

Attachment G

December 5, 2019 Planning Commission Draft
Hearing Minutes

**NEWPORT BEACH PLANNING COMMISSION MINUTES
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, DECEMBER 5, 2019
REGULAR MEETING – 6:30 P.M.**

I. CALL TO ORDER – The meeting was called to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE – Commissioner Ellmore

III. ROLL CALL

PRESENT: Chair Peter Koetting, Vice Chair Erik Weigand, Secretary Lee Lowrey, Commissioner Curtis Ellmore, Commissioner Lauren Kleiman, Commissioner Mark Rosene

ABSENT: Commissioner Sarah Klaustermeier

Staff Present: Community Development Director Seimone Jurjis, Deputy Community Development Director Jim Campbell, Assistant City Attorney Yolanda Summerhill, City Traffic Engineer Tony Brine, Police Civilian Investigator Wendy Joe, Assistant Planner David Lee, Assistant Planner Liz Westmoreland, Administrative Support Specialist Clarivel Rodriguez, Administrative Support Technician Amanda Lee

IV. PUBLIC COMMENTS

None

V. REQUEST FOR CONTINUANCES

None

VI. PUBLIC HEARING ITEMS

ITEM NO. 1 LIDO ISLE HEDGE HEIGHTS CODE AND LCP AMENDMENTS (PA2019-132)
Site Location: Lido Isle

Summary:

Amendments to Newport Beach Municipal Code (NBMC) Title 20 (Planning and Zoning) and NBMC Title 21 (Local Coastal Program Implementation Plan) to raise maximum hedge height limitations in front setbacks abutting stradas on Lido Isle from 42 inches to 60 inches.

Recommended Action:

1. Receive public comments;
2. Find the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15050(c)(3), and 1537. The proposed action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment;
3. Adopt Resolution No. PC2019-035 recommending the City Council approve Code Amendment No. CA2019-005; and,
4. Adopt Resolution No. PC2019-036 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2019-002 to the California Coastal Commission.

Commissioners Rosene, Kleiman, Ellmore, Lowrey and Weigand disclosed no ex parte communications. Chair Koetting disclosed his receipt of correspondence from a neighbor.

Assistant Planner David Lee reported Lido Isle Covenants, Conditions, and Restrictions (CC&Rs) allow hedges to reach a maximum height of 5 feet, but City regulations allow a maximum height of 3.5 feet. The Lido Isle Community Association (LICA) has requested a Code amendment to increase the maximum hedge height for Lido Isle to 5 feet when the hedge is located in the front setback abutting a strada only. The City Council approved initiation of the subject Code amendment on September 10, 2019.

Assistant Planner Lee stated that Lido Isle consists of primarily single-family residences and a handful of multi-unit lots. Stradas, defined as public pedestrian walkways with no vehicular access, are located throughout Lido Isle. Residents of Lido Isle commonly utilize the yard area abutting a strada as a backyard and allow hedges to grow taller to provide more privacy for the yard. Lido Isle properties are subject to front setbacks of 10 feet along stradas, 4 feet along streets, and 1.5 feet along side streets but no rear setbacks. In a traditional configuration, the maximum allowed height for hedges and walls is usually greater in the required rear yards than in the front yard in order to create more privacy. Lido Isle properties typically have a front yard abutting a strada and a second front yard abutting a street. The maximum allowed height for hedges and walls in front yards is 3.5 feet. Thus, Lido Isle residents have little private outdoor space. The proposed Code amendment increases the allowed height of hedges located in front setbacks abutting Lido Isle stradas to 5 feet consistent with the CC&Rs.

In reply to Chair Koetting's inquiries, Assistant Planner Lee advised that residents have to trim an overgrown hedge to a height of 5 feet. In 2001, the Lido Isle Community Association increased the maximum hedge height from 30 inches to 60 inches. The City's maximum allowed hedge height has always been 42 inches or 3.5 feet. Deputy Community Development Director Jim Campbell noted an increase in the maximum hedge height will not impact any public views from any of the stradas. The Local Coastal Program Implementation Plan has to be amended to allow a less restrictive requirement for hedge heights on Lido Isle.

Chair Koetting opened the public hearing.

Eric Henn, Lido Isle Community Association President, explained that front doors face the street on Lido Isle rather than the strada because garages are located along the street. In 2001, residents voted to increase the hedge height to 5 feet to provide some privacy for homes' backyards.

Scott Souders supported the proposed amendment. His Lido Isle home has 5-foot hedges along the strada. Without the hedges, a pedestrian can look into his home.

Chair Koetting closed the public hearing.

Motion made by Vice Chair Weigand and seconded by Commissioner Kleiman to adopt Resolution No. PC2019-035 recommending the City Council approve Code Amendment No. CA2019-005 and Resolution No. PC2019-036 recommending the City Council authorize staff to submit Local Coastal Program Amendment No. LC2019-002 to the California Coastal Commission.

AYES: Koetting, Weigand, Lowrey, Ellmore, Kleiman, Rosene
NOES:
ABSTAIN:
ABSENT: Klostermeier

ITEM NO. 2 FUNKE VARIANCE (PA2018-042)
Site Location: 536 Hazel Drive

Summary:

A request to construct a 777-square-foot addition to an existing 2,011-square-foot, single-family residence to accommodate a Code-compliant two-car garage and additional second-floor living area. Specifically, the variance is requested to allow a portion of the proposed garage and new second-floor bedroom to encroach 2 feet into the required 5-foot front setback along Hazel Drive.

Recommended Action:

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. PC2019-037 approving Variance No. VA2018-002.

Assistant Planner Liz Westmoreland reported the property is located north of East Coast Highway at the edge of Corona del Mar. A portion of the property is located in Buck Gully. The house was built in the 1950s and has a

nonconforming carport. In 1988, a modification permit was approved for a similar project on the property. However, the project was not constructed, and the permit expired. The applicant seeks to build a compliant two-car garage, to modernize the house, to add square footage, and to maintain the natural canyon area at the rear of the site. The applicant has requested approval of a variance to allow a portion of the new construction to encroach 2 feet into the 5-foot front setback. The stair and front entryway will not encroach into the front setback. The proposed construction will add approximately 350 square feet and a garage to the home. The buildable area of the lot is constrained by the principal structure stringline such that the available area on the lot to construct a residence is smaller than any other property on the 400 and 500 blocks of Hazel Drive. Since other projects have built out further than the subject project, they can be rebuilt in the existing location. The subject project does not have the same ability. Staff recommends approval of the variance because it will remove two cars from the street. Approximately 85 square feet of the proposed structure on both the first and second level will encroach into the front setback.

Commissioners Rosene, Kleiman, Ellmore, Lowrey and Weigand disclosed no ex parte communications. Chair Koetting disclosed a conversation with a neighbor.

In response to Vice Chair Weigand's queries, Assistant Planner Westmoreland indicated granting the variance would not create a precedent for neighboring properties. About four other projects along the street have received modification permits or variances allowing similar construction reducing the front yard setback. The prior variances and modifications do not create a precedent, but do help demonstrate compatibility. The other similar projects have not been detrimental to the community.

In answer to Commissioner Ellmore's questions, Assistant Planner Westmoreland explained that the applicant proposes to work within the existing structure while remodeling and adding square footage. The structure will have to comply with current Building Codes. In order to be considered a remodel rather than a redevelopment, the project must retain some loadbearing components of the structure. If the applicant proposed to rebuild the structure, a variance may still be required because the constraint on buildable area would be the same.

In reply to Commissioner Rosene's inquiries, Assistant Planner Westmoreland indicated the stringline policy of the General Plan causes development to expand out or towards the street. Deputy Community Development Director Campbell indicated that redevelopment of homes along Buck Gully could extend structures towards Buck Gully over time, but a General Plan amendment would be required to revise the policy and prevent any expansion towards the Buck Gully.

In response to Chair Koetting's queries, Assistant Planner Westmoreland advised that the structure does not meet the definition of a cottage. Staff proposed Condition of Approval No. 2 because the applicant wanted to maintain the existing foundation and structural components. If the project is extended into the canyon to the principal stringline, then the applicant has indicated that the foundation and structural components would have to be completely replaced to support the addition. Condition of Approval No. 2 is intended to keep the applicant from extending into both the canyon and into the front setback.

Chair Koetting opened the public hearing.

Erich Funke, property owner, reported the purpose of the project is to create a livable, modern home and a usable garage. The proposed two-car garage will replace the existing master bedroom, which will be relocated to the new second floor. He agreed to the proposed conditions of approval.

Tracey Funke, property owner, indicated one adjacent neighbor has an existing two-car garage and a second adjacent neighbor will be constructing a two-car garage. Neighbors support the project.

Jim Mosher noted the staff report does not refer to the Implementation Program for the General Plan policy and questioned the absence of an implementing regulation from the Zoning Code. In addition, he questioned the rationale for the applicant requesting a variance rather than applying for a modification permit. The variance is needed because the applicant does not want to move a wall of the structure, not because the stringline constrains the buildable area.

Deputy Community Development Director Campbell explained that in updating the Zoning Code in 2010, the Council limited the scope of modification permits to no more than 10 percent of the standard. The applicants could not achieve their objectives through a modification permit because the relief sought exceeds 10 percent of the standard leading to the subject variance application. Amending the Zoning Code to include regulations to implement the stringline policy is an item on staff's work plan. The unique circumstances in this case include the steep topography, the regulations, and the interior wall. Denying the variance request could result in the applicant selling the home to someone who would demolish the existing structure and build a home with a large basement.

In answer to Commissioner Ellmore's questions, Deputy Community Development Director Campbell stated the project is an extensive remodel with an addition. The appearance of the proposed home will be completely different from the existing structure.

Assistant Planner Westmoreland reported Condition of Approval No. 12, regarding construction noise, should state "... on Saturdays, Sundays or Holidays."

In response to Commissioner Rosene's inquiry, Deputy Community Development Director Campbell clarified that the Council revised the modification permit process in 2010. The applicants cannot utilize a modification permit because of the amount of relief they are seeking.

Steve Prough, a neighbor, expressed his support for the project.

Chair Koetting closed the public hearing.

Motion made by Secretary Lowrey and seconded by Chair Koetting to approve staff's recommendation with the revision of Condition of Approval No. 12.

AYES: Koetting, Weigand, Lowrey, Ellmore, Kleiman, Rosene
NOES:
RECUSED:
ABSENT: Klaustermeier

Commissioner Kleiman departed the meeting at approximately 7:12 p.m.

ITEM NO. 3 MALIBU FARM EXPANSION (PA2019-057)
Site Location: 3416, 3420, and 3424 Via Oporto

Summary:

A minor use permit to expand an existing food service, eating and drinking establishment with a Type 47 (On-Sale General for Bona Fide Public Eating Place) Alcoholic Beverage Control (ABC) license. The existing restaurant is located at 3420 Via Oporto and includes indoor and outdoor areas. The existing 624-square-foot, take-out-only ice cream and coffee shop (to remain) is located at 3416 Via Oporto. The proposed expansion would convert the existing Malibu Farm retail store at 3424 Via Oporto into additional restaurant space. No late hours (after 11 p.m.) are proposed. If approved, this Minor Use Permit would supersede Use Permit No. UP2017-026.

Recommended Action:

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;
3. Adopt Resolution No. PC2019-038 approving Minor Use Permit No. UP2019-022 and rescinding Use Permit No. UP2017-026.

Assistant Planner Westmoreland reported the Planning Commission approved a minor use permit for the existing restaurant in 2017. In 2018, a conditional use permit addressed parking for Lido Marina Village and allocated the maximum square footage for restaurant uses in Lido Marina Village. If the Planning Commission approves the project, 115 square feet of net public area will remain for restaurant uses within Lido Marina Village. The applicant proposes to expand the existing restaurant and add a small back-of-house area to the former Malibu Farm retail space. The applicant does not propose to operate the business after 11 p.m. The 2018 conditional use permit for parking at Lido Marina Village includes a condition of approval requiring a minimum of 6 feet for public access along the waterfront but 10 feet is the ideal. Assistant Planner Westmoreland described an improvement within the existing public walkway easement to provide a gated landing area for an ADA-accessible gangway that redirects the public. Staff does not recommend approval of the proposed patio area because it would allow for less than 10 feet of access, the ideal standard, and could further impede public access in the presence of the gated landing area.

Commissioners disclosed no ex parte communications.

In answer to Vice Chair Weigand's inquiry, Assistant Planner Westmoreland advised that the gangway provides access to different uses within the existing waterfront marina.

Chair Koetting opened the public hearing.

John Stockwell, business owner, remarked that the patio is important to the restaurant because people like to sit outside. The distance between the proposed patio and the railing is only 5 feet, and pedestrians have to walk around it. He proposed constructing a patio 10 feet away from the ADA-accessible gangway. The railing is a sidewalk obstruction with or without the proposed patio.

In reply to Vice Chair Weigand's inquiries, Assistant Planner Westmoreland clarified that the condition of approval states the public walkway along the waterfront should be 10 feet wide. The proposed patio would provide a 6-foot accessway to the accessible gangway and encroach into the sidewalk. The restaurant has an existing patio. Police Civilian Inspector Wendy Joe stated the Police Department's only interest in the project pertains to alcohol licensing and use. Deputy Community Development Director Campbell suggested staff could structure the conditions so that the Planning Commission could approve the project with the proposed patio and the applicant could submit modifications to the patio for ministerial review and the Director's approval.

In answer to Chair Koetting's question, Assistant Planner Westmoreland indicated an engineer familiar with accessibility requirements would have to determine if the landing could be relocated.

In response to Commissioner Ellmore's queries, Mr. Stockwell advised that the proposed patio can accommodate eight seats, and the edge of the patio would be 10 feet 5 inches away from the landing. The patio does not receive direct sunlight because it's on the north side of the building, and umbrellas probably would not be needed for shade.

In answer to Vice Chair Weigand's questions, Deputy Community Development Director Campbell related that a retractable awning or umbrellas over the patio could be feasible. Previously, the Planning Commission included a condition of approval indicating an ideal sidewalk would be 10 feet wide. A minimum width of 6 feet is acceptable to staff.

Mr. Stockwell expressed concern regarding Conditions of Approval Nos. 2 and 6. Kristofer Golder, DJM Capital, requested Condition of Approval No. 2 to be deleted because the applicant wants to retain the outdoor patio; he requested Condition of Approval No. 3 should be modified to state maintenance of a 6-foot pedestrian easement clear of any obstructions; Condition of Approval No. 6 should be deleted because it states only the existing patio shall be permitted; and a condition of approval may be added to require reconfiguring or removing the existing ADA railings at the gangway to maintain clearance on the boardwalk.

Chair Koetting suggested the Planning Commission continue the item so that staff and the applicant can resolve issues with the conditions of approval and the ADA-accessible gangway. He expressed concern about insufficient parking to support an expansion of the restaurant.

Motion made by Chair Koetting and seconded by Commissioner Ellmore to continue the item.

In reply to Vice Chair Weigand's inquiries, Assistant Planner Westmoreland reported the expansion falls within the allowable square footage allocated to restaurant uses under the parking study and the conditional use permit for parking. The condition requires the boardwalk to be a minimum of 6 feet wide and ideally 10 feet wide. With the proposed patio, the boardwalk will be 6 feet wide.

Vice Chair Weigand preferred to allow ministerial review and approval of any changes rather than to continue the item. Deputy Community Development Director Campbell advised that staff could likely work with the applicant and return the item to the Commission on January 9, 2020. If the gated gangway landing could be relocated, staff would support the proposed patio.

Commissioner Rosene could approve the project with ministerial review of modifications to the landing.

Community Development Director Seimone Jurjis indicated that the holiday closure would delay resolution of the issues beyond the next few weeks.

Jim Mosher related that the building faces east, and the proposed patio would receive the morning sun. Condition of Approval No. 57 refers to a 60-day time period but does not state the action that begins the 60-day period.

Assistant Planner Westmoreland recommended Condition of Approval No. 57 state "within 60 days of approval."

Chair Koetting closed the public hearing.

Chair Koetting and Commissioner Ellmore withdrew the motion.

Secretary Lowrey could agree to continuing the item or approving the project with ministerial review but did not wish to delay the project unduly.

Based on Mr. Golder's confirmation that construction plans have not been submitted, Chair Koetting commented that construction could not begin for several months. He proposed any motion require resolution of the ADA-accessible gangway prior to allowing the applicant to implement the outdoor patio.

Deputy Community Development Director Campbell recommended the Planning Commission: (1) replace Condition of Approval No. 2 with "the proposed 132-square-foot outdoor patio may be permitted provided the existing dock railing impediment within the 6-foot easement is removed or relocated to the satisfaction of the Director;" (2) delete the second and third sentences from Condition of Approval No. 3; and (3) delete the second and third sentences from Condition of Approval No. 6.

In answer to Commissioner Ellmore's query, Mr. Golder advised that an awning that does not impede the boardwalk could be installed over the proposed patio. Condition of Approval No. 10 may be modified to state "the use of umbrellas for shade purposes shall be permitted. Any other type of outdoor covering shall be subject to review and approval by the Community Development Director."

Motion made by Vice Chair Weigand and seconded by Commissioner Rosene to adopt Resolution No. PC2019-038 approving Minor Use Permit No. UP2019-022 and rescinding Use Permit No. UP2017-026 with the stated revisions to Conditions of Approval Nos. 2, 3, 6, 10, and 57.

AYES: Koetting, Weigand, Lowrey, Ellmore, Rosene
NOES:
RECUSED:
ABSENT: Klostermeier, Kleiman

VII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 MOTION FOR RECONSIDERATION

None

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

Community Development Director Jurjis appreciated Commissioners' service during 2019. The next meeting will be January 9, 2020. The Council has requested that staff prepare an action plan to address the Regional Housing Needs Allocation (RHNA) for the City, and staff will present an action plan to the Council on January 14, 2020. Listen and Learn workshops are scheduled for Districts 1 and 4, next week.

ITEM NO. 6 REQUESTS FOR EXCUSED ABSENCES

None

VIII. ADJOURNMENT – 7:55 p.m.

The agenda for the December 5, 2019, Planning Commission meeting was posted on Friday, November 22, 2019, at 3:00 p.m. in the Chambers binder, on the digital display board located inside the vestibule of the Council Chambers at 100 Civic Center Drive, and on the City's website on Friday, November 22, 2019, at 1:05 p.m.

Peter Koetting, Chairman

Lee Lowrey, Secretary