



## 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 October 30, 2020.

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### ZONING ADMINISTRATOR ACTIONS OCTOBER 29, 2020

- Item 1: Handel's Homemade Ice Cream Minor Use Permit No. UP2020-170 (PA2020-223)  
Site Address: 2200 West Ocean Front, Suite A  
Action: Approved by Resolution No. ZA2020-069 Council District 1
- Item 2: 22nd Street Pizza Minor Use Permit No. UP2020-171 (PA2020-224)  
Site Address: 2200 West Ocean Front, Suite B  
Action: Approved by Resolution No. ZA2020-070 Council District 1
- Item 3: Goldenrod, a California Limited Liability LLC Residential Condominiums Tentative Parcel Map No. NP2020-012 and Coastal Development Permit No. CD2020-133 (PA2020-248)  
Site Address: 506 and 508 Goldenrod Avenue  
Action: Approved by Resolution No. ZA2020-071 Council District 6
- Item 4: Robitaille Residence Coastal Development Permit No. CD2020-071 (PA2020-121)  
Site Address: 908 East Balboa Boulevard  
Action: Approved by Resolution No. ZA2020-072 Council District 1

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

- Item 1: Orange Coast Winery - Limited Term (Less Than 90 Days) Permit No. XP2020-007 (PA2020-289)  
Site Address: 869 West 16<sup>th</sup> Street  
Action: Approved Council District 2

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2020-069

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING MINOR USE PERMIT UP2020-170 FOR A TAKE-OUT SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT LOCATED AT 2200 WEST OCEAN FRONT, SUITE A (PA2020-223)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Handel's Homemade Ice Cream, with respect to property located at 2200 West Ocean Front Suite A, and legally described as Lot 1, Block 22 within the Newport Beach Tract requesting approval of a minor use permit.
2. The applicant proposes to convert an existing full-service eating and drinking establishment into a take-out service, limited eating and drinking establishment. The request includes a maximum of six seats, no alcohol service and no late hours.
3. The subject property is designated Mixed-Use Water 2 (MU-W2) by the General Plan Land Use Element and is located within the Mixed-Use Water (MU-W2) Zoning District.
4. The subject property is located within the Coastal Zone. The Coastal Land Use Plan category is Mixed-Use Water Related (MU-W) and it is located within the Mixed-Use Water Related (MU-W2) Coastal Zone District. The project is exempt from the requirements of a Coastal Development Permit (CDP) as it does not expand the existing structure or use and does not require additional parking. Therefore, the proposed changes are not considered an intensification of use.
5. A public hearing was held online on October 29, 2020, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The proposed project involves minor interior improvements to an existing commercial space and involves no expansion in floor area or change in parking requirement.

### SECTION 3. REQUIRED FINDINGS.

#### Minor Use Permit

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

#### Finding

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

#### Facts in Support of Finding

1. The General Plan designates the site as Mixed-Use Water 2 (MU-W2) which applies to areas where it is the intent to establish waterfront locations in which marine-related uses are intermixed with commercial service use and residential.
2. The proposed take-out service, limited restaurant use is consistent with the (MU-W2) designation as it is intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach.
3. There are mixed-use structures that include visitor serving commercial such as eating and drinking establishments throughout the surrounding area. These uses are complementary to the surrounding commercial and residential uses.
4. The subject property is not part of a specific plan area.

#### Finding

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

#### Facts in Support of Finding

1. The property is designated by the Zoning Code as Mixed-Use Water (MU-W2), which applies to areas where it is the intent for waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. The proposed take-out service, limited ice cream shop with no alcohol service and no late hours requires a new minor use permit pursuant to Table 2-8 of Newport Beach Municipal Code Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements). The property is located approximately 320 feet from a residential zoning district.
2. There is no existing parking on-site. The building has operated as commercial and food service uses since prior to 1994, when Use Permit No. UP3535 was approved, which memorialized the nonconforming restaurant use (Suite A) with up to 1,895

gross square feet and 634 square feet of net public area. In 2018, Urban Cup moved into Suite A under Minor Use Permit No. UP2017-013 and reduced the net public area to 450 square feet. Based on the parking requirement of 1 space per 40 square feet of net public area for Urban Cup, there is a credit of 12 parking spaces. Suite B and Suite C have always been occupied by commercial and take-out service limited which is the same parking requirement as general commercial, 1 space per 250 square feet with a 4-space parking credit. This leaves a 16-space-parking credit for the entire building. Handel's Homemade Ice Cream will occupy Suite A and will use 8-spaces of the parking credit (take-out service limited, 1 space per 250 square feet) and 22<sup>nd</sup> Street Pizza will occupy Suite B and use the remaining 8-spaces of the parking credit (1 space per 40 square feet of net public area). The proposed uses require a total of 16 spaces, requiring no net increase in the required parking.

3. The parking requirement for take-out service, limited food service is 1 space per 250 square feet ( $1,895/250 = 7.58$ ) which results in eight (8) spaces. The eight spaces are covered by the existing parking credit for the building as outlined in Fact No. 2 above.
4. As conditioned, the proposed project will comply with Zoning Code standards for eating and drinking establishments.

### Finding

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

### Facts in Support of Finding

1. The establishment will provide a take-out ice cream shop within the 1,845 square foot existing Suite with the potential for a maximum 6 seats, walk-in cooler, dry storage, dedicated wash down area that will drain directly into the sewer system, a covered trash enclosure with gate and one all gender restroom.
2. The hours operation of the restaurant will be restricted to the hours between 8:00 a.m. and 10:00 p.m., daily. These hours are consistent with the business hours of other restaurants and uses in the commercial area.
3. The proposed take-out ice cream shop will be located within an existing single-story building accessible from the corner of 22<sup>nd</sup> Street and West Ocean Front, which provides convenient access to motorists, pedestrians, and bicyclists.
4. The surrounding area contains various, retail and visitor serving commercial uses including restaurants and take-out eating establishments. The restaurant is compatible with the existing and permitted uses within the area.

Finding

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

Facts in Support of Finding

1. The tenant improvement for the commercial space is currently in the plan check process.
2. The tenant improvement includes a review to ensure adequate public and emergency vehicle access, and that public services, and utilities are provided. The tenant improvement plans are required to be reviewed for compliance with applicable building and fire codes.

Finding

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, and 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 take-out service, limited eating and drinking establishment will serve the surrounding community in a commercial area designed for such uses.

## SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2020-170, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
4. This resolution supersedes Planning Commission Resolution No. PC2018-002 for Minor Use Permit No. UP2017-013 (PA2017-096), which upon vesting of the rights authorized by this Minor Use Permit, shall become null and void.

**PASSED, APPROVED, AND ADOPTED THIS 29<sup>th</sup> DAY OF OCTOBER, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"****Planning Division**

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. *Use Permit No. UP2020-170 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code ("NBMC"), unless an extension is otherwise granted.*
5. *This Use Permit shall supersede Use Permit No. UP2017-013 which will become null and void.*
6. *The hours of operation shall be between 8:00 a.m. to 10:00 p.m., daily.*
7. *The maximum number of seats permitted is six.*
8. *No alcohol service is permitted with this Use Permit for a take-out service, limited eating and drinking establishment.*
9. *The exterior rear storefront (back of house area of proposed use) facing 22<sup>nd</sup> Street shall be improved to avoid the look a vacant storefront. The improvement shall be included in the exterior elevations in building permit plans and shall be designed to be architecturally compatible with the building to the satisfaction of the the Community Development Director.*
10. *If a security enclosure systemwall is added to the open-air vestibule in the future, the design shall be architecturally compatible with the existing building and shall be reviewed and approved by the Community Development Director prior to installation.*
11. This Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

12. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
13. A copy of the resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
14. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
15. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
16. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

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 either the current business owner, property owner or the leasing agent.
18. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
19. No audible outside paging system shall be utilized in conjunction with this establishment.
20. 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.

21. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
22. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
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. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
25. Storage outside of the building in the front or at the rear of the Property shall be prohibited, with the exception of the required trash container enclosure.
26. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the NBMC to require such permits.
27. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 (Planning and Zoning) of the NBMC.
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 Handel's Homemade Ice Cream Minor Use Permit including, but not limited to, UP2020-170 (PA2020-223). 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**

29. 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.
30. The establishment shall comply with Disable Access requirements.

## RESOLUTION NO. ZA2020-070

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING MINOR USE PERMIT UP2020-171 FOR A FULL-SERVICE EATING AND DRINKING ESTABLISHMENT INCLUDING TYPE 41 ALCOHOLIC BEVERAGE LICENSE (ON-SALE BEER AND WINE) WITH NO LATE HOURS LOCATED AT 2200 WEST OCEAN FRONT SUITE, B (PA2020-224)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by 22nd Street Pizza, with respect to property located at 2200 West Ocean Front, Suite B, and legally described as Lot 1, Block 22 within the Newport Beach Tract requesting approval of a minor use permit.
2. The applicant proposes to convert an existing take-out service eating and drinking establishment and bike rental shop into a full-service eating and drinking establishment. The request includes 23 seats and a Type 41 Alcoholic Beverage Control License (On-Sale Beer and Wine) with no late hours.
3. The subject property is designated Mixed-Use Water 2 (MU-W2) by the General Plan Land Use Element and is located within the Mixed-Use Water (MU-W2) Zoning District.
4. The subject property is located within the Coastal Zone. The Coastal Land Use Plan category is Mixed-Use Water (MU-W) and it is located within the Mixed-Use Water (MU-W2) Coastal Zone District. The project is exempt from the requirements of a Coastal Development Permit (CDP) because no additional parking is required, and the addition of alcohol sales is intended as a convenience for on-site patrons that already exists within the building and will essentially be shifted to this use with no net increase of licenses or parking. Therefore, the proposed changes are not considered an intensification of use.
5. A public hearing was held online on October 29, 2020, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The proposed project involves minor interior improvements to an existing commercial space with no expansion in floor area or change in parking requirements.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code (NBMC), 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 crime rate in the subject reporting district (RD 15) as well as two (2) of the three (3) adjacent RDs (Reporting Districts) are over the City average. RD 15 contains the large commercial shopping center known as The Landing at 32<sup>nd</sup> Street and Balboa Boulevard and much of Via Lido and Balboa Boulevard. The purpose of the Zoning of these beach areas is to provide various commercial and retail uses to support the surrounding residential area as well as the surrounding tourist destinations. Therefore, these beach areas with a higher concentration of commercial land uses tend to have a higher crime rate than adjacent RDs.
- 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 RDs. Additionally, this is the beach area that is considered one of the most significant tourist areas of the City.
- 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. The commercial building is within a mixed-use area with residential and various commercial services including retail, eating and drinking establishments of a similar nature. The residential uses are intermixed amongst these uses. The neighborhood is intended and designed for mixed residential and commercial uses. The subject

property is along the West Ocean Front public boardwalk and beach. Marina Park is more than 1,000 feet away. Other sensitive land uses above are not located within close proximity of the subject building.

*iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*

1. Several other establishments along West Ocean Front, Balboa Boulevard currently have active ABC Licenses, most of which are bona fide eating and drinking establishments and are not defined as bars, lounges or nightclubs by the Zoning Code. Approximately 250 feet south on McFadden Place is Rockin' Baja Lobster, Taco Bell Cantina, the Stag Bar and Kitchen and The Blue Beet Bar. Across 22<sup>nd</sup> Street along the West Ocean Front Boardwalk are Blackies, Beach Ball Bar, Mutt Lynch's Bar, Dory's Deli, Oh Those Doughnuts and 21 Ocean Front Hotel before the Pier area. The Pier area includes Charlee's Chili, Baja Sharkeez Bar and Sol Grill and various other take-out restaurants.
2. Due to the type and operation of the restaurant which is conditioned to close at 10:00 p.m. with only 23 seats, and the incorporation of additional conditions to prevent the restaurant from operating as a bar or lounge, the proximity to other establishments does not appear to create foreseeable concern.

*v. Whether or not the proposed amendment will resolve any current objectionable conditions*

1. The subject building has historically been occupied by a full-service eating and drinking establishment with a Type 41 ABC license and drinking establishment with a greater number of seats and similar hours of operation (Urban Cup). There is no evidence that suggests this type of use has created objectionable conditions. Urban Cup will vacate, therefore there will be no net increase of ABC license within the subject building.

### 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 minor use permit are set forth:

### Finding

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

### Facts in Support of Finding

1. The General Plan designates the site as Mixed-Use Water 2 (MU-W2) which applies to areas where it is the intent to establish waterfront locations in which marine-related uses are intermixed with commercial service use and residential.

2. The proposed full-service restaurant use is consistent with the (MU-W2) designation as it is intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach.
3. Several mixed-use structures including visitor serving commercial such as eating and drinking establishment uses exist nearby and are complementary to the surrounding commercial and residential uses.
4. The subject property is not part of a specific plan area.

### Finding

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

### Facts in Support of Finding

1. The property is designated by the Zoning Code as Mixed-Use Water (MU-W2), which applies to areas where it is the intent for waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. The proposed full service, eating and drinking establishment with alcohol service and no late hours requires a new minor use permit pursuant to Table 2-8 of Newport Beach Municipal Code Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements). The property is located approximately 320 feet from a residential zoning district.
2. There is no existing parking on-site. The building has operated as commercial and food service uses since prior to 1994, when Use Permit No. UP3535 was approved, which memorialized the nonconforming restaurant use (Suite A) with up to 1,895 gross square feet and 634 square feet of net public area. In 2018, Urban Cup moved into Suite A under Minor Use Permit No. UP2017-013 and reduced the net public area to 450 square feet. Based on the parking requirement of 1 space per 40 square feet of net public area for Urban Cup, there is a credit of 12 parking spaces. Suite B and Suite C have always been occupied by commercial and take-out service limited which is the same parking requirement as general commercial, 1 space per 250 square feet with a 4-space parking credit. This leaves a 16-space-parking credit for the entire building. Handel's Homemade Ice Cream will occupy Suite A and will be processed under a separate permit, will use 8-spaces of the parking credit (take-out service limited, 1 space per 250 square feet) and 22<sup>nd</sup> Street Pizza will occupy Suite B and use the remaining 8-spaces of the parking credit (1 space per 40 square feet of net public area). The proposed uses require a total of 16 spaces, requiring no net increase in the required parking.
3. The parking requirement for a food service eating and drinking establishment is 1 space per 30-50 sf (square feet) of net public area (NPA). Staff recommends a parking requirement of 1 space per 40 sf of NPA for 22<sup>nd</sup> Street Pizza ( $295/40 = 7.37$ )

which results in eight (8) spaces. The 1 space per 40 sf of NPA is appropriate for this type of use based on several physical design and operational characteristics. For example, there are only 23 seats included on the floor plan and the net public area is only 295 square feet. The existing operation includes take-out service which will be maintained and does add some added turn-over that is shared within that net public area. The project does not include outdoor dining and does not have opportunities for future outdoor dining. Lastly, the project is conditioned to prohibit live entertainment and dancing with no late hours. The eight spaces are covered by the existing parking credit for the building as outlined in Fact No. 2 above.

4. As conditioned, the proposed project will comply with Zoning Code standards for eating and drinking establishments.

### Finding

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

### Facts in Support of Finding

1. The establishment consists of 295 square feet of net public area, kitchen facilities, indoor storage and washing areas, a restroom, dedicated wash down area that will drain directly into the sewer system, and a covered trash enclosure with gate. All improvements to the space including the removal of the wall that combined the previous suites will require a Building Permit.
2. The hours operation of the restaurant will be restricted to the hours between 8:00 a.m. and 10:00 p.m., daily. These hours are consistent with the business hours of other restaurants and uses in the commercial area.
3. The existing restaurant is located within an existing single-story building accessible from 22<sup>nd</sup> Street and the alley at the rear, which provides convenient access to motorists, pedestrians, and bicyclists.
4. The surrounding area contains various, retail and visitor serving commercial uses including restaurants and take-out eating establishments. The restaurant is compatible with the existing and permitted uses within the area.
5. The operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure that the business remains a restaurant and does not become a bar or tavern. Additionally, dancing or live entertainment is not permitted.

Finding

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

Facts in Support of Finding

1. The tenant improvement for the commercial space is currently in the plan check process.
2. The tenant improvement includes a review to ensure adequate public and emergency vehicle access, and that public services, and utilities are provided. The tenant improvement plans are required to be reviewed for compliance with applicable building and fire codes.

Finding

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, and 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 will serve the surrounding community in a commercial area designed for such uses. The service of alcohol is provided as a public convenience and is not uncommon in establishments of this type. Additionally, the service of alcohol will provide an economic opportunity for the property owner to maintain a successful business that is compatible with the surrounding community.
3. All owners, managers, and employees selling or serving alcohol will be required to complete a Responsible Beverage Service Certification Program.



SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2020-171, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 29<sup>th</sup> DAY OF OCTOBER, 2020.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"****Planning Division**

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. *Use Permit No. UP2020-171 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code ("NBMC"), unless an extension is otherwise granted.*
5. *This Use Permit shall not be effective until such time that Minor Use Permit No. UP2020-170 becomes effective for Handel's Ice Cream at 2200 West Ocean Front A, supersedes Use Permit No. UP2017-013 and Urban Cup is vacated.*
6. *The hours of operation shall be between 8:00 a.m. to 10:00 p.m., daily.*
7. *The net public area of the interior of the restaurant shall not exceed 295 square feet of net public area. An increase of this area will require an amendment to this use permit and potentially a parking waiver.*
8. This Use Permit may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
10. A copy of the resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
11. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order

the dimming of light sources or other remediation upon finding that the site is excessively illuminated.

- 12. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
- 13. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

- 14. Should the Property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
- 15. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
- 16. No audible outside paging system shall be utilized in conjunction with this establishment.
- 17. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
- 18. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
- 19. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
- 20. 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).

21. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
22. Storage outside of the building in the front or at the rear of the Property shall be prohibited, with the exception of the required trash container enclosure.
23. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the NBMC to require such permits.
24. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 (Planning and Zoning) of the NBMC.
25. 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 22<sup>nd</sup> Street Pizza Minor Use Permit including, but not limited to, UP2020-171 (PA2020-224). 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.

### **Police Department**

26. All customers must vacate the establishment 30 minutes after closing.
27. The removal or relocation of tables, chairs, stools, or other furniture to accommodate an area for standing or dancing shall be prohibited.

28. The approval is for an eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 41 (On-Sale Beer and Wine – Eating Place) license in conjunction with the restaurant as the principal use of the facility.
29. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
30. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
31. There shall be no live entertainment or dancing allowed on the premises.
32. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
33. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
34. No off-sales of alcohol shall be permitted.
35. Food service from the regular menu shall be made available to patrons until closing.
36. 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.
37. 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.
38. “VIP” passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).
39. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.
40. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-

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site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

41. Strict adherence to maximum occupancy limits is required.
42. The applicant shall maintain a security recording system with a 30-day retention, and make those recordings available to the Police Department upon request.
43. 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.
44. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every 3 years regardless of certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

### **Building Division**

45. 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.
46. The restaurant shall comply with Disable Access requirements.

## RESOLUTION NO. ZA2020-071

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2020-012 AND COASTAL DEVELOPMENT PERMIT NO. CD2020-133 FOR FOUR (4)-UNIT CONDOMINIUM PURPOSES LOCATED AT 506 AND 508 GOLDENROD AVENUE (PA2020-248)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Western Pacific Development (Applicant), with respect to property located at 506 and 508 Goldenrod Avenue, requesting approval of a tentative parcel map and a coastal development permit.
2. The lot at 506 Goldenrod Avenue is legally described as Lot 6, Block 534 of Tract 186 Corona del Mar, City of Newport Beach in the County of Orange. The lot at 508 Goldenrod Avenue is legally described as Lot 8, Block 534 of Tract 186 Corona del Mar, City of Newport Beach in the County of Orange.
3. The Applicant requests a tentative parcel map for four (4)-unit condominium purposes. Two (2) separate duplexes are under construction pursuant to Zoning and Building Code requirements on two (2) separate lots under common ownership. The Tentative Parcel Map will allow each residential unit to be sold individually. No waivers of Title 19 (Subdivisions) are proposed. The Tentative Parcel Map also requires the approval of a Coastal Development Permit pursuant to Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC).
4. The subject properties are designated RT (Two Unit Residential) by the General Plan Land Use Element and are located within the R-2 (Two-Unit Residential) Zoning District.
5. The subject properties are located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two Unit Residential) (20.0 - 29.9 DU/AC) and the Coastal Zoning designation is R-2 (Two-Unit Residential).
6. A public hearing was held online on October 29, 2020, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. 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, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. Therefore, the proposed parcel map is eligible for the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

#### ***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 Section 19.12.070 (Required Findings for Action on Tentative Maps) of the NBMC:

#### 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 four (4)-unit residential condominium purposes with two (2) units on each legal lot.
2. While the subject properties have historically been developed as a part of a larger parking lot, they are zoned R-2. A new duplex is now under construction on each lot. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use Designation.
3. The subject property is not located within a specific plan area.
4. The project is conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Goldenrod Avenue frontage, as needed, as well as the undergrounding of utilities, consistent with the Title 19 (Subdivisions) of the NBMC.

#### Finding:

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



Facts in Support of Finding:

1. The project site is physically suitable for a duplex because it is relatively flat and rectangular, like the surrounding properties.
2. The subject property is accessible from both Goldenrod Avenue and the alley in the rear.
3. The site is adequately served by existing utilities, as the site is within an already developed neighborhood.
4. Fact in Support of Finding A.2 is hereby incorporated by reference.

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. The property is located within an existing residential neighborhood that does not contain any sensitive vegetation or habitat on-site.
2. 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. Section 2 of this Resolution is hereby incorporated by reference.

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map is for 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:

*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.*

Facts in Support of Finding:

1. The Public Works Department has reviewed the proposed Tentative Parcel Map and determined that 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 no public easements are located on the property.
2. There are no existing easements either through or adjacent to 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 site, developed for residential use, lies 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 duplexes are consistent with the R-2 Zoning designation, which allows two (2) residential units per individual lot. The Tentative Parcel Map 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 residential building under construction has been designed to have wastewater discharge into the existing sewer system and 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 within the Coastal Zone. All Facts in Support of Findings L and M are hereby incorporated by reference.

***Coastal Development Permit***

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:

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

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The project site is not 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 the project is a tentative parcel map for condominium purposes on two (2) properties zoned for two (2)-unit development. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

**SECTION 4. DECISION.**

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

1. The Zoning Administrator of the City of Newport Beach hereby finds the Project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Use Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2020-012 Coastal Development Permit No. 2020-133, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. The approval of Parcel Map No. NP2020-012 and of Coastal Development Permit No. CD2020-133 shall become final and effective 14 days following the date the Resolution is 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. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

**PASSED, APPROVED, AND ADOPTED THIS 29<sup>TH</sup> DAY OF OCTOBER, 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 receive final inspection until after recordation of the parcel map.
4. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Tentative Parcel Map.
5. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code.
6. *Prior to recordation of the Parcel Map, a park fee shall be assessed for four additional dwelling units.*
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 Goldenrod, a California Limited Liability LLC Residential Condominiums including, but not limited to, Tentative Parcel Map No. NP2020-012 and Coastal Development Permit No. CD2020-133 (PA2020-248). 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**

8. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD 83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
9. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one (1) 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.
10. All improvements shall be constructed as required by Ordinance and the Public Works Department.
11. All damaged sidewalk panels along the Goldenrod Avenue property frontage and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.
12. *The existing street tree along the 508 Goldenrod Avenue frontage shall be protected in place.*
13. *A new 36-inch box street tree shall be installed along the 506 Goldenrod Avenue frontage.*
14. All existing overhead utilities shall be undergrounded.
15. No above ground improvements shall be permitted within the 5-foot alley setback.
16. New sod or low ground covers of the type approved by the City shall be installed throughout the Goldenrod Avenue parkway fronting the development site.
17. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed per City standard with a traffic-grade box and cover. Each water meter and sewer clean out shall be located within the public right-of-way.
18. All unpermitted encroachments (including but not limited to decorative hardscape, walls, and steps) shall be removed from the Goldenrod Avenue right of way.
19. An encroachment permit is required for all work activities within the public right-of-way.
20. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.

21. 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**

22. Independent utility services shall be provided for each unit.
23. Independent fire risers shall be required for each unit.
24. Construction shall comply with the California Code of Regulations.



## RESOLUTION NO. ZA2020-072

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-071 TO DEMOLISH AN EXISTING DETACHED ONE-CAR GARAGE AND CONSTRUCT A NEW DETACHED TWO-CAR GARAGE WITH AN ACCESSORY DWELLING UNIT (ADU) ABOVE LOCATED AT 908 EAST BALBOA BOULEVARD (PA2020-121)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Bradford C. Smith Architect (Applicant), with respect to property located at 908 East Balboa Boulevard, requesting approval of a coastal development permit.
2. The parcel at 908 East Balboa Boulevard is legally described as Lot 4, Block 13, Bay Front Section of the Balboa Tract, including a portion of the abandoned street adjacent.
3. The Applicant proposes demolition of a detached, one-car garage that serves an existing single-family residence and the construction of a new, detached, 436-square-foot, two-car garage with a 533-square-foot accessory dwelling unit (ADU) above. The project includes additional appurtenances, such as walls, fences, drainage devices, and hardscaping. The design complies with all applicable development standards and no deviations are requested.
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-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 online on October 29, 2020, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, 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), Article 19 of Chapter 3, 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 a detached one-car garage and the construction of a new 436-square-foot detached garage with a 533-square-foot ADU above.
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 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 property is zoned R-2. The property is currently developed with a single-family residence that includes a detached, one-car garage. The current development is nonconforming due to parking, as two garage spaces are required.
2. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, parking, and unit size.
  - a. The maximum floor area limitation for the parcel is 7,008-square-feet. The existing single-family residence is 1,621-square-feet, the ADU is 533-square-feet, and the new garage is 436-square-feet. The total proposed floor area of all enclosed areas is 2,590 square feet.
  - b. The development will maintain approximately 1,696-square-feet of open volume area on the lot.
  - c. The proposed development provides the minimum required setbacks. The setbacks required for the subject property are 1 foot along East Balboa Boulevard, 10 feet from the abandoned right of way line along the waterfront, and 3 feet along each side property lines. There are no additional setback requirements for an ADU above a garage.
  - d. The highest guardrail is less than 24 feet from established grade (8.04 feet NAVD88) and the highest ridge is no more than 29 feet from established grade,

which comply with the maximum height requirements. An ADU above a garage is subject to the same height limitations as the underlying zoning district.

- e. The detached garage and ADU is designed to be similar to the principal dwelling with respect to architectural style, roof pitch, color, and materials.
  - f. The project includes the construction of a detached garage, which will provide parking for a total of two vehicles, complying with the minimum two-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area. The new garage will replace a smaller, nonconforming garage, and will bring the single-family residence into conformance with current parking development standards.
  - g. NBMC Chapter 21.48.200 (Accessory Dwelling Units) does not require additional parking to be provided for an ADU when the proposed ADU is located within one-half mile of a public transit. NBMC Subsection 21.48.200(C)(9)(c)(ii) defines “public transit” as a bus stop with fixed route bus service that provides transit service at fifteen (15) minute intervals or better during peak commute periods. The nearest public transport is in the form of an Orange County Transportation Authority (OCTA) bus stop located at Palm Street and East Balboa Boulevard. This bus stop is approximately 0.2-miles walking distance and is serviced by the OCTA number 47 bus; however this bus does not provide service at a frequency of 15 minutes or better during peak commute periods.. While this bus stop is not consistent with the current Title 21 definition, California state law has changed and now defines public transit in a more inclusive way rendering Title 21 more restrictive and inconsistent with state law. A Local Coastal Program (LCP) amendment has been prepared and submitted for review by the Coastal Commission (City of Newport Beach Local Coastal Plan Amendment 1-20, LCPA-5-NPB-20-0025-1) which would revise this definition. The project, as designed, would comply with State law and would conform to the LCP amendment. Furthermore this project merely preserves the existing parking ratio and does not create a greater demand for on-street parking. The existing nonconforming one-car garage that serves the single-family residence will be replaced with a two-car garage and the overall parking ratio will remain the same. Fact 1 in support of Finding B is incorporated here by reference.
3. The project is conditioned to require the recordation of a deed restriction that will prohibit the use of the ADU for short term rentals (i.e., less than 30 days) and will also prohibit the sale of the ADU separate from the principal dwelling. Currently NBMC Section 21.48.200 has a requirement that the owner of the property occupy either the ADU or the principal structure and for that requirement to be included in the deed restriction. State law has placed a moratorium on the owner-occupancy requirement through 2025 and as such, the requirement for owner-occupancy will not be included in the deed restriction. This requirement is being eliminated as part of a Local Coastal Program amendment that has been prepared and submitted for review by the Coastal Commission (City of Newport Beach Local Coastal Plan Amendment 1-20, LCPA-5-NPB-20-0025-1).

4. The neighborhood is predominantly developed with two-story residences of varying densities. The adjacent properties both have second story development and the ADU above the garage will not appear out of place in comparison with its surroundings. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
5. A Coastal Hazards Report and Sea Level Rise Analysis was prepared for the project by GeoSoils, Inc., dated September 21, 2020. The report states that the current maximum bay water elevation is 7.7 North American Vertical Datum of 1988 (NAVD88). The report analyzes future sea level rise scenarios assuming a 2.95-foot increase in the maximum water level over the next 75 years (i.e. the life of the structure). The sea level is estimated to reach approximately 10.65 feet NAVD88 (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). The report concludes that the habitable portion of the project will be safe from flooding hazards for the next 75 years.
6. The Coastal Hazards Report acknowledges an existing bulkhead at the project site. The bulkhead is a shallow founded low height brick structure, about 3 feet in total height (at an elevation of approximately 8.00 feet NAVD88) and does not meet the current City's top of bulkhead elevation requirement of 10.65 NAVD88. The elevation of the ADU will protect the habitable portion of the structure rather than the bulkhead itself. Furthermore, the report acknowledges that the bulkhead is not adequate to protect the existing principal structure from a sea level rise of greater than 0.3 feet which could occur within the next decade. The project is conditioned accordingly that 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.
7. The proposed floor elevation of the garage is approximately 8.40 feet NAVD88 with the ADU finished floor at about 16.75 feet NAVD88. The finished floor elevation of the project complies with the minimum 9.00 feet (NAVD88) elevation standard for interior living areas of all new development within flood hazard areas. The Coastal Hazard Report concludes that the bay water elevation (currently 7.7 feet NAVD88) will not exceed the finished floor elevation of the habitable ADU until beyond 2100. The new two car garage however will be subject to flooding with a sea level rise of about 0.5 feet. Flooding of the garage, a non-habitable area, is allowed under The Federal Emergency Management Agency (FEMA) ASCE 24.
8. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
9. The property is a bay front lot and located adjacent to coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize

pollution of runoff and coastal waters derived 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.

10. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan, and it is not located on a coastal bluff or in a canyon. The nearest coastal viewpoint as identified in the Coastal Land Use Plan is over 300 feet away, on the opposite side of the Balboa Peninsula, at Peninsula Park, and is not visible from the site. The project sits within the allowed building envelope and does not contain any unique features that could degrade the visual quality of the coastal zone. While the subject property is visible from the harbor, the detached garage will be located on the opposite end of the property and behind the existing principal structure. The appearance from the waterfront will be unchanged.

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. NBMC Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing detached, nonconforming, one-car garage with a new, detached, two-car garage with ADU above. The project does not involve a change in land use however the project does increase density by one additional dwelling unit. This increase should not have a discernable impact on public access to the coast or recreational opportunities as an increase of one unit is a nominal change and fits within the allowable range designated by the Coastal Land Use Plan. Furthermore, there is a large municipal lot (Balboa Municipal Lot) less than 0.25-mile from the project site. The lot, located at 701 E Oceanfront, provides a considerable amount of parking for visitors to the area.
2. Vertical access to the harbor is available at the east end of the block via the dead-ending B Street. There the street meets a small, sandy, beach where lateral access is available. 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 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. CD2020-071, 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 29<sup>TH</sup> DAY OF OCTOBER, 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 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 including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.
3. 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.
4. Prior to the issuance of a building and/or grading permit for an accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney. The deed restriction document shall notify future owners of the restrictions on short-term rentals. This deed restriction shall remain in effect so long as the accessory dwelling unit exists on the property.
5. *Each unit shall be served by its individual water meter and sewer lateral and cleanout.*
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. 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.
  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.
  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 a building permit, 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 a building permit, the Applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
  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.
  26. This Coastal Development Permit No. CD2020-071 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. 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 Robitaille Residence including, but not limited to, Coastal Development Permit No. CD2020-071 (PA2020-121). 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** Orange Coast Winery (PA2020-289)  
• Limited Term Permit – Less than 90 Days No. XP2020-007

**Applicant** Orange Coast Winery

**Site Location** 869 West 16<sup>th</sup> Street

**Legal Description** First Addition to Newport Mesa Tract, Lot 913, Westerly 396 Feet

On **October 30, 2020**, the Zoning Administrator approved a Limited Term Permit for a duration of less than 90 days authorizing the continued use of an existing wine tasting room at 869 West 16<sup>th</sup> Street. The existing suite includes two tasting rooms, a small kitchen, and restrooms. The proposed hours of operation are from 5:00 p.m. to 10:00 p.m. on weekdays, and 11:00 a.m. to 10:00 p.m. on weekends.

In 2010, the operation was originally approved for Suite 869 as an interim food processing use that consisted of wine production, retail, and a limited wine-tasting component on weekends only. Over time, the business model for the winery changed and wine production no longer occurred onsite. The applicant is seeking approval to operate as a “wine tasting room” under a Limited Term Permit while the City evaluates an amendment to the Municipal Code that would allow for wine tasting rooms in the Industrial (IG) Zoning District subject to the approval of a Conditional Use Permit. Wine tasting rooms are a food and beverage establishment that operate under an Alcoholic Beverage Control Type 2 (Winegrower) license and serve wine and a limited menu such as cheese plates, appetizers and sandwiches (no wine production onsite). This approval is based on the following findings and subject to the following conditions.

### **FINDINGS**

#### **Finding:**

- A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).*

Fact in Support of Finding:

1. The Class 1 (Existing Facilities) exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The project involves the operation of a wine tasting room use within an existing building involving negligible or no expansion of use.

Finding:

- B. The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

Facts in Support of Finding:

1. The limited term permit will allow an existing nonconforming wine bar to continue operation on a limited basis while a Code Amendment is under review to allow for such uses in the IG Zone. While the operation previously utilized Suites 869, 871, and 873, only Suite 869 is permitted for the wine tasting operation, with a maximum of 49 occupants. No customers are permitted within Suites 871 and 873. As conditioned, all unpermitted access from Suite 869 to 871 shall be removed.
2. The operation of the wine tasting room is limited to 90 days from the date of the issuance of a Certificate of Occupancy (pursuant to Condition of Approval No. 5) and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. The proposed hours of operation are from 5:00 p.m. to 10:00 p.m. on weekdays, and 11:00 a.m. to 10:00 p.m. on weekends. The operation is located within an industrial area and has not been detrimental to surrounding uses in the past.

Finding:

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

Facts in Support of Finding:

1. The subject lot is approximately 1.61 acres in size (70,202 square feet). The existing wine bar has operated in Suite 869 since its original approval in 2010, and has since expanded to Suite 871 for additional customer seating area. The operation is located within a building which includes other uses such as auto detailing and a furniture

showroom. The building is served by a large, 92-space on-site parking lot. The existing parking lot has adequately accommodated the wine tasting room in the past and is expected to accommodate the use for a limited duration.

2. The lot is located on West 16<sup>th</sup> Street between Monrovia Avenue and Placentia Avenue. The continuation of the winery use will not affect any of the surrounding uses.

Finding:

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

Fact in Support of Finding:

1. The subject property has a large parking lot with two direct driveway approaches taken from West 16<sup>th</sup> Street. The winery is located within an industrial area and proposes to operate during evening hours on weekdays and all day on weekends, when surrounding uses are typically not operating. The on-site parking lot has historically accommodated the winery use. There are no traffic issues anticipated.

Finding:

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

Fact in Support of Finding:

1. The existing winery has operated at the subject property since 2010. The large on-site parking lot has historically accommodated the use when it operated in both Suites 869 and 871 at a higher occupancy. The proposed limited term permit only allows operation within Suite 869 with a maximum occupancy of 49 people. The existing parking lot is expected to accommodate the temporary use.

Finding:

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

Facts in Support of Finding:

1. The subject property has a land use designation of General Industrial (IG) and is a component of the West Newport Mesa area which contains a mix of residential, office, retail, industrial and public uses. The IG District is "intended to provide for a wide range of moderate to low intensity industrial uses, such as light manufacturing

and research and development, and limited ancillary commercial and office uses.” Existing ancillary commercial uses allowed within the IG District under the City’s zoning regulations include Eating and Drinking Establishments (Take-Out Service-Limited), Health and Fitness Facilities, and Retail (including Alcohol Sales).

The Limited Term Permit for a wine tasting room would complement and be consistent with the other limited ancillary commercial uses permitted within the IG District in that it provides additional amenities that support West Newport Mesa area residents and employees by providing a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU 2, below. Additional benefits from the proposed amendment include providing opportunities for the establishment of local businesses that generate sales tax and provide opportunities for employment which is consistent General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below.

**Goal LU 2** *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City’s diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

**Policy LU 2.4 Economic Development** *Accommodate uses that maintain or enhance Newport Beach’s fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

2. The existing winery was permitted to operate in 2010 through City Council Ordinance 2010-17, which granted a Code Amendment to apply the Interim Study Overlay to allow food processing uses within the Controlled Manufacturing (M-1-A) Zoning District. The ordinance allowed for the winery to operate exclusively in Suite 869, with a primary use of wine manufacturing. A small area of Suite 869 was permitted for wine tasting, with limited hours. Subsequent to the approval of the ordinance, the Zoning Code was amended in 2010, which designated the zoning of the property as Industrial (IG).
3. Subsequent to the business’s original permitting and establishment, the winery expanded into the adjacent suite (Suite 871) and ceased the manufacturing portion of their operations, operating primarily as a wine tasting room. This Limited Term Permit will allow the wine tasting room to operate in Suite 869 only, due to the fact the previous expansion into Suite 871 was done without permits.
4. The site is not located within a specific plan area.

**CONDITIONS**

1. The development shall be in substantial conformance with the approved site plan except as noted in the following conditions.
2. Anything not specifically approved by this limited term permit is prohibited and must be addressed by a separate and subsequent review.
3. The wine tasting room shall operate in Suite 869 only. All unpermitted access into adjacent suites shall be removed.
4. There shall be a maximum occupancy of 49 persons, maximum. The applicant shall demonstrate the occupancy during the plan check process, to the satisfaction of the Community Development Director.
5. Prior to the operation of the wine tasting room in Suite 869, the applicant shall obtain required building permits for all unpermitted construction. All construction shall comply with current code. The limited term permit shall not be in effect until all required permits are obtained and a final inspection is approved by Building Inspector.
6. The hours of operation shall be from 5:00 p.m. to 10:00 p.m. on weekdays, and 11:00 a.m. to 10:00 p.m. on weekends.
7. There shall be no live entertainment.
8. The operator of the limited duration use shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons and equipment. 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. If noise generation does not comply with the aforementioned provisions, the Community Development Director may require remediation measures which may include relocation of equipment.
9. No outdoor sound system, loudspeakers, or paging system shall be permitted in conjunction with the facility.
10. Lighting shall be in compliance with applicable standards of the Zoning Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" type fixtures are not permitted. If in the opinion of the Community Development Director the existing illumination creates an unacceptable negative impact on surrounding land uses or sensitive habitat areas, the dimming of light sources or other remediation may be ordered. An electrical permit shall be secured for lighting as required by the Building Division.

11. Should the wine tasting room operation become a detriment to the public health, comfort, convenience, safety, and general welfare of the peace and quiet of the neighboring properties and their inhabitants, this permit may be revoked.
12. The approval of the requested limited term permit is contingent upon compliance with applicable provisions of the Municipal Code and the successful granting of all required permits from any other department or governing agency.
13. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any 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 **Orange Coast Winery Limited Term Permit** including, but not limited to, **Limited Term Permit No. XP2020-007 (PA2020-289)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **APPEAL PERIOD**

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

On behalf of Jaime Murillo, Zoning Administrator

By:



David S. Lee, Associate Planner

MS/dl

Attachments: ZA 1 Vicinity Map  
ZA 2 Plans



# **Attachment No. ZA 1**

Vicinity Map

# VICINITY MAP



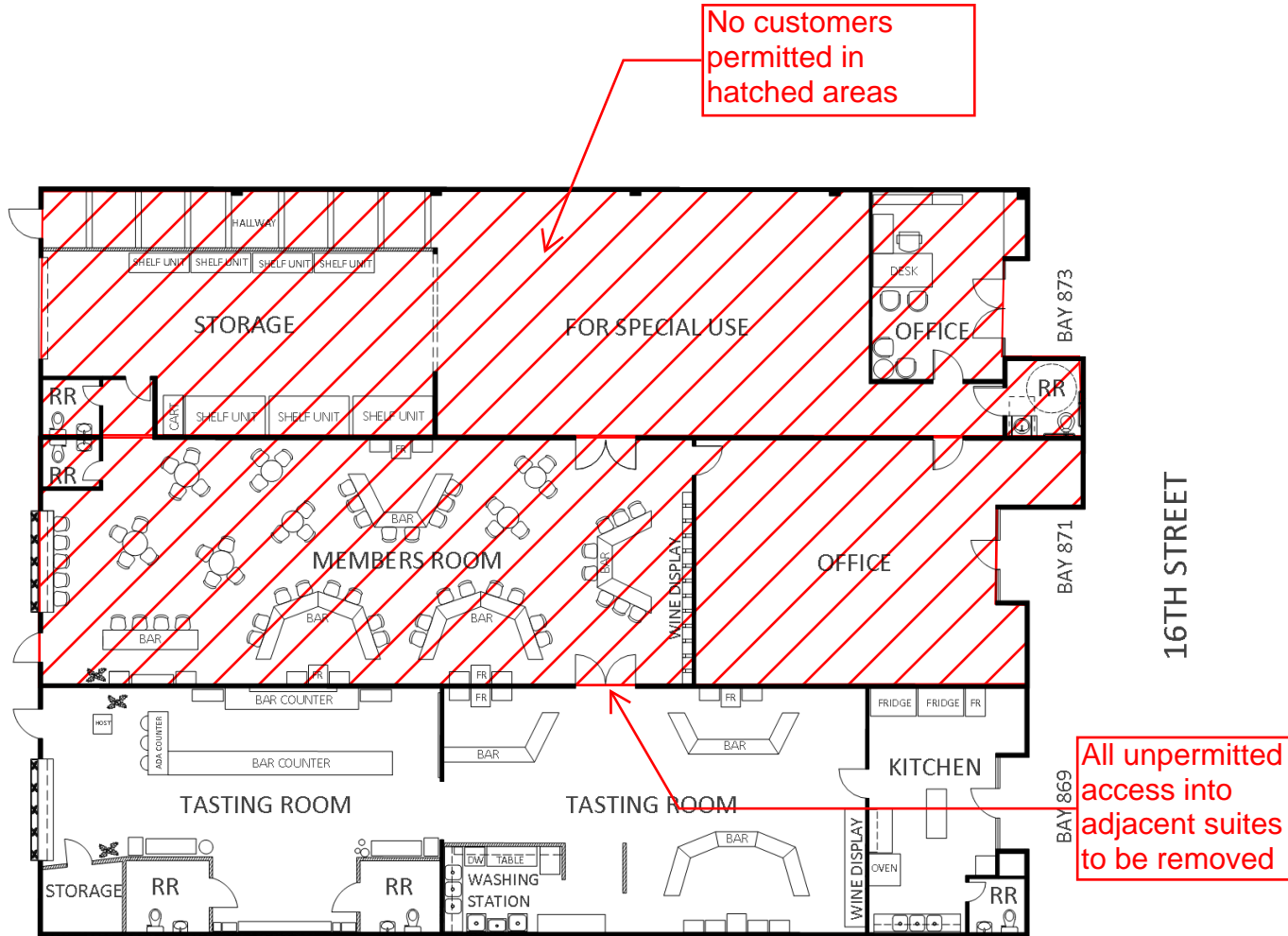
Limited Term Permit – Less than 90 Days No.  
XP2020-007 (PA2020-289)

**869 West 16<sup>th</sup> Street**

# **Attachment No. ZA 2**

Plans

BACK PARKING LOT



Maximum Occupancy: 49  
Suite 869 ONLY

**fp** :: PROPOSED FLOOR PLAN FF&E  
10 scale: 1/16" = 1'-0"



**CLIENT**  
Orange Coast Winery  
869 W 16th St.  
Newport Beach  
CA 92663

THESE DRAWINGS REPRESENT DESIGN INTENT AND CONCEPT ONLY. THEY ARE NOT TO BE USED FOR CONSTRUCTION WITHOUT THE WRITTEN PERMISSION OF KRISBEL DESIGN. CONTRACTOR SHALL VERIFY DIMENSIONS AND CONDITIONS PRIOR TO CONSTRUCTION MATERIALS.

**PROJECT**  
Winery Remodel  
**DATE**  
09/11/2020

**SHEET TITLE**  
BAYS 869, 871, 873  
**DRAWN BY**  
KrisBel Design