup>nd</sup> Street as well as The Arcade and will remain unchanged.

Finding:

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

Facts in Support of Finding:

1. McFadden Square and the surrounding corridor along Newport Boulevard and Balboa Boulevard consist of lots of varying size. The proposed lot merger would remove the interior property line between the subject properties to permit the parcel as a single, unified site, and would not result in a development pattern, inconsistent with the existing development in the area.
2. As currently configured the individual lots meet the minimum area standard of 2,500 square feet stipulated by the Zoning Code for the MU-W2 Zoning District. The proposed lot merger will result in a parcel that is 5,400 square feet in area, exceeding the minimum lot area requirement. The majority of parcels in the vicinity are well in excess of the minimum lot area requirement; thus, the merger will not create a large parcel that appears out of character with the surrounding development.
3. The resulting lot configuration will not change the existing pattern of development since the orientation and access to the parcels would remain the same.

Waiver of Parcel Map

In accordance with Section 19.08.30(A)(3) (Waiver of Parcel Map Requirement) of the Newport Beach Municipal Code, the Zoning Administrator may approve a waiver of the parcel map requirement in cases where no more than three parcels are eliminated. The following finding and facts in support of such finding are set forth:

Finding:

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

Facts in Support of Finding:

1. The proposed lot merger will result in a parcel that is 5,400 square feet in area, which is compliant with the Zoning Code requirement of 2,500 square feet for a newly created parcel within the MU-W2 district.

2. The lots are currently developed. Approval of the proposed lot merger would remove the existing interior lot line, and allow the properties to be used as a single site for development. The lot merger in and of itself would not change the land use, density, and intensity. The proposed merged parcel would comply with all design standards and improvements required for new subdivisions by Title 19, the Zoning Code, Local Coastal Land Use Plan, and General Plan.
3. The proposed parcel will have a frontage on Newport Boulevard, 22<sup>nd</sup> Street and The Arcade; therefore, the proposed lot merger will not result in a deprivation of legal access.
4. The proposed lot merger does not result in the elimination of more than three lots.
5. Any improvements to the project site are required to comply with applicable Municipal Code regulations and City policies.
6. The subject property is not subject to a specific plan.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Merger No. LM2016-007, 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 or call for review 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 26<sup>TH</sup> DAY OF JANUARY, 2017.**



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. Lot Merger No. LM2016-007 shall expire unless exercised within twenty-four (24) months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The map shall be submitted to the Public Works Department for Final Map Review and Approval. All applicable fees shall be paid.
4. Prior to the issuance of building permits for any construction to cross the existing interior lot line between the two (2) lots to be merged, recordation of the lot merger documents with the County Recorder shall be required.
5. 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 Crab Cooker Lot Merger including, but not limited to, Lot Merger No. LM2016-007 (PA2016-186). 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.





## COMMUNITY DEVELOPMENT DEPARTMENT

### PLANNING DIVISION

100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915

(949) 644-3200 Fax: (949) 644-3229

[www.newportbeachca.gov](http://www.newportbeachca.gov)

## **COMMUNITY DEVELOPMENT DIRECTOR ACTION LETTER**

**APPLICATION:** Staff Approval No. SA2016-024 (PA2016-204)  
Hoelscher Grade Determination

**APPLICANT:** Ron Ritner, Ritner Group

**LOCATION:** 2742 and 2752 Bay Shore Drive

**LEGAL DESCRIPTION** Lot 5, Tract 1014

On **January 27, 2017**, the Community Development Director approved the establishment of an alternate grade of 10.75 NAVD88 for the purpose of measuring the height of accessory structures and fences within the ten-foot front yard setback. The alternate grade is based on the topography of the subject property and the adjoining properties (Refer to Exhibit A). The property is located in the R-1 (Single-Unit Residential) Zone.

### ***Section 20.30.050 Establishment of Grade by Director***

*If the Director finds that the existing grade on the subject lot has been previously altered (e.g., contains retaining structures, property line walls, planters, or excavation/fill), or other conditions are present to the degree that the existing grade is not representative of the prevailing grades on adjoining lots and/or the general area and, therefore, is not appropriate for the purpose of establishing the grade of the subject lot, the Director may establish the grade that is reasonable and comparable with the grades of adjoining lots and that will not be detrimental or injurious to property and improvements on adjoining lots.*

The Planning Director's Staff Approval is based on the following findings and conditions.

#### Finding:

- A. The existing grade on the subject lot has been previously altered (e.g., contains retaining structures, property line walls, planters, or excavation/fill), or other conditions are present to the degree that the existing grade is not representative of the prevailing grades on adjoining lots and/or the general area and, therefore, is not appropriate for the purpose of establishing the grade of the subject lot.

Facts in Support of Finding:

- A-1. The applicant is proposing to redevelop the property with a new single-unit dwelling; however, the grades along the front setback area (waterfront) include depressed areas that are not representative of the prevailing grades on the two adjoining properties. This grade differential creates design constraints and unfairly restricts the heights of accessory structures below those of the neighboring properties. The proposed alternate grade plane will elevate the depressed areas while preventing the bulkhead to exceed the wall heights of the adjoining properties.
- A-2. The subject property is currently developed with a patio elevation of approximately 8.50 feet NAVD88. This patio elevation is approximately 1 foot 3 inches lower than the property to the south (2732 Bay Shore Drive; 9.81 NAVD88) and approximately 3 feet lower than the property to the north (2762 Bay Shore Drive; 11.7 NAVD88) and, therefore, not appropriate for the purposes of measuring height of the accessory structures.

Finding:

- B. The grade is reasonable and comparable with the grades of adjoining lots and will not be detrimental or injurious to property and improvements on adjoining lots.

Facts in Support of Finding:

- B-1. Allowing a higher grade of 10.75 feet NAVD88 (average elevation of four corners of the front setback) would provide the property with a grade elevation that is compatible with those of the neighboring properties and equitable for the purposes of measuring heights of accessory structures within the front setback.

**CONDITIONS**

1. The grade for the purposes of measuring height of accessory structures authorized by this determination shall be based on existing grade prior to construction or alternate grade of 10.75 NAVD88 whichever is greater.
2. A copy of this action letter, including the findings and conditions, shall be copied onto the building plans.
3. 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 Hoelscher Grade Determination including, but not limited to, the SA2016-024 (PA2016-204). 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.

**APPEAL PERIOD:** An appeal or call for review 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. For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

On behalf of Kimberly Brandt, AICP, Community Development Director

By:



David S. Lee, Planning Technician

JM/dl

Attachments: CD 1 Vicinity Map  
CD 2 Photos  
CD 3 Plans

# **Attachment No. CD 1**

Vicinity Map

# VICINITY MAP



Staff Approval No. SA2016-024  
PA2016-204

**2742 & 2752 Bay Shore Drive**

# **Attachment No. CD 2**

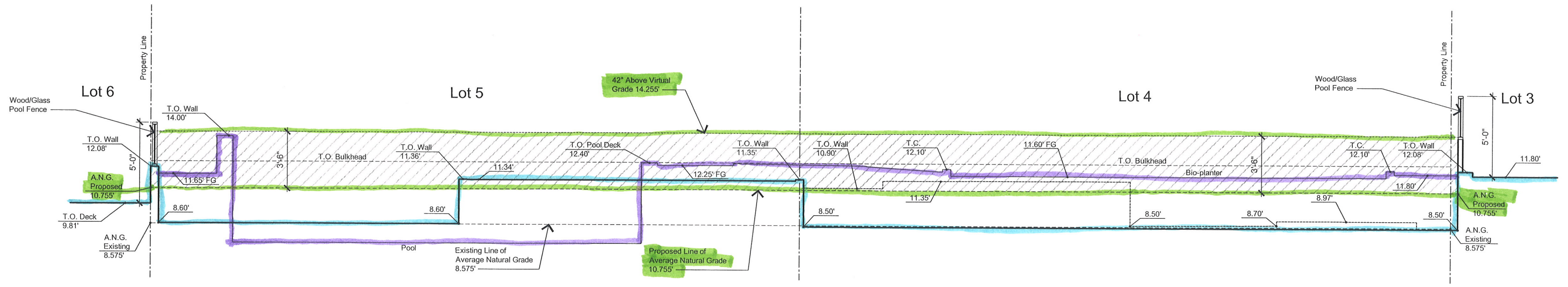
Photos



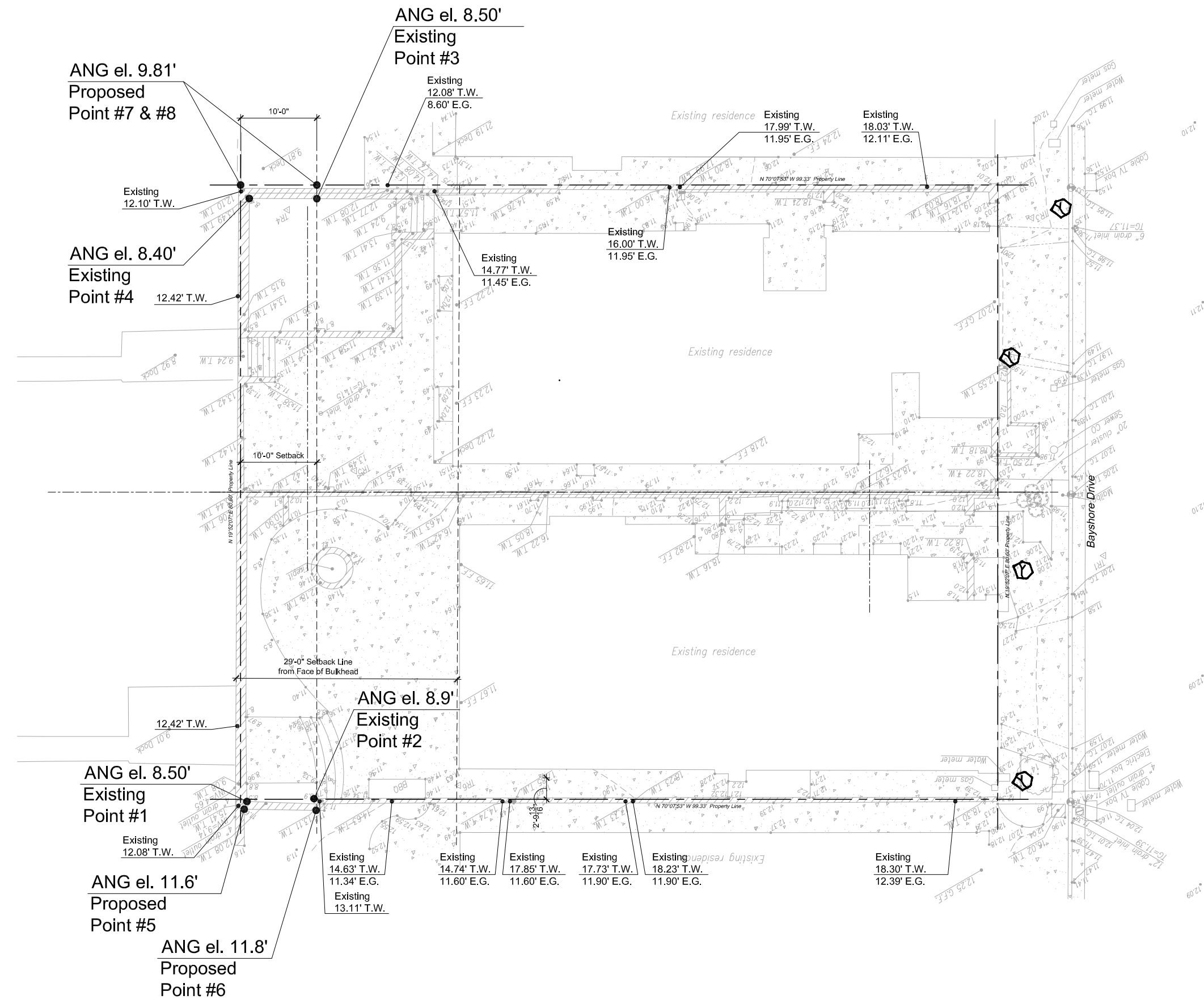
# **Attachment No. CD 3**

Plans





- Existing section through Lots
- New Layout per Landscape and Civil



**Planning Criteria**

Zoning:	R-1
Site Area	8,006 Sq. Ft.
Buildable Area	6,485.4 Sq. Ft.
Floor Area Limitations:	
2 x Buildable Area	12,970.8 Sq. Ft.
Proposed Floor Area:	
Total Living	5,190 Sq. Ft.
1 Car Garage	457 Sq. Ft.
2 Car Garage	502 Sq. Ft.
<b>Total Proposed Area</b>	<b>6,149 Sq. Ft.</b>
Open Volume Area:	
15% x Buildable Area	972.81 Sq. Ft.
Total Proposed Open Space:	2,387 Sq. Ft.
Total Landscape Area	1,575 Sq. Ft.
Setbacks:	
Front	10'
Rear	0'
Side Yard 1	4'
Side Yard 2	4'
Maximum Height:	29'

**Area Tabulation**

Main level	2,422 Sq. Ft.
Upper Level	2,768 Sq. Ft.
<b>Total Living</b>	<b>5,190 Sq. Ft.</b>
Covered Entry	81 Sq. Ft.
1 Car Garage	457 Sq. Ft.
2 Car Garage	502 Sq. Ft.
Loggia	207 Sq. Ft.
Master Suite Deck	97 Sq. Ft.
Office Deck	36 Sq. Ft.
Bedroom 4 Deck	39 Sq. Ft.
Stair Deck	35 Sq. Ft.

**Grade Establishment**

Area for Determining slope Calculation

Existing:	
A.N.G. Point # 1	8.50'
A.N.G. Point # 2	8.90'
A.N.G. Point # 3	8.50'
A.N.G. Point # 4	8.40'
<b>Total</b>	<b>34.30'</b>
DM'ded by 4	
Existing A.N.G. (Average Natural Grade)	8.575'
Proposed:	
A.N.G. Point # 5	11.60'
A.N.G. Point # 6	11.80'
A.N.G. Point # 7	9.81'
A.N.G. Point # 8	9.81'
<b>Total</b>	<b>43.02'</b>
DM'ded by 4	
Proposed A.N.G. (Average Natural Grade)	10.755'

**PROJECT ADDRESS**  
 2742 BAYSHORE DRIVE  
 NEWPORT BEACH, CA. 92663  
 ASSESSOR'S PARCEL NUMBER:  
 049-191-05, 049-191-06  
 LOT 4 & 5 - TRACT 1014

