



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: Seimone Jurjis, Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator, Hearing Officer, and/or Planning Division staff for the week ending February 28, 2020.

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### ZONING ADMINISTRATOR ACTIONS FEBRUARY 27, 2020

- Item 1: Marigold Partners LLC Condominiums Tentative Parcel Map No. NP2019-013 (PA2019-225)  
Site Location: 502 and 502 1/2 Marigold Avenue  
Action: Approved by Resolution No. ZA2020-018 Council District 6
- Item 2: Alejo PS89, LLC Condominiums Tentative Parcel Map No. NP2019-014 and Coastal Development Permit No. CD2019-067 (PA2019-235)  
Site Location: 4916 Seashore Drive, Units A and B  
Action: Approved by Resolution No. ZA2020-019 Council District 1
- Item 3: Newport Center Monument Signs Modification Permit No. MD2019-007 and Coastal Development Permit No. CD2019-070 (PA2019-209)  
Site Location: 1401 and 1402 Newport Center Drive  
Action: Removed from Calendar Council District 5
- Item 4: Edward and Christine Capparelli Residence Coastal Development Permit No. CD2019-073 (PA2019-263)  
Site Location: 117 North Bay Front  
Action: Approved by Resolution No. ZA2020-020 Council District 5
- Item 5: Smith 507 LLC Residence Demolition Coastal Development Permit No. CD2019-063 (PA2019-245)  
Site Location: 1616 West Ocean Front, Units A, B and C  
Action: Approved by Resolution No. ZA2020-021 Council District 1

**HEARING OFFICER ACTIONS  
FEBRUARY 24, 2020**

Item 1: Balboa Realty Abatement Period Extension (PA2019-186)  
Site Address: 813 East Balboa Boulevard

Action: Approved by Resolution No. HO2020-001 Council District 1

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

Item 1: Red O Patio Expansion Staff Approval SA2020-001 (PA2019-183)  
Site Address: 143 Newport Center Drive

Action: Approved Council District 5

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. ZA2020-018

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2019-013 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 502 AND 502 ½ MARIGOLD AVENUE (PA2019-225)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by I.D.L. Home Inc. (Applicant), with respect to property located at 502 and 502 ½ Marigold Avenue, and legally described as Lot 4, Block 540 CDM Tract requesting approval of a tentative parcel map for condominium purposes.
2. The Applicant requests a tentative parcel map for two-unit condominium purposes. A single-family dwelling was demolished and a new duplex is currently under construction. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. The tentative parcel map would allow each unit to be sold individually.
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 not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held on February 27, 2020, 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 (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) 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 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 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 NBMC Title 20 (Planning and Zoning) and is approved based on the following findings per NBMC Section 19.12.070 (Required Findings for Action on Tentative Maps):

#### Finding:

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

#### Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A single-family dwelling was 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 RT General Plan Land Use Designation.
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, curbs, and gutters along the Marigold Avenue frontage and any damaged concrete alley panels consistent with NBMC Title 19.

#### Finding:

*B. 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 two-unit residential development because it is regular in shape. It was also previously developed with a single-family dwelling.
2. The subject property is accessible from the alley and is adequately served by all existing utilities.

#### Finding:

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



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

Facts in Support of Finding:

1. A single-family dwelling 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 CEQA Guidelines – Class 15 (Minor Land Alterations).

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the 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:

*E. 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:

*F. 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 property was previously developed with a residential use and is located in a Zoning District that permits residential uses.

Finding:

*G. 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:

*H. 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 Title 24 of the California Building Code 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:

- I. 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 intended uses of 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:

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

Fact in Support of Finding:

1. The 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:

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

Fact in Support of Finding:

1. The subject property is not within the Coastal Zone.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2019-013, subject to the conditions set forth in Exhibit "A," which is attached here to and incorporated by reference.
3. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director of Community Development in accordance with the provisions of NBMC Title 19 Subdivisions.

**PASSED, APPROVED, AND ADOPTED THIS 27<sup>th</sup> DAY OF FEBRUARY, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****Planning Division**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Prior to the recordation of the Parcel Map, a park fee shall be assessed for one unit.
3. 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.
4. The building permit for the new construction shall not be final until after recordation of the parcel map.
- 5.
6. 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) of the Newport Beach Municipal Code.
7. 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 Marigold Partners LLC Condominiums including, but not limited to, Tentative Parcel Map No. NP2019-013 (PA2019-225). 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 Department**

6. 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, Sub-article 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.**

7. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub-article 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. The Applicant shall reconstruct all damaged sidewalk panels, curb, gutter along the Marigold Avenue property frontage and any damaged concrete alley panels along the alley property frontage as determined by the Public Works Department.
10. All existing overhead utilities shall be undergrounded.
11. No above ground improvements are permitted within the 5-foot rear alley setback area.
12. All existing private improvements, including the walkway within the public right-of-way fronting the development site shall be removed.
13. The Applicant shall install new sod or low ground covers of the type approved by the City throughout the Marigold Avenue parkway fronting the development site.
14. 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.
15. The Applicant shall install a new 36-inch box tree along Marigold Avenue public right-of-way.
16. An encroachment permit is required for all work activities within the public right-of-way.
17. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
18. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

**Building Division**

19. Independent utility services shall be provided for each unit.

20. Independent fire risers shall be required for each unit.
21. Construction shall comply with the California Code of Regulations.

## RESOLUTION NO. ZA2020-019

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2019-014 AND COASTAL DEVELOPMENT PERMIT NO. CD2019-067 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 4916 SEASHORE DRIVE, UNITS A AND B (PA2019-235)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Forkert Engineering & Surveying, Inc. (Applicant), with respect to property located at 4916 Seashore Drive, Units A and B, and legally described as Lot 80, Tract 03813, requesting approval of a tentative parcel map and a coastal development permit for condominium purposes.
2. The Applicant requests a coastal development permit and tentative parcel map for two-unit condominium purposes. A two-unit dwelling will be demolished and a new duplex is currently in the plan check process. No waivers of Newport Beach Municipal Code (NBMC) 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 NBMC Title 21 (Local Coastal Program Implementation Plan).
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 also located within the coastal zone. The Coastal Land Use Plan designation is Two-Unit Residential (20.0 – 29.9 DU/AC) (RT-D) and it is within the Two-Unit Residential (R-2) Coastal Zoning District.
5. A public hearing was held on February 27, 2020, 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 NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) 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 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 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.

#### *Coastal Development Permit*

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of NBMC Title 21 (Local Coastal Program Implementation Plan) and approves the coastal development permit based on the following findings per NBMC Subsection 21.52.015(F):

#### 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 NBMC Section 21.30.025 (Coastal Zone 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. The new duplex construction is currently under review through the building permit plan check process. This will be addressed as part of the review.
3. The Tentative Parcel Map is for a property within a developed residential neighborhood. The subject property is approximately 115 feet away from West Ocean Front beach, is separated by a row of existing residential development and is within the Categorical Exclusion Area. The development of the duplex was approved pursuant to the Categorical Exclusion Order (CEO2019073).

#### 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 lot does not currently provide nor inhibit public coastal access. The existing lot includes half (2.5 feet) of a 5-foot easement for a pedestrian walkway through the subject property leading to the 50<sup>th</sup> Street-end and the public beach. This easement will be maintained with the tentative parcel map. Additionally, the tentative parcel map is conditioned to provide an improved accessibly-compliant curb ramp along the Neptune Avenue frontage at the pedestrian easement, improving the public easement. 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.

*Tentative Parcel Map*

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

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 will be demolished and a new duplex will be constructed. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
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, curbs, and gutters along the Seashore Drive, Neptune Avenue and pedestrian easement property frontages consistent with NBMC Title 19 (Subdivision Code).

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 duplex development because it is rectangular in shape, topographically flat, and is currently developed with a duplex.
2. The subject property is accessible from Neptune Avenue 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 will be demolished and a new duplex is currently in the plan check process. There will be no change in land use or density as a result of this project.
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 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 NBMC Section 19.28.010 (General Improvement Requirements) 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.
2. The existing lot includes half (2.5 feet) of a 5-foot easement for a pedestrian walkway that is centered on the side property line, through the subject property leading to the 50<sup>th</sup> Street end and the public beach. This easement will be maintained with the tentative parcel map. Additionally, the tentative parcel map is conditioned to provide an improved accessibly-compliant curb ramp along the Neptune Avenue frontage at the pedestrian easement.

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 Title 24 of the California Building Code 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 duplex 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 duplex 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 this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2019-014 and Coastal Development Permit No. CD2019-067, 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 NBMC Title 21 (Local Coastal Program Implementation Plan). 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 27<sup>th</sup> DAY OF FEBRUARY, 2020.**



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Jaime Murillo  
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.
3. The building permit for the new construction shall not be final until after recordation of the parcel map.
4. 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 NBMC Title 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan).
5. 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 Alejo PS89, LLC Condominiums including, but not limited to, Tentative Parcel Map No. NP2019-014 and Coastal Development Permit No. CD2019-067 (PA2019-235). 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**

6. 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, Sub-article 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.**

7. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub-article 18. Monuments (one-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. The Applicant shall repair and/or replace all damaged street, sidewalk panels and curb/gutter along the Seashore Drive, Neptune Avenue and pedestrian easement property frontages, as determined by the Public Works Department.
10. 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.
11. An encroachment permit is required for all work activities within the public right-of-way.
12. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
13. The Applicant shall reconstruct the damaged driveway approach on Neptune Avenue.
14. All existing overhead utilities shall be undergrounded.
15. The Applicant shall construct an accessibly compliant curb ramp along the Neptune Avenue frontage at the 5-foot wide pedestrian easement.
16. 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.
17. The final parcel map shall illustrate and retain the existing 5-foot wide pedestrian walkway that is centered on the property line of the subject property.

## **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. ZA2020-020

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2019-073 TO DEMOLISH AN EXISTING RESIDENTIAL DUPLEX AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE LOCATED AT 117 NORTH BAY FRONT (PA2019-263)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Justin Johnston for Brandon Architects, with respect to property located at 117 North Bay Front, and legally described as Lot 5, Block 2, of Section 1, Balboa Island requesting approval of a coastal development permit (CDP).
2. The applicant proposes to demolish an residential duplex and construct a new 2,300-square-foot, single-family residence with an attached 451-square-foot, two-car 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 R-BI (Two-Unit Residential, Balboa Island) Zoning District and the General Plan Land Use Element category is RT (Two-Unit Residential).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E (Two-Unit Residential) (30.0 - 39.9 DU/AC) and the Coastal Zoning District is R-BI (Two-Unit Residential, Balboa Island).
5. The proposed project will result in the reduction of one housing unit on the subject property and is subject to a CDP. The subject CDP application was deemed complete on December 19, 2019. The project is therefore not subject to the provisions of Senate Bill 330, which became effective on January 1, 2020.
6. A public hearing was held on February 27, 2020 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 residential duplex and construction of a new 2,300-square-foot, single-family residence with an attached 451-square-foot, two-car garage consistent with applicable regulations.
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 2,752 square feet and the proposed gross floor area is 2,751 square feet.
  - b. The proposed development will provide the required setbacks, which are 10 feet along the front property line, 3 feet along the side property lines and 5 feet along the rear property line.
  - 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 two vehicles, which complies with the minimum two-space parking requirement for single-family residences with less 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 developed with a mix of one-, two- and three-story residential structures.

3. The property is an oceanfront lot that is separated from the ocean by a public boardwalk and City-owned concrete seawall/bulkhead. 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. A Coastal Hazards and Sea Level Rise Study was prepared for the project by GeoSoils, Inc., dated December 17, 2019. The report concludes that, with the implementation of sea level rise strategies (water proofing and the future raising of the City's bulkhead), the proposed development will not be adversely impacted by potential coastal hazards over the next minimum 75 years. The GeoSoils study further concludes that with the implementation of the cited recommendations, no additional protective devices will be necessary to protect the development from any existing or anticipated future coastal hazards for the next 75 years or more.
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 habitable floor of the proposed structure is 9.23 feet North American Vertical Datum of 1988 (NAVD 88), which complies with the minimum 9.0-foot NAVD 88 elevation standard for new structures. The development will be required to be waterproofed to 10.6 feet NAVD 88 to accommodate future anticipated potential sea level rise.
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 project site is not located adjacent to a coastal view road or coastal viewpoint identified by Local Coastal Program (LCP) maps. The project site may be located within the viewshed of distant public viewing areas; however, the project will replace an existing duplex residence with a new single-family residence that complies with all applicable LCP development standards. It will also maintain a building envelope consistent with the existing and anticipated 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 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 a duplex 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 public boardwalk. The project including all construction fencing is contained entirely within the private property.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act ("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. CD2019-073, 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 27<sup>th</sup> DAY OF FEBRUARY, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Prior to issuance of building permits, the project plans shall be updated to reflect that a waterproofing curb will be constructed around the proposed residence as an adaptive flood protection device up to 10.6 feet North American Vertical Datum of 1988 (NAVD88). Flood shields (sand bags and other barriers) can be deployed across the openings to protect prevent flooding to the structure.
3. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
4. 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. This letter shall be scanned into the plan set prior to building permit issuance.
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. No demolition or construction materials shall be stored on public property.
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. This Coastal Development Permit does not authorize any development seaward of the private property.
8. 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.
9. 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.
  10. 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.
  11. 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.
  12. 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.
  13. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
  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.

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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 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.
  18. 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.
  19. Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
  20. 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 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.
  21. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.
  22. Prior to the issuance of building permits, the applicant shall submit a final 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.
  23. 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.
  24. 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.
  25. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.



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26. This Coastal Development Permit shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
  27. The Applicant shall obtain Public Works review and approval of any private improvements proposed within the public right-of-way area. Such improvements shall comply with Council Policy L-6 related to allowable encroachments within public rights-of-way. Temporary construction fencing during construction shall not be located within the abutting public access walkway or public sidewalks.
  28. 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 Capparelli Residence including, but not limited to, Coastal Development Permit No. CD2019-073 (PA2019-263). 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. ZA2020-021

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2019-063 TO DEMOLISH AN EXISTING 3,516 SQUARE-FOOT NON-CONFORMING TRIPLEX AND 3-SPACE CARPORT LOCATED AT 1616 WEST OCEAN FRONT, UNITS A, B AND C (PA2019-245)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Julie Laughton (“Applicant”), with respect to property located at 1616 West Ocean Front, Units A, B and C (“Property”), requesting approval of a coastal development permit.
2. The lot at 1616 West Ocean Front (Units A, B and C) is legally described as Lot 8, Block 16, of Tract Section B Newport Beach.
3. The applicant proposes to demolish an existing 3,516 square-foot non-conforming triplex and 3-space carport (“Project”). No new construction is proposed at this time. Future redevelopment of a single-family home will require a separate application for a coastal development permit. A construction erosion control plan/Construction Pollution Prevention Plan (CPPP) will be implemented during and after demolition.
4. The Property is designated RT (Two Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
5. The Property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two Unit Residential – 20.0 – 29.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
6. A public hearing was held on February 27, 2020, 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 15303 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 demolition of up to three single-family residences and additions of up to 10,000 square feet to existing structures. The proposed Project consists of the demolition of three dwelling units and a three-space carport.
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, 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 Project includes the demolition of an existing triplex, carports, and appurtenant facilities. The future redevelopment of the site for use as a single-family or two-unit development would require the approval of a separate coastal development permit. No new construction is proposed at this time.
2. The existing structure on the Property is non-conforming due to density and parking because the existing building contains three dwelling units and a three-space carport. The Planning and Zoning Code (Title 20) and Local Coastal Program Implementation Plan (Title 21) allow for up to two dwelling units maximum on site and a minimum of two parking spaces per dwelling unit. Any future redevelopment on the Property would be required to comply with Title 20 and Title 21 requirements related to density and parking. Therefore, demolition of the existing structures would remove an existing non-conforming use with deficient parking.
3. Although the Project includes the demolition of three dwelling units in the coastal zone, the Project is exempt from Chapters 20.34 and 21.34 (Conversion of Demolition of Affordable Housing). The Project is exempt because the City has less than 50 acres (in aggregate) of privately owned, vacant land available for residential use within the City's coastal zone and three miles therefrom.
4. The Property is located adjacent to the Ocean Front Boardwalk and the beach. A construction erosion control plan/CPPP 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. The Project design also addresses water quality through the inclusion of a

post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.

5. The proposed demolition of the existing triplex would temporarily remove the structure from the view shed of the beach. Prior to and after demolition, temporary construction fencing would be erected along the property lines for safety and water quality purposes. Any future redevelopment of the site would be evaluated for potential impacts to public views as part of the coastal development permit process.

Finding:

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

Facts in Support of Finding:

1. The Property is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the Project's impact, and be proportional to the impact. In this case, the Project removes an existing non-conforming triplex on a standard R-2 lot that is deficient four required parking spaces. 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. Additionally, any future redevelopment of the site would require the approval of a Coastal Development Permit and would consist of a maximum of two units with code-required parking provided, reducing the demand for on-street parking needed for public access.
2. Vertical access to the beach is available near the site along 17<sup>th</sup> Street. Lateral access is available on the beach and boardwalk directly adjacent to the Property. The Project does not include any features that would obstruct access along these routes.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act ("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. CD2019-063, 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 27<sup>TH</sup> DAY OF FEBRUARY, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

1. *The development (the demolition of an existing triplex, carports, and appurtenant facilities) 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. *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. No demolition or construction materials shall be stored on public property including the Ocean Front Boardwalk.*
3. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
4. *This Coastal Development Permit does not authorize any new construction, only the demolition of the existing triplex and appurtenant structures on-site.*
5. 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.
6. 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/CPPP.
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. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
11. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
12. 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.
13. 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.
14. Prior to the issuance of building permits for demolition, the applicant shall submit a final construction erosion control plan/CPPP. The plan shall be subject to the review and approval by the Building Division.
15. Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
16. 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.
17. Should the Property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
18. This Coastal Development Permit No. CD2019-063 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.

- 
19. 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 Smith 507 LLC Residence Demolition including, but not limited to, Coastal Development Permit No. CD2019-063 (PA2019-245). 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. HO2020-001

### A RESOLUTION OF THE HEARING OFFICER OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING AN ADDITIONAL TEN-YEAR ABATEMENT PERIOD EXTENSION FOR THE PROPERTY LOCATED AT 813 EAST BALBOA BOULEVARD (PA2019-186)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Balboa Realty (Applicant); on behalf of Alex Batley, Aaron Batley, and Arthur Dorr (Owners); requesting approval of an abatement period extension of 10 years in addition to a previous extension until November 30, 2031, with respect to property located at 813 East Balboa Boulevard, and legally described as Lot 7, Block 12, Balboa Tract (Property).
2. Newport Beach Municipal Code (NBMC) Section 20.38.100 (Abatement Periods) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon a specified period of time unless that period of time is extended by a resolution from a Hearing Officer after a noticed public hearing to allow the property owner to amortize the owner's investment in the nonconforming property or to avoid an unconstitutional taking of property.
3. The Applicant proposes an extension of the required abatement period specified by NBMC Section 20.38.100 (Abatement Periods). Since 1946, the site has been improved with a single-story nonresidential building and use. The Applicant intends to invest in the existing building through interior and exterior modifications and improvements to support a commercial office use of the premises. The Applicant requests to allow the existing nonresidential use to continue for an additional ten year period until November 30, 2031, without abatement.
4. The Property is designated Two-Unit Residential by the General Plan (RT) Land Use Element and is located within the Two-Unit Residential Zoning District (R-2). The zoning designation was requested by a prior owner, but no residential use of the property has occurred at any time on the premises.
5. The Property is located within the coastal zone. Pursuant to NBMC Subsection 21.52.035(C)(2)(g), (Other Existing Structures), the subject tenant improvement is exempt from a coastal development permit as the interior remodel and exterior façade work do not involve an actual or potential risk of substantial adverse environmental impact. The proposed nonresidential use is of commensurate intensity with that existing on the site and the improvements do not change the intensity of use of the structure which has always been a nonresidential use.

6. A properly noticed public hearing was held on February 20, 2020, in the Balboa Conference Room (Bay 2B – Second Floor) located in the Newport Beach City Hall located at 100 Civic Center Drive, Newport Beach. Evidence, both written and oral, including a written staff report was presented and considered at this hearing by the Hearing Officer, William B. Connors. Testimony from two members of the public was delivered and information presented which has been considered by the Hearing Officer in making this decision.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 1 exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. In this case, extension of the abatement period would allow the remodel of an existing single-story commercial structure to accommodate an office use.

## SECTION 3. REQUIRED FINDINGS.

In accordance with NBMC Subsection 20.38.100(C)(4)(c) (Extension of Abatement Period) the following findings and facts in support of such findings are set forth:

### Finding:

1. *Is the length of the abatement period appropriate considering the owner's investment in the use?*

### Fact in Support of Finding:

A. Yes. The structure is rather old and is visually unattractive. It was recently purchased for \$1.2 million by Applicants who propose an additional investment of approximately \$300,000 to \$500,000 more to refurbish the property and establish an office. Improvements include structural reinforcement, accessibility compliance, upgrades to the heating, ventilation and air conditioning (HVAC) and mechanical, electrical and plumbing (MEP) systems. The amortization period of that requested is reasonable to financially support an investment of this level.

B. The existing remaining abatement period of one year nine months is insufficient to allow amortization of the costs of improvement given the condition of the existing building and proposed renovations, including improvements for structural reinforcement, accessibility compliance, upgrades to the HVAC and MEP systems. Granting the

extension would leave eleven and a half years to make use of the existing structure on the site without any potential required abatement of the nonconforming use.

C. Based on the information submitted, an extension of an additional ten years for the abatement of the current uses is necessary to avoid the resultant economic hardship which might lead to the property remaining in its somewhat dilapidated condition.

D. The abatement extension of an additional ten years is appropriate in this case since it will afford the property owner the ability to amortize the value of the proposed building improvements and secure financing of the property that is likely to be impossible if a potential abatement of current uses is imminent.

Finding:

*2. Does the length of time the use was operating prior to the date of nonconformity justify the extension of the abatement period beyond the code specified one year?*

Fact in Support of Finding:

A. Yes. The property has been used for nonresidential purposes since it was constructed in 1946. There is no evidence of any negative impact to the surrounding areas, and in the context of surrounding uses it integrates into the commercial and mixed-use neighborhood.

B. The property became nonconforming in 2003, 17 years ago, when the City Council adopted Ordinance No. 2003-14 rezoning it to the current residential use. The existing structure and use conformed to the Land Use Element of the General Plan for 57 years prior to this, and was not subject to abatement until 2008. At all relevant times, the commercial use has been compatible with the surrounding land uses and there is no evidence of any nuisance arising from such use.

C. The substantial period of commercial use without noted problems underscores a high probability of continued successful integration into the surrounding environs, supporting the extension sought. Balboa Realty currently operates one block east of the site and has not been the subject of any concern.

Finding:

*3. Would the existing structure be suitable for an alternative use?*

Fact in Support of Finding:

A. No. Transitioning the nonresidential structure for residential use would necessitate total demolition or unreasonably high costs of converting the existing nonresidential building to residential dwelling units.

B. It is conceivable that the building could be modified to accommodate other nonresidential uses, but not within reasonably justifiable parameters. The existing building is currently vacant and was last occupied by an entertainment business. Conversion to a residential use would require demolishing and building new or major renovation with significant structural and seismic alterations to provide adequate living areas and residential garages. The current building has no lot line setbacks, and could have major issues with respect to windows, doors, or other openings on the exterior of the building.

Finding:

4. *Would remaining at this site beyond the abatement period result in any public harm?*

Fact in Support of Finding:

A. No. One member of the public opined that failing to conform to existing zoning harms the general public. There was no evidence offered in support of that contention, and in fact the building has existed as nonconforming since 2003 without any incident or complaint with respect to its continued nonresidential uses. There is no evidence that extending the nonconforming use has or will result in any negative impact or harm to the public. There is no evidence that the continued nonresidential use will result in any negative change whatsoever. In fact, the continued delay of abatement will result in extension of the commercial use, but with improvements to the exterior of the building in a way that will benefit surrounding properties that look upon this site.

B. The property is in an area that includes a mix of mixed-use commercial and residential uses, including Cruisers Pizza Bar and Grill, retail, and the OCSD A Street Pump Station. The continued commercial use of the subject property is compatible with the surrounding uses and will not have any negative impact or pose harm on the neighboring residential and nonresidential uses in the vicinity.

C. See Fact in Support of Finding 2.B.

D. The existing nonresidential building has not posed a negative impact on the neighboring uses and the proposed upgrades will enhance the site and surrounding neighborhood.

Finding:

5. *Would relocation of the facility to another site be overly costly and infeasible?*

1. Yes. This building and underlying land cost almost \$1.2 million to purchase. The Applicant explained there is no evidence of other suitable properties for sale within this specific area of Newport Beach. This would be especially difficult to accomplish within the remaining existing abatement period.

2. The relocation of the proposed use is difficult since there are no commercial buildings of comparable size in the Balboa Village area to accommodate the occupant's needs. Balboa Village is part of Balboa Realty's brand identity, having operated in this area for over ten years just one block east of the subject site.
3. The property owner's investment with the purchase of the property would result in a substantial loss of revenue to the property owner if the existing building could not continue to be used for nonresidential purposes. As noted above, it would be extremely costly to convert this existing structure to residential use, probably requiring demolition and reconstruction. This would be an unreasonable expenditure to expect the owner to shoulder.
4. If the owner were to be required to abate the property to residential use, a taking of the premises without payment of adequate compensation may result. The lack of suitable site alternatives and extremely high costs of converting the existing facility to residential might prove unfair for the Applicant to bear in the remaining extension time.

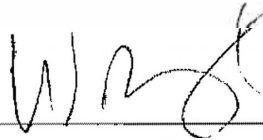
#### SECTION 4. DECISION.

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

1. The Hearing Officer of the City of Newport Beach hereby finds this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Hearing Officer of the City of Newport Beach hereby conditionally grants and approves the requested Abatement Period Extension (PA2019-186) for the subject property located at 813 East Balboa Boulevard, Newport Beach, CA, subject to the findings and considerations set forth above and the condition set forth in Exhibit "A," which is attached hereto and incorporated by reference for a period of 10 additional years until November 30, 2031.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time the decision is appealed or called for review to the Planning Commission in accordance with the provisions of Title 20, Planning and Zoning, of the NBMC.
4. This Resolution is intended to apply at the conclusion of the extension previously granted by Hearing Officer Resolution No. HO2020-001 (PA2019-186), and is additive to that determination, and does not in any way nullify or void that decision.
5. In reaching this Decision, the opinions and conclusions of members of the public that attended the hearing were expressly studied and analyzed before granting this extension. While the issues were well researched and discussed, they failed to offer any substantial evidence that the current use of the premises has been problematic in any way, or that extension of this use

will lead to any such negative issues. After due deliberation, the reasons for extension prevail over counter arguments.

**PASSED, APPROVED, AND ADOPTED THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2020.**

BY:  \_\_\_\_\_

William B. Conners, Municipal Law Consultant  
Hearing Officer for the City of Newport Beach

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**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. The abatement extension granted herein shall be conditional upon the Applicant demonstrating an actual intent to construct the improvements to the internal and external portions of the structure by securing appropriate permits and commencing such construction within 12 months of the date of this Resolution, with completion to occur within 24 months after construction commences unless such limits are extended after a reopening and modification of this Decision. It is the intent of this condition that applicant actively commence and continue construction of the improvements to ensure that the extension remains justified based on economic conditions related to such improvements. Should the Applicant fail to comply with this condition of approval, the grant of extension is automatically withdrawn and denied, subject to further review of the matter by a hearing officer at that time.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. 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 building permits.
5. 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 including the Hearing Officer, 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 Balboa Realty Abatement Extension including, but not limited to, Abatement Extension No. PA2019-186. 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.



COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION  
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915  
949-644-3200  
[www.newportbeachca.gov](http://www.newportbeachca.gov)

## **ZONING ADMINISTRATOR ACTION LETTER**

**Subject:** Red O Patio Expansion (PA2019-183)  
▪ Staff Approval No. SA2020-001

**Site Location** 143 Newport Center Drive

**Applicant** EDGE Architecture + Planning

**Legal Description** LLA 2012-005 Parcel 3

On **February 26, 2020**, the Zoning Administrator approved Staff Approval No. SA2020-001 to allow modifications to an existing eating and drinking establishment (restaurant) and found said modification to be minor and in substantial conformance with Minor Use Permit No. UP2013-009. This approval is based on the following findings and subject to the conditions discussed in this action letter.

### **LAND USE AND ZONING**

- **Zone:** PC-56 (North Newport Center)
- **General Plan:** CR (Regional Commercial)

### **PROJECT SUMMARY**

The applicant requests the addition of a third outdoor dining patio at an existing restaurant. The existing Minor Use Permit authorized a Type 47 Alcoholic Beverage Control (ABC) License for the restaurant. The proposed 823-square-foot patio would offer the same food and beverage menu and hours of operation (9:00 a.m. to 2:00 a.m., daily) as the previously approved restaurant.

### **I. BACKGROUND**

On July 25, 2013, the Zoning Administrator approved Minor Use Permit No. UP2013-009 (PA2013-109) to allow an eating and drinking establishment with late hours (after 11:00 p.m.) and alcohol sales (Type 47 ABC License – On Sale General – Eating Place).

On August 21, 2013, the Chief of Police approved Operator License No. OL2013-003 (PA2013-109) to allow a food service restaurant with late hours (after 11:00 p.m.) and a Type 47 ABC License pursuant to Municipal Code Chapter 5.25.



## **II. PROPOSED CHANGES**

The approved plans for Minor Use Permit No. UP2013-009 included a 6,915-square-foot indoor dining area and two outdoor dining areas: one is 1,500 square feet and the other is a detached 2,100-square-foot pavilion. The applicant proposes to add a third outdoor dining patio that would be 823 square feet in area located to the left of the restaurant entrance along Anacapa Drive. The Police Department has reviewed the request and has no objection to the proposed third outdoor dining patio.

## **III. FINDINGS**

Pursuant to Section 20.54.070, the Community Development Director may authorize minor changes to an approved site plan, architecture, or the nature of the approved use, or refer the requested change to the Zoning Administrator, without a public hearing, and waive the requirement for a new use permit application. The approval and waiver of a new use permit application is based on the following findings and facts in support of the findings.

### Finding:

*A. The changes are consistent with all applicable provisions of this Zoning Code.*

### Facts in Support of Finding:

1. The project is located in the Fashion Island Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District. Fashion Island is intended to be a regional retail and entertainment center and a day/evening destination with a wide variety of uses that serve visitors, residents, and employees of the area. The restaurant with late hours and alcohol sales is a commercial use that serves visitors, residents, shoppers, and employees in the area, and the restaurant and additional outdoor dining patio is consistent with the purpose of the North Newport Center Planned Community District for the Fashion Island Sub-Area.
2. Eating and drinking establishments are allowed uses within the Fashion Island Sub-Area. Pursuant to the PC-56 Development Plan, the on-premise sale of alcohol in conjunction with an eating and drinking establishment is subject to approval of a minor use permit. Minor Use Permit No. UP2013-009 was approved for the restaurant and outdoor dining with alcohol sales. The proposed addition of a third outdoor dining patio is consistent with the PC-56 Development Plan and the operational characteristics approved under Minor Use Permit No. UP2013-009. The facts in support of the Minor Use Permit approved with Resolution No. ZA2013-039 remain applicable to the proposed additional outdoor dining patio, including the alcohol considerations within Section 20.48.030 (Alcohol Sales).

Finding:

*B. The changes do not involve a feature of the project that was a basis for or subject of findings or exemptions in a negative declaration or Environmental Impact Report for the project.*

Facts in Support of Finding:

1. The previously approved Minor Use Permit was determined to be categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities), which exempts minor alterations to existing facilities involving negligible expansion of use beyond that existing at the time of the lead agency's determination. The size of the proposed outdoor patio or the lack of a patio were not features of the project that was a basis for finding the project exempt from environmental review.
2. The construction of an additional outdoor dining patio qualifies for a Class 1 (Existing Facilities) categorical exemption as the additional patio is a minor alteration and addition to an existing facility involving a negligible expansion of the authorized use.

Finding:

*C. The changes do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval.*

Fact in Support of Finding:

1. The proposed additional outdoor dining patio including the sale and consumption of alcohol on the patio was not the subject of a condition of approval for the project. The staff report, meeting minutes, and Zoning Administrator Resolution No. ZA2013-039 do not specifically address additional outdoor dining, the size of the outdoor dining, or lack of a patio at the proposed third patio location.

Finding:

*D. The changes do not result in an expansion or change in operational characteristics of the use.*

Fact in Support of Finding:

1. The eating and drinking establishment use with alcohol sales and late hours will remain unchanged as a result of the third outdoor dining patio. The use will not change as the same conditions of approval are applicable, including requirements and limitations on food service, dancing, and live entertainment. The proposed additional outdoor dining will offer the same food and beverage menu as the previously approved restaurant and patio. The hours of operation of between 6:00 a.m. and 2:00 a.m. will

be the same as previously approved under Minor Use Permit No. UP2013-009. Therefore, the proposed changes do not result in an expansion or change in operational characteristics of the use.

**IV. DETERMINATION**

This Staff Approval has been reviewed and a determination has been made that the proposed change to the existing eating and drinking establishment is minor and in substantial conformance with the original approval.

**V. CONDITIONS**

All previous conditions of approval of Minor Use Permit No. UP2013-009 shall remain in full force and effect as stated in Zoning Administrator Resolution No. ZA2013-039 (Attachment No. CD 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. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:



Melinda Whelan  
Assistant Planner

Approved by:



Jaime Murillo  
Zoning Administrator

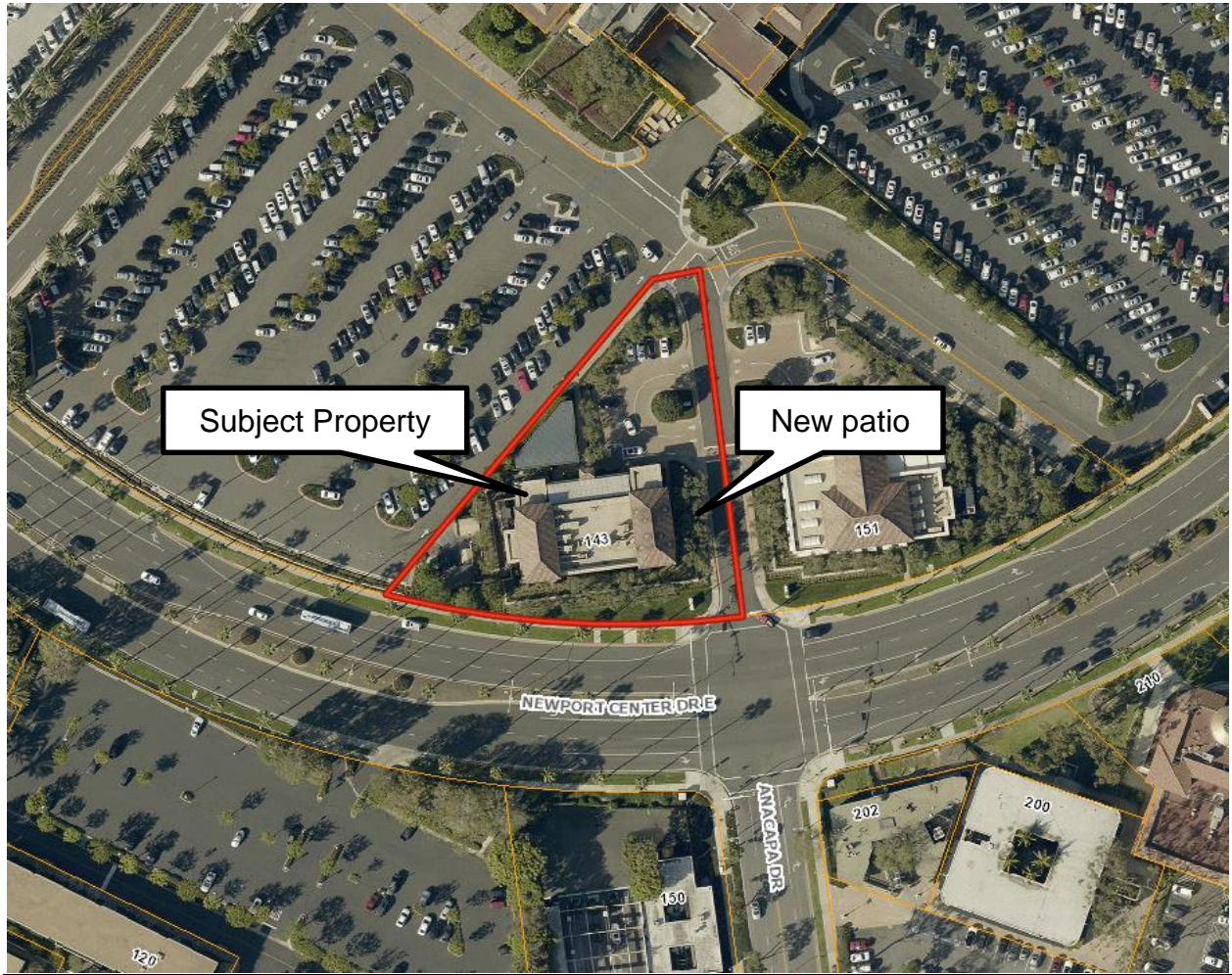
jm/MSW

Attachments: CD 1 Vicinity Map  
CD 2 Zoning Administrator Resolution No. ZA2013-039  
CD 3 Plans

# **Attachment No. CD 1**

Vicinity Map

# VICINITY MAP



Staff Approval No. SA2020-001  
PA2019-183

**143 Newport Center Drive**

# **Attachment No. CD 2**

Zoning Administrator Resolution No.  
ZA2013-039

## RESOLUTION NO. ZA2013-039

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-009 TO ALLOW A TYPE 47 (ON SALE GENERAL) ALCOHOLIC BEVERAGE CONTROL LICENSE AT A NEW FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT LOCATED AT 143 NEWPORT CENTER DRIVE (PA2013-109)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Red O, LLC, with respect to property located at 143 Newport Center Drive, and legally described as Parcel 3 of Lot Line Adjustment No. LA2012-005, recorded September 11, 2012 as Instrument No. 2012000529298 of official records, in the office of the County Recorder of the County of Orange, requesting approval of a minor use permit.
2. The applicant requests a minor use permit to allow a Type 47 (On Sale General) Alcoholic Beverage Control (ABC) license for Red O, a food service, eating and drinking establishment with late hours (after 11:00 p.m.), live entertainment, with and two outdoor dining patios. Due to the late hours of operation (after 11:00 p.m.), approval of an Operator's License by the Newport Beach Police Department will be required.
3. The subject property is located within the Fashion Island Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District and the General Plan Land Use Element category is CR (Regional Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on July 25, 2013 in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting 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 meeting.

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

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. The proposed project involves the addition of alcoholic beverages at a restaurant that is under construction that will include live entertainment and two outdoor dining patios. Therefore, both the interior use and outdoor dining patios qualify for a categorical exemption under Class 1.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

#### Finding

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales of the Zoning Code).*

#### Facts in Support of Finding

In finding that the proposed use is consistent with Section 20.48.030 (Alcohol Sales) of the Zoning Code, the following criteria must be considered:

- i. The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
1. The proposed establishment is located within Reporting District 39, wherein the number of crimes is higher than adjacent Reporting Districts (RDs) and the City. The adjacent RDs (43, 44, and 47) have a lower number of crimes as they are primarily residential with few commercial uses. Due to the high concentration of commercial land uses in Fashion Island, the crime rate and shoplifting rate is greater than adjacent residential Reporting Districts; however, the Newport Beach Police Department does not consider the number significant given the type of development within this Reporting District.
- ii. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
1. Due to the high concentration of commercial land uses, the calls for service and number of arrests are greater than adjacent residential Reporting Districts. The Police Department does not consider the rate high because of the concentration of restaurants and commercial uses within Fashion Island and the surrounding North Newport Center. The Newport Beach Police Department has not previously reported any calls for service to the subject property since the proposed use is part of a new development project.
- iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*
1. Fashion Island does not abut sensitive land uses and is separated from other uses by parking lots, roadways and other commercial uses. Residential uses are permitted in the northern sections of the PC-56 (North Newport Center Planned Community) Zoning



District within Blocks 500, 600, 800, and San Joaquin Plaza. The proposed use is not located in close proximity to these residential districts, day care centers, park and recreation facilities, places of religious assembly, and schools.

- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
1. Muldoon's Irish Pub is located at 202 Newport Center Drive to the south of the project site at the intersection of Anacapa and Newport Center Drive. Muldoon's is authorized to operate until 2:00 a.m. and provides live entertainment, dancing, and Type 47 (On Sale General) and Type 68 (Portable Bar) alcohol licenses. Off-sale alcohol sales are located in the vicinity at Whole Foods, at 461 Newport Center Drive, within Fashion Island. Additionally, there are many comparable restaurant establishments within the Fashion Island Shopping Center. These include other pad restaurant tenants such as Roy's Hawaiian Fusion, Fleming's Steak House, and True Food Kitchen. The Type 47 (On Sale, General) alcohol license requested is the same as those obtained for said establishments and there is no evidence suggesting these uses have been detrimental to the neighborhood. However, Red O and the recently approved Fig & Olive will be the only locations with late hours after 12:00 midnight within Fashion Island. While the proposed hours of operation are later, an adequate security plan per the Police Department is in place for the Fashion Island Shopping Center and conditions of approval are proposed to adequately manage the late hour component of the proposed restaurant.
- v. Whether or not the proposed amendment will resolve any current objectionable conditions.*
1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the restaurant. Operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol related impacts.
  2. The restaurant use will be located within a shopping center designated to include such development. The Regional Commercial (CR) designation of the General Plan allows eating and drinking establishments. The service and consumption of alcohol at the proposed restaurant, pursuant to a Type 47 Alcoholic Beverage Control license under the conditions imposed by this Minor Use Permit that it will be operated and maintained, complies with the provisions of the Zoning Code and the North Newport Center Planned Community District Regulations.
  3. The restaurant will be adjacent to a highly-traveled commercial area that is occupied by a mixture of office and retail uses. It is anticipated that the establishment will serve visitors and employees of the nearby businesses who stop and eat within the North Newport Center area. Adding alcohol service to the menu will compliment the food service and provide for the convenience of customers.

4. The proposed restaurant is located within a shell building that is currently under construction. Improvement to the interior of the building for the restaurant use is currently in plan check and will be designed specifically for a restaurant that includes on-site service and consumption of alcoholic beverages.

#### *Minor Use Permit*

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

#### Finding

*B. The use is consistent with the General Plan and any applicable specific plan:*

#### Facts in Support of Finding

1. The Land Use Element of the General Plan designates the project site as Regional Commercial (CR), which is intended to provide retail, entertainment, service, and supporting uses that serve local and regional residents. The proposed restaurant with alcoholic beverage sales and live entertainment is a use that serves local and regional residents and is consistent with land uses in the CR land use designation.

#### Finding

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

#### Facts in Support of Finding

1. The project is located in the Fashion Island Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District. Fashion Island is intended to be a regional retail and entertainment center and a day/evening destination with a wide variety of uses that will serve visitors, residents, and employees of the area. The restaurant with alcoholic beverage sales and live entertainment is a commercial use that serves visitors, residents, and employees in the area and, therefore, is consistent with the purposes of the North Newport Center Planned Community District for the Fashion Island Sub-Area.
2. Eating and Drinking Establishments are permitted uses within the Fashion Island Sub-Area of the North Newport Center Planned Community Zoning District. Pursuant to the Planned Community Text, live entertainment falls beneath the definition of "Commercial Recreation and Entertainment" which is a permitted use within the Fashion Island subarea. Pursuant to the Planned Community Text, the on-premise sale of alcohol in conjunction with an eating and drinking establishment requires a minor use permit.

3. The proposed outdoor dining area and the restaurant area are within the limits of the cumulative floor area allocated for Fashion Island.

#### Finding

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

#### Facts in Support of Finding

1. The Fashion Island Sub-Area permits a range of retail, dining, and commercial entertainment uses within the PC-56 (North Newport Center Planned Community) Zoning District. While the proposed establishment provides a component of late night dining services similar to a lounge, the use is compatible with surrounding permitted commercial uses in the vicinity and there are no sensitive land uses located nearby.
2. The proposed hours of operation are 9:00 a.m. to 2:00 a.m., daily. While the proposed hours of operation for Red O are later than the hours for other restaurants within Fashion Island, an adequate security plan is in place for the Fashion Island Shopping Center and conditions of approval are proposed to adequately manage the late hour component of the proposed restaurant.
3. Due to the late hours of operation (after 11:00 p.m.), approval of an Operator's License by the Newport Beach Police Department will be required. A copy of the Fashion Island Security Plan will be provided as part of the operator license process for the proposed business. An operator license required pursuant to NBMC Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential nuisances associated with the operation of the restaurant. The operator license will help ensure compatibility of the proposed business with the surrounding uses in the vicinity.
4. Live entertainment in the form of a piano bar and mood music is requested during the regular hours of operation. The recommended hours of operation for live entertainment during the evening hours are until 1:00 a.m., daily, to encourage patrons to leave in compliance with the 2:00 a.m. closing hour.
5. The on-site consumption of alcoholic beverages will be incidental to the restaurant use. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period, per the conditions of approval. Alcoholic beverage service will be under the supervision of employees who have completed a certified training program pursuant to Condition of Approval No. 15.

Finding

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

Facts in Support of Finding

1. The Fashion Island shopping center provides adequate parking and circulation within the surface parking lots and parking structures on site.
2. This site has been reviewed by the Fire Department to ensure adequate public and emergency vehicle access is provided. Utilities are provided with all applicable requirements.
3. The site is under construction with a shell building designed for a restaurant use. Improvement to the interior of the building for the restaurant use is currently in plan check.
4. Improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The food service, eating and drinking establishment with alcohol service will serve visitors and the surrounding business community. The proposed establishment will provide alcohol service as a public convenience to visitors and workers within the surrounding area.
3. Fashion Island management has historically provided efficient on-site security and cooperates with the Newport Beach Police Department. The provision of an operator license will further enable the Police Department to regulate the operation of the proposed business.

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

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-009 (PA2013-109), 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 fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 25<sup>th</sup> DAY OF JULY, 2013.**

By:



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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****Planning Division Conditions**

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. Alcohol service shall be limited to a Type 47 (On Sale General) Alcoholic Beverage Control License.
3. The hours of operation shall be limited to between 9:00 a.m. to 2:00 a.m., daily.
4. There shall be no live entertainment allowed on the premises without first obtaining a Live Entertainment Permit from the City. Live entertainment shall be permitted at the subject property until 1:00 a.m., daily or earlier if required by the Live Entertainment Permit. Prior to the final of building permits for the restaurant tenant improvement, the applicant shall obtain a Live Entertainment Permit from the Revenue Division.
5. The operator as well as any future operators of the restaurant shall obtain an Operator License pursuant to Chapter 5.25 of the Municipal Code to ensure the business is operated in a safe manner. The Operator License may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the restaurant.
6. Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for any additional gross floor area associated with the restaurant and mezzanine in accordance with Chapter 15.38 of the Newport Beach Municipal Code. The applicant shall be credited for square footage identified in the restaurant pad shell building under Plan Check No. 1364-2012 and the remaining balance shall be charged to the applicant.
7. Prior to the issuance of building permits, San Joaquin Transportation Corridor Fees shall be paid for any additional gross floor area associated with the restaurant and mezzanine. The applicant shall be credited for square footage identified in the restaurant pad shell building under Plan Check No. 1364-2012 and the remaining balance shall be charged to the applicant.
8. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code, unless the Zoning Administrator first approves an amended minor use permit. This Minor Use Permit shall be terminated if the operation is no longer maintained as a "bona fide public eating place" as defined by the California Department of Alcoholic Beverage Control.
9. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.

10. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
11. There shall be no on-site radio, television, video, film or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
12. No “happy hour” type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered from the full service menu.
13. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
14. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of this restaurant business that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
15. There shall be no dancing allowed on the premises unless permitted by a Special Events permit.
16. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
17. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
18. All owners, managers, and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner’s, manager’s, and employee’s successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

19. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
20. The boundary of the accessory outdoor dining area shall be marked through the use of a 36-inch-high rail. Fences, walls, or similar barriers shall serve only to define the outdoor dining area and not constitute a permanent all weather enclosure.
21. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 of the Municipal Code, Community Noise Control.
22. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
23. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
24. The operator of the food service use shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use.
25. Storage outside of the building shall be prohibited, with the exception of the required trash container enclosure.
26. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
27. The alcoholic beverage outlet operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the alcoholic beverage outlet and adjacent properties, if directly related to the patrons of the subject alcoholic beverage outlet.
28. All proposed signs shall be in conformance with the provisions of the PC-56 (North Newport Center Planned Community), Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code, or an approved Comprehensive Sign Program for the project site.



29. 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 permit.
30. The Zoning Administrator may add to or modify conditions of approval to this Minor Use Permit, upon a determination that the operation which is subject of this Minor Use Permit causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
31. Any changes in operational characteristics, hours of operation, expansion in area, or modification to the floor plan, shall require an amendment to this Minor Use Permit, unless otherwise approved by the Planning Division.
32. Should the business, subject to the Minor Use Permit conditioned herein, be sold or otherwise come under different ownership or a change in operators, any future owners, operators, or tenants shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
33. This Minor Use Permit shall expire unless exercised within twenty-four months from the date of approval as specified in Section 20.54.60 of the Newport Beach Municipal Code.
34. 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 Red O Minor Use Permit including, but not limited to, the Minor Use Permit No. UP2013-009 (PA2013-109). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Building Division and Fire Department Conditions**

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

36. A covered wash-out area (36 inches wide by 36 inches deep by 6 feet high) for refuse containers and kitchen equipment shall be provided and shall drain directly into the sewer system, unless otherwise approved by the Community Development Director and Public Works Director in conjunction with the approval of an alternative drainage plan. The washout area shall be specifically shown on the construction drawings submitted for building permits.
37. The facility shall comply with the provisions of Chapter 14.30 of the Municipal Code for commercial kitchen grease disposal, as determined by the Building Division and the Utilities Department.
38. The restaurant shall provide the number of plumbing fixtures to satisfy the requirements of Chapter 4 of the California Building Code, 2010.
39. Prior to issuance of building permits, an exit analysis shall be provided for the outdoor dining patio.
40. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Division.
41. Public sanitation facilities shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Division.

# **Attachment No. CD 3**

Plans

























































