



## CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

November 9, 2023  
Agenda Item No. 2

**SUBJECT:** Dawson Residence (PA2022-0315)  
▪ Coastal Development Permit  
▪ Modification Permit  
▪ Staff Approval

**SITE LOCATION:** 2741 Ocean Boulevard

**APPLICANT:** Blues 1905 LLC, Raquel & Craig Dawson

**OWNER:** Blues 1905 LLC

**PLANNER:** David Lee, Senior Planner  
949-644-3225, dlee@newportbeachca.gov

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### **PROJECT SUMMARY**

An appeal of the Zoning Administrator's August 10, 2023, approval of a remodel of and addition to an existing, non-conforming single-unit residence. The following discretionary approvals are requested to implement the project:

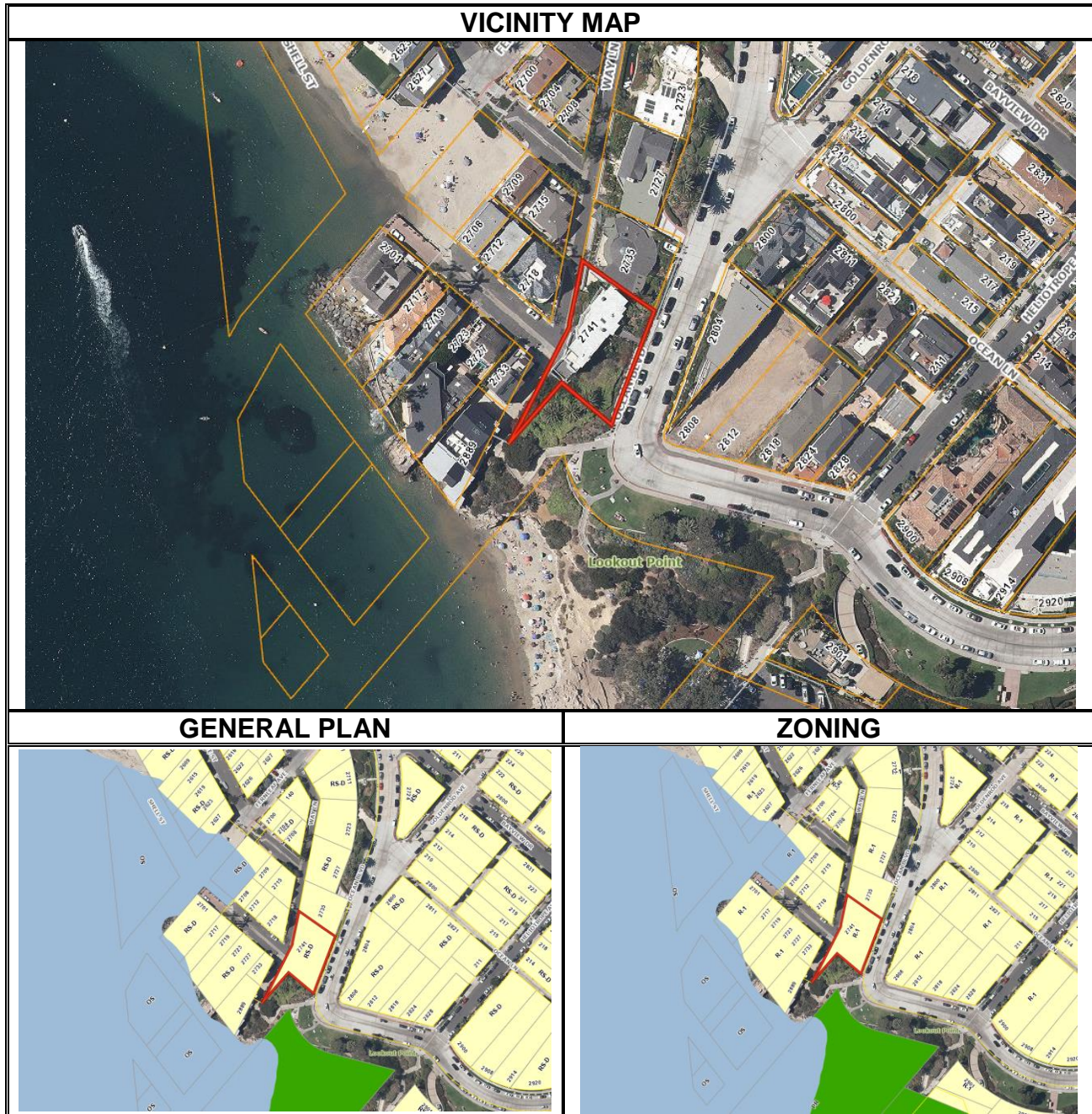
- **Coastal Development Permit:** Authorization of development in the Coastal Zone pursuant to the City's Local Coastal Program. The scope of work consists of all construction activities shown on the proposed plans including grading and excavation, foundation work, landscape and hardscape improvements, drainage devices, a swimming pool, and various accessory structures;
- **Modification Permit:** Required to authorize retaining walls and associate guardrails located within the front yard setback along Ocean Boulevard that exceeds the maximum 42-inch height limit and Ocean Boulevard curb height elevation; and
- **Staff Approval:** Required for determination of substantial conformance with a previously approved variance that authorized deviations to height, floor area, and setbacks for the existing building.

The appeal application is attached (Attachment No. PC 2), as well as staff's responses to the appeal (Attachment No. PC 3). Furthermore, additional background of the Zoning Administrator's staff report is provided in the August 10, 2023, Zoning Administrator Staff Report (Attachment No. PC 4) meeting minutes (Attachment No. PC 5), and public comments (Attachment No. PC 6).

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**RECOMMENDATION**

- 1) Conduct a public hearing;
- 2) Determine the project is consistent with the Mitigated Negative Declaration approved with VA1137 and is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures) because it has no potential to have a significant effect on the environment; and
- 3) Adopt Resolution No. PC2023-037 denying the appeal and upholding the action of the Zoning Administrator and approving an application (PA2022-0315) for a coastal development permit, modification permit, and staff approval (Attachment No. PC 1).



LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Single Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-unit residence
NORTH	RS-D	R-1	Single-unit residences
SOUTH	Parks and Recreation (PR)	Parks and Recreation (PR)	Lookout Point Park
EAST	RS-D	R-1	Single-unit residences

WEST	RS-D	R-1	Single-unit residences
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## **INTRODUCTION**

### **Project Setting and Background**

The subject property is located in Corona del Mar, within a row of uniquely oriented single-unit residences which are constructed between Ocean Boulevard and Way Lane. These lots have a steep slope that descends approximately 50 feet towards Way Lane. The project site is located adjacent to Lookout Point and significant public views are available from Ocean Boulevard and Lookout Point to the south, west and northwest. Views of Corona del Mar State Beach, the entrance to Newport Harbor, the eastern end of Balboa Peninsula, and Newport Harbor. Public views over the project site are more oriented toward the Harbor.

On June 1, 1961, Variance No. 653 was approved to allow a reduction of the front yard setback from 10 to 0 feet along Ocean Boulevard. During this time, the lot was 4,971 square feet in area, as a large portion of land between the residence and Ocean Boulevard was within the public right-of-way. The original residence and detached two-car garage were constructed in 1962.

On November 6, 1986, the Planning Commission approved Variance No. 1137 (Attachment No. PC 7), allowing an addition to encroach into the front setback along Ocean Boulevard, to exceed the allowable floor area limit, and to exceed the height limit.

Subsequently on December 8, 1988, the Planning Commission approved an amendment to VA1137 (Attachment No. PC 8), which permitted an as-built open exterior stairway that exceeds the height limit and allowed it to encroach nine feet six inches into the required 10-foot front setback along Ocean Boulevard. The approval also allowed an as-built mechanical storage room that further increased the gross floor area of the dwelling beyond the maximum floor area limits since these improvements were not included in the 1986 approval. Subsequent to this approval, the setback along Way Lane increased from 2.5 feet to 10 feet, making the existing garage and portions of the residence nonconforming due to its encroachment into the setback.

In 1989, the addition and a four-car garage on Way Lane authorized by VA1137 was completed, creating a 5,564-square-foot residence, which was 2.04 times the buildable area of the site at the time.

On October 12, 1998, Resolution No. 98-66 was adopted by City Council to abandon a portion of the previously mentioned Ocean Boulevard right-of-way adjacent to the subject property. The abandoned right-of-way comprising 5,556 square feet was added to the subject property (see Figure 1, below), which expanded the lot area to 10,360 square feet. Consequently, the buildable area increased to 6,692 square feet and maximum allowable floor area was expanded to 10,038 square feet.



On April 6, 2017, the Planning Commission approved Variance No. VA2015-005 for the demolition of the existing residence and the construction of a new single-unit residence that would have exceeded required height limits. The proposed structure would have also encroached into required setback on Way Lane. Since the project was not implemented within the time limits outlined in the Newport Beach Municipal Code (NBMC), the approval expired and was never constructed.

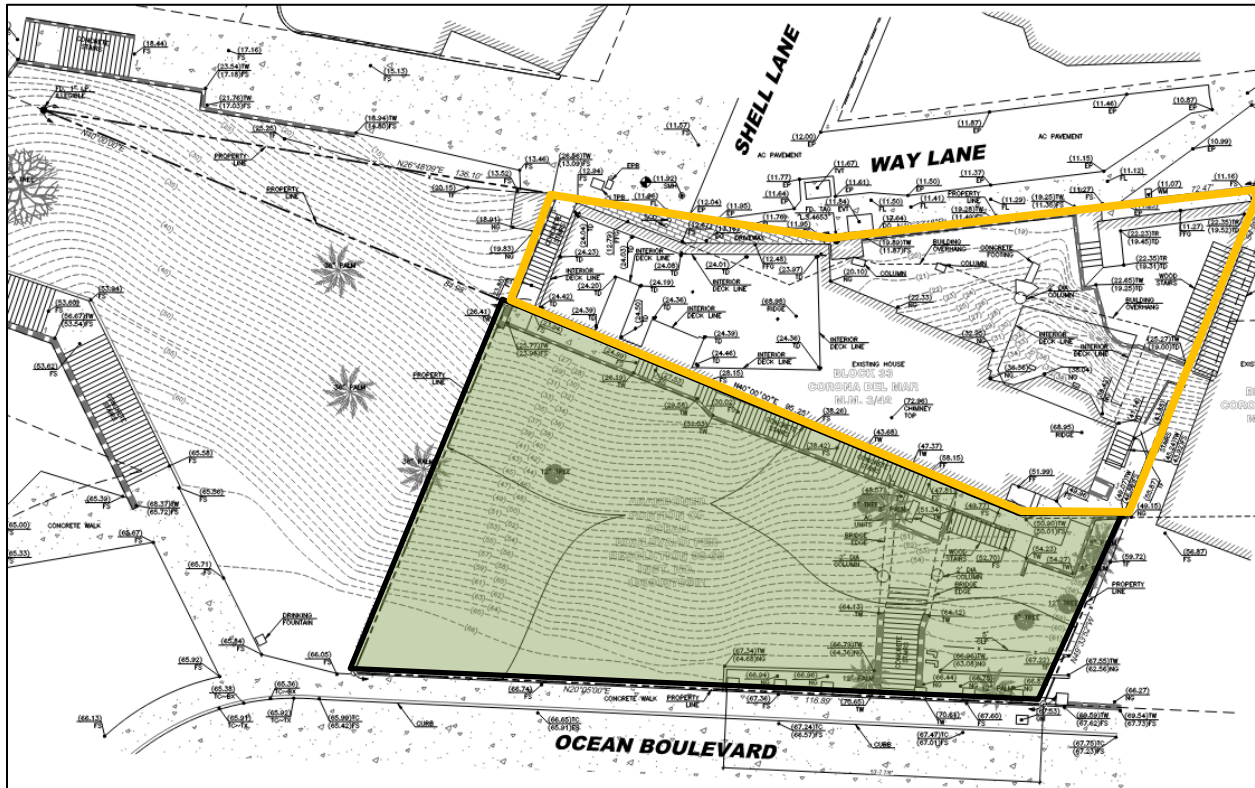


Figure 1: Abandoned Right-of-Way Added to Property (Highlighted in Green), the original parcel is outlined in Orange

### **Zoning Administrator Approval and Subsequent Appeal**

On August 10, 2023, the Zoning Administrator approved the application PA2022-0315 that is described in more detail below.

On August 24, 2023, an appeal of the application was filed by Jim Mosher, Ron Yeo, Daniel Herman, Walt Howald, and Bill and Jinx Hansen.

### **Conduct of Hearing**

Pursuant to Municipal Code Sections 20.64.030.C.3 and 21.64.030.C.3 (Filing and Processing of Appeals and Calls for Review - Conduct of Hearing), a public hearing on

an appeal is conducted “de novo,” meaning that it is a new hearing and the prior *action* of the *Zoning Administrator* has no force or effect. The Planning Commission is not bound by the *Zoning Administrator’s* prior decision or limited to the issues raised by the appeal.

## **PROJECT DESCRIPTION**

The applicant proposes to remodel and add to the existing residence that has five floors. The existing residence has been calculated to be 5,781 square feet<sup>1</sup>, which includes all livable area and garages. The proposed addition is 2,511 square feet that creates a total of 8,292 gross square feet, which is below the maximum square footage allowed on the site. The addition includes a new entryway, office bathroom, and pantry on the fifth floor, closets and a bathroom on the fourth floor, a gym, wine cabinet, bedroom, bathrooms, and laundry room on the third floor, and pool storage on the second floor. The addition is located between the existing building and Ocean Boulevard below applicable height limits.

Since the existing residence does not have interior access between all floors and requires the residents to use exterior stairs to access different floors, the applicant has included a new interior stair and elevator in the design to improve access. The elevator will access all floors and the stair will connect floors one through four<sup>2</sup>. An exterior stair will be provided between floors four and five. The elevator requires additional excavation and is recessed towards the interior of the lot under the existing building and it will not be visible. An outdoor swimming pool on the second floor above the garage level is also proposed. The areas of addition include a Spanish tile roof, where the roof of the existing building will be remodeled with a flat, grey-colored roof for architectural variety (see Figure 2, below). All additions are on the Ocean Boulevard side of the property, are not visible from Way Lane, and are oriented to preserve or enhance ocean views.

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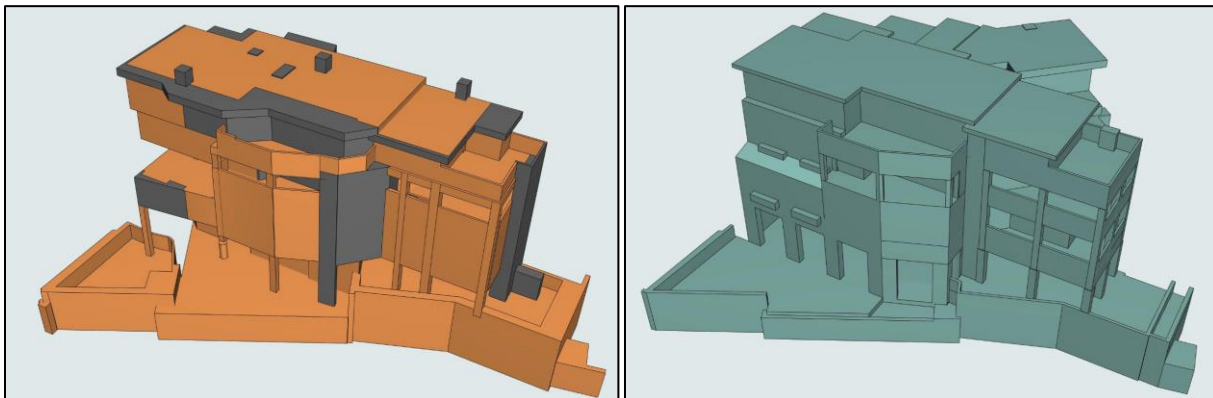
<sup>1</sup> Although Condition of Approval No. 2 of VA1137 (Amended) limited the maximum floor area to 5,564 square feet, a careful review of the construction plans confirms that the actual existing floor area that was constructed is 5,781 square feet.

<sup>2</sup> Floor one is uppermost level and level five is largely garage space abutting Way Lane.



*Figure 2: Rendering of Addition, as seen from Ocean Boulevard*

The proposed remodel of the existing building removes massing from the Way Lane side of the structure. The remodel and addition do not result in any additional massing or encroachment on the Way Lane side of the property (see Figure 3, below).



*Figure 3: Existing structure with massing removed (highlighted in grey) (left). Proposed massing after remodel and addition (right).*

As previously discussed, the existing residence was granted a variance to exceed the height limit. Other than the removal of the existing chimneys that enhances public views over the building from Ocean Boulevard and Lookout Point, the height of the existing roof is not proposed to change. The addition is approximately 20 feet high measured from the



existing slope in front of the existing building and it does not exceed the curb height of Ocean Boulevard. The addition complies with the current height standards of the Zoning Code and Local Coastal Program. All applicable development standards are addressed in Table 1 on Page 8.

Finally, the project includes a new modified exterior access stair from Ocean Boulevard. While the existing stair features a long runway to the existing entry, the proposed addition relocates the entry closer to Ocean Boulevard on the existing slope. As a result, the applicant has designed a new staircase in an L-shaped design, which requires new retaining walls and associated guardrails that exceed the height limit within the front yard setback. The proposed stairway and guardrail require a modification permit as a result.

## **DISCUSSION**

### *General Plan, Zoning Code, and Local Coastal Plan*

The property is categorized as Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and located in the Single-Unit Residential (R-1) Zoning District. Additionally, the property is located in the Single Unit Residential Detached (RSD-B) (60.9.9 DU/AC) and R-1 Coastal Land Use and Coastal Zoning District. These designations are intended to provide for areas appropriate for detached single-family residential dwelling units, each located on a single legal lot, and does not include condominiums or cooperative housing. Other than the existing nonconforming encroachment into the rear setback along Way Lane, the proposed project is consistent with the City's Coastal Land Use Plan, General Plan, and Zoning Code. A coastal development permit is required, and the property is not eligible for a waiver for de minimis development because the property is in the Coastal Commission Appeal Area.

### **Coastal Development Permit**

In accordance with NBMC Section 21.52.015 (Coastal Development Permits, Findings, and Decision), the following findings, and facts in support of such findings are set forth:

- a. *Conforms to all applicable sections of the certified Local Coastal Program; and*
- b. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

As previously discussed, the existing residence is nonconforming due to the encroachment into the rear setback along Way Lane. Apart from the requested modification permit for new front setback retaining walls and an associated guardrail that would exceed the maximum height in the front yard setback, the proposed remodel and addition to the existing residence conforms to all applicable development standards, including floor area limit, setbacks, height, and off-street parking as evidenced by the project plans and illustrated in Table 1 below.

Table 1 – Development Standards		
Development Standard	Standard	Proposed
<b>Setbacks (min.)</b>		
Front	10 feet	10 feet
Left Side	4 feet	4 feet
Right Side	4 feet	None (Existing condition)*
Rear	10 feet	None (Existing condition)*
<b>Allowable Floor Area (max.)</b>	10,219 square feet	8,292 square feet
<b>Open Space (min.)</b>	1,003 square feet	3,220 square feet
<b>Parking (min.)</b>	3-car garage	3-car garage
<b>Height (max.)</b>	24-foot flat roof	54 feet (existing flat roof)* 20 feet (new flat roof)

*\*The existing dwelling is nonconforming in that portions of the dwelling and garage encroach into the rear 10-foot setback adjacent to Way Lane and portions of the garage also encroach into the 4-foot right-side setback. There is no new addition in the rear of the property abutting Way Lane.*

### *Bluff Alteration*

The project is consistent with Coastal Land Use Plan (CLUP) Policy 4.4.1-3 and NBMC Section 21.30.030 (Natural Landform and Shoreline Protection), as the project has been sited to minimize adverse impacts on bluffs to the maximum feasible extent. The areas which contain buildable area on the property are all similarly sloped so that there are no flat areas for development.

City staff has worked with the applicant to minimize bluff alteration. The project includes an excavation of approximately 1,400 cubic yards from below the building to provide elevator and interior access improvements to all building levels. The proposed excavation is not visible from the Way Lane side of the property, which is where the views of the bluff are most prominent. The excavation will also not be noticeable from the Ocean Boulevard side of the property, as the residence is located below the curb height and the bluff is below the view plane of visitors on Ocean Boulevard.

Overall, the project minimizes the alteration of the site's natural topography where possible, including sections of bluff on the southwestern part of the lot directly below a public bluff part of Lookout Point park. This area is proposed to remain and appear as an extension of the public bluff area to the south, close to Lookout Point. Furthermore, the expansion of the building footprint is concentrated between the existing dwelling and Ocean Boulevard, thereby preserving significant portions of southeastern bluff area adjacent to the public bluff area between the subject property and the public walkway adjacent to Lookout Point (see Figure 4, below). The altered portion of the bluff is below the sidewalk and is generally not visible from Ocean Boulevard and Lookout Point due to the slope and the existing vegetation. It is also not visible from the harbor and other public vantage points due to the location of the existing structure. The slope does not contain unique or visible rock outcroppings.

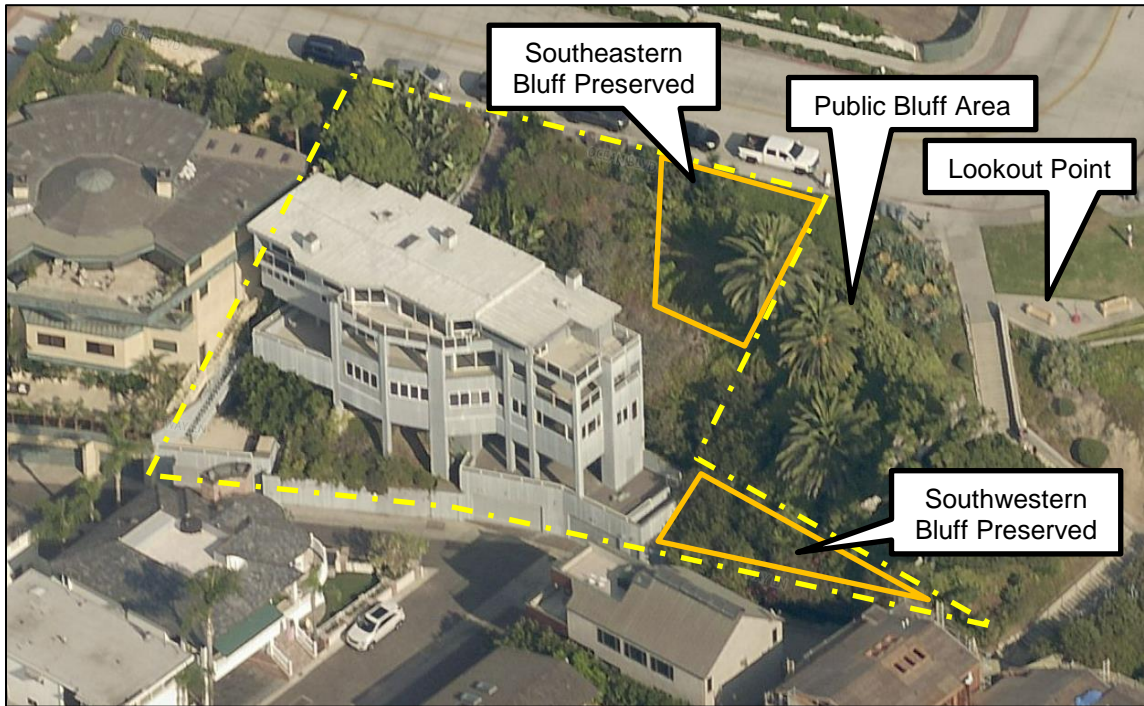


Figure 4: Existing Bluff Areas (Approximate property lines in yellow)

#### *Nonconforming Allowances*

Pursuant to CLUP Policy 2.2.5-1 (Nonconforming Structures and Uses) and NBMC Section 21.38.040(G), (Nonconforming Structures), a nonconforming structure can be expanded up to fifty (50) percent of the gross floor area of the existing structure, if the nonconforming structure is consistent with the following: 1) does not impede public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs; 2) does not block or impair public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas; 3) conforms to coastal resource protection development regulations of NBMC Sections 21.28.040 (Bluff Overlay District), 21.28.050 (Canyon Overlay District), 21.30.030 (Natural Landform and Shoreline Protection), 21.30A (Public Access and Recreation), or Chapter 21.30B (Habitat Protection).

In this case, the project does not impede public access or views to the sea (in fact, the project improves views), and the property is not located in the designated Bluff or Canyon Overlay Districts or in an environmentally sensitive habitat area (ESHA). Although the project includes grading of the property including approximately 1,400 cubic yards of cut and exporting to accommodate the addition and remodel, the project overall minimizes the alteration of the site's natural topography as discussed in the *Bluff Alteration* section above.

The Project expands the residence to 8,292 square feet, which is a 2,511-square-foot addition and less than the 2,891 square feet (50 percent) allowed for expansion of a

nonconforming structure. Therefore, the proposed addition to the existing home complies with the 50 percent addition limit in Section 21.38.040(G) of the Implementation Plan.

### *Coastal Hazards and Water Quality*

The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. A Preliminary Geotechnical Study has been prepared by Stoney Millar Consultants, Inc., dated December 6, 2022. The project has been designed to be consistent with the recommendations in the studies. Additionally, the structural engineers and contractors have developed a constructability plan that details the approach to demolition, excavation, and monitoring to minimize and eliminate potential impacts. Construction plans are reviewed for compliance with approved investigations and CBC before building permit issuance.

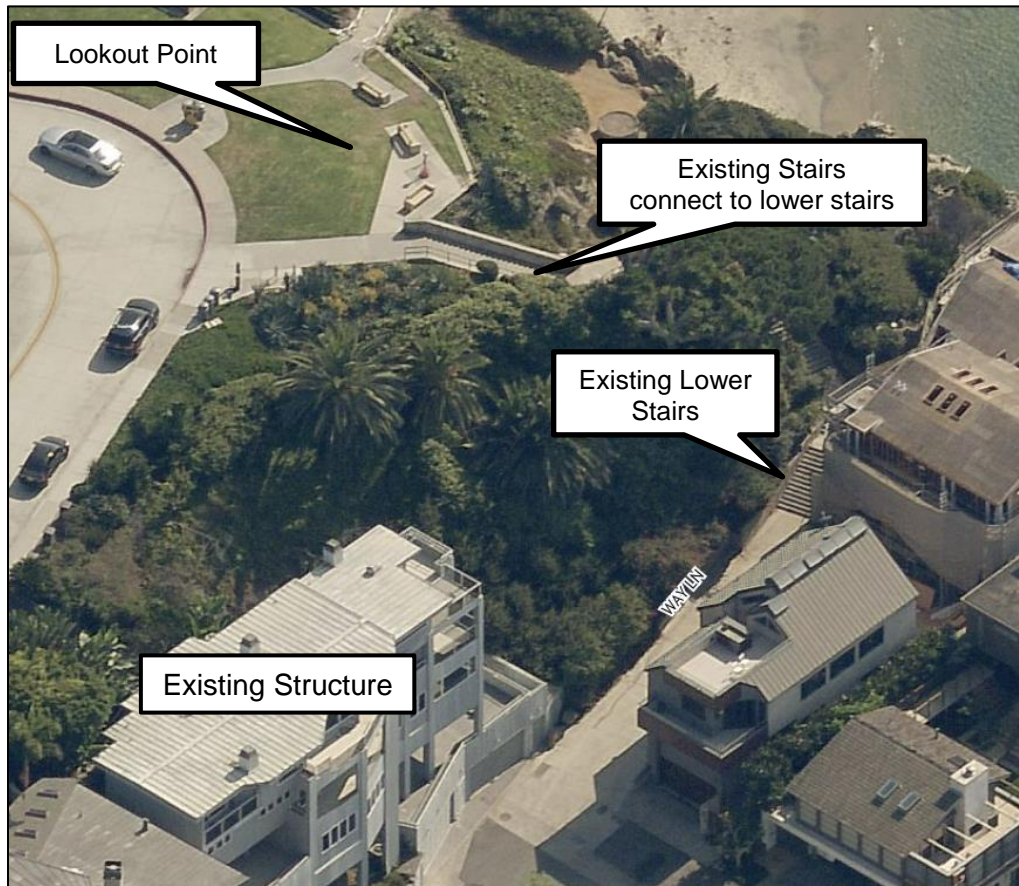
The property is located approximately 150 feet from coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived from construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.

Pursuant to NBMC Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality Management Plan (WQMP) is required. A preliminary WQMP has been prepared for the project by Toal Engineering dated, December 15, 2022. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, the use of a LID approach to retain the design storm runoff volume on-site, and documentation of the expected effectiveness of the proposed BMPs. The proposed modeling project includes a vastly upgraded drainage system and is particularly important given the proximity to China Cove, and improves the existing drainage system.

### *Public Access and Views*

The property is located between the first public road and the sea and does not currently provide nor inhibit public coastal access. Public access to Lookout Point is adjacent to the property. Additionally, pedestrian public access is provided by stairs adjacent to the Property from Lookout Point to Way Lane and China Cove beyond. Ocean Boulevard includes multiple access points to the public beach, including the Corona del Mar Main Beach Ramp and a walkway located at the eastern end of Lookout Point. The project does not include any features that would obstruct access along these existing routes during or after construction.





*Figure 5: Pedestrian Access to Lookout Point*

The project is consistent with CLUP Policy 4.4.1-1 and NBMC Section 21.30.100 (Scenic and Visual Quality Protection), as it has been sited and designed to protect and enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean and coastal bluffs. Ocean Boulevard is designated as a coastal view road by the CLUP. The existing three chimneys which exceed the height limit and partially impede public views of the ocean, are proposed to be removed from the Project. There are existing guardrails located on the property line along Ocean Boulevard that are approximately 55 feet wide, which are proposed to be replaced by new guardrails that are approximately 33 feet wide. The removal of the three chimneys and the shorter segment of railings will enhance the existing public view of the ocean. The proposed railings will provide the necessary fall protection for pedestrians traveling Ocean Boulevard. Additionally, since some existing vegetation impedes views, staff has included Condition of Approval No. 16, to require all landscaping located on private property, including trees, are to be maintained to be below the highest point of the residence, which will further improve public views of the ocean as seen from Ocean Boulevard. The proposed addition to the residence at the front of the building does not exceed maximum heights or the Ocean Boulevard curb height, protecting and enhancing existing views to the ocean.

The subject property is located adjacent to and immediately north of Lookout Point, which is a designated public viewpoint in the CLUP and offers public views of the Pacific Ocean. The project is an addition to an existing residence which will maintain a design consistent with the existing neighborhood pattern of development for the row of residences between Ocean Boulevard and Way Lane and will enhance the existing views afforded from Lookout Point, as it is not between the viewpoint and the ocean. An additional designated public viewpoint, West Jetty View Park, is located approximately 1,700 feet west of the site across the Harbor entrance. The existing building appears to occupy the entire site and there is no visible portion of the bluff and no scenic rock outcroppings. The height and footprint of the existing residence will not change, and staff concludes the public view from West Jetty Park or other vantage points on the harbor or Balboa Peninsula does not change in any remarkable way based on the photo simulation of the proposed project provided in Figure 6, below.



Figure 6: Existing view (top) and proposed view (bottom) from West Jetty View Park



Ocean Boulevard is designated as a coastal view road by the CLUP. The existing three chimneys which exceed the height limit and partially impede public views of the ocean, are proposed to be removed from the Project. A portion of the existing wrought-iron guardrails located on the property line along Ocean Boulevard are also proposed to be removed, which will enhance the public views from Ocean Boulevard (see Figure 7, below). As a part of the Project Plans (Attachment No. PC 10), the applicant has provided view simulations from Ocean Boulevard and West Jetty View Park (Sheets A024 and A025) illustrating the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts on public views. Additionally, an updated view simulation of the harbor and beach from Ocean Boulevard has been provided by the applicant (Attachment No. PC 9).



*Figure 7: Existing view (top) and proposed view (bottom) from Ocean Boulevard*

## Modification Permit

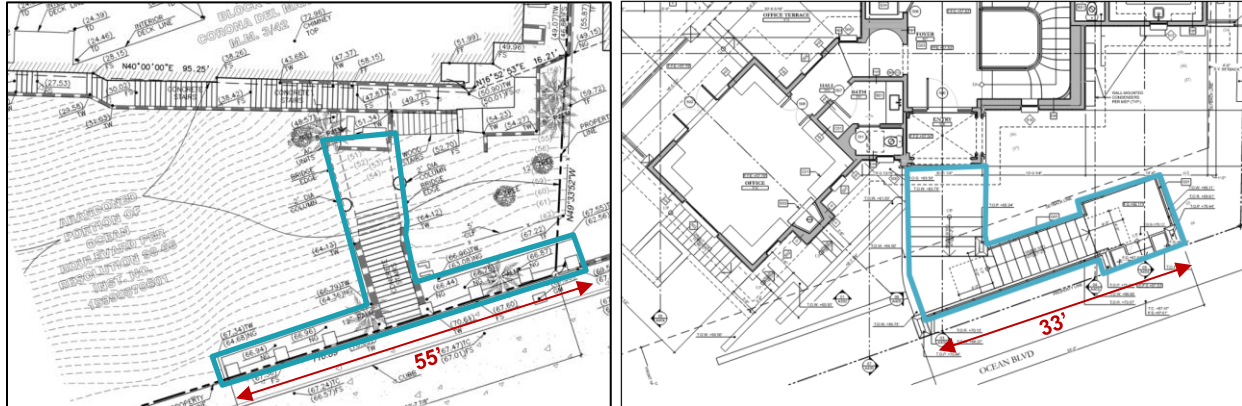
Pursuant to Newport Beach Municipal Code (NBMC) Subsection 20.52.050(B)(3)(g), the Applicant requests a modification permit to allow for retaining walls and associated guardrails to exceed the maximum height of 42 inches within the front yard setback and exceed the Ocean Boulevard curb elevation. In accordance with NBMC Subsection 20.52.050(E) (Modification Permits – Required Findings), the following findings and facts in support of such findings are set forth:

- a. The requested modification will be compatible with existing development in the neighborhood;*
- b. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use;*
- c. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code;*
- d. There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public; and*
- e. The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

As previously discussed, the subject property has a sloping topography that slopes from Ocean Boulevard down towards Way Lane. Within the 10-foot front yard setback, there is an approximate eight-foot drop in elevation from the sidewalk down toward the existing building. The steep decline creates a difficulty in constructing an entry staircase without higher retaining walls to support the path of travel from Ocean Boulevard to the front entry of the Project. Due to the steep slope, retaining walls with required protective guard rails are needed and proposed to exceed the 42-inch height limit (approximately eight feet above existing grade at worst case). Staff has worked with the applicant's design team and building engineers to minimize the length of the walls and required guardrails while providing a set of stairs that meet applicable building code standards.

Since the addition reduces the amount of space for a straight staircase similar to the existing condition, the proposed staircase features an L-shape design with two portions of steps and two landings, which is supported by higher retaining walls and protective guard rails above (see Figure 8, below).





*Figure 8: Existing Stairs (top) and Proposed Stairs (bottom) highlighted in blue*

The requested retaining wall system, which supports the entry stairway, spans an approximate 33 feet in width, which is relatively small compared to the approximately 120-foot wide lot. The staircase occupies approximately 250 square feet, which is approximately 20% of the entire 10-foot front yard setback area. The retaining walls, stairs and protective guardrails are relatively small in scale and will not be detrimental to the neighborhood or general public.

Currently, the existing entry system includes guardrails approximately 55 feet in width and include eight pilasters that all exceed the Ocean Boulevard curb height by approximately three feet. The proposed entry system, which replaces the existing, is smaller measuring approximately 33 lineal feet in width and includes only three pilasters ranging in height from three to 3.5 feet in height above the curb height. At the worst-case area, the top of railing is only three feet above the curb elevation.

The proposed retaining walls and associated guardrails range from approximately seven to eight feet tall from existing grades below that are all below the adjacent public sidewalk. The required guardrails for the stairs atop these walls are no more than 42 inches above the sidewalk. At the worst-case slope area, the highest part of the retaining wall and associated guardrail is 8.13 feet above existing grade where the maximum retaining wall height is 8 feet, pursuant to Sections 20.30.040 and 21.30.040 of the NBMC. Detailed plans outlining the heights of all accessory structures are included on Sheet A021 on the Project Plans (Attachment No. PC 10).

Overall, the reduced width of the proposed wall and railing system is an improvement compared to the existing conditions. Additionally, the proposed railings are an open, wrought-iron design, which maintains view opportunities to the ocean. Although the railings exceed the curb height, they are not comprised of a solid material and are not tall enough to obstruct any public view of the ocean or harbor due to their location and intervening development (i.e., the existing building).

### **Staff Approval**

In accordance with NBMC Section 20.54.070 (Changes to an Approved Project), the Planning Commission may authorize minor changes to an approved site plan, architecture, or the nature of the approved use, where the Planning Commission finds that the changes are consistent with the following findings:

- a. Are consistent with all applicable provisions of this Zoning Code;*
- b. Do not involve a feature of the project that was a basis for or subject of findings or exemptions in a negative declaration or Environmental Impact Report for the project;*
- c. Do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval; and*
- d. Do not result in an expansion or change in operational characteristics of the use.*

The existing height of the residence, which was constructed to be approximately 54 feet high from existing grade at the southwest and northwest property corners, was authorized by the Planning Commission on November 6, 1986 to exceed the height limit through Variance No. VA1137. Although the project does not propose to modify the existing approved roof height, it includes an addition towards the Ocean Boulevard bluff side which is approximately 20 feet high from existing grade where there is a more severe slope. The areas of addition do not exceed the Ocean Boulevard curb height and comply with the current height standards of the Zoning Code.

VA1137 also authorized the dwelling to exceed the maximum allowable floor area and included Condition of Approval No. 3, which states that the gross floor area of the structure shall not exceed 5,264 square feet (1.93 times the buildable area). The subsequent amendment approved for VA1137 allowed an additional 300 square feet of as-built structures, totaling a maximum allowed floor area of 5,564 square feet (2.04 times the buildable area). However, as discussed in the Background section on Page 4, the public right-of-way was abandoned by the City and dedicated to the subject property, which resulted in an increased lot area of 10,360 square feet and increased buildable area to 6,692 square feet. Condition of Approval No. 3, which intended to minimize the size of the residence in relation to the lot area at the time, is no longer applicable since the buildable area is now larger. The applicant is proposing to add to the existing residence, resulting in an 8,292-square-foot residence, where the maximum floor area is now 10,038 square feet ( $6,692 \times 1.5 = 10,038$ ).

As a part of the approval for VA1137, the City prepared a Mitigated Negative Declaration (included in Attachment No. PC 7) under the provisions of the California Environmental Quality Act (CEQA) which stated that the residence would not have a significant effect on the environment, and incorporated six mitigation measures as Conditions of Approval Nos. 9 through 14 in VA1137 for the project. Preliminary grading plans, erosion control plans, and Water Quality Management Plan (WQMP) have been conceptually reviewed by applicable City departments, including Planning, Building, Geotechnical, and Public Works.

If approved by the Planning Commission, the Project will be required to obtain building permits through plan check review, where additional review and approval of these plans are required. The required plans and process satisfy the mitigation measures and conditions of the original Negative Declaration as part of VA1137.

At the time of the approval of VA1137, the existing railings, which are approximately 55 feet wide along the Ocean Boulevard property line, were located within the public right-of-way and it was recognized that the railings would remain in place. This was prior to the City's abandonment of the right-of-way and dedication of the land to the subject property. The project includes the replacement of the existing railings with a shorter, 33-foot wide segment of railings which are proposed to be open wrought-iron to improve the public views.

The project includes rehabilitated landscaping areas. Condition of Approval No. 5 of VA1137 allowed for trees and shrubs located on the Ocean Boulevard slope to be maintained above the top of curb, up to the height of the existing railings. For the project, the species of trees have been reviewed and Condition of Approval No. 16 specifies that all landscaping located on private property, including trees, shall be maintained to be below the highest point of the residence, which is an additional improvement for public views compared to the existing requirement.

### **The Appeal**

On August 24, 2023, an appeal of PA2022-0315 was filed by Jim Mosher and additional co-appellants. The issues raised by the appellants include potential inconsistencies with CLUP policies which relate to non-conforming structures, protection of public views, alterations to an existing bluff, and siting development with the predominant line of existing development. Additionally, an included basis for the appeal is the perceived conflict with the future long-range Ocean Boulevard Vision Plan, which was endorsed by the City Council in February of 2023. This plan is still in the early stages and has not been adopted by the City. The appeal application, which includes the entire grounds for appeal prepared by the appellants, is included in Attachment No. PC 2.

Staff has reviewed the appeal and has provided a detailed response (Attachment No. PC 3). Additionally, the draft resolution approved by the Zoning Administrator has been updated to analyze consistency with all identified policies by the appellants.

### **Summary**

Although the proposed project includes an addition, it is within the parameters of the NBMC and smaller than the allowable addition on the site. The areas of addition are below the Ocean Boulevard curb height and include the removal of three existing chimneys which will improve public views. The project also removes a segment of guardrails along Ocean Boulevard and is conditioned to limit landscape height to the highest point of the residence. The addition and remodel comply with development standards such as height, setback, floor area, and parking. The applicant has intentionally preserved significant

portions of the bluff as a part of the project to protect the existing landform and provide a transition from the residential neighborhood to the public park and beach. Staff believes that the additions to the residence do not affect the existing public views, but instead enhances them. The project is consistent with all policies which are cited by the appellant, and they have been addressed in this staff report, the attached responses to the appeal, and the attached draft resolution.

## **ENVIRONMENTAL REVIEW**

As a part of the 1986 approval of VA1137, the City prepared a Mitigated Negative Declaration (MND) for the existing residence under the provisions of the California Environmental Quality Act (CEQA). The Project does not create additional impacts to what was originally analyzed in the MND. Additionally, the Project is consistent with the required mitigation measures of the MND, which require grading plans to ensure proper drainage, erosion control, and concentrated run-off, as well as a geologic investigation which analyze slope stability. The Project includes grading plans, erosion control plans, and a geotechnical report which have been reviewed by City staff.

Additionally, this project is exempt from the California Environmental Quality Act (CEQA) under Section 15303 under Class 3 (New Construction or Conversion of Small Structures) 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.

Class 3 exempts the demolition of up to three (3) single-unit residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the remodel and 2,511-square-foot addition to an existing single-unit residence.

The exceptions to this categorical exemption under Section 15300.2 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.

## **PUBLIC NOTICE**

Notice of this public hearing was published in the Daily Pilot, mailed to all owners and residential occupants of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways), including the applicant, and posted on the subject property at least 10 days before the scheduled hearing, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the city website.



**APPEAL PERIOD:**

This action shall become final and effective 14 days following the date the Resolution is adopted unless within such time an appeal or call for review is filed with the Community Development Director by the provisions of Title 20 Planning and Zoning and Title 21 (Local Coastal Program [LCP] Implementation Plan) of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:

  
David Lee, Senior Planner

JM/dl

Attachments:	PC 1	Draft Resolution
	PC 2	Application of Appeal
	PC 3	Staff Responses to Appeal
	PC 4	August 10, 2023 Zoning Administrator Staff Report (No Attachments)
	PC 5	Minutes of the August 10, 2023 Zoning Administrator Meeting
	PC 6	Public Comments from Zoning Administrator Meeting
	PC 7	Variance No. VA1137
	PC 8	Variance No. VA1137 (Amended)
	PC 9	Updated View Renderings
	PC 10	Project Plans

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