



## 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 February 26, 2021.

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### ZONING ADMINISTRATOR ACTIONS FEBRUARY 25, 2021

- Item 1: 304 Goldenrod, LLC Residential Condominiums Coastal Development Permit No. CD2020-149 and Tentative Parcel Map No. NP2020-018 (PA2020-352)  
Site Address: 304 and 304 ½ Goldenrod Avenue  
Action: Approved by Resolution No. ZA2021-009 Council District 6
- Item 2: Soliman Residence Coastal Development Permit No. CD2020-131 (PA2020-262)  
Site Address: 3807 Seashore Drive  
Action: Approved by Resolution No. ZA2021-010 Council District 1
- Item 3: The Goalpost Trust Residence Coastal Development Permit No. CD2020-146 and Zoning Clearance No. ZC2020-022 (PA2020-320)  
Site Address: 5201 Seashore Drive, Units A and B  
Action: Approved by Resolution No. ZA2021-011 Council District 1
- Item 4: Gabriel Residence Coastal Development Permit No. CD2020-153 (PA2020-346)  
Site Address: 941 Via Lido Soud  
Action: Approved by Resolution No. ZA2021-012 Council District 1
- Item 5: Regenerative Institute of Newport Beach Minor Use Permit No. UP2020-188 (PA2020-338)  
Site Address: 20341 Birch Street, Suite 110  
Action: Approved by Resolution No. ZA2021-013 Council District 3

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. ZA2021-009

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2020-018 AND COASTAL DEVELOPMENT PERMIT NO. CD2020-149 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 304 AND 304 ½ GOLDENROD AVENUE (PA2020-352)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Nicholson Companies (Applicant), with respect to property located at 304 and 304 ½ Goldenrod Avenue, requesting approval of a tentative parcel map and coastal development permit.
2. The lot at 304 Goldenrod Avenue is legally described as the southwesterly rectangular 20 feet of Lot 6 and the northeasterly rectangular 20 feet of Lot 4 in Block 234 of the Corona del Mar Tract.
3. The Applicant requests a tentative parcel map for two (2)-unit condominium purposes. A duplex has been demolished and a new duplex is currently under construction pursuant to Zoning and Building Code requirements. The Tentative Parcel Map will allow each unit to be sold individually. No waivers of Title 19 (Subdivisions) are proposed. A Coastal Development Permit (CDP) is also required because this property is in the Coastal Zone.
4. The subject property is 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 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 the Coastal Zoning designation is R-2 (Two-Unit Residential).
6. A public hearing was held online on February 25, 2021, 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 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 Tentative Parcel Map is eligible for the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of NBMC Title 20 (Planning and Zoning) and is approved based on the following findings per 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 two (2)-unit residential condominium purposes. The project site was previously developed with a duplex and has been cleared of existing improvements. A new duplex is under construction. 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.
2. The subject property is not located within a specific plan area.
3. 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 lot is physically suitable for a duplex because it is relatively flat and rectangular. It was also previously developed with a duplex.
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 was previously developed with a duplex that is being replaced resulting in no increase of density.

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 the R-2 Zoning District, which is intended for and 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 duplex is consistent with the R-2 Zoning District, which allows up to two (2) residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

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

Fact in Support of Finding:

1. The 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 two (2)-unit residential condominium purposes. A new duplex is under construction. The new duplex conforms to all applicable development standards, including floor area limit, setbacks, height, and off-street parking. The proposed subdivision and improvements are consistent with the density of the R-2 Coastal Zoning District.
2. 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.
3. The Tentative Parcel Map is for a property within a developed neighborhood that is over 1,000 feet from the mean high-water line and is not near any natural landforms or environmentally sensitive areas.

Finding:

*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 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project the project is a tentative parcel map for two (2)-unit condominium purposes. 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.
2. Approval of the parcel map will not affect public recreation, access or views.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2020-018 Coastal Development Permit No. CD2020-149, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. The approval of Parcel Map No. NP2020-018 and of Coastal Development Permit No. CD2020-149 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.
4. .

**PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF FEBRUARY 2021.**



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Jaime Murillo  
Zoning Administrator



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

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Prior to building permit final and 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 description change 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 of the NBMC.
6. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of 304 Goldenrod, LLC Residential Condominiums including, but not limited to, Tentative Parcel Map No. NP2020-018 and Coastal Development Permit No. CD2020-149 (PA2020-352). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**Public Works Department**

7. A Parcel Map shall be recorded. The map shall be prepared on the California coordinate system (North American Datum of 1983, NAD83). Prior to recordation of the map, the surveyor/engineer preparing the map shall submit to the County Surveyor and the City of Newport Beach, a digital-graphic file of said map in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivisions

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.**

8. 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 (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.
9. All improvements shall be constructed as required by Ordinance and the Public Works Department.
10. All damaged sidewalk panels, curb, gutter, and street 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.
11. All existing overhead utilities shall be undergrounded.
12. No above ground improvements will be permitted within the 5-foot rear alley setback. Smooth transitions between neighboring properties shall be provided.
13. *All non-standard encroachments within the Goldenrod Avenue public right of way, including but not limited to, carriage walks, railings, and walls shall be removed.*
14. *The two existing street trees along the Goldenrod Avenue frontage shall be protected in place.*
15. *The Applicant shall install new sod or low groundcovers of the type approved by the City throughout the Goldenrod Avenue parkway fronting the development site.*
16. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
17. An encroachment permit shall be required for all work activities within the public right-of-way.
18. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
19. In case of damage done to public improvements surrounding the development site by private construction, additional reconstruction within the public right-of-way shall be required at the discretion of the Public Works Inspector.

### **Building Division**

20. Independent fire risers shall be required for each unit.

## RESOLUTION NO. ZA2021-010

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-131 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED 2-CAR GARAGE LOCATED AT 3807 SEASHORE DRIVE (PA2020-262)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects, with respect to property located at 3807 Seashore Drive, requesting approval of a coastal development permit.
2. The lot at 3807 Seashore Drive is legally described as Lot 4 of Block 38 of the Map of Third Addition to Newport Beach Tract.
3. The applicant requests a coastal development permit to demolish an existing single-family residence and construct a new 2,400 square foot single-family residence and attached 374 square foot garage in the VE Special Flood Hazard Area ("VE Flood Zone"). The proposed structure includes a raised foundation supported by caissons to meet the minimum finished floor requirements of the VE Flood Zone. The project includes hardscape, walls, landscaping, and drainage facilities.
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-E (Two Unit Residential) - (30.0 - 39.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
6. A public hearing was held online on February 25, 2021, 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 categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the construction of up to six (6) dwelling units in urbanized areas. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 2,400-square-foot single-family residence and attached 374 square-foot two (2)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 2,774 square feet and the proposed floor area is approximately 2,773.5 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 5 feet along the front property line abutting the beach, 4 feet along each side property line and 0 feet along the rear property line abutting Seashore Drive.
  - c. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
  - d. The highest guardrail is less than 24 feet from established grade (17.5 feet NAVD88) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements. Pursuant to Section 21.30.060 (B), the minimum required top of slab elevation for interior living areas of all new development within flood hazard areas shall be as established by the Flood Insurance Rate Maps recognized by the Building Division as part of flood safety requirements and maps adopted by the Council. The subject property is located in the VE Flood Zone and the minimum top of slab elevation is required to be a minimum of 17.5 feet NAVD88. Pursuant to 21.30.060 (B), the height of a principal structure shall be measured from the top of slab elevation. Therefore, the

established grade for the subject property is 17.5 feet NAVD88, and the maximum elevation allowed for a guardrail or flat roof is 41.5 feet NAVD88 and 46.5 feet NAVD88 for a sloping roof (minimum 3:12 pitch).

2. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated June 13, 2020 for the project. The report concludes that the project will be reasonably safe from wave overtopping and future sea level rise. The estimates assume an approximate 2.95-foot increase from sea level rise over the next 75 years (i.e. the life of the structure). The maximum water elevation is 7.7 NAVD88, therefore the future 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 finished floor elevation of the first floor of the proposed structure is approximately 17.5 feet NAVD88, which complies with the minimum 9.0-foot (NAVD88) elevation standard for new structures and exceeds the minimum requirements for future sea level rise (10.65 feet NAVD88).
3. The Coastal Hazards Report and Sea Level Rise Analysis also evaluates the potential for shoreline erosion and wave attack at the site. The report concludes that future wave runup will likely not reach the site under severely eroded beach conditions and extreme storms. The report states that this section of Newport Beach does experience short term erosion, but that the erosion is temporary and largely the result of an energetic winter. The report concludes that the sandy beach in front of the property is typically over 375 feet wide and has provided adequate protection for the property over the last several decades. The proposed development will not need shoreline protection over the life of the development.
4. The project would be reviewed for compliance with building code and FEMA standards prior to issuance of a building permit. The VE Flood Zone mapped at the site requires a base flood elevation (BFE) of +15 feet NAVD88, and the City requires an additional one (1) foot of freeboard to the bottom of the lowest horizontal structural member. Therefore, the project has been designed with a raised finished floor of approximately 17.5 feet NAVD88. The residential structure is also required to have a pile foundation. Therefore, although unlikely to occur at the project site over the life of the development, the structure has been designed to withstand potential wave overtopping in compliance with the FEMA VE Flood Zone standards.
5. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) (Protective Structures), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) (Development Standards). Both requirements are included as conditions of approval that will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.

6. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
7. The property is located on a wide beach, approximately 200 feet from the mean high tide line. 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.
8. Pursuant to Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared for the project by Forkert Engineering & Surveying Inc. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
9. Proposed landscaping complies with Implementation Plan Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
10. The project site is not located adjacent to a Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is on Newport Island and is not visible from the site. The site is located adjacent to Seashore Drive, which serves as lateral access and provides intermittent views of the beach where it intersects with street ends. As currently developed, the existing property and other residences along Seashore Drive impede views of the ocean from Seashore Drive and provide very limited opportunities to see the beach through side yard setbacks. The subject lot is located in the middle of the block, and existing views of the beach are available along the 38<sup>th</sup> and 39<sup>th</sup> Street ends. The proposed project would not block any existing views through the project site. Additionally, the proposed single-family residence complies with all applicable Local Coastal Program (LCP) development standards and maintains a building footprint consistent with the existing neighborhood pattern of development.
11. The project site is located in the viewshed of the public beach, which is not a designated viewpoint but provides scenic views of the ocean. The project will replace an existing single-family home with a new single-family home that complies with all applicable development standards. Although not required for the subject lot, the project also complies with the City's Residential Design Standards that restrict the size and location of third

floors. The project proposes a third floor of 39 square feet to accommodate a powder room, which is set back approximately 29 feet from the rear setback and approximately 37 feet from the front setback. For comparison, the City's Design Standards would allow up to 277 square feet on the third floor with a minimum setback of 15 feet from the front and rear setback lines. The reduced size and greater setbacks would minimize the appearance of bulk and scale from the adjacent beach, neighboring properties, and street. The project would be constructed with a finished floor that is approximately 5 feet above the existing beach elevation and the overall height of the structure will appear higher than neighboring properties. However, as the other 165 properties along the beach from 24<sup>th</sup> Street to 48<sup>th</sup> street redevelop, they will also be required to comply with the VE Flood Zone construction standards that necessitate raised foundations on caissons. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

12. The rear of the proposed residence, which is visible from Seashore Drive, includes substantial architectural treatment and visual interest, in-keeping with the design guidelines of the NBMC, specifically Section 21.30.100 (Scenic and Visual Quality Protection). The existing structure does not include architectural treatment, with a solid building face, one (1) window, and a garage door. There are no window treatments or architectural features, nor does it include any "see through" elements that reduce scale. There are also visible signs of aging since original construction in the 1950s. Although the proposed structure will appear taller as viewed from the street, the upper levels have been setback and include areas of visual interest. The design includes modulation of volume throughout the structure, and increased front and rear setbacks beyond what is required by code. The project design also includes low walls and "see through" elements such as glass balcony railings that prevent the appearance of the site being walled off from the beach and streets. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to existing public views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on standard R-2 lot with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is located in the middle of the block, and designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

2. Vertical access to the beach is available at the 38<sup>th</sup> and 39<sup>th</sup> Street ends. Lateral access is available on the beach in front of the property and along Seashore Drive to the rear of the property. The project does not involve the removal or creation of additional street parking spaces. The project design does not include any unique features in the rear of the property that could obstruct access or create hazards for the motorists or pedestrians on Seashore Drive. The first-floor garage is setback approximately 9 feet from the property line, which would allow the residents additional visibility to the bike path and street as they enter and exit the garage.
3. Any new encroachments within the Ocean Front Encroachment area would require review and approval by Public Works Department and the California Coastal Commission. No new encroachments on the beach are proposed as part of this project.

#### 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. CD2020-131, 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 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2021.**



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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 to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
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 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.
5. 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.
6. 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.
7. 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.
8. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the

approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.

9. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
10. 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.
11. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
12. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
13. This Coastal Development Permit does not authorize any development seaward of the private property.
14. 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 (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
15. 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.

16. 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.
17. 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.
18. 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.
19. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
20. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
21. 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.
22. 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.
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. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
25. This Coastal Development Permit No. CD2020-131 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.

26. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Soliman Residence including, but not limited to, Coastal Development Permit No. CD2020-131 (PA2020-262). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

## RESOLUTION NO. ZA2021-011

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-146 AND ZONING CLEARANCE NO. ZC2020-022 TO DEMOLISH A NONCONFORMING DUPLEX AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE AND ATTACHED ACCESSORY DWELLING UNIT (ADU) ON THE FIRST FLOOR LOCATED AT 5201 SEASHORE DRIVE, UNITS A AND B (PA2020-320)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Lawrence Witzer, Trustee, The Goalpost Trust (“Applicant”) with respect to property located at 5201 Seashore Drive, Units A and B, requesting approval of a coastal development permit and zoning clearance.
2. The parcel at 5201 Seashore Drive is legally described as Lot 1, Block 52, in the Ocean Front Tract.
3. The Applicant proposes the demolition of a nonconforming duplex and the construction of a new single-family residence and attached accessory dwelling unit (ADU). The project would result in a 3-story, 1,411-square-foot, single family residence with a 589-square-foot ADU on the first floor. Parking is provided as an attached 454-square-foot two (2)-car garage. The project will close an existing curb cutout on 52<sup>nd</sup> Street to create one (1) new on-street public parking space, improving public access. 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 RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-D (Single Unit Residential Detached) (20.0 - 29.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zone District.
6. A public hearing was held online on February 25, 2021, 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, Division 6, 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 (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of a nonconforming duplex and the construction of a new 1,411-square-foot, single family residence with a 589-square-foot ADU on the first floor. Parking is provided as an attached 454-square-foot two (2)-car garage. The project is within the parameters noted for the Class 3 exemption and will not have a significant effect on the environment.
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-1. The property is currently developed with a duplex that is nonconforming due to density.
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 2,528-square-feet. The proposed single-family residence is 1,411-square-feet, the ADU is 589-square-feet, and the new garage is 454-square-feet. The total proposed floor area of all enclosed areas is 2,454 square feet.
  - b. The development will maintain approximately 193-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 5 feet along the beach, 0 feet off Seashore Drive, and 3 feet along each side property lines. There are no additional setback requirements for the proposed ADU.
  - d. The highest guardrail is less than 24 feet from established grade (13.11 feet based on the North American Vertical Datum of 1988 [NAVD88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
  - 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. 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 (1)-half mile of a public transit. NBMC Subsection 21.48.200(C)(9)(c)(ii) – (Accessory Dwelling Units) 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 the southwest corner of the West Balboa Boulevard and 41st Street intersection. This bus stop is 0.5-miles walking distance from the project site. The OCTA number 47 bus serves this stop and is identified in the OCTA system map (available as Attachment ZA 3) as a route offering 15-minutes or less weekday rush hour frequency. Recent California state law from 2020 now defines public transit in a more inclusive way. 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 parking waiver standards. 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.
3. The project includes a new attached ADU to the proposed single-unit dwelling and complies with all conditions and applicable development standards of NBMC Section 21.48.200 (Accessory Dwelling Units). The proposed ADU has the following characteristics:
- a. Measures 580 square feet in area and located on the first floor;
  - b. Contains one bedroom and bathroom, a kitchen, and living area; and
  - c. Matches the principal dwelling with respect to architectural style, roof pitch, color, and materials.
4. 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 (Accessory Dwelling Units) 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).

5. The property currently consists of one (1) legal lot developed with a nonconforming residential duplex. The neighborhood is predominantly developed with two (2)-story, single-family residences. Some structures in the vicinity have three (3) stories, including properties at 5107, 5205, and 5207 Seashore Drive. R-1 allows development of third stories subject to certain development standards. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development consistent with applicable development standards.
6. A Coastal Hazards Report and Sea Level Rise Analysis was prepared for the project by GeoSoils, Inc., dated October 1, 2020. The report states that the current maximum bay water elevation is 7.7 feet based on the North American Vertical Datum of 1988 (NAVD88). The report analyzes future sea level rise scenarios assuming a 3.2-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 10.9 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.
7. The finish floor elevation of the first floor of the proposed living area is 13.11 feet (NAVD88), which exceeds the minimum 9.0-foot (NAVD88) elevation standard for new structures and exceeds the projected "likely" sea level rise scenario of 10.9 feet (NAVD88) for the year 2100, exceeding the 75-year assumed economic life of the structure.
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 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 a building permit. 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.



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; however, the project will not affect the public's ability to gain access to use and/or view the coast and nearby recreational facilities. The existing residential development neither provides nor inhibits public coastal access. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing nonconforming duplex with a new single-family residence and attached ADU. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
2. Under IP Section 21.30A.030 (Protection and Provision of Public Access Required), the project will close an existing curb cutout on 52<sup>nd</sup> Street to create one (1) new on-street public parking space, improving public access.
3. The project is located adjacent to a public beach with an average width of more than 200 feet, is designed and sited so as not to block or impede existing public access opportunities and occurs within the confines of private property. An existing 15-foot deep encroachment area on the beach frontage is authorized by an existing encroachment permit and is to be proposed remain unchanged. Existing coastal access conditions will not be affected by the project. Coastal access is currently provided and will continue to be provided by street ends throughout the neighborhood with access to the beach and water, including the 52<sup>nd</sup> Street end, which is located east of the site.
4. The project site is not located adjacent to a coastal view road or coastal viewpoint identified by Local Coastal Program maps. The project site may be located within the viewshed of distant public viewing areas; however, the project will replace an existing duplex with a new single-family residence and ADU that complies with all applicable Local Coastal Program (LCP) development standards. It will also maintain a building envelope consistent with the existing and anticipated neighborhood pattern of development. Reorientation of the garage from 52<sup>nd</sup> Street to the alley will result in increased articulation of the new structure, as can be seen in the viewshed of the street-end. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.
5. The existing 15-foot patio encroachment on the beachfront is allowed pursuant to Title 21 Appendix C (Oceanfront Encroachment Policy Guidelines) and the project is conditioned to maintain an encroachment permit from Public Works. The existing improvements within the encroachment area are limited to an on-grade patio enclosed with 30-inch walls. The patio does not affect public views or access to the public beach.

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. 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.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2020-146 and Zoning Clearance No. ZC2020-022, 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 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2021.**



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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, 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 permit, 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. *Prior to building permit final, the project must close the existing curb cutout on 52<sup>nd</sup> Street project frontage to create a new on-street metered parking stall.*
6. *Trees or vegetation along the 52<sup>nd</sup> Street frontage must be maintained as not to grow into the public viewshed and must not in any way degrade the visual quality or block views as seen from the 52<sup>nd</sup> street end.*
7. *Garage access must be taken from Seashore Drive.*
8. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.

9. Reconstruct all damaged curb, gutter and sidewalk along the 52<sup>nd</sup> Street and Seashore Drive frontages per City Standard.
10. A new ocean front encroachment permit must be obtained for the proposed encroachment within the ocean front area. Proposed encroachments shall be consistent with the Local Coastal Program Implementation Plan, Appendix C.
11. An encroachment permit is required for all work activities within the public right-of-way.
12. All improvements must comply with the City's sight distance requirement. See City Standard 110-L.
13. 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.
14. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
15. This Coastal Development Permit does not authorize any development seaward of the private property.
16. 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 (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
17. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
18. 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.
19. 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.
  20. 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.
  21. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
  22. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
  23. 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.
  24. 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.
  25. 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.
  26. 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.
  27. 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.
  28. 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.

29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. This Coastal Development Permit No. CD2020-146 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.
35. 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 Goalpost Trust Residence and ADU including, but not limited to, Coastal Development Permit No. CD2020-146 and Zoning Clearance No. ZC2020-022 (PA2020-320). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

## RESOLUTION NO. ZA2021-012

**A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-153 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW 6,479-SQUARE-FOOT, TWO (2)-STORY, SINGLE-FAMILY RESIDENCE WITH AN ATTACHED 925-SQUARE-FOOT, THREE (3)-CAR GARAGE. THE PROJECT INCLUDES LANDSCAPE, HARDSCAPE, AND SUBSURFACE DRAINAGE FACILITIES ALL WITHIN THE CONFINES OF THE PRIVATE PROPERTY. THE DESIGN COMPLIES WITH ALL APPLICABLE DEVELOPMENT STANDARDS AND NO DEVIATIONS ARE REQUESTED AT 941 VIA LIDO SOUD (PA2020-346)**

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

### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Andrew Gabriel (Property Owner), with respect to property located at 941 Via Lido Soud, requesting approval of a coastal development permit (CD2020-153). The lot at 941 Via Lido Soud is legally described as Lot 323 of Tract 907.
2. The applicant proposes to demolish an existing single-family residence and the construction of a new 6,479-square-foot, two (2)-story, single-family residence with an attached 925-square-foot, three (3)-car garage. The project includes landscape, hardscape, and subsurface drainage facilities all within the confines of the private property. The design complies with all applicable development standards and no deviations are requested.
3. The subject property is designated RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single-Unit Residential Detached - (10.0 - 19.9 DU/AC) and the property is located within the R-1 (Single-Unit Residential) Coastal Zone District.
5. A public hearing was held online on February 25, 2021, 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.

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## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one (1) single-family residence and the construction of one new 6,479-square-foot, single-family residence and attached 925-square-foot, three (3)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015 (Coastal Development Permits, Findings and Decision) of the Newport Beach Municipal Code (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 proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 8,062 square feet and the proposed floor area is 6,479 square feet.
  - b. The proposed development will provide the minimum required setbacks, which are 4 feet along the front property line abutting Via Lido Soud, 4 feet along each side property line, and 10 feet along the front property line abutting the waterway.
  - c. The highest ridge of the sloping roof is approximately 24 feet from established grade, which complies with the maximum height limitation of 29 feet for a sloping roof.



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- d. The project includes enclosed garage parking for three (3) vehicles, in compliance with the minimum parking requirement for single-family residences with more than 4,000 square feet of habitable floor area.
  2. The neighborhood is predominantly developed with two (2)-story, single-family residences. The proposed design, bulk, and scale of the development will be consistent with the existing neighborhood pattern of development and expected future development.
  3. The existing development includes a private seawall/bulkhead along the waterway. A Bulkhead Conditions Report prepared by William Simpson & Associates, Inc., dated December 25, 2020, concludes that the cast-in-place wall is in generally good condition. In order to protect the proposed new development, the report states that the existing seawall/bulkhead was reinforced and repaired in the year of 2018 and the top of bulkhead is constructed to 12.50 feet (NAVD88). Therefore, it is not anticipated that the wall will need further repair or replacement in the next 75 years.
  4. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) – (Natural Landform and Shoreline Protection), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) – (Waterfront - Development Standards). Both requirements are included as conditions of approval that will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.
  5. A project-specific Coastal Hazards Analysis Report was prepared by William Simpson & Associates, Inc., dated December 25, 2020. The maximum bay water elevation is 7.7 feet NAVD 88 (North American Vertical Datum of 1988 (NAVD 88)). 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). Therefore, the sea level is estimated to reach approximately 10.65 feet (NAVD 88) - (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 existing bulkhead was reinforced and capped up to 12.5 feet in 2018 to provide adequate flood protection as anticipated for the likely range of sea level rise for the 75-year life of the structure. The report concludes that flooding, wave run up and erosion will not significantly impact this property over the life of the proposed development, since the existing seawall/bulkhead has been reinforced and repaired in the year of 2018. The need for a new shoreline protective device is not anticipated over the economic life of the proposed development to protect it from flooding, wave runup or erosion.

6. The finished floor elevation of the proposed single-family residence is 13.25 feet (NAVD 88), which complies with the minimum 9.0-foot (NAVD 88) elevation standard. The Coastal Hazards Report concludes that the bay water elevation (currently 7.7 feet NAVD 88) will not exceed the finished floor of the single-family residence at 13.25 feet (NAVD 88) for the anticipated 75-year life of the structure.
7. The property is located in an area known for the potential of seismic activity and liquefaction. A project-specific Geotechnical Investigation prepared by GeoSoils, Inc on September 26, 2017, provides recommendations relative to grading, drainage and foundation design. 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.
8. A Construction Pollution Prevention Plan (CPPP) prepared by Toal Engineering, dated November 16, 2020, provides recommendations for temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation, and to minimize pollution of runoff derived by construction chemicals and materials. Construction plans and activities will be required to adhere to the CPPP.
9. Pursuant to NBMC Section 21.35.050 (Water Quality and Hydrology Plan), because of the project site's proximity to coastal waters, a preliminary Water Quality and Hydrology Plan (WQHP) was prepared by Toal Engineering, dated November 11, 2020. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of a low-impact development (LID) approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs. Construction plans will be reviewed for compliance with the approved WQHP prior to building permit issuance.
10. The project design addresses water quality with a construction erosion control plan and a post construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site is directed to the City's storm drain system.
11. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant, and prohibits invasive, species. Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
12. The property is not located near designated public viewpoints or coastal view roads and will not impact public coastal views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline; however, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. Vertical access to the bay and beach is available adjacent to the site at a City owned parcel along Via Lido Nord. Lateral access is available on the beach to the west and where Via Koron ends to the east where there is a small access point. The project does not include any features that would obstruct access along these routes.
3. There are no designated public viewpoints or Coastal View Roads near the project site, per the Coastal Land Use Plan. The nearest coastal viewpoint is Kings Road Park, which is about 3,970 feet away from the project site. The nearest coastal view corridor is West Coast Highway, which is about 2,515 feet away from the project site. Due to the distance of the proposed development from public view points and the project's compliance with all applicable development standards, including height and setbacks, the project will not impact coastal views.

## 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. CD2020-153 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 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2021.**



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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 the issuance of a building permit, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices 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 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
5. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, wetland or their buffers.
6. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Pollution Prevention Plan (CPPP).
7. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in

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confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.

8. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sides, nor stored in contact with the soil, and located as far away as possible from drain inlets and any waterways.
9. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
10. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
11. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
12. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this coastal development permit.
13. This coastal development permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
14. Prior to issuance of the building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
15. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
16. Prior to the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
17. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.

18. Coastal Development Permit No. CD2020-153 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
  
19. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Gabriel Residence including, but not limited to, Coastal Development Permit No. CD2020-153 (PA2020-346). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

## RESOLUTION NO. ZA2021-013

**A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING MINOR USE PERMIT NO. UP2020-118 TO ALLOW 4,884 SQUARE FEET OF MEDICAL OFFICE USE TO RELOCATE ON THE FIRST FLOOR WITHIN AN EXISTING THREE FLOOR, 20,643-SQUARE-FOOT OFFICE BUILDING AT 20341 BIRCH STREET, SUITE 110. THE REMAINING 15,759 SQUARE FEET SHALL REMAIN DEDICATED TO GENERAL OFFICE TENANTS. PARKING IS SHARED BETWEEN THREE BUILDINGS LOCATED AT 20341 BIRCH STREET, 20322 ACACIA STREET, AND 20342 ACACIA STREET, CONSISTENT WITH THE ORIGINAL SITE DESIGN. (PA2020-338)**

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

### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Knitter Partners International (Applicant), with respect to property located at 20341 Birch Street, and legally described as Parcel 3 of Parcel Map 2003-203, as recorded in Book 340, Pages 6 and 7 of Parcel Maps, requesting approval of a Minor Use Permit.
2. The applicant proposes a Minor Use Permit to allow the utilization, of a portion of an approved multi-use building, to accommodate 4,884 square feet of medical office use on the first floor within the existing three (3) floor, 20,643-square-foot building. The remaining 15,759 square feet shall remain dedicated to the current office uses. Parking will be shared between all three buildings on the site and consistent with Zoning Code requirements. Parking is shared between three buildings located at 20341 Birch Street, 20322 Acacia Street, and 20342 Acacia Street, consistent with the original site design.
3. The subject property is located within the Santa Ana Heights Specific Plan, Business Park (SP-7, BP) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
4. The subject property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held online on February 25, 2021, 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 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 project allows a minor change in use from general office use to medical office use within an existing multi-use office building and involves issuance of building permits for interior tenant improvements.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020F (Required Findings) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

### Finding:

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

### Facts in Support of Finding:

1. The office-condominium complex has a General Plan land use designation of General Office Commercial (CO-G), which is intended to provide for administrative, professional, and medical offices with limited accessory retail and service use. The change of use from general office to medical office use is consistent with this designation.
2. The site is located in the Santa Ana Heights Specific Plan zoning district within the Business Park sub-area (SP-7, BP). Medical office uses are allowed within this zoning district with approval of a minor use permit.

### 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.*

### Fact in Support of Finding:

1. Medical office uses are allowed within the Business Park area of the Santa Ana Heights Special Plan District (SP-7, BP) with approval of a minor use permit. The Regenerative Institute of Newport Beach is a medical use that offers advanced pain-relieving treatments to their patients.

### 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. Medical office uses are allowed in this area with approval of a minor use permit. Development on the subject site and surrounding properties consist of office buildings developed for various office uses.
2. The property is a multi-use office building consisting of three floors. Each floor consists of approximately 6,881 square feet of floor area (total 20,643 square feet). Regenerative Institute of Newport Beach currently occupies Suite 230 of the second floor, which consists of 2,637 square feet and plans to move to Suite 110 of the first floor, which consists of 4,884 square feet. The remaining suites are currently general office tenants. Parking is provided within a shared surface level parking lot that serves three buildings (20341 Birch Street, 20322 Acacia Street, and 20342 Acacia Street) There are currently 172 parking spaces within the shared surface lot.
3. Building A consists of 11,003 square feet, Building B consists of 11,003 square feet, and Building C consists of 20,643 square feet, which totals 42,649 square feet. Pursuant to Table 3-10: Off-Street Parking Requirements of the Zoning Code, the 42,649 square feet of floor area requires 171 parking stalls to be shared between the three buildings. There are currently 172 parking spaces existing on the site and up to 20 percent of the office buildings can be utilized for medical office uses. The proposed medical office use falls within this 20 percent limitation of the 42,649 square feet total which equates to 8,530 square feet of allowed medical use. There are no other medical office uses within the complex.

Finding:

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

Facts in Support of Finding:

1. The subject site is located between Birch and Acacia Streets in the Business Park area of the Santa Ana Heights Specific Plan District. The surrounding area consists of properties developed for various office uses.
2. The property is a multi-use office building consisting of three floors. Each floor consists of approximately 6,881 square feet of floor area (total 20,643 square feet). Regenerative Institute of Newport Beach currently occupies Suite 230 of the second floor, which consists of 2,637 square feet and plans to move to Suite 110 of the first floor, which consists of 4,884 square feet. The remaining suites in the building are currently general office uses. Parking is provided within a shared surface level parking lot that serves three buildings (20341 Birch Street, 20322 Acacia Street, and 20342 Acacia Street) There are currently 172 parking spaces within the shared surface lot.

3. Tenant improvements to the existing general office space will require a building permit. All Fire and Building Code regulations will be verified during the plan check process.
4. There is adequate access on the site for fire and medical emergency vehicles from Birch Street and Acacia Street.

Finding:

*E. The Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The proposed medical office use fits well with the existing medical and general office uses on the site and in the surrounding vicinity.
2. Adequate parking exists to accommodate the medical office use square footage.
3. Any tenant improvements for the proposed medical use will be minor in nature and will not impact the overall operation of the existing general office and medical office uses on the site.

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. UP2020-188, 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 after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 25TH DAY OF FEBRUARY, 2021.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The 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. The Zoning Administrator may add to or modify the conditions of this Use Permit approval; or they may revoke this permit 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.
5. Any expansion in area approved for medical office use shall require an amendment to this Use Permit or the processing of a new use permit.
6. 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.
7. The total number of parking spaces provided for all uses on site will be consistent with requirements of the Zoning Code. A minimum of 171 parking spaces shall be provided on-site.
8. Fair share fees to convert square footage from general office to medical office use shall be calculated at plan check and paid prior to building permit issuance.

**Building Division**

9. 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.
10. Prior to issuance of building permits for tenant improvements, the project plans shall identify whether Regenerative Institute of Newport Beach will be OSPHD 3 licensed.

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11. Prior to issuance of building permits for tenant improvements, the project plans shall specify type of service/procedure being provided that will not have non-ambulatory patient per response.

### **Fire Department**

12. Prior to issuance of building permits for tenant improvements, the applicant shall submit a deferred submittal and obtain approval for the fire sprinkler and fire alarm system.

### **Miscellaneous**

13. 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.
14. 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 Newport Beach Municipal Code.
15. 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 **Regenerative Institute of Newport Beach** including, but not limited to **UP2020-188 (PA2020-338)**. 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.