



## 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 January 31, 2025.

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### ZONING ADMINISTRATOR PUBLIC HEARING ACTIONS JANUARY 30, 2025

- Item 1: Mario's Butchery Minor Use Permit (PA2024-0185)  
Site Address: 1000 Bristol Street North (Suites 29 and 30)
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2025-004 | Council District | 3 |
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- Item 2: Sixt Rent a Car LLC Car Wash Limited Term Permit (PA2024-0209)  
Site Address: 4200 Birch Street
- |   |                  |   |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2025-005 | Council District | 3 |
|---|------------------|---|
- Item 3: Clarke Residence Coastal Development Permit (PA2024-0118)  
Site Address: 127 Harbor Island Road
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2025-006 | Council District | 5 |
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- Item 4: Hoag Memorial Hospital Presbyterian CareMar Medical Building Coastal Development Permit (PA2024-0188)  
Site Address: 3900 West Coast Highway (Lower Campus)
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2025-007 | Council District | 2 |
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Item 5: Cappy's Café Minor Use Permit, Coastal Development Permit, and Lot Merger (PA2023-0191)

Site Address: 5930 West Coast Highway and 205, 206, and 207 60th Street

Action: Approved by Resolution No. ZA2025-008

Council District

1

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.

Wendy Joe, Civilian Investigator, NBPD (*Telecom - Massage – ABC License*)

Mark Short, Police Sergeant, NBPD (*Massage – ABC License*)

## RESOLUTION NO. ZA2025-004

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING A MINOR USE PERMIT FOR A TAKE-OUT SERVICE-FAST CASUAL ESTABLISHMENT LOCATED AT 1000 BRISTOL STREET NORTH, SUITES 29 AND 30 (PA2024-0185)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Mario Llamas, concerning property located at 1000 Bristol Street North (Suites 29 and 30), and legally described as Parcel 1 in Resubdivision 541 requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to allow the expansion of an existing Take-out service- Fast-Casual establishment within an existing commercial shopping center. The project would allow the existing business to expand into the adjacent suite. No late hours (after 11:00 p.m.), live entertainment, or alcohol service is requested as part of the application. The business would include a maximum of 20 seats including the outdoor dining area. If approved, this minor use permit would supersede Specialty Food Service Permit No. SF0023 and Outdoor Dining Permit No. 0063.
3. The subject property is designated CG (General Commercial) by the General Plan Land Use Element and is located within the PC-11 (Newport Place Planned Community – General Commercial Site 3) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on January 30, 2025 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 is exempt from the California Environmental Quality Act (CEQA) 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 Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The existing 1,200-square-foot retail space is being improved to allow a negligible expansion of an existing commercial establishment, with no intensification of parking or increase in

seating. The existing retail that previously occupied the subject space falls within the similar retail- commercial-service type use.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020(F) (Minor Use 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. The use is consistent with the General Plan and any applicable specific plan.*

#### Facts in Support of Finding:

1. The General Plan land use designation for this site is CG (General Commercial). The CG designation is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The food service establishment is consistent with this land use designation, as the use will serve residents and persons working in the area.
2. 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 Plaza Newport Shopping Center provides parking pursuant to Section 20.40.040 (Off-Street Parking Spaces Required) of the Newport Beach Municipal Code (NBMC) as required in the Development Regulations in PC-11.
2. Specialty Food Permit No. SF0023 established a parking requirement of 1 space per 250 square feet of floor area (7 spaces) for Suite 30. Additionally, Outdoor Dining Permit No. OD0063 limited the outdoor area to 170 square feet maximum and 15 seats with no additional parking required. Section 20.40.040 of the NBMC requires 1 space per 250 square feet for take-out service, fast-casual establishments including any outdoor dining areas. Therefore, the existing Mario's Butchery is considered existing non-conforming as no parking is provided for the outdoor dining patio.
3. Furthermore, the shopping center, including Mario's Butchery, is considered existing nonconforming due to previously approved parking waivers for eating and drinking establishments. However, Section 20.38.060(B)(1) (Nonconforming Parking) of the NBMC allows a change of use without providing additional parking provided there is

no intensification of use, and the use does not require more than 1 parking space per 250 square feet of gross area. The previous optometry retail store that occupied the proposed space in Suite 29, also had a parking requirement of 1 space per 250 square feet. The existing outdoor dining will remain with no change in size or number of seats (i.e. no intensification). The proposed expansion of Mario's Butchery into the adjacent suite is classified under the Take-out service-Fast-Casual eating and drinking establishment as no more than 20 seats, no alcohol service, and no late hours are proposed. Section 20.40.040 of the NBMC requires 1 space per 250 square feet for Take-out service-Fast-Casual eating and drinking establishments. Therefore, consistent with Section 20.38.060(B)(1) of the NBMC, the expanded Mario's Butchery does not require any additional parking. A future change in the type of food service such as adding alcohol service, late hours, or more than 20 seats would be considered intensification of use and would require a Conditional Use Permit and Parking Waiver for the shopping center from the Planning Commission.

4. The approval of this Minor Use Permit will supersede Specialty Food Permit No. SF0023 and Outdoor Dining Permit No. 0063 and all applicable conditions will be consolidated or updated as part of this use permit. The outdoor dining area is existing nonconforming due to the updated parking requirement for outdoor dining for Take-out service-Fast-Casual eating and drinking establishments. Today the Take-out-Fast-Casual establishments are required to be parked as part of the 1/250 square feet, where outdoor dining did not require any additional parking for the patio. Therefore, consistent with the Outdoor Dining Permit, a condition is in place limiting the area to the existing size of 170 square feet and 15 seats so no intensification would occur. An addition to the outdoor dining area would require parking at a rate of 1 space per 250 square feet or a parking waiver.
5. As conditioned, the proposed establishment will comply with Zoning Code standards for eating and drinking 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 project includes expanding the existing take-out service, fast-casual eating and drinking establishment (1,750 square feet) into the adjacent 1,200 square foot retail space resulting in a total 2,950-square-foot tenant space. Project implementation includes expanding the existing kitchen area and reconfiguring the existing layout to provide easier access for take-out orders and service. No changes are proposed to the existing outdoor dining area. A building permit will be required for the tenant improvement.
2. The project is located within the Plaza Newport Shopping Center. The shopping center includes existing personal services, retail sales, eating and drinking

establishments, and an urgent care. The surrounding area consists of retail and office buildings with the closest residential located across the 73 Freeway adjacent to South Bristol Street. The project's operational characteristics are conditioned to help ensure the use is compatible with the residential and other commercial uses in the vicinity.

3. As conditioned, the allowed hours of operation are 7:00 a.m. to 10:00 p.m., daily, thereby limiting the likelihood of late night or early morning land use conflicts with nearby businesses.

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.*

Facts in Support of Finding:

1. The Plaza Newport Shopping Center is approximately five acres and is developed with approximately 170,000 square feet in four (4) multi-tenant buildings and a parking lot. The existing buildings and parking lot have functioned satisfactorily with the current configuration which allows vehicular access from two separate driveways along North Bristol Street and one on Dove Street.
2. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing property and the proposed project will not negatively affect emergency access.
3. The expansion of the existing use into the adjacent suite does not include an increase of floor area or footprint of the existing building within the shopping center. All improvements are confined to the interior of the existing tenant spaces.

Finding:

*E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or 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. Food service uses have been operating in Suite 30 since at least 1994 without any detriment to the surrounding neighborhood.
2. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct

objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.

3. The applicant is required to obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees with the establishment.

#### 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 the Minor Use Permit filed as PA2024-0185, 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.
4. This resolution supersedes Specialty Food Permit No. SF0023 and Outdoor Dining Permit No. OD0063, which upon vesting of the rights authorized by this Minor Use Permit, shall become null and void.

**PASSED, APPROVED, AND ADOPTED THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**



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 and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *The total number of seats (including both indoor and outdoor seats) shall not exceed 20. No alcohol service is permitted. The existing outdoor dining area shall be limited to 170 square feet.*
3. *An expansion of the outdoor dining area, the provision of more than 20 seats, the addition of alcohol service, or any other change that intensifies the use classification shall require a Conditional Use Permit including a new Parking Waiver for the shopping center from the Planning Commission.*
4. *The hours of operation shall be limited to between the hours of 7:00 a.m. and 10:00 p.m., daily.*
5. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
6. 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 Use Permit.
7. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.
8. *Minor Use Permit filed as PA2024-0185 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code unless an extension is otherwise granted.*
9. This 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 are detrimental to the public health, welfare, or materially injurious to property or improvements in the vicinity or if the property is operated or maintained to constitute a public nuisance.
10. Any change in operational characteristics or other modification to the approved plans, may require an amendment to this Minor Use Permit or the processing of a new Minor Use Permit.



11. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans before issuance of the building permits.
12. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
13. Before 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.
14. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control), under Sections 10.26.025 (Exterior Noise Standards) and 10.26.030 (Interior Noise Standards), and other applicable noise control requirements of the Newport Beach Municipal Code (NBMC).
15. 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 leasing agent.
16. Construction activities shall comply with Section 10.28.040 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, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays, or Holidays.
17. No outside paging system shall be utilized in conjunction with this establishment.
18. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
19. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
20. The exterior of the business shall be always maintained free of litter and graffiti. 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.
21. 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).

22. 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.
23. Storage outside of the building in the front or at the rear of the property shall be prohibited, except for the required trash container enclosure.
24. A Special Events Permit is required for any event or promotional activity outside the normal operating 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.
25. 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 **Mario's Butchery including, but not limited to, PA2024-0185**. 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 the 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.

### **Building Division**

26. 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 before the issuance of a building permit.
27. Plumbing fixtures shall comply with California Plumbing Code Table 422.1.
28. All exit access doors shall have panic hardware in assembly occupancy with occupant load greater than 50 (CBC 1010.5.9)

29. An accessible path of travel is required from the public right-of-way and parking space to subject tenant space.

## RESOLUTION NO. ZA2025-005

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING A LIMITED TERM PERMIT TO AUTHORIZE A LIMITED DURATION HANDWASH-ONLY CAR WASH FACILITY LOCATED AT 4200 BIRCH STREET (PA2024-0209)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Karsten Jaensch of Sixt Rent a Car LLC (Applicant), concerning property located at 4200 Birch Street, and legally described as Parcel 1 of Parcel Map No. 45-25 (Property) requesting approval of a limited term permit.
2. The Applicant requests a 12-month duration limited term permit that will allow for the operation of a handwash-only, car wash facility to exclusively serve Sixt Rent a Car LLC fleet vehicles. Fleet vehicles will be driven from John Wayne Airport to the project site after customer use and will be washed, vacuumed, and returned to John Wayne Airport. No construction, overnight vehicle storage, or public car washing services are proposed (Project).
3. The subject property is categorized as General Commercial (CG) by the Land Use Element of the General Plan and is located within the Newport Place Planned Community (PC 11) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on January 30th, 2025, 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 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. The exceptions to this categorical exemption under Section 15300.2 are not applicable.
1. The Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The project includes no construction. The existing facility will be used for the hand washing of rental cars with no overnight vehicle storage.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.040(G) (Limited Term Permits – Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

#### Finding:

*A. The operation of the requested limited duration use at the location proposed and within the time period specified 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 requested limited duration use;*

#### Facts in Support of Finding:

1. The limited term permit will allow for the temporary operation of a handwash-only car wash facility exclusively serving Sixt Rent a Car LLC fleet vehicles for a duration of up to 12 months (from February 13, 2025, through February 13, 2026). The facility will be permitted to operate from 7:00 A.M. to 11:00 P.M.
2. The project site is zoned PC 11 (Newport Place), which is an area appropriate for both commercial and light industrial uses. The project site is within Service Station Site 1 of PC 11, which allows for a vehicle service station and car wash. The Project is consistent with the intended purpose of the zoning district.
3. All activities are contained on-site, and no vehicle queuing is allowed in the public right-of-way, preventing hazards or inconveniences to the public. Condition of Approval No. 28 prohibits queuing in the public right of way.

#### Finding:

*B. The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

#### Facts in Support of Finding:

1. The subject parcel is 1.20 acres, rectangular shape, and is fairly flat.
2. The Property has been developed with a car wash since 1974. Most recently, the Property operated pursuant to Use Permit no. UP2001-035 (PA2001-200). UP2001-035 permitted a mechanical car wash, vehicle detailing, and gasoline pumps open to the public. The Project includes the temporary storage of fleet vehicles (during the day only) owned by a vehicle rental service. Vehicle storage and vehicle rental services are not permitted to operate in this zoning district but may be allowed temporarily, subject to a limited term permit.

3. The Property contains a car wash tunnel, a structure for auto detailing, a structure housing mechanical equipment associated with the car wash tunnel, and a canopy covering gas pumps which connects the two structures. The detailing structure includes a customer waiting area, a cashier station, two restrooms, a work and storage closet area, and an equipment room. No modifications are proposed to the existing carwash infrastructure and no construction is required to implement the temporary use.
4. Car washing will be performed exclusively by hand and at the Property. Vacuuming and any minor detailing will be performed within the car wash tunnel.
5. Adequate space exists for vehicle circulation, staging, car washing, detailing, and employee parking.
6. The Property's prior use as a car wash demonstrates the operational compatibility of the Project with the surrounding area.
7. Designated entry/exit points and controlled operations prevent spillover onto adjacent properties and prevent queuing into the street as required in Condition of Approval No. 28. Traffic to and from the facility is not anticipated to interfere with the various uses adjacent to the site.
8. The Project has been reviewed by the Building Division, Public Works Department, and Fire Department and all department-specific conditions of approval are provided in Exhibit A.

Finding:

- C. The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Facts in Support of Finding:

1. The Property is bounded by Dove Street, Birch Street, Scott Drive, and the Benihana restaurant at 4250 Birch Street. The layout of the site allows for vehicles to enter from Scott Drive and exit onto Birch Street. The site and building location provide sufficient internal vehicle circulation and staging areas.
2. The Project is not anticipated to generate excessive traffic in an already urbanized area as operations are internal to Sixt Rent a Car's business and will serve approximately 40 fleet vehicles a day.

Finding:

- D. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator;*

Facts in Support of Finding

1. The Project is anticipated to have a maximum of six fleet vehicles onsite at a time. The Property is striped with five tandem employee parking spaces, five tandem staging area spaces, and one ADA parking stall. Vehicles cannot stage within the car wash tunnel other than when the vehicle is being cleaned.
2. A maximum of four employees would be onsite at a given time. The five parking spaces dedicated to employees is sufficient to accommodate employee parking.
3. The Project is not open to members of the public, therefore no onsite parking beyond spaces necessary for employees and vehicle staging is required.

Finding:

*E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The subject property is categorized as General Commercial (CG) by the Land Use Element of the General Plan. The GC Category is intended to provide areas appropriate or a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The temporary car wash facility is consistent with the last use of the site, will be used for a limited duration, and will serve both citywide and regional needs. The Project is consistent with the CG Category and is a use that supports an airport use in the area.
2. The Property is within Service Site 1 of the Newport Place Planned Community (PC 11). PC 11 is intended to provide a range of commercial and light industrial uses that are adjacent to John Wayne Airport. Section 20.52.040(D)(7) (Limited Term Permits) allows for limited duration uses compatible with the subject zoning district and surrounding uses, subject to a limited term permit. In Service Site 1 of PC 11, a permanent car washing facility is allowed subject to the approval of a use permit.
3. The Project does not include vehicles being stored overnight. Vehicle storage is not allowed within Service Station Site 1 of PC 11. Vehicle storage for Sixt Rent a Car will be located at provided parking spaces at John Wayne Airport. Condition of Approval No. 5 prohibits overnight vehicle storage.
4. The site is not located within a specific plan area.

## 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 Limited Term Permit filed as PA2024-0209, 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 NBMC.

**PASSED, APPROVED, AND ADOPTED THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**



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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. A material violation of any of those laws in connection with the use may be caused the revocation of this Limited Term Permit.
4. All proposed signs shall be in conformance with the provisions of the Newport Place Planned Community (PC 11) Zoning District.
5. *No overnight vehicle storage is permitted on-site.*
6. *Operational hours are restricted to 7:00 a.m. to 11:00 p.m.*
7. *The Property shall only be accessed by employees and shall be used for back-of-house operations. No customers are allowed onsite and the location authorized under this Limited Term Permit shall not be open to the general public.*
8. This Limited Term 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 the area, or other modification to the approved plans, shall require subsequent review and approval by the Planning Division and may require an amendment to this Limited Term Permit or the processing of a new limited term permit.
10. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans before issuance of the building permits.
11. Before the issuance of a building permit, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought-tolerant plantings and water-efficient irrigation practices, and the plans shall be approved by the Planning Division.

12. *This Limited Term Permit shall expire twelve (12) months from the date of end of the appeal period set to end on February 13, 2025, unless an extension of up to one (1) additional period of twelve (12) months is granted by the Zoning Administrator in compliance with Section 20.54.060 (Time Limits and Extensions). A letter requesting the extension shall be submitted to the Planning Division no later than thirty (30) days prior to the expiration date of this permit.*
13. All landscape materials and irrigation systems shall be maintained by 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.
14. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
15. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control), under Sections 10.26.025 (Exterior Noise Standards) and 10.26.030 (Interior Noise Standards), and other applicable noise control requirements of the NBMC.
16. 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 leasing agent.
17. No outside paging system shall be utilized in conjunction with this establishment.
18. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
19. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
20. The exterior of the business shall be always maintained free of litter and graffiti. 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.
21. 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).

22. 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.
23. Storage outside of the building in the front or at the rear of the property shall be prohibited, except for the required trash container enclosure.
24. A Special Events Permit is required for any event or promotional activity outside the normal operating 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 NBMC to require such permits.
25. 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.
26. 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 **Sixt Rent a Car LLC Car Wash including, but not limited to the Limited Term Permit filed as PA2024-0209**. 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 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.

### **Fire Department**

27. Vehicles shall not be stored in the car wash tunnel other than when the vehicle cleaning is performed.
28. Two 2A 10BC fire extinguishers shall be placed at either end of the car wash tunnel.

**Public Works Department**

29. Site operations shall not impact the public right of way. Vehicles shall not be staged, stored or queued in the public right-of-way at any time.
30. All proposed back of house services shall occur entirely on private property and is prohibited within the public right-of-way.

## RESOLUTION NO. ZA2025-006

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-UNIT DWELLING AND CONSTRUCT A NEW 7,868 SQUARE-FOOT SINGLE UNIT DWELLING INCLUDING THREE GARAGE SPACES LOCATED AT 127 HARBOR ISLAND ROAD (PA2024-0118).**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Don James of EBTA Architects (Applicant) on behalf of James Clarke (Owner), concerning the property located at 127 Harbor Island Road and legally described as Lot 19 of Tract 3283 (Property), requesting approval of a coastal development permit (CDP).
2. The Applicant proposes to demolish an existing 3,247-square-foot, single-unit dwelling and construct a new, two-story, 6,896-square-foot, single-unit dwelling with a 590-square-foot two-car garage and a 382-square-foot single-car garage. The project also includes the raising and reinforcing of an existing bulkhead for protection against coastal hazards. The design also includes appurtenances such as walls, hardscape, and landscaping (Project). The Project complies with all development standards and no deviations from the Newport Beach Municipal Code (NBMC) are requested.
3. The Property is categorized as Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached – 0.0 - 5.9 DU/AC (RSD-A), and it is located within the Single-Unit Residential (R-1) Coastal Zoning District
5. A public hearing was held on January 30, 2025, online via Zoom. A notice of the time, place, and purpose of the hearing was given by the NBMC. Evidence, both written and oral, was presented to and considered by the Zoning Administrator at this hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section, 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 demolition of up to three single-family dwellings and additions of up to 10,000 square feet to existing structures. The Project consists of the demolition of a single-unit dwelling and the construction of a new single-unit dwelling located in the R-1 Coastal Zoning District. 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) (Coastal Development Permits - 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 11,834 square feet and the proposed floor area is 7,868 square feet.
  - b. The Project provides the minimum required setbacks, which are 10 feet along the front property line abutting Harbor Island Road, four feet along each side property line, and 10 feet along the property line abutting the harbor which is also regulated as a front setback.
  - c. The highest flat roof is 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 includes two garages for parking for a total of three vehicles, complying with the minimum three-car garage parking requirement for single-unit dwelling with more than 4,000 square-feet of habitable floor area.
  - e. The Project proposes a minimum top of slab elevation of 11.34 feet based on the North American Vertical Datum of 1988 (NAVD88) which complies with the minimum 9.0-foot NAVD 88 top of slab elevation requirement for new structures.

2. The neighborhood is predominantly developed with single- and two-story, single-unit dwellings. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
3. A Coastal Hazards and Bulkhead Conditions Report was prepared for the Project by PMA Consulting, Inc., dated May 14, 2023. The current maximum bay water elevation is 7.70 NAVD88 and may exceed the existing 9.08 feet NAVD88 top of bulkhead elevation during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 3.05-foot increase in the maximum water level over the next 75 years (i.e. the life of the structure). Therefore, the sea level is estimated to reach approximately 10.75 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 estimated sea level rise over the next 75 years, using the Medium-High Risk Aversion, is potentially 6.7 feet, 14.4 feet NAVD88. The report concluded that the existing bulkhead shall be reinforced and raised to a height of 12.80 NAVD88 with capability of increasing to a height 14.4 feet NAVD88 without further seaward encroachment. Based on the data provided, the study concludes that coastal hazards will not significantly impact the Property over the next 75 years, as the proposed Project has minimal risk from flooding.
4. On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. The guidelines require that any bulkhead structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet NAVD88 with a design for adaptability elevation of 14.4 feet NAVD88. The Project is raising the bulkhead to an elevation of 12.80 feet NAVD88, as recommended by the Coastal Hazards and Bulkhead Conditions Report, which exceeds the City's minimum standard of 10.9 feet NAVD88 with capability of increasing to a height 14.4 feet NAVD88.
5. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) (Natural Landform and Shoreline Protection) of the NBMC, the Owner will be required to enter into an agreement 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). The Owners 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). These requirements are included as Condition of Approval Nos. 8 and 9 which will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.
6. 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

7. Pursuant to Section 21.35.050 (Water Quality and Hydrology Plan), of the NBMC, due to the proximity of the development to the shoreline and the development containing more than 75% of impervious surface area, a Water Quality Management Plan (WQMP) is required. A preliminary WQMP was prepared by Toal Engineering, dated February 14, 2023, was reviewed by the City's Geologist Engineer. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of a LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs. A final WQMP shall be reviewed and approved prior to the issuance of a building permit.
8. The Property is located adjacent to coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived from construction chemicals and materials. The Project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
9. Proposed landscaping complies with Section 21.30.075 (Landscaping) of the NBMC. Condition of Approval No. 18 requires that landscape be designed to provide drought tolerant plantings, non-invasive plant species and water efficient irrigation. A final landscape plan shall be reviewed and approved prior to the issuance of a building permit to verify invasive species are not planted.
10. The Project is located within the immediate vicinity of coastal view roads and coastal viewpoints as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is approximately 900 feet to the north, at the corner of Harbor Island Road and Bayside Drive. The Project is not visible from that location due to the intervening structures. The Property is also within the general view as seen from other viewpoints above the Property. The Project replaces an existing two-story, single-unit, dwelling with a new, two-story, single-unit dwelling that complies with all applicable Title 21 (Local Coastal Program Implementation Plan) development standards and maintains a building envelope consistent with the existing pattern of development and expected future development. Therefore, the Project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts on 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 between the first public road and the sea. Section 21.30A.040 (Determination of Public Access/ Recreation Impacts) of the NBMC 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 single-unit dwelling with a new single-unit dwelling, consistent with the existing neighborhood pattern of development and applicable development standards. Therefore, the Project does not involve a change in land use or intensity that will result in increased demand for public access and recreation opportunities.

2. Lateral access to the Promontory Bay and the harbor is available along Bayside Drive, as a public walkway. Three beach access locations are also located near the Property along Beacon Bay. The Project is located entirely within the confines of private property, except for improvements to the driveway within the public right-of-way. The Project does not include any features that would obstruct access along the public walkway or any of the nearby public beach access locations.

#### 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 15303 under Class 3 (New Construction or Conversion 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.
2. The Zoning Administrator of the City of Newport Beach hereby approves the Coastal Development Permit filed as PA2024-0118, 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 Implementation Plan), of the 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 30<sup>TH</sup> DAY OF JANUARY 2025.**



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Benjamin M. Zueba, AICP, Zoning Administrator

**EXHIBIT “A”**

**CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**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. A material violation of any of those laws in connection with the use may be caused by the 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 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.
6. Prior to the 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.
7. This Coastal Development Permit 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.
8. *Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the 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.*
9. *Prior to the issuance of a building permit, the 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 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 development.*

10. Prior to final building permit inspection, the existing seawall shall be reinforced and raised/capped to at least a height of 10.9 NAVD88 and capable to be raised up to 14.4 feet NAVD88, in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial and Residential Facilities.
11. This Coastal Development Permit does not authorize any development seaward of the private property.
12. This Coastal Development Permit does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. Prior to the issuance of a building permit, 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.

19. 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.
20. 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.
21. 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 and Saturday between the hours of 8:00 a.m. and 6:00 p.m. Noise-generating construction activities are not allowed on Sundays, or Holidays.
22. All noise generated by the proposed use shall comply with Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the NBMC.
23. 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.
24. 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.
25. 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 **Clarke Residence, including but not limited to, the Coastal Development Permit filed as PA2024-0118**. 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**

26. Prior to the issuance of a building permit, the Applicant shall submit a final drainage and grading plan. The plan shall be subject to review and approval by the Building Division.
27. Prior to the issuance of a building permit, the Applicant shall submit a final construction erosion control plan. The plan shall be subject to review and approval by the Building Division.
28. Prior to the issuance of a building permit, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall comply with the approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.

### **Public Works Department**

29. The proposed driveway approach shall comply with City Council Policy L-2 (Driveway Approaches).
30. A new sewer cleanout shall be installed per City Standard 406. All used sewer laterals shall be abandoned at the property line.
31. All non-standard improvements within the Harbor Island Road right-of-way shall be removed.
32. New curb drains shall be installed per City Standard 184.
33. New driveway approach shall be installed per City Standard 162.
34. The existing water meter and service shall be abandoned at the main.
35. A new water service shall be installed per City Standard 502.

**Fire Department**

36. NFPA 13D fire sprinklers shall be installed in the development.

## RESOLUTION NO. ZA2025-007

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING A COASTAL DEVELOPMENT PERMIT FOR A NEW TWO-STORY MEDICAL BUILDING LOCATED AT 3900 WEST COAST HIGHWAY (PA2024-0188)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Boulder Associates (Applicant) on behalf of Hoag Memorial Hospital Presbyterian (Owner), concerning property located at 3900 West Coast Highway and legally described as a portion of lot 172 in Block 1 of the Irvine Subdivision (Property), requesting approval of a coastal development permit (CDP).
2. The Applicant requests a CDP to construct a new two-story, 28,323 square-foot medical building with outdoor patios and associated improvements such as landscaping, hardscaping, a trash enclosure and site circulation at an existing surface parking lot in the Lower Campus of the hospital. The first floor is 15,466 square-feet and will support a 28-bed, short stay residential care program that operates 24 hours a day, seven days a week, where patients can stay up to 45 days. The second floor is 12,198 square feet and will support six outpatient therapy group classrooms, for up to 86 patients per day and will operate Monday to Friday from 8:00 a.m. to 9:00 p.m. (Project). No deviations from the Newport Beach Municipal Code (NBMC) or Hoag Memorial Hospital Presbyterian Planned Community (PC38) are requested.
3. The Property is located within the Hoag Memorial Hospital Presbyterian Planned Community (PC38) and is designated as Private Institution (PI) by the General Plan Land Use Element.
4. The Property is located within the coastal zone. The Property is designated as Private Institutions (PI-B) (0.0 – 0.75 FAR) by the Coastal Land Use Plan.
5. A public hearing was held on January 30, 2025, 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. All potential environmental concerns have been addressed in previously certified Supplemental Final Environmental Impact Report (SEIR) (SCH No.19910071003) and Final Environmental Impact Report (FEIR) No. 142 as referenced in SEIR, that the City of Newport Beach intends to use said documents for the above-noted project, and further that there are no additional reasonable alternatives or mitigation measures that

should be considered in conjunction with said project. Copies of the previously prepared environmental documents for Hoag Memorial Hospital Presbyterian are available for public review and inspection at the Planning Division or the City of Newport Beach website at: [CEQA Environmental Documents](#).

2. The Zoning Administrator finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time-consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages that may be awarded to a successful challenger.

### 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 Property is located within the Coastal Zone. The Property is categorized as Private Institution (PI-B) (0.0 – 0.75 FAR) by the Coastal Land Use Plan (CLUP) and is located within the Hoag Memorial Hospital Presbyterian Planned Community (PC38). The Project is for a new two-story medical building to provide outpatient and residential care services.
2. The Project complies with applicable development standards of the Hoag Memorial Hospital Presbyterian Planned Community (PC38) including, but not limited to use, development limits, setbacks, height and parking.
  - a. The Project complies with PC38 which allows residential care and outpatient therapy uses on the Lower Campus of the Property by right.
  - b. The maximum development limit of the Lower Campus of the Property is 577,889 square-feet. There is 207,405 square-feet of existing building area on the Lower Campus and the Project proposed 28,158 square-feet for a total building area of 235,563 square-feet. The Project therefore complies within the maximum development limit for the Lower Campus.
  - c. The Project requires a 20-foot setback along the northern boundary of the Lower Campus and 45-foot setback along the West Coast Highway boundary. There is no required building setback along the western boundary of the Lower Campus. The Project proposes a 132-foot setback from the northern boundary and 82-foot



setback from the West Coast Highway boundary. The Project therefore complies with the setback requirements.

- d. PC38 specifies height limits for several areas throughout Property. The Project is located in Lower Campus Zone, sub-area B which allows a maximum structure height of 37 feet, as measured from grade (57 feet above mean sea level) along the West Coast Highway boundary and a maximum structure height of 43 feet, as measured from grade (63 feet above mean sea level) along the northern boundary of the Lower Campus. Additionally, PC38 requires that no structure shall exceed the height of the existing slope on the northern boundary. The proposed structure measures 34 feet, 6 inches from grade, which is 54 feet, 6 inches above sea level inclusive of the proposed patio located on the second floor and will not exceed the height of the existing slope on the northern boundary of the Lower Campus. The Project therefore complies with all height requirements.
  - e. The Property currently provides 2,494 parking spaces through several parking structures and surface parking lots and 2,327 parking spaces are currently required. PC38 requires a parking rate of 2.31 parking spaces per 1,000 square feet of gross floor area for outpatient service and one space per 1,000 square feet of gross floor area for residential care. The Project includes 12,857 gross square feet of outpatient services and 15,466 gross square feet of outpatient services for a total parking requirement of 46 spaces. The new total required parking requirement for the Property is 2,353 parking spaces. The Project is located on an existing surface parking lot which will reduce onsite parking to 2,392 parking spaces. Therefore, the Property will continue to comply with the minimum parking requirements.
  - f. Conceptual landscaping plans provide a minimum of 5% of surface parking areas to be devoted to planting areas as required by PC38 landscape standards and in compliance with Implementation Plan Section 21.30.075 (Landscaping). Condition of Approval No. 23 requires landscape design to provide drought tolerant plantings, non-invasive plant species and water efficient irrigation.
  - g. The Project proposes a minimum top of slab elevation of 20.0 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 Lower Campus of the Property is developed with a range of single-, two-, and three-story medical buildings, a parking structure, temporary trailers, and a cogeneration facility. The Project's two-story design, bulk, and scale of development is consistent with the existing Lower Campus' pattern of development and complies with the height requirements specified in PC38.
  3. 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.

4. 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.
5. The Project is located adjacent to coastal view roads and coastal viewpoints as identified in the Coastal Land Use Plan. The Project is located approximately 140 feet southeast from Sunset View Park which is identified as a Public Viewpoint and below Sunset Park Lane which is identified as a Coastal View Road by the Coastal Land Use Plan. Site evaluation revealed that the proposed two-story design, inclusive of proposed patio, is consistent with the existing pattern of development of the Lower Campus and will not affect the existing views afforded from Sunset Ridge Lane. The Project is also located within the viewshed of other distance coastal viewpoints including at Newport Island Park, Channel Park, and Cliff Drive Park; however, the Project is not visible from these locations due to the distance and intervening structures. The Project will construct a new two-story medical building that complies with all applicable Local Coastal Program (LCP) and PC38 development standards and maintains a building envelope consistent with the existing pattern of development of the Lower Campus. 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 not located between the nearest public road and the sea or shoreline.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby finds. The Project therefore complies with the California Environmental Quality Act (CEQA).
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. PA2024-0188, 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 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 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 30<sup>TH</sup> DAY OF JANUARY 2025.**



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Benjamin M. Zieba, AICP, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**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 shall be limited to 28,323 square-feet of gross floor area. Upon approval of the Project, the total building area for the Lower Campus would be 235,563 square-feet.*
3. *The Project shall be limited to a height of 34 feet, 6 inches from grade and 54 feet, 6 inches above mean sea level and shall not exceed the height of the adjacent slope.*
4. *A minimum of 2,353 parking spaces shall be provided on the Property for Hoag to maintain compliance with parking requirements specified in PC38, including the proposed medical building.*
5. *All outpatient therapy sessions shall be conducted inside the building.*
6. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
7. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
8. 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 cause the revocation of this Coastal Development Permit.
9. All proposed signs shall be in conformance with any approved Hoag Sign Program (Part VI of PC38) for the Property and provisions of Chapter 20.42 (Sign Standards) of the NBMC.
10. 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, welfare, or materially injurious to property or improvements in the vicinity or if the property is operated or maintained to constitute a public nuisance.
11. Coastal Development Permit No. PA2024-0188 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.

12. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans before issuance of the building permits.
13. Prior to the issuance of building permits, the Applicant shall submit a final lighting plan with a letter from a licensed electrical engineer stating that the Project complies with the requirements Section V.E (Lighting) and Section VII (Hoag Hospital Parking Regulations) of PC38 to minimize impacts to adjacent land uses. If illumination creates an unacceptable negative impact on surrounding land uses or environmental resources, the Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
14. 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, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
15. All noise generated by the proposed use shall comply with the provisions of Section V.M (Noise Standards) of the PC38 and Chapter 10.26 (Community Noise Control) of the NBMC.
16. A Special Events Permit is required for any event or promotional activity outside the normal operating 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 NBMC to require such permits.
17. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
18. 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).
19. 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.
20. 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.

21. 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.
22. 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.
23. Prior to the issuance of building permits, the Applicant shall submit a final landscape and irrigation plan for compliance with Section VIII (Hoag Hospital Landscape Regulations) of PC38. These plans shall incorporate drought tolerant plantings, non-invasive plant species, water efficient irrigation design and a minimum of 5% of surface parking areas devoted to planting areas. The plans shall be approved by the Planning Division.
24. *Prior to the issuance of building permits, the Applicant shall submit a construction management plan to be reviewed and approved by the Community Development, Fire and Public Works Departments. Upon approval of the plan, the Applicant shall be responsible for implementing and complying with the stipulations set forth in the approved plan*
25. 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.
26. 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.
27. 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.
28. Prior to 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.
29. The Project shall be in compliance with all applicable mitigation measures contained in Supplemental Final Environmental Impact Report (SEIR) (SCH No.19910071003).
30. 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 leasing agent.
31. 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 **Hoag CareMar Medical Building including, but not limited to Coastal Development Permit (PA2024-0188)**. 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 the 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.

### **Building Division**

32. 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.
33. Building height, area, and story shall comply with Chapter 5 of the California Building Code (CBC) 2022.

34. Exterior wall and opening protection to the property line and between building shall comply with Table 705.5 and 705. 8 of the California Building Code (CBC) 2022. The plan shall show the assumed imaginary property line.
35. Medical office shall comply with OSHPD-3 requirements per Section 1226 of the California Building Code (CBC).
36. Residential treatment shall comply with Section R2.1 of Chapter 420 and 435 of the California Building Code (CBC).
37. Accessible residential rooms shall be per 11B-223.2.1.
38. Limit occupant load of group room to 49 occupant loads.
39. Plumbing fixture analysis shall comply with CPC Table 422.1. Accessible restrooms shall comply with 11B-213 of the California Building Code (CBC) 2022.
40. Circulation paths continuous to vehicular traffic shall be physically separated from vehicular traffic per 11b-250.1.
41. The ascending slope adjacent to the proposed building below shall set a distance of H/2 minimum from the slope to provide protection from slope drainage, erosion and shallow failures. When a wall is proposed, the top of wall elevation may be subtracted from the total height of the slope to determine the "H" to compute H/2, this minimum building distance from the wall.

### **Public Works Department**

42. Connections to the City water and sewer shall be installed per City Standards.
43. Parking layout shall comply with City standard 805.
44. Vehicular circulation shall be subject to further review by the Public Works Department

### **Fire Department**

45. Fire Department site and building access shall comply with Section 503 of the California Fire Code (CFC) 2022 and Newport Beach Fire Department (NBFD) guideline C.01.
46. Fire sprinklers shall be installed per with Section 903 of the California Fire Code (CFC) 2022 and Newport Beach Fire Department (NBFD) guideline F.05 and 2022 National Fire Protection Association 13 (NFPA) standards.
47. Fire alarm shall be installed per Section 907 of the California Fire Code (CFC) 2022 and comply with the R2.1 requirements of Section 907.2.11 of the California Fire Code (CFC) 2022 and 2022 National Fire Alarm and Signaling Code 72 (NFPA) standards.



48. An Emergency Radio Response Communications System shall be installed per Newport Beach Fire Department (NBFD) guideline D.05.
49. A two-way communication system shall be installed at elevator landings.
50. A fire underground supply line and onsite fire hydrants shall be required per Section 507 California Fire Code (CFC) 2022 and Newport Beach Fire Department (NBFD) guideline F.04.
51. Mechanical retractable fabric awnings shall meet the requirement of the Section 3105.4 of the California Building Code (CBC) 2022 for flame propagation test methods

### **Utilities Department**

52. Prior to the issuance of building permits, the Applicant shall provide a water demand study and wastewater capacity study for the new building.
53. The proposed storm drain lines will be located on private property and will be maintained by the property owner.
54. Prior to the issuance of building permits, the Applicant provide details showing the location, size, and material of sewer connections.
55. Prior to the issuance of building permits, the Applicant shall provide a video survey of the sewer line if the proposed building will tie into the private sewer line to confirm line conditions. If defects or issues are found, the line will be required to be repaired, replaced or relined at the discretion of the Utilities Director.
56. Prior the issuance of building permits, an inspection of the nearest manhole will be required to determine if the manhole needs to be lined at the discretion of the Utilities Director.

### **Municipal Operations Department**

57. Refuse enclosures shall be conveniently placed to meet the needs of the proposed building and be easily accessible for janitorial staff and meet the requirements listed in Section 20.30.120 (Solid Waste and Recyclable Materials Storage) of the NBMC.
58. Internal source separation (trash, recycling, and organic food scrap containers) shall be implemented in communal dining, food preparation, and break areas.
59. Tree height on slope shall not extend above the Sunset View Park sidewalk.

## RESOLUTION NO. ZA2025-008

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A MINOR USE PERMIT, COASTAL DEVELOPMENT PERMIT, AND LOT MERGER FOR AN OUTDOOR DINING PATIO AT AN EXISTING RESTAURANT LOCATED AT 5930 WEST COAST HIGHWAY AND 205, 206, AND 207 60TH STREET (PA2023-0191)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Government Solutions, Inc., with respect to property located at 5930 West Coast Highway and 206 60th Street, and legally described as Lots 4, 5, 6, and 7 of Block 159 of the River Section Tract and property located at 205 and 207 60th Street, and legally described as Lots 14 and 15 of Block 160 of the River Section Tract. The applicant is requesting approval of a minor use permit, coastal development permit, and lot merger.
2. On June 21, 1962, the Planning Commission approved Use Permit No. 862 to allow the sale of beer and wine for the existing restaurant. Subsequently, on April 23, 1981, the Planning Commission approved Use Permit No. 1980, to allow live entertainment for the existing restaurant.
3. On October 20, 1997, the Planning Commission approved Accessory Outdoor Dining Permit No. 25 to allow a 262 square-foot accessory outdoor dining area for the existing restaurant.
4. As part of the City's response to the COVID-19 Pandemic with Emergency Order No. 2020-005, on May 28, 2020, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-007 and Emergency Coastal Development Permit No. CD2020-023 that allowed temporary outdoor dining with 12 tables in the rear parking lot of the existing restaurant (i.e., Cappy's Café).
5. On July 2, 2020, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-063 and Emergency Coastal Development Permit No. CD2020-052 that allowed an increase for 20 tables of outdoor dining approximately 1,800 square-feet in the parking lot of Cappy's Café. The outdoor dining temporarily displaced 14 parking spaces.
6. After termination of the Emergency Order on June 22, 2021, the Zoning Administrator approved Limited Term Permit No. XP2021-005 and Coastal Development Permit No. CD2021-036 on December 16, 2021, to allow a reduction to an 800 square-foot outdoor dining area for up to one year term. On December 23, 2022, the Zoning Administrator approved an extension of time of Limited Term Permit No. XP2021-005 and Coastal

Development Permit No. CD2021-036 for a one-year term to expire on December 30, 2023.

7. The applicant is requesting a minor use permit and coastal development permit to remove an existing temporary outdoor dining patio and construct a permanent 440-square-foot outdoor dining patio for an existing restaurant. The existing restaurant has a Type 47 (On-Sale General Eating Place) Alcoholic Beverage Control (ABC) License and provides live entertainment, which would continue as part of the project. No changes to the operational characteristics of the existing restaurant are requested and no late hours (i.e. after 11:00 p.m.) are proposed. Additionally, the applicant is requesting a lot merger to merge three underlying legal lots into one lot. If approved, this Minor Use Permit would supersede Use Permit No. UP1980, Use Permit No. UP862, and Accessory Outdoor Dining Permit No. 25.
8. The subject property is designated Visitor Serving Commercial (CV) by the General Plan Land Use Element and is located within the Commercial Visitor-Serving (CV) Zoning District.
9. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor Serving Commercial – (0.0 – 0.75 FAR) (CV-A) and it is located within the Commercial Visitor-Serving (CV) Coastal Zoning District.
10. A public hearing was held on January 30, 2025, 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 exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and 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 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing use. The project involves the removal of a temporary outdoor dining patio and the construction of a new outdoor dining patio that will be maintained on a permanent basis for an existing restaurant which is considered a negligible expansion of the existing use.
3. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and Zoning; no variances or exceptions are required; all services and access to the proposed parcels are available; the parcel was not involved in a division of a larger parcel within the previous two years; and the parcel does not have

an average slope greater than 20%. This exemption includes a lot merger of three underlying lots that will not result in the creation of any new parcels and will comply with the conditions specified above.

### 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 General Plan land use category for the property is Visitor Serving Commercial (CV), which is intended to provide for accommodations, goods, and services intended to primarily serve visitors to the City of Newport Beach. The restaurant is located on West Coast Highway in West Newport and accommodates both residents and visitors to the City. The restaurant has a temporary outdoor dining patio that was constructed as a result of the COVID-19 Pandemic and the project proposes to remove the temporary outdoor dining patio and construct a new permanent outdoor dining patio to enhance the existing restaurant.
2. The property is in the West Newport area and pursuant to Land Use Element Policy LU 3.3 (Opportunities for Change) of the General Plan, the West Newport area supports the consolidation of retail and visitor-serving commercial uses, and new residential opportunities. The existing restaurant serves as a visitor-serving commercial use and the project proposes to consolidate three underlying lots into a single lot for the benefit of the restaurant and to allow construction of the outdoor dining patio.
3. The property is not part of a specific plan.

#### 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 property is in the Commercial Visitor-Serving (CV) Zoning District that is intended to provide for areas appropriate for accommodations, goods, and services intended to serve primarily visitors to the City. The existing restaurant is within an area that is heavily frequented by both residents and visitors to the City and the outdoor patio area will

provide an additional amenity to the restaurant for visitors to enjoy an outdoor dining experience in proximity to the coast.

2. A Food Service, Eating and Drinking Establishment land use (i.e., a restaurant) is allowed in the CV Zoning District with approval of a minor use permit.
3. The property is within the coastal zone and pursuant to Section 21.40.040 (Off-Street Parking Spaces Required), a Food Service use requires one parking space per every 30 to 50 square-feet of net public area, including outdoor dining areas exceeding 25% of the interior net public area. The restaurant operates during daytime hours for breakfast and lunch only and is closed during typical dinner hours. The parking lot also accommodates both bicycle parking and motorcycle parking and during peak hours, restaurant staff is available to direct patrons to available parking spaces to assist in managing the flow of traffic. The restaurant offers live entertainment within the interior of the restaurant; however, no dancing is permitted and there is no stage for patrons to congregate. Therefore, Staff believes a requirement of one parking space per 50 square-feet of net public area is appropriate for the existing restaurant.
4. The indoor net public area for the restaurant is 1,032 square-feet. The restaurant has an existing 228 square-foot outdoor dining patio along the side of the restaurant, and the project proposes a new 440 square-foot outdoor dining patio at the rear of the property for a total outdoor dining area of 668 square-feet. Of the 668 square-feet, 258 square-feet may be excluded from the parking calculations (25% of the indoor net public area). In total, 30 parking spaces are required and there are 33 parking spaces provided.

<b>Location/Description</b>	<b>Net Public Area (SQ. FT)</b>	<b>Parking Spaces Required</b>	<b>Parking Rate</b>
<b>Indoor Net Public Area</b>	1,032	21	1 per 50 sq. ft.
<b>Outdoor Dining Patio (Excluded from Parking)</b>	258	0	0
<b>Outdoor Dining Patio (Included in Parking)</b>	410	9	1 per 50 sq. ft.
<b>Total</b>	<b>1,700</b>	<b>30</b>	<b>1 per 50 sq. ft.</b>

5. The property at 5930 West Coast Highway will provide 13 parking spaces and the property at 205 and 207 60th Street will provide 20 parking spaces. Although the parking spaces are on different properties, the properties are owned in common, and a recorded parking agreement has been in place since 1961 to ensure the parking remains available for use by the restaurant.
6. Seven parking spaces are located partially on the adjacent property at APN 114-170-70, known as the Semeniuk Slough. Historical aerial imagery shows the location of the parking spaces in this area for at least 60 years. A condition of approval has been included to require the owner/operator of the restaurant to obtain rights to use this area

and inform the City should the owner/operator no longer have authorization to park on the adjacent parcel.

7. Use Permit No. 862 approved on June 21, 1962, by the Planning Commission allowed for the sale of beer and wine at the restaurant. Since then, the restaurant has operated with a Type 47 (On-Sale General – Eating Place) ABC License for over 30 years which, at the time the license was modified, did not require an amendment to the use permit. The existing restaurant will continue to operate with a Type 47 ABC License and the Newport Beach Police Department (NBPD) has provided conditions of approval to ensure the restaurant will continue to operate without potential conflicts with the surrounding land uses.

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 new outdoor dining patio does not substantially change the operational characteristics of the existing restaurant. The outdoor dining patio would serve as an accessory to the existing restaurant and would complement the dining experience for patrons of the establishment with additional seating options.
2. Use Permit No. 1980 approved on April 23, 1981, to allow live entertainment for the restaurant and included conditions of approval to confine all live entertainment and any accompanying music to the interior of the restaurant facility. Condition of Approval No. 2 is included to retain this condition.
3. The restaurant will remain complementary to the other uses along West Coast Highway which include retail stores, a hotel, and several restaurants.

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 project site is located on West Coast Highway in West Newport that has heavy vehicular traffic and pedestrian activity. The property has operated as a restaurant for over 60 years and as Cappy's Café for over 40 years. The restaurant has operated with a temporary outdoor dining patio since May 2020 with no major issues and the project will allow the restaurant to retain a permanent outdoor dining patio.

2. The property is accessible from West Coast Highway and 60th Street. The additional parking located at 205 and 207 60th Street is accessed through the property with a dedicated unobstructed drive aisle. Additionally, restaurant staff will assist in guiding patrons to available parking spaces during peak hours.
3. The project has been reviewed by the City's Public Works Department and Fire Prevention Division (Fire Department) to ensure adequate public and emergency vehicle access, public services, and utilities are provided on the property.

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. Fact 7 in support of Finding B is hereby incorporated by reference.
2. The project includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots of the restaurant, during business hours, if directly related to the patrons of the establishment.
3. The outdoor dining area is situated behind the restaurant towards the rear of the property and is not adjacent to West Coast Highway. Adequate access is provided through the property and the outdoor dining area will not obstruct any required access or parking.
4. The existing restaurant operates primarily during typical breakfast and lunchtime hours and no late hours are proposed. The restaurant has served as a local establishment for residents and visitors to the West Newport area and the outdoor dining area will add an additional amenity for patrons to the restaurant.

***Coastal Development Permit***

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

Finding:

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

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Facts in Support of Finding:

1. The Coastal Land Use Plan (CLUP) designates the property as Visitor Serving Commercial (CV-A) which is intended to provide for accommodations (e.g., hotels, motels, hostels), goods, and services intended to primarily serve visitors to the City of Newport Beach. The property is developed with an existing restaurant that has served the City for over 60 years and the project proposes an outdoor dining patio in an area that currently has a temporary outdoor dining patio.
2. The project complies with applicable development standards including, but not limited to, floor area limitation, setbacks, and height.
  - a. The project proposes to merge three lots that will total approximately 7,991 square-feet. The maximum floor area limitation is 3,999.5 square-feet (0.50 FAR) (after the lot merger) and the total floor area of the existing restaurant is 2,947 square-feet.
  - b. The CV Coastal Zoning District only requires a side setback when a property abuts a residential use and only requires a rear setback when the property abuts either an alley or a residential use. No front setback is required. As the subject property does not abut any residentially zoned properties and abuts open space to the rear, no building setbacks are required.
  - c. The base height limit for the CV Zoning District is 26 feet for flat elements and 31 feet for sloping roofs (minimum 3:12 slope). The proposed outdoor dining patio is approximately 15-feet, six-inches.
  - d. The restaurant, with the proposed outdoor dining patio, requires 30 parking spaces and the property provides 33 on-site parking spaces. No on-street parking spaces along West Coast Highway will be removed or impacted. Therefore, public parking will not be impacted as part of the project.
3. The property has no native vegetation, habitat, or landscaping on-site or along the West Coast Highway frontage. The proposed outdoor dining patio has no potential to impact biological resources.
4. The closest public viewpoint is approximately 180-feet to the north of the property at Newport Shores Park, as designated in the CLUP. An existing structure at 6001 Coast Boulevard sits between Newport Shores Park and the outdoor dining patio and, therefore, is not visible from this viewpoint.
5. The nearest coastal view road is at the intersection of West Coast Highway and Superior Avenue which is over 2,500 feet east of the property. The project is located entirely on private property and is not within proximity of this intersection to inhibit any coastal views. Additionally, the outdoor dining patio is designed to complement the existing restaurant. The project does not have the potential to degrade the visual quality of the coastal zone or result in significant adverse impacts to public view.



Finding:

- G. *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 not located between the nearest public road and the sea or shoreline. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC 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 permanent outdoor dining area for an existing restaurant to complement the existing business and adequate parking is provided. 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 and lateral access to the beach is available at the intersection of West Coast Highway and Prospect Street approximately 630-feet west of the property. The project proposes an outdoor dining area that is entirely on private property and does not include any features that would obstruct access along this route.

***Lot Merger***

In accordance with Section 19.68.030(H) (*Lot Mergers – Required Findings*) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

- H. *Approval of the merger will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot merger is consistent with the legislative intent of this title;*

Facts in Support of Finding:

1. The project is consistent with the purpose and intent pursuant to Section 19.04.020 (Purpose and Applicability) of the NBMC. The lot merger will not result in the creation of additional parcels, as it will remove two interior lot lines to merge three underlying lots into one single lot. The proposed outdoor dining patio will be constructed entirely within the merged lot.
2. The proposed outdoor dining patio will be subject to the requirements of Title 20 (Planning and Zoning), which is intended to promote orderly development, protect

neighborhood character, and preserve public health, safety, and general welfare of the City. Further, the project has been reviewed by the Building Department, Public Works Department, and Fire Department.

Finding:

- I. The lots to be merged are under common fee ownership at the time of the merger;*

Fact in Support of Finding:

1. The three underlying lots to be merged are under common ownership, as evidenced by the Preliminary Title Report submitted with the application.

Finding:

- J. The lots as merged will be consistent or will be more closely compatible with the applicable zoning regulations and will be consistent with other regulations relating to the subject property including, but not limited to, the General Plan and any applicable Coastal Plan or Specific Plan;*

Facts in Support of Finding:

1. Facts in support of Finding A are hereby incorporated by reference.
2. Facts in support of Finding F are hereby incorporated by reference.
3. The existing restaurant and temporary outdoor dining patio are currently constructed across lot lines. The lot merger will allow the existing restaurant and new outdoor dining patio to be constructed entirely on one lot.

Finding:

- K. Neither the lots as merged nor adjoining parcels will be deprived of legal access as a result of the merger;*

Fact in Support of Finding:

1. No adjoining parcels will be deprived of legal access as a result of the merger. The west side of the property will continue to be accessed by 60th Street. Additionally, the alley on the east side of the property will remain.

Finding:

- L. The lots as merged will be consistent with the pattern of development nearby and will not result in a lot width, depth or orientation, or development site that is incompatible with nearby lots. In making this finding, the review authority may consider the following:*

- i. Whether development of the merged lots could significantly deviate from the pattern of development of adjacent and/or adjoining lots in a manner that would result in an unreasonable detriment to the use and enjoyment of other properties.*
- ii. Whether the merged lots would be consistent with the character or general orientation of adjacent and/or adjoining lots.*
- iii. Whether the merged lots would be conforming or in greater conformity with the minimum lot width and area standards for the zoning district.*

Facts in Support of Finding:

1. Any development on the merged lots will be required to meet all applicable development standards and, therefore, will not significantly deviate from the pattern of development of adjacent and/or adjoining lots in a manner that would result in an unreasonable detriment to the use and enjoyment of other properties.
2. The restaurant currently has a temporary outdoor patio that was installed during the COVID-19 Pandemic that crosses over an underlying lot line. The project will allow a permanent outdoor dining patio to be constructed within a smaller footprint that would not be constructed across lot lines.
3. The parcels that front West Coast Highway vary in size with the adjacent lot at 6000 West Coast Highway approximately at 5,100 square-feet and the next property at 6030 West Coast Highway approximately at 17,700 square-feet. The merged lot for the project will be approximately 7,991 square-feet. The new lot would generally be consistent with the lot sizes in the vicinity of the property.
4. The CV Zoning District does not have a minimum lot area or lot width. The existing property at 5930 West Coast Highway has a lot area of 5,049 square feet and a 0.50 FAR, which allows for a 2,524.5 square-foot structure. The existing restaurant is approximately 2,947 square feet and exceeds the allowed FAR (0.58 FAR) for that single parcel. The lot merger will merge three underlying lots, which will allow the maximum square footage to be 3,999.5 square feet. Therefore, the existing restaurant will be in compliance with the 0.50 FAR limitation.

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) and 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 minor use permit, coastal development permit, and lot merger 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 by the provisions of Title 20 (Planning and Zoning) and 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.
4. This resolution supersedes Use Permit No. 862, Use Permit No. 1980, and Accessory Outdoor Dining Permit No. 25 which upon vesting of the rights authorized by this minor use permit, coastal development permit, and lot merger (PA2023-0191), shall become null and void.

**PASSED, APPROVED, AND ADOPTED THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**



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Benjamin M. Zueba, AICP, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan and floor plan dated with the date of approval for Use Permit No. 1980 and Outdoor Dining Permit No. 25 except as modified by this approval.
2. *Live entertainment and any accompanying music shall be confined to the interior of the restaurant facility.*
3. *The hours of operation for the restaurant shall be between 6:00 a.m. and 11:00 p.m., daily.*
4. *The owner/operator shall obtain rights for the use of private property located at APN 114-170-70 for parking. Should the parking spaces on APN 114-170-70 no longer be available for use by the owner/operator, the owner/operator shall immediately notify the Community Development Director. The Community Development Director shall establish a reasonable period of time in which one of the following shall occur: 1) Substitute parking acceptable to the Director, or 2) the size or intensity of use authorized by this Minor Use Permit is reduced in proportion to the parking spaces lost, or 3) the owner or operator of the project must obtain a parking reduction pursuant to NBMC Section 20.40.110 and Section 21.40.110 (Adjustments to Off-Street Parking Requirements) rendering the parking on APN 114-170-70 unnecessary.*
5. *The parking and/or stopping of vehicles on 60th Street or in the public right-of-way between the subject property and adjacent buildings is prohibited. A "no customer pickup/drop off" sign shall be posted on the restaurant building on 60th Street.*
6. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. 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, Coastal Development Permit, and Lot Merger.
8. This Minor Use Permit, Coastal Development Permit, and Lot Merger filed as PA2023-0191 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.
9. This Minor Use Permit, Coastal Development Permit, and Lot Merger 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.

10. Any change in operational characteristics, expansion in area, or other modification to the approved plans, may require an amendment to this Minor Use Permit, Coastal Development Permit, and Lot Merger or the processing of a new Minor Use Permit, Coastal Development Permit, and Lot Merger.
11. 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.
12. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
13. 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.
14. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) of the NBMC and other applicable noise control requirements of the NBMC.
15. 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.
16. Construction activities shall comply with Section 10.28.040 (Construction Activity – Noise Regulations) of the NBMC, 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.
17. No outside paging system shall be utilized in conjunction with this establishment.
18. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.

19. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
20. 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.
21. 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).
22. 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.
23. Storage outside of the building in the front, sides, or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
24. 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.
25. 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 the City's approval of ***Cappy's Cafe including but not limited to, Minor Use Permit, Coastal Development Permit, and Lot Merger (PA2023-0191)***. 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.

**Fire Department**

26. Fire extinguishers and emergency exit lighting shall be provided in accordance with the Newport Beach Fire Department.
27. Any heating elements or use of liquid petroleum gas for heating shall be reviewed and approved by the Newport Beach Fire Department.

**Building Division**

28. 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.

**Public Works**

29. *Prior to the issuance of building permits, the lot merger shall be submitted to the Public Works Department for final map review and approval. All applicable fees shall be paid and the approved final map (lot merger) shall be recorded with the County recorder.*

**Police Department**

30. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every three years regardless of certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
31. The applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the use permit.
32. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
33. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.



34. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment. Pre-recorded music may be played in the tenant space, provided exterior noise levels outlined below are not exceeded. All noise generated by the proposed use shall comply with the provisions of NBMC Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the NBMC.
35. All owners, managers and employees must abide by all laws and conditions of the Alcoholic Beverage License.
36. No outdoor sound system, loudspeakers, or paging system shall be permitted in conjunction with the facility.
37. Proper signs indicating, "No Alcohol Beyond this Point" should be displayed at all patio exits.
38. The outdoor patio must be licensed by the Department of Alcoholic Beverage Control prior to alcohol service being conducted.
39. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.