

## ATTACHMENT A

### RESOLUTION NO. 2019- 80

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, UPHOLDING AND AFFIRMING THE PLANNING COMMISSION'S APPROVAL OF VARIANCE NO. VA2019-002 TO ALLOW PORTIONS OF A NEW SINGLE-FAMILY RESIDENCE TO EXCEED THE MAXIMUM HEIGHT LIMIT FOR PROPERTY LOCATED AT 1113 KINGS ROAD (PA2019-060)**

**WHEREAS**, an application was filed by Carolyn Reed ("Applicant"), with respect to property located at 1113 Kings Road, and legally described as Lot 31, Block, E, of Tract 1219 in the City of Newport Beach, County of Orange, State of California, as shown on a map thereof recorded in Book 38, Pages 26 and 27 of Miscellaneous Maps, in the Office of the County Recorder of said county ("Property") requesting approval of a variance from Newport Beach Municipal Code ("NBMC") Section 20.30.060 to allow portions of the upper level roof deck, and portions of the office and covered patio on the main level of a new single-family residence to exceed the maximum height limit ("Project");

**WHEREAS**, the Property 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 Property is not located within the coastal zone;

**WHEREAS**, a public hearing was held by the Planning Commission on May 23, 2019, in the City 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 California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing. At the conclusion of the public hearing, the Planning Commission voted 5 ayes and 2 nays to adopt Resolution No. PC2019-015, approving the Project;

**WHEREAS**, on June 5, 2019, Stop Polluting Our Newport ("SPON") filed an appeal of the Planning Commission's decision to approve the Project to the City Council;

**WHEREAS**, a public hearing was held on August 13, 2019, in the City Council Chambers located 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 Chapter 20.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing; and

**WHEREAS**, pursuant to Chapter 20.64 (Appeals) of the NBMC, the City Council public hearing was conducted “de novo,” meaning that the City Council considered all evidence and testimony anew.

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

**Section 1:** The City Council does hereby uphold the Planning Commission’s approval of Variance No. VA2019-002 subject to the conditions of approval attached as Exhibit “A,” and incorporated herein by reference. The City Council’s decision is made in accordance with Section 20.52.090(F) (Variance – Findings and Decision) of the NBMC, and is supported by the following findings and facts:

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 Property is a bluff top residential property that slopes north to south generally consistent with other properties located along the south side of Kings Road; however, this particular Property is unique in that a deep gully severely constrains the northeastern corner of the lot. This gully is an unusual Property feature that burdens the Property with multiple sloping angles and directions that does not generally apply to the other properties along Kings Road.
2. The rear portion of the proposed residence measures approximately 100 feet back from the front property line along Kings Road. The slope differential and change in grade is significant along the western boundary line of the residence as compared to the eastern property line where the gully feature is located. The change in existing grade along the western boundary line is approximately five (5) feet (five percent slope) along the proposed length of the residence, whereas the change in existing grade along the eastern boundary line is approximately 25.5 feet (25.5 percent slope) due to the gully feature.
3. The most significant change in grade along the eastern boundary actually occurs within the first 67 feet of the lot as measured from the front property line, where the

gully at its deepest point (62.85 feet North American Vertical Datum of 1988 [NAVD 88]) is 26.5 feet below the elevation of the front property line (89.3 feet NAVD 88), resulting in a steep slope of 40 percent.

4. The lot also slopes in various directions from east to west. At the front setback line, the difference in grade between the east property line and west property line is approximately 0.8 feet with a 1 percent slope up from west to east. However, at the extreme depth of the gully on the easterly property line (62.85 feet NAVD 88), the corresponding grade measurement on the westerly property line is 20 feet higher (82.94 feet NAVD 88). At this location the lot slopes down 22 percent from west to east.
5. This variation in topography is a result of the gully in the northeastern corner of the lot and presents a unique circumstance in comparison to other properties in its vicinity that warrant the requested variance.

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. Due to physical conditions of the Property including multiple slope grades and angles, strict compliance with Title 20 of the NBMC ("Zoning Code") requirements would deprive the homeowner privileges of a residence burdened by the cost, inconvenience, and loss of functionality enjoyed by other properties in the vicinity under the identical zoning classification.
2. The Zoning Code requires the height of structures to be measured from a grade plane based on an approximation of the existing grade using several grade points. On sloping lots, the height limit is intended to follow the slope of the established grade plane. It is typical for properties on sloping lots to be designed with terracing foundations and a roof that typically maintain a two-level appearance within the allowed height envelope. Due to the topographical constraint that the gully creates on this lot, including multiple slopes in differing directions, strict compliance with the Zoning Code development standards precludes the Property owners from

enjoying this same privilege of designing a two-level terraced design across the buildable width of the lot.

3. The topography featuring multiples slope angles and a gully at a portion of the northeastern property corner, combined with a residence that spans the buildable width of the lot, presents a unique challenge. Strict compliance with the Zoning Code would deprive the Applicant the privilege of building a residence of uniform height across the subject Property which is a privilege enjoyed by other properties in the vicinity and under an identical zoning classification.
4. The entire front of the residence facing the street could be built to 29 feet in height with sloping roofs without a variance. However, the front of the residence is designed to a maximum height of 23.78 feet from existing grade at the front elevation and is the tallest observed height as viewed from Kings Road. Due to the sloped nature of the lot and corresponding maximum height envelope, the first point of height exceedance occurs down-slope away from Kings Road and 22 feet back from the front setback line (33 feet from the curb). The height encroachments are not visually higher than any portion of the residence as viewed from Kings Road because they are behind the complying roof elements at the front of the building.
5. Modifying the proposed design to eliminate the height variance for the enclosed living area would require eliminating an office on the main level, located behind a compliant garage, and eliminating or significantly reducing the size of an upper level closet, bathroom, and teen room. Modifying the design to eliminate the height variance for the outdoor living areas would require eliminating the roof cover over the deck behind the garage and office on the main level and reducing the size of the upper level deck. The appearance of the structure as viewed from Kings Road would not change, but the functionality of the home design would be impacted.
6. The granting of a variance provides relief from Zoning Code height calculations to allow the residence to maintain comparable height across both the east and west sides of the residence to improve and maintain functionality of the house design. It is not intended nor does it in any way permit features or height increases beyond what can be built by right elsewhere on the Property where physical hardships due to topography are not present.
7. The adjacent single-family residence to the east (1101 Kings Rd.), which is also impacted by the topographic gully feature, has been granted two variances in the

past (VA1034 in 1973 and VA1150 in 1989). It provided relief from the topographic constraint allowing the home to be constructed. As viewed from Kings Road, the neighboring residence (100.72 foot ridge elevation) is 11 feet lower in overall roof elevation than the proposed residence (111.92 foot ridge elevation) due to the difference in existing grade from which these residences are measured from. However, the neighboring property is more severely impacted by the gully and the variances authorized a maximum structure height of 45 feet 6 inches and deck height of 36 feet 6 inches as measured from existing grade. These height limit exceedances are approximately 13.5 feet higher for the living area and 12 feet higher for the deck than the proposed variance request.

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. The granting of a variance for the preservation of the applicant's rights to enjoy a residence similar in style and character to the surrounding residences is necessary due to the physical conditions of the Property including varying topography with multiple slope grades in differing directions and the steepness of the grade.
2. The eastern side of the proposed residence is considerably smaller than the western side of the residence and the design extends a smaller distance away from Kings Road on the western side of the residence due to the constraining topographical features. However, the granting of the variance due to the property slopes is necessary to maintain functionality of the house design and by allowing the height increase for approximately 116 square feet of roof area over enclosed living areas and 211 square feet of roof area over a covered patio area to exceed the 29 foot height limit. It would also allow 26 square feet of deck and railing area to exceed the 24 foot flat roof height limit. Strict compliance with the Zoning Code would deprive the applicant the substantial property right of building a residence of uniform height across the Property, a design that is enjoyed by other properties in the vicinity of the variance request. The variance is intended to permit only what can be built by right elsewhere on the Property where physical hardships due to topography of the gully feature are not present.

3. To avoid the topographic constraint associated with the gully, the teen room, decks, and covered patio features of the proposed residence would need to be setback approximately an additional 15 feet from the easterly side setback line (19 feet from easterly property line) to eliminate the need for the variance. This modification to the design would effectively reduce the buildable width from approximately 90 percent of the lot width to 72 percent of the lot width at those locations
4. The over-height areas of the residence are located over a gully feature that slopes significantly in both a north-south direction, as well as east-west direction that creates a challenge to design a residence that is functional and architecturally pleasing. The granting of this variance allows the applicant to preserve and benefit from the development of a residence that utilizes the entire buildable width of the lot similar in style, size, and character of surrounding homes.
5. See Facts in Support of Finding B above, which are also in support of Finding C.

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.*

Facts in Support of Finding:

1. Each segment of Kings Road presents various differing degrees of slope topography and properties are developed with homes and yards reflecting their specific topographic constraints. It is appropriate to evaluate each residence in the immediate vicinity on a case-by-case basis. In this case, the Property is more severely impacted than most other sloping lots on the south side of Kings Road due to the unique gully feature that affects this lot with more drastic changes in topography in multiple directions. Therefore, approval of the variance does not constitute a grant of special privilege in this case.
2. The variance allows the Applicant to develop a single-family residence that effectively utilizes the buildable width of the lot comparable to and compatible with developments on other lots in the vicinity that are identically zoned. Other sloping lots in the vicinity under the same zoning classification along the south side of Kings Road are able to be developed with two-story structures and daylighting basements across the entire width of their lots. The proposed height limit exception

does not result in a special privilege as the variance allows the Applicant to construct a residence that meets their needs while maintaining parity with surrounding development.

3. The Applicant will not achieve additional height beyond what would be permissible on a typical slope that is more representative of the slope on other properties along Kings Road, which are not impacted by a gully feature. Furthermore, when viewed from the street elevation, the residence will provide articulation and will be approximately 5 feet lower than the 29 foot height limit as viewed from the Kings Road and maintain heights consistent with other two-story homes constructed in the vicinity.
4. The adjacent properties across Kings Road benefit from a naturally raised pad, which results in structures that appear taller from the street elevation. The proposed exception from the height limit will not result in a development that is out of character with the neighborhood.

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. The granting of the variance will allow for an increase in the roof area of approximately 353 square feet, which equates to approximately 5.7 percent of the total roof area (6,199 square feet). The remaining roof area will be located under the 24 foot flat roof and 29 foot sloping roof height limit
2. The design of the structure includes adequate articulation, modulation, and open volume area consistent with the requirements of the Zoning Code.
3. The granting of the variance will not create a visual impact to the community or impact public or private views. Currently there are no public views from Kings Road to the south due to the existing residence and garages. The over-height features will not be visible from Kings Road or residence across the street since they would

be located behind height-compliant portions of the structure as viewed from the street. Additionally, the over-height features would not be readily noticeable as viewed from West Coast Highway below due to the distance from the highway and the limited size and height of the features proposed that would exceed the height limit. Therefore, the variance will not create a visual impact on surrounding areas or roadways.

4. Although the City does not have private view protection policies, the proposed residence will not negatively impact the private views of the residences on the north side of Kings Road or the public as a result of granting the variance. The Zoning Code allows the residence to be built to the 29 foot height limit across the entire front of the property along Kings Road, but the proposed structure is approximately five feet lower than the allowed 29 foot height limit as viewed from the street. The small portions of roofs requiring the variance will not be visible from the street elevation of Kings Road and will not impact private views from the northerly side of Kings Road any more than a conforming design.
5. The portions of the structure that exceed the height limit would be most visible from the property to the east that is also impacted by the gully feature. To minimize the bulk and mass of the structure as viewed from the neighboring property, the roof planes have been designed to pitch down towards the easterly neighbor. Furthermore, the portion of the upper level bathroom that appears as a third level as viewed from the neighbor to the east has been setback an additional two feet beyond the four-foot side setback to further minimize the bulk and mass of the visibly tallest portion of the residence where the grades are lowest. The over-height covered patio on the main level is open on the side, increasing building modulation and further reducing the visual mass of the structure.
6. There are no public views over or adjacent to the Property.

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. The Zoning Code provides the flexibility in application of land use and development regulations through the variance review process. The variance procedure is



intended to resolve practical physical hardships resulting from the unique topography and lot configurations that exist in the City and on this Property. Due to the topography of the lot, height and design of buildings on neighboring properties, the height limit exception can be approved by the City Council through this variance request.

2. The Property is designated for single-unit residential use and the granting of the variance does not increase the density or floor area beyond what is planned for the area, and will not result in additional traffic, parking, or demand for other services.
3. The Property is not located within a specific plan area.

**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 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. Class 3 exempts the construction of new small facilities or structures including up to three new single-family residences in urbanized areas. The Project is the construction of one new single-family residence. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The Project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

**Section 5:** This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

**ADOPTED** this 10th day of September 2019.

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Diane B. Dixon  
Mayor

**ATTEST:**

\_\_\_\_\_  
Leilani I. Brown  
City Clerk

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
\_\_\_\_\_  
Aaron C. Harp  
City Attorney

Attachment: Exhibit A – Conditions of Approval

## **EXHIBIT "A"**

### **CONDITIONS OF APPROVAL**

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 Variance.
4. This Variance may be modified or revoked by the Planning Commission should they determine that the proposed use or conditions under which it is being constructed or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is constructed or maintained so as to constitute a public nuisance.
5. A copy of the Resolution, including conditions of approval (Exhibit "A") shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
6. 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.
7. 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.
8. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, 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.
9. 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).

10. 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 the Reed Residential Variance (PA2019-060) including, but not limited to, Variance No. VA2019-002. 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.