



## **CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT**

May 9, 2019  
Agenda Item No. 4

**SUBJECT:** Dr. Cerni's Medical Office (PA2018-168)  
▪ Conditional Use Permit No. UP2018-016

**SITE LOCATION:** 20271 Birch Street, Suite 100

**APPLICANT:** Dr. Cerni with Forever Ageless Aesthetic & Regenerative Medicine

**OWNER:** JSC Holdings, LLC

**PLANNER:** Benjamin M. Zdeba, AICP, Associate Planner  
949-644-3253, bzdeba@newportbeachca.gov

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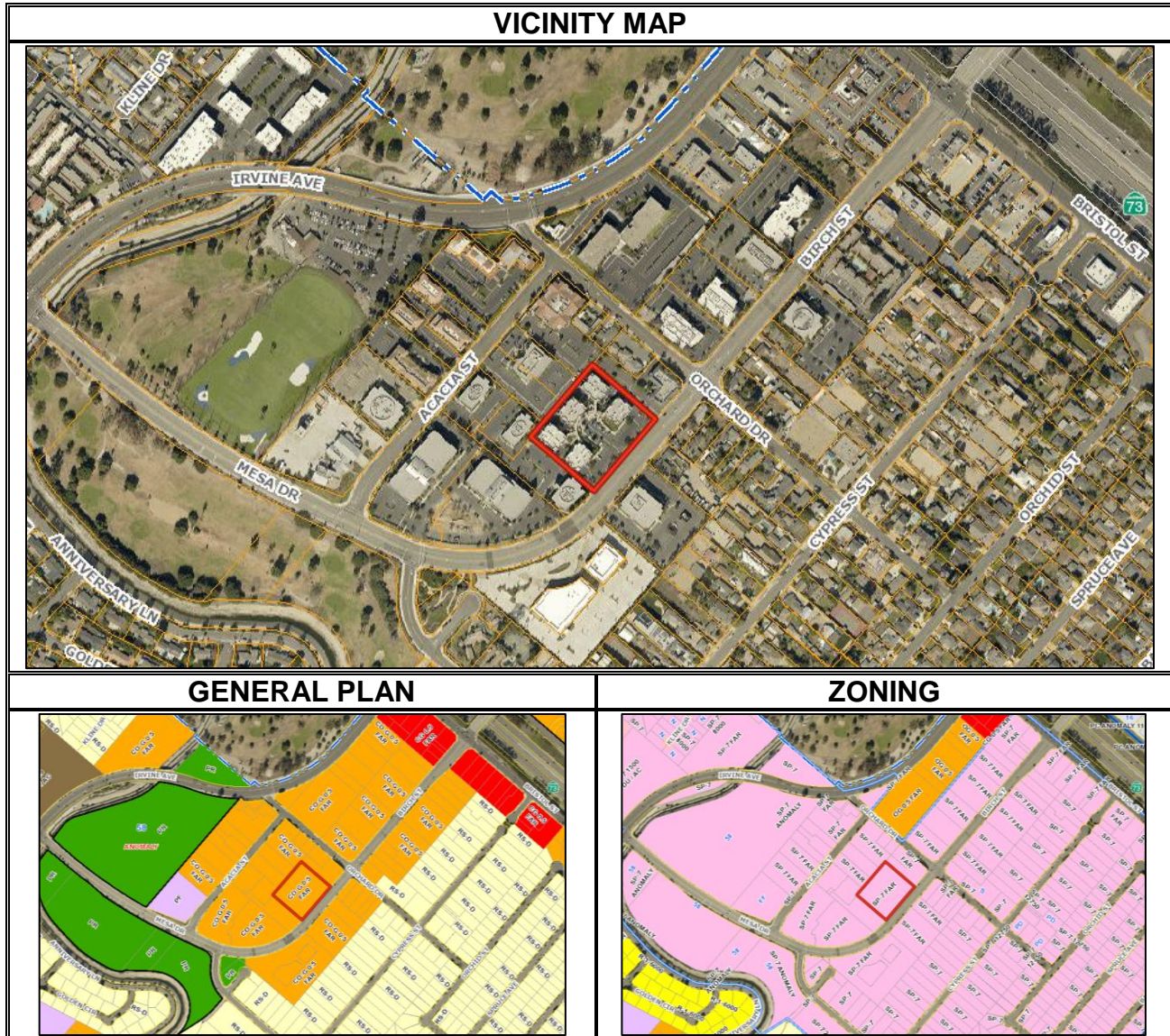
### **PROJECT SUMMARY**

The applicant requests a conditional use permit to allow a three-space reduction of the required 23 off-street parking spaces and to allow the continued operation of an existing, unpermitted 4,575-square-foot medical office use within the Birch Heights office park. The medical office established its operation in 2018, without securing approval of a use permit as required by the Business Park (BP) land use designation of the Santa Ana Height Specific Plan Area (SP-7).

### **RECOMMENDATION**

- 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 no potential to have a significant effect on the environment; and
- 3) Adopt Resolution No. PC2019-011 approving Conditional Use Permit No. UP2018-016 (Attachment No. PC 1).

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LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	General Commercial Office (CO-G)	Business Park (BP) District of the Santa Ana Heights Specific Plan Area (SP-7)	Commercial office condominiums
NORTH	CO-G	BP of the SP-7	Multi-tenant commercial office buildings and nonconforming residences
SOUTH			
EAST			
WEST			

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## **INTRODUCTION**

### **Project Setting and Background**

The project site is located in the Birch Heights office park on Birch Street near Orchard Drive. The site is bound on the north, west, and south by commercial office uses within the Business Park (BP) District of the Santa Ana Heights Specific Plan Area (SP-7). To the east across Birch Street is a commercial office building and nonconforming residential uses that are also located within the BP District.

Birch Heights is comprised of five condominium office buildings totaling 48,265 square feet on approximately 2.19 acres. The office park was annexed from the County of Orange in 2002, and contains a mix of professional, administrative and medical offices. It is served by an existing 190-space surface parking lot. The 4,575-square-foot tenant space is located on the first level above parking. The tenant space was formerly occupied by a non-medical office use.

At the end of 2017, Dr. Cerni purchased the tenant space and on February 15, 2018, he commenced the use without securing use permit approval for a medical office as required by the BP land use standards of the Santa Ana Heights Specific Plan.

### **Project Description**

The medical office occupies the entire tenant space and operates from 9 a.m. to 6 p.m., Monday through Friday. Services offered include the treatment of conditions including scars, skin laxity, wrinkles, excess fat, and unwanted hair. The operation includes one doctor (Dr. Cerni), one nurse, three aestheticians, and two administrative staff members for a total of seven employees. There are no overnight stays of patients and all exams, diagnoses and procedures are outpatient. A floor plan and pictures of the tenant space are attached as Attachment No. PC 4.

## **DISCUSSION**

### **Analysis**

Medical office uses do not typically require use permits to operate in the City of Newport Beach (they are usually permitted or prohibited in commercial or office districts); however, the subject site is not located within a standard zoning district. The Santa Ana Heights Specific Plan governs the site and contains separate requirements. Ultimately, the operation of a medical office use with limited hours would not be substantially different from the previously existing professional office space. However, medical office uses have a greater parking requirement than professional office uses, and in this case, the Birch Heights office park is not developed with enough spaces to meet code requirements with the introduction of the proposed medical office. Therefore, the applicant is requesting approval of use permit to authorize the reduction of the required parking spaces from 23 to 20. A

detailed discussion of the parking requirements and the findings of the parking demand study provided by the applicant is provided later in this report.

### *General Plan*

The General Plan Land Use Element designates the site for commercial uses under CO-G (General Commercial Office). This designation is intended to provide for administrative, professional, and medical offices with limited accessory retail and service uses. A medical use is explicitly allowed under the existing General Plan designation. The proposed medical office use would be part of an existing office park (Birch Heights) and would be consistent with the associated land use designation and General Plan.

### *Zoning Code and Specific Plan*

The subject site is located within the Business Park (BP) District of the Santa Ana Heights Specific Plan Area (SP-7). The BP District is established to provide for the development and maintenance of professional and administrative offices, commercial uses, specific uses related to product development, and limited light industrial uses. A medical office use is listed as permitted subject to the approval of a minor use permit.

### Parking

Newport Beach Municipal Code (NBMC) Section 20.90.120(F)(6) (Off-Street Parking) of the Santa Ana Heights Specific Plan references Chapter 20.40 (Off-Street Parking) for all parking requirements. Pursuant to Section 20.40.040 (Off-Street Parking Spaces Required), the first 50,000 square feet of office requires one parking space per 250 square feet of net floor area, and the next 75,000 square feet of office requires one space per 300 square feet of net floor area. Medical offices, if not more than 20 percent of the total net floor area, share identical parking requirements. These requirements are shown graphically in Table 1 below.

<b>Table 1, Off-Street Parking Required for Offices and Medical Offices</b>	
<i>Land Use</i>	<i>Parking Spaces Required</i>
Offices*—Business, Corporate, General, Governmental	
First 50,000 square feet (sq. ft.)	1 per 250 sq. ft. net floor area
Next 75,000 sq. ft.	1 per 300 sq. ft. net floor area
Floor area above 125,001 sq. ft.	1 per 350 sq. ft. net floor area
*Not more than 20% medical office uses.	
Offices—Medical and Dental Offices	1 per 200 sq. ft. gross floor area

The existing office park has a gross floor area of approximately 48,265 square feet and a net floor area of 45,750 square feet. There are five other existing medical offices, which total 14,150 square feet of net floor area or approximately 31 percent net floor area of the office park. Therefore, the proposed medical office cannot take advantage of the reduced parking requirement and must provide parking at a rate of one parking space per 200 square feet of gross floor area.

Based on the tenant list provided by the Applicant, Birch Heights requires 188 parking spaces. The proposed medical office would increase the requirement by 5 parking spaces for a total of 193 spaces required. The parking lot is currently developed with 190 spaces resulting in an overall proposed deficiency of 3 spaces.

NBMC Section 20.40.110(B) allows off-street parking requirements to be reduced with the approval of a conditional use permit when the applicant has provided sufficient data to indicate that parking demand will be less than the required number of spaces and a parking management plan is prepared in compliance with NBMC Section 20.40.110(C). In this case, the applicant provided "Birch Heights Parking Analysis" dated October 23, 2018 (Attachment No. PC 3). The study was prepared by a qualified professional, in this case a traffic engineer, from EPD Solutions, Inc.. The analysis and conclusions of the study were reviewed and accepted by the City Traffic Engineer.

The study acknowledges the use has already been in operation without a negative impact to parking supply. It also concludes there is an observed peak parking demand of 146 parking spaces; therefore, the reduction of three (3) required off-street parking spaces is appropriate and is not expected to create any parking deficiencies.

Given the findings of the study that there is a significantly lesser parking demand for the office park than the sum total zoning code requirement, there is no benefit or need for a parking management plan for this project. Staff has included Condition of Approval No. 7 in the draft Resolution to require a parking management plan if an identifiable parking issue attributable to the tenant arises in the future.

#### Use Permit Findings

In accordance with Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits), the Planning Commission must make the following findings for approval of a conditional use permit:

1. *The use is consistent with the General Plan and any applicable specific plan.*
2. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and the Municipal Code.*
3. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*



4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*
5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or 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 of the proposed use.*

As previously discussed in the *General Plan* and *Zoning Code* and *Specific Plan* subsections, the proposed medical office use is consistent with the land use designations for the project site.

The current and proposed use occupies an existing tenant space within Birch Heights, which has a mixture of professional and business offices, as well other existing medical offices. The proposed use would operate with standard business hours of 9 a.m. to 6 p.m.

The applicant has provided a parking demand study to substantiate waiving 3 of the required 23 parking spaces for the proposed use. Conditions of Approval Nos. 6 and 7 are included in the draft Resolution for approval to address any unforeseen parking-related impacts. The Conditions require all employees and patrons to park on-site and the submission of a parking management plan if the business operation changes such that the parking supply is negatively affected by the medical office use.

While it is unclear whether any unpermitted construction has occurred in the tenant space either before or after Dr. Cerni's purchase, Condition of Approval No. 23 is included to ensure any existing unpermitted work is addressed appropriately by securing any required permits.

It is also notable that the medical office has been illegally operating (i.e., without a use permit and required parking) since February 2018 and has not been proven incompatible with its surrounding uses.

In summary, staff believes sufficient facts exist in support of each finding. The building is physically suitable and the location and area proposed are compatible with the neighborhood. As conditioned, it is expected to continue to operate in an effective manner that is compatible with the surrounding tenants in the office building and office park as a whole.

### Alternatives

1. The Planning Commission may suggest specific project modifications or operational changes that are necessary to alleviate concerns. Modifications may address the



business operation plan. If the changes are substantial, the item should be continued to a future meeting to allow the changes to be incorporated.

2. If the Planning Commission believes that the facts to support the findings for approval are insufficient at this time, the Planning Commission may deny the application. Refer to the draft resolution for denial provided as Attachment No. PC 2.

### Environmental Review

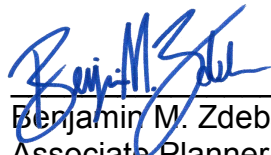
This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

The Class 1 exemption authorizes the operation, repair, maintenance and minor alterations of existing buildings. The Project will be located within an existing tenant space within an existing developed office/business park. No alterations were required to accommodate the new use.

### Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to all owners 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 meeting, 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.

Prepared by:



Benjamin M. Zdeba, AICP  
Associate Planner

Submitted by:



Jim Campbell  
Deputy Community Development Director

### ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 Draft Resolution for Denial
- PC 3 Parking Demand Study
- PC 4 Project Floor Plan and Photographs

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## **Attachment No. PC 1**

Draft Resolution with Findings and  
Conditions

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## **RESOLUTION NO. PC2019-011**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP2018-016 TO WAIVE A PORTION OF THE OFF-STREET PARKING REQUIREMENTS AND ALLOW THE CONTINUED OPERATION OF A MEDICAL OFFICE LOCATED AT 20271 BIRCH STREET, SUITE 100 (PA2018-168)**

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

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

1. An application was filed by Coralee S. Newman of Government Solutions, Inc. ("Applicant") on behalf of JSC Holdings, LLC ("Owner/Operator"), with respect to property located at 20271 Birch Street, Suite 100, and legally described as Parcel 1 of Parcel Map 89-341, as recorded in Book 268, Page 37 ("Property"), requesting approval of a conditional use permit.
2. The Applicant requests a reduction of three (3) parking spaces in required off-street parking and to allow the continued operation of an existing, unpermitted 4,575-square-foot medical office within the Birch Heights office park ("Birch Heights"), an existing office condominium development with multiple tenants and a shared parking lot ("Project"). The medical office established its operation in 2018, without securing approval of a use permit as required by the Business Park ("BP") land use designation of the Santa Ana Height Specific Plan Area ("SP-7").
3. The Property is designated General Commercial Office ("CO-G") by the General Plan Land Use Element and is located within the BP District of the SP-7.
4. The Property is not located within the coastal zone; therefore, the Project is not reviewed against Newport Beach Municipal Code ("NBMC") Title 21 Local Coastal Program Implementation Plan and a coastal development permit is not required.
5. A public hearing was held on May 9, 2019, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and NBMC Chapter 20.62 (Public Hearings). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing.

#### **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.**

1. This Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Class 1 exemption authorizes the operation, repair, maintenance and minor alterations of existing buildings. The Project will be located within an existing tenant space within an existing developed office/business park. No alterations were required to accommodate the new use.

### SECTION 3. REQUIRED FINDINGS.

In accordance with NBMC Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits), the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *The use is consistent with the General Plan and any applicable specific plan.*

#### Facts in Support of Finding:

1. The General Plan Land Use Element designates the site for commercial uses under CO-G (General Commercial Office). This designation is intended to provide for administrative, professional, and medical offices with limited accessory retail and service uses. A medical office use is allowed under the existing General Plan designation. The proposed medical office use would be located in an existing tenant space within Birch Heights and would be consistent with the associated land use designation.
2. The Property is located within the Business Park ("BP") District of the Santa Ana Heights Specific Plan Area ("SP-7"). The BP District is established to provide for the development and maintenance of professional and administrative offices, commercial uses, specific uses related to product development, and limited light industrial uses. A medical office use is listed as permitted subject to the approval of a minor use permit. With the approval of the subject Use Permit and parking reduction, the use would operate consistent with applicable zoning regulations.

#### Finding:

- B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and the Municipal Code.*

#### Facts in Support of Finding:

1. *Facts in Support of Finding A* are hereby incorporated by reference.
2. The medical office occupied the existing tenant space and commenced operation in February 2018, without securing appropriate approvals from the City. Condition of Approval No. 23 is included to ensure tenant improvements completed without the benefit of a building permit in the existing tenant space are addressed by the Owner/Operator. Any changes that have been made are interior only with no changes to the existing gross floor area or building footprint.

3. NBMC Section 20.90.120(F)(6) (Off-Street Parking) references Chapter 20.40 (Off-Street Parking) for all parking requirements. Pursuant to Section 20.40.040 (Off-Street Parking Spaces Required), the first 50,000 square feet of office requires one space per 250 square feet of net floor area, and the next 75,000 square feet of office requires one space per 300 square feet of net floor area. Medical offices, if not more than 20 percent of the total net floor area, share identical parking requirements. The existing office park has a gross floor area of approximately 48,265 square feet and a net floor area of 45,750 square feet. There are five other existing medical offices, which total 14,150 square feet of net floor area or approximately 31 percent net floor area of the office park. Therefore, the proposed medical office cannot take advantage of the reduced parking requirement and must provide parking at a rate of one parking space per 200 square feet of gross floor area.
4. Based on the current tenant list provided by the Applicant, Birch Heights requires 188 parking spaces. The proposed medical office would increase the requirement by 5 parking spaces for a total of 193 spaces required. There are 190 parking spaces to serve the office park resulting in an overall proposed deficiency of 3 spaces. NBMC Section 20.40.110(B) allows off-street parking requirements to be reduced with the approval of a conditional use permit when the Applicant has provided sufficient data to indicate that parking demand will be less than the required number of spaces and a parking management plan is prepared in compliance with NBMC Section 20.40.110(C). In this case, the Applicant provided "Birch Heights Parking Analysis" dated October 23, 2018, and prepared by a traffic engineer (i.e., a qualified professional) with EPD Solutions, Inc, which was reviewed and accepted by the City Traffic Engineer.
5. The study acknowledges the use has been in operation without a negative impact to parking supply. It also concludes there is an observed peak parking demand of 146 parking spaces; therefore, the reduction of three (3) required off-street parking spaces is appropriate and will not create any parking deficiencies. The existing parking supply is adequate to accommodate the proposed use. Given the findings of the study that there is a significantly lesser demand than the zoning code requirement, there is no benefit or need for a parking management plan for this project. Condition of Approval No. 7 is included to require a parking management plan if there is an identifiable parking issue attributable to the Project in the future.

Finding:

- C. *The design, location, size, operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. The Project is a medical office use within Birch Heights, which contains a mixture of professional and business offices, as well as other existing medical offices. As conditioned, it is expected to operate in a manner compatible with other tenants and land uses in the office park.



2. The medical office has been illegally operating (i.e., without a use permit and required parking) since February 2018, and has not been proven incompatible with its surrounding uses.
3. Adequate parking exists to support the proposed use, as discussed in the *Facts in Support of Finding B*.
4. The proposed medical office would occupy an existing office space and would operate similar to a traditional professional or business office use with hours from approximately 9 a.m. to 6 p.m., Monday through Friday ("Hours of Operation"). Basic operating conditions of approval are included to help ensure compatibility with the surrounding area and other businesses operating in Birch Heights.

Finding:

- D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. *Fact in Support of Finding B(2)* is hereby incorporated by reference.
2. Emergency access to and through Birch Heights is currently provided from Birch Street. No changes to emergency access are proposed and on-site circulation would not change.
3. Birch Heights, including the subject tenant space, is adequately served by public services and utilities. Irvine Ranch Water District ("IRWD") is the water service provider and it is located within the Costa Mesa Sanitary District ("CMSD").
4. The design of any tenant improvements will comply with all local and State Building, Public Works, and Fire Codes, and plans will be reviewed prior to the issuance of building permits.

Finding:

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or 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 of the proposed use.*

Facts in Support of Finding:

1. A medical office within an existing office park would operate similarly to a typical professional, business or medical offices already operating and in a development designed to accommodate a variety of office uses. The use is not anticipated to generate

increased noise, dust, odor, traffic, vibration, lighting or other potential nuisances as compared to other typical office uses. Therefore, introduction of an additional medical office in this location would not constitute an increased nuisance or hazard to the public.

2. There is adequate parking existing on-site to accommodate the increased medical office use square footage. Adequate access to the site for emergency vehicles is provided from Birch Street. The tenant space is located on the first level above parking, but is accessible at grade since the site slopes up from Birch Street.
3. The Project includes conditions of approval to ensure that potential conflicts with the surrounding land uses and the City as a whole are minimized to the greatest extent possible. The Operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots, during business hours, if directly related to the patrons of the business.
4. The Hours of Operation are compatible with other uses in Birch Heights.

#### SECTION 4. DECISION.

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

1. The Planning Commission of the City of Newport Beach hereby approves Conditional Use Permit No. UP2018-016, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal is filed with the City Clerk in accordance with the provisions of NBMC Title 20 Planning and Zoning.

#### **PASSED, APPROVED, AND ADOPTED THIS 9<sup>TH</sup> DAY OF MAY, 2019.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Peter Zak, Chairman

BY: \_\_\_\_\_  
Lee Lowrey, Secretary

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

1. The Project shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *Conditional Use Permit No. UP2018-016 shall expire unless exercised within 24 months from the date of approval as specified in Newport Beach Municipal Code (NBMC) Section 20.54.060(A).*
3. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. The Applicant and Owner/Operator 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 Conditional Use Permit.
5. *Prior to the issuance of any required building permits, applicable Fair Share Traffic Fees shall be paid to convert the space from office to medical office in accordance with NBMC Chapter 15.38 (Fair Share Traffic Contribution Ordinance). The Owner shall be credited for the existing office use, and shall pay the net difference for the medical office use.*
6. *All employees and patrons of the medical office shall park on-site within the shared parking area for Birch Heights.*
7. *If there is a change in on-site staffing or the business operation that creates a deficiency in parking supply or results in a parking impact to surrounding businesses, the Applicant shall prepare and submit a parking management plan for review and approval by the Community Development Director.*
8. *The floor area allowed for this medical office suite is a maximum of 4,575 square feet. Any increase in floor area may require the review and approval of an amended or new conditional use permit.*
9. This Conditional Use Permit may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
10. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review by the Planning Division and may

require an amendment to this Conditional Use Permit or the processing of a new conditional use permit.

11. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the any Building Division and field sets of plans prior to issuance of the building permits.
12. 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 Planning Division.
13. Should the Property be sold or otherwise come under different ownership, either the current business owner, property owner or the leasing agent shall notify any future owners or assignees of the condition of this approval.
14. Construction activities shall comply with NBMC Section 10.28.040 (Loud and Unreasonable Noise), which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
15. No outside paging system shall be utilized in conjunction with this establishment.
16. All trash shall be stored within the building or within dumpsters stored in the existing trash enclosure.
17. The Owner/Operator shall help to ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of NBMC Title 14, including all future amendments (including water quality-related requirements).
18. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 7 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Conditional Use Permit.
19. This approval shall expire and become void unless exercised within 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.
20. To the fullest extent permitted by law, Applicant and Owner/Operator 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 Dr. Cerni's Medical Office including, but not limited to, Conditional Use Permit No. UP2018-016 (PA2018-168). 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, Owner/Operator, City, and/or the parties initiating or bringing such proceeding. The Applicant and Owner/Operator 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 and Owner/Operator shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Building Division and Fire Department**

21. *The building or portions thereof used to provide medical, surgical, psychiatric, nursing or similar care on a less-than-24-hour basis to persons who are rendered incapable of self-preservation by the services provided shall comply with the requirements for an "ambulatory care facility" in accordance with 2016 California Building Code (CBC) Section 422 or any successor section.*
22. *If the use and/or building is classified as an "ambulatory care facility" under 2016 CBC Section 422, or any successor section, with more than five patients, the building will be classified as I-2.1 occupancy group and shall comply with I-2.1 requirements such as, but not limited to, exiting, separation, construction types, area limitation, etc.*
23. *Within 30 days of the effective date of this approval, the Owner/Operator shall schedule a field inspection with a City Building Official. If any unpermitted work is found, the Owner/Operator will be required to obtain a construction building permit (i.e., an "as-built" building permit) to legalize said work within a reasonable amount of time, as determined by the City Building Official conducting the inspection. As no building permits have been issued since 1994, any unpermitted construction and interior remodels shall comply with current code requirements. The Owner/Operator is responsible for addressing all unpermitted work within the subject tenant space.*

## **Attachment No. PC 2**

Draft Resolution for Denial

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## **RESOLUTION NO. PC2019-011**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DENYING CONDITIONAL USE PERMIT NO. UP2018-016 TO WAIVE A PORTION OF THE OFF-STREET PARKING REQUIREMENTS AND ALLOW THE CONTINUED OPERATION OF A MEDICAL OFFICE LOCATED AT 20271 BIRCH STREET, SUITE 100 (PA2018-168)**

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

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

1. An application was filed by Coralee S. Newman of Government Solutions, Inc. ("Applicant") on behalf of JSC Holdings, LLC ("Owner/Operator"), with respect to property located at 20271 Birch Street, Suite 100, and legally described as Parcel 1 of Parcel Map 89-341, as recorded in Book 268, Page 37 ("Property"), requesting approval of a conditional use permit.
2. The Applicant requests a reduction of three (3) parking spaces in required off-street parking and to allow the continued operation of an existing, unpermitted 4,575-square-foot medical office within the Birch Heights office park ("Birch Heights"), an existing office condominium development with multiple tenants and a shared parking lot ("Project"). The medical office established its operation in 2018, without securing approval of a use permit as required by the Business Park ("BP") land use designation of the Santa Ana Height Specific Plan Area ("SP-7").
3. The Property is designated General Commercial Office ("CO-G") by the General Plan Land Use Element and is located within the BP District of the SP-7.
4. The Property is not located within the coastal zone; therefore, the Project is not reviewed against Newport Beach Municipal Code ("NBMC") Title 21 Local Coastal Program Implementation Plan and a coastal development permit is not required.
5. A public hearing was held on May 9, 2019, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and NBMC Chapter 20.62 (Public Hearings). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this hearing.

#### **SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.**

This Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15270 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. Projects which a public agency rejects or disapproves are not subject to CEQA review.

**SECTION 3. REQUIRED FINDINGS.**

The Planning Commission may approve a use permit only after making each of the required findings set forth in NBMC Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits). In this case, the Planning Commission was unable to make the required findings based upon the following:

1.

**SECTION 4. DECISION.**

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

1. The Planning Commission of the City of Newport Beach hereby denies Conditional Use Permit No. UP2018-016.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 9<sup>TH</sup> DAY OF MAY, 2019.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Peter Zak, Chairman

BY: \_\_\_\_\_  
Lee Lowrey, Secretary

## **Attachment No. PC 3**

Parking Demand Study

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# memo

## EPD SOLUTIONS, INC.

To: Dr. Joseph Cerni, Forever Ageless  
From: Meghan Macias, T.E.  
CC: Coralee Newman, Government Solutions, Inc.  
Date: 10/23/2018, revised 02/19/19  
Re: Birch Heights Parking Analysis

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### Introduction

EPD Solutions, Inc. (EPD) has prepared this parking analysis to document the existing parking requirements, quantify the existing parking demand, and determine whether adequate parking is provided for Forever Ageless in the Birch Heights office complex. The Birch Heights office complex is located at 20271 – 20321 SW Birch Street in the City of Newport Beach. The complex is comprised of five buildings totaling 45,750 net (50,000 gross) square feet. This analysis specifically evaluates conversion of the first floor of the 20271 building from office use to medical office use. This suite is currently entitled for office use, but is occupied by Forever Ageless, a cosmetic medical office. There are 190 total parking spaces within the complex, of which six spaces are reserved for handicapped persons. There are no other reserved spaces, which maximizes the available parking supply within the Birch Heights office complex.

### Previous Minor Use Permit Approval

A Minor Use Permit (MUP) was approved on October 24, 2012 allowing an increase in the square footage of medical office within the complex from 5,000 square feet to 14,150 square feet. The additional 9,150 net-square feet was allocated by the MUP in the following manner: 4,575 net square feet to the first floor of the office-condominium located at 20311 SW Birch Street and the remaining 4,575 net square feet within any of the office-condominiums within the complex. It should be noted that the text of the MUP is not consistent when discussing square footage and varies between net and gross square feet. To maintain consistency, the evaluation in this memo will be based on net square feet, since this is how the parking requirement was calculated in the MUP. Page 3 of Resolution No. ZA2012-038 provides a table outlining the parking requirements. The first 40,750 net square feet are required to provide parking at a rate of 1 space per 250 net SF, while the remaining 5,000 gross SF is required to provide parking at a rate of 1 space per 200 gross SF.

Table 1 (all tables provided at the end of this memo) shows the existing approved use for each suite, along with the current tenant. As shown in the table, there is approximately 14,150 sf of approved medical office space. Forever Ageless (a medical use) occupies Suite 100 of Building 20271, however this space is currently entitled for office use, and the parking for this suite is

calculated using the rate for office. The square footage and parking space calculation shown in Table 1 are based on net SF.

Table 1 also indicates the currently approved parking rates for each suite. As shown in Table 1, 188 total spaces are required. This is consistent with the parking calculation on page 3 of Resolution No. ZA2012-038. As noted in the introduction, there are 190 parking spaces within the complex, therefore adequate parking is provided per the existing approval. If Suite 100 of Building 20271 (Forever Ageless) was parked according to the City requirement for medical office, then 23 spaces would be required for Forever Ageless, instead of 18. The total parking requirement for the complex would increase to 193 parking spaces, which would not be satisfied by the 190 existing parking spaces.

### Existing Parking Demand

Parking surveys documenting the existing parking demand were conducted at the Birch Heights office complex on Wednesday, October 10 and Thursday, October 11, 2018. The surveys were taken on an hourly basis between 7:00 AM and 6:00 PM. The survey data is provided in Table 2. As shown in the table, the maximum observed parking demand on either day was 146 vehicles, leaving a surplus of 44 spaces during peak parking utilization. The existing tenants utilize parking at a rate of 1 space per 314 occupied sf and occupy 42 fewer spaces than required by City code. The survey data includes the parking demand for Forever Ageless, as this tenant is currently occupying Suite 100 in Building 20271 and was in operation at the time of the survey. As noted previously, when Forever Ageless is included as a medical office, the site would not satisfy the City parking requirement. However, as demonstrated by the parking surveys, there is adequate parking available on-site to accommodate the actual parking demand of the fully-occupied complex, which includes Forever Ageless.

### Conclusion

Forever Ageless, a cosmetic medical office, currently occupies 4,575 net square feet of office space in the Birch Heights office complex located at 20271 – 20321 SW Birch Street in the City of Newport Beach. The space is approved for business or professional office, which per City code requires fewer parking spaces than medical office. When parking for the complex is calculated according to City code requirements and previous approvals, 193 parking spaces would be required. The complex currently has 190 parking spaces, which is adequate to meet the existing observed parking demand of 146 vehicles, as surveyed on October 10, 2018. A change in the approved land use for Suite 100 of Building 20271 from office to medical office would not affect the existing observed parking demand, since Forever Ageless is already in operation and the parking demand was captured in the parking survey. No parking deficiencies would be expected as there would be no change in operation of any business on-site.

If you have any questions about this memo, please do not hesitate to contact me at (949) 794-1186 or at [meghan@epdsolutions.com](mailto:meghan@epdsolutions.com).

Table 1 - Existing Approved Land Use and Parking (Proposed Medical Office Parking Rate for Forever Ageless)

Building	Suite	Size	Approved Land Use	Tenant	Approved Parking Rate <sup>1</sup>	Parking Required	Existing Use Parking Rate <sup>3</sup>	Parking Required
20271	100	4,575	Business Office <sup>2</sup>	Forever Ageless	1 sp/ 250	18.30	1 sp/ 200	22.88
	200	4,575	Professional Office	Akua Behavioral Health/Mind & Body - Drug Addiction Treatment	1 sp/ 250	18.30	1 sp/ 250	18.30
	202		Business Office	MondayOne - Real Estate Development office				
20281	100	4,575	Business Office	Law Offices	1 sp/ 250	18.30	1 sp/ 250	18.30
	200	4,575	Business Office	TAG / The Ankenbrandt Group	1 sp/ 250	18.30	1 sp/ 250	18.30
	201		Business Office	Navigators Print & Design, Inc.				
20301	100	1,525	Medical Office	Newport Plastic Surgery	1 sp/ 250	6.10	1 sp/ 250	6.10
	101	1,525	Business Office	ECN - Nonprofit	1 sp/ 250	6.10	1 sp/ 250	6.10
	102	1,525	Medical Office	La Boutique Med Spa	1 sp/ 250	6.10	1 sp/ 250	6.10
	201	4,575	Business Office	Advanced Environmental Controls				
	202		Business Office	Citizens Business Finance, Inc.	1 sp/ 250	18.30	1 sp/ 250	18.30
	203		Business Office	BudTree Corp.				
	204		Business Office	NetXact, Inc.				
20311	100	2,625	Professional Office	Venice Sanchez & Ryan Wright (Psychiatry)	1 sp/ 250	10.50	1 sp/ 250	10.50
	150	1,950	Medical Office	Back to Basics Health & Wellness Center (Chiropractic)	1 sp/ 250	7.80	1 sp/ 250	7.80
	200	4,575	Medical Office	Dr. Semira Bayati Newport Plastique	1 sp/ 200	22.88	1 sp/ 200	22.88
	210		Medical Office	Pro Age - Medical & Aesthetics				
20321	100	4,575	Medical Office	William DeMoss Chiropractic	1 sp/ 250	18.30	1 sp/ 250	18.30
	200	4,575	Professional Office	Michael McKennon, CPA	1 sp/ 250	18.30	1 sp/ 250	18.30
Total Medical		14,150	Total			187.58	192.15	
Total Office		31,600	Total Parking Required			188	193	
		45,750						

Note: Square footages are estimated based on 4,575 net SF per floor.

SF = Square feet

<sup>1</sup>19,150 sf of medical approved to use 1 sp/250 sf per ZA2012-038. 2nd floor of Building 20311 approved with rate of 1 sp/200 sf.

<sup>2</sup>Currently approved for business office, occupied by medical office.

<sup>3</sup>Using Medical Office rate for Forever Ageless



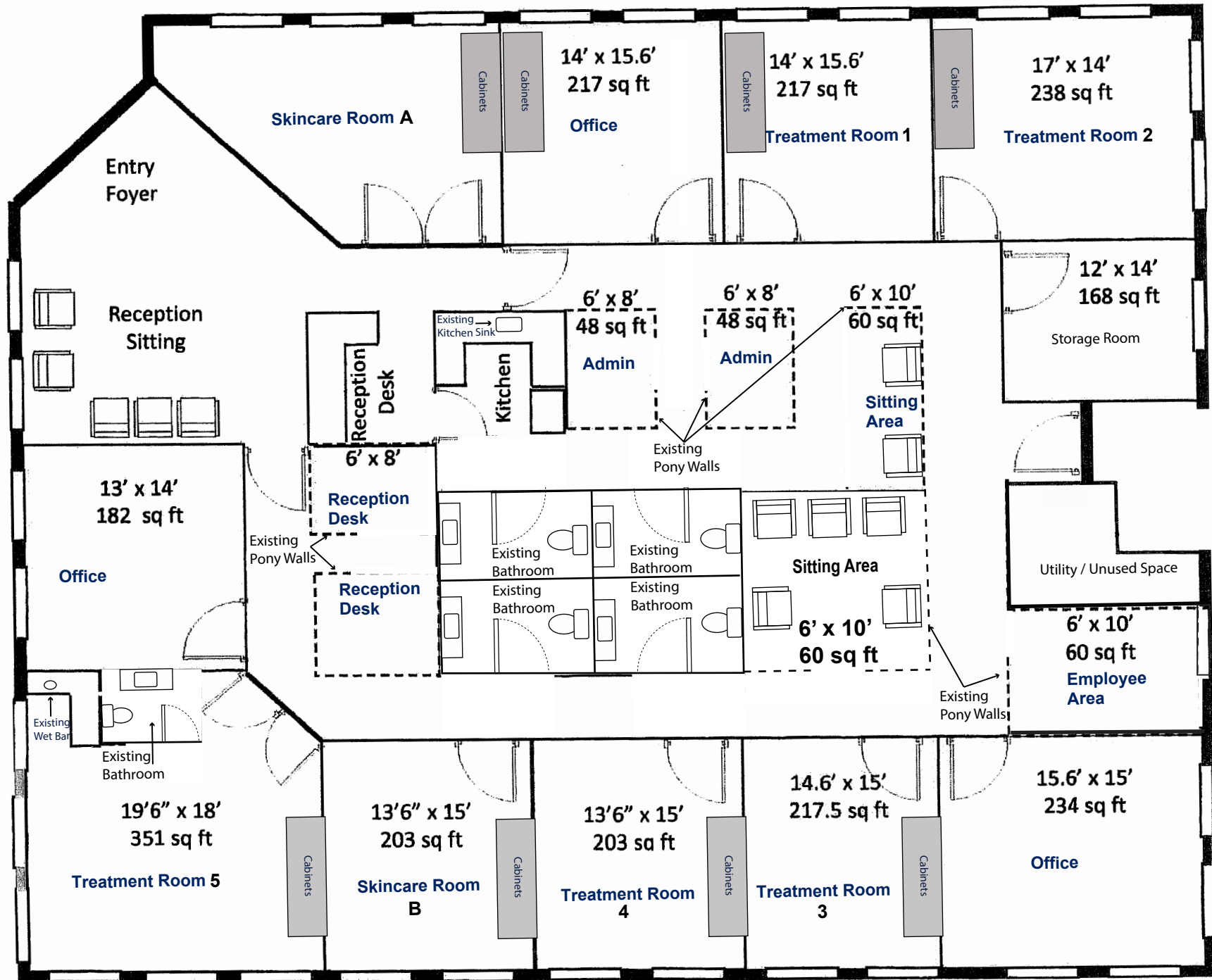
**Table 2. Observed Parking Demand**

	<b>Wednesday 10-10-18</b>			<b>Thursday 10-11-18</b>		
<b>Start Time</b>	<b>Regular</b>	<b>Handicapped</b>	<b>Total</b>	<b>Regular</b>	<b>Handicapped</b>	<b>Total</b>
7:00 AM	22	0	22	24	0	24
8:00 AM	50	0	50	63	0	63
9:00 AM	93	2	95	101	1	102
10:00 AM	133	1	134	132	0	132
11:00 AM	142	4	146	135	2	137
12:00 PM	135	2	137	124	1	125
1:00 PM	110	1	111	119	0	119
2:00 PM	136	1	137	126	0	126
3:00 PM	134	0	134	118	3	121
4:00 PM	128	0	128	115	3	118
5:00 PM	79	0	79	89	1	90
6:00 PM	48	0	48	44	0	44
Peak Demand	142	4	146	135	3	137
Parking Supply	184	6	190	184	6	190
Parking Surplus	42	2	44	49	3	53

## **Attachment No. PC 4**

Project Floor Plan and Photographs

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**RECEPTION SEATING AREA**



**RECEPTION DESK**

**KITCHEN (EXISTING)**



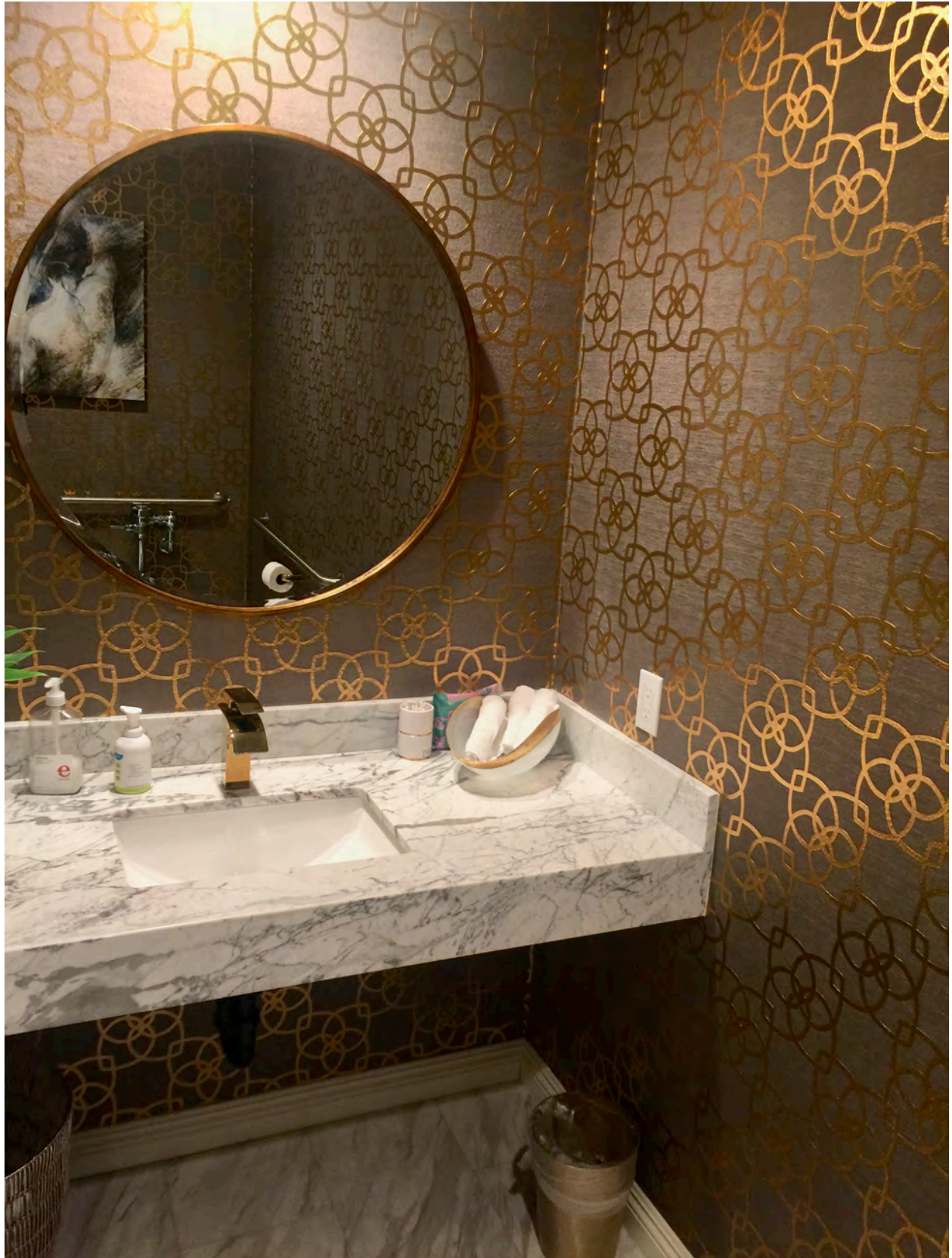


**BACK SEATING AREA – SHOWING EXISTING PONY WALLS (ACROSS FROM TREATMENT ROOM 3)**

**TREATMENT ROOM 4**



**SKINCARE ROOM B**

**CENTRAL BATHROOM (EXISTING)**





**TREATMENT ROOM 5 (SHOWING EXAMPLE OF INSTALLED CABINETS)**



**TREATMENT ROOM 5 – WET BAR (EXISTING)**