

ATTACHMENT A

RESOLUTION NO. 2018-73

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING VARIANCE NO. VA2017-002 AND COASTAL DEVELOPMENT PERMIT NO. CD2017-091 TO ALLOW THE CONSTRUCTION OF A NEW SINGLE-FAMILY RESIDENCE FOR PROPERTY LOCATED AT 3200 OCEAN BOULEVARD (PA2017-208)

WHEREAS, an application was filed by Nicholson Construction on behalf of Karen M. Hinton, Successor Trustee of the Maloney Family Trust ("Applicant"), with respect to property located at 3200 Ocean Boulevard, in the City of Newport Beach, and legally described as a portions of Lot 7 and Lot 8 of Block 138 of the Re-subdivision of Corona Del Mar, in the City of Newport Beach, County of Orange, State of California, as shown on Map recorded in Book 4, Page 67 of Miscellaneous Maps in the office of the County Recorder of said county, requesting approval of a coastal development permit and a variance.

WHEREAS, the Applicant requests a coastal development permit to demolish an existing single-family residence and allow the construction of a new 7,276-square-foot, single-family residence and a 688-square-foot, three-car garage. Excluding the 2,748-square-foot subterranean basement, the resulting total floor area proposed is 5,216 square feet. The Applicant requests a variance application to allow the residence to encroach five (5) feet into the required ten (10) foot rear setback and exceed the maximum floor area limit of 4,234 square feet.

WHEREAS, the site is designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.

WHEREAS, the site is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached – 6.0–9.9 DU/AC (RSD-B) and the Coastal Zone is Single-Unit Residential (R-1).

WHEREAS, a public hearing was held before the Planning Commission on August 9, 2018, in the Council Chambers located at 100 Civic Center Drive, Newport Beach. The Planning Commission approved Variance No. VA2017-002 and Coastal Development Permit No. CD2017-091 allowing for the demolition of an existing single-family residence and construction of a new single-family residence and determining that the findings and facts in support of such findings were sufficient. Conditions of approval were established to minimize potential impacts from the residence to the surrounding neighborhood.

WHEREAS, on August 20, 2018, Council Member Jeff Herdman submitted a Call for Review for the City Council to review the previous approval made by the Planning Commission.

WHEREAS, on September 25, 2018, the City Council held a noticed public hearing to consider the Call for Review in the Council Chambers located at 100 Civic Center Drive,

Newport Beach. A notice of time, place and purpose of the public hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at the public hearing.

WHEREAS, a variance is requested to allow a new single-family residence that exceeds the maximum floor area and encroaches five (5) feet into a required ten (10) foot rear setback, in accordance with NBMC Section 20.52.090(F) (Variances – Findings and Decision). 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 subject property has a unique orientation compared to neighboring lots along Ocean Boulevard. The property and surrounding area were originally subdivided in 1904 as part of the Re-Subdivision of Corona del Mar. The subject property and neighboring property at 210 Larkspur Avenue consist of portions of Lot 7 and 8 of Block 138 of that original subdivision. Subsequent to the original subdivision, portions of Lots 7 and 8 were combined and reoriented to provide two lots facing Larkspur Avenue (pre-1948). As a result of the reorientation, the subject property (southern portion of Lots 7 and 8) does not have alley access and maintains vehicular access from Larkspur Avenue.
2. Typical R-1 lots surrounding the subject property abut an alley and are only subject to a five (5) foot rear alley setback. However, the subject lot is atypical due to the reorientation and abuts a residence to the rear instead of an alley. Including the subject property and 210 Larkspur Avenue, there are a total of thirteen (13) similarly reconfigured lots out of three hundred sixty seven (367) lots in the Re-subdivision. Due to the lot not abutting an alley, it is subject to a ten (10) foot rear setback. The ten (10) foot rear setback, in addition to the large twenty-four (24) foot front setback, disproportionately impacts the Applicant's right to develop the property.
3. The subject property is shallower than the typical lots in the surrounding neighborhood. The lot depth ranges between seventy-nine (79) and eighty-eight (88) feet, whereas the typical lot depth is one hundred eighteen (118) feet. The unusual shape and orientation of this lot does not generally apply to other properties in the vicinity under the same R-1 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. Strict compliance with the Zoning Code deprives the subject property of a buildable area that is comparable to typical lots with similar lot sizes. With the lot's current setback configuration, forty-eight (48) percent of the lot is dedicated to the required setbacks. Surrounding typical properties have an approximate setback dedication ranging from twenty-six (26) to thirty-eight (38) percent.
2. Strict compliance with the Zoning Code requirements would deprive the subject property of constructing a residence with similar floor area ratio ("FAR") when compared to neighboring lots. The required maximum floor area yields an FAR of 0.777, which is approximately twenty-five (25) percent less than what is allowed on lots of similar or smaller size and standard configuration in the surrounding neighborhood and same zone. Surrounding typical lots have FARs between 0.930 and 1.167.

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. Without granting the variance to increase the floor area, the Applicant could not construct a residence on the property similar to and consistent with what the development regulations permit on other lots in the area. Per Zoning Code and LCP development standards, the Applicant can only build a 4,234 square-foot residence (including garage), which results in a FAR of 0.777. This is substantially smaller than what could be constructed on typical rectangular R-1 lots in Corona del Mar, which have FARs between 0.930 and 1.167.
2. The Applicant is requesting a maximum floor area of 5,216 square feet, which would result in a FAR of 0.958 that is consistent with other properties in the vicinity and within the same zone.
3. The required ten (10) foot rear setback, in addition to the large twenty-four (24) foot front setback along Ocean Boulevard, constitutes an impingement on the Applicant's right to develop the property. The remaining properties on the same block have the same large front setback, but enjoy a five (5) foot rear yard setback which allows a larger buildable area. Granting a five (5) foot rear yard setback

would bring parity between the subject property and the surrounding neighborhood.

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.*

Fact in Support of Finding:

1. Approval of the variance request allows the Applicant to develop a 5,216 square-foot residence (excluding subterranean basement) that is comparable in size, height, and setbacks with other lots along Ocean Boulevard that are identically zoned.
2. The request to increase the floor area above the maximum allowed by the Zoning Code creates a FAR of 0.958, which is not a special privilege as it is consistent with the limitations on other properties in the vicinity. The FAR in the surrounding area is between 0.930 and 1.167.
3. Due to the reorientation of the subject property, the rear abuts a residence instead of an alley, which requires a ten (10) foot rear setback. The request to encroach five (5) feet into the required ten (10) foot rear setback is consistent with other properties in the vicinity, as typical R-1 lots that surround the subject property abut an alley and are subject to a five (5) foot rear alley setback.

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.*

Facts in Support of Finding:

1. Granting of the variance will improve the current setback configuration that exists on the lot. Currently, a twenty-two (22) foot wide portion of the existing garage and second floor living area encroach eight (8) feet, three (3) inches into the required ten (10) foot rear yard setback, resulting in a setback of one (1) foot nine (9) inches. The proposal includes the demolition of the existing dwelling and the construction of a new dwelling five (5) feet from the property line for a width of thirty-seven (37) feet. Although the width of the encroachment increases, the location of the dwelling five (5) feet from the property line exceeds what would normally be provided if this were treated as a side yard with a minimum required four (4) foot setback. This setback, in addition to the existing Five (5) foot ten (10) inch setback on the abutting residence on 210 Larkspur, would create a separation of ten (10) feet, ten

- (10) inches between the neighboring structures. The existing separation is seven (7) feet, seven (7) inches.
2. The proposed five (5) foot rear yard setback is more than a typical setback between two abutting residences. If the proposed rear yard setback was regulated as a side yard setback, a four (4) foot setback would be required on both properties, creating an eight (8) foot minimum separation between the two structures. The proposed rear yard setback will provide the adequate flow of light and air to the adjacent residence.
 3. The proposed design is a two-story structure with a subterranean basement, located in a neighborhood with two- and three-story residences. The design, including proposed floor area, maintains a bulk and scale that is consistent with other allowable development on typical lots in the surrounding area constructed.
 4. Although the City does not have private view protection policies, the adjacent neighbor located at 210 Larkspur Avenue currently enjoys a private view across the northwesterly corner of the subject lot. The design of the proposed dwelling includes a two hundred four (204) foot open space design feature at the northwesterly corner of the proposed dwelling that helps preserve a significant portion of the neighbor's existing private view and provides a greater private viewshed than what could have been provided with a setback-compliant design that did not include the feature.
 5. Granting of the variance to allow additional floor area will not be detrimental to the on-street parking situation in the area. The proposed residence provides a three-car garage with additional car storage in the basement level.

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. Granting the variance request would not increase the density beyond what is planned for the area, and will not result in additional traffic, parking, or demand for other services.
2. The proposed variance request provides similar setbacks for the property consistent with the existing development pattern along Ocean Boulevard.
3. The proposed variance request provides a maximum floor area that is consistent with neighboring lots of similar size, located within the same zoning designation.
4. The property is not located within a specific plan area.

WHEREAS, a coastal development permit is requested to allow the demolition of an existing single-family residence and the construction of a new single-family residence that exceeds the maximum floor area and encroaches five (5) feet into a required ten (10) foot rear setback, in accordance with NBMC Section 21.52.015(F) (Coastal Development Permit – Findings and Decision). The following findings and facts in support of such findings are set forth:

Finding:

A. *Conforms to all applicable sections of the certified Local Coastal Program.*

Facts in Support of Finding:

1. The proposed deviations to the rear setback and floor area limitation allow for a development that is similar and compatible in design, bulk, and scale of the existing single-family neighborhood pattern of development and expected future development. The maximum floor area limitation granted by the variance would allow 5,216 square feet of floor area, or an FAR of 0.958, consistent with the typical FAR of other properties in the vicinity ranging between 0.930 and 1.167.
2. With the exception of the variance requests, the proposed development complies with applicable residential development standards including, but not limited to, front and side setbacks, height, and parking as follows:
 - a. The proposed residence complies with the height limitations of the Zoning Code, which allows a maximum of twenty-four (24) feet for flat roofs and twenty-nine (29) feet for sloped roofs, measured from existing grade. A thirty (30) square-foot elevator shaft with a flat roof extends to twenty-nine (29) feet which is a permitted height exception granted in LCP Section 21.30.060 (Height Limits and Exceptions).
 - b. As the proposed residence includes more than 4,000 square feet of livable floor area, a three-car garage is required. The proposed residence provides a three-car garage.
 - c. A minimum of four hundred sixty six (466) square feet of open volume area is required and the proposed residence includes six hundred sixty five (665) square feet of open volume area provided.
3. The property is located in an area known for the potential of seismic activity and liquefaction and is required to comply with the California Building Code ("CBC") and City's Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the

inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.

4. The development is set back approximately three hundred (300) feet from the nearest beach. Due to the large distance from coastal waters, a Water Quality Management Plan ("WQMP") and a Construction Pollution Prevention Plan ("CPPP") are not required. A post-construction drainage system will be installed that includes drainage and percolation features designed to retain dry weather and minor rain run-off on-site to ensure the project does not impact water quality. Any water not retained on-site is directed to the City's storm drain system.
5. Proposed landscaping complies with NBMC Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant, and prohibits invasive, species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
6. The subject property is not between the nearest public road and the sea or shoreline of any body of water located within the coastal zone. The Coastal Land Use Plan identifies Ocean Boulevard as a coastal view road. However, the subject property is located on an inland lot north of Ocean Boulevard and will not impact public coastal views from Ocean Boulevard. There is also no impact on public views from Larkspur Avenue, as no deviation is being requested from the required 4-foot side yard setback on Larkspur Avenue. Conditions of approval are included to remove existing trees and prohibit the planting of new trees in order to enhance the view corridor as viewed from Larkspur Avenue. The existing residential lot does not currently provide nor inhibit public coastal access. The property is more than 200 feet from the nearest public beach and the proposed development will remain a private residential lot.

Finding:

- 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.*

Fact in Support of Finding:

1. The existing residential lot does not currently provide nor inhibit public coastal access. The property is more than two hundred (200) feet from the nearest public beach and the proposed development will remain a residential lot. The development will not impact public access to local coastal resources and is not located between the sea or shoreline and the nearest public road.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council of the City of Newport Beach does hereby uphold the Planning Commission's approval of Variance No. VA2017-002 and Coastal Development Permit No. CD2017-091 with the conditions of approval attached as Exhibit "A," and incorporated herein by reference.

Section 2: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 3: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the adoption of this resolution is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Section 15303 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 3 exempts the construction of limited numbers of new, small structures, including one single-family residence. The proposed project is a new single-family residence located within the R-1 (Single-Unit Residential) Zoning District.

Section 5: This resolution shall take effect immediately and the City Clerk shall certify the vote adopting the resolution.

Section 6: Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.


ADOPTED this 25th day of September, 2018.

Marshall "Duffy" Duffield
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

PLANNING

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 Use Permit.
4. 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. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
5. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the City's Building Division and field sets of plans prior to issuance of the building permits.
6. *The dwelling shall encroach a maximum of five (5) feet into the rear ten (10) foot setback. An additional six (6) inch allowance shall be permitted for a roof eave.*
7. *The northwesterly corner of the proposed residence shall maintain a two hundred four (204) square-foot open space feature on each level above grade as shown on the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval. No structures, principal or accessory, shall be constructed within said open space areas.*
8. *The maximum floor area shall not exceed 5,216 square feet (excluding subterranean basement).*
9. *Accessory structures and landscaping in the side setback abutting Larkspur Avenue shall be in substantial conformance with the approved site plan and shall not exceed forty-two (42) inches from existing grade, in order to maintain the view corridor on Larkspur Avenue.*
10. *No trees shall be planted within the side setback area abutting Larkspur Avenue in order to maintain the view corridor on Larkspur Avenue.*

11. *No trees shall be planted within the illustrated private view corridor shown in Figure 4 of the Staff Report dated August 9, 2018.*
12. *All trees located within the side setback abutting Larkspur Avenue and the front setback shall be removed.*
13. *No trees shall be planted in the planter area near the intersection of Larkspur Avenue and Ocean Boulevard to enhance the view corridor as viewed from Larkspur Avenue.*
14. Prior to the issuance of a building permit, the Applicant shall submit a final 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 City's Planning Division.
15. 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.
16. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the City's Planning Division.
17. Prior to issuance of a building permit, the Applicant shall submit to the City's Planning Division an additional copy of the approved architectural plans for inclusion in the application file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to eleven (11) inches by seventeen (17) inches. The plans shall accurately depict the elements approved by this Variance and Coastal Development Permit application.
18. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
19. Debris from demolition shall be removed from work areas each day and removed from the project site within twenty-four (24) hours of the completion of the project. Stock piles 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.

20. Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
21. 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.
22. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, wetland or their buffers.
23. 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.
24. Construction activities shall comply with NBMC Section 10.28.040, 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.
25. This approval shall expire and become void unless exercised within twenty-four (24) months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of NBMC Title 20 Planning and Zoning.
26. 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 Hinton and Maloney Variance including, but not limited to, Variance No. VA2017-002 and Coastal Development Permit No. CD2017-091 (PA2017-208). 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.

Public Works Conditions

27. Parkways on Ocean Boulevard and Larkspur Avenue shall be planted with drought-tolerant planting or turf.
28. The proposed driveway shall be installed per City Standard STD-162-L. The approach bottom maximum width shall be twenty (20) feet.
29. The proposed project shall comply with sight distance standard STD-110-L at the corner of Ocean Boulevard and Larkspur Avenue.
30. No staging/storage of materials shall be permitted within the public right-of-way.
31. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the City's Public Works Inspector.