



**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 March 26, 2021.

**ZONING ADMINISTRATOR ACTIONS
MARCH 25, 2021**

Item 1: Bay Island No. 1, LLC Residence Coastal Development Permit No. CD2020-132 (PA2020-260)
Site Address: 1 Bay Island

Action: Approved by Resolution No. ZA2021-017	Council District	1
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APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

RESOLUTION NO. ZA2021-017

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-132 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE, INCLUDING AN ADJUSTMENT TO OFF-STREET PARKING REQUIREMENTS FOR THE PROPERTY LOCATED AT 1 BAY ISLAND (PA2020-260)

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, Inc. (Applicant), on behalf of Bay Island No. 1, LLC (Property Owner) with respect to property located 1 Bay Island, requesting approval of a coastal development permit (CD2020-132). The lot at 1 Bay Island is legally described as S-Township 6, Range 10, Section 34.
2. On November 24, 1997, the City Council approved Planned Residential Development (PRD) Use Permit No. 3618 to implement a PRD Overlay District, which modified the Multi-Family Residential (MFR) zoning and development regulations for Bay Island. The purpose of the PRD Use Permit is to ensure that future development maintains the single-family detached character of Bay Island.
3. The applicant proposes a coastal development permit to allow the demolition of an existing single-family residence and the construction of a new 3,975-square-foot single-family residence (Development) and adjust the off-street parking requirements with a parking management plan.
4. The subject property is designated Multiple Residential Detached (RM-D) by the General Plan Land Use Element and is located within the RM (Multiple Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RM-C (Multiple Unit Residential) - (10.0 - 19.9 DU/AC) and the property is located within the RM (Multiple Residential) Coastal Zone District.
6. A public hearing was held online on March 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, Division 6, 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 (1) new 3,975-square-foot, single-family residence.
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 open space.
 - a. The maximum cumulative floor area limitation for all residential development on Bay Island is ~143,916 square feet and the proposed cumulative floor area is ~130,095 square feet.
 - b. The proposed development complies with required setbacks, which are 20 feet along all exterior property lines.
 - c. The highest flat elements of the roof are no more than 28 feet from established grade and the highest ridge is no more than 33 from established grade, which complies with the maximum height in the RM Coastal Zoning District.

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- d. The minimum required common open space on Bay Island is 1,725 square feet and the proposed common open space is ~ 452,460 square feet.
 - e. The minimum required private open space for the development is 199 square feet and proposed private open space is 308 square feet.
 - f. The review authority can authorize off-site parking or adjustments to parking requirements with a coastal development permit pursuant to NBMC Section 21.40.100 (Off-Street Parking). As a part of the development, the applicant proposes an adjustment to off-street parking requirements and the provision of a parking management plan. The parking management plan includes the use of two off-site parking spaces in the existing 49- space parking structure owned in common by Bay Island residents located at 501 W. Bay Avenue. The project has been conditioned to maintain this design feature and parking management plan.
2. Bay Island is predominantly developed with two (2) and three (3)-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. 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.
 4. The development fronts the Newport Bay with a sandy beach separating the project site and the water. A project-specific Coastal Hazards Analysis Report was prepared by GeoSoils, Inc., dated September 23, 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 10.7 feet (NAVD 88) - (the likely range for sea level rise over the 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 9 feet in 2014 and can be increased in height in the future. 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 2014, and may be increased in height without further encroachment seaward. 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. A condition of

approval is included requiring waterproofing of principal structures up to a height of 10.7 feet (NAVD 88).

5. The finished floor elevation of the proposed single-family residence is 9.33 feet (NAVD 88), which complies with the minimum 9.0-foot (NAVD 88) elevation standard.
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 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 the CBC prior to building permit issuance.
7. Proposed landscaping complies with the Implementation Plan Section 21.30.075 (Landscaping.) A condition of approval is included that requires drought-tolerant, and prohibits invasive, species. Final landscape plans will be reviewed to verify invasive species are not planted.
8. The property is located adjacent to coastal waters. The project design addresses water quality with a construction erosion control plan and a post drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff onsite. Any water not retained on-site is directed to the City's storm drain system.
9. The project site is not located adjacent to a coastal view road, public viewpoint, or public accessway, as identified in the Coastal Land Use Plan. The project is located within the viewshed of public beaches at the nearby street ends on the Balboa Peninsula. The project site is also located within the viewshed of distant public viewing areas. However, the project will replace an existing single-family residence with a new single-family residence that complies with all applicable Local Coastal Program development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Further, the proposed project maintains a maximum height of 29 feet where the Local Coastal Program development standards allow a maximum height up to 33 feet. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline in the private community of Bay Island. NBMC 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. The project involves the demolition of a single-family residence and the construction of a new single-family residence. Therefore, there is no change in land use and the proposed increases in floor area, height and bulk will not result in any significant adverse impacts to public recreation, access or views or otherwise diminish the public's use of the ocean, harbor, bay, channels, estuaries, salt marshes, sloughs, beaches, coastal parks, trails, or coastal bluffs.

2. Vertical and lateral access to the bay front is available adjacent to the Bay Island community at the street ends along the Balboa Peninsula (approximately 150 feet from the subject property). Lateral access to the bay front is also available along the sandy beachfront of the abandoned Edgewater Avenue adjacent to the Bay Island Bridge, and the passive sitting area adjacent to the Bay Island Bridge.

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. CD2020-132 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 25TH DAY OF MARCH, 2021.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Project-Specific Conditions in Italics

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *Prior to issuance of a building permit, the applicant shall prepare a construction management plan to minimize impacts to adjacent residences on Island Avenue and Edgewater Avenue to be reviewed and approved by the Community Development Director.*
3. *A minimum of two parking spaces, including one covered, shall be maintained for the dwelling unit at the parking structure located at 501 West Bay Avenue (Lots 2, 3, 4, 5, 6 Block 3, East Newport Tract).*
4. *All principal structures shall be waterproofed to a minimum height of 10.7 feet NAVD 88.*
5. 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.
6. 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
7. 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.

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8. 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).
 9. 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.
 10. 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.
 11. 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.
 12. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
 13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
 14. 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.
 15. 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.
 16. 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.
 17. 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.
 18. 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.

19. 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.
20. Coastal Development Permit No. CD2020-132 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.
21. 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 Bay Island No. 1, LLC Residence including, but not limited to, Coastal Development Permit No. CD2020-132 (PA2020-260). 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.