

# **Attachment CC3 Appeal**



# Appeal Application

City Clerk's Office  
100 Civic Center Drive / P.O. Box 1768  
Newport Beach, CA 92658-8915  
949-644-3005

Clerk's Date & Time Stamp

RECEIVED  
2016 JUL -7 PM 4:16  
OFFICE OF  
THE CITY CLERK  
CITY OF NEWPORT BEACH

## Appeal the Decision of:

<input type="checkbox"/> Hearing Officer - NBMC §20.64
<input type="checkbox"/> Operator License - NBMC §5.25.060 (Attention: City Manager)
<input checked="" type="checkbox"/> Planning Commission - NBMC §20.64
<input type="checkbox"/> Zoning Administrator - NBMC §20.64 and §15.45.080 (F)
<input type="checkbox"/> Other

## Applicable Appeal Fees Pursuant to Master Fee Schedule adopted 9-22-15:

Hearing Officer - \$1,506.00
Operator License - \$692.00
Planning Commission - \$1,506.00
Zoning Administrator - \$1,506.00
Other - \$

## Appellant Information:

Name(s): Newport Place Residential, LLC  
Address: 20411 SW Birch, Suite 310  
City/State/Zip: Newport Beach, California 92660  
Phone: (949) 672-8068 Fax: \_\_\_\_\_ Email: bjensen@np-residential.com

## Appealing Application Regarding:

Name of Applicant(s): Newport Place Residential, LLC Date of Decision: June 23, 2016  
Project No.: PA2014-150 Activity No.: PA2014-150  
Site Address: 1701 Corinthian Way, 1660 Dove Street, 4251, 4253, 4255 Martingale Way, 4200, 4220 & 4250 Scott Drive  
Description of application: See Attached "A"

Reason(s) for Appeal (attach a separate sheet if necessary): See Attachment "A"

Signature of Appellant: Britnae Jensen Date: July 7, 2016

## FOR OFFICE USE ONLY:

Date Appeal filed and Administrative Fee received: JULY 7, 2016

Delani L. Brown  
City Clerk



cc: Department Director, Deputy Director, Staff, File

F:\Users\Clerk\Shared\Forms\Appeal Application  
Updated 2-23-16

## **ATTACHMENT “A”**

### **Description of Application**

Planned Development Permit to allow the redevelopment of the existing MacArthur Square shopping center to include construction of 384 multi-family residential units and 5,677 square feet of retail use with an adjustment to development standards that include: building setback encroachments into the required 30-foot street setback of 12 feet on Corinthian Way, 10 feet on Martingale Way, 8 feet on Dove Street, and 6 feet on Scott Drive; adjustments to exceed the 55-foot height limit by introducing architectural elements up to 83 feet in height; a waiver of General Plan Policy 6.15.13 in return for a fee payment equal to the value of the 0.5 acre parkland established by Ordinance No. 2007-30; a lot merger to combine three existing parcels into one; and an Affordable Housing Implementation Plan for the proposed project.

### **Reason(s) for Appeal**

Newport Place Residential, LLC, and Lester C. Smull, Property Owner (“Appellant”), appeal the 4-1 decision by the Planning Commission to deny the redevelopment of the MacArthur Square shopping center with a high quality mixed use residential and retail development.

When presented to the Planning Commission for consideration, the proposed project included 384 multi-family residential units and 5,677 square feet of retail space with building setbacks from 18 feet to 59 feet, building heights up to 83 feet, and a waiver of the 0.5 acre neighborhood public park. The proposed project offered to pay a fee equal to the value of the 0.5 acre parkland per Ordinance No. 2007-30 in light of the fact that the park location and characteristics do not fit the definition of a neighborhood park per the City’s General Plan and the proposed park site is remote from potential users, does not serve public needs, and would create a maintenance and liability burden for the City if dedicated for public use. After working with City staff for over 2 years developing this project, the Appellant feels that the Appellant’s originally proposed project is the best project and should still be considered by City Council as is. The applicable land use regulations do not require that any commercial square footage be maintained on the site and the Appellant feels that the amount of retail square footage voluntarily proposed is more than sufficient. An area study was performed within walking distance of the project (0.5 miles) and demonstrates that of the uses being eliminated as a result of the redevelopment, uses that would be in demand for residential support (i.e. medical, dental, convenience store, hair & nail salons, dry cleaners, dining establishments, etc), exist, often times in multiple locations within the surveyed area. By not including excess retail space within the development, it allows existing surrounding businesses to benefit from the introduction of residential use in the community and aims to help drive business to these existing establishments. The proposed setback modifications aim to eliminate a “remote island” feel that would otherwise potentially exist if the 30’ building setbacks were maintained. The overall reduction in the setbacks allow the proposed stoop units to provide more connection to the surrounding public sidewalk and provide more of the “walkable neighborhood” environment that is desired within the City’s vision for the area. The variation in setbacks also allow for increased building articulation, resulting in a more aesthetically pleasing appearance when viewed from the street. The increased building height allows for more architectural interest and a variation of the building roofline that breaks up massing of the buildings. It is important to note that the areas of the highest elevation of 83 feet are the non-habitable tower elements that disguise elevator equipment and stairwells.

While the Appellant believes the requested adjustments to the City's park dedication, setback, and building height standards are justified on their own merits (and were fully supported by City staff), it also is important to keep in mind that the project is a density bonus affordable housing project within the meaning of Government Code Section 65915 and Chapter 20.32 of the Newport Beach Municipal Code. As such, since 30% of the Project's "base" number of units will be kept affordable to lower income households, the Project is entitled to receive *three (3)* "incentives or concessions"—with that term defined to include "[a] reduction in site development standards or a modification of zoning code requirements or architectural design requirements. . . , including, but not limited to, *a reduction in setback. . . requirements that would otherwise be required*" and "[o]ther regulatory incentives or concessions proposed by the developer. . . that result in identifiable, financially sufficient, and actual cost reductions." (See Government Code Section 65915(b)(3), (d)(2)(C), and (k)(1).)

Feedback from the Planning Commission during the public hearing suggested that modifications to certain aspects of the proposed project would be looked upon more favorably, however, a continuance was not offered and when requested by the Appellant, was denied by the Commission on a 3-2 vote without any opportunity provided for further discussion between the Appellant, Staff and the Commission. Thus, the Appellant feels that due process was denied by not allowing a continuance that would have provided the Appellant the opportunity to address the comments of the Commission and modify the proposed project. While the Appellant feels that modifying the proposed project would provide a less desirable option, the Appellant has prepared a revision to the project that eliminates all of the variances that were originally included within the project, is fully compliant with all applicable General Plan policies, municipal code regulations, etc., and addresses additional comments (i.e. provision of additional retail space and parking), which the Appellant is prepared to share and discuss with the City Council as well as the Planning Commission, if given the opportunity to do so.

### **Development Agreement**

While it was not a finding within the resolution for denial of the project, it is important to note that there was a significant amount of discussion regarding the proposed project and the insistence by some of the Planning Commissioners to have a Development Agreement imposed on the project. The Appellant is in agreement with Staff's assessment of the appropriate policies within the City's General Plan and Municipal Code both at the time the project commenced over 2 years ago, and through the Planning Commission hearings—that there is no policy requiring a Development Agreement for this project. The Appellant is concerned that the Planning Commissioner's focus on this item, even after discussion of staff's assessment that arose during the June 9<sup>th</sup> public hearing could be affecting the critique of the other aspects of the project that were used as the basis for denial. This is further evidenced by Planning Commission's denial of a continuation requested by the Appellant at the June 9<sup>th</sup> hearing that would allow the project time to further address the Commissioner's comments regarding building setbacks, height and the park provision.

**BUSINESS PROPERTIES**  
**MANAGEMENT COMPANY**

17631 FITCH  
IRVINE, CALIFORNIA 92614-6021  
(949) 474-8900  
FAX (949) 474-8936

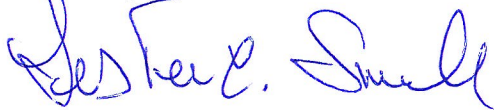
July 7, 2016

City of Newport Beach  
100 Civic Center Drive  
Newport Beach, CA 92660

To whom it may concern,

I, Lester C. Smull, authorize Newport Place Residential, LLC to file, on my behalf, the appeal for the Residences at Newport Place project (Project Number PA2014-150).

Sincerely,



Lester C. Smull, Trustee, Managing General Partner  
MacArthur Square, a California General Partnership

cc: Newport Place Residential, LLC

BUSINESS PROPERTIES  
MACARTHUR SQUARE  
17631 FITCH  
IRVINE, CA 92614-6021

FARMERS & MERCHANTS BANK  
23772 ROCKFIELD BLVD.  
LAKE FOREST, CA 92630

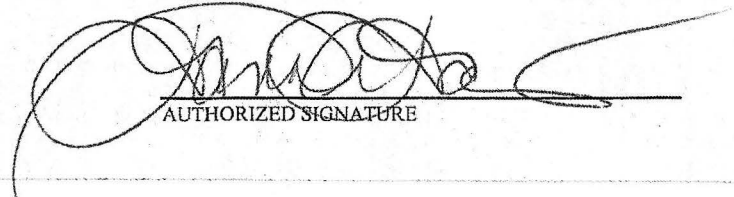
NO: 0000020684

DATE
07/01/2016

AMOUNT
*****\$1,506.00

PAY ONE THOUSAND FIVE HUNDRED SIX AND XX / 100 DOLLARS

TO THE  
ORDER  
OF  
CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
100 CIVIC CENTER DRIVE  
NEWPORT BEACH, CA 92660

  
AUTHORIZED SIGNATURE

**Recreation & Senior Services Dept.**  
 100 Civic Center Drive  
 Bay E  
 Newport Beach, CA 92660  
 Phone: (949) 644-3151  
 FAX: (949) 644-3155  
 Email: recreation@newportbeachca.gov

**Receipt #1018941.005**

Jul 7, 2016 4:18 PM



DROP-IN CUSTOMER

Prepared By: Lisa Gizara

Customer ID: 1

Home phone: --, Work phone: --

Payment Summary			
Check:	\$1,506.00	Check # 20684	
Cash:			\$0
Credit Card:	\$0		
		Memo:	\$0
Account:	\$0		
		Gift Card:	\$0
Financial Aid:	\$0		
<b>Total Received:</b>	<b>\$1,506.00</b>	<b>Total Payments:</b>	<b>\$1,506.00</b>
		Payment Plan:	\$0

Transactions		
Customer	Description	Charge
Drop-In Customer	CC Planning Commission Appeal Action: Product Sale	\$1,506.00
Home phone: --		
Email: --		
ID: 1		

**Total Charges** \$1,506.00**Total Payments** \$1,506.00**Balance** \$0

Thank you for your choosing Newport Beach Recreation & Senior Services. Please visit us online at [www.newportbeachca.gov](http://www.newportbeachca.gov)