



CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

March 12, 2020
Agenda Item No. 3

SUBJECT: 428 Fernleaf, LLC Condominiums (PA2019-231)
▪ Coastal Development Permit No. CD2019-066
▪ Tentative Parcel Map No. NP2019-012
▪ County Tentative Parcel Map No. 2019-156

SITE LOCATION: 428 Fernleaf Avenue

APPLICANT: JFB Custom Homes

OWNER: 428 Fernleaf, LLC

PLANNER: Melinda Whelan, Assistant Planner
949-644-3221 or mwhelan@newportbeachca.gov

LAND USE AND ZONING

- **General Plan Land Use Plan Category:** RT (Two Unit Residential)
- **Zoning District :** R-2 (Two-Unit Residential)
- **Coastal Land Use Plan Category:** RT-D (Two Unit Residential) – (20.0 – 29.9 DU/AC)
- **Coastal Zoning District:** R-2 (Two-Unit Residential)

PROJECT SUMMARY

A request for a coastal development permit (CDP) and tentative parcel map for two-unit condominium purposes. A single-family dwelling has been demolished and a new duplex is under construction. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. The Tentative Parcel Map would allow each unit to be sold individually. The Tentative Parcel Map also requires the approval of a coastal development permit pursuant to NBMC Title 21 (Local Coastal Program Implementation Plan).

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) 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; and

- 3) Adopt Draft Zoning Administrator Resolution No. __ approving Coastal Development Permit No. CD2019-066 and Tentative Parcel Map No. NP2019-012 (Attachment No. ZA 1).

DISCUSSION

- A single-family dwelling has been demolished and a new duplex is under construction, which will provide the required two-car parking per unit. Vehicular access will be maintained from the alley, which is consistent with the pattern of development for this block of residential dwellings.
- The subject property is generally flat and measures approximately 3,537 square feet in area.
- Approval of the Tentative Parcel Map will allow each unit to be sold individually.
- The property is designated for two-unit residential use by the General Plan, Zoning Code, Local Coastal Program, and the Coastal Zoning in the Implementation Plan. The new duplex is consistent with these designations and a tentative parcel map for condominiums does not change the use.
- The new condominium project will conform to current NBMC requirements and will meet all Title 19 standards.
- Prior to the recordation of the Parcel Map, an In-Lieu Park Dedication fee shall be assessed for one unit due to the increase in ownership units with the Tentative Parcel Map.
- The Tentative Parcel Map is for condominium purposes and meets all of the requirements of the Local Coastal Program Implementation Plan, including NBMC 21.30.025 (Coastal Zone Subdivisions). The subject property is located within a developed neighborhood. The subject property is approximately 1,600 feet from the Harbor entrance and lies within the Categorical Exclusion Area. The demolition of the single-family residence and development of the duplex was approved pursuant to the City's Categorical Exclusion Order (CEO2019045).
- The project site is not located between the nearest public road and the sea or shoreline. In this case, the project is a tentative parcel map for condominium purposes. A single-family dwelling has been demolished and a new duplex is under construction. As such, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.

- Public improvements such as repair and/or replacement of broken and/or otherwise damaged sidewalk panels, curb/gutter and street along the Fernleaf Avenue property frontage, as well as any damaged concrete alley panels, will be required of the applicant per the NBMC and Subdivision Map Act.

ENVIRONMENTAL REVIEW

The project is categorically exempt under Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and Zoning Code, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

PUBLIC NOTICE

Notice of this application was published in the Daily Pilot, mailed to all owners and residential occupants 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 hearing, 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.

APPEAL PERIOD:

This action shall become final and effective 14 days following the date the Resolution is adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of NBMC Title 21 (Local Coastal Implementation Plan). Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:



Melinda Whelan
Assistant Planner

BMZ/msw

Attachments:	ZA 1	Draft Resolution
	ZA 2	Vicinity Map
	ZA 3	County Tentative Parcel Map No. 2019-156

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2020-###

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2019-012 AND COASTAL DEVELOPMENT PERMIT NO. CD2019-066 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 428 FERNLEAF AVENUE (PA2019-231)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by JFB Custom Homes (“Applicant”), with respect to property located at 428 Fernleaf Avenue, and legally described as Lot 10, Block 433, of the Corona del Mar Tract, requesting approval of a tentative parcel map and a coastal development permit for condominium purposes.
2. The Applicant requests a coastal development permit (CDP) and tentative parcel map for two (2)-unit condominium purposes. A single-family dwelling has been demolished and a new duplex is currently under construction. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. The Tentative Parcel Map would allow each unit to be sold individually. The Tentative Parcel Map also requires the approval of a coastal development permit pursuant to NBMC Title 21 (Local Coastal Program Implementation Plan).
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two Unit Residential (RT).
4. The subject property is also located within the coastal zone. The Coastal Land Use Plan designation is Two Unit Residential (20.0 – 29.9 DU/AC) (RT-D) and it is within the Two-Unit Residential (R-2) Coastal Zoning District.
5. A public hearing was held on March 12, 2020, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator 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 15315 under Class 15 (Minor Land Divisions) 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.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division

is in conformance with the General Plan and Zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

Coastal Development Permit

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of NBMC Title 21 (Local Coastal Program Implementation Plan) and approves the coastal development permit based on the following findings per NBMC Subsection 21.52.015(F):

Finding:

A. That the proposed map conforms to all applicable sections of the certified Local Coastal Program.

Facts in Support of Finding:

1. The Tentative Parcel Map is for condominium purposes and meets all of the requirements of the Local Coastal Program, including NBMC Section 21.30.025 (Coastal Zone Subdivisions).
2. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code and Building Division standards and policies. This was addressed during the plan check review. The permit has been issued and the new duplex is under construction.
3. The Tentative Parcel Map is for a property within a developed residential neighborhood. The subject property is approximately 1,600 feet from the Harbor entrance and lies within the Categorical Exclusion Area. The demolition of the single-family residence and development of the duplex was approved pursuant to the City's Categorical Exclusion Order (CEO2019045).

Finding:

B. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

Fact in Support of Finding:

1. The project site is not located between the nearest public road and the sea or shoreline. In this case, the project is a tentative parcel map for condominium purposes. A single-family dwelling has been demolished and a new duplex is under construction meeting all condominium standards. As such, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.

Tentative Parcel Map

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of NBMC Title 20 (Planning and Zoning) and is approved based on the following findings per NBMC Section 19.12.070 (Required Findings for Action on Tentative Maps):

Finding:

- C. That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

1. The Tentative Parcel Map is for two (2)-unit residential condominium purposes. A single-family dwelling has been demolished and a new duplex is under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the broken and/or otherwise damaged sidewalk panels, curb/gutter and street along the Fernleaf Avenue property frontage, as well as any damaged concrete alley panels consistent with NBMC Title 19 (Subdivision Code).

Finding:

- D. That the site is physically suitable for the type and density of development.*

Facts in Support of Finding:

1. The lot is physically suitable for a duplex development because it is rectangular in shape, topographically flat, and was previously developed with a duplex.
2. The subject property is accessible from the alley and is adequately served by existing utilities.

Finding:

E. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

1. A single-family dwelling has been demolished and a new duplex is currently under construction. There will be no change in land use or density as a result of this project.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the CEQA Guidelines – Class 15 (Minor Land Alterations).

Finding:

F. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.

Fact in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per NBMC Section 19.28.010 (General Improvement Requirements) and Section 66411 (Local Agencies to Regulate and Control Design of Subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

G. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to

determine that the public at large has acquired easements for access through or use of property within a subdivision.

Fact in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

H. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site is developed for residential use and is located in a Zoning District that permits residential uses.

Finding:

I. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.

Facts in Support of Finding:

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a "land project" as previously defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land.
2. The project is not located within a specific plan area.

Finding:

J. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

K. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.

Fact in Support of Finding:

1. The proposed duplex is consistent with the R-2 Zoning District, which allows two (2) residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

L. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.

Fact in Support of Finding:

1. The design of the new duplex was reviewed as part of the building permit plan check process and will be constructed such that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

M. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.

Fact in Support of Finding:

1. The subject property is within the Coastal Zone. The Facts in Support of Findings A and B above are hereby incorporated by reference.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) 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 Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2019-012 and Coastal Development Permit No. CD2019-066, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of NBMC Title 21 (Local Coastal Program Implementation Plan). Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 12TH DAY OF MARCH, 2020.

Jaime Murillo, Zoning Administrator

EXHIBIT “A”**CONDITIONS OF APPROVAL****PLANNING**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Subsequent to the recordation of the Parcel Map, the Applicant shall apply for a building permit for a description change of the subject project development from “duplex” to “condominium.” The development will not be condominiums until this permit is final.
3. Prior to the recordation of the Parcel Map, an In-Lieu Park Dedication fee shall be assessed for the increase in density by one (1) ownership dwelling unit. The fee paid shall be consistent with that in effect at the time of payment.
4. The building permit for the new construction shall not be final until after recordation of the Parcel Map.
5. 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 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan).
6. 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 428 Fernleaf, LLC Condominiums including, but not limited to, Tentative Parcel Map No. NP2019-012 and Coastal Development Permit No. CD2019-066 (PA2019-231). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City’s costs, attorneys’ fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

PUBLIC WORKS

6. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub-article 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
7. Prior to recordation of the Parcel Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub-article 18. Monuments (one [1]-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. The Applicant shall repair and/or replace all damaged street, sidewalk panels and curb/gutter along the Fernleaf Avenue property frontage and any damaged concrete alley panels along the alley property frontage, as determined by the Public Works Department.
10. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed per City standard with a traffic-grade box and cover.
11. There are no above ground improvements permitted within the five (5)-foot rear alley setback area.
12. An encroachment permit is required for all work activities within the public right-of-way.
13. All existing private improvements, including rocks and pavers within the public right-of-way fronting the development site shall be removed.
14. The Applicant shall install new sod or low groundcovers of the type approved by the City throughout the Fernleaf Avenue parkway fronting the development site.
15. All improvements shall comply with the City's sight distance requirement. See City Standard STD-110-L.
16. Abandon the existing driveway approach along the Fernleaf Avenue frontage per City Standard STD-165-L.

17. All existing overhead utilities shall be undergrounded.
18. The Applicant shall install a new 36-inch box street tree along the Fernleaf Avenue public right-of-way.
19. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

BUILDING

20. Independent utility services shall be provided for each unit.
21. Independent fire risers shall be required for each unit.
22. All construction shall comply with the California Code of Regulations.

Attachment No. ZA 2

Vicinity Map

VICINITY MAP



Coastal Development Permit No. CD2019-066
Tentative Parcel Map No. NP2019-012
PA2019-231

428 Fernleaf Avenue

Attachment No. ZA 3

Tentative Parcel Map

LOT 10
BLOCK 433
CORONA DEL MAR
M.M. 3/41-42

LOT 10 IN BLOCK 433 OF CORONA DEL MAR IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 41 & 42 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

428 FERNLEAF, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY



SCALE = 1" = 16'



PREPARED BY: A. R. H.

10/15/2019

PAUL D. CRAFT, P.L.S. 8516
LICENSE EXPIRES 12/31/20
JN: 19058

DATE _____

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