

Attachment No. PC 2

November 21, 2024, Planning Commission Minutes

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**NEWPORT BEACH PLANNING COMMISSION MINUTES
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, NOVEMBER 21, 2024
REGULAR MEETING – 6:00 P.M.**

I. **CALL TO ORDER**– 6:00 p.m.

II. **PLEDGE OF ALLEGIANCE** - Secretary Salene

III. **ROLL CALL**

PRESENT: Chair Mark Rosene, Vice Chair Tristan Harris, Secretary David Salene, Commissioner Brady Barto, Commissioner Curtis Ellmore, Commissioner Jonathan Langford, and Commissioner Lee Lowrey (arrived at 6:08 p.m.)

ABSENT: None

Staff Present: Assistant City Manager/Community Development Department Director, Deputy Community Development Director Jaime Murillo, Assistant City Attorney Yolanda Summerhill, Police Investigator Wendy Joe, Assistant Planner Daniel Kopshever, Assistant Planner Jerry Arregui, Administrative Assistant Clarivel Rodriguez, and Department Assistant Savannah Martinez

IV. **PUBLIC COMMENTS** - None

V. **REQUEST FOR CONTINUANCES** - None

VI. **CONSENT ITEMS**

ITEM NO. 1 MINUTES OF OCTOBER 3, 2024

Recommended Action: Approve and file

Motion made by Commissioner Ellmore and seconded by Vice Chair Harris to approve the meeting minutes of October 3, 2024, as amended by Mr. Mosher.

AYES: Barto, Ellmore, Harris, Langford, Rosene, and Salene

NOES: None

ABSTAIN: None

ABSENT: Lowrey

VII. **PUBLIC HEARING ITEMS**

ITEM NO. 2 OLEA RESTAURANT EXPANSION (PA2024-0064)

Site Location: 2001 Westcliff Drive, Suite 100-101

Summary:

A conditional use permit (CUP) to expand an existing restaurant into an adjacent commercial suite. The expansion will add 750 square feet of area to provide additional seating, an additional restroom, a private dining room, and space for an unamplified player piano. The player piano does not meet the definition of live entertainment pursuant to Section 20.70 of Newport Beach Municipal Code (NBMC) and no dancing is proposed. The restaurant currently operates with late hours and a Type 47 (On Sale General – Eating Place) Alcoholic Beverage Control (ABC)

license. No change is proposed to the ABC License or to the hours of operation, which are from 10:00 a.m. to 12:00 a.m., daily. If approved, Use Permit No. UP2016-03 would be superseded, and the Applicant would be required to obtain an updated Operator's License pursuant to NBMC Section 5.25.020.

Recommended Actions:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has not potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2024-024, approving the Conditional Use Permit filed as PA2024-0064.

Assistant Planner Kopshever used a presentation to review the vicinity map, project location and description, floor plan, parking, findings, notable conditions, and recommended action.

No ex parte communications were disclosed by the Commissioners.

In reply to Chair Rosene's question, Sten Green, the applicant, indicated that 49 people can be accommodated in the side area and approximately 12 people in the private dining room as per Condition of Approval 42. Furthermore, he agreed to the conditions of approval. In response, Assistant City Manager Jurjis suggested amending Condition of Approval 42 to limit the occupancy load in compliance with the building code.

Chair Rosene opened the public hearing.

There were no public comments received.

Chair Rosene closed the public hearing.

Motion made by Vice Chair Harris and seconded by Secretary Salene to approve the item with the amendment to Condition of Approval 42.

AYES: Barto, Ellmore, Harris, Langford, Lowrey, Rosene, and Salene
NOES: None
ABSTAIN: None
ABSENT: None

ITEM NO. 3 ZENK RESIDENCE (PA2024-0057)
Site Location: 2830 Bayview Drive

Summary:

A request for a coastal development permit (CDP) to allow the demolition of an existing single-unit dwelling and construction of a new three-story, 5,275-square-foot, single-unit dwelling with a 682-square-foot, attached three-car garage and a 2,340-square-foot subterranean basement. The project also includes landscape, hardscape, drainage improvements, and site walls.

Due to the nonstandard lot configuration, the request also includes a variance from development standards of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) to allow the following deviations:

- a) Exceed the gross floor area limit by approximately 1,513 square feet;
- b) Encroach 10 feet into the 20-foot front setback along Heliotrope Avenue;
- c) Encroach 6 feet into the 10-foot rear setback; and
- d) Encroach into the 15-foot front and rear third floor setbacks.

Recommended Actions:

- 1. Conduct a public hearing;
- 2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to 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; and
- 3. Adopt Resolution No. PC2024-025, approving the Coastal Development Permit and Variance filed as PA2024-0057.

Commissioner Ellmore recused himself due to real property interests within 1,000 feet of the subject property.

Assistant Planner Arregui used a presentation to review the project location and lot orientation, required setbacks, proposed project, required findings, variance request, zoning compliance, buildable area, setback variance continued, Bayview frontage alternative, required setbacks, façade modulation, floor area limit variance, third floor setback variance, coastal views and access, public comments, and recommended action.

In reply to Secretary Salene's question, Assistant Planner Arregui relayed that the lot at 2820 was constructed in 1937 and the subject property in 1947, based on county records, and reviewed the current setback conditions for the subject property.

In reply to Vice Chair Harris' inquiry, Assistant Planner Arregui relayed that the parcels are recognized as legal because the construction and reconfiguration occurred before the enactment of the Subdivision Map Act when properties were allowed to cross property lines. Deputy Community Development Director Murillo stated that the City records a Certificate of Compliance to recognize parcels as legal lots that were configured before the Subdivision Map Act.

In reply to Commissioner Barto's inquiry, Deputy Community Development Director Murillo reviewed the history of the setback maps including the original name, introduction in the early 1940s, inclusions, and the conversion of Districting Maps to Setback Maps in 2010. Furthermore, to provide clarity of how the configurations were allowed, he utilized the presentation to review the required setback map, stated that Bayview Drive was treated as the front and possibly didn't apply Heliotrope Avenue as the side, the house was recognized as legal nonconforming for prior issued permits, and the front setback encroachment was addressed in prior issued permits and an over height deck exists within the front setback.

There were no exparte communications disclosed by the Commissioners.

Chair Rosene opened the public hearing.

Brandon Lindsay represented the applicant who noted that the subject property is a nonstandard lot, compared nearby properties, the FAR study, less buildable area, the consequences of keeping Heliotrope Avenue as the front yard orientation, front setbacks, and an intent to enrich the neighborhood. Furthermore, the applicant accepted the conditions of approval.

Cheryl Fischer recommended the Commission uphold the existing building codes and deny the request to exceed the gross floor area limits. She clarified an error in the packet that 2820 Bayview Drive is facing Heliotrope Avenue and observes the setback.

Chair Rosene stated for the record that the Planning Commission has reviewed all the letters received.

Pam Smith, 245 Heliotrope Avenue, opposed the variance and recommended a compromise.

Becky Bethel opposed the variance and shared the impact to residents who live on the flower streets.

Shala Nowroozi, 2828 Ocean Boulevard, requested the Commission honor what the people want.

Jim Mosher questioned using floor area ratios when the zoning code uses a floor area limit that considers setbacks for residential properties and suggested asking the City Council to change the setback map to reflect the correct setbacks.

Scott Christie opposed the variance.

Robert Stayner opposed the variance.

Frank Turney, 302 Heliotrope Avenue, supported the Commission upholding the ordinance.

Charlie Mogner opposed the variance and provided a handout.

Mr. Lindsay relayed that the views and angles were studied and submitted to the City for its record, and the property is not a standard lot and the reason for the variance is to identify the best configuration, and the applicant wants harmony and what is deemed fair.

Assistant Planner Arregui clarified that the note in the staff report that stated the property faces Bayview Drive was meant to refer to the orientation of the lot and not the home and provided the definition of a front lot line. Furthermore, he stated that the basement is exempt from the floor area since it is a fully subterranean basement and 2960 Bayview Drive is a traditional double lot with the narrower side facing the street that it is on, resulting in the allowance for a larger home than the subject property.

Chair Rosene closed the public hearing.

Commissioner Langford thought the project is beautiful, a unique situation, and allowed to ask for variances. He noted that the City decided on this matter and the calculated risk the previous property owner took is not the Commission's responsibility to fix. He supported protecting setbacks in Corona del Mar.

Commissioner Barto concurred with Commissioner Langford. He expressed confusion about how this existing setback is a surprise and how the property owner can get rid of it without a compelling understanding of why.

Chair Rosene appreciated the FAR information, struggled making the necessary findings for a variance, thought the home would dominate the street scene on Heliotrope Avenue, disagreed with a 10-foot setback, noted the home exceeds the buildable square footage by 200 square feet utilizing the proposed setbacks, and thought the project would be an overbuild, not harmonious with the neighborhood, and implied special privilege.

Secretary Salene was conflicted by the matter, stated that the property owner bought the property knowing the setbacks, and thought the building would impact on the character of the community and overtake the street.

Vice Chair Harris shared the sentiments of the other Commissioners, thought the City made the decision on this matter in 2008 when they accepted the parcel lines, noted the unique property, and stated that he is likely to support a variance, and the accommodations are reasonable.

Commissioner Langford thought the 10-foot rear setback does not need to be that deep, so a variance into that setback could be supported.

Commissioner Barto thought there were arguments for some variances on this lot, the 10-foot rear setback does not seem necessary, and some of the setbacks on the front and rear on the third floor are also probably right for variances.

Chair Rosene reviewed the proposed variances along the property lines, struggled with the 10-foot setback on Heliotrope Avenue, thought the architect should return with alternatives, and did not support the variance.

Chair Rosene stated and Assistant City Attorney Summerhill concurred with two options for action: the applicant can request a continuance, or the Commission can approve or deny the application and variance.

Motion made by Chair Rosene to deny the application and variance. He then removed the motion, opened the public hearing, and asked the applicant if they would like to request a continuance to work with staff and the neighbors. The applicant requested a continuance and asked for direction from the Commission. As per Assistant City Attorney Summerhill, the public hearing remained open until a future time.

Assistant City Manager Jurjis suggested the Commission provide guidance for the architect and would re-notice the item to come back in January 2025.

Guidance from the following Commissioners was provided:

Commissioner Barto expressed concern for the setbacks from Heliotrope Avenue and noted other variance components were reasonable beyond that.

Chair Rosene suggested the setback on Heliotrope Avenue be at least on the first floor, noted opportunities for a variance in the garage subterranean space, and proposed a livable space setback in a wedding cake fashion to give a feeling for a larger setback on Heliotrope Avenue.

Secretary Salene thought Heliotrope Avenue is the main issue and a full 20-foot setback is not necessary, but a 10-foot setback may not be enough.

Commissioner Lowrey expressed concern about the setback on Heliotrope Avenue and asked for a modification.

Commissioner Langford thought the rear setback is not as important as protecting Heliotrope Avenue and proposed a modification to the third level.

Assistant City Attorney Summerhill stated that the Assistant City Manager will re-notice the item and no further action is required by the Planning Commission.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 MOTION FOR RECONSIDERATION - None

ITEM NO. 5 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA

Deputy Community Development Director Murillo announced that the City is underway with the General Plan Update efforts and community meetings, online and interactive participation is included, and public comment is desired. He noted the next Planning Commission meeting on December 5.

ITEM NO. 6 REQUESTS FOR EXCUSED ABSENCES - None

IX. ADJOURNMENT – With no further discussion, Chair Rosene adjourned the meeting at 7:22 p.m.

The agenda for the November 21, 2024, Planning Commission meeting was posted on Thursday, November 14, 2024, at 3:45 p.m. in the Chambers binder, on the digital display board located inside the vestibule of the Council Chambers at 100 Civic Center Drive, and on the City's website on Thursday, November 14, 2024, at 3:16 p.m.



Mark Rosene, Chair



David Salene, Secretary