



## CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER, AND PLANNING COMMISSION  
FROM: Seimone Jurjis, Assistant City Manager/Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator for the week ending March 1, 2024.

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### ZONING ADMINISTRATOR PUBLIC HEARING ACTIONS FEBRUARY 29, 2024

- Item 1: Kamell Residence Coastal Development Permit (PA2023-0115)  
Site Address: 4005 Seashore Drive (Units A and B)
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| Action: Approved by Resolution No. ZA2024-012 | Council District | 1 |
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- Item 2: Artisan Property LLC Residential Condominiums Tentative Parcel Map and Coastal Development Permit (PA2023-0190)  
Site Address: 825 & 825 ½ West Bay Avenue
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2024-013 | Council District | 1 |
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- Item 3: Annual Review of Hoag Memorial Hospital Presbyterian Development Agreement (PA2009-064)  
Site Address: 1 Hoag Drive
- |  |                  |   |
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| Action: The Zoning Administrator found that Hoag Memorial Hospital Presbyterian is in good faith compliance with the terms of the Development Agreement. | Council District | 2 |
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**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2024-012

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING A COASTAL DEVELOPMENT PERMIT TO CONSTRUCT AN ATTACHED ACCESSORY DWELLING UNIT TO AN EXISTING DUPLEX LOCATED AT 4005 SEASHORE DRIVE UNITS A AND B (PA2023-0115)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Samuel Ghaly, concerning property located at 4005 Seashore Drive Units A and B, and legally described as Lot 3 Block 40 of 3<sup>rd</sup> Addition Newport Beach Tract, requesting approval of a coastal development permit.
2. A coastal development permit (CDP) to allow the remodel and addition to an existing non-conforming 3,694-square-foot duplex. The proposed project includes an addition of approximately 360-square-feet to create an accessory dwelling unit on the third floor. The structure would reach a maximum height of 29 feet and includes a third floor uncovered roof deck. The proposed addition of the accessory dwelling unit requires a CDP.
3. The subject property is designated RT (Two Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E Two-Unit Residential (30-39.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
5. A public hearing was held on February 29, 2024, online via Zoom. A notice of the time, place, and purpose of the hearing was given by the Newport Beach Municipal Code (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 categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15301, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Section 15301 Class 1 (Existing Facilities) because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption includes additions of less than 50% to the existing development. The proposed addition includes approximately 360 square feet to the existing duplex, which is less than a 10% increase of the existing floor area. Therefore, the proposed project complies with the Class 1 exemption.

### SECTION 3. REQUIRED FINDINGS.

By Section 21.52.015 (F) (Coastal Development Permits - Findings, and Decision) of the Newport Beach Municipal Code, the following findings, and facts in support of such findings are set forth:

Finding:

A. *Conforms to all applicable sections of the certified Local Coastal Program.*

Facts in Support of Finding:

1. The existing development is legally nonconforming due to floor area, open volume, and parking. An ADU that conforms to Section 21.48.200 (Accessory Dwelling Units) shall not be required to correct legally established nonconforming zoning conditions pursuant to Section 21.48.200 (B)(4) (Accessory Dwelling Units - Effect of Conforming) of the NBMC. Therefore, the existing non-conforming features of the existing duplex may remain and the creation of a new ADU does not trigger compliance with the minimum open volume, floor area, or parking requirements of the NBMC. The considerations required under Section 21.38.040 (Nonconforming Structures) and 21.38.060 (Nonconforming Parking) are not applicable.
2. Pursuant to California State Law governing ADUs and Title 20 of the NBMC, the proposed addition of an accessory dwelling unit (of up to 800 square feet) shall be allowed despite the existing nonconformities of the duplex. Existing State Law and Title 20 of the NBMC also allow an attached unit to an existing duplex (multi-family development) up to the base height limit. Although, Section 21.48.200 (F)(4)(d) (Accessory Dwelling Units – Development Standards) of the NBMC limits the height to 16 feet tall, Coastal Commission staff has provided direction stating that State Law governing ADUs may supersede the Title 21 standards prior to the adoption of updates that would make Title 21 consistent with State Law. The amendments to Section 21.48.200 (F)(4)(d) of Title 21 (Local Coastal Program Implementation Plan) of the NBMC are part of an LCP amendment that is currently under review by the California Coastal Commission. The proposed amendments would update ADU standards within Title 21 to allow for a proposed ADU to reach the base height limit of the zoning district instead of the 16-foot limit. The proposed ADU is compliant with State Law and can be permitted in the interim while updates are being made to Title 21 in compliance with State Law and the Coastal Act. The proposed ADU complies with applicable residential development standards including setbacks and height.
  - a. The maximum floor area limitation is 3,600 square feet. The existing floor area is approximately 3,695 square feet. The proposed accessory dwelling unit is 360 square feet resulting in a total of 4,054 square feet. The accessory dwelling unit may exceed the maximum floor area limit to allow an 800 square foot (maximum) ADU pursuant to State Law.
  - b. The proposed development provides the minimum required setbacks, which are 5 feet along the front property line abutting West Ocean Front, 3 feet along each side

- property line, and 0 feet along the second front property line abutting Seashore Drive.
- c. The highest guardrail is less than 24 feet from the established grade (13.46 feet NAVD88) and the highest ridge is no more than 29 feet from the established grade, which complies with the maximum height requirements.
  - d. The existing duplex includes a two-car garage, where a two-car garage and two covered parking spaces are required. The accessory dwelling unit does not require additional parking as it is within ½ mile walking distance of public transit.
  - e. The existing duplex and proposed ADU conform to the coastal resource protection development regulations of Section 21.30.100 (Scenic and Visual Quality Protection), or Chapter 21.30B (Habitat Protection) of the NBMC. Specifically, the project is not located within the Canyon Overlay District or bluff Overlay District and does not contain any significant natural land forms or vegetation. The proposed accessory dwelling unit on the third floor provides greater than the minimum required stepbacks and does not exceed the maximum height limit for development in this zone. The accessory dwelling unit is set back 32 feet from the front property line along the public beach, reducing the potential for visual impact.
3. The neighborhood is predominantly developed with two (2)- and three (3)-story, single-unit and two-unit residences. The proposed design, bulk, and scale of the development are consistent with the existing neighborhood pattern of development.
  4. A Coastal Hazards Report and Sea Level Rise Analysis were prepared by GeoSoils, Inc., dated March 27, 2023, for the project. The report concludes that the proposed project is reasonably safe from shoreline erosion due to the lack of waves or wakes that can erode sand from the beach. The report also concludes that the project will be reasonably safe from future sea level rise assuming an increase up to 10.9 feet NAVD88 (the likely range for sea level rise over the 75-year design life of the structure based on low-risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). The finished floor elevation of the first floor of the existing structure is 14.80 feet based on the North American Vertical Datum of 1988 (NAVD88), which complies with the minimum 9.0-foot (NAVD88) elevation standard for new structures and exceeds the minimum requirements for sea level rise (10.9 feet NAVD88). The finished floor of the addition will be above 30 feet NAVD88.
  5. A portion of the site is mapped within the Federal Emergency Management Agency (FEMA) “VE” Special Flood Hazard Area with a base flood elevation of 15 feet NAVD88. As determined by the Building Division and FEMA, new construction, substantial damage, and/or substantial improvement projects are required to raise the finished floor of all interior living areas above the designated base flood elevation, which results in foundations that are elevated approximately 3-5 feet above the ground. The existing structure is not required to be reconstructed to comply with flood zone requirements unless the addition or remodel is considered a “substantial improvement” pursuant to the Building Division’s or FEMA’s thresholds. The Building Division has reviewed the proposed project and included conditions of approval to ensure that the project does not trigger compliance with the flood

zone requirements such as raising the finished floor of the existing residence. The project includes conditions of approval from the Building Division to protect against changes that could trigger these requirements. Additionally, the proposed ADU is located on the third floor with a finished floor elevation of at least 30 feet NAVD88.

6. Under NBMC Section 21.30.030(C)(3)(i)(iv) (Natural Landform and Shoreline Protection – Development Standards), the property owner will be required to agree with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). This requirement is included as a condition of approval that will need to be satisfied before the final building permit inspection, respectively.
7. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) (General Site Planning and Development Standards – Waterfront Development). This requirement is included as a condition of approval that will need to be satisfied before the issuance of building permits, respectively.
8. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved before the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC before building permit issuance.
9. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is located approximately 1,000 feet away at Newport Island Park and at Channel Place Park, and neither are visible from the site. The proposed residence is not located near Coastal View Roads, as designated in the Coastal Land Use Plan. Due to the distance of the proposed development from the public viewpoint and the project's compliance with height and setbacks, the project will not impact coastal views. The site is adjacent to the public beach, however, the proposed accessory dwelling unit on the third floor provides more than the minimum step backs; 32 feet from the front property line along the beach where the minimum is 20 feet. This reduces visibility of the accessory dwelling unit from the beach as well as reduces the appearance of massing on the third floor.

Finding:

- B. *Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located 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 between the nearest public road and the sea or shoreline. Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project adds a 360 square-foot accessory dwelling unit to an existing duplex located on a standard R-2 lot. By nature, the proposed ADU is accessory to the primary use of the property as a duplex. The ADU is only 360 square feet, so any increase in density would be minimal. Therefore, the project does not involve a change in land use, density, or intensity that will result in increased demand for public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the bay and beach is available approximately 60 feet from the property at the terminus of 40<sup>th</sup> Street and approximately 90 feet from the property at the terminus of 41<sup>st</sup> Street. Lateral access is available along the wide beach in front of the site. The project does not include any features that would obstruct access along these routes.

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 under Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit filed as PA2023-0115, subject to the conditions outlined 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 by the provisions of Title 21 Local Coastal Program (LCP) Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) 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 29<sup>TH</sup> DAY OF FEBRUARY, 2024.**



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Benjamin M. Zueba, AICP, Zoning Administrator

**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. *Prior the issuance of a building permit, the accessory dwelling unit (ADU) shall require a deed restriction that prohibits separate sale of the ADU and prohibits rental or leasing of the ADUs for 30 days or less.*
3. *Before the final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.*
4. *Before the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any 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 development. This letter shall be scanned into the plan set before building permit issuance.*
5. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter the sensitive habitat, receiving waters, or storm drains or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
6. Demolition beyond the approved scope of work requires planning division approval before the commencement of work. Approval of revisions to project plans is not guaranteed. Any changes in the current scope of work may require the entire structure to be demolished and redeveloped in conformance with the current NBMC Title 20 and Title 21 Development Standards.
7. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak

nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds under MBTA:

- A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
  - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
8. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented before and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
  9. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
  10. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
  11. Trash and debris shall be disposed of in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed of in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
  12. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
  13. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
  14. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused by the revocation of this Coastal Development Permit.
  15. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained are detrimental to the public health, and welfare or materially



injurious to property or improvements in the vicinity or if the property is operated or maintained to constitute a public nuisance.

16. *Before the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to review and approval by the Building Division.*
17. *Before the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to review and approval by the Building Division.*
18. *Before issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.*
19. Construction activities shall comply with Section 10.28.040 (Construction Activity – Noise Regulations) 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. Noise-generating construction activities are not allowed on Saturdays, Sundays, or Holidays.
20. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified periods unless the ambient noise level is higher:

Location	Between the hours of 7:00 AM and 10:00 PM		Between the hours of 10:00 PM and 7:00 AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

21. Before the issuance of the building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
22. 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 the current property owner or agent.
23. This Coastal Development Permit filed as PA2023-0115 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
24. To the fullest extent permitted by law, the 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 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 Kamell Residence including but not limited to, Coastal Development Permit (PA2023-0115). 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 the applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all the City's costs, attorneys' fees, and damages, which the City incurs in enforcing the indemnification provisions outlined in this condition. The applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

### Building Division

25. Prior to permit issuance, project plans shall be submitted that demonstrate compliance with the following:
- a) Plans for wood framed structures more than two stories in height shall be prepared by a licensed architect or engineer per Section 15.05.080 (Amendment to Table R301.2) of the NBMC as amended to California Residential Code (CRC) Section R301.1.3.2
  - b) For habitable levels located more than one story above or more than one story below an egress door: The maximum travel distance from any occupied point to a stairway or ramp that provides egress from such habitable level or basement shall not exceed 50' (CRC R311.4).
  - c) Bedrooms shall comply with Emergency escape rescue opening per CRC R310.
  - d) *The plans shall include calculations for determining if the scope of work is considered a substantial improvement. If the proposed scope of work is determined to be a substantial improvement as defined by the Building Division, the project shall comply with VE Flood Zone requirements including the policies and design requirements in ASCE 24 and Building Code Policy NBMC 15.50. A new coastal development permit would be required.*
  - e) Foundation shall be designed to mitigate liquefaction.
  - f) Exterior walls of dwellings, guesthouses, garages, carports and/or accessory structures closer than 5 ft. (3 ft. if sprinklered) to the property line shall be 1-hour fire-resistance-rated construction (Table R302.1(1) and (2))
  - g) There shall be 1-hr fire and 50 stc sound rating between walls and floors of dwelling units (CRC R302.3.)

- h) Where floor assemblies are required to be fire-resistance rated, the supporting construction of such walls shall have equal or greater fire-resistive-rating (Section CRC R302.3.1.)

## RESOLUTION NO. ZA2024-013

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING A TENTATIVE PARCEL MAP AND COASTAL DEVELOPMENT PERMIT FOR A TWO-UNIT RESIDENTIAL CONDOMINIUM LOCATED AT 825 WEST BAY AVENUE (PA2023-0190)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Sheila Wright of Toal Engineering (“Applicant”), concerning property located at 825 West Bay Avenue, which is legally described Lot 25 Of Tract No. 884 (“Property”).
2. The Applicant requests a tentative parcel map and coastal development permit for two-unit condominium purposes. The property owner proposes to demolish an existing residential duplex and construct a new two-unit residential condominium building. No waivers of the Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. The tentative parcel map would allow each unit to be sold individually. A coastal development permit (CDP) is required because the project site is located within the coastal zone.
3. The Property is designated Two Unit Residential (RT) by the General Plan Land Use Element and is located within the Two-Unit Residential (R-2) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Two Unit Residential (20.0-29.9 DU/AC) (RT-D) and it is located within the Two-Unit Residential (R-2) Coastal Zoning District.
5. A public hearing was held on February 29, 2024, online via Zoom. A notice of the time, place, and purpose of the hearing was given by the Newport Beach Municipal Code (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 categorically 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.
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 (2) years, and the parcel does not have an average slope greater than 20 percent. The Project is for a two-

unit condominium subdivision that will conform to all development standards, and is therefore consistent with and eligible for the Class 15 Exemption.

### SECTION 3. REQUIRED FINDINGS.

#### ***Tentative Parcel Map***

In accordance with Section 19.12.070 (Required Findings for Action on Tentative Maps) of the Newport Beach Municipal Code (NBMC), the following findings, and facts in support of such findings, are set forth:

#### Finding:

- A. *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-unit condominium purposes. The Property is currently developed with a residential duplex on one lot. The property owner proposes to demolish an existing residential duplex and construct a new two-unit residential condominium building. The condominium map will allow for the separate sale of each unit in the future. The proposed subdivision and improvements are consistent with density of the R-2 Zoning District and the Two Unit Residential (RT) General Plan Land Use designation.
2. The Property is not located within a specific plan area.

#### Finding:

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

#### Facts in Support of Finding:

1. The Property is physically suitable for attached residential dwellings, as it is regular in shape and size with access to both West Bay Avenue and the alley in the rear. The Property is currently developed with a residential duplex which the owner proposes to demolish and redevelop with an attached, two-unit residential condominium.
2. The Property is accessible by pedestrians from West Bay Avenue at the front property line, from 9<sup>th</sup> street at the side property line, and from the alley abutting the rear property line. Vehicular access is available from the alley.
3. The Property is adequately served by existing utilities, including electrical, water, and sewer. Per Conditions of Approval Nos. 18, 20, and 22, separate utility connections shall be required for each condominium unit including fire sprinkler lines.

4. There is no proposed change in density. The Property is currently developed with two residential units and will be redeveloped with two residential units, resulting in no net change of residential dwelling units.

Finding:

- C. *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. The Property is located within a developed residential neighborhood that does not contain any sensitive vegetation or habitat on-site.
2. 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.

Finding:

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

Facts 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 Applicant per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. The Project shall comply with all ordinances of the City and all Conditions of Approval.
2. The Project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the 9<sup>th</sup> Street frontage, Bay Avenue West frontage, and alley, as needed. Existing private improvements (walls) within the Bay Avenue West and 9<sup>th</sup> Street rights-of-way will be removed. The applicant shall dedicate a 10-foot radius cut-off for street and public utility purposes at the West Bay Avenue and 9<sup>th</sup> Street intersection and install a new curb ramp at the corner of this intersection. The utilities will be undergrounded, consistent with Title 19 (Subdivisions) of the Newport Beach Municipal Code.

Finding:

- E. *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 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 the 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.*

Facts in Support of Finding:

1. The Public Works Department has reviewed the proposed tentative parcel map and determined that 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 no public easements are located on the Property.

Finding:

- F. *The 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 Property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The Property is developed for residential use and lies in the R-2 Zoning District, which permits residential uses.

Finding:

- G. *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. The 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:

- H. 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 Code of Regulations (the California Building Code) which 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:

- I. 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 two-unit residential condominium project is consistent with the R-2 Zoning District, which allows up to two (2) residential units on the Property. Therefore, the tentative parcel map for residential condominium purposes will not affect the City in meeting its regional housing needs.

Finding:

- J. 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 Project wastewater is designed to discharge into the existing sewer system and complies with the Regional Water Quality Control Board (RWQCB) requirements.



Finding:

- K. *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 (3) of the Coastal Act.*

Fact in Support of Finding:

1. The Property is located within the coastal zone, therefore a CDP is required in conjunction with the proposed tentative parcel map. The project complies with the certified Local Coastal Program (LCP) and public access and recreation policies of Chapter 3 of the Coastal Act. The Facts in Support of Findings L and M for the coastal development permit (below) are hereby incorporated by reference.

*Coastal Development Permit*

In accordance with Section 21.52.015 (Coastal Development Permits, Findings, and Decision) of the NBMC, the following findings, and facts in support of such findings, are set forth:

Finding:

- L. *Conforms to all applicable sections of the certified Local Coastal Program.*

Facts in Support of Finding:

1. The Project is for a tentative parcel map for two-unit residential condominium purposes. The proposed subdivision and improvements are consistent with the density of the R-2 Coastal Zoning District.
2. The neighborhood is predominantly developed with two- and three-story, single- and two-unit residences. The proposed subdivision, which will allow for a two-unit residential condominium, is consistent with the existing neighborhood pattern of development.
3. The Property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies.
4. The tentative parcel map is for a property that is over 160 feet from the bay and is not near any natural landforms or environmentally sensitive areas.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the Project proposes a two-unit residential condominium map on a property currently developed with a residential duplex. Therefore, the project does not involve a change in land use, density, or intensity that will result in increased demand for public access and recreation opportunities. Furthermore, future site development shall be required to comply with applicable development standards sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. The tentative parcel map is for a property that is over 160 feet from the bay and the approval of the map will not affect public recreation, access, or views. There is a street and a block of residential properties between the subject property and the bay.

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 under 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 the Tentative Parcel Map and Coastal Development Permit (PA2023-0190), subject to the conditions outlined in Exhibit "A" which is attached hereto and incorporated by reference.
3. 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 Title 21 (Local Coastal Program [LCP] Implementation Plan) of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) 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 29<sup>TH</sup> DAY OF FEBRUARY, 2024.**



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Benjamin M. Zueba, AICP, Zoning Administrator

## EXHIBIT "A"

### CONDITIONS OF APPROVAL

#### **Planning Division**

1. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
2. Prior to recordation of the final parcel map, the existing residential duplex shall be demolished.
3. Approval of this project does not constitute approval or implied approval for any future property development permits, including but not limited to demolition permits, coastal development permits, grading permits, or building permits.
4. The Applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be cause for revocation of this approval.
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 Title 19 Subdivisions and Title 21 of the NBMC.
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 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 Artisan Property LLC Residential Condominiums including, but not limited to **Tentative Parcel Map and Coastal Development Permit (PA2023-0190)**. 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 the City for all of the City's costs, attorneys' fees, and damages, which the 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 Department**

7. Prior to the final inspection of the building permit for new construction, 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 Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 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.

8. 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 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.
9. After the recordation of the Parcel Map and prior to the building permit final, 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 description change permit is final.
10. All improvements shall be constructed as required by Ordinance and the Public Works Department.
11. An encroachment permit is required for all work activities within the public right-of-way.
12. *All damaged sidewalk panels, curb, gutter, sidewalk, and street along the 9<sup>th</sup> Street and West Bay Avenue frontage and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.*
13. Prior to the recordation of the parcel map, all existing overhead utilities shall be undergrounded.
14. Prior to recordation of the parcel map, the applicant shall dedicate a 10-foot radius corner cut-off for street and public utility purposes at the West Bay Avenue and 9<sup>th</sup> Street intersection.
15. Prior to recordation of the parcel map, the applicant shall install a new curb ramp at the corner of Bay Avenue West and 9<sup>th</sup> Street intersection.
16. All improvements shall comply with the City's sight distance requirement per City Standard 110-L.
17. The Applicant shall plug the existing driveway approach on 9<sup>th</sup> Street per City Standard 165.
18. *Each unit shall be served by its individual water service/meter and sewer lateral/cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.*

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 Division**

20. Prior to the recordation of the parcel map, separate utilities shall be provided for each unit, including fire sprinklers.

**Fire Department**

21. A NFPA 13D fire sprinkler system shall be required for the Project.
22. Each unit shall have their own dedicated water meter for the fire sprinkler system.