



CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Seimone Jurjjs, Community Development Director

SUBJECT: Report of actions taken by the Zoning Administrator, Hearing Officer, and/or Planning Division staff for the week ending August 16, 2019.

ZONING ADMINISTRATOR ACTIONS AUGUST 15, 2019

- Item 1: Pleasantville Road Partners, LLC Residential Condominiums Coastal Development Permit No. CD2019-022 and Tentative Parcel Map No. NP2019-007 (PA2019-071)
Site Address: 319 Jasmine Avenue
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| Action: Approved by Resolution No. ZA2019-051 | Council District | 6 |
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- Item 2: Jack's Surfboards/Jack's Girls Outdoor Sales Limited Term Permit No. XP2019-008 (PA2019-125)
Site Address: 2727 Newport Boulevard, Suite 101
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| Action: Approved by Resolution No. ZA2019-052 | Council District | 1 |
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- Item 3: Fluter-Collins Residence Coastal Development Permit No. CD2019-023 (PA2019-097)
Site Address: 2104 East Ocean Front
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| Action: Approved by Resolution No. ZA2019-053 | Council District | 1 |
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- Item 4: Steckler Residence Coastal Development Permit No. CD2019-032 (PA2019-119)
Site Address: 2104 East Ocean Front
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| Action: Approved by Resolution No. ZA2019-054 | Council District | 5 |
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- Item 5: Mulflur Residential Condominiums Coastal Development Permit No. CD2019-031 and Tentative Parcel Map No. NP2019-010 (PA2019-104)
Site Address: 512 and 512 ½ Begonia Avenue
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| Action: Approved by Resolution No. ZA2019-055 | Council District | 6 |
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- Item 6: 944 Via Lido Nord House Demolition Coastal Development Permit No. CD2018-111 (PA2018-279)
Site Address: 944 Via Lido Nord
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| Action: Approved by Resolution No. ZA2019-056 | Council District | 1 |
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**HEARING OFFICER ACTIONS
AUGUST 15, 2019**

Item 1: Moore Hedge Height Reasonable Accommodation No. RA2019-001 (PA2019-050)
Site Address: 101 Via Undine

Action: Approved by Resolution No. HO2019-001 Council District 1

**COMMUNITY DEVELOPMENT DIRECTOR
OR PLANNING DIVISION STAFF ACTIONS
(Non-Hearing Items)**

Item 1: Comprehensive Sign Program No. CS2018-006 (PA2018-237)
Site Address: 330 Old Newport Boulevard (Newport Harbor Medical Plaza)

Action: Approved Council District 2

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 of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

RESOLUTION NO. ZA2019-051

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2019-007 AND COASTAL DEVELOPMENT PERMIT NO. CD2019-022 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 319 JASMINE AVENUE (PA2019-071)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Nicolson Companies, with respect to property located at 319 Jasmine Avenue, and legally described as Lot 21 and Northeasterly 25 feet of Lot 19 in Block 236 of Tract 186 Corona del Mar, City of Newport Beach in the County of Orange requesting approval of a tentative parcel map and a coastal development permit for condominium purposes.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. A duplex has been demolished and a new duplex is currently under construction. No waivers of Title 19 (Subdivisions) are proposed. The Tentative Parcel Map would allow each unit to be sold individually. The Tentative Parcel Map also requires the approval of a Coastal Development Permit pursuant to Title 21 Local Coastal Program Implementation Plan in the Municipal Code.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential.
4. The subject property is located within the coastal zone and has a Coastal Land Use Designation of Two-Unit Residential (RT-D) and a Coastal Zoning District of Two-Unit Residential (R-2).
5. A public hearing was held on August 15, 2019, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Class 15 (Minor Land Divisions).
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved

in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code and approves the Coastal Development Permit based on the following findings per Section 21.52.015.F of Title 21:

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for condominium purposes and meets all of the requirements of the Local Coastal Program, including 21.30.025 Coastal Subdivisions.
2. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code and Building Division standards and policies.
3. The Tentative Parcel Map is for a property within a developed neighborhood that is over 1,000 feet from the mean high water line and is not near any natural landforms or environmentally sensitive areas.

Finding:

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

Facts in Support of Finding:

1. The project site is not located between the nearest public road and the sea or shoreline. The residential lots do not currently provide nor inhibit public coastal access. Newport Beach Municipal Code Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is a tentative parcel map for condominium purposes. Thus, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A duplex has been demolished and a new two-unit dwelling is under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current General Plan Land Use Designation (Two-Unit Residential).
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the reconstruction of sidewalks along the Jasmine Avenue frontage and concrete alley panels along the alley, consistent with the Subdivision Code (Title 19).

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a two-unit development because it is regular in shape.
2. The subject property is accessible from the alley at the rear and is adequately served by existing utilities.

Finding:

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

infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

1. A duplex has been demolished and a new two-unit dwelling is currently under construction.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The new two-unit dwelling will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Facts in Support of Finding:

1. The subject property is within the Coastal Zone. The facts in support of findings A and B above are hereby incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2019-007 and Coastal Development Permit No. CD2019-022, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken

by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 15th DAY OF AUGUST, 2019.



Rosalinh Ung
Zoning Administrator

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

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is final. The building permit for the new construction shall not be final until after recordation of the parcel map.
3. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code.
4. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Pleasantville Road Partners Condominiums including, but not limited to, Tentative Parcel Map No. NP2019-007 and Coastal Development Permit No. CD2019-022 (PA2019-071)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

PUBLIC WORKS

5. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

6. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
7. All improvements shall be constructed as required by Ordinance and the Public Works Department.
8. All damaged sidewalk panels along the Jasmine Avenue property frontage and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.
9. All existing overhead utilities shall be undergrounded.
10. No above ground improvements shall be permitted within the 5-foot alley setback.
11. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed per City standard with a traffic-grade box and cover. Each water meter and sewer clean out shall be located within the public right of way.
12. An encroachment permit is required for all work activities within the public right-of-way.
13. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
14. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

BUILDING

15. Independent utility services shall be provided for each unit.
16. Independent fire risers shall be required for each unit.
17. Construction shall comply with the California Code of Regulations.

RESOLUTION NO. ZA2019-052

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LIMITED TERM PERMIT NO. XP2019-008 FOR OUTDOOR SALES FOR JACKS SURFBOARDS/JACK'S GIRLS LOCATED AT 2727 NEWPORT BOULEVARD (PA2019-125)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jack's Surfboards, with respect to property located at 2727 Newport Boulevard, and legally described as Lake Tract, Lot 4 Block 127, and Lots 5 to 14 including portion of Lots 2/3 lying northerly of 26th Street, and all -except street- Lots 15 to 19, including all in Block 127, Tract 418, requesting approval of a Limited Term Permit for more than 90 days.
2. The applicant proposes a Limited Term Permit for a period of 12 months to allow outdoor sales of store merchandise within three (3) parking spaces of the on-site parking lot in front of the Jack's Surfboards/Jack's Girls location. The outdoor sales may take place on various dates, up to nine (9) times throughout a 12-month period beginning with the date of the first sale in August 2019. Each sale may last up to four (4) consecutive days.
3. 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.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor-Serving Commercial (CV-A 0.00- 0.75 FAR) and it is located within the CV Coastal Zone District.
5. A public hearing was held on August 15, 2019 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15304 under Class 4 (Minor Alterations to Land) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The project qualifies for this exemption because there will be no permanent improvements to the site. The two (2) canvas canopies and significant (water-filled or similar) barricades

are permitted to delineate the temporary sales area within three (3) parking spaces of the on-site parking lot during the sales and are conditioned to be removed at the end of each sale.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.040.G (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a Limited Term Permit 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, 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 requested limited duration.*

Facts in Support of Finding:

1. The limited term permit will allow outdoor sales, which will be limited to nine (9) times throughout a 12-month period beginning with the date of the first sale in August 2019. Each sale may last up to four (4) consecutive days.
2. Outdoor sales will be limited to the sale of typical store merchandise and will be conducted in conjunction with the normal hours of operation of Jack's Surfboards/Jack's Girls, typically from 8:00 a.m. to 9:00 p.m.
3. Set-up for each sale day will occur prior to opening of the store, and all unsold merchandise will be removed from the outdoor sales area at the end of each sale day.
4. The outdoor sales area will be limited to a maximum of three (3) parking spaces located adjacent to the Jack's Surfboards/Jack's Girls storefront. Portable canopies (approximately 10 feet by 10 feet) may be erected within the three (3) parking spaces. As conditioned, no ADA parking spaces will be utilized as part of the outdoor sales area.
5. In order to enhance patron safety from vehicular traffic, the applicant has provided and the City Traffic Engineer has approved, a plan illustrating the placement of significant barricades around the perimeter of the outdoor sales area to delineate it from the adjacent parking spaces and drive aisles.
6. Similar outdoor sales for Jack's Surfboards, as conditioned and in the same location within the adjacent parking area, have been conducted in the past with approval of the City and have not been proven detrimental.

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 site is a commercial property, which is .94 acres in size and developed with two (2) detached buildings occupied by various retail and service uses. Jack's Surfboards/Jack's Girls are retail sales stores which occupy most of the square footage of the larger of the two (2) detached buildings, which is located within the southerly portion of the site.
2. Outdoor sales will be conducted within three (3) parking spaces located directly in front of Jack's Surfboards/Jack's Girls storefront. Based upon the site plan, the use of the three (3) parking spaces will not impede traffic circulation on the site, nor will it negatively impact required parking for other uses on the site. As conditioned, no ADA parking spaces will be utilized as part of the outdoor sales area.
3. The subject site is bounded by Newport Boulevard to the east, Balboa Boulevard to the west, 28th Street to the north, and 26th Street to the south. The adjacent rights-of-way (Newport Boulevard and Balboa Boulevard) serve as buffers between the nearby residential properties within the R-2 (Two-Unit Residential) Zoning District.

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.

Fact in Support of Finding:

1. The subject site has two (2) direct driveway approaches, one (1) from Newport Boulevard on the easterly side of the site and one (1) from Balboa Boulevard on the westerly side. The location of the outdoor sales area will not impede access to the site, and no traffic issues resulting from the outdoor sales are anticipated.

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. As conditioned, a maximum of three (3) parking spaces (eighty-six (86) parking spaces on site) will be utilized for the outdoor sales area, and no ADA parking spaces will be utilized as part of the outdoor sales area.
2. It is anticipated that, in addition to customers whose destination would be Jack's Surfboards/Jack's Girls, the outdoor sales could attract both pedestrian and vehicular customers of other uses on the site as well as in the surrounding area.
3. Per City Code Enforcement records, previous outdoor sales conducted with approval of a limited term permit by the City and conditioned similarly to this permit have not negatively impacted the parking for neighboring uses on the subject site.

Finding:

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

Facts in Support of Finding:

1. The General Plan Land Use Element category for the site is CV (Visitor-Serving Commercial). The CV designation is intended to provide for accommodations, goods, and services intended to primarily serve visitors to the City. The proposed use is accessory to the existing retail use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CV designation.
2. The site is located in the CV (Commercial Visitor-Serving) Zoning District. The CV zoning designation is intended to provide for areas appropriate for accommodations, goods, and services intended to serve primarily visitors to the City. The proposed use is accessory to the existing retail use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CV designation. The CV zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.
3. The property is within the Coastal Zone. Temporary events authorized by a Limited Term Permit are exempt from the requirement of a Coastal Development Permit pursuant to Section 21.52.035 D. (Special and Temporary Events) of the Municipal Code. Pursuant to 21.52.035 D., this Limited Term Permit meets the following criteria: will not significantly impact public use of roadways or parking areas or otherwise impact public use or access to coastal waters; will not occupy any portion of a public sandy beach or the location is remote with minimal demand for public use; and there is no potential for adverse effect of sensitive coastal resources; a fee will not be charged for general public admission; and does not involve permanent structures or structures that involve grading or landform alteration for installation.
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 approves Limited Term Permit No. XP2019-008, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 15th DAY OF AUGUST, 2019.



Rosalinh Ung
Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan except as noted in the following conditions.
2. Anything not specifically approved by this limited term permit is prohibited and must be addressed by a separate and subsequent review.
3. The outdoor sales shall be limited to nine (9) times throughout a 12-month period beginning with the date of the first sale requested in August 2019. Each sale may last up to four (4) consecutive days, provided the number of sale days does not exceed thirty (30) within the 12-month period. The dates requested by the applicant and approved with this permit are as follows: 2019 - August 30, 31; September 1, 2; November 29, 30; December 1, 12, 13, 14, 15, 18, 20, 21, 22, 23, 24, 26, 27; 2020 – April 10, 11, 12; May 22, 23, 24, 25; July 2, 3, 4, 5. Any changes to the dates specified shall require that the City be notified in advance.
4. To request a change to the sale dates approved with this Limited Term Permit, the applicant shall submit a letter to the Community Development Director requesting the change at least one (1) week prior to the new date.
5. This Limited Term Permit shall expire twelve (12) months from the date of the first sale requested in August 2019, unless an extension of up to one (1) additional period of 12 months is granted by the Zoning Administrator in compliance with Section 20.54.060 (Time Limits and Extensions) of the Zoning Code. 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.
6. The Limited Term Permit shall be limited to outdoor sales of merchandise associated with Jack's Surfboards/Jack's Girls only and does not permit outdoor sales as an independent use. The sale of snacks, food and beverages shall be prohibited.
7. Outdoor sales shall take place in conjunction with the normal hours of operation of Jack's Surfboards/Jack's Girls, typically from 8:00 a.m. to 9:00 p.m. Set-up for the sale shall occur before the store opens. All areas shall be kept clean throughout the day. Any unsold merchandise and any related items shall be removed from the outdoor sales area at the end of each sale date by 10:00 p.m. The significant (water-filled or similar) barricades may remain until the end of the last date of each sale.
8. The outdoor sales area shall occupy no more than three (3) parking spaces located directly in front of the Jack's Surfboards storefront as shown on the approved site plan (approximately 20 feet by 10 feet for a total of 200 square feet) and shall not extend into the public right-of-way. No ADA parking spaces shall be utilized as part of the outdoor sales area.

9. The outdoor sales area shall be separated from the adjacent building by a minimum of 20 feet.
10. No activities related to the outdoor sales are permitted on public property including any portion of a public street or public sidewalk.
11. The outdoor sales shall not create a pedestrian or traffic hazard. The sales area shall be surrounded by significant barricades (i.e. water-filled barricades or other barricades approved by the Planning Division and Public Works Department) to delineate the sales area and provide patron safety from adjacent vehicular traffic.
12. Any change to the approved plot plan/site plan delineating the location of the outdoor sales area, barricade locations, and barricade type shall be reviewed and approved by the Planning Division and City Traffic Engineer prior to the sale date and shall be submitted to the Planning Division to be included in the project file.
13. The sales area shall be signed to clearly identify that the area is closed for vehicular parking.
14. No posting of promotional signs is permitted on any portion of public property, including trees, utility poles, street signs, etc. All signage located on-site shall comply with Chapter 20.42 (Sign Standards) of the Zoning Code.
15. No amplified sound is permitted.
16. No smoking or open flames are permitted inside the canopies.
17. The sales area and vicinity will be kept clean at all times.
18. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Jack's Surfboards/Jack's Girls Outdoor Sales including, but not limited to, XP2019-008 (PA2019-125). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

FIRE

19. Tents and canopies having an aggregate area in excess of 400 square feet will not require a permit if the following is provided: a. fabric tent is open on all sides, individual tent does not exceed a maximum size of 700 square feet, tents placed side-by-side to not exceed an aggregate area of 700 square feet, and a minimum clearance of twelve (12) feet is maintained to all structures and other tents.
20. Provide a 2A-10BC extinguisher outside.
21. No outdoor heaters are permitted.

PUBLIC WORKS

22. All vehicles shall be lawfully parked. No fire lane exemptions.
23. No activity is permitted within the public right-of-way.
24. No posting of promotional signs is permitted on any portion of the public right-of-way, including trees, utility poles and street signs, etc.
25. No exclusive use of public parking areas is permitted.
26. Activities shall not create a pedestrian or traffic hazard. Prevent crowds from blocking sidewalks or standing in drive aisle.
27. Sales event area shall be surrounded by significant barricades (i.e. water-filled barricades), to delineate the sales area and provide patron safety from adjacent vehicular traffic within the parking lot.
28. The sales area shall be clearly signed to identify that the sales area is closed to vehicular traffic and parking.

RESOLUTION NO. ZA2019-053

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2019-023 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE LOCATED AT 2104 EAST OCEAN FRONT (PA2019-097)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects, with respect to property located at 2104 East Ocean Front, and legally described as Lot 2, Block E, Tract 518 requesting approval of a coastal development permit.
2. The applicant proposes to demolish an existing single-family residence and construct a new 3,603-square-foot, single-family residence with an attached 587-square-foot, three-car garage.
3. The subject property is located within the R-1 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single-Unit Residential Detached).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single Unit Residential Detached) (10.0 - 19.9 DU/AC) and the Coastal Zoning District is R1 (Single-Unit Residential).
5. A public hearing was held on August 15, 2019 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to 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. Class 3 includes the construction of a single-family residence in a residential zone. The proposed project includes the demolition of an existing single-family residence and construction of a new 3,603-square-foot, single-family residence with an attached 587-square-foot, three-car garage.
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 (Coastal Development Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The proposed structure conforms to all applicable development standards including, but not limited to, floor area limitation, setbacks, height, and parking:
 - a. The maximum floor area limitation is 4,412 square feet and the proposed gross floor area is 4,190 square feet.
 - b. The proposed development will provide the required setbacks, which are 10 feet along the front property line abutting the beach, 3 feet along the side property lines, and 0 feet along the rear property line abutting the alley.
 - c. The highest guardrail or flat roof is no more than 24 feet, measured from established grade at every point as required by Zoning Code Section 20.30.050(B)(3) and the highest ridge is no more than 29 feet from established grade, which complies with the maximum height limitation.
 - d. The project includes enclosed garage parking for three vehicles, which complies with the minimum three-space parking requirement for single-family residences with more than 4,000 square feet of livable floor area.
2. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood's pattern of development and expected future development consistent with applicable development standards as the neighborhood is predominantly developed with two- and three-story, single-family residences.
3. The property is an oceanfront lot that is separated from the ocean by sandy beach with an average width of more than 500 feet. A Coastal Hazards and Wave Runup Study was prepared for the project by GeoSoils, Inc., dated April 22, 2019. The report concludes that the long-term shoreline erosion rate is small, if any long-term erosion occurs at all, and it is unlikely that the mean high tide line will reach within 300 feet of the property over the life of the structure. A beach width of 200 feet is recognized by coastal engineers as sufficiently wide to protect landward development. The GeoSoils study also concludes that coastal hazards, including wave runup and overtopping, will not impact the property over the next 75 years and there is no anticipated need for a shore protection device over the life of the proposed development.
4. Pursuant to Newport Beach Municipal Code (NBMC) Section 21.30.030(C)(3)(i)(iv), the property 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 property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.

5. The finished floor elevation of the first floor of the proposed structure is 17.50 North American Vertical Datum of 1988 (NAVD 88), which exceeds the minimum 9.0 (NAVD 88) elevation standard for new structures and exceeds the minimum requirements for sea level rise (10.1 feet NAVD 88).
6. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (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.
7. A post-construction drainage system will be installed that includes drainage and percolation features designed to retain dry weather and minor rain runoff on-site to ensure the project does not impact water quality. Any water not retained on-site is directed to the City's storm drain system.
8. The project design addresses water quality with a construction erosion control plan that outlines temporary best management practices (BMPs) to be implemented during construction to minimize erosion and sedimentation, and to minimize pollution of runoff derived by construction chemicals and materials. No water quality impacts to coastal waters are anticipated based upon the location and elevation of the property.
9. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant and prohibits invasive species. Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
10. The property is not located near coastal view roads and is not located near any identified public viewpoints; therefore, the project will not negatively impact public coastal views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline; however, the project will not affect the public's ability to gain access to use and/or view the coast and nearby recreational facilities. The proposed residential development neither provides nor inhibits public coastal access. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project includes the replacement of an existing single-family residence with a new single-family residence. The project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
2. The project is designed and sited so as not to block or impede existing public access opportunities and occurs within the confines of private property. Existing coastal access conditions will not be affected by the proposed development. Coastal access is currently provided and will continue to be provided by street ends throughout the neighborhood with access to the beach and water.

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 ("CEQA") pursuant to 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 Coastal Development Permit No. CD2019-023, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 15th DAY OF AUGUST, 2019.

Rosalinh Ung
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Coastal Development Permit No. CD2019-023 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.
4. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
5. Prior to the issuance of building permit, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
6. Prior to the issuance of a building permit, the property owner shall sign 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, judgements, 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. The letter shall be scanned into the plan set prior to building permit issuance.
7. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
8. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
9. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined should they determine 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. 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.
11. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
12. 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, wetland or their buffers.
13. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
14. This Coastal Development Permit does not authorize any development seaward of the private property.
15. Construction staging, storage and/or access is not allowed to occur on or from the adjacent sandy beach.
16. The applicant is responsible for compliance with the Migratory Bird Treaty Act. 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, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

17. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
18. Prior to issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the coastal development permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this coastal development permit.
19. Prior to 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.
20. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought-tolerant plantings, non-invasive plant species and water-efficient irrigation design. The plans shall be approved by the Planning Division.
21. 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.
22. Prior to issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
23. 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 as far away from storm drain systems or receiving waters as possible.
24. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
25. At such time as directed by the City or the California Coastal Commission, the applicant shall agree to and cooperate with both agencies for: 1) the removal of any unpermitted development located seaward of the property and within the prolongation of the side property lines of the subject property, and 2) the restoration of the affected area consistent with a restoration plan approved by the City and Coastal Commission.
26. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including

without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Fluter Residence including, but not limited to Coastal Development Permit No. CD2019-023 (PA2019-097)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

RESOLUTION NO. ZA2019-054

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2019-032 FOR A NEW SINGLE-FAMILY RESIDENCE LOCATED AT 132 SOUTH BAY AVENUE (PA2019-119)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ian Harrison, with respect to property located at 132 South Bay Front, and legally described as Lot 9 and a portion of Lot 10 of Block 1, requesting approval of a Coastal Development Permit.
2. The applicant proposes the demolition of an existing single-family residence and the construction of a new 2,723-square-foot, single-family residence with a 458-square-foot attached garage. The proposed development also includes additional appurtenances such as walls, fences, patios, hardscape, drainage devices, and landscaping.
3. The subject property is located within the Balboa Island (R-BI) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two Unit Residential (RT-E) and the Coastal Zoning District is Balboa Island (R-BI).
5. A public hearing was held on August 15, 2019, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place, and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the construction of limited numbers of new, small structures, including one single-family residence. The proposed project is a new single-family residence located in the R-BI Coastal Zoning District.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable, as the project is to replace an existing single-family residence with a new single-family

residence in the same location. 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 (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 3,185 square feet and the proposed floor area is 3,181 square feet.
 - b. The proposed development complies with the required setbacks, which are 5 feet along the property line abutting South Bay Front, 5 feet along the property line abutting the alley, and 3 feet along each side property line.
 - c. The highest guardrail/parapet is below 24 feet from established grade and the highest ridge is 29 feet from established grade. The proposed development complies with all height requirements.
 - d. The proposed development provides a two-car garage, meeting the minimum garage requirement for a single-family residence.
 - e. The proposed development meets the minimum 9.0 feet (NAVD88) top of slab elevation requirement for interior living areas of new structures.
2. The neighborhood is predominantly developed with two- and three-story single-family residences and duplexes. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
3. The project site is separated from the Newport Bay by an existing City-owned bulkhead and a public pedestrian boardwalk (South Bay Front). The bulkhead which protects the subject property is part of a larger bulkhead system which surrounds Balboa Island. No modification to the existing bulkhead is proposed with this project.

4. Pursuant to Municipal Code Section 21.35.050, due to the proximity of the development to the shoreline and the development including more than 75-percent of impervious surface area, a Water Quality Hydrology Plan (WQHP) is required. A WQHP prepared by Robin B. Hamers & Associates, Inc., dated June 5, 2019, has been submitted and will be reviewed by the City's Engineer Geologist. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
5. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (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 CBC prior to building permit issuance.
6. The project site is not located adjacent to a coastal view road, public viewpoint, or public accessway, as identified in the Coastal Land Use Plan. The site is located approximately 650 feet from Balboa Island Park. Due to the large distance between the proposed residence and the park, the project will not affect public views from the park. Furthermore, all improvements in the front setback area of the subject property is limited to 42-inches from existing grade. An investigation of the project site and surrounding area did not identify any other public view opportunities. The project may be located within the viewshed of distant public viewing areas. However, the project will replace an existing single-family residence with a new single-family residence that complies with all applicable LCP development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

Finding:

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

Fact in Support of Finding:

1. The project site is located on Balboa Island between the nearest public road and the sea. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited so as not to block or impede existing public access opportunities.

2. Vertical access to the bay is available near the site on Emerald Street. Also, South Bay Front is a pedestrian boardwalk along the bay that is identified as lateral access to the bay by the Coastal Land Use Plan. The proposed single-family residence does not interfere with either vertical or lateral access to the bay.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15315, Article 19 of 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. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2019-032, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 15TH DAY OF AUGUST, 2019.



Rosalinh Ung
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. Coastal Development Permit No. CD2019-032 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.
4. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any 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.
5. 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.
6. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
7. 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.
8. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. 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.

9. 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.
10. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the WQHP/WQMP and any changes could require separate review and approval by the Building Division.
11. Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
12. 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.
13. 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, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
15. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.

16. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
17. Prior to issuance of the building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
18. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the project file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.
19. Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
20. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
21. 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.
22. This project shall comply with flood mitigation construction requirements for A01 SFHA.
23. This project shall comply with liquefaction mitigation construction requirements.
24. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **Steckler Residence Coastal Development Permit including, but not limited to, Coastal Development Permit No. CD2019-032 (PA2019-119)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

RESOLUTION NO. ZA2019-055

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2019-010 AND COASTAL DEVELOPMENT PERMIT NO. CD2019-031 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 512 AND 512 ½ BEGONIA AVENUE (PA2019-104)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Civilscapes Engineering, Inc. (“Applicant”) with respect to property located at 512 Begonia Avenue, and legally described as Lot 14, Block 530 of Tract 186 Corona del Mar, City of Newport Beach in the County of Orange requesting approval of a tentative parcel map and a coastal development permit for condominium purposes.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. An existing duplex will be demolished and a new duplex will be constructed. No waivers of development standards are requested. No waivers of Title 19 (Subdivisions) are proposed. The Tentative Parcel Map would allow each unit to be sold individually. The Tentative Parcel Map also requires the approval of a Coastal Development Permit pursuant to Title 21 Local Coastal Program Implementation Plan in the Municipal Code.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone and has a Coastal Land Use Designation of Two-Unit Residential – (20.0-29.9 DU/AC) (RT-D) and a Coastal Zoning District of Two-Unit Residential (R-2).
5. A public hearing was held on August 15, 2019, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is categorically exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15315 under Class 15 (Minor Land Divisions) 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 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division

is in conformance with the General Plan and Zoning Code, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

3. The exceptions to these categorical exemptions under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code and approves the Coastal Development Permit based on the following findings per Section 21.52.015.F of Title 21:

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. An existing duplex will be demolished and a new two-unit dwelling will be constructed. The proposed subdivision and improvements are consistent with the density of the R-2 Coastal Zoning District.
2. The project site is not located between the nearest public road and the sea or shoreline and approval of the parcel map will not affect public recreation, access or views.
3. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code and Building Division standards and policies.
4. The Tentative Parcel Map is for a property within a developed neighborhood that is over 1,000 feet from the mean high water line and is not near any natural landforms or environmentally sensitive areas.

Finding:

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

Fact in Support of Finding:

1. The project site is not located between the nearest public road and the sea or shoreline. The residential lots do not currently provide nor inhibit public coastal access. Newport Beach Municipal Code Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is a tentative parcel map for condominium purposes. Thus, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. An existing duplex will be demolished and a new two-unit dwelling will be constructed. The proposed subdivision and improvements will be consistent with the density of the R-2 Zoning District and the current General Plan Land Use Designation (Two-Unit Residential).
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the reconstruction of sidewalks along the Begonia Avenue frontage and concrete alley panels along the alley, consistent with the Subdivision Code (Title 19).

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a two-unit development because it is regular in shape. The lot is rectangular in shape, 30 feet wide, 118 feet deep, and 3,540 square feet in area. The existing duplex will be demolished and a new duplex will be constructed.
2. The subject property will maintain vehicular access from the alley at the rear of the property and is adequately served by existing utilities.

Finding:

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

Facts in Support of Finding:

1. An existing duplex will be demolished and a new duplex will be constructed.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

2. The project is not located within a specific plan area.

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to The California Energy Code, California Code of Regulations Title 24, Part 6 that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The new two-unit dwelling will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Fact in Support of Finding:

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

SECTION 4. DECISION

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds the Project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Use Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2019-010 and Coastal Development Permit No. CD2019-031, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 15th DAY OF AUGUST, 2019.



Rosalinh Ung
Zoning Administrator

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

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is final. The building permit for the new construction shall not be final until after recordation of the parcel map.
3. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code.
4. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Mulflur Residential Condominiums including, but not limited to, Tentative Parcel Map No. NP2019-010 and Coastal Development Permit No. CD2019-031 (PA2019-104). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

PUBLIC WORKS

5. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD 83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

6. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
7. All improvements shall be constructed as required by Ordinance and the Public Works Department.
8. All damaged sidewalk panels along the Begonia Avenue property frontage and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.
9. All existing overhead utilities shall be undergrounded.
10. No above ground improvements shall be permitted within the 5-foot alley setback.
11. New sod or low ground covers of the type approved by the City shall be installed throughout the Begonia Avenue parkway fronting the development site.
12. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed per City standard with a traffic-grade box and cover. Each water meter and sewer clean out shall be located within the public right-of-way.
13. An encroachment permit is required for all work activities within the public right-of-way.
14. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
15. The existing street tree along Begonia Avenue frontage shall be protected in place.
16. Remove all existing private improvements within the Begonia Avenue right of way, including but not limited to walls.
17. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

BUILDING

18. Independent utility services shall be provided for each unit.
19. Independent fire risers shall be required for each unit.

20. Construction shall comply with the California Code of Regulations.

RESOLUTION NO. ZA2019-056

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-111 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND INSTALL LANDSCAPING LOCATED AT 944 VIA LIDO NORD (PA2018-279)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by W.T. Durant, Inc., with respect to property located at 944 Via Lido Nord, and legally described as Lot 324 of Track 907, requesting approval of a coastal development permit.
2. The applicant proposes the demolition of an existing 4,939-square-foot single-family residence and the improvement of a private lawn area for the same property owner located at 940 Via Lido Nord. The new improvements consist of the installation of approximately 4,027 square feet of new, open, landscaped and hardscaped areas which will be used by the owner for personal recreation and enjoyment. The existing property line walls, the existing cantilevered patio, the existing dock, and the existing bulkhead will not be demolished and will be left in their current locations.
3. The subject property is located within the Single-Unit Residential (R-1) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached – (10.0-19.9 DU/AC) (RSD-C) and the Coastal Zoning District is Single-Unit Residential (R-1).
5. A public hearing was held on August 15, 2019 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is categorically exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 1 includes the demolition and removal of small structures including one single-family dwelling. The proposed project includes the demolition of an existing single-family dwelling located in the R-1 Coastal Zoning District.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015 (Coastal Development Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The subject property is currently developed with a single-family dwelling on an existing lot designated for residential development by the Local Coastal Program. The project applicant requests to demolish the existing single-family dwelling. After the demolition of the existing dwelling, the site will be landscaped for private enjoyment. Per Section 21.30.085 of the Local Coastal Program, landscaping has been conditioned to have low-water demand and be drought-tolerant. The planting of invasive species shall be prohibited. Any subsequent construction will require a separate coastal development permit at a later date.
2. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code and Building Division standards and policies.
3. A Construction Pollution Prevention 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 by construction chemicals and materials.
4. The property is located within 100 feet of coastal waters. As conditioned, the project design will address water quality through the preparation of a final construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site shall be directed to the City's storm drain system.

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 project site is located on Lido Isle between the nearest public road and the sea or shoreline; however the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Implementation Plan Section

21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project demolishes an existing single-family dwelling and installs open landscape. The project includes the demolition of the existing single-family dwelling and the improvement of a private lawn. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.

2. The residential lot does not currently provide nor does it inhibit public coastal access. Development will occur within the confines of private property and existing coastal access conditions will not be affected. Coastal access is currently provided and will continue to be provided by small public beach areas on Lido Isle with access from the water.
3. The project site is not located adjacent to a coastal view road nor is it located near any public viewpoint as identified in the Coastal Land Use Plan. Furthermore, an investigation of the project site and surrounding area did not identify any other public view opportunities. The project site may be located within the viewshed of distant public viewing areas; however, the project will replace an existing single-family residence with a new, open, landscaped area. 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.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project 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 Coastal Development Permit No. CD2018-111 subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 15TH DAY OF AUGUST, 2019.



Rosalinh Ung
Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan and landscape plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The demolition of the existing single-family dwelling shall be in substantial conformance with the approved demolition plan stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
3. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
4. Coastal Development Permit No. CD2018-111 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.
5. Landscaping of the site shall conform to the requirements of Section 21.30.075 (Landscaping) and Section 21.30.085 (Water Efficient Landscaping) of the Local Coastal Program Implementation Plan. Plant materials shall be selected for low-water demand and drought tolerance, and the planting of invasive species shall be prohibited.
6. Landscaping of the site shall conform to Section 14.17 (Water Efficient Landscape Ordinance) of the Newport Beach Municipal Code.
7. All landscape materials and irrigations systems shall be maintained in accordance with the approved erosion control plan. All landscaped areas shall be maintained in a healthy and growing conditions 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.
8. Construction activities shall comply with Newport Beach Municipal Code (NBMC) Section 10.28.040, which restricts hours of noise-generating construction activities to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
9. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
10. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.

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11. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
 12. Prior to issuance of building permits, a copy of the Resolution, including conditions of approval Exhibit "A," shall be incorporated into the Building Division and field sets of plans.
 13. Prior to 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.
 14. Prior to issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved landscape plans for inclusion in the Coastal Development file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.
 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. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
 17. The applicant is responsible for compliance with the Migratory Bird Treaty Act. 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, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

18. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Pollution Prevention Plan (CPPP).
19. 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.
20. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. 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.
21. 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.
22. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
23. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of 944 Via Lido Nord House Demolition, but not limited to, Coastal Development Permit No. CD2018-111 (PA2018-279). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

PUBLIC WORKS

24. Existing driveway approach shall be abandoned, and a new curb and gutter shall be installed to match existing curb and gutter.
25. The existing sewer cleanout box shall be removed and covered, and the existing sewer lateral shall be capped at the property line.

RESOLUTION NO. HO2019-001

A RESOLUTION OF THE HEARING OFFICER OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING REASONABLE ACCOMMODATION NO. RA2019-001 FOR THE PROPERTY LOCATED AT 101 VIA UNDINE (PA2019-050)

THE HEARING OFFICER OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Rhonda Moore (“Applicant”), authorized representative requesting approval of a reasonable accommodation, with respect to property located at 101 Via Undine, Newport Beach, California and legally described as Lot 252 in Tract 907 in the City of Newport Beach, County of Orange, State of California, Assessor’s Parcel No. 423-251-14 (“Property”).
2. The Applicant has submitted a reasonable accommodation application requesting relief from Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls) and Section 21.30.040 (Fences, Hedges, Walls, and Retaining Walls) of the Newport Beach Municipal Code (“NBMC”) to allow a hedge along the perimeter of a front yard setback area to exceed the maximum height limit of 42 inches. The additional hedge height is requested to provide an individual with a disability privacy to utilize the yard area on the subject property.
3. The Property is designated 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 (RSD-C) and it is located within the Single-Unit Residential (R-1) Coastal Zoning District.
5. The project is exempt from the requirements of a coastal development permit pursuant to NBMC Section 21.52.035(C) because the hedge is considered accessory to the principle dwelling and would not result in any improvement to the dwelling structure that results in changes in floor area exceeding ten percent (10%) of the existing floor area or ten percent (10%) of the existing height, parking demand, or change the general level of activity within the neighborhood.
6. A public hearing was held on July 31, 2019, in the Newport Beach Conference Room (Bay B – 1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and the NBMC. Evidence, both written and oral, was presented to, and considered by, the Hearing Officer at this hearing. The hearing was held open until Monday, August 5, 2019 at 5 PM, to allow for submittal of additional documents and rebuttal thereto.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act ("CEQA") pursuant to 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 project involves a minor accessory hedge that is pre-existing on an existing single-family property involving no construction.

SECTION 3. REQUIRED FINDINGS.

In accordance with NBMC Section 20.52.070(D)(2), the following findings and facts in support of such findings are set forth:

Finding:

- A. *That the requested accommodation is requested by or on behalf of one or more individuals with a disability protected under the Fair Housing Laws.*

Facts in Support of Finding:

1. A letter from Dr. Rimal Bera, MD, the treating physician, has been submitted by the applicant supporting this claim and the necessity for the increase in hedge height within the front yard setback. The statement indicates that due to the severity of the existing medical condition of his patient who is a resident of the subject property, the accommodation is necessary to provide privacy to utilize the outdoor yard area on-site and outside the patient's bedroom slider. The increased hedge height is necessary for the patient to enjoy the yard and not have severe symptoms triggered by the exterior of the property. Supporting medical documentation was submitted from a second treating physician, Dr. K. Himasiri Desilva, confirming the diagnosis. Other supporting documents were submitted from UC Irvine Health describing the appointment schedule and a drug regime prescribed for the disabled resident. A letter from the Social Security Administration confirming the disabled resident was eligible for Supplemental Security Income due to his disability was also submitted.

Most medical records were either redacted or sealed to protect doctor-patient confidentiality and privacy, at the request of the applicant. The following findings are adopted in support of sealing the documents:

California Rules of Court 2.550(d) describes findings required to seal records. They state five findings.

(1) There exists an overriding interest that overcomes the right of public access to the record. Here, the medical records contain doctor-patient communications that

are privileged and also raise privacy interests. They contain detailed diagnosis, medications, and appointment schedules. They also include detailed descriptions of the diagnosed condition. At issue is whether a mental disability exists. The Hearing Officer was presented with substantial, credible medical evidence from well established and recognized experts sufficient to make a determination whether a disability exists. As the alleged disability is a mental impairment, any public interpretation of this information and any challenge to its conclusions would likely require a third-party expert examination of the patient, which would further invade the disabled resident's privacy interests. The probative value to the public of the details of the disability are outweighed by the prejudicial effect to the disabled resident of disclosing privileged and private information. The doctor-patient and privacy interests in these details outweigh the right of public access to the details of the disability.

(2) *The overriding interest supports sealing the record.* Here, the overriding interest is doctor-patient confidentiality and privacy. These are foundational interests and support the sealing of the records.

(3) *A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed.* Here, testimony at the hearing questioned the disability and several opponents of the Reasonable Accommodation insisted on access to medical records. If the medical records were made public there is a substantial probability the confidential material in the record would be widely disseminated among opponents and neighbors, prejudicing the patient's doctor-patient confidentiality and privacy interests.

(4) *The proposed sealing is narrowly tailored.* Here, the Hearing Officer sealed some of the records submitted by the applicant and released others with confidential information on the released documents redacted. This action is narrowly tailored to protect only doctor-patient and privacy interests.

(5) *No less restrictive means exist to achieve the overriding interest.* Here, the medical information was necessary for the Hearing Officer to establish that a disability existed. There is no other alternative than to submit this information to the Hearing Officer and there is no less restrictive means of conveying that information while protecting the overriding interests of confidentiality and privacy.

Further, Municipal Code section 20.52.070.C.4.d specifically requires that "any request for information regarding the disability of the individuals benefited complies with ... the privacy rights of the individuals affected." The documents requested to be placed under seal were submitted at the Hearing Officer's request and the Hearing Officer must therefore observe the privacy rights of the disabled resident.

Finding:

B. *That the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.*

Facts in Support of Finding:

1. The additional hedge height is needed for the disabled resident to enjoy and utilize safe access to the outdoor yard area outside of their bedroom sliding door.
2. In the letter from Dr. Bera, MD of UCI Neuropsychiatric Center that has been submitted by the applicant supporting the claim and the need for increased hedge height, Dr. Bera recommends the increased hedge height due to the necessary use of a private yard due to the resident's existing medical condition. The increased hedge height would allow the individual privacy and alleviates symptoms triggered by passing pedestrians, gardeners, construction workers, dogs, noise and lights. This particular pathway located on the other side of the hedge is frequently traveled and provides public access to the beach and clubhouse. The patient spends the majority of the time at home and utilizes this area located directly outside of the patients bedroom and bathroom and is accessed by the patient through sliding glass doors. Dr. Bera concludes that this hedge that encloses the majority of the yard area allows this patient to continue to enjoy a more secluded, secure, quiet and safe area inside and outside the bedroom.
3. With consideration of the factors provided by NBMC Section 20.52.070.D.3-4, the requested reasonable accommodation is necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling. If the requested accommodation is granted, the disabled person will be able to utilize the outdoor yard area. This area is outside their bedroom sliding door. Access to this protected outdoor yard area for the disabled resident that spends most of their time at their home on the subject property is thereby enhancing their quality of life. Any modifications necessary to create similar outdoor yard areas on the subject property with three front setback areas cannot be accommodated within the existing residence without more significant disruption to the interior of the home and could be impossible without demolition of portions of the existing dwelling. Approval of the accommodation will not alter the character of the neighborhood, because the hedge is a nominal accessory feature common within the Lido Isle neighborhood and along the Stradas.
4. The requested reasonable accommodation to raise the hedge height from 42 inches to 78 inches is reasonable on its face, possible, feasible, and plausible.
5. Objections raised by opponents, including that there are potential alternatives less impactful and that public and/or private views to the harbor will be impacted, do not establish that the request is NOT reasonable.

Finding:

- C. *That the requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined in Fair Housing Laws and interpretive case law.*

Facts in Support of Finding:

1. Allowing the additional hedge height would not impose an undue financial or administrative burden on the City. There are no administrative costs because there are no building permits required.

Finding:

D. That the requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.

Facts in Support of Finding:

1. The proposed accommodation would not result in any fundamental alterations to the character and use of home or the neighborhood. The hedge only provides additional privacy for the existing yard area which is approximately 400 square feet and does not change the use of the house or the yard. The hedge is nominal in nature and maintains a design, bulk, and scale of development that is consistent with the surrounding neighborhood pattern of development.
2. The hedge is a common accessory within the surrounding Lido Isle Community and provides necessary privacy of the yard on the subject property. The property is unique with three front setbacks. The only setback that includes an exterior yard area is the front setback on the Strada Trieste (public walkway). The proposed increase in the hedge height represents a nominal change to the existing property and would not intensify the existing single-unit residential use of the property; therefore, the requested accommodation would not undermine the express purpose or land use identified by the City's General Plan.
3. While the requested reasonable accommodation may impact public and/or private views to the harbor, there are no identified City programs regarding the preservation of views to the harbor that are fundamentally altered.

Finding:

E. That the requested accommodation will not, under specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

Facts in Support of Finding:

1. There is a required site distance triangle adjacent the intersection of the Strada and Via Lido Soud, where the hedge will be trimmed and maintained at a maximum 36 inches to comply with the City Traffic Engineer recommendation pursuant to Zoning Code Section 20.30.130(E). Traffic Visibility Area to ensure the safety of pedestrians and bicyclists; therefore, the proposed project would not pose a threat

to the health or safety of other individuals or substantial physical damage to the property of others.

2. The City Police Department reviewed the request and did not identify any safety concerns.
3. While some private views to the harbor may be impacted, there is no evidence that the requested reasonable accommodation will result in substantial physical damage to any property of others.

Finding:

F. That the burden on the applicant to show the request is reasonable on its face and/or possible was met while the burden on opponents to show that the request is either not reasonable, is an undue hardship, or is a fundamental alteration to a city program was not met.

Facts in Support of Finding:

1. All arguments that the accommodation was NOT reasonable, was an undue hardship, or caused a fundamental alteration to a City program were considered and found not to be persuasive. Specifically, the subject resident met the definition of "disabled;" the accommodation is necessary to allow the resident equal opportunity to use and enjoy the ENTIRE dwelling and surrounding premises; impacts on the existing public and private partial views caused by the accommodation do not outweigh the benefit to the applicant to enjoy and use the entire dwelling and adjacent premises; there are no fundamental alterations to a City program; all safety concerns have been mitigated; and no property of others will sustain substantial physical damage.

Finding:

G. For housing located in the coastal zone, a request for reasonable accommodation under Section 21.16.020 (E) may be approved by the City if it is consistent with the findings provided in subsection (D)(2) of this section; with Chapter 3 of the California Coastal Act of 1976; with the Interpretative Guidelines for Coastal Planning and Permits established by the California Coastal Commission dated February 11, 1977, and any subsequent amendments, under the Local Coastal Program.

Facts in Support of Finding:

1. In accordance with Section 21.16.020(E), (Reasonable Accommodations) of the Local Coastal Program Implementation Plan, the review authority may grant reasonable accommodations to the City's coastal zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling in compliance with Federal and State Fair Housing Laws.

2. In accordance with Section 21.52.035(C)(1) the project is exempt from the requirements from a coastal development permit since the hedge is accessory to the principal dwelling and the modifications do not result in an increase of gross floor area, height, or bulk of the principal structure by more than ten percent (10%).
3. The requested reasonable accommodation is consistent with the City's Local Coastal Program. The taller hedge will not encroach onto the Strada Trieste or any public walkway. Therefore, the public view that is afforded south down the Strada and across Via Lido Soud towards the beach on the Bay will not be impacted. Additionally, the public access via the Strada will not be significantly impacted. Traffic and parking are not affected by the increase in hedge height. No potential adverse effects to the goals and policies of the California Coastal Act, Interpretative Guidelines, or Local Coastal Program were identified.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Hearing Officer of the City of Newport Beach hereby approves Reasonable Accommodation No. RA2019-001, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. The Hearing Officer Decision and Order, dated August 15, 2019 and attached as Exhibit B, in its entirety, is incorporated by reference herein.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal is filed with the City Clerk in accordance with the provisions of NBMC Title 20 Planning and Zoning.

PASSED, APPROVED, AND ADOPTED THIS 15TH DAY OF AUGUST, 2019.

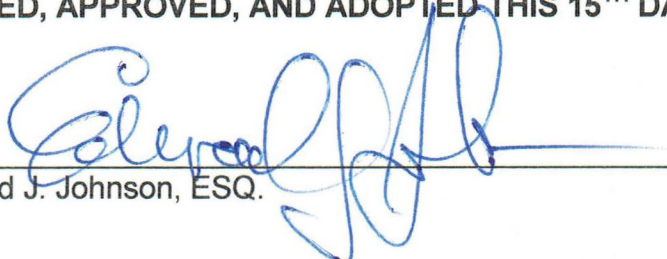

_____, Hearing Officer
Edward J. Johnson, ESQ.

EXHIBIT "A"

CONDITIONS OF APPROVAL

PLANNING

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 applicant shall maintain the hedge at all times at the maximum height of 6.5 feet except for the area within the 5 foot by 5 foot site distance triangle from the intersection of Strada Trieste and Via Lido Soud where the maximum height shall not exceed thirty-six (36) inches at any time.
3. The reasonable accommodation shall lapse if the exercise of rights granted by it are discontinued for at least one hundred eighty (180) consecutive days.
4. If the disabled person(s) initially occupying the residence vacates or conveys the property for which the reasonable accommodation was granted, the hedge shall be modified and maintained at heights compliant with the Zoning Code.
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. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
7. A copy of the Resolution, including conditions of approval set forth in this Exhibit "A", shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
8. This approval shall expire and become void unless exercised within twenty-four (24) months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of NBMC Title 20 Planning and Zoning.
9. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Moore Hedge Height Addition including, but not limited to, Reasonable Accommodation No. RA2019-001 (PA2019-050). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of

suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

EXHIBIT "B"

HEARING OFFICER DECISION AND ORDER

**CITY OF NEWPORT BEACH
EDWARD J. JOHNSON ESQ., HEARING OFFICER
REASONABLE ACCOMMODATION NO. RA2019-001**

Hearing Location: Newport Beach City Hall
100 Civic Center Drive
Newport Beach, CA 92660

Hearing Date: July 31, 2019; 10:38 AM

Application Number: RA2019-001

Applicant: Rex and Rhonda Moore

City Staff: Melinda Whelan, Assistant Planner

Decision: **The Reasonable Accommodation is APPROVED**

Parties Present: Edward J. Johnson, Esq., appearing by Skype from Mariposa CA
Melinda Whelan, City of Newport Beach
Armeen Komeili, Newport Beach Deputy City Attorney
Rhonda Moore, applicant
Sean Morrissey, attorney for applicant

Notice:

Notice of the hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the site, and posted on the subject property at least 10 days prior to the hearing.

Staff Report and Recommendation:

City Community Development Department staff submitted a Staff Report describing a request for a Reasonable Accommodation under Municipal Code Sections 20.52.070 and 21.16.020, to allow a hedge along the perimeter of the front yard setback to exceed the maximum height limit of 42 inches, and to instead be grown to a maximum height of 6.5 feet (78 inches). The additional hedge height is requested to provide privacy of the front yard area on the subject property for an individual with a disability. Staff reported that the City Traffic Engineer had reviewed the application and recommended a "sight distance triangle" whereby the hedge height would be reduced to 36 inches in a five foot by five foot area along the corner of the lot so that pedestrians along the public way adjacent to the hedge could see travelers along the public way that was immediately perpendicular to the hedges. Staff reported that no public views would be obstructed. Staff reported that the City Police Department had also reviewed the application and had no comments. Staff recommended approval.

Standard of Review:

The legal standard of review of all evidence in administrative cases is a preponderance of the evidence, or evidence which is of greater weight and more convincing than the evidence offered in opposition to it, that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. As this is an application for a benefit, the burden of proof and the burden of persuasion initially lies with the applicant. However, the burden of proof for a Reasonable

Accommodation in particular is not entirely settled law, as discussed in detail below. Essentially, it's a two part test. Initially, the applicant bears the burden of showing the request is "possible" and/or "seems reasonable on its face." Then the burden shifts to opponents to show the request is "not reasonable" and/or would cause "undue hardship."

Findings:

The request for Reasonable Accommodation is APPROVED. The only question presented by this request is whether or not the requested accommodation met the findings of Municipal Code section 20.52.070.D.2. The City Staff Report thoroughly describes the project description, background, Municipal Code requirements, and required findings and is hereby incorporated by reference, as amended below, as a finding of this DECISION AND ORDER.

Requested Accommodation:

The Newport Beach Municipal Code allows reasonable accommodations so that an individual with a disability protected by Fair Housing Laws can have an equal opportunity to use and enjoy a dwelling. To approve such accommodation, five required findings must be made. Those findings are described in detail in the Staff Report, incorporated herein by reference, as amended.

The U.S. Department of Housing and Urban Development (HUD) Fair Housing website (https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/inhousing) describes disability rights in housing as specified by federal law. The HUD website states that federal law defines a person with a "disability," in part, as "[a]ny person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment. (*See also School Board of Nassau County, Florida v. Arline*, 480 U.S. 273, 279 (1987)) Disability rights in private housing also apply to zoning and land use regulations.

Here, the applicant requests a reasonable accommodation to exceed the front yard height limit for hedges to provide privacy for a disabled individual. The disabled person's treating physician reported that the resulting privacy would be helpful in light of the applicant's condition. This reasonable accommodation request is a very minor alteration to the City's zoning and planning policies.

As a general comment, this Hearing Officer offered cautions regarding the use of this procedure at the hearing on a prior Reasonable Accommodation Request, NO. 2018-001, held on June 26, 2018, and at another prior Reasonable Accommodation Request, NO. 2018-002, held on July 17, 2018, and repeats those cautions again here. The Hearing Officer is concerned that the use of a reasonable accommodation request should not substitute for what otherwise might more properly be a variance request or other type of more appropriate procedure. There appears to be no limit to what could be requested as a "reasonable accommodation," as this process allows exemption from any "zoning and land use regulations, policies, and practices" (*see* section 20.52.070.A, Purpose) limited only by the findings. Accommodations such as the one here will establish precedent for other requests, and may set a precedent for what might be required of private housing providers to make reasonable accommodations, especially for small housing projects like the land use at issue here. The City should be mindful of the federal definition of "disability" and the intent of the Fair Housing laws to assure that zoning and land use policies do not keep persons with disabilities from locating to their area, as described in the HUD website, when considering future reasonable accommodation requests.

Summary of Evidence Presented:

Real Party in Interest

At the outset of the hearing, Mr. Donald Fesler, a neighbor opposed to the accommodation, argued that the real party in interest was the owner of the property, who was not the applicant and who was not present, and that the application should be rejected. Mrs. Rhonda Moore, the applicant, testified that the owner was her mother-in-law who was aware of the application and had given approval for the filing. The Hearing Officer accepted these representations. Further, Municipal Code section 20.52.070.C.1 states that a request may be made “by any person with a disability [or] their representative...” and here the application was submitted by “Rex and Rhonda Moore,” where the Moore’s are the parents of the alleged disabled party who would be the beneficiary of the accommodation, and are the disabled party’s representative.

Summary of Testimony in Support

The City Staff Report recommends approval. The Staff Report stated that the disabled individual requires the additional hedge height to provide privacy to alleviate severe symptoms triggered by passing pedestrians and others. The hedge would shield an outdoor open space used by the disabled individual, which is immediately adjacent to his bedroom, and accessed by the bedroom sliding glass door. The disabled individual spends the majority of his time at home and uses this area frequently.

Mrs. Rhonda Moore, mother of the disabled resident, explained that the request was for 78 inches in height because the disabled resident was 6 foot tall and she believed that an addition 6 inches over his height would most effectively screen him.

The Staff Report included a letter from the disabled individual’s physician describing the disability and stating that “ It is imperative that my patient have the reasonable accommodation ... [to] alleviate[] symptoms [and] allow my patient to continue to enjoy a more secluded, secure, quiet and safe area inside and outside his bedroom.” Additional documentation of the disability was submitted by the applicant, some of which was placed under seal at the applicant’s request, more fully discussed below.

Mr. Eric Henn, Lido Isle Community Association President, appeared and presented a letter in qualified support, conditioned on the hedge not exceeding 60 inches, which the Association Board had supported for the general area. Hedges in excess of this height would impact private and public views to the harbor, he argued.

Summary of Testimony in Opposition

Mr. Don Fesler, owner of property near the subject property, submitted written and verbal testimony. Mr. Fesler’s written declaration argued that there was only a redacted document supporting the disability and that any supporting medical information should be made public. He challenged the veracity of the applicant regarding the hedges and argued the application was just an attempt to circumvent the City’s hedge height requirements. He argued that he had observed the alleged disabled individual jogging, skateboarding, walking the dog, driving, attending community BBQ’s, and working out, and challenged that there was a qualifying disability. He argued that the increased hedge height would not be effective in shielding noise or views through the hedge, and that there were alternative bedrooms and a interior patio open to the sky that provided alternatives for privacy, and therefore the additional hedge height was not necessary. He argued that the accommodation would fundamentally alter the character of the community because it would block views and be out of character with other hedges. He also questioned why

the Moore's moved to Lido Isle as the close proximity of houses did not provide the same degree of privacy they would have if they did not live on the island. Mr. Fesler's oral testimony essentially repeated these objections, and also argued that the applicant placed the disability at issue which waives any privilege and case law required all details to be disclosed.

Ms. Roberta Fesler, owner of property near the subject property, submitted written and verbal testimony. Her written testimony also challenged the veracity of the applicant and the motive for the application. She also challenged the need for the accommodation as alternative bedrooms and outdoor spaces were available. She also challenged the nature of the disability noting she too had observed the disabled individual jogging, skateboarding, and driving. She declared that she had personally observed the interior patio and argued it was sufficient to meet privacy needs. She also objected to the redaction and sealing of medical records. She also believed that the hedge would create a safety issue in that the subject residence was located on a busy corner and the oversized hedge would block the view of those traveling along the public way that was perpendicular to the hedges. Mrs. Fesler's oral testimony essentially summarized her written declaration, and also argued that the definition of "dwelling" does not include the adjacent outdoor spaces and therefore a reasonable accommodation for the use and enjoyment of a "dwelling" does not include the use of the outdoor spaces.

Ms. Manal Bozarth, a nearby neighbor, appeared and objected that the increased hedge height would obstruct her and neighbors' view of the bay, would create a safety issue, and would alter the look of Lido Isle. She questioned why the Moore's would purchase a home on Lido with close living proximity and less privacy. She subsequently submitted written comments arguing that alternative bedrooms were available to the disabled individual and questioned the legitimacy of the disability.

Correspondence in opposition was received from Mr. Wayne Graveline, a nearby neighbor, objecting that his view of the harbor would be blocked; and from Ms. Sandra Abrahamian, a nearby neighbor, objecting that the oversized hedge would create a safety hazard for people coming along the perpendicular public way.

Rebuttal testimony from the applicant clarified that the disabled individual may have been seen performing the activities discussed above but that the disability was not a physical one. She also explained that she was not previously aware that a reasonable accommodation procedure was available which was the reason she had not submitted an application earlier.

Summary of Other Testimony

Correspondence was received from Mr. Jim Mosher discussing the appeal procedures and suggesting appeals should be first heard by the Planning Commission before being heard by the City Council.

The hearing concluded at 12:28 PM, but was held open until 4 PM Friday, August 2 for additional document submittal, and to 5 PM Monday, August 5 for rebuttal to any additional submittals.

Discussion:

Municipal Code section 20.52.070.A defines the Purpose of a Reasonable Accommodation to be "to provide an individual with any disability an equal opportunity to use and enjoy a dwelling."

To approve an individual Reasonable Accommodation, the Hearing Officer must find that the application meets all five required findings of Municipal Code section 20.52.070.D.2.a. They are:

- i. *The requested accommodation is requested by or on behalf of one or more individuals with a disability protected under the Fair Housing Laws;*
- ii. *The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling;*
- iii. *The requested accommodation will not impose an undue financial or administrative burden on the City as “undue financial or administrative burden” is defined in Fair Housing Laws and interpretive case law;*
- iv. *The requested accommodation will not result in a fundamental alteration in the nature of a City program, as “fundamental alteration” is defined in Fair Housing Laws and interpretive case law; and*
- v. *The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health and safety of other individuals or substantial physical damage to the property of others.*

First Required Finding: Disability

The first finding requires that the application be for the benefit of “one or more individuals with a disability protected under the Fair Housing Laws.” The Federal HUD website on Disability Rights in Housing, referenced above, states that the definition of a person with a disability includes “any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.” (See also *Giebeler v. M&B Assocs*, 343 F.3d 1143, 1147 (9th Cir. 2003) “a physical or mental impairment which substantially limits one or more of such person’s major life activities.”)

Here, a letter from the treating physician was submitted as part of the application packet. Based on a request from the applicant, the City Attorney redacted key medical information from the letter to protect privacy. The Hearing Officer requested additional unredacted documentation to determine if a disability existed. Applicant Rhonda Moore requested that such information be placed under seal to protect doctor-patient confidentiality and privacy.

At the outset of the hearing, the Hearing Officer announced and gave notice that the request to seal documents would be considered, and announced the standards for determining whether to approve the sealing of documents. The Hearing Officer explained that the California Rules of Court, Rule 2.550, provides guidance on sealed records. Although the Reasonable Accommodation administrative hearing is not conducted by a Superior Court or other “Court” as envisioned by the California Judicial Council, it is a quasi-judicial proceeding and the Hearing Officer finds that the Rules of Court provide persuasive reasoning.

Rule 2.550(d) describes findings required to seal records. They state five findings.

- (1) *There exists an overriding interest that overcomes the right of public access to the record.* Here, the medical records contain doctor-patient communications that are privileged and also raise privacy interests. They contain detailed diagnosis, medications, and appointment schedules. They also include detailed descriptions of the diagnosed condition. At issue is whether a mental disability exists. The Hearing Officer was presented with substantial, credible medical evidence from well established and recognized experts sufficient to make a determination whether a disability exists. As the alleged disability is a mental impairment, any public interpretation of this information and any challenge to its conclusions would likely require a third-party expert examination of the patient, which would further invade the disabled resident's privacy interests. The probative value to the public of the details of the disability are outweighed by the prejudicial effect to the disabled resident of disclosing privileged and private information. The doctor-patient and privacy interests in these details outweigh the right of public access to the details of the disability.
- (2) *The overriding interest supports sealing the record.* Here, the overriding interest is doctor-patient confidentiality and privacy. These are foundational interests and support the sealing of the records.
- (3) *A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed.* Here, testimony at the hearing questioned the disability and several opponents of the Reasonable Accommodation insisted on access to medical records. If the medical records were made public there is a substantial probability the confidential material in the record would be widely disseminated among opponents and neighbors, prejudicing the patient's doctor-patient confidentiality and privacy interests.
- (4) *The proposed sealing is narrowly tailored.* Here, the Hearing Officer sealed some of the records submitted by the applicant and released others with confidential information on the released documents redacted. This action is narrowly tailored to protect only doctor-patient and privacy interests.
- (5) *No less restrictive means exist to achieve the overriding interest.* Here, the medical information was necessary for the Hearing Officer to establish that a disability existed. There is no other alternative than to submit this information to the Hearing Officer and there is no less restrictive means of conveying that information while protecting the overriding interests of confidentiality and privacy.

Further, Municipal Code section 20.52.070.C.4.d specifically requires that "any request for information regarding the disability of the individuals benefited complies with ... the privacy rights of the individuals affected." The documents requested to be placed under seal were submitted at the Hearing Officer's request and the Hearing Officer must therefore observe the privacy rights of the disabled resident.

The applicant submitted two sets of documents in response to the Hearing Officer's request for additional documentation of the disability, with requests that they be sealed. For the first set, guided by the above findings and requirements, the Hearing Officer announced the following at the hearing:

An email requesting that the documents be sealed was held to be a public document. A letter to the Hearing Officer from applicant Rhonda Moore describing the details of the disability was to be sealed for privacy. An unredacted letter from the treating physician to the Hearing Officer describing the disability would be sealed for privacy and a redacted version released as a public document. A second letter from the treating physician containing details of the

disability was to be similarly treated. A report from UC Irvine Health describing medications and appointments would be sealed for doctor-patient confidentiality and privacy. A letter from the Social Security Administration regarding Supplemental Security Income would be made public with confidential information redacted for privacy. A detailed description of the disability characteristics would be sealed for privacy. A letter from UC Irvine Health regarding Jury Duty Exemption would be made public with information about the disability redacted for privacy. The Reasonable Accommodation application would be made public with confidential information redacted for privacy.

The second set of documents requested to be sealed was submitted by applicant Rhonda Moore after the hearing, but within the time allowed by the Hearing Officer to submit supplemental documents. Guided by the above findings and requirements, the Hearing Officer finds the following regarding those documents:

Reports from a second treating physician, Dr. K. Himasiri Desilva, describing diagnosis, medicine prescriptions, and appointments would be sealed for doctor-patient confidentiality and privacy.

The hearing was left open until 4 pm Friday, August 2, 2019 for, among other reasons, an opportunity for opponents to submit case law or other authority arguing that the disability has been placed at issue requiring all document to be disclosed, and no additional authority was received by that time.

Therefore, the preliminary determinations about sealed documents made at the hearing, and the determinations made herein about the second set of documents, are now final and the documents as described above shall be sealed and/or redacted.

The diagnosis, prognosis, and treatment plan described in the documents of the two treating physicians, along with the letter from the Social Security Administration informing the subject disabled individual that he met the medical requirements to receive Supplemental Security Income benefits, is substantial evidence of a disability. Accordingly, I find that a disability exists in accordance with statutory and case law definitions for Reasonable Accommodations.

The First Required Finding for a Reasonable Accommodation can be made.

Second Required Finding: Necessary for Equal Opportunity

The second Reasonable Accommodation finding requires that “[t]he requested accommodation is *necessary* to provide one or more individuals with a disability an equal opportunity to use and enjoy a *dwelling*.” (Emphasis added.) Further, Municipal Code section 20.52.070.C.4.c, Application Required Submittals, requires that the applicant document that the requested modification is the *minimum necessary* ... to use and enjoy the residence.” (Emphasis added.)

The Sixth Circuit Court of Appeals discussed the meaning of the terms “equal opportunity,” “necessary,” and “reasonable” in the context of a reasonable accommodation in *Smith & Lee Associates v. City of Taylor, Michigan*, 102 F.3d 781 (6th Cir 1996), which provides persuasive reasoning. (The Ninth Circuit Court of Appeals has cited to this case with general approval in *Giebeler*, 343 F.3d at 1155.)

In *Smith*, the Court stated that the phrase “equal opportunity,” “is concerned with achieving equal results, not just formal equality ... [and that] the FHAA [Fair Housing Act Amendments of 1988] imposes an *affirmative duty* to reasonably accommodate handicapped people.” (*Id.* at 795. Emphasis original, internal citations omitted. See also *Giebeler*, 343 F.3d at 1146-1147.) Further, the Court in *Smith* stated that “[t]he statute links the term ‘necessary’ to the goal of equal opportunity.” (*Smith*, 102 F.3d at 795.) “Equal opportunity is a key component of the necessity analysis” (*Giebeler*, 343 F.3d at 1155.) “The concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s [here the applicant] quality of life by ameliorating the effects of the disability.” (*Id.* Internal quotes and citations omitted.) With respect to what constitutes “reasonable,” the Court stated that “an accommodation is reasonable unless it requires ‘a fundamental alteration in the nature of a program’ or imposes ‘undue financial and administrative burdens.’” (*Id.*, quoting the United States Supreme Court in *Southeastern Community College v. Davis*, 442 U.S. 397, 410 (1979). Emphasis added.) The United States Supreme Court, in *US Airways v. Barnett*, 535 U.S. 391, 401-402 (2002), described “reasonable” as meaning “reasonable on its face ... feasible ... plausible.”)

This discussion appears to shift the burden to the public entity to show that the accommodation is NOT reasonable.

This point was addressed by the Ninth Circuit Court of Appeals in *Giebeler v. M&B Assocs.* There, the Court stated it had “not decided previously whether the plaintiff [here the applicant] or the defendant [here the opponents] in an FHAA case bears the burden of showing whether a proposed accommodation is reasonable.” (*Giebeler*, 343 F.3d at 1156.) The Court described two variations of the burden. In the first variation, the applicant bears the burden of showing the accommodation was “possible,” whereupon the burden shifts to the opponents to show that it is NOT reasonable. In the second variation, the applicant bears the burden to show that the accommodation seems “reasonable on its face,” whereupon the burden shifts to the opponents to show that the accommodation would cause an “undue hardship.” (*See Id.*) The Court in *Giebeler* did not decide this issue as it found that the applicant there met both standards. The Court went on to discuss “reasonableness” and stated that “[o]rdinarily, an accommodation is reasonable under FHAA when it imposes no fundamental alteration in the nature of the program or undue financial or administrative burdens.” (*Id.* at 1157; internal quotes and citations omitted.)

(Nowhere in the case research did this Hearing Officer find a requirement that the burden is on an applicant to show that the modification be the “minimum necessary” despite the City application requirement.)

The above discussion by the Courts ties the Second Required Finding of Municipal Code section 20.52.070.D.2 to the Third and Fourth Required Findings and here they will be discussed together.

Here, the applicant has requested that hedges along the frontage of Strada Trieste, a non-vehicular public way adjacent to the disabled resident’s bedroom, be allowed to grow higher than the maximum height of 42 inches, to a height of 78 inches. The disabled resident’s treating physician submitted a letter, partially redacted by the City for privacy, stating that this would allow privacy and alleviate symptoms triggered by passers-by. It stated that the privacy would allow the disabled resident to enjoy a secluded, secure, quite and safe area inside and outside of the bedroom.

Documents sealed by this Hearing Officer, discussed above, detail the symptoms of the disabled resident's mental impairment, describe how the symptoms can be aggravated, and concludes that the hedge can alleviate the symptoms triggered by passers-by. The diagnosis of the impairment is confirmed by sealed medical records from a second treating physician, Dr. K. Himasiri Desilva.

The two treating physicians, who have treated the disabled resident for years, are best positioned to diagnose a mental impairment, its symptoms, and conditions that trigger those symptoms. Given that, I find that an accommodation for additional hedge height seems reasonable on its face, and the growth of oversized hedges is certainly possible, feasible, and plausible. This meets the applicant's burden under either variation described by *Giebeler*. The burden then shifts to opponents to show that the accommodation is NOT reasonable and/or that it would cause undue hardship, per the burden described in *Giebeler*.

Here, opponents raise a number of objections. Essentially the objections that the requested reasonable accommodation is either not reasonable or an undue burden are summarized as follows: (1) The resident does not meet the definition of "disabled" as envisioned by the statutes; (2) The accommodation is not the minimum necessary because the requested accommodation would not be effective and alternatives are available; (3) The term "use and enjoyment of a dwelling" refers to the interior of the home and does not include the adjacent outdoor spaces; (4) The additional hedge height causes a fundamental alteration to the character of the community and an undue hardship regarding views to the harbor; (5) The higher hedge creates safety concerns; and (6) There is an improper motive behind the application.

These objections will each be addressed in the order listed above.

(1) Disability

As discussed above, documents from two treating physicians, a document from the Social Security Administration confirming eligibility for Supplemental Security Income due to medical conditions, and the testimony and supporting documents from the disabled resident's mother are more than sufficient to find that a preponderance of evidence exists establishing the disability.

This objection is unpersuasive.

(2) Alternatives

Opponents argue that the objective of privacy can be achieved by the disabled resident using another alternative, that is, by using a bedroom interior to the home that is not adjacent to the public way, and by using a courtyard open to the sky in the interior of the home for outdoor recreation which is also not adjacent to the public way. They argue this would eliminate the distractions that trigger the disabled resident's symptoms and obviate the need for the accommodation. They argue that two other Hearing Officer Reasonable Accommodation Decisions, one decided by this Hearing Officer, support that argument based on the availability of other alternatives. The two cases were RA2011-002 to exceed the allowable floor area ratio to enclose a breezeway leading to a handicap accessible bathroom, and RA2018-002 to allow a golf cart to park in the rear yard setback.

However, those two cases are inapposite to the case here.

RA2011-002 involved a major remodel to enlarge the ground floor kitchen and dining area, and to relocate an existing bathroom. To make the new relocated bathroom accessible to the disabled

resident, the existing breezeway was proposed to be enclosed, thus exceeding the allowable floor area ratio. The Hearing Officer found that the existing bath in its existing location was adequate to provide the disabled person equal opportunity to use and enjoy the dwelling, and its relocation was not necessary. In essence, the existing condition was sufficient and the barrier was created by the applicant himself to accommodate the self-serving interest of a larger kitchen and dining area. The reasonable accommodation for additional floor area to enclose the breezeway was denied.

RA2018-002 involved a request to allow a golf cart to park in the rear yard so that the resident could more easily access neighborhood stores and services. The golf cart was in addition to the resident's family vehicle, which was not modified for any handicap accessibility, which the applicant testified he was able to drive, and which was lawfully parked in the resident's garage. The Hearing Officer found that the resident did not adequately establish his disability and that reasonable accommodations were intended to allow equal use and enjoyment of the dwelling, which did not include convenient use and enjoyment of neighborhood stores and services. The request was denied.

Both cases involved a finding that no barriers were present that needed to be removed and neither turned on the availability of other alternatives. In fact, nowhere in the findings required by Municipal Code section 20.52.070.D.2, nor in the findings that a Hearing Officer *may* consider in section 20.52.070.D.3-4, does the word "alternatives" appear.

Another denial with facts somewhat similar to the Moore application was *Howard v. Beavercreek*, 276 F.3d 802 (6th Cir. 2002). The Sixth District Court of Appeals' reasoning there merits examination. There, the Court upheld the denial of a requested accommodation to raise a fence to six feet, which was in excess of city requirements. Mr. Howard, the disabled applicant, argued he suffered from PTSD and believed his neighbors were spying on him, exacerbating his condition. The fence was for the purpose of privacy and eliminating any undue stress. The City, trial Court, and Appeals Court based their denial, in part, on the lack of a definitive opinion from the treating physician, which stated only that it was *feasible* that the fence *may* relieve the stress. They also found that Mr. Howard had lived in his home for several years and had not earlier requested the accommodation, showing that he was not denied equal opportunity to enjoy the housing or community of his choice. The trial court further found that there was "uncontroverted evidence" that the fence would cause a threat to pedestrian and vehicular traffic. The Appeal Court affirmed the denial. (*Id.* at 805-807.)

The Moore application here differs in several key respects. First, here, the treating physician was much more emphatic in the need for the accommodation, stating that the accommodation was "imperative" and that the hedges "alleviates these symptoms" of the disability. Second, according to Mr. Fesler's declaration, the Moore's had only recently moved into the residence in the summer of 2017 and began immediately planting oversized hedges. (Although Mr. Fesler argued it was not for the purposes of privacy for the disabled resident). Mrs. Moore testified that the only reason she waited so long to apply for a reasonable accommodation was that she only recently learned such a procedure was available. Third, the City's Traffic Engineer has determined that the required "safety triangle" trimming would mitigate any safety threats, and the City Police Department's review did not reveal any safety issues. So the three principal factors determining *Howard*, longevity in the neighborhood without the accommodation, an equivocal opinion from the treating physician, and threats to pedestrian and vehicular traffic,

were not present here. For those reasons, while instructive, the facts of the *Howard* case do not compel a similar finding of denial here, and its holding is by no means controlling here.

The facts and reasoning of the above three denials are substantially distinguished from the Moore application and do not suggest denial here.

The case here is much more similar to three other requests that were all approved, one by this Hearing Officer. They were RA2015-002, RA2016-001, and RA2018-001. All three involved requests to accommodate an elevator to the second story. The argument against the Moore's application here is that the disabled resident could simply confine himself to certain parts of the house, thus avoiding the accommodation for additional hedge height. Applying that same logic to the elevator cases, those residents could have been told to simply confine themselves to the first floor, thus avoiding the accommodation for an elevator. But that was not the standard for the three elevator cases and is not the standard for the case here for hedges.

As discussed above, the term "necessary" is linked to the goal of equal opportunity. The required finding references an equal opportunity to use and enjoy a dwelling. Here, a resident does not enjoy equal opportunity to use and enjoy a dwelling when they are confined to only parts of the dwelling, effectively barring them from other parts of the home such as the second story in the case of the elevator requests or a specific bedroom as here. "The concept of necessity requires at a minimum the showing that the desired accommodation will affirmatively enhance the disabled [resident's] quality of life by ameliorating the effects of the disability." (*Smith*, 102 F.3d at 795.) That minimum showing was met by the documentation from the treating physician as discussed above.

This objection is unpersuasive.

A few opponents questioned why the Moore's would move to this location, implying that other locations would provide an alternative where more privacy would be available. But living in the neighborhood of their choice is exactly the point. Every court reviewing a reasonable accommodation references this goal of the FHAA. For example, the Ninth Circuit Court of Appeals noted "Congress intended the FHAA to protect the right of handicapped persons to live in the residence of their choice in the community." (*City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802 (9th Cir. 1994); *See also Smith*, 102 F.3d at 795, the Act prohibits excluding people with disabilities entirely from zoning neighborhoods or giving them less opportunity to live in certain neighborhoods than people without disabilities.) While it is true that Lido Isle is densely packed with very small lot sizes, high lot coverage, and minimum outdoor usable recreation space, the fact that other neighborhoods with more lot space and/or privacy are available as an alternative does not compel disabled persons to exhaust those alternatives and to forgo living in the neighborhood of their choice.

This objection is unpersuasive.

(3) Definition of "Dwelling"

Opponents argue that reasonable accommodations must be limited to use and enjoyment of the dwelling, which they argue, is defined by 42 USC 3602(b) as only those areas within the enclosed home and not the adjacent open spaces.

This is an overly narrow interpretation of the letter and intent of the statute. The intent is to prevent discrimination and to promote equal opportunity. FHAA section 42 USC 3604(f)(3), which contains the language for “reasonable accommodations,” also defines “discrimination” in terms of the “premises” which suggests more than the four walls of the structure. (Black’s Law Dictionary, Seventh Edition, defines “premises” to mean “a house or building, *along with its grounds*.” Emphasis added.) If barriers must be removed to the equal use and enjoyment of the interior of the home, it makes little sense to *allow* barriers to the equal use and enjoyment of the outdoor spaces of the premises immediately adjacent to the home. Any reasonable person would take for granted that, if their bedroom fronted on an outdoor space with a sliding glass door leading to it, they would be entitled to use that space as part of their dwelling and premises. Such is the case here. This Hearing Officer is unaware of any case law supporting this narrow interpretation. Notably, the case in *Howard*, discussed above, included the argument that a privacy fence was needed, *inter alia*, to prevent leaves from blowing into the *yard* which exacerbated a heart condition when the applicant raked them. Although denied on other grounds, the Court there made no distinction that this outdoor area was disqualified from a reasonable accommodation request due to not meeting the definition of “dwelling.” Further, the interpretation of reasonable accommodations in all case law has been liberally applied, including the reasoning discussed above that places the burden on opponents to show the accommodation is NOT reasonable. The argument that the home, or “dwelling,” is limited to the space within the dwelling walls, without supporting authority applying this to reasonable accommodations, is insufficient to show that the accommodation is NOT reasonable.

This objection is unpersuasive.

(4) Fundamental Alterations or Undue Hardship – Views

Opponents argue that allowing oversized hedges in this location would create a fundamental alteration to the character of the community. Currently, all hedges located in the front yards in the neighborhood where the accommodation is requested are limited to 42 inches by City regulations. The local homeowners association (HOA), the Lido Isle Community Association, testified that they recently approved a CC&R requirement to allow hedge heights to increase from 30 inches to 60 inches to allow privacy but which still allowed some view to the harbor. In addition to this requirement, the CC&Rs required all trees to be trimmed to 7 feet off the ground. This would allow a view corridor of 2 feet between the 5 foot tall hedges and the 7 foot tree trimmings off the ground. The HOA argued that if this particular hedge was allowed up to 78 inches as requested, and trees are trimmed down to 84 inches, it would leave only 6 inches of view corridor. The HOA argued that the requested accommodation would impact all homes north (away from the water) of the accommodation looking toward the harbor and all homes on the applicant’s side of the Strada (pedestrian public way) in that those homes would no longer have a clear view. The HOA supported an accommodation of 6 feet but not the 78 inches. Other neighbors objected that their view of the harbor and water would be restricted. They argued this restriction on the views would be an undue burden and fundamental alteration to their property rights and to the public views.

In water-oriented communities, views to the water are an important property interest that has significant economic value. Opponents were quick to point that out. However, the “fundamental alteration” in the findings refers to the “nature of the City’s zoning program.” Here, it is the HOA’s program for view preservation not the City’s zoning program that is affected. While the accommodation may indeed affect the views of individuals and the public, it is not a fundamental alteration to the zoning program and no such argument was presented. Further, no case authority

was presented in support of this argument that would show that private and public views were the type of fundamental alteration as “defined in Fair Housing Laws and interpretative case law” as required by the finding. Even if the HOA program were to be considered, the HOA jurisdiction includes many other streets and strada on the island which would be completely unaffected by the requested accommodation.

This objection fails to show a fundamental alteration in the nature of a program.

However, the Court in *Smith*, discussed above, did note that, in determining the reasonableness of an accommodation, cost to the objectors and benefit to the applicant merit consideration as well, and a court must balance the objector’s interest against the need for the accommodation. (*Smith*, 102 F.3d at 795; *see also Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995) reasonable accommodation not “an obligation to do everything humanly possible to accommodate a disabled person.”)

Here, after showing that the accommodation is reasonable and/or possible, the burden shifts to opponents to show that the accommodation is NOT reasonable or would cause undue hardship. Opponents argue the added hedge height would be a significant cost to them and cause them an undue hardship by limiting their views. But in a densely packed urban environment such as this, many things may obstruct views, including the numerous other hedges and trees along the view corridor. The Staff Report, the applicant, and the HOA all reported that there are many other oversized hedges in the immediate neighborhood which presumably also block views. The existing private views argued here are limited at best and no view analysis was presented to substantiate the degree of loss.

Further, when the Courts in *Smith* and *Bronk* noted that costs and benefits should be balanced, they were referring to costs to the entity providing the accommodation. Here, the accommodator is the City, and costs to the City are addressed in the Third Required Finding that there be no undue burden on the City, and the Fourth Required Finding that there be no fundamental alteration to a City zoning program. The City Staff Report declared there to be no such adverse impacts. Any impact to a third-party should be viewed in the context of those findings. Regarding private or public views, there is no City zoning program that has been identified for the protection of views. The subject property is within the coastal area and has an active local coastal program (LCP), but no evidence was presented that any views to the coast or harbor are to be protected. Third-party impacts are also viewed in the context of the Fifth Required Finding that there be no health or safety threat, or substantial physical damage to the property of others. The City Traffic Engineer and City Police Department did not identify any health or safety threat (discussed more fully below). Further, the blockage of a partial harbor view is not the direct causation of physical damage to property of others. Even if such an attenuated argument could be made based on indirect causation, no evidence was submitted of “substantial” property damage, or that a view to the harbor was even “property.” Third-party impacts could also be viewed in the context of the environmental review, and here the Staff Report found “no potential to have a significant effect on the environment.”

In short, third-party impacts should be reviewed in the context of the Fourth Required Finding for any adverse effects on the third-party relative to a City zoning program, or in the context of the Fifth Required Finding for any adverse effects on third-party health and safety or physical property damage, or the environmental review for any adverse effects on a third-party relative to

environmental impacts. In addition, the cost analysis should take into account the City's *affirmative duty* to accommodate the needs of disabled persons.

On balance, the limited view obstruction for a limited number of people has not been shown to rise to a level to outweigh the benefit to the applicant to remove barriers to the equal opportunity for the use and enjoyment of a dwelling, and does not overcome the affirmative duty to provide reasonable accommodations.

This objection is unpersuasive.

(5) Safety Concerns

Opponents argue that the additional hedge height will cause safety issues.

The subject property is located on the corner of Strada Triese and Via Lido Soud. The oversized hedge is proposed to be along Strada Trieste, a pedestrian public way running generally north-south to the harbor. It intersects with Via Lido Soud, running generally east-west, which is a public street with an adjacent sidewalk. Opponents argue this is a very busy intersection for pedestrians and that the hedge, located on the corner of the intersection, will block the view of people coming around the corner at the intersection.

The City Traffic Engineer has recommended that the hedge be trimmed and maintained to a maximum of 36 inches along this corner in a "sight distance triangle" measuring 5 foot by 5 foot along the corner, to address this safety issue. Further, the Police Department has reviewed the request and expressed no safety concerns, staff reported.

The City Traffic Engineer and the City Police Department have not expressed concern over safety and the City Traffic Engineer has recommended a mitigation measure to address any potential traffic and pedestrian safety issue.

This objection is unpersuasive.

(6) Improper Motive

Opponents have argued that this reasonable accommodation request is merely an "end-run" around the City's hedge height requirements. There was much discussion at the hearing and in written declarations about prior code enforcement actions by the City and homeowners association to enforce the existing requirements upon the applicants. Opponents argued that the reasonable accommodation application was just a circumvention of the rules and enforcement actions, and that the applicant only desires to have higher hedges.

Prior code enforcement actions are not before this Hearing Officer, and the City, nor this Hearing Officer, enforce homeowner association rules. While this Hearing Officer has cautioned against using the reasonable accommodation procedure to circumvent other more appropriate procedures for resolving issues, this application must be taken at face value and reviewed pursuant to the Municipal Code, relevant statutes and case law.

This objection is unpersuasive.

All arguments presented by opponents in items 1-6 above were considered and are found not to rise to the level of showing that the accommodation is NOT reasonable.

The Second Required Finding can be made.

Third Required Finding: Undue Financial or Administrative Burden on the City

The City Staff Report concluded that there would be no financial or administrative burden on the City, and none were presented at the hearing.

On this basis, and the on basis discussed under the Second Required Finding, the Third Required Finding can be made.

Fourth Required Finding: No Fundamental Alteration in City's Zoning Program

The City Staff Report concluded that there would be no fundamental alteration to the City's zoning program. As discussed above, the argument that the allowance of this one hedge to exceed the height limit would cause a fundamental alteration to the character of the area and to the views to the harbor was found to be unpersuasive.

On this basis, and the on basis discussed under the Second Required Finding, the Fourth Required Finding can be made.

Fifth Required Finding: Health and Safety; Physical Damage to Property of Others

As discussed above, the City Traffic Engineer and City Police Department have concluded that, as mitigated, the request would not threaten health or safety of other individuals. As discussed above, opponents have argued that their view of the harbor would be obstructed and that a harbor view is a form of property which is damaged. As discussed above, this argument, in the context of a reasonable accommodation, is unpersuasive.

On this basis, and the on basis discussed under the Second Required Finding, the Fifth Required Finding can be made.

Environmental Findings

The accommodation has been found to be exempt from environmental review, which is the mechanism for identifying environmental impacts including safety and impacts to others. Planning staff found the request to have no potential to have a significant effect on the environment.

Conclusion:

State and federal Fair Housing Laws are intended to protect those with disabilities from housing discrimination and to provide them a level playing field to access housing. Providing reasonable accommodations in support of state and federal Fair Housing Laws is good public policy. It is a powerful tool for creative solutions. But it should be used judiciously and take into account the impacts on others.

The burden of proof requires that the applicant must first show that a disability exists. Here, the documentation from treating physicians confirms the disability. Then, the burden rests with the applicant to show the requested accommodation is reasonable on its face, meaning it is feasible, possible, or plausible. Here, growing a hedge beyond the 42 inch requirement to a maximum of 78 inches meets this low burden. Then the burden shifts to opponents to show the accommodation is NOT reasonable or creates an undue hardship or will be a fundamental alteration to a city program. Costs to opponents are to be balanced against the benefit to the applicant. Here, the arguments that a height exemption for one hedge will be a fundamental

alteration to a citywide hedge height program or to the HOA island-wide hedge height CC&R is not persuasive. Further, although the accommodation may obstruct some private views which are currently partial at best, it has not been shown to be substantial physical property damage, and does not outweigh the benefit to the applicant to fully use and enjoy his dwelling and associated outdoor recreational open space, and to live in the neighborhood of his choice. While there may or may not be other motives or benefits to the application, the application on its face complies with all required findings.

Resolution:

Resolution No. HO2019-001, as presented in Attachment No. 1 in the Staff Report and modified herewith, is adopted.

This Decision and Order, in its entirety, is incorporated by reference into the Resolution.

ORDER:

Resolution No. HO2019-001, Approving Request for Reasonable Accommodation is hereby ADOPTED.

This Order is effective upon service on the parties.

APPEAL OF DECISION ON REASONABLE ACCOMMODATION:

This DECISION AND ORDER is appealable to the Newport Beach City Council.

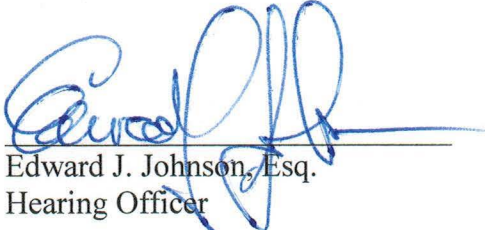
Municipal Code section 20.52.070.B designates the Hearing Officer as the Review Authority to approve, conditionally approve, or deny applications for a reasonable accommodation.

Subsection D.1.b states that the Hearing Officer action shall be subject to appeal procedures identified for any other discretionary permit. Section 20.50.030, Table 1, states that the Review Authority for an appeal of a Hearing Officer decision on a reasonable accommodation is the City Council. Subsection D.1.c provides that “[o]n review the [City] Council may sustain, reverse, or modify the decision of the Hearing Officer or remand the matter for further consideration....”

This action shall become final and effective fourteen days following the date this Resolution was adopted unless within such time an appeal to the City Council is filed with the Community Development Director in accordance with the provisions of NBMC Title 20 Planning and Zoning and NBMC Title 21 Local Coastal Program Implementation Plan.

IT IS SO ORDERED:

Date: August 15, 2019


Edward J. Johnson, Esq.
Hearing Officer



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915
949-644-3200

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ZONING ADMINISTRATOR ACTION LETTER

Subject: Comprehensive Sign Program No. CS2018-006 (PA2018-237)
Site Location 330 Old Newport Boulevard (Newport Harbor Medical Plaza)
Applicant Sunset Signs
Legal Description Parcel 1 of Lot Merger No. LM2014-05

On August 16, 2019, the Zoning Administrator approved Comprehensive Sign Program No. CS2018-006. The approval is in accordance with the provisions of Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code (NBMC). The intent is to integrate all of the building's tenant signage with the overall site design.

LAND USE AND ZONING

- **Zone:** OG (Office General)
- **General Plan:** CO-G (General Commercial Office)

Pursuant to [Section 20.42.120 \(Comprehensive Sign Program\)](#) of the NBMC, a Comprehensive Sign Program is required whenever three or more separate tenant spaces are proposed for a single site, whenever a structure has more than three hundred (300) linear feet of frontage on a public street, and when signage is proposed at or above the second story of a multi-story building. Under the Comprehensive Sign Program, deviations are allowed with regard to sign area, total number, location, and/or height of signs. In this case, a total of nine signs are proposed for four tenants, including a request to allow the following deviations from the Zoning Code:

1. Sign Area:
 - Allow three (3) building signs in excess of 75 square feet in area.
2. Total number of signs:
 - Allow two (2) building signs for each of the two primary tenants, in lieu of the one (1) normally allowed.
 - Allow additional wall signage for addressing and multi-tenant identification.

3. Location of signs:

- Above the bottom of lowest second story window for second story occupancies that do not have exterior entrances and for address numbers;
- Extending outside of the middle fifty (50) percent of the building or tenant frontage measured from lease line to lease line.

The approval is based on the following findings and standards, and subject to the following conditions:

FINDINGS AND STANDARDS FOR APPROVED SIGNS

Finding

- A. *The project is exempt from environmental review under the requirements of the California Environmental Quality Act pursuant to Section 15311, Class 11 (Accessory Structures).*

Fact in Support of Finding:

1. Class 11 exempts minor structures accessory to existing commercial facilities, including signs. The proposed signs are incidental and accessory to the principal commercial use of the property and do not intensify or alter the use.

Standard

- B. *The proposed sign program shall comply with the purpose and intent of this Chapter [Chapter 20.42], any adopted sign design guidelines, and the overall purpose and intent of this Section [Section 20.42.120 – Comprehensive Sign Program].*

Facts in Support of Standard

1. The purpose of a comprehensive sign program is to integrate all of a project's signs with the overall site design and architecture to create a unified architectural design statement. A comprehensive sign program provides a means for the flexible application of sign regulations for projects that require multiple signs in order to provide incentive and latitude in the design and display of signs, and to achieve, not circumvent, the purpose of [Chapter 20.42 \(Sign Standards\)](#). The proposed Comprehensive Sign Program limits tenant signage to a maximum of two primary tenants and two secondary tenants, and incorporates a building identification sign, a pedestrian scale multi-tenant directory sign, and address signage in a unified design as described in these findings and shown on the proposed plans.
2. The proposed Comprehensive Sign Program complies with the purpose and intent of Newport Beach Municipal Code [Chapter 20.42 \(Sign Standards\)](#) because it provides the building tenants with adequate identification while guarding against

excessive proliferation of signage. The increased number and area of the wall signs provide necessary identification for motorists travelling on Newport Boulevard, Hospital Road, and Old Newport Boulevard; however, it preserves and enhances the community appearance by regulating the type, size, location, quantity, and illumination of signs through conditions of approval and conformance with approved plans. Through these regulations, the Comprehensive Sign Program will enhance the safety of motorists and pedestrians by minimizing the distraction of signs as well as to protect the life, health, property, and general welfare of City residents and visitors.

3. A comprehensive sign program allows deviations with regard to sign area, total number, location, and/or height of signs. Approval of this Comprehensive Sign Program includes deviations to the total number and location of allowed building signs. However the overall sign increase will not be more than 30 percent allowed by the Zoning Code (97.5 square feet max.). Because of the length of the commercial building frontage along a curved street, the proposed number and location of signs will provide better sign visibility without creating an overcrowded appearance. Also, since the office building is located near the intersection of three streets, the proposed signage is necessary to identify the major office tenants to vehicles traveling from multiple directions of the intersection.

Standard

- C. The proposed signs shall enhance the overall development, be in harmony with, and relate visually to other signs included in the Comprehensive Sign Program, to the structures and/or developments they identify, and to surrounding development when applicable.*

Facts in Support of Standard

1. The commercial building on the site is intended for the use of multiple tenants. The tenants will be permitted signage pursuant to the submitted 330 Old Newport Boulevard Sign Program Matrix to allow adequate site identification and visibility. The signs have been designed to be consistent with one another and to not be abrupt in scale with the individual tenant frontage. The location and size of the signs do not dominate, but rather are consistent with the proportions of the façade on which they are located. The font, colors, and materials of proposed signs will complement the architecture and colors of the existing building.
2. The wall-mounted signs have been designed to comply with applicable development standards and will not obstruct public views from adjacent roadways because the signs will be affixed to existing structures and will not create any additional obstructions.

Standard

- D. The sign program shall address all signs, including permanent, temporary, and exempt signs.*

Facts in Support of Standard

1. The Comprehensive Sign Program addresses all project signage. Temporary and exempt signs not specifically addressed in the sign program shall be regulated by the provisions of Newport Beach Municipal Code Chapter 20.42 (Sign Standards).

Standard

E. The sign program shall accommodate future revisions that may be required because of changes in use or tenants.

Facts in Support of Standard

1. It is not anticipated that future revisions to the Comprehensive Sign Program will be necessary to accommodate a change in tenants or use. However, the Community Development Director may approve minor revisions to the Comprehensive Sign Program if the intent of the original approval is not affected, pursuant to Chapter 20.42.

Standard

F. The program shall comply with the standards of this Chapter [Chapter 20.42], except that deviations are allowed with regard to sign area, total number, location, and/or height of signs to the extent that the Comprehensive Sign Program will enhance the overall development and will more fully accomplish the purposes and intent of this Chapter [Chapter 20.42].

Facts in Support of Standard

1. The Comprehensive Sign Program requests deviations to the total number and location of allowed building signs. Because of the length of the commercial building frontage along a curved street, the proposed number and location of signs will provide better sign visibility without creating an overcrowded appearance.
2. Allowing deviation from the Zoning Code to allow a greater number of signs and greater overall sign area is appropriate based on the size and location of the commercial building, which has approximately 287 feet of frontage along a curved street, in order to provide adequate and appropriate site identification consistent with the proportions and location of the building.
3. Allowing deviation from the Zoning Code for certain wall signs to be located outside of the middle 50 percent and on the second floor level is appropriate given the architectural design of the building. The architectural design of the building incorporates two tower elements that are appropriate for signage; however due to the width of the towers, the signs are limited to the middle 80% of the tower width to maintain proper placement and integrate into the overall building design.

Standard

G. The approval of a Comprehensive Sign Program shall not authorize the use of signs prohibited by this Chapter [Chapter 20.42].

Fact in Support of Standard

1. The Comprehensive Sign program does not authorize the use of prohibited signs.

Standard

H. Review and approval of a Comprehensive Sign Program shall not consider the signs' proposed message content.

Fact in Support of Standard

1. The Comprehensive Sign Program contains no regulations affecting sign message content.

CONDITIONS

1. The development shall be in substantial conformance with the approved site plan, details, and elevations, except as noted in the following conditions.
2. Upon demolition or substantial structural and nonstructural changes to the exterior of the development on which this approval is based, this Comprehensive Sign Program shall be rendered nullified and a new Comprehensive Sign Program shall be obtained for the new or altered development in accordance with the Zoning Code provisions in effect at the time the new development is approved.
3. All signs shall be maintained in accordance with Section 20.42.170 (Maintenance Requirements) of the Newport Beach Municipal Code. Temporary and exempt signs not specifically addressed in the program shall be regulated by the provisions of Chapter 20.42 of the Newport Beach Municipal Code.
4. In accordance with Municipal Code Section 20.42.120.F of the Zoning Code, the Community Development Director may approve minor revisions to the Sign Program if the intent of the original approval is not affected. This may include deviations on the tenant configurations, such as combining or dividing suites.
5. A building permit shall be obtained prior to commencement of the construction and/or installation of the signs.
6. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees,

disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **330 Old Newport Boulevard Sign Program including, but not limited to Comprehensive Sign Program No. CS2018-006 (PA2018-237)** and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

APPEAL PERIOD

An appeal or call for review may be filed with the Director of Community Development within 14 days following the date of action. For additional information on filing an appeal, contact the Planning Division at (949) 644-3200.

Prepared by:


Liane Schuller
Planning Consultant

Approved by:


Rosalinh Ung
Zoning Administrator

Attachments:

- ZA 1 Vicinity Map
- ZA 2 Comprehensive Sign Program Matrix
- ZA 3 Project Plans

Attachment No. ZA 1

Vicinity Map

VICINITY MAP



Comprehensive Sign Program No. CS2018-006
(PA2018-237)

330 Old Newport Boulevard

Attachment No. ZA 2

Comprehensive Sign Program Matrix

Exhibit "B"

330 OLD NEWPORT BOULEVARD
COMPREHENSIVE SIGN PROGRAM MATRIX

<u>Sign Type</u>	<u>Tenant</u>	<u>Number of Signs</u>	<u>Size Limitation</u>	<u>Other Specifications</u>
Tenant Identification	1	Two, one each type	Sign type "a" - 75 sq.ft. max. - 36" letter /42" logo	Sign limited to middle 50% of wall elevation (refer to plans)
			Sign type "b" - 75 to 96.5 sq.ft. - 36" letter/42" logo	Sign limited to middle 50% or 80% of wall elevation, depending upon location (refer to plans)
	2	Two, one each type	Sign type "a" - 75 sq.ft. max. - 36" letter /42" logo	Sign limited to middle 50% of wall elevation (refer to plans)
			Sign type "b" - 75 to 96.5 sq.ft. - 30" letter/36" logo	Sign limited to middle 50% or 80% of wall elevation, depending upon location (refer to plans)
	3	One	- 75 to 96.5 sq.ft. - 30" letter/36" logo	Sign limited to middle 50% of wall elevation (refer to plans)
	4	One	- 75 to 96.5 sq.ft. - 30" letter/36" logo	Sign limited to middle 50% of wall elevation (refer to plans)
Multi-Tenant	n/a	One	- 95 sq.ft. - 12.5" letters	
Building Identification	n/a	One	- 56 sq.ft. - 20 " letters - No logos	
Address Numbers	n/a	Two	- 17 sq.ft. - 30.5" letters - No logos	

Notes/Requirements:

- a) Sign locations shall be as depicted on approved plans.
- b) Wall signs shall be constructed of individual channel letters and attached per mounting details depicted on approved plans.
- c) Requirements for all signs per Municipal Code Chapter 20.42, except as provided in this sign matrix.
- d) Sign Designs shall be consistent with Citywide Sign Design Guidelines Manual.
- e) Pursuant to Section 20.42.120.F of the Zoning Code, the Community Development Director may approve minor revisions to this approval if the intent of the original approval is not affected.

Attachment No. ZA 3

Project Plans

RECEIVED BY
COMMUNITY
JUL 17 REC'D
DEVELOPMENT
CITY OF NEWPORT BEACH

330 Old Newport Blvd. Newport Beach, CA 92663

SIGN PROGRAM

5.22.19



LANDLORD Newport Harbor Medical Plaza
330 Old Newport Blvd.
Newport Beach, CA 92663

SIGN CONSULTANT



Sunset Signs
2981 White Star Ave
Anaheim, CA, 92806

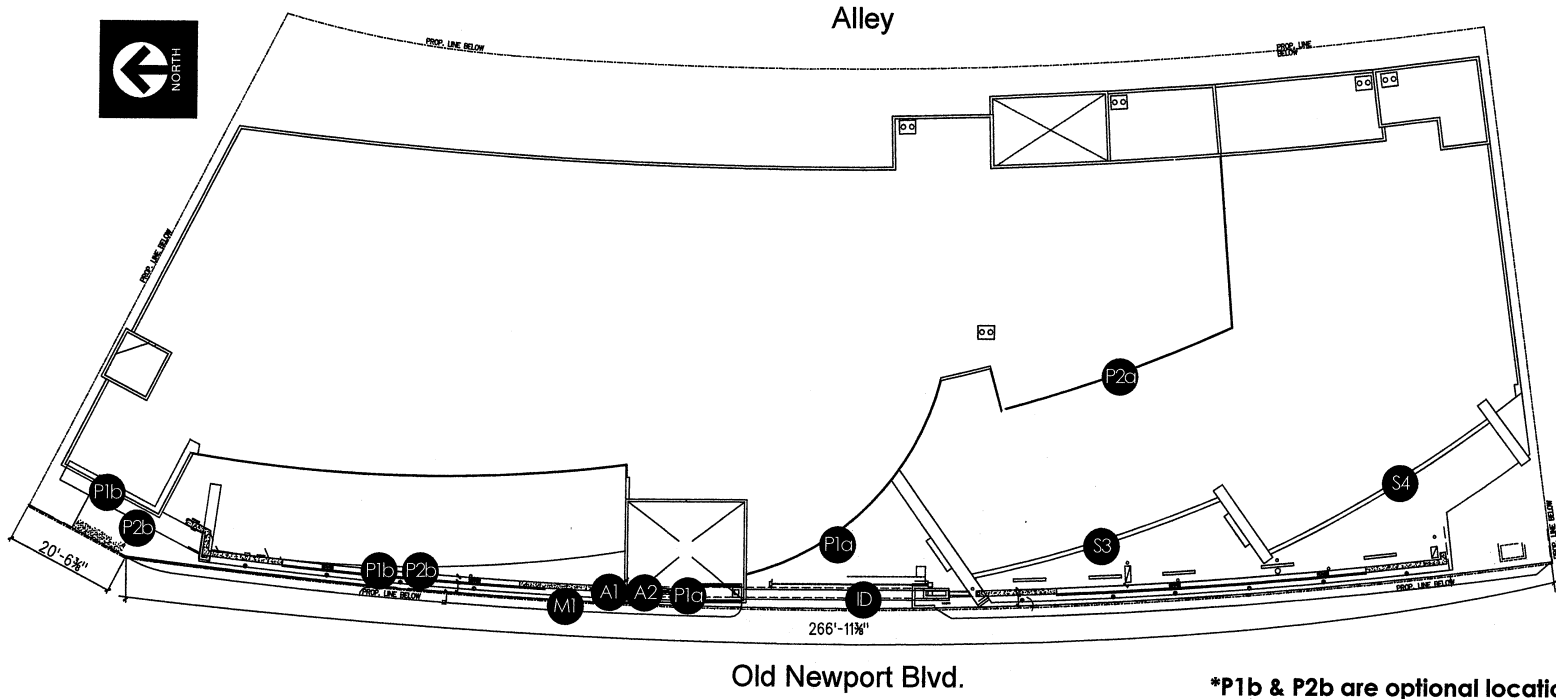
TABLE OF CONTENTS

Sign Type Chart
Sign Legend
Elevation
Tenant Signage Details
Building ID Main Entry Sign Details
Address Signage Details
Site Map
Building Views

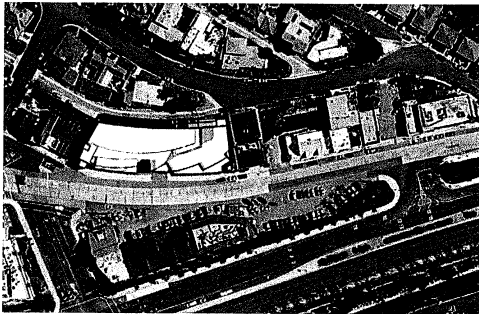
SIGN TYPE CHART

SIGN TYPE	SIGN SPEC PAGE	DESCRIPTION	GENERAL LOCATION	MAX. QUANTITY	MAX. SIGN AREA	MAX. LETTER HEIGHT	MAX. LOGO HEIGHT	ILLUMINATION PERMITTED?
Primary Tenant 1a	6	Front Lit Channel	Building Fascia	1	75 sq. ft.	36"	42"	Yes
Primary Tenant 1b	6	Front Lit Channel	Building Fascia	1	96.5-75 sq. ft. (Based on location)	36"	42"	Yes
Primary Tenant 2a	6	Front Lit Channel	Building Fascia	1	75 sq. ft.	36"	42"	Yes
Primary Tenant 2b	8	Front Lit Channel	Building Fascia	1	96.5-75 sq. ft. (Based on location)	30"	36"	Yes
Secondary Tenant 3	7	Front Lit Channel	Building Fascia	1	75 sq. ft.	30"	36"	Yes
Secondary Tenant 4	7	Front Lit Channel	Building Fascia	1	75 sq. ft.	30"	36"	Yes
Multi-tenant	9	Reverse Lit Channel	Building Fascia	1	95 sq. ft.	12.5"	N/A	Yes
Building ID Main Entry	10	Face-Lit Trimless Channel	Building Fascia	1	56 sq. ft.	20"	20"	Yes
Address Numbers	11	Reverse Lit Channel	Building Fascia	2	17 sq. ft.	30.5"	N/A	Yes

SIGN LEGEND



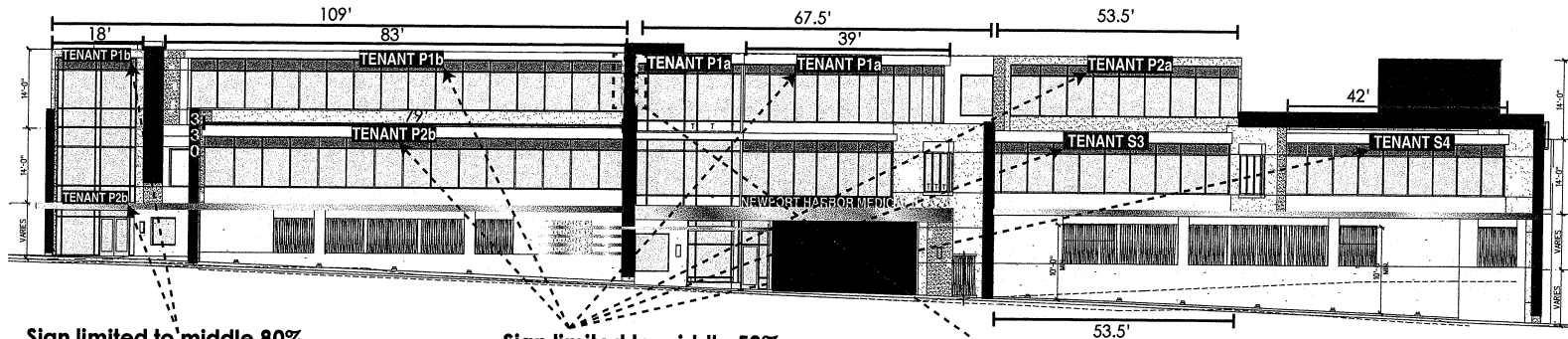
***P1b & P2b are optional locations.
Only 1 sign of each allowed.**



LEGEND	
P1a Primary Tenant 1 Sign (Location Option)	S4 Secondary Tenant 4 Sign
P1b Primary Tenant 1 Sign (Location Option)	MI Multi-Tenant Reverse Lit Sign
P2a Primary Tenant 2 Sign (Location Option)	A1 Address Numbers
P2b Primary Tenant 2 Sign (Location Option)	A2 Address Numbers
S3 Secondary Tenant 3 Sign	ID Building ID Main Entry

330 Old Newport Blvd. Newport Beach, CA 92663

ELEVATION



Sign limited to middle 80%

Sign limited to middle 50%

West Elevation - NTS



*P1b & P2b are limited to 1 of 2 optional locations.
2 signs total allowed for each Primary Tenant.

330 Old Newport Blvd. Newport Beach, CA 92663

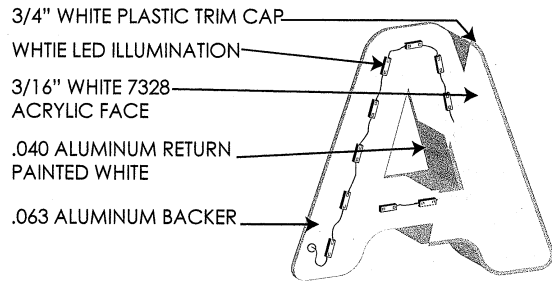
TOP LEVEL TENANT SIGNAGE DETAILS (SIGN TYPES P1a, P1b, P2)



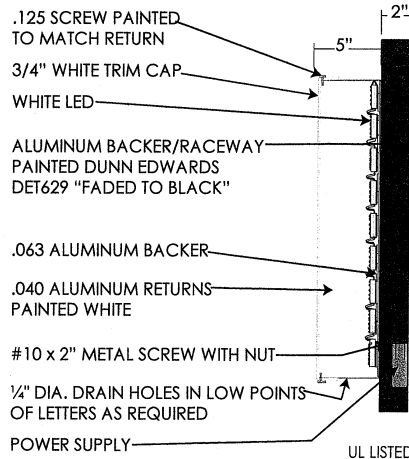
Front-Lit channel letter
 With 3/16" thick white 7328 acrylic face,
 .040" thick 5" deep aluminum returns
 .063" aluminum backs. Mounted to 2" deep backer panel/raceway.
 Backer/Raceway painted Dunn Edwards DET629 "Faded to Black"

Note: backer to be curved where located on curved background building surface

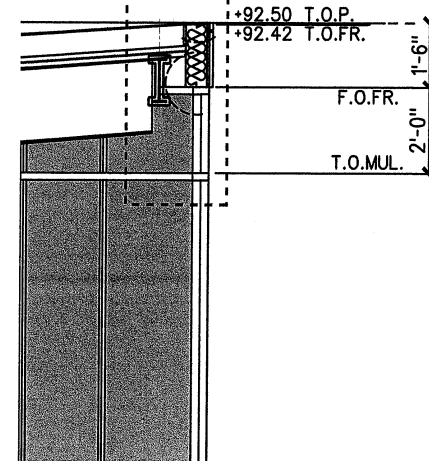
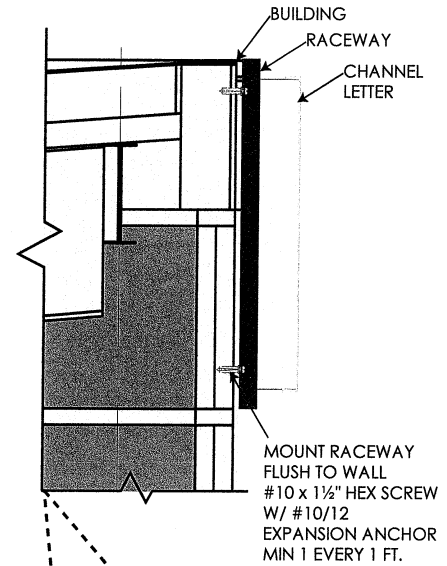
LETTER DETAIL



SIDE VIEW



SIDE VIEW



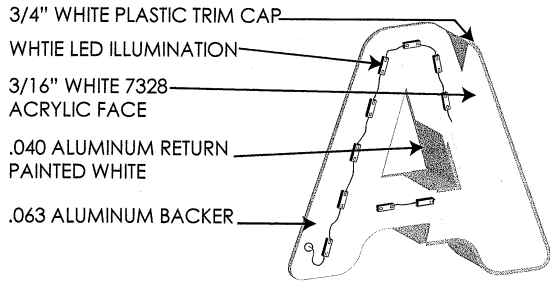
LOWER LEVEL TENANT SIGNAGE DETAILS (SIGN TYPES S3, S4)



Front-Lit channel letter
 With 3/16" thick white 7328 acrylic face,
 .040" thick 5" deep aluminum returns
 .063" aluminum backs. Mounted to 2" deep backer panel/raceway.
 Backer/Raceway painted Dunn Edwards DET629 "Faded to Black"

Note: backer to be curved where located on curved background building surface

LETTER DETAIL



- 3/4" WHITE PLASTIC TRIM CAP
- WHITE LED ILLUMINATION
- 3/16" WHITE 7328 ACRYLIC FACE
- .040 ALUMINUM RETURN PAINTED WHITE
- .063 ALUMINUM BACKER

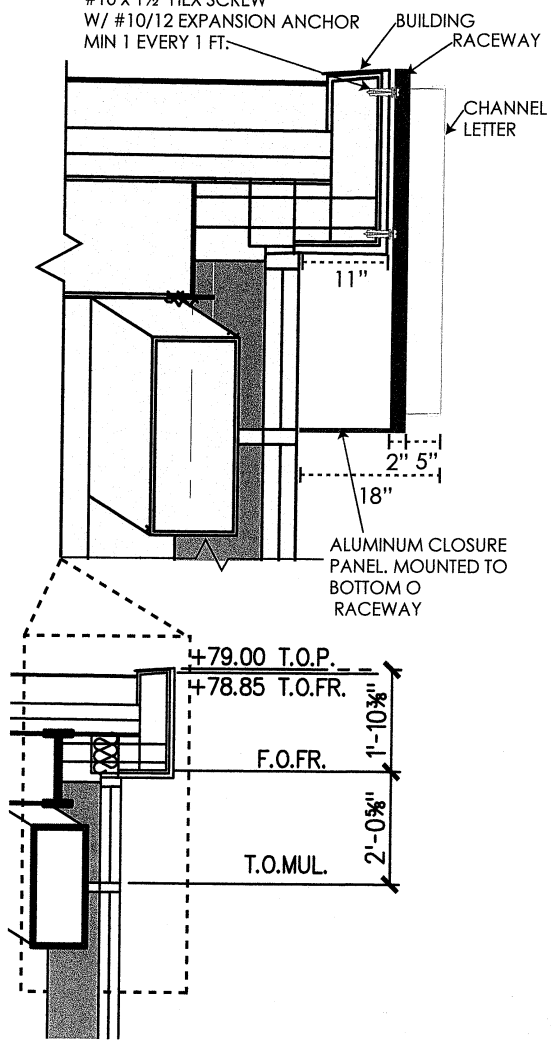
SIDE VIEW

- .125 SCREW PAINTED TO MATCH RETURN
- 3/4" WHITE TRIM CAP
- WHITE LED
- ALUMINUM BACKER/RACEWAY PAINTED DUNN EDWARDS DET629 "FADED TO BLACK"
- .063 ALUMINUM BACKER
- .040 ALUMINUM RETURNS PAINTED WHITE
- #10 x 2" METAL SCREW WITH NUT
- 1/4" DIA. DRAIN HOLES IN LOW POINTS OF LETTERS AS REQUIRED
- POWER SUPPLY

UL LISTED

SIDE VIEW

MOUNT RACEWAY FLUSH TO WALL
 #10 x 1 1/2" HEX SCREW
 W/ #10/12 EXPANSION ANCHOR
 MIN 1 EVERY 1 FT.

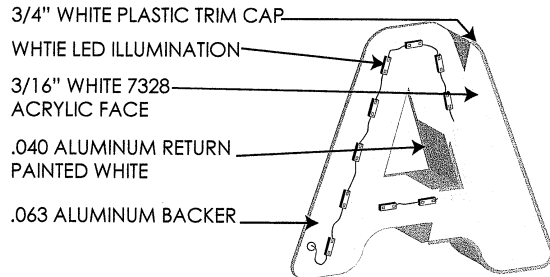


SIGN TYPES P2b DETAILS

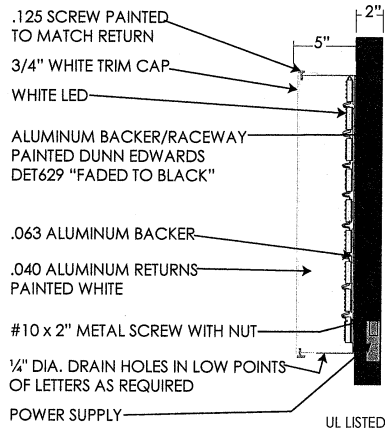


Front-Lit channel letter
 With 3/16" thick white 7328 acrylic face,
 .040" thick 5" deep aluminum returns
 .063" aluminum backs. Mounted to 2" deep backer panel/raceway.
 Backer/Raceway painted Dunn Edwards DET629 "Faded to Black"

LETTER DETAIL

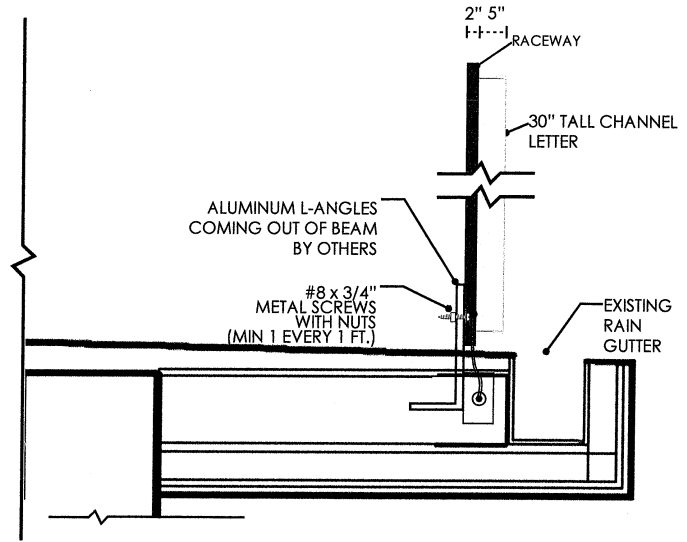


SIDE VIEW



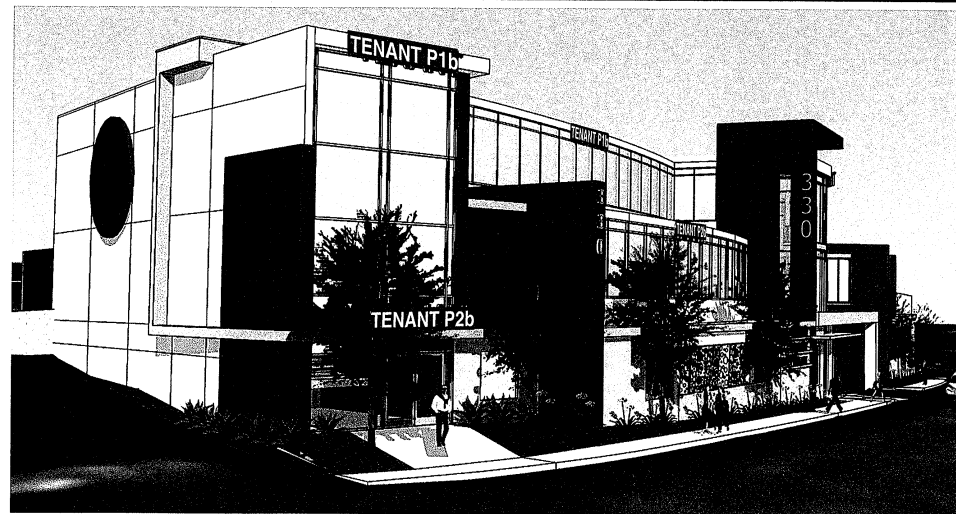
MOUNTING DETAIL

NOT TO SCALE



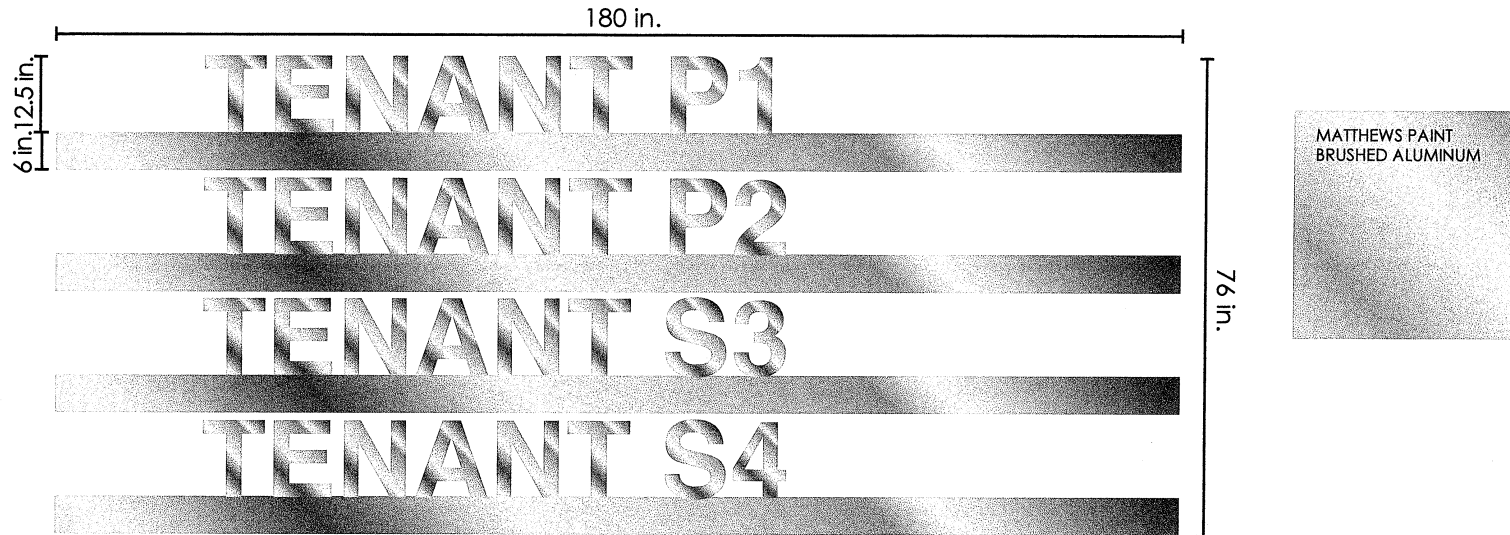
ELEVATION PHOTO

NOT TO SCALE



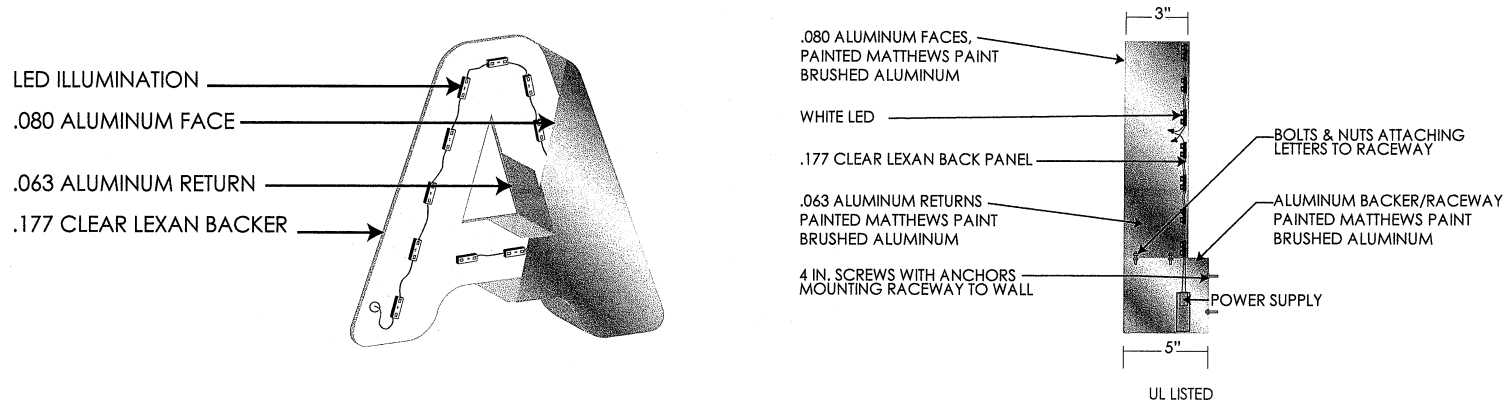
330 Old Newport Blvd. Newport Beach, CA 92663

MULTI-TENANT SIGNAGE DETAILS



Reverse-Lit channel letter
 With .080 aluminum face, .063" thick 3" deep aluminum returns
 .177" clear lexan backs. Mounted to 5" deep raceway.
 Letter face, returns & raceway painted Matthews Paint Brushed aluminum

LETTER DETAIL



BUILDING ID MAIN ENTRY SIGN DETAILS

398 in.

NEWPORT HARBOR MEDICAL PLAZA

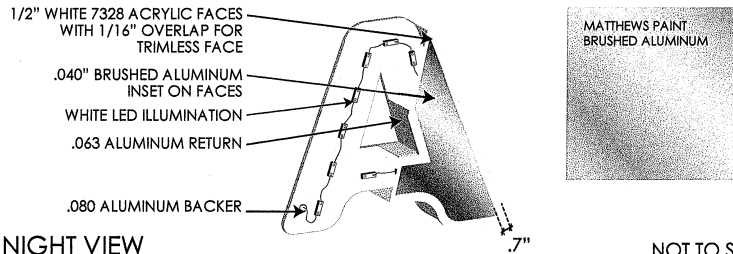
Face lit trimless channel letter.
 White trimless acrylic faces with inset .040" brushed aluminum on face.
 Returns painted Matthews Paint Brushed Aluminum

MOUNTING DETAIL

NOT TO SCALE

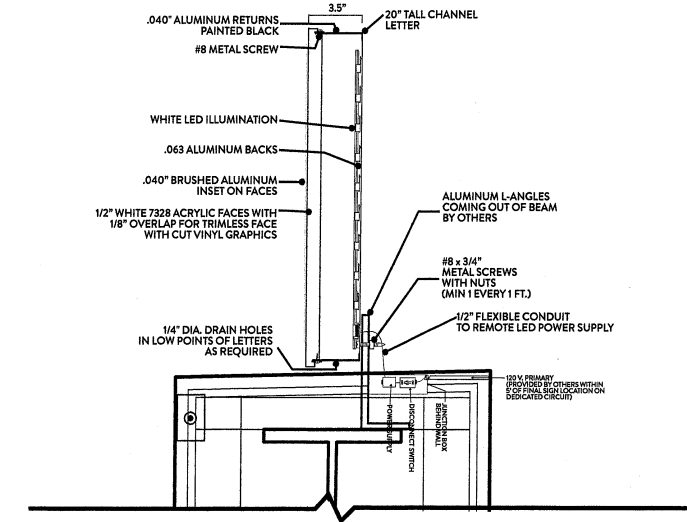
LETTER DETAIL

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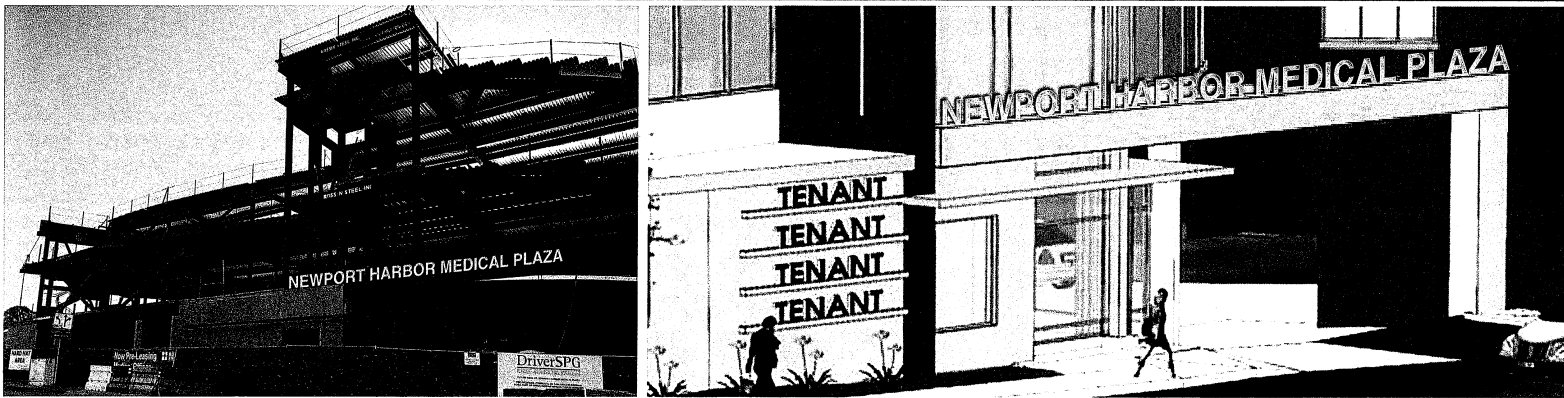
NIGHT VIEW

NOT TO SCALE



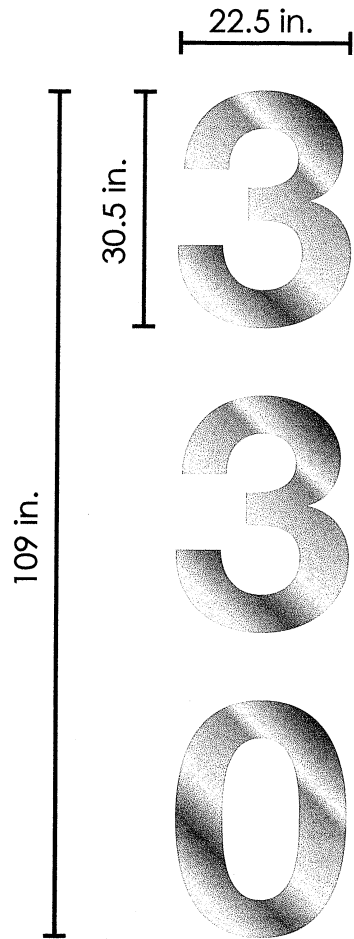
ELEVATION PHOTOS

NOT TO SCALE

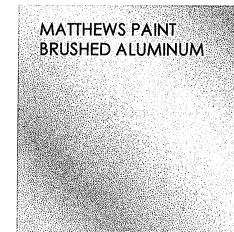
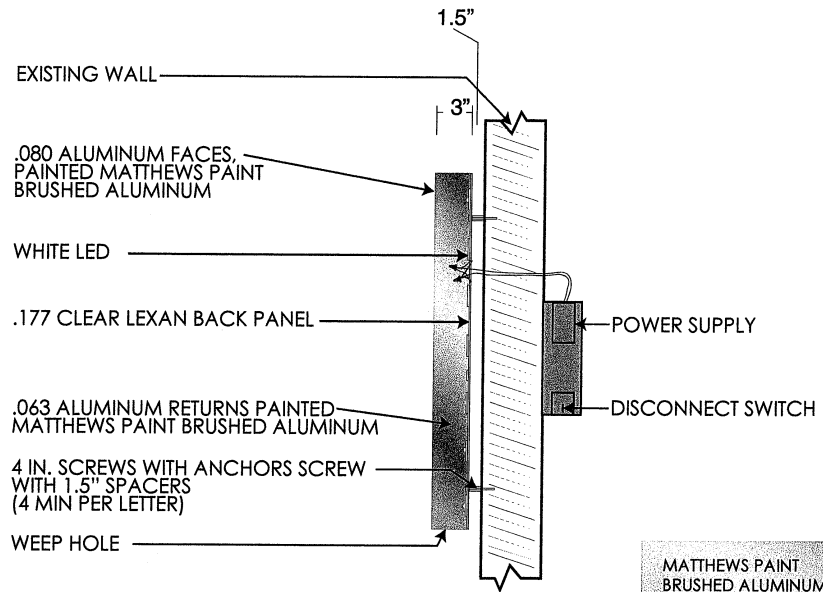


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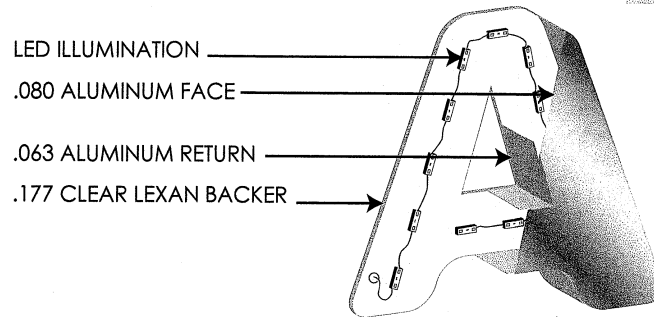
ADDRESS DETAILS



Reverse-Lit channel letter
 With .080 aluminum face
 .063" thick 3" deep aluminum returns
 .177" clear lexan backs.
 Painted Matthews Paint Brushed aluminum
 Font: Helvetica Bold



LETTER DETAIL

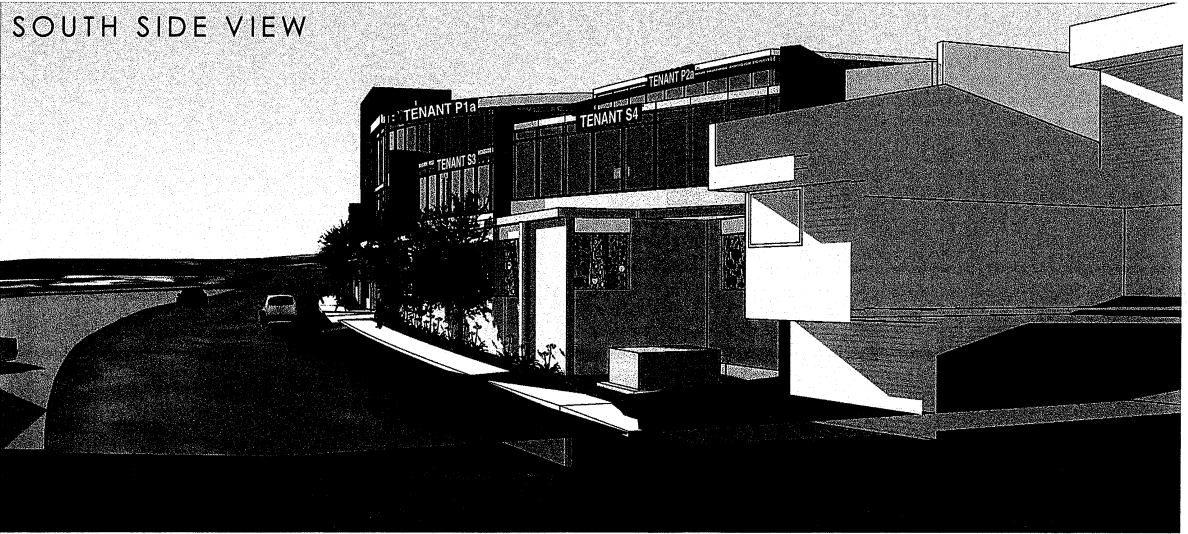


SITE MAP



330 Old Newport Blvd. Newport Beach, CA 92663

BUILDING VIEWS



330 Old Newport Blvd. Newport Beach, CA 92663