



## 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, and/or Planning Division staff for the week ending July 17, 2020.

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### ZONING ADMINISTRATOR ACTIONS JULY 16, 2020

Item 1: 109 and 111 Bayside Place Slope Restoration Coastal Development Permit No. CD2020-048 (PA2020-064)  
Site Address: 109 and 111 Bayside Place

Action: Approved by Resolution No. ZA2020-053

Council District

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**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period 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. ZA2020-053

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-048 TO REPAIR AND RESTORE A FAILED BLUFF LOCATED AT 109 AND 111 BAYSIDE PLACE (PA2020-064)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Winkle Custom Homes (“Applicant”), with respect to property located at 109 and 111 Bayside Place, requesting approval of a coastal development permit.
2. The lots at 109 and 111 Bayside Place are legally described as Portions of Block D of Corona del Mar, as recorded in Miscellaneous Map Book 3, Pages 41 and 42, Records of Orange County, California.
3. The Applicant proposes to repair and restore an existing slope at 109 and 111 Bayside Place. The slope failed in December 2010. The slope is located on the inland side of Bayside Place and is within the front setback areas of 109 and 111 Bayside Place. The work includes the construction of a 24-inch-wide v-ditch behind an existing retaining wall, installation of a matting system on the slope, and the revegetation of the impacted slope area. The restoration is necessary to protect the principal structures on Carnation Avenue and Bayside Place.
4. The subject property is designated RT (Two Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-B (Two Unit Residential) (6.0 – 9.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
6. A public hearing was held on July 16, 2020, in the Council Chambers 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 categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15304 under Class 4 (Minor Alterations to Land) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. Class 1 exempts the addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices. In this case, the slope repair is the addition of a safety device in conjunction with the existing structures of the surrounding development.
3. Class 4 exempts minor trenching and backfilling where the surface is restored. In this case, the slope repair will restore the surface of the previously existing slope.
4. The exceptions to the Class 4 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 NBMC, the following findings and facts in support of such findings are set forth:

#### Finding:

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

#### Facts in Support of Finding:

1. The subject properties are in the R-2 Coastal Zoning District, which provides for two-unit residential development on each lot and is consistent with the City's Coastal Land Use Plan, General Plan, and Zoning Code. A coastal development permit is required for development on the coastal bluff and the property is not eligible for a waiver for de minimis development because the property is located in the Coastal Commission Appeal Area.
2. The properties each currently consist of one single-family residence and a significant private easement for access to create Bayside Place, a private, gated road. Bayside Place is accessible from Bayside Drive, a public street. The residence at 109 Bayside Place was constructed in 2010, and the residence at 111 Bayside Place was constructed in 2008. The neighborhood is predominantly developed with two- and three-story, single-family residences.
3. The area of development is proposed in the front yard setback areas of 109 and 111 Bayside Place on the inland side of Bayside Place. The development consists of the construction of a 24-inch-wide v-ditch behind an existing 24-inch-high retaining wall, installation of a matting system on the slope, and the revegetation of the impacted slope area. The development is in response to a slope failure that occurred in December 2010. The area of slope failure is currently controlled by plastic sheeting and sandbags, intended to temporarily protect the slope from further failure.

4. The proposed accessory structures conform to all applicable development standards, including landscape standards and height of accessory structures in setback areas.
5. The development area is located on the inland side of the private Bayside Place approximately 140 feet from the Newport Harbor. The project site is separated from the harbor by the residences on Bayside Place and the private road of Bayside Place. Due to the distance from coastal waters and the scope of work, a Water Quality Management Plan (WQMP) is not required.
6. The properties are in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
7. The subject properties front the Newport Harbor near the harbor entrance and are protected by a bulkhead. There are no proposed alterations to the single-family structures and development is separated from the shoreline by the residential development and the Bayside Place private road.
8. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), the property owners 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 final building inspection, and prior to the issuance of building permits, respectively
9. The project is not visible from the public right-of-way on Bayside Drive, any coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The area of proposed slope repair is visible from the Bayside Place private road and private residences along Bayside Place and Carnation Avenue. The area of repair and new v-ditch are within the front setback of the subject properties and therefore are required to comply with a maximum height limitation of 42 inches. The proposed v-ditch is less than 24 inches in height. The proposed matting system on the slope will be flush with the surrounding slope surface. The project proposes to replace the existing plastic sheeting and sandbags with a permanent matting system that will be revegetated to blend in with surrounding vegetation. Further, vegetation will be required to consist of noninvasive and drought-tolerant plantings. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to existing public views.

10. The project is consistent with the Bluff Erosion Policies of the Local Coastal Program Coastal Land Use Plan as indicated below:

**Policy 2.8.6-5** *Permit revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls and other structures altering natural shoreline processes or retaining walls when required to preserve coastal-dependent uses or to protect existing principal structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply, unless a waiver of future shoreline protection was required by a previous coastal development permit.*

The proposed development does not alter the natural shoreline process and will not result in any impacts to local shoreline sand supply since the bluff is not subject to marine erosion, however is necessary to protect existing principal residential structures along Bayside Place and Carnation Avenue, as detailed in the memorandum prepared by G3SoilWorks on July 8, 2020.. Staff research of property records did not find any waivers of future protection required by a previous coastal development permit on either property.

**Policy 2.8.6-6** *Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts, and eliminate or mitigate adverse impacts on local shoreline sand supply.*

The proposed slope repair is the minimum necessary to protect existing principal residential structures along Bayside Place and Carnation Avenue. The project site does not provide coastal access, and the repair of the slope neither provides nor inhibits existing public access opportunities in the area. Visual impacts are minimized through revegetating the slope to blend in with surrounding vegetation. The project site does not contribute to the local sand supply.

**Policy 2.8.6-7** *Discourage shoreline protective devices on public land to protect private property/development. Site and design any such protective devices as far landward as possible. Such protective devices may be considered only after hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat are exhausted as possible alternatives.*

The project is located entirely on private property, and therefore does not place a shoreline protective device on public land.

**Policy 2.8.6-8**

*Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development. "Existing development" for purposes of this policy shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.*

The proposed slope repair is the minimum necessary to protect the existing residential principal structures along Bayside Place and Carnation Avenue. Failure to repair the slope could result in further slope failure, which may endanger residences along Carnation Avenue above the project site and along Bayside Place below the project site.

**Policy 2.8.6-9**

*Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline, or bluff that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future protection was required by a previous coastal development permit.*

The property owners of the project site are required to record a waiver of future shoreline protection as a condition of approval of the coastal development permit. The waiver of future shoreline protection will be applied to the inland extent of the properties on the coastal bluff. As there will be no alterations to the existing single-family residences at this time, the waiver will not apply to the existing bulkhead.

**Policy 2.8.6-10**

*Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).*

The slope repair, necessary to protect existing principal residential structures, is the only development proposed as a part of this coastal development permit.

Finding:

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

Facts in Support of Finding:

1. The project site is located 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 repairs and restores an existing slope that failed in 2010. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and so as not to block or impede existing public access opportunities.
2. Vertical access to the bay and beach is available at the Fernleaf Avenue street end and at Corona del Mar State Beach, approximately 1,000 feet and 1,500 feet from the project site, respectively. Lateral access is available at Corona del Mar State Beach. The project does not include any features that would obstruct access along these routes. Further, a scenic preservation easement is located at the intersection of Carnation Avenue and Ocean Boulevard, approximately 300 feet south of the properties

## SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15304 under Class 4 (Minor Alterations to Land) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment and the exceptions to the Class 4 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2020-048, 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 NBMC. 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 16<sup>TH</sup> DAY OF JULY, 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. 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.
3. 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.
4. 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.
5. 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.
6. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.

7. 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.
8. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
9. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
10. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
11. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
12. Prior to issuance of 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.
13. 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.
14. 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.
15. 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
16. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
17. Prior to the issuance of a Certificate of Occupancy, 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

including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the coastal bluff reinforcement, that results in any encroachment seaward of the authorized footprint of the coastal bluff reinforcement or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns

18. This Coastal Development Permit No. CD2020-048 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 NBMC, 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 109 and 111 Bayside Place Slope Restoration including, but not limited to, Coastal Development Permit No. CD2020-048 (PA2020-064). 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.