

## **Attachment No. PC 1**

Draft Resolution with Findings and  
Conditions

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## **RESOLUTION NO. PC2025-013**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A VARIANCE TO ALLOW A SINGLE-UNIT DWELLING AND ATTACHED GARAGE TO ENCROACH INTO THE 50-FOOT FRONT SETBACK FOR THE PROPERTY LOCATED AT 1020 WHITE SAILS WAY (PA2023-0200)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### **SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by Ron Thorpe of C.J. Light Associates ("Applicant") on behalf of the property owner, Michael Tracy ("Property Owner"), concerning property located at 1020 White Sails, and legally described as Lot 30 of Tract Map No. 2202 ("Property") requesting approval of a variance.
2. The Applicant requests a variance to allow an addition to an existing single-unit dwelling to encroach into the required 50-foot front setback. Specifically, the Applicant requests to construct a new attached three-car garage that will encroach 29 feet into the front setback with a roof overhang that encroaches 31 feet into the front setback and a new bedroom addition that will encroach 13 feet into the front setback. The proposed garage would replace the existing two-car garage and would be located below the existing grade. The existing two-car garage would be converted into living space. The project also includes the removal of several existing unpermitted structures including a detached storage room, walls, fences, stairs, and other accessory structures that were constructed without the benefit of a building permit. No other deviations to the development standards are proposed ("Project").
3. The Project was previously scheduled for a public hearing before the Planning Commission on May 9, 2024, however, on May 8, 2024, the Project was removed from the agenda at the request of the Applicant.
4. On May 30, 2024, a Code Enforcement Case was opened citing unpermitted construction on the Property. Based on an investigation of the Property, it was determined that the existing driveway was removed, an attached storage room with a garage door was constructed in the front setback, and stairs, walls, and fences in the front of the Property were constructed without building permits. The various unpermitted improvements do not comply with the Newport Beach Municipal Code (NBMC) including setbacks and height limits for accessory structures. A new garage was not constructed to replace the garage that is no longer accessible via a driveway.
5. The Property is categorized Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element and located within the Single-Unit Residential (R-1-6000) Zoning District.

6. The Property is not located within the coastal zone.
7. A public hearing was held on July 17, 2025, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of the time, place, and purpose of the hearing was given in accordance with the California Government Code Section 54950 *et seq.* (Ralph M. Brown Act) and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to and considered by, the Planning Commission at this hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is exempt from the California Environmental Quality Act ("CEQA") under Section 15301 under Class 1 (Existing Facilities) and Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
2. Class 1 exempts projects that consist of additions to existing structures provided that the addition will not result in an increase of more than 50% of the floor area, or 2,500 square feet, whichever is less. The Project includes a 1,245 square-foot addition (net increase) to an existing 3,780 square-foot single-unit dwelling. The addition is less than 2,500 square-feet and constitutes an addition of 33% of the existing single-unit dwelling, which is less than 50%.
3. Class 5 exempts projects that consist of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density, including setback variances not resulting in the creation of any new parcels. The Property has an average slope of approximately 15% and the Project will not result in the creation of new parcels.
4. The exceptions to this categorical exemption under Section 15300.2 of the CEQA Guidelines are not applicable. The Project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.090 (Variances – Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

### Finding:

- A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical*

*features) that do not apply generally to other properties in the vicinity under an identical zoning classification;*

Facts in Support of Finding:

1. The Property is located in the Harbor View Hills area along White Sails Way. Front setbacks for this area of Harbor View Hills are established on Setback Map No. S-11A, "Harbor View Hills/Spyglass" (formerly designated as Districting Map No. 32). Pursuant to Setback Map No. S-11A the front setbacks along White Sails Way range from 13feet to 52feet as measured from the front property line abutting the street or sidewalk. The average setback among the 13 properties on White Sails Way is approximately 36 feet. The Property has a 50-foot front setback, which is at the high end of this range. There are four other properties on White Sails Way with a front setback between 48 and 52 feet. The next largest front setback is 40 feet.
2. The Property is located within the Single-Unit Residential (R-1-6000) Zoning District. Pursuant to Table 2-2 (Development Standards for Single-Unit Residential Zoning Districts) of Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC, the typical front setback is 20feet for this zoning district. Additionally, the typical front setback for the Single-Unit Residential (R-1) Zoning District is also 20feet. The Property has a front setback that is 2.5 times larger than the typical setback for this zoning district.
3. Typical vehicular access on this street is provided via a direct or straight-in driveway from the street to the garage with either no slope or a minimal upward slope to the garage. The Property is the only property on White Sails Way that was constructed with a driveway approach that curves to the left up an approximately 20% slope that requires making a right turn into the garage. This driveway configuration and associated maneuvering area takes away from the building site. This is a limitation that other properties in the neighborhood do not have.
4. The Property slopes down towards White Sails Way, with an approximately 10-foot grade differential from the garage floor down to the street level. This 10-foot grade differential is located within the required 50foot front yard setback.
5. In order for the Property to achieve the same flat straight-in driveway approach as the other properties along White Sails Way while maintaining the 50-foot front setback and the existing single-unit dwelling, a large portion of the front setback area would require substantial grading to carve out and retain the slope. This would require excavating underneath the existing single-unit dwelling, which is more costly than the scope of the Project.
6. The large front setbacks along White Sails Way coupled with the steep topography of the lot creates a unique circumstance for this lot that does not generally apply to other properties in the vicinity under the same zoning classification.

Finding:

- B. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification;*

Facts in Support of Finding:

1. The Applicant seeks to maintain as much of the original construction as possible while adding a new garage with direct access from the street and an additional bedroom. The new bedroom would be repurposed from the existing garage with a small addition that encroaches into the front setback. The Property has a 6-foot rear setback. However, the footprint of the existing single-unit dwelling is unable to build up to this rear setback as approximately 15 feet of the rear Property has a steep upward slope with an approximately 10 foot difference. The Property also has an existing pool in the rear that limits development.
2. Other properties in the same zoning district have straight driveway approaches into the garage on a flat driveway or small slope that does not create a safety hazard pulling into the driveway or pulling out of the driveway onto White Sails Way. Additionally, other properties in the same zoning district are able to achieve a lot coverage that is closer to the maximum allowed in the R-1-6000 Zoning District (60% maximum). The garage and bedroom addition would bring the overall lot coverage to 42%.
3. The Property is approximately 12,768 square feet and the maximum allowable lot coverage is 7,659 square feet or 60% of the lot. However, the practical buildable footprint of the Property (less setbacks) is approximately 7,053 square feet, or 55%. Other similarly sized properties within the same zoning district have buildable footprints (i.e. lot area minus setbacks) that allow them to build up to 60% lot coverage. This includes the ability to design a building that meets the design criteria pursuant to Section 20.48.180(B) (Design Criteria) of the NBMC by providing articulated exterior walls, variation in the wall plane, building modulation, openings, and recesses. Thus, the Property is disproportionately limited as compared to other properties of a similar shape with identical zoning. No amendments to the underlying maximum lot coverage are proposed.
4. The neighboring property to the south at 1014 White Sails Way has a similarly large front setback of 48-feet and a slope of approximately 8 to 10 feet in the front setback unlike the other properties on White Sails Way that have been developed with less sloped front yards. However, the existing garage encroaches 26-feet, 7-inches into the front setback as authorized by Modification Permit No. 5098 that was approved by the Modification Committee on June 14, 2000. The approval was justified by the topography of the property and elevation of the access street that would provide an opportunity for the excavation and construction of the subterranean garage that would not impact the view of neighboring properties. The Modification Committee has since been dissolved and approval of a Modification Permit with Zoning Administrator approval would only allow a maximum of 10%, or 5-feet, deviation from the required setback. The Applicant must now seek approval of a variance to achieve a similar design.

5. It should be noted that approval of Modification Permit No. 5098 for the prior project does not set a precedent for other Modification Permits or Variances to be approved. Rather, the variance is supported by the unique constraints of the Property related to the sloping topography and large front setback, which was only present on one other property (1014 White Sails Way). The Project proposes a similar design with a basement level garage in the front setback that is located almost entirely below the existing grade with the exception of the vehicular entry point. Pursuant to Section 20.52.090 (G) (Precedents) of the NBMC, the variance would not create a precedent for future approvals.

Finding:

- C. *Granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the applicant;*

Facts in Support of Finding:

1. As described above, the front of the Property has a heavily sloping topography coupled with a large front setback of 50 feet. Without granting the variance, the Property owner would not be able to achieve the full 60% lot coverage with a design that allows for building articulation, open areas around the structure, and landscaping. Additionally, the variance will allow for safer ingress/egress to and from the Property with a garage that is closer to the street level and has direct access from the street. The garage will still maintain a 21-foot setback which is consistent with other similarly zoned properties in the City.
2. Facts 4 through 6 in support of Finding A are incorporated herein by reference.
3. Facts 1 through 3 in support of Finding B are incorporated herein by reference.

Finding:

- D. *Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district;*

Facts in Support of Finding:

1. The granting of the variance would not constitute a special privilege inconsistent with the limitations upon other residential properties, especially those zoned Single-Unit Residential (R-1 and R-1-6000), which have a standard front setback of 20 feet. It allows the Property Owner to maintain equity with other single-unit dwellings in the neighborhood where additions and garages with direct access to the street have been constructed. The proposed setback of 21 feet will allow the Property Owner full use and enjoyment of the Property by providing safer vehicular access with increased visibility without creating bulk or scale that is inconsistent with the pattern of development in the neighborhood. Additionally, the bedroom addition will allow the Property Owner to enjoy

the use of their dwelling with a larger primary bedroom that is difficult to achieve with the large setback restriction.

2. The requested variance would not result in more floor area or a higher lot coverage than surrounding properties of similar size and the same zoning district. There are other properties in the Harbor View Hills area that cannot build up to the 60% maximum lot coverage due to setback application and lot configuration restraints. However, the number of lots that share this restriction are limited. Additionally, the Property has an existing 20% slope in the front setback that deprives the owner of standard garage access from the street. There is only one other property in the vicinity that has a similar slope, and that property enjoys a 21-foot 5-inch setback. The alternative that would provide the same direct garage access would require excavating the entire slope within the 50-foot front setback to construct a straight-in driveway approach to a garage that is setback 50-feet from the front property line. This alternative would require substantial grading and reinforcement of the existing slope, which presents a limitation that is not consistent with other properties in the vicinity within the same zoning district.
3. This neighborhood in Harbor View Hills is designed with a wide range of staggered front setbacks. The front setbacks along White Sails Way range from 13 feet to 52 feet. The properties approximately 300-feet west along Sea Lane also are designed with staggered front setbacks with a range of 18 feet to 33 feet. The properties approximately 160-feet to the east along Goldenrod Avenue also are designed with staggered front setbacks with a range of 10 feet to 48 feet with two other properties having a 58-foot and 60-foot front setback. The nearby properties along Sea Lane and Goldenrod Avenue are also within the R-1-6000 Zoning District.
4. The staggered front setbacks were established through Tract Map No. 2202 accepted and filed on November 10, 1959. Based on the historical research of this neighborhood, staff was unable to find any justification made in the Tract Map application that would suggest a requirement for the large range of setbacks.
5. Although the NBMC does not have any development standards that protect private views, the Property is within the Harbor View Hills Community Association with Architectural and Landscaping Guidelines adopted on November 18, 2019. The guidelines indicate that proposed improvements, including residential buildings, garages, fences, walls, and similar structures, must not block the existing views from other lots. The Project includes the conversion of the existing garage to a primary bedroom as well as an addition to the primary bedroom into the 50-foot front setback. Pursuant to Table 2-2 of Section 20.18.30 of the NBMC, the maximum height for structures is 24-feet for a flat roof and 29-feet for a sloped roof which would allow for additions to be built vertically without encroaching into the setbacks. However, this vertical improvement would not be compatible with the neighborhood, which is largely single-story, and would be inconsistent with the Architectural and Landscaping Guidelines. Additionally, the Applicant has received conditional approval for the design from the Harbor View Hills Community Association and the Harbor View Hills Architectural Design Committee.



6. The variance would not result in a substantial increase in total lot coverage on the Property that could be viewed as the granting of a special privilege, and no additional deviations are requested. The lot coverage is currently 29% and the Project proposes a lot coverage of 42%, which would remain under the maximum allowed lot coverage of 60%.
7. The bedroom addition on the northern side of the Property will be 37-feet from the front property line. This addition will be designed to meet a similar setback to the closest neighboring property at 1026 White Sails Way where the front setback is 40 feet.
8. Any unpermitted work that does not meet the development standards of the NBMC, such as, but not limited to, walls, fences, stairs, gates, and other accessory structures located in the 50-foot front setback that exceed 42-inches in height are required to be removed or modified to comply with the provisions of the NBMC. A condition of approval is included in Exhibit "A" requiring removal of these structures.
9. Pursuant to Section 20.40.040 (Off Street Parking Spaces Required) of the NBMC, the Property is required to provide three parking spaces in a garage with a minimum interior clear dimension of 20 feet by 20 feet and a tandem depth of 35 feet. The unpermitted attached storage building will be rebuilt as a garage that meets the required dimensions to provide adequate parking for the Property. The project would result in one additional off-street parking space, as the new driveway would also provide one supplemental parking space that meets the required dimensions.

Finding:

- E. Granting of the variance will 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; and*

Facts in Support of Finding:

1. The overall design plan meets the residential design criteria provided within Section 20.48.180(B)(2) (Residential Design Standards and Design Criteria) of the NBMC by avoiding long unarticulated walls and providing a front façade where the primary entry is the dominant element of the front façade. This is consistent with the neighborhood pattern on White Sails Way where the primary entry faces the street.
2. Properties along White Sails Way have varying slopes in the front of the property with the more sloping properties near Harbor View Drive, including the Property. Properties in the neighborhood are developed with landscaping, terraced walls, and driveways in the front yard with a range of setbacks from 13 feet to 52 feet. The Project would be designed in substantial conformance to the approved plans to ensure minimal bulk is proposed in the front setback so the project remains consistent with the design of the neighborhood.

3. The Project would allow the driveway to be designed with a straight in and out approach that would provide safer exiting from the Property onto White Sails Way with more traffic visibility. This would reduce an existing hazard on the Property.
4. The Public Works Department has reviewed the Project for compliance with line-of-sight considerations and has provided conditions for the project. Conditions include requiring the driveway to be reconstructed so that it is perpendicular to the curb face and aligns with the southern edge of the garage opening and for the new driveway slope to comply with the City standards. The original driveway had a slope of approximately 20% where Section 20.40.070(A)(2) (Development Standards for Parking Areas – Access Ramps) of the NBMC requires that vehicle access to parking areas shall not exceed a slope of 15% and the original driveway could not be reconstructed with the current code.

Finding:

- F. Granting of the variance will not be in conflict with the intent and purpose of this section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

1. Section 20.30.110 (Setback Regulations and Exceptions) of the NBMC establishes standards to ensure the provision of open areas around structures for; visibility and traffic safety; access to and around structures; access to natural light and ventilation; separation of incompatible land uses; space for privacy, landscaping, and recreation; protection of natural resources; and safety from fire and geological hazards. The proposed setback of 21 feet for the garage and 37 feet for the bedroom addition would still maintain adequate open area, visibility, access to light, privacy, and safety from fire and geologic hazards consistent with the purpose and intent of this Section of the NBMC.
2. In accordance with Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC, the Property is within the Single-Unit Residential (R-1-6000) Zoning District where the standard front setback is 20 feet. The change in setback will still maintain the purpose and intent of setback standards and is consistent with the Zoning District.
3. The current front yard improvements, landscaping, driveway, and the slope of the lot creates an obstruction of visibility of oncoming traffic, pedestrians, and cyclists. The proposed setback reduction to 21 feet for the garage will allow vehicles to exit the property with more visibility because the garage will be able to be constructed closer to street level.
4. The Property is not located within a specific plan area of the Coastal Zone.
5. Facts 8 and 9 of Finding D are hereby incorporated by reference.

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

- PASSED, APPROVED, AND ADOPTED THIS 17<sup>TH</sup> DAY OF JULY, 2025.**

ABSENT:

BY: \_\_\_\_\_  
David Salene, Secretary

**EXHIBIT “A”****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

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 Variance.
4. *The Variance (PA2023-0200) 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.*
5. *This approval only applies to the Project proposed under PA2023-0200. If more than 50% of exterior walls of the structure are removed and replaced, or the Building Division deems the project new construction, then the variance is no longer effective, and the Project will need to be revised to comply with all current Title 20 (Planning and Zoning) regulations such as setbacks. If the existing single-family residence is demolished and new structure is built, that structure shall be subject to all Title 20 (Planning and Zoning) standards in place at the time of new construction.*
6. *Demolition beyond the approved scope of work requires Planning Division approval prior to commencement of work. Approval of revisions to project plans are not guaranteed. Any changes in the current scope of work may require a new variance.*
7. *All unpermitted improvements shall be removed, unless permits are obtained from the City demonstrating that the as-built improvement(s) comply with all requirements of the NBMC. All required building permits shall be obtained prior to the commencement of any construction, including removal of unpermitted improvements.*
8. *This approval does not authorize deviations to any standards of the NBMC for accessory structures such as fences, hedges, walls, and retaining walls. Therefore, all accessory structures shall comply with Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls) and Section 20.30.110 (Setback Regulations and Exceptions) of the NBMC.*
9. This Variance may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or

maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

10. Any expansion in area, or other modification to the approved plans, shall require subsequent review by the Planning Division and potential amendment to this approval or the processing of a new application.
11. 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.
12. *Prior to the issuance of building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.*
13. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
14. Prior to the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
15. 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.
16. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
17. Debris from construction shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
18. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.

19. 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 **Tracy Residence Variance including, but not limited to, a Variance (PA2023-0200)**. 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**

20. 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.
21. Prior to the issuance of a grading permit, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.

### **Public Works Department**

22. The Applicant shall remove all non-compliant encroachments along the White Sails Way frontage per City Council Policy L-6 including, but not limited to, loose rocks, walls, and paving. All remaining compliant encroachments will require an encroachment permit and encroachment agreement per City Council Policy L-6.
23. A new sewer clean out shall be installed on the existing sewer lateral per City Standard 406.
24. The driveway shall be constructed so that it is perpendicular to the curb face and aligns with the southern edge of the garage opening, and the driveway width shall comply with all City Standards.
25. The driveway slope shall comply with City Standard 167-A.