



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 August 30, 2024.

ZONING ADMINISTRATOR PUBLIC HEARING ACTIONS AUGUST 29, 2024

Item 1:	Luu Residence Coastal Development Permit (PA2023-0184) Site Address: 1509, 1509 ½, and 1509 ¼ West Balboa Boulevard	Action: Approved by Resolution No. ZA2024-048	Council District	1
Item 2:	Hyman Residence Modification Permit (PA2024-0112) Site Address: 909 Almond Place	Action: Approved by Resolution No. ZA2024-049	Council District	4
Item 3:	The NOW Massage Minor Use Permit (PA2024-0089) Site Address: 2600 East Coast Highway	Action: Approved by Resolution No. ZA2024-050	Council District	6

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. ZA2024-048

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING A COASTAL DEVELOPMENT PERMIT FOR THE DEMOLITION OF AN EXISTING THREE-UNIT RESIDENCE AND THE CONSTRUCTION OF A NEW THREE-STORY, 2,614-SQUARE-FOOT, TWO-UNIT RESIDENCE WITH A 735-SQUARE-FOOT INTERNAL ACCESSORY DWELLING UNIT, A 354-SQUARE-FOOT ATTACHED TWO-CAR GARAGE, AND THREE CARPORT SPACES LOCATED AT 1509, 1509 ½ and 1509 ¼ WEST BALBOA BOULEVARD (PA2023-0184)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Azzalino (Applicant) on behalf of Karen Luu (Owner), with respect to property located at 1509, 1509 ½, and 1509 ¼ West Balboa Boulevard, and legally described as Lot 24 of Block 15 of the Tract of Newport Beach Section B (Property), requesting approval of a coastal development permit (CDP).
2. The Applicant proposes to demolish an existing nonconforming three-unit residence to construct a new three-story, 2,614-square-foot, two-unit residence with a 735-square-foot internal accessory dwelling unit (ADU), a 354-square-foot attached two-car garage, and a total of three carport spaces. The design also includes appurtenances such as hardscape and landscaping (Project).
3. The Property is located within the Two-Unit Residential (R-2) Zoning District and the Two Unit Residential (RT) General Plan Land Use Element category. The R-2 Zoning District permits single- and two-unit residential dwellings. The existing three-unit residence is considered nonconforming due to density. City records indicate that this Property has been recognized as a three-unit residence since 1970.
4. The Property is located within the coastal zone. The Property is within the Two-Unit Residential (R-2) Coastal Zoning District and Two Unit Residential (RT-D 20.0 – 29.9 DU/AC) Coastal Land Use Plan Category.
5. The Property is located with the Categorical Exclusion Area of the Coastal Zone as designated by the California Coastal Commission (CCC). Properties within the Categorical Exclusion Areas can be excluded from the requirements of the Coastal Act. However, the Categorical Exclusion Area only applies to the development of single- and two-unit residences. The Project is to construct a two-unit residence with an internal ADU; therefore, the Project does not qualify for a Categorical Exclusion Order and a CDP is required.
6. A public hearing was held on August 29, 2024, online via Zoom. A notice of time, place, and purpose of the hearing was given in accordance with 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 15303, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the construction of apartments, duplexes and similar structures totaling up to six dwelling in urbanized areas. The Project is to demolish an existing three-unit dwelling and construct a new two-unit residence with an internal ADU located in the R-2 Coastal Zoning District within a developed neighborhood. Therefore, the Class 3 exemption is applicable.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The Project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015(F) (Findings and Decision) of the NBMC, 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 Project complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 3,707 square feet and the proposed floor area is 3,703 square feet.
 - b. The Project complies with the required setbacks, which are 5 feet along West Balboa Boulevard, 3 feet along each side property line and 0 feet along the rear alley.

- c. The highest guardrail/parapet is below 24 feet from established grade and the highest ridge is 29 feet from the established grade. The Project therefore complies with all height requirements.
 - d. The Project provides a two-car garage and three carport spaces which comply with the minimum parking requirements for a two-unit residence. The proposed internal ADU does not require additional parking.
 - e. The Project proposes a minimum top of slab elevation of 9.0 feet based on the North American Vertical Datum of 1988 (NAVD 88) which complies with the minimum 9.0-foot NAVD 88 top of slab elevation requirement.
2. The Project is to demolish the existing three-unit residence on-site to construct a two-unit residence and an internal ADU. As a result, the Project complies with the Housing Crisis Act of 2019 and Senate Bill 8 (Skinner) because it does not result in the loss of residential density. The State Department of Housing and Community Development (HCD) has verified with the City in an email dated March 23, 2022, that an ADU is considered a housing unit under Government Code Section 66300 provisions to replace existing units. The Owner has certified that the units are not "protected" units under Section 66330 Subdivision (d)(2). The Project is consistent with the General Plan, Local Coastal Program, and Zoning designations that allow the two-unit and accessory dwelling unit land uses. Under Coastal Land Use Plan Table 2.1.1-1, the Two Unit Residential (RT) category is intended to provide primarily for two-unit residential development such as duplexes or townhomes. Implementation Program (IP) Table 21.18-1 shows "Two-Unit Dwellings" and "Accessory Dwelling Units" as allowed uses in the R-2 Coastal Zoning District. Therefore, the Project of a two-unit residence with an internal ADU to replace the existing three-unit residence is consistent with the R-2 zoning and land use designations and does not result in a loss of residential density.
 3. The neighborhood is developed with a range of single- and two-unit homes between one and three stories. The Project's three-story residence's design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
 4. The Property is not located within 200 feet of the water mean high tide line; therefore, a Coastal Hazards Report was not prepared for this Project. The Property does not have an existing bulkhead and is not directly abutting the shoreline.
 5. 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 prior to 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 the CBC prior to building permit issuance.
 6. The Property is not located adjacent to a coastal view road as identified in the Coastal Land Use Plan. The Property is located approximately 200 feet from Veterans Memorial

Park, which is identified as a Public Viewpoint by the Coastal Land Use Plan. Additionally, the Project may be located within the viewshed of other distant public viewing areas. Site evaluation revealed that the proposed three-story design is consistent with the existing neighborhood pattern of development and will not affect the existing views afforded from the surrounding streets. The Project will replace an existing three-unit residence with a new two-unit residence and internal ADU that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Therefore, the Project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

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.*

Facts in Support of Finding:

1. The Property is located on the Balboa Peninsula between the nearest public road and the sea. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) 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 replaces an existing three-unit residence with a new two-unit residence and internal ADU. Therefore, 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. Furthermore, the Project is designed and sited so as not to block or impede existing public access opportunities.
2. Fact in Support of Finding A.2 is hereby incorporated by reference.
3. The Property is located between 15th Street and 16th Street, which are identified by the Coastal Land Use Plan as having public beach access at their street ends. The Project does not interfere with the existing nearby access to the beach, which will continue to be provided. Lateral access to the beach is available along the West Ocean Front walking path.

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 15303 under Class 3 (Conversion or Construction of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment and that the exceptions to the Class 3 Exemption do not apply.

2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. PA2023-0184, 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 Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code (NBMC). 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 29TH DAY OF AUGUST 2024



Benjamin M. Zieba, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project specific conditions are italicized)

Planning Division

1. The Project 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. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
4. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
5. 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 is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the Property is operated or maintained so as to constitute a public nuisance.
6. Coastal Development Permit No. PA2023-0184 shall expire and become void unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.
7. *Prior to the issuance of a building permit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney, prohibiting the use of the accessory dwelling unit for short-term rentals (i.e., less than 30 days) and prohibiting the sale of the ADU separate from the principal dwelling. This deed restriction shall remain in effect so long as the accessory dwelling unit exists on the property.*
8. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers.
9. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.

10. 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.
11. 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.
12. Debris from demolition shall be removed from work areas each day and removed from the Property within 24 hours of the completion of the Project. Stock-piles 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.
13. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
14. Prior to the issuance of building permits, the Applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
15. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
16. 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 pursuant to 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, 2 or 1 short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

17. 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.
18. Prior to the issuance of building permits, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
19. Should the Property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
20. 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 **Luu Residence including, but not limited to, Coastal Development Permit No. PA2023-0184**. 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.

Building Division

21. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the WQHP/WQMP, and any changes could require separate review and approval by the Building Division.
22. Prior to the issuance of building permits, the Applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
23. Prior to issuance of the building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.

24. Prior to the issuance of building permits, the Applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
25. Prior to issuance of building permits, the Applicant shall submit a soils report which include recommendations for construction on liquefiable soils. Additionally, the building foundation shall comply with the minimum requirements of the City of Newport Beach Building Code Policy CBC 1803.5.11-12.

Public Works Department

26. Public All improvements shall be constructed as required by Ordinance and the Public Works Department.
27. An encroachment permit shall be required for all work activities within the public right-of-way.
28. *Existing broken and/or otherwise damaged concrete curb, gutter and sidewalk panels along the West Balboa Boulevard frontage and any damaged concrete panels along the alley frontages shall be reconstructed.*
29. Each unit shall be served by its individual water service/meter and sewer lateral/cleanout.
30. The elevation at the back of curb of the carports (portion closest to the alley) shall be a minimum of 6-inches above the adjacent alley flowline.
31. All improvements shall comply with the City's sight distance requirement. See City Standard 100-L and NBMC Section 21.30.0130 (Traffic Safety Visibility Area).
32. In case of damage done to public improvements surrounding the Property by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

RESOLUTION NO. ZA2024-049

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING A MODIFICATION PERMIT OF A 12% ADDITION LOCATED AT 909 ALMOND PLACE (PA2024-0112)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Tyler Wilson (Applicant), for 909 Almond Place (Property), and legally described as Lot 13 in Tract 4705 of the Eastbluff Development, requesting approval of a modification permit.
2. The Applicant proposes a 680 square foot, 12% addition to an existing nonconforming single-unit dwelling where the Zoning Code limits additions to 10% of the existing gross floor area when the required parking dimensions are not provided. Section 20.40.040 (Off-Street Parking Spaces Required) requires single-unit dwellings with 4,000 square feet or greater floor area to provide a 3-car garage. The existing garage measures approximately 27 feet, 8 inches wide by 20 feet deep and is considered legal nonconforming. While there are no explicit required interior dimensions for a 3-car garage in the Zoning Code development standards, a longstanding interpretation has been to require an interior garage clearance of 28 feet, 3 inches wide by 20 feet deep.
3. The Property is designated as Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1-6000) Zoning District.
4. The Property is not located within the coastal zone.
5. A public hearing was held on August 29, 2024, online via Zoom. A notice of the time, place, and purpose of the hearing was given in accordance with 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 has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities) of the Guidelines for CEQA.
2. This exemption includes additions to existing structures up to 50% of the floor area before the addition, or 2500 square feet, whichever is less. The Project is a 680 square-foot addition to an existing single-unit dwelling in a developed neighborhood and is not within an environmentally sensitive area.

SECTION 3. REQUIRED FINDINGS.

By Section 20.52.050(E) (Modification Permits – Required Findings) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

- A. *The requested modification will be compatible with existing development in the neighborhood.*

Facts in Support of Finding:

1. The surrounding neighborhood is comprised of one- and two-story single-unit dwellings. The Modification Permit will allow an addition to the existing two-story, single-unit dwelling, which is compatible with other properties in the neighborhood. The Project includes additional floor area to the kitchen for a butler's pantry, interior remodel of an existing powder bath to a wine room, new gym, and expansion of two existing bedrooms on the second floor. There is no change to the density or intensity as a result of the Project.
2. The proposed addition will result in a total floor area of 6,200 square feet (including the 631-square-foot garage). The resulting bulk and scale of the Project is compatible with other single-unit dwellings within the neighborhood.

Finding:

- B. *The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

Facts in Support of Finding:

1. In 2001, the existing residence underwent a significant remodel and addition, during which the original 3-car garage was retained, with interior clearances of approximately 27 feet 8 inches wide by 20 feet deep. Section 20.40.040 (Off-Street Parking Spaces Required) requires single-unit dwellings with 4,000 square feet or greater floor area to provide a 3-car garage. While there are no explicit required interior dimensions for a 3-car garage in the Zoning Code development standards, a longstanding interpretation has been to require an interior garage clearance of 28 feet, 3 inches wide by 20 feet deep. Therefore, the Property's existing 3-car garage interior clearance is considered legal nonconforming.
2. NBMC Subsection 20.38.030(C) (Nonconforming Uses and Structures – Determination of Nonconformity) defines a "legal nonconforming structure" as any structure that was lawfully erected but does not conform with the current development standards for the zoning district in which it is located by reason of adoption or amendment of the Zoning Code.

3. The granting of the modification permit is necessary to allow a reasonable addition to an existing dwelling that was constructed in compliance with garage standards in effect at the time of original construction, and that are adequate in width for the parking of 3 vehicles.

Finding:

- C. *The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code*

Facts in Support of Finding:

1. Facts in Support of Finding B are hereby incorporated by reference.
2. Relocating the interior walls 7 inches to the West or East to achieve the 28-foot 3-inch clear width would encroach into the existing guest living room, bedroom, entry way, and stair access to the second level. These encroachments are contrary to the purpose of the Project and would be costly to alter.

Finding:

- D. *There are no alternatives to the modification permit that could provide similar benefits to the applicants with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding:

1. Fact 2 of Finding C is hereby incorporated by reference.
2. The intent of the Project is to provide additional living area on the second floor, including the expansions of two existing bedrooms on the second floor. A redesign to reduce the size of the addition to 192 square feet will significantly impact the objectives of the Project and would not provide similar benefits to the homeowner.

Finding:

- E. *The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

Facts in Support of Finding:

1. The Project conforms to all applicable development standards, including floor area limit, setbacks, height, and will provide adequate protection for light, air, and privacy. The Project is consistent in scale with other dwellings in the neighborhood.
2. The Project maintains more than the minimum 3-foot side yard for fire access in accordance with Zoning Code Section 20.30.110 (Setbacks Regulations and Exceptions), Subsection A(1)(c).
3. The approval of this Project is conditioned such that the Applicant is required to obtain all necessary permits in accordance with the Building Code and other applicable Codes.
4. The Property includes a driveway adequate in size which measures approximately 28 feet wide by 14 feet deep to accommodate parking for two additional vehicles on-site, minimizing demand for on-street parking.

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 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 PA2024-0112, 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 a call for review is filed with the Community Development Director by the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 29TH DAY OF AUGUST 2024.

Benjamin M. Zueba, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project specific conditions are italicized)

Planning Division

1. The Project shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused the revocation of this Modification Permit.
4. This Modification 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 is detrimental to the public health, welfare or materially injurious to Property or improvements in the vicinity or if the Property is operated or maintained so as to constitute a public nuisance.
5. Any change to the approved plans, shall require review by the Planning Division. An amendment to or the processing of a new modification permit may be required.
6. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
7. 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 Zoning Code Development Standards.
8. *Each parking space within the garage shall be permanently available and maintained for parking purposes. The interior clear dimensions (27 feet 8 inches wide by 20 feet deep) shall be kept clear of obstructions including cabinets, shelving, or similar that may impact the ability to adequately park three vehicles.*
9. Prior to the issuance of a building permit, the Applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Modification Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall

accurately depict the elements approved by this Modification Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

10. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
11. 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 20 Planning and Zoning of the NBMC.
12. 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 **Hyman Residence** including, but not limited to, **Modification Permit No. PA2024-0112**. 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 that which 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.

Fire Division

13. Fire sprinkler plans and calculations shall be submitted to Nbfd for review for the addition.

RESOLUTION NO. ZA2024-050

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING AN AMENDMENT TO A MINOR USE PERMIT FOR A MASSAGE ESTABLISHMENT LOCATED AT 2600 EAST COAST HIGHWAY, SUITE 120 (PA2024-0089)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Michael Nash, with respect to property located at 2600 East Coast Highway, Suite 120, and legally described as Parcel 1 of Parcel Map No. 84-722 requesting approval of a minor use permit amendment.
2. The applicant is requesting an amendment to their existing minor use permit (MUP) that authorized a massage use at the subject property. The existing MUP was approved on October 12, 2023, and included a condition (Condition No. 5) that limited the number of massage technicians allowed onsite and/or performing massage services at any given time. The applicant is requesting to remove this condition to allow full use of the suite. No other changes are proposed. Additionally, no late hours are proposed (after 11:00 p.m.). If approved, this MUP would supersede MUP (PA2023-0114).
3. The subject property is designated Corridor Commercial (CC) by the General Plan Land Use Element and is located within the Commercial Corridor (CC) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on October 12, 2023, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing. The Zoning Administrator adopted Resolution No. ZA2023-062 approving PA2023-0114 to allow a minor use permit for a massage establishment with an adjustment to the parking rate.
6. A public hearing was held on August 29, 2024, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. 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 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 Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The project proposes to change an operational characteristic at an existing massage establishment. No physical alterations or additions are proposed.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits – Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The use is consistent with the General Plan and any applicable specific plan;*

Facts in Support of Finding:

1. The project site is categorized as CC (Corridor Commercial) in the Land Use Element of the General Plan, which is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity.
2. Land Use Policy LU 2.1 (Resident-Serving Land Uses) of the Land Use Element of the General Plan is intended to accommodate uses that support the needs of Newport Beach's residents including housing, retail, services, employment, recreation, education, culture, entertainment, civic engagement, and social and spiritual activity that are in balance with community natural resources and open spaces.
3. The existing massage establishment is consistent with the land uses permitted within this land use designation. The proposed change will allow the massage establishment to operate to its full potential without limiting business at the establishment.
4. The subject property is not part of a specific plan area.

Finding:

- B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*

Facts in Support of Finding:

1. The subject property is located in the CC (Commercial Corridor) Zoning District which is intended to provide for areas appropriate for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity.

2. While the massage establishment is adjacent to residential neighborhoods, the tenant space is oriented towards East Coast Highway. The properties fronting East Coast Highway are also in the CC (Commercial Corridor) Zoning District and provide a range of commercial uses to serve nearby residential neighborhoods.
3. Pursuant to Table 3-10 of Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC, the required parking rate for a massage establishment is one parking space for every 200 square feet of gross floor area, or as determined by an approved use permit.
4. The adjacent tenant space (Sugarfish Restaurant) operates under an existing Conditional Use Permit (PA2022-0149), approved January 5, 2023, that included a parking management plan and parking waiver for 19 required off-street parking spaces. A parking study was prepared by Trames Solutions, Inc. on November 18, 2022, to support the request. The parking study established a parking demand for the property including Sugarfish Restaurant and the other suites. Suite 120, which is the subject tenant space, was vacant during the evaluation and only allocated eight parking spaces, assuming a rate of one space per 250 square-feet of gross floor area.
5. As part of the approved MUP (PA2023-0114), a reduced parking rate of one space per 250 square feet of gross floor area was authorized consistent with the prepared parking study. Condition of Approval No. 5 was included that limited operations to no more than five massage technicians onsite and/or performing massage services at any given time to justify the reduced parking rate.
6. The subject Applicant is seeking to amend the MUP to allow for full use of the tenant space by providing 10 parking spaces on-site for the business, consistent with the standard parking rate of one parking space per 200 square feet of gross floor area per Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC. To support the request, the property owner prepared a parking memo dated April 1, 2024, that revealed an error in the prior parking study prepared for the Sugarfish Restaurant. The prior parking study indicated that the property provided 84 parking spaces, when 88 parking spaces are available onsite. This parking count was verified by the City via site investigation on July 11, 2024. Therefore, adequate parking is available for the use and a reduced parking rate is no longer necessary to support the use, as 10 spaces would be available for the subject suite instead of eight spaces previously allocated.
7. The proposed massage establishment is consistent with the legislative intent of Section 20.48.120 (Massage Establishments and Services) and Chapter 5.50 (Massage Establishments) of the NBMC. These sections provide standards for the establishment, location, and operation of massage establishments operated as an independent use. The intent is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration that may accompany and result from large numbers of massage establishments.

Finding:

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

Facts in Support of Finding:

1. The massage establishment is located within an approximately 2,000 square-foot tenant space within an existing commercial building. The massage establishment consists of eight individual massage rooms, a transition room, a lobby, and reception area. The use also includes an office, break room, and storage closet for employee use; all of which are included in the existing tenant space.
2. The hours of operations are between 9:00 a.m. and 9:00 p.m., daily. The surrounding uses consist of office, retail, restaurants, and personal services. The proposed hours of operation are compatible with the surrounding uses and the project does not propose late hours (past 11:00 p.m.) which will minimize any disturbances to residences near the property. No changes to the hours of operations are proposed.
3. The existing commercial building is oriented towards East Coast Highway and facing away from the adjacent residential neighborhoods. The nearest residential dwelling is approximately 55 feet from the subject property and is separated by a surface parking lot, an entrance to a subterranean parking lot, and an alleyway.

Finding:

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

Facts in Support of Finding:

1. The site is located on East Coast Highway and Dahlia Avenue within an existing multi-tenant commercial building. The parking lot is located at the rear of the property and accessed by the alleyway from Dahlia Avenue.
2. The property is improved with a total of 88 parking spaces, 80 of which are within an underground parking structure and eight of which are surface-level open parking spaces. The proposed use will require 10 parking spaces and Facts 4, 5, and 6 in support of Finding B are incorporated herein by reference.
3. The Fire Prevention Division (Fire Department) has reviewed the project to ensure adequate public and emergency vehicle access is provided and does not have any concerns with the use.

Finding:

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The massage establishment has been conditioned with typical daytime and evening hours of operation that will minimize any detriment to the surrounding area.
2. The massage establishment will provide additional services to the residents in the surrounding area and visitors to the City.
3. The project has been reviewed by the Building, Public Works, Fire, and Police Departments and recommended conditions of approvals have been included to limit any effects to the City or persons visiting or working in the surrounding neighborhood.

Location

In accordance with Section 20.48.120(B) (Massage Establishments and Services – Waiver of Location Restrictions) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

- F. *The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed;*

Facts in Support of Finding:

1. The intent of this section is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration, which accompany and are brought about by large number of massage establishments and the misuse of massage therapy as a front for prostitution and other illegal activities.
2. Although the massage establishment is located within 500 feet of another massage establishment, it is located in a separate development and is sufficiently separated from other massage services. The closest tenant space offering massage services is located at 2744 East Coast Highway approximately 520 feet from the subject massage establishment.
3. There will be no late hours of operation, as the project is conditioned to operate between 9:00 a.m. and 9:00 p.m.

4. A condition of approval is included to ensure the applicant will obtain an Operator's Permit from the Newport Beach Police Department (NBPD) in compliance with Chapter 5.50 (Massage Establishments) of the NBMC prior to operation of the business.

Finding:

- G. *The proposed use will not enlarge or encourage the development of an urban blight area; and*

Facts in Support of Finding:

1. The massage establishment is located in a single tenant space within a managed, multi-tenant commercial building, which will prevent problems and discourage the development of urban blight. The subject property is not located within a blighted area, is well maintained, and is intended to provide a service that supports the surrounding residents and visitors to Newport Beach.

Finding:

- H. *The proposed use will not adversely affect a religious institution, school, park, or playground;*

Facts in Support of Finding:

1. The massage establishment is located within 500 feet of a park (Old School Park). Therefore, the applicant requests to waive location restrictions pertaining to Section 20.48.120 (Massage Establishments and Services) of the NBMC.
2. Old School Park is a small park that is approximately 13,200 square-feet with an adjacent parking area that is a designated public open space area for the nearby residential neighborhood of the Corona del Mar Homes (PC29) Zoning District and is developed with walkways, benches, and open area. No structures, public restrooms, or playgrounds are constructed in this park which reduces the amount of time visitors would typically spend at this park. The massage establishment would operate during typical daytime hours and is not anticipated to encourage the development of an urban blight area.
3. There are no religious institutions, schools, or playgrounds within 500 feet of the subject property.

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 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 the Minor Use Permit (PA2024-0089), 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 Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.
4. This resolution supersedes Zoning Administrator Resolution No. ZA2023-062, which upon vesting of the rights authorized by this minor use permit amendment, shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 29TH DAY OF AUGUST 2024.



Benjamin M. Zueba, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
4. *The hours of operation shall be between 9 a.m. and 9 p.m., daily.*
5. *All employees of the establishment shall park onsite.*
6. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code.
7. *This Minor Use Permit filed as PA2024-0089, shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
8. This Minor Use 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 is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new Use Permit.
10. 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.
11. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.

12. 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.
13. No outside paging system shall be utilized in conjunction with this establishment.
14. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
15. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
16. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
17. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
18. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
19. 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 20 (Planning and Zoning) of the Newport Beach Municipal Code.
20. 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 of **The NOW Massage including, but not limited to, Minor Use Permit (PA2024-0089)**. 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.

Building Division

21. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

Police Department

22. Strict adherence to Newport Beach Municipal Code Chapter 5.50 (Massage Establishments) shall be upheld.
23. Prior to operation, the applicant business shall apply for and obtain an Operator's Permit from the Chief of Police and keep said permit in good standing.
24. All employees of the applicant business who conduct massage services on the premises must be certified by the California Massage Therapy Council (CAMTC) (physicians, physical therapists, and chiropractors exempt).
25. As outlined in Newport Beach Municipal Code Section 5.50.030 (Requirements of Operation), the business shall maintain requirements of operation, and submit to inspections by officers of the Police Department.

Code Enforcement

26. All windows (except treatment room windows) shall remain visible and transparent in nature. Window signage shall comply with the NBMC.
27. The names of employees shall be posted upon entry and contact information and list of state certifications shall be provided upon request. A current list of employees shall be kept on-site and maintained at all times.
28. The owner, operator, or responsible manager's contact information for the massage establishment shall be provided to the City of Newport Beach Code Enforcement Division.