



## CITY OF NEWPORT BEACH

**Building and Fire Board of Appeals Minutes**  
**1000 Avocado Avenue, Friends Meeting Room**  
**Newport Beach, CA 92660**  
**January 24, 2022, 3:00 p.m.**

**I.) CALL MEETING TO ORDER** – The meeting was called to order at 3:00 p.m.

**II.) ROLL CALL**

Present: Pulaski, Ahlke, Allen, Bondy, Caskey, Nour, Walz  
Absent:

**III.) PUBLIC COMMENTS**

None.

**IV.) ELECTION OF OFFICERS**

**1. SELECTION OF BOARD CHAIR**

Recommended Action: Board members to select a Chair

**Motion** by Board Member Waltz, seconded by Board Member Caskey and carried (7-0-0-0) to approve Board Member Saum Nour as Chair.

AYES: Pulaski, Ahlke, Allen, Bondy, Caskey, Nour, Walz  
NOES: None  
ABSENT: None  
ABSTAIN: None

**2. SELECTION OF BOARD VICE CHAIR**

Recommended Action: Board members to select a Vice Chair

**Motion** by Board Member Nour, seconded by Board Member Caskey, and carried (7-0-0-0) to approve Vice Chair Rolly Pulaski as Vice Chair.

AYES: Pulaski, Ahlke, Allen, Bondy, Caskey, Nour, Walz  
NOES: None  
ABSENT: None  
ABSTAIN: None

**V.) APPROVAL OF MINUTES**

**1. APPROVAL OF NOVEMBER 17, 2020 MINUTES**

Recommended Action: Approve the minutes of November 17, 2020

**Motion** by Board Member Waltz, seconded by Board Member Caskey and carried (4-0-0-3) to approve the Minutes of November 17, 2020.

AYES: Ahlke, Caskey, Nour, Walz  
NOES: None  
ABSENT: None  
ABSTAIN: Allen, Bondy, Pulaski

## **VI.) NEW BUSINESS**

### **1. 2318 NEWPORT BOULEVARD, APPEAL OF THE FIRE MARSHAL AND CHIEF BUILDING OFFICIAL DETERMINATION TO REQUIRE FIRE SPRINKLER PROTECTION OF EXISTING BUILDING FOR PROPOSED OCCUPANCY INCREASE FROM 164 TO 250 PERSONS**

Recommended Action: Uphold the Fire Marshal and Chief Building Official's determination

Fire Marshal Bass announced that the proposal is to increase the occupant load from 164 to 250 occupants for the property. The Acting Chief Building Official and the Fire Marshal reviewed the proposal and determined that fire sprinklers are required since the occupancy is over 100 persons. The applicant has since filed an appeal regarding the determination. The existing project is a non-conforming facility that was evaluated under the Code year of 2001. The current Certificate of Occupancy allows up to 164 persons. The new proposal includes a new floor plan and would increase the occupancy to 250 people. The use change is from dining to include dancing and standing areas.

In answer to Board Members' queries, Acting Building Official Thai confirmed that during the plan check process, which is still in progress, staff reviewed the Fire Code and existing Code requirements. The current submittal is being evaluated under the 2019 Code. Fire Marshal Bass confirmed that staff has no objections to the increase in occupancy limit if fire sprinklers are installed.

Greg Pappas, co-owner of Woodys Wharf, shared that his partners and himself have operated Woodys Wharf for over 15 years. He mentioned that their occupancy load is very low compared to their competition and requested that the occupancy be increased to what is allowed by the existing Codes.

Alex Arie, the Architect, explained that the applicants are not trying to change things, but rather show the City that the occupancy should have been higher since the beginning. In 2015, the applicant began the process to increase the occupancy. During those discussions, the Building Department recommended that the facility install fire sprinklers or apply for an amendment to have different equipment in lieu of fire sprinklers. The Fire Department recommended installing fire sprinklers or fire alarms with pull stations. The plans for the project were not submitted until the year 2021 and the submittal included pull stations in lieu of fire sprinklers.

Tuk Vorapani, licensed Fire Protection Engineer and consultant for the applicant, confirmed that in 2015 there was an agreement with the City regarding the fire prevention measures for the facility. The Code has not changed since 2015.

In answer to Board Member Walz's questions, Mr. Arie confirmed that the facility is a legal non-conforming use and that 100 persons is the occupancy load requirement for new buildings. The proposal does intensify the non-conforming use, but also allows the facility to increase to a higher occupancy load that it is entitled to have. The Building and Fire Code state that for an existing facility, sprinklers are required when an addition of 50 percent or higher is added to an existing structure with a resulting building area exceeding 5,000 square feet, if there is an additional story constructed, and if there is an addition to a building that already has sprinklers. None of those provisions apply to the proposal. In regards to a new alternative method of construction, Fire Marshal Bass confirmed that staff has not received any new alternative means or methods forms or requests.

In reply to Board Member Ahlke's question regarding the change in function, Mr. Pappas confirmed that the facility has always had dancing.

In response to queries from Board Member Caskey, Mr. Vorapani concurred that the 2013 Code was applied to the plans and there have been two Code changes since 2013. Fire Marshal Bass confirmed that the 2016 and 2019 Code changes are the same as the 2013 Code. The standard for 100 occupants was established in the 2007 Code changes. Acting Building Official Thai confirmed that all plumbing and life safety requirements will be reviewed during plan check.

In answer to questions from Chair Nour, Mr. Arie agreed that no place in the Code does it state an owner is entitled to specific provisions. The applicant is expressing that the business should have been allowed a higher occupancy load when it was established in 2007-2008 based on the calculations in the Building Code. Mr. Arie explained that yes, he is the architect of record but a fire life safety consultant was hired at the City's request to prepare the application and other documents. Mr. Vorapani answered that there was no report done for fire equivalency. Fire Marshal Bass mentioned that the Station Night Club fire occurred on February 20, 2003.

In reply to questions from Board Member Bondy, Fire Marshal Bass answered there is no correspondence, plans, forms, or any written documentation showing an agreement between the City and the applicant. Staff will honor any documents the applicant has showing such an agreement but the applicant has not submitted any. Regarding the original calculation of occupancy, Acting Building Official Thai declared that the 2007 occupant load is not a component that the Building Division can determine or advise the applicant on.

In response to inquiries from Board Member Ahlke, Acting Building Official Thai noted that non-fixed dining area seating in the original Certificate of Occupancy does not imply dancing. Non-fixed dining area seating applies to moveable tables and chairs. The applicant is proposing to convert the existing table and chair dining area into a dance floor and that is considered a change in function. Mr. Pappas mentioned that the two tables in front of the stage are not there anymore and there is no change inside the dining room. Board Member Ahlke remarked that based on the submitted plans there is a change in function.

Acting Building Official Thai reminded the Board that the Fire Marshal's determination is based on the 2019 Building Code and any appeal of the 2007 or 2015 review process is irrelevant.

In reply to Mr. Pappas's question regarding if the tables and chairs are not moved, are sprinklers required, Fire Marshal Bass restated that with the increased occupant load, the facility is not in compliance with the existing Certificate of Occupancy. Also, there is an intensification of use and a change of use and so now the facility is required to have fire sprinklers per the Code.

In response to questions by Board Member Allen, Fire Marshal Bass confirmed that there is no A3 occupancy in the 2001 Code and it should have been another Code designation. The correct occupancy Code that is being used is A2 under the 2019 Code.

Mr. Pappas commented that if the patio tables and chairs are not moved, that would allow the business to have 215 occupants based on the calculations in the staff report. He supported leaving them where they are and having the new occupancy load of 215.

Chair Nour requested that Fire Marshal Bass cite the section of the Code that mandates that the applicants must have sprinklers. Fire Marshal Bass noted that in Newport Beach Municipal Code, Section 903.2.1.2, Group A2 Occupancy requires an automatic sprinkler system. Mr. Vorapani argued that the Code Section 903.2 of the Newport Beach Municipal Code applies to new buildings, not existing ones. Acting Building Official Thai clarified that the Newport Beach

Municipal Code Amended Section 903.2 has two sections. The first section addresses new buildings and the second section addresses existing buildings. Within the second section regarding existing buildings, Item D allows more restrictive requirements by other provisions of the Code. Based on that, the California Building Code and Fire Code Section 903.2.1.2 applies and requires that any A2 occupancy load over 100 persons must have sprinklers. Mr. Vorapani restated that he does not agree with Item D regarding more restrictive requirements. Chair Nour inquired if the architect of record agrees that there is a change in use because of the designation change between A3 and A2. Mr. Arie argued that the A3 to A2 change is a secondary change because of an error and that the applicant has no problem with the change. Chair Nour remarked that based on the Code, the designation A2 requires sprinklers. Mr. Vorapani restated that the use of occupancy has not changed and the business is still a restaurant.

In reply to Board Member Bondy's query regarding the applicant's interpretation of the Code, Mr. Vorapani clarified that "other provisions of the Code" should not include the requirement that over 100 occupants requires sprinklers because that provision is for new buildings.

Ralph Furra, the property owner, clarified that the architectural plans submitted to the City in 2005 by Robison Hill have him as the client and he has never been a client of theirs. Also, he is not the appellant and Roger Diamond is not his attorney as stated on the paperwork.

Jim Mosher reminded the Board that there was a warehouse fire on December 2, 2016 where 100 people were trapped inside a warehouse without sprinklers and 36 of the people died.

**Motion** by Board Member Caskey, seconded by Board Member Allen, and carried (7-0) with the recommendation to uphold both the Fire Marshal and the Chief Building Official's determination that the building is to be fire sprinklered.

AYES: Pulaski, Ahlke, Allen, Bondy, Caskey, Nour, Walz  
NOES: None  
ABSENT: None  
ABSTAIN: None

**VII.) BUILDING AND FIRE BOARD OF APPEALS ANNOUNCEMENTS OR MATTERS WHICH MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION OR REPORT.**

None.

**VIII.) ADJOURNMENT**

Chair Nour adjourned the meeting at 4:50 p.m.