



CITY OF NEWPORT BEACH

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newportbeachca.gov/PublicWorks

Delivered via Regular U.S. Mail and Electronic Mail

January 18, 2024

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attn: Gary McKitterick
2010 Main Street, 8th Floor
Irvine, CA 92614-7214

RE: Notice of Harbor Commission Decision: 101 Bayside Place Appeal, Plan Check
#HAIC2022-1651

Mr. McKitterick,

On January 10, 2024, the Harbor Commission adopted Resolution HC2024-01 (attached) denying the appeal and upholding the approval in concept of the residential dock reconfiguration at 101 Bayside Place. Newport Beach Municipal Code states that the reviewing body shall issue a written decision within a reasonable time.

Since the Harbor Commission Chair and Secretary signed Resolution HC2024-01 late this afternoon, the fourteen (14) day appeal period will commence on January 19, 2024 and end on February 1, 2024. If no appeal or call for review of the decision is filed within the fourteen (14) calendar days, the decision is final.

Please feel free to contact me if you have any questions.

Thank you,

Chris Miller
Public Works Manager
cmiller@newportbeachca.gov
(949) 644-3043

Enclosures

cc: Mark and Melody Robinson (via regular mail only w/ Encls)
Michael Torres, Newport Pacific Law, P.C. (via e-mail only w/ Encls.)
Jacquelyn Chung, CPS Consulting (via e-mail only w/ Encls.)

RESOLUTION NO. HC2024-01

A RESOLUTION OF THE HARBOR COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA DENYING THE APPEAL AND UPHOLDING THE APPROVAL IN CONCEPT OF THE RESIDENTIAL DOCK RECONFIGURATION AT 101 BAYSIDE PLACE

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

SECTION 1. STATEMENT OF FACTS.

1. On November 8, 2023, Mark and Melody Robinson (“Appellant”), owners of 103 Bayside Place, filed an appeal of the Public Works Director’s decision of November 1, 2023 approving in concept the application by Larry Van Tuyl (“Applicant”), owner of 101 Bayside Place (“Property”) for a harbor development permit to reconfigure his residential pier structure (Plan Check #HAIC2022-1651) (“Project”), as more specifically described and depicted in the Staff Report and its attachments.
2. The basis of Appellant’s appeal is that the Project required review by the Harbor Commission instead of by City staff; the Project is inconsistent and fails to comply with the City’s Waterfront Project Design Guidelines; the Project will create significant public safety impacts and materially and adversely impact Appellant; and the City failed to comply with CEQA.
3. Applicant’s proposed Project will reconfigure the residential dock system at the Property located in the Entrance Channel area along the southern edge of Carnation Cove. The existing dock system, which has exceeded its useful life, consists of a pier approach, pier platform, gangway, gangway landing, U-shaped floating dock and supporting piles throughout.
4. The Property’s side property lines are not parallel to each other (e.g., not perpendicular to the eastern property line as shown by the blue dashed lines in the aerial photos), and they extend bayward along their same bearing. The existing dock system is entirely landward of the U.S. Bulkhead, Pierhead and Project Lines with the southwest corner of the outside, western finger-float extending to the Bulkhead Line.
5. Dock systems within the Entrance Channel area require enhanced design considerations to withstand the extreme forces from the current and swells particularly during the storm season. Therefore, engineers tend to increase the finger-float widths and pile quantity/size, as needed, to accommodate these conditions. In addition, the water depth along this edge of the channel tends to be shallow, and underwater rock outcroppings exist in this vicinity therefore complicating dock design.
6. The inside berthing area of the existing U-shaped float could accommodate a vessel with a beam of 22-feet and a length of approximately 50-feet if positioned wholly within the inside slip. However, since vessels are generally permitted to extend beyond the end of

their floats by their beam, the potential maximum size vessel berthed in the inside of the existing U-shaped float could be approximately 72-feet long (50-feet + 22-feet).

7. The side-tie on the existing outside, western finger-float facing the channel is approximately 56-feet long. Because of the unusual position of the bulkhead and pierhead lines in relation to this outside finger-float, a vessel with significant beam (e.g., catamaran or trimaran etc.) and significant length could potentially side-tie to this outside finger-float assuming the float were designed for such vessel loading.
8. The side-tie on the existing inside, eastern finger-float facing land is approximately 31-feet long. Therefore, a larger electric boat or similar vessel class could easily side-tie to this inside, eastern finger-float.
9. A public hearing was held by the Harbor Commission on January 10, 2024, in the City Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and NBMC Section 17.05.140(B). Evidence, both written and oral, was presented to, and considered by, the Harbor 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 (Existing Facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 (CEQA Guidelines). There is no potential for the project to have a significant effect on the environment because the replacement residential dock system will be in the same location and substantially the same size and purpose as the dock system it replaces. The overwater coverage of the new dock system will be 15% greater than the overwater coverage of the existing dock system (1,809 square feet compared to 1,564 square feet).
2. The exceptions to the categorical exemptions 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. There is no substantial evidence of any unusual circumstances.

SECTION 3. REQUIRED FINDINGS.

The Harbor Commission hereby adopts the following findings required under Newport Beach Municipal Code (NBMC) Sections 17.65.040(E) and Section 17.05.140(D)(1) (the referenced Attachments are found in the Staff Report):

Finding:

- A. *The use complies with this title, the Local Coastal Program, General Plan, design criteria and any applicable standards and policies approved by the City Council.*

Facts in Support of Finding:

1. The Project is of similar use and is in a single-finger float configuration versus the existing U-shaped float configuration. The Project extends bayward 20-feet, 5-inches less than the existing float.
2. Council Policy H-1 states that piers and floats may not extend bayward beyond the Pierhead Line unless approved in compliance with the Council Policy. Because the Project does not extend beyond the Pierhead Line nor even the Bulkhead Line, the Project conforms to Council Policy H-1 and does not require Harbor Commission review. The Project may be considered for approval by staff.
3. The Project is in the Entrance Channel adjacent to residential docks and will be entirely within the prolongations of the side property lines. The residential dock setback requirements from the prolongation of the side property lines is 5-feet. The northern side of the Project is setback 20-feet, 10-inches and southern side of the Project is setback 28-feet, 9-inches.
4. The Applicant submitted an eelgrass and Caulerpa survey report which will be evaluated by the appropriate regulatory and resource agencies for compliance. Additional surveys will be required from the regulatory and resource agencies prior to construction, and mitigation measures will be negotiated between those agencies and the Applicant as applicable.
5. The Project does not obstruct views as the floating dock does not extend any higher above the water than any other floating dock in Newport Harbor. The pier platform and pier approach are similar to the existing pier platform and pier approach. The style of vessels and their size in terms of height are not factors for consideration in pier permit reviews.
6. When issuing the Approval in Concept, staff determined the Project was categorically exempt from CEQA under CEQA Guidelines Sections 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction), which is consistent with the determination of similar residential dock projects in Newport Harbor. No substantial evidence of any alleged unusual circumstances of the Project have been provided and none of the other exceptions of CEQA Guidelines Section 15300.2 apply. Since the Project qualified for categorical exemptions under CEQA, conducting an initial study was not required.

Finding:

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

Facts in Support of Finding:

1. The Project is located in a residential area with private residential dock systems throughout. No commercial vessels are permitted to operate at residential docks. Thus, the operating characteristics are compatible with the allowed uses in the area.
2. Special Conditions Nos. 8-11 regarding vessel size and berthing restrictions will ensure the size and operating characteristics of the use are compatible with those that are allowed in the vicinity.
3. See Facts in support of Finding A above.

Finding:

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

Facts in Support of Finding:

1. The Project is a reconfiguration of an existing residential pier system. The use of the site will be virtually the same as the existing use and the physical suitability and access for public and emergency vehicle shall be unchanged.
2. See Facts in support of Finding A above.

Finding:

- D. Operation of the use at the location proposed would not be detrimental to or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety or general welfare.*

Facts in Support of Finding:

1. A maneuverability study demonstrates that the proposed vessels at the Property as well as the neighbor's vessels to the north and south of the Property could navigate to and from their respective slips safely. The study further shows that navigational congestion will not result and that the property rights of Appellant, or property owners or long-term lessees located within a 300-foot radius of the Property will not be unreasonably affected. Therefore, the Project application was appropriate for staff review and did not require referral to the Harbor Commission.

2. See Facts in support of Findings A, B, and C above.

Finding:

- E. Any new development is designed or sited so as to not obstruct public access to coastal resources or, in the case of alteration, extension, enlargement, expansion, reconstruction, replacement or addition of any structures, would not, in comparison to the existing structures, further restrict or impair the public's use of the bay or beach in the vicinity of the existing structure or structures.*

Facts in Support of Finding:

1. The Project extends bayward 20-feet, 5-inches less than the existing float extends, and is landward of the Bulkhead, Pierhead and Project Lines and therefore outside of the main navigation channel.
2. A maneuverability study demonstrates that the proposed vessels at the Property as well as the neighbor's vessels to the north and south of the Property could navigate to and from their respective slips. Thus, the Project would not in comparison to the existing structures, further restrict or impair the public's use of the bay in the vicinity.
3. The Project does not obstruct views as the floating dock does not extend any higher above the water than any other floating dock in Newport Harbor. The pier platform and pier approach are similar to the existing pier platform and pier approach. Thus, there are no view considerations.
4. See Facts in support of Findings A, B, C, and D above.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED BY THE HARBOR COMMISSION OF THE CITY OF NEWPORT BEACH:

1. The Project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 (CEQA Guidelines). There is no potential for the project to have a significant effect on the environment because the replacement residential dock system will be in the same location and substantially the same size and purpose as the dock system it replaces. The exceptions to the categorical exemptions under Section 15300.2 are not applicable.
2. The appeal is denied and the decision of the Public Works Director approving in concept the harbor development permit for the residential dock reconfiguration at 101 Bayside Place, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference, is upheld.

3. This action shall become final and effective 14 days following the date of adoption of this Resolution unless within such time an appeal or call for review is made in accordance with the provisions of NBMC Chapter 17.65 (Appeals or Calls for Review).

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF JANUARY, 2024.

AYES: SCULLY, BEER, MARSTON, CUNNINGHAM, SVRCEK, WILLIAMS, YAHN

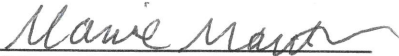
NOES:

ABSTAIN:

ABSENT:

BY: 

Steve Scully, Chair

BY: 

Marie Marston, Secretary

Exhibit(s):

Exhibit A – Special Conditions



Public Works
100 Civic Center Drive
Newport Beach, CA 92660

Special Conditions

November 1, 2023

Project: Reconfiguration of Residential Dock
Address: 101 Bayside Place

The approval in concept of the subject project at the above referenced address, described as removing the existing dock system including the U-shaped float, and replacing with a new dock system including a new single-finger float, is subject to the following conditions:

1. The above referenced project and structure(s) is subject to all applicable federal, state, county and City of Newport Beach statutes, rules, ordinances, laws, and regulations including but not limited to Harbor Permit policies (Council Policy H-1) and Title 17 of the Newport Beach Municipal Code.
2. Any future work on the above-mentioned structure(s) beyond that which is expressly permitted herein may require permits from the City of Newport Beach and any other applicable agencies. Painting and work considered to be cosmetic in nature does not require a permit. This approval does not extend to any changes to the operational characteristics, structures, and project beyond those expressly included as part of this approval.
3. The conditions set forth in this document pertain to the project as approved in concept. Any future modifications or alterations may require additional and/or updated conditions which may override or change these conditions. These conditions supersede all past conditions associated with this property.
4. Only marine oriented uses are allowed on the pier, pier platform, gangway, and float. Patio furniture, plants etc. are not permitted.
5. In accordance with subsections A and B.3 of the Newport Beach Municipal Code section 10.08.030 (Use of Streets and Sidewalks for Commercial Purposes), as amended from time to time or any other successor statutes thereto, the project applicant shall obtain the proper permits for equipment and materials storage.
6. The project shall be implemented in conformance with the current version of the City of Newport Beach Local Coastal Program – Coastal Land Use Plan.

7. The noise regulations in Newport Beach Municipal Code Section 10.28.040 (Construction Activity – Noise Regulations), as amended from time to time or any other successor statute thereto, apply.
8. The maximum sized vessel permitted to side-tie to the bayward (western) side of the single-finger float is 90-feet long, length overall (total length including swim step, bowsprit and all appurtenances), and 22-feet wide.
9. The 90-foot long by 22-foot wide vessel side-tied to the bayward (western) side of the single-finger float shall be berthed so that the aft-most part of the vessel (stern or swim step) shall not extend beyond the northern side of the concrete module matchcast float “MC2” adjacent to “P1” (pile no. 1) as shown on Sheets 5 and 9 of the plan set submitted on October 4, 2023.
10. The maximum sized vessel permitted to side-tie to the landward (eastern) side of the single-finger float is 40-feet long, length overall (total length including swim step, bowsprit and all appurtenances), and 15-feet wide.
11. Vessels shall not encroach beyond the prolongation of the northern and southern property lines.
12. All required insurance shall be maintained in full force and effect during the pendency of this approval in concept.
13. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless the 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 in Concept, the applicant’s exercise of this Approval in Concept, the activities of the applicant carried on under authority of this Approval in Concept, and/or any related California Environmental Quality Act determinations. This indemnification shall include, but not be limited to, damages awarded against the City if any, costs of suit, attorney’s 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 City for all of City’s costs, attorney’s 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.

Chris Miller, Public Works Manager

Date

Applicant Signature

Print Name

Date