



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: Seimone Jurjis, Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending July 16, 2021.

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### ZONING ADMINISTRATOR ACTIONS JULY 15, 2021

- Item 1: Atria Newport Beach Signage Comprehensive Sign Program No CS2020-007 and Modification Permit No. MD2020-009 (PA2020-270)  
Site Address: 393 Hospital Road and 4000 Hilaria Way  
Action: Approved by Resolution No. ZA2021-037 Council District 2
- Item 2: Voss Residential Condominiums Coastal Development Permit No. CD2021-019 and Tentative Parcel Map No. NP2021-004 (PA2021-094)  
Site Address: 3907 and 3909 Marcus Avenue  
Action: Approved by Resolution No. ZA2021-038 Council District 1
- Item 3: Divided Sky SMKJ LLC Residence Coastal Development Permit No. CD2021-010 (PA2021-055)  
Site Address: 1 Collins Island  
Action: Approved by Resolution No. ZA2021-039 Council District 5
- Item 4: Irwin Residence Coastal Development Permit No. CD2021-008 (PA2021-036)  
Site Address: 13 Beacon Bay  
Action: Approved by Resolution No. ZA2021-040 Council District 5

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

- Item 1: Chihuahua Cerveza Temporary Trailer Limited Term Permit No. XP2021-003 (PA2021-133)  
Site Address: 3107 Newport Boulevard  
Action: Approved Council District 1

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. ZA2021-037

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COMPREHENSIVE SIGN PROGRAM NO. CS2020-007 AND MODIFICATION PERMIT NO. MD2020-009 TO INCREASE THE MAXIMUM SIGN AREA AT AN EXISTING SENIOR LIVING FACILITY LOCATED AT 393 HOSPITAL ROAD AND 4000 HILARIA WAY (PA2020-270)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by GNU Group (Applicant) with respect to property located at 393 Hospital Road and 4000 Hilaria Way and legally described as a portion of Lot 169 in Block 2 of Irvine's Subdivision and Lots 6 and 7 of Tract No. 5854, respectively, requesting approval of a comprehensive sign program and modification permit.
2. The Applicant proposes a new comprehensive sign program to establish standards for all project signage at an existing senior living facility. Pursuant to Newport Beach Municipal Code (NBMC) Section 20.42.120 (Comprehensive Sign Program), a comprehensive sign program can allow for an increase in sign height by twenty percent (20%) above the maximum and an increase in sign area by thirty percent (30%) above the maximum. Other allowed deviations include total number, location, and/or height or width of signs. In this case, the Applicant is seeking the following deviations:
  - a) The installation of wall signs above the bottom of the lowest second story window;
  - b) Letters with a height of greater than thirty-six (36) inches;
  - c) The installation of up to three (3) freestanding monument signs on one (1) site, where the NBMC allows a maximum of one (1) freestanding sign per site, located only on the primary frontage; and
  - d) Monument signs with widths that exceed proportional dimension standards.
3. A modification permit is also required for this Sign Program, as the Applicant is requesting approval of two (2) sign types that exceed the maximum sign area allowed in the Private Institutions (PI) Zoning District by more than 30 percent. These signs are:
  - a) Sign Type 4 (Skyline Marquee). A wall sign with a maximum sign area of 77 square feet located on the primary frontage facing Newport Boulevard; and
  - b) Sign Type 5 (Main Entry Branding). A wall sign with a maximum sign area of 77 square feet located on a secondary frontage facing Patrice Road and Hilaria Way.

4. The subject property is designated Private Institutions (PI) by the General Plan Land Use Element and is located within the Private Institutions (PI) Zoning District.
5. The subject property is not located within the coastal zone; therefore, a coastal development permit is not required.
6. A public hearing was held online on July 15, 2021, consistent with Governor's Executive Order N-08-21 and N-29-20 related to COVID-19. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15311 under Class 11 (Accessory Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 11 includes construction or replacement of minor structures such as on-premise signs accessory to (or appurtenant to) existing commercial facilities. The proposed sign is incidental and accessory to the automotive dealer use of the property and will not intensify or alter the use.
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 STANDARDS AND FINDINGS.

### **Comprehensive Sign Program**

In accordance with NBMC Section 20.42.120 (Comprehensive Sign Program), the following standards and facts in support of such standards are set forth:

#### **Standard:**

- A. *The proposed sign program shall comply with the purpose and intent of this Chapter [Chapter 20.42], any adopted sign design guidelines and the overall purpose and intent of this Section [Section 20.42.120].*

Facts in Support of Standard:

1. The approximately 3.7-acre site is developed with a multi-story, irregularly shaped, senior living facility. The building reaches a height of 37 feet in some places and is set back a minimum of 20 feet from Newport Boulevard (State Route 55) and up to 60 feet from Newport Boulevard in some places. The site has a sharp downward slope on the eastern edge along Newport Blvd with a gradual downward cross slope from north to south resulting in the building sitting high above the road surface of Newport Boulevard. The project site can be accessed from driveways on Hospital Road, Patrice Road, and Hilaria Way. The physical characteristics of the project site, the building design, and the multiple access points require the proposed additional signage, placement and increase in letter height to achieve adequate project identification.
2. The Program complies with the purpose and intent of Chapter 20.42 (Sign Standards) because it provides the project site adequate identification while guarding against the excessive proliferation of signs. The sign program preserves and enhances community appearance by regulating the type, size, location, quantity, and illumination of all signs.

Standard:

- B. The proposed signs shall enhance the overall development, be in harmony with, and relate visually to other signs included in the Comprehensive Sign Program, to the structures and/or developments they identify, and to surrounding development when applicable.*

Facts in Support of Standard:

1. The architectural style of the building is modern and features stucco in various beige tones, weathered wood accents, and anodized bronze trim elements for windows and doors. The proposed signage is intended to complement the architectural vision of the exterior by utilizing matching finishes and similar palettes. Wall signs are placed on architectural features that encourage the placement of signage. With those design considerations, the signs relate visually to each other and the building.
2. The project site is abutted to the south and west by medical uses including Hoag Hospital and Newport Lido Medical Center. These large facilities feature prominent identification signage with which this program is consistent. To the north of the project site, along Patrice Road and Hilaria Way, is multi-unit residential. A halo-lit wall sign has been proposed along this frontage. Condition of Approval number 9 requires the illumination to be turned off between the hours of 10 p.m. and 6 a.m. as to prevent any negative impacts or incompatibilities between the uses.
3. Freestanding signs are proposed along Newport Boulevard, Hospital Road, and Patrice Road. The freestanding signs are externally illuminated using ground mounted lamps and only light the sign face. Both the freestanding sign along Newport Boulevard and the sign along Hospital Road will signal to motorists where to turn to reach the site. The freestanding sign along Patrice Road is located at a drop-off island at the end of a cul-de-sac and will signal to motorists that they have arrived at the facility. The freestanding

signs will be integrated with the architecture of the building through the use of colors and finishes consistent with the building palette and will be integrated with the project topography through the thoughtful installation of landscaping at the base of the sign.

Standard:

*C. The sign program shall address all signs, including permanent, temporary, and exempt signs.*

Fact in Support of Standard:

The Sign Program includes all project signage. Any future temporary and exempt signs not specifically addressed in the program shall be regulated by the provisions of Chapter 20.42 (Sign Standards).

Standard:

*D. The sign program shall accommodate future revisions that may be required because of changes in use or tenants.*

Fact in Support of Standard:

The Sign Program has been developed to be effective for a senior living facility. A change in owner or operator should not require a revision to the sign program. Any change to the facility name should be easily accommodated as the sign program has been designed for adequate site identification. If changes are required, the Community Development Director may approve minor revisions to the sign program if the intent of the original approval is not affected.

Standard:

*E. The program shall comply with the standards of this Chapter, except that deviation are allowed with regard to sign area, total number, location, and/or height of signs to the extent that the Comprehensive Sign Program will enhance the overall development and will more fully accomplish the purposes and intent of this Chapter.*

Facts in Support of Standard:

1. Allowing the installation of wall signs above the second-story windows is appropriate given the multi-story design of the building and overall building height. Placing an identification sign at the top of the building façade is a common practice whereas placing the sign at the first story height would appear awkward and out of place.
2. Allowing the increase in letter height is appropriate given the size of the building, the setback of the building, and the sign design.

3. Allowing the additional freestanding monument signs is appropriate given the physical characteristics of the project site. There are multiple approaches to the project site, and it is reasonable to request site identification at each entry point.
4. Allowing Sign Type 1 to be wider than the standards listed in 20.42.080 (Standards for Specific Types of Permanent Signs) is appropriate given the specific location of the sign along Newport Boulevard. The high speed of traffic means that a motorist will quickly pass a narrower sign. The wider size allows vehicles to identify the project site earlier and safely move into the right-hand turn lane for Hospital Road.
5. Allowing Sign Type 3 to be wider than the standards listed in 20.42.080 is appropriate given the specific location of the sign. Sign Type 3 is located within the drop-off island at Patrice Road. The sign is intended to create a formal announcement of the front door. The wider sign allows for a lower sign height, which is desirable in this location due to pedestrians passing through this area. Sign Type 3 has a maximum height of four (4) feet which is lower than the height of most adult pedestrians.
6. All other components of the sign program are consistent with the NBMC.

Standard:

*F. The Approval of a Comprehensive Sign Program shall not authorize the use of signs prohibited by this Chapter [Chapter 20.42].*

Fact in Support of Standard:

The Comprehensive Sign Program does not authorize the use of prohibited signs.

Standard:

*G. Review and approval of a Comprehensive Sign Program shall not consider the signs' proposed message content.*

Fact in Support of Standard:

The content of the signs was not considered, and the proposed Comprehensive Sign Program does not contain any regulations regarding sign message content.

**Modification Permit**

Pursuant to NBMC Section 20.42.110, deviations in sign height greater than twenty (20) percent and sign area greater than thirty (30) percent are subject to the approval of a modification permit. In accordance with NBMC Section 20.52.050 (Modification Permits), the following findings and facts in support of such findings for Sign Types 4 and 5 are set forth:

Finding:

*H. The requested modification will be compatible with existing development in the neighborhood.*

Facts in Support of Finding:

1. Fact 2 in Support of Finding B is incorporated by reference.
2. Based on research of building permit records in the vicinity, a 128-square-foot wall sign is installed on the adjacent westerly property at 351 and 361 Hospital Road.
3. The requested maximum sign area for Sign Types 4 and 5 is 77 square feet, respectively. Each proposed sign is smaller in area than the wall sign on 351 and 361 Hospital Road.
4. The proposed wall signs will not appear overly large or out of place compared to the existing development in the neighborhood, which is predominantly larger healthcare and institutional buildings.

Finding:

*I. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

Facts in Support of Finding:

1. The project site is considerably large and provides over 500 feet of lineal frontage along Newport Boulevard, which is a major arterial six (6)-lane divided roadway and has a speed limit of 50 miles per hour. A larger sign size in this location is appropriate given the higher speed of travel. Furthermore, Sign Type 4 will not dominate the façade on which it is located and will be compatible with the overall massing and bulk of the building.
2. The distance between the building façade and the centerline of Newport Boulevard is over 125 feet. The location of Sign Type 4, near the roofline of the building and its increased size will provide enhanced visibility at farther distances.
3. Access to the project site can be taken from either Hospital Road or through the residential neighborhood to the north of the project site via Patrice Road or Hilaria Way. Sign Type 5 is placed near the roofline of the building and serves as an indicator that the main entry to the facility is below. Sign Type 5 will sit centered on a wall plane that is differentiated from the rest of the building by wood paneling. The sign is appropriately placed, will not dominate the façade on which it is located, and will be compatible with the overall massing and bulk of the building.

Finding:

*J. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Facts in Support of Finding:

1. The project site is zoned Private Institutions (PI). The NBMC groups PI along with Open Space (OS), Parks and Recreation (PR), and Public Facilities (PF) as “Special Purpose Zoning Districts.” All special purpose zoning districts are subject to the same design standards for permanent signs. The maximum sign area allowed for a wall sign within these districts is 50 square feet whereas the maximum sign area within a commercial zoning district is 75 square feet. The senior living facility appears more like and functions more similarly to a commercial building than a park or open space facility. Strict application of the zoning code in this instance prevents the project site from installing signage sized appropriately for the function of the building.
2. The NBMC defines a primary frontage as “the building frontage that is designated by an Applicant as the “primary frontage” for the purpose of determining the applicable sign standards and that does not face a residential district”. Despite an entrance to the facility being from the residential neighborhood, the Patrice Road/Hilaria Way frontage cannot be defined as a primary frontage. Strict application would limit the sign area of a wall sign on a secondary frontage to fifty percent (50%) of the sign area allowed on the primary frontage. This limitation would result in Sign Type 5 being restricted to 25 square feet. The intent of Sign Type 5 is to serve as an indicator of the main entry to the facility, which is from its secondary frontage (Patrice Rd/Hilaria Way). The limitation would make the sign smaller than the skyline marquee fronting Newport Blvd and therefore would not achieve the project goal of being a main entry marker.

Finding:

*K. There are no alternatives to the modification permit that could provide similar benefits to the Applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding:

1. The existing building does not have wall areas adequately visible or appropriate for project identification other than at the top of the building. This elevated location requires an increase in sign area above the allowable limits in the NBMC in order to be visible, legible, and compatible in scale with the building design.
2. Compliance with all other applicable NBMC chapters and the attached conditions of approval is required and will further ensure that the proposed signs will not be detrimental.



**Finding:**

- L. The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

**Facts in Support of Finding:**

1. This approval will allow for an increase in the size of wall signs but will not result in a change in intensity or density of the existing convalescent/congregate care facility land use.
2. The size of Sign Types 4 and 5 is within the scale of the signs in the surrounding area and will not adversely affect or be detrimental to persons, property, or improvements in the surrounding neighborhood.
3. The proposed locations of Sign Types 4 and 5 will not affect views for nearby properties or occupants of the neighborhood as they will be installed on an existing building.
4. The increased size of Sign Types 4 and 5 will provide better visual direction for the public from the surrounding public roadways and from a greater distance without detracting from the building's overall aesthetic.
5. Condition of Approval number 9 requires the illumination of Sign Type 5 to be turned off between the hours of 10 p.m. and 6 a.m. as to prevent any negative impacts or incompatibilities between the facility and the adjacent residential use.
6. Fact 2 in Support of Finding K incorporated by reference.

**SECTION 4. DECISION.****NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15311 under Class 11 (Accessory 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 Comprehensive Sign Program No. CS2020-007 and Modification Permit No. MD2020-009, subject to the conditions set forth in Exhibit "A" and sign matrix parameters denoted in Exhibit "B," which are 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 is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the NBMC.
4. This resolution supersedes Modification Permit No. MD2003-085 which upon vesting of the rights authorized by this Comprehensive Sign Program and Modification Permit shall become null and void.

**PASSED, APPROVED, AND ADOPTED THIS 15 DAY OF JULY, 2021.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT “A”****CONDITIONS OF APPROVAL**

*(project-specific conditions are italicized below)*

1. The development shall be in substantial conformance with the approved site plan, sign plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Locations of signs are limited to the designated areas and shall comply with the limitations specified in the Sign Matrix included in Exhibit “B”.
3. Sign locations shall be subject to review by the City’s Public Works Department and shall comply with the line of sight requirements per City Standard STD-110-L.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. 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 approval.
6. A building permit shall be obtained prior to commencement of installation of the signs.
7. *Landscaping shall be installed at the base of the monument signs in accordance with NBMC 20.42.080 (Standards for Specific Types of Permanent Signs) subsection (C)(10).*
8. *Prior to final of building permits, an inspection shall be conducted to confirm that landscaping has been installed.*
9. *Illuminated signs facing Patrice Road/Hilaria Way shall be installed with an automatic timer and will be turned off between the hours of 10 p.m. and 6 a.m., daily.*
10. *Prior to final of building permits, a nighttime lighting inspection shall be conducted to confirm signage lighting will not cause a nuisance to nearby residential properties.*
11. Each illuminated sign shall be subject to a thirty (30) day review period, during which time the Director may determine that a reduction in illumination or turning off of illumination is necessary due to negative impacts on surrounding property or the community in general. In addition, and at any time, the Director may order the dimming or turning off of any illumination found to be excessively bright. The Director’s determination will be made without regard to the message content of the sign.
12. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the NBMC.

13. This Modification 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. All signs must be maintained in accordance with Section 20.42.170 (Maintenance Requirements) of the NBMC.
15. 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.
16. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
17. 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.
18. 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 the City's approval of Atria Newport Beach Signage, but not limited to, Comprehensive Sign Program No. CS2020-007 and Modification Permit No. MD2020-009 (PA2020-270). 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.

**EXHIBIT “B”**

**Atria Newport Beach Signage Comprehensive Sign Program Matrix**

Name	Sign Type	Primary Frontage (Newport Blvd)	Secondary Frontage *	Other Specifications
<b>Sign Type 1 Site Monument 1</b>	Freestanding Sign - Monument	Maximum Number: 1  Maximum Sign Area: 74 sq. ft.  Maximum Sign Height: 5'-5"  Maximum Sign Width: 15'-4"		
<b>Sign Type 2 Site Monument 2</b>	Freestanding Sign - Monument		Maximum Number: 1  Maximum Sign Area: 48 sq. ft.  Maximum Sign Height: 8'-8"  Maximum Sign Width: 5'-7"	- Along Hospital Road

Atria Newport Beach Signage (PA2020-270)  
Exhibit B

<p><b>Sign Type 3 Site Monument 3</b></p>	<p>Freestanding Sign - Monument</p>		<p>Maximum Number: 1</p> <p>Maximum Sign Area: 32 sq. ft.</p> <p>Maximum Height: 4'3"</p> <p>Maximum Sign Width: 8'</p>	<p>- Along Patrice Road</p>
<p><b>Sign Type 4 Skyline Marquee</b></p>	<p>Building Sign - Wall</p>	<p>Maximum Number: 1</p> <p>Maximum Sign Area: 77 sq. ft.</p> <p>Maximum Sign/Letter/Logo Height:6'</p> <p>Maximum Sign Width: 12'-9"</p>		
<p><b>Sign Type 5 Main Entry Building</b></p>	<p>Building Sign - Wall</p>		<p>Maximum Number: 1</p> <p>Maximum Sign Area: 77 sq. ft.</p> <p>Maximum Sign/Letter/Logo Height:6'</p> <p>Maximum Sign Width: 12'-9"</p>	<p>- Illumination to be shut off between 10 p.m. and 6 a.m.</p>

<b>Sign Types 6 and 7 Building Address</b>	Building Sign - Wall		Maximum Number: 2  Maximum Sign Area: 2'-6" sq. ft.  Maximum Sign Height: 1'-0"	
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**Frontage:**

Primary:

Newport Boulevard

Secondary:

Hospital Road

Patrice Road/Hilaria Way

**Notes/Requirements:**

- a) Sign locations shall be as depicted on approved plans.
- b) Wall signs shall be constructed of individual channel letters and attached per mounting details depicted on approved plans.
- c) Requirements for all signs per Municipal Code Chapter 20.42, except as provided in this sign matrix.
- d) Sign Designs shall be consistent with Citywide Sign Design Guidelines Manual.
- e) Pursuant to Section 20.42.120.F of the Zoning Code, the Community Development Director may approve minor revisions to this approval if the intent of the original approval is not affected.

## RESOLUTION NO. ZA2021-038

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-019 AND TENTATIVE PARCEL MAP NO. NP2021-004 TO DEMOLISH AN EXISTING DUPLEX AND CONSTRUCT A NEW THREE (3)-STORY TWO (2)-UNIT CONDOMINIUM LOCATED AT 3907 AND 3909 MARCUS AVENUE (PA2021-094)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Bradford C. Smith, Architect, with respect to property located at 3907 and 3909 Marcus Avenue, requesting approval of a coastal development permit and tentative parcel map.
2. The lot at 3907 and 3909 Marcus Avenue is legally described as Lot 4 and the southeasterly 8 ½ feet of Lot 5, Block 339, Canal Section, as shown on a map thereof recorded in Book 4, Page 98 of Miscellaneous Maps, Records of Orange County, California.
3. The Applicant proposes to demolish an existing duplex and construct a new 4,081-square-foot, three (3)-story, two (2)-unit condominium with two (2) attached single-car garages totaling 464 square feet and two (2) carport spaces. The project includes landscape, hardscape, drainage, and accessory structures all within the confines of the property. The project also includes a reinforced bulkhead with cap for coastal hazards protection. The project complies with all development standards and no deviations from are requested. The tentative parcel map will merge the underlying lot lines for development of a two (2)-unit condominium and allow each unit to be sold individually.
4. The subject property is designated RT (Two-Unit Residential Detached) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two-Unit Residential – 20.0 - 29.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
6. A public hearing was held online on July 15, 2021, consistent with Governor's Executive Orders N-08-21 and N-29-20 related to COVID-19. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.



## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures) and Section 15315 under Class 15 (Minor Land Divisions), 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 duplex and the construction of a new 4,081-square-foot, three (3)-story, two (2)-unit condominium with two (2) attached single-car garages totaling 464 square feet and two (2) carport spaces and therefore qualifies within this exemption.
3. Class 15 exempts 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. The Tentative Parcel Map is for condominium purposes and to merge underlying legal lot lines and is therefore consistent with all of the requirements of the Class 15 exemption.
4. 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 and Tentative Parcel Map for condominium purposes 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 4,722 square feet and the proposed floor area is 4,081 square feet.

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- b. The proposed development provides the minimum required setbacks, which are 4 feet along the front property line abutting Marcus Avenue, 3 feet along each side property line, and 20 feet along the second front property line abutting the waterway.
  - c. The highest guardrail is less than 24 feet from established grade and the highest ridge is no more than 29 feet from established grade, which complies with the maximum height limitation.
  - d. The project includes one (1) enclosed garage for each residence and one (1) covered carport for each residence for a total of four (4) parking spaces, in compliance with the minimum parking requirement for two (2)-unit residences.
2. The neighborhood is predominantly developed with two (2)- and three (3)-story, single-family and two (2)-unit residences with scattered one (1)-story residences. 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.
  3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc. dated April 19, 2021, for the project. The current maximum bay water elevation is 7.7 feet North American Vertical Datum of 1988 (NAVD 88) and may exceed the current top of bulkhead elevation of 6.58 feet (NAVD 88) during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 3-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 10.7 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).
  4. On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. The guidelines require that any structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet NAVD88 with a design for adaptability elevation of 14.4 feet NAVD88. The project has been conditioned to raise the bulkhead to an elevation of 10.9 feet NAVD88. PMA Consulting, Inc. has confirmed the bulkhead can be raised up to 14.4 feet NAVD88 if needed and in compliance with the updated guidelines.
  5. Once the existing seawall/bulkhead is reinforced/capped per the report's recommendations, flooding, wave run-up, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. A waterproofing curb is also proposed be constructed around the perimeter of the dwelling that would protect against flooding up to an elevation of 10.9 feet (NAVD 88). Flood shields (sandbags and other barriers) can be deployed across the openings to protect and prevent flooding to the structure. The report concludes that the proposed project is reasonably safe from the flooding hazards for the next 75 years with the reinforced/capped/raised bulkhead and a flood protection curb. Therefore, the project

has been conditioned to raise/cap the bulkhead and include a flood protection curb structure up to 10.9 feet (NAVD 88).

6. The finished floor elevation of the proposed condominiums is at 10.00 feet (NAVD 88), which complies with the minimum 9.00-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 proposed flood protection curb around the condominium at 11.00 feet (NAVD 88) for the anticipated 75-year life of the structure.
7. The proposed improvements including the replacement of deadmen/tiebacks and raising the bulkhead are located entirely within private property and the City's permit jurisdiction pursuant to the Post LCP Certification Permit and Appeal Jurisdiction Map. The permit jurisdiction boundary is coterminous with the exterior of the bulkhead, and no improvements are proposed bayward of the existing bulkhead. Additionally, no mechanized equipment will be required or utilized bayward of the existing bulkhead to implement the project as designed. If any improvements are requested bayward of the existing bulkhead, approval from the California Coastal Commission will be required.
8. 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).
9. 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.
10. 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 CBC prior to building permit issuance.
11. The property is located adjacent to coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.

12. Pursuant to Newport Beach 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 preliminary Water Quality and Hydrology Plan (WQMP) is required. A preliminary WQMP has been prepared for the project by Forkert Engineering & Surveying, Inc. dated April 20, 2021. The WQMP 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 WQMP prior to building permit issuance.
13. 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 runoff and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system
14. 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.
15. The project site is not located adjacent to a coastal view road or public access way, but is located near a designated Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest viewpoint is located at Newport Island Park, which is accessible to the public and provides opportunities to view the bay. The residence is not located between the park and the bay and would not obscure views from this public area. The third story of the proposed structure may be visible from the park, with two (2) existing residences obstructing views between the park and proposed residence. However, the proposed two (2)-unit dwelling complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. The project complies with all third-floor standards of the NBMC which limit the size and location of the third floor. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
16. The Tentative Parcel Map is for condominium purposes and meets all of the requirements of the Local Coastal Program, including [Section 21.30.025 \(Coastal Subdivisions\)](#).

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. Vertical access to the bay is available near the site at 39th Street. Lateral access is available along the waterway at Newport Island Park where there is a small access point

and beach. The project does not include any features that would obstruct access along these routes.

2. The project site and Tentative Parcel Map 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 a duplex located on a standard R-2 lot with a new two (2)-unit dwelling. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
3. The project site is not located adjacent to a coastal view road or public access way, but is located near a designated Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest viewpoint is located at Newport Island Park, which is accessible to the public and provides opportunities to view of the waterfront. The residence is not located between the park and the water and would not obscure views from this public area. The third story of the proposed structure may be visible from the park, with three (3) existing residences obstructing views between the park and proposed residence. However, the proposed two (2)-unit dwelling complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. The project complies with all third-floor standards of the NBMC which limit the size and location of the third floor. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map will consolidate underlying legal lots and for two (2)-unit residential condominium purposes. An existing duplex will be demolished and replaced with a new two (2)-unit condominium. 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 Tentative Parcel Map does not apply to any specific plan area.

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for two (2)-unit development because it is regular in shape and is relatively flat.
2. The subject property is accessible from Marcus Avenue, and is adequately served by existing utilities.

Finding:

*E. That the design of the subdivision or the proposed improvements, are not likely to cause substantial environmental damage or 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 existing duplex will be demolished and replaced with a new two (2)-unit condominium. A duplex has been existing on this site since 1950. The proposed project will replace the existing structure with a new two (2)-unit residential condominium that is compliant with all current code requirements.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The subdivision is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map will consolidate underlying legal lot lines and will subdivide the new units for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place

to prevent serious public health problems. All ordinances of the City and all Conditions of Approval will be complied with.

2. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. Utilities will be undergrounded and any damaged concrete and curb must be replaced as outlined in the conditions of approval.

Finding:

- G. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Fact in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

- H. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site, developed for residential use, lies in a zoning district that permits residential uses.

Finding:

- I. *That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be*

*included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this Project site is not considered a “land project” as previously defined in Section 11000.5 of the California Business and Professions Code because the Project site does not contain 50 or more parcels of land.
2. The project is not located within a specific plan area.

Finding:

- J. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- K. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City’s share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City’s residents and available fiscal and environmental resources.*

Fact in Support of Finding:

1. The proposed two (2)-unit duplex is consistent with the R-2 Zoning District, which allows two (2) residential units on the property. Therefore, the Tentative Parcel Map for two (2)-unit condominium purposes will replace an existing duplex and therefore, will not affect the City in meeting its regional housing need.

Finding:

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



Fact in Support of Finding:

1. The new two (2)-unit duplex will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Facts in Support of Finding:

1. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two-Unit Residential – 20.0-29.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
2. The Facts in Support of Findings A and B found above are hereby incorporated by reference.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) and 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 Coastal Development Permit No. CD2021-019 and Tentative Parcel Map No. NP2021-004 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 15<sup>TH</sup> DAY OF JULY, 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, 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 of building permits for the new residence, the existing seawall shall be reinforced and capped to 10.90 feet (NAVD 88) and capable to be raised up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities.*
3. *The existing seawall shall be reinforced in accordance with the recommendations provided in the Coastal Hazards Report and Sea Level Rise Analysis prepared by GeoSoils, Inc. dated April 19, 2021.*
4. *Prior to issuance of building permits, a waterproofing curb or similar design feature shall be constructed around the proposed residence as an adaptive flood protection device up to 10.9 feet (NAVD88). Flood shields (sandbags and other methods) can be deployed across the openings to protect prevent flooding to the structure.*
5. *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.*
6. *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.*
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, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.

8. Demolition beyond the approved scope of work requires planning division approval prior to commencement of work. Approval of revisions to project plans are not guaranteed. Any changes in the current scope of work may require the entire structure to be demolished and redeveloped in conformance with the current Zoning Code Development Standards.
9. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway
10. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
11. 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.
12. 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.
13. 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.
14. 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.

15. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
16. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
17. 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.
18. 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.
19. *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.*
20. *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.*
21. *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.*
22. *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.*
23. *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.*
24. *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.*
25. *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.*

26. 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.
27. This Coastal Development Permit No. CD2021-019 and Tentative Parcel Map No. NP2021-004 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.
28. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Voss Residential Condominiums including, but not limited to, Coastal Development Permit No. CD2021-019 and Tentative Parcel Map No. NP2021-004 (PA2021-094). 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.

#### Fire Department

29. Each dwelling unit shall be protected by an individual fire sprinkler system in accordance with NFPA 13D.
30. A 3-foot wide accessway shall be provided from the street to the rear of the property.

#### Public Works Department

31. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach, a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, 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.
32. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments

(one 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 the construction project.

33. All improvements shall be constructed as required by Ordinance and the Public Works Department.
34. An encroachment permit is required for all work activities within the public right-of-way.
35. Reconstruct all concrete curb, gutter, and sidewalk along the Marcus Avenue property frontage.
36. All existing overhead utilities shall be undergrounded.
37. Each unit shall be served by its individual water service/meter and sewer lateral/cleanout. Each water meter and sewer cleanout shall be installed with a traffic grade box and cover.
38. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
39. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

#### Building Division

40. The project shall comply with all flood mitigation requirements for the Special Flood Hazard Area AO1 Zone.
41. Site Drainage shall be taken to the street. Use of a sump pump below base flood elevation to divert site drainage is not permitted.
42. The parking areas shall be separated from the living areas with a 1-hour rated construction wall.
43. A 42-inch high guardrail shall be required at the rear bulkhead where a grade difference of more than 30 inches occurs.
44. Prior to the issuance of building permits, the survey shall clearly identify the existing high point to determine base floor and design flood elevations.

## RESOLUTION NO. ZA2021-039

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-010 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW 3-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED 3-CAR GARAGE LOCATED AT 1 COLLINS ISLAND (PA2021-055)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Sinclair Associates Architects Inc., with respect to property located at 1 Collins Island, requesting approval of a coastal development permit (CD2021-010). The lot at 1 Collins Island is legally described as Lot 1 of Tract No. 1723, in the City of Newport Beach, County of Orange, State of California, as per map recorded in Book 50, Page 31, of Miscellaneous Maps, in the office of the county recorder of said county.
2. The applicant proposes to demolish an existing single-family residence and construction of a 5,307-square-foot, three (3)-story, single-family residence with an attached 725-square-foot three (3)-car garage. The design includes landscape, hardscape, and subsurface drainage facilities all within the confines of the private property. The project also includes a reinforced bulkhead with cap for coastal hazards protection. The project complies with all 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-B (Single Unit Residential Detached) – (6.0 – 9.9 DU/AC) and is located within the R-1 (Single-Unit Residential) Coastal Zone District.
5. A public hearing was held online on July 15, 2021, consistent with Governor's Executive Orders N-08-21 and N-29-20 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 demolition of up to three single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one single-family residence and the construction of a new 5,307-square-foot single-family residence and attached 725-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, 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 6,913 square feet and the proposed floor area is 6,032 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 7 feet along the front property line abutting the harbor, 4 feet along the interior side property line, and 4 feet along the rear street property line.
  - c. The highest guardrail is less than 24 feet from established grade and the highest ridge is no more than 29 feet from established grade, which complies with the maximum height limitation.
  - d. The project includes garage parking for a total of three (3) vehicles, complying with the minimum three (3)-car garage 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 and three-story story, single-family residences. 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.

3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated June 9, 2021, for the project. The maximum bay water elevation is 7.7 feet (NAVD 88) and may exceed the current top of bulkhead elevation of 8.28 feet (NAVD 88) during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 3-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 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).
4. On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. The guidelines require that any structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet NAVD88 with a design for adaptability elevation of 14.4 feet NAVD88. The project has been conditioned to raise the bulkhead to an elevation of 10.9 feet NAVD88. PMA Consulting, Inc. has confirmed the bulkhead can be raised up to 14.4 feet NAVD88 if needed and in compliance with the updated guidelines.
5. Once the existing seawall/bulkhead is reinforced/capped/raised per the report's recommendations, flooding, wave run-up, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. Utilizing flashing and waterproofing for up to 23 inches would protect against flooding up to an elevation of 10.9 feet (NAVD 88). Flood shields (sandbags and other barriers) can be deployed across the openings to protect and prevent flooding to the structure. The report concludes that the proposed project is reasonably safe from the flooding hazards for the next 75 years with the reinforced/capped/raised bulkhead and a flood protection curb.
6. The finished floor elevation of the proposed single-family residence is 9.25 feet (NAVD 88), which complies with the minimum 9.00-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 proposed top of slab elevation around the single-family residence at 9.00 feet (NAVD 88) utilizing flashing and waterproofing for up to 23 inches (10.9 feet NAVD88) for the anticipated 75-year life of the structure.
7. 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).
8. 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.

9. 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 CBC prior to building permit issuance.
10. The property is located adjacent to coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
11. 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 preliminary Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared for the project by RCE Consultants, 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. Construction plans will be reviewed for compliance with the approved WQHP prior to building permit issuance.
12. 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 runoff and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system
13. 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.
14. 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 the Balboa Yacht Basin, which is about 1,632 feet to the north east of the project site. The nearest coastal view corridor is Bayside Drive from Coast Highway to Linda Isle Drive, which is about 1,714 north of the project site. As currently developed, the existing property and other residences located on Collins Island are located within these view sheds. However, due to the distance of the proposed development from public viewpoints and the project's compliance with all

applicable development standards, including height and setbacks, the project will not impact existing 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. 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 single-family residence located on a standard R-1 zoned 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 designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities. However, the proposed single-family residence complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
2. Vertical access to the bay and beach is available southwest of the site at the south street end of Emerald Avenue. Lateral access is available 435 feet to the southeast along the Balboa Island boardwalk. The project does not include any features that would obstruct access along these routes.
3. The project site is 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 replaces an existing single-family residence located on a standard R-1 zoned 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 designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
4. The project is designed and sited so as not to block or impede existing public access opportunities. Coastal access is currently provided and will continue to be provided by street ends throughout the Balboa Island neighborhood with access to the water.

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. CD2021-010 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 15<sup>TH</sup> DAY OF JULY, 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 of building permits for the new residence, The existing seawall shall be reinforced and capped to 10.9 feet (NAVD 88) and capable to be raised up to 14.4 feet (NAVD 88) minimum in accordance with the recommendations provided in the report prepared by PMA Consulting, Inc. on June 9, 2021 and as identified in the approved plans.*
3. *Prior to issuance of building permits, a waterproofing curb or similar design feature shall be constructed around the proposed residence as an adaptive flood protection device up to 10.9 feet (NAVD88). Flood shields (sandbags and other methods) can be deployed across the openings to protect prevent flooding to the structure.*
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. *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. 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.
7. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.

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8. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
    - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
    - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
  9. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
  10. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
  11. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
  12. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
  13. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
  14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
  15. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.

16. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
17. *Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.*
18. *Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.*
19. *Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.*
20. *Prior to issuance of 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.*
21. *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.*
22. *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.*
23. *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.*
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. CD2021-010 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 the Divided Sky SMKJ, LLC Residence including, but not limited to, Coastal Development Permit No. CD2021-010 (PA2021-055). 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. ZA2021-040

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-008 FOR THE DEMOLITION OF AN EXISTING SINGLE-FAMILY RESIDENCE AND THE CONSTRUCTION OF A NEW THREE (3)-STORY, 3,880-SQUARE-FOOT, SINGLE-FAMILY RESIDENCE WITH A 712-SQUARE-FOOT ATTACHED THREE (3)-CAR GARAGE LOCATED AT 13 BEACON BAY (PA2021-036)**

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 13 Beacon Bay, and legally described as Lot 13 of Record of Survey Book 9 Page 42, requesting approval of a Coastal Development Permit.
2. The applicant proposes the demolition of an existing single-family residence and the construction of a new three (3)-story, 3,880-square-foot, single-family residence with a 712-square-foot attached garage. The proposed development also includes additional appurtenances such as walls, fences, patios, hardscape, drainage devices, and landscaping.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two Unit Residential (RT). The R-2 Zoning District permits single-unit residential dwellings.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two Unit Residential (10.0 – 19.9 DU/AC) – (RT-C) and the Coastal Zoning District is Two-Unit Residential (R-2).
5. A public hearing was held online on July 15, 2021, consistent with Governor's Executive Orders N-08-21 and N-29-20 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), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the construction of limited numbers of new, small structures, including one (1) single-family residence. The proposed project is a new single-family residence located in the R-2 Coastal Zoning District.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015 (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 5,576 square feet and the proposed floor area is 4,592 square feet.
  - b. The proposed development complies with the required setbacks, which are 15 feet abutting the bay, 3 feet abutting Beacon Bay, and 3 feet along each side property line.
  - c. The highest guardrail/parapet is below 24 feet from established grade and the highest ridge is 29 feet from established grade. The proposed development complies with all height requirements.
  - d. The proposed development provides a three (3)-car garage, exceeding the minimum garage requirement for a single-family residence.
  - e. The proposed development has a finished floor of 10.38 feet North American Vertical Datum of 1988 (NAVD 88), which complies with the minimum 9.0-foot NAVD 88 top of slab elevation requirement for interior living areas of new structures.
2. The neighborhood is predominantly developed with two (2)- and three (3)-story single and two (2)-unit residences. The proposed three (3)-story structure's design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
3. A Coastal Hazards Report was prepared by Geosoils, Inc. on June 8, 2021. The project site is separated from the water by a small sandy beach. The report concludes that the highest high tide elevation (currently 7.7 feet NAVD 88) will not exceed 10.9 feet (NAVD 88) using the low-risk aversion projected sea level rise (3.2-foot increase) over the 75-year design life of the structure based on estimates for sea level rise provided by the

State of California Sea-Level Rise Guidance 2018. The report states that the estimated sea level rise over the next 75 years, using the Medium-High Risk Aversion, is potentially 6 feet (13.7 feet NAVD 88). The proposed structure includes a curb at 10.9 feet NAVD 88 and can be adapted up to 14.4 feet (NAVD 88) in the future, if necessary. Additionally, the site has not historically been subject to any wave overtopping, nor is overtopping waters over the next 75 years expected to reach the subject site, even under extreme conditions. Based on the data provided, the study provides no recommendations necessary for shoreline protection devices and concludes that coastal hazards will not impact the property over the next 75 years, as the proposed project has minimal risk from flooding.

4. 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 2,500 square feet of impervious surface area, a Water Quality Management Plan (WQMP) is required. A WQMP prepared by Thomas M. Ruiz, Civil Engineer, dated February 22, 2021, has been submitted and will be reviewed by the City's Engineer Geologist. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of a LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
5. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and the CBC prior to building permit issuance.
6. The project site is not located adjacent to a coastal view road, public viewpoint, public park, or public accessway, as identified in the Coastal Land Use Plan. The project site is located adjacent to a public beach and is visible from the beach. The project may be located within the viewshed of other distant public viewing areas. Site evaluation revealed that the proposed three (3)-story design is consistent with the existing neighborhood pattern of development and will not affect the existing views afforded on Cape Cove or Shelter Cove street ends. The project will replace an existing single-family residence with a new single-family residence that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

Finding:

- B. Conforms 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 in the Beacon Bay area between the nearest public road and the sea. 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 single-family residence 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 designed and sited so as not to block or impede existing public access opportunities.
2. The project is also located on a block between Cape Cove and Shelter Cove, which are identified as public beach access locations. The project does not interfere with the existing nearby access to the 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 (Conversion or Construction 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. CD2021-008, 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 (NBMC). 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 15<sup>TH</sup> DAY OF JULY, 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, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. Coastal Development Permit No. CD2021-008 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 (NBMC), unless an extension is otherwise granted.
4. Prior to issuance of building permits, the project plans shall be updated to reflect that a waterproofing curb or similar design feature will be constructed around the proposed residence as an adaptive flood protection device up to 10.9 feet (NAVD88). Flood shields (sand bags and other barriers) can be deployed across the openings to protect prevent flooding to the structure.
5. 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.
6. 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.
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, the beach, wetlands or their buffers.

8. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
9. All proposed accessory structures located within setback areas shall comply with applicable height limits consistent with Zoning Code Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls).
10. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
11. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock-piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
12. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
13. 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.
14. 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.
15. 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.
16. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
  17. 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.
  18. 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.
  19. 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.
  20. 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.
  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 Irwin Residence including, but not limited to, Coastal Development Permit No. CD2021-008 (PA2021-036). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

#### Building Division

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



23. 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.
24. 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.
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.



## COMMUNITY DEVELOPMENT DEPARTMENT

### PLANNING DIVISION

100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915

(949) 644-3200

[www.newportbeachca.gov](http://www.newportbeachca.gov)

## **ZONING ADMINISTRATOR ACTION LETTER**

<b>Application</b>	<b>Chihuahua Cerveza Temporary Trailer (PA2021-133)</b> <ul style="list-style-type: none"><li>Limited Term Permit No. XP2021-003</li></ul>
<b>Applicant</b>	<b>Chihuahua Cerveza</b>
<b>Site Address</b>	<b>3107 Newport Boulevard</b>
<b>Legal Description</b>	<b>Parcel 1 of Parcel Map No. 2009-135, as per map filed in Book 371, Pages 4 through 6 of Parcel Maps, in the office of the County Recorder in the County of Orange, California</b>

On **July 16, 2021**, the Zoning Administrator approved a limited term permit (less than 90 days) to allow one 20-foot-long storage trailer within the rear parking lot of The Landing Shopping Center. The trailer does not have electrical components and is not expected to create additional noise. The trailer will store paper goods and miscellaneous décor for the restaurant during its tenant improvement construction. There will be no hazardous materials stored within the trailer. The property is located in the CN (Commercial Neighborhood) Zoning District. The approval is based on the following findings and subject to the following conditions:

### **FINDINGS**

#### **Finding:**

- A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 11 (Accessory Structures)*

#### **Fact in Support of Finding:**

- Class 11 exempts the placement of seasonal or temporary use of items such as lifeguard towers, mobile food units, portable restrooms, or similar items. The proposed temporary trailer will occupy one parking space within the rear parking lot of the shopping center for a temporary time period and will be ancillary to an existing restaurant during its tenant improvement construction.

Finding:

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

Facts in Support of Finding:

1. The limited term permit will allow one temporary storage trailer to store paper goods and miscellaneous decor on-site for a limited duration (less than 90 days), as conditioned.
2. The use and access of the storage trailer is limited to the hours of 7:00 a.m. to 9:00 p.m. to limit activities that could create noise disturbances to surrounding residents. The trailer is permitted to remain onsite in conformance with the permit from July 30, 2021, through October 27, 2021.
3. The proposed storage trailer is approximately 20 feet long, 8 feet wide, and 8 feet, 6 inches high. The trailer will occupy one parking space for a limited duration in the rear parking lot of the shopping center.
4. Electric refrigeration trailers for the adjacent grocery store have been used at the subject property on holiday weekends during similar hours in the past and the use has not proven detrimental.
5. The proposed trailer is located behind Pavilions grocery store. Conditions of approval require the area of the trailer to be maintained daily for the removal of trash. All trash shall be stored within the building or within the on-site trash enclosures, screened from view of neighboring properties.

Finding:

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

Facts in Support of Finding:

1. The subject lot is approximately 3.75 acres in size. Based upon the site plan, there is adequate area to accommodate the proposed trailer and existing uses without impacting vehicle circulation. The trailer will occupy one parking space adjacent to the Pavilions grocery store at the rear parking lot for a limited duration (less than 90 days).

2. The lot is bound by Balboa Boulevard to the west, Newport Boulevard to the east, 32<sup>nd</sup> Street to the north, and 30<sup>th</sup> Street to the south. The adjacent right-of-way (30<sup>th</sup> Street) separates the lot from nearby residential properties within the R-2 (Two-Unit Residential) Zoning District. A public parking lot is located directly across 30<sup>th</sup> Street, where the trailer will be located.

Finding:

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

Fact in Support of Finding:

1. The subject lot has four direct driveway approaches taken from Newport Boulevard, 32<sup>nd</sup> Street, Balboa Boulevard, and 30<sup>th</sup> Street. The trailer's location is in the northern corner of the rear parking lot and will not impede access or truck access to the grocery store's loading dock at the eastern side of the rear parking lot. The trailer will occupy one required parking stall for a limited period of time (less than 90 days). No traffic or site circulation issues are anticipated.

Finding:

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

Facts in Support of Finding:

1. The proposed limited duration storage trailer will not create additional parking demand since it will be utilized to store paper goods and miscellaneous décor during construction of tenant improvements and remodeling of the restaurant. The parking space that the trailer will occupy will not have a detrimental effect on parking demand within the shopping center since the space is typically underutilized due to its location at the rear of the shopping center.
2. The subject property recently had a limited term permit No. XP2021-001 (PA2021-038) for an on-site trailer which expired on June 6, 2021. Subsequently, an additional limited term permit No. XP2021-002 (PA2021-114) was issued for an adjacent tenant to accommodate refrigerated trailers for the Independence Day holiday, which expired on July 7, 2021. The dates from the existing and proposed limited term permits will not overlap or coincide, therefore parking or circulation for the site will not be conflicted.

Finding:

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

Facts in Support of Finding:

1. The General Plan land use designation for this site is CN (Neighborhood Commercial). The CN designation is intended to provide for a range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. The proposed use is accessory to the existing restaurant use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation.
2. The site is located in the CN (Commercial Neighborhood) Zoning District. The CN designation is intended to provide for a range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. The proposed use is ancillary to the existing restaurant use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation. The CN Zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.
3. The site is not located within a specific plan area.

**CONDITIONS**

*(Project-specific conditions are in italics)*

1. The development shall be in substantial conformance with the approved site plan except as noted in the following conditions.
2. Anything not specifically approved by this limited term permit is prohibited and must be addressed by a separate and subsequent review.
3. *The temporary storage trailer shall be located within the rear parking lot and adjacent to Pavilions grocery store, as shown on the site plan (Attachment No. ZA 2). The trailer shall occupy a maximum of one parking space.*
4. *The temporary storage trailer shall be limited to the storage of paper goods and miscellaneous décor for the restaurant. No alcohol or food shall be stored within the temporary trailer.*
5. *The temporary trailer is permitted on-site for a duration between July 30, 2021, and October 27, 2021.*

6. *The temporary trailer shall not have any electrical components or refrigeration.*
7. *Access of the temporary trailer shall be limited to the hours of 7:00 a.m. to 9:00 p.m., daily. If the hours of operation are not adhered to, the applicant shall be subject to fines in accordance with Chapter 1.05.020 (Authority and Administrative Citation Fines). Fines may reflect the maximum amount, as authorized by the City Manager or his designee.*
8. *Use of the trailer shall comply with the noise standards of Chapter [10.26 \(Community Noise Control\)](#) of the City of Newport Beach Municipal Code. The maximum noise generated by the proposed use shall not exceed a noise level equal to the value of the noise standard plus 20 DBA for any period of time, as measured using A-weighted slow response. The Code Enforcement Officer may require additional sound testing and attenuation at his/her discretion to comply with the noise standards of the Municipal Code.*
9. *The applicant shall provide a 24-hour contact number for emergencies, complaints, or concerns to Code Enforcement and interested parties upon request during the time period the trailer is authorized.*
10. *The temporary trailer shall not restrict vehicle circulation, truck access to the loading dock, or the public right-of-way at the rear of the Pavilions Grocery Store .*
11. *Access for emergency vehicles must be maintained around the temporary trailer within the parking area. A minimum clearance of 14 feet is required adjacent to the trailer. Twenty feet of clearance is required in all other areas of the required fire access roadway around the Pavilions Grocery Store.*
12. *The trailers shall not block any firefighting equipment such as fire hydrants, standpipe connections, or fire department connections.*
13. *There shall be no hazardous materials stored within the temporary trailer.*
14. *There shall be no trash stored within the temporary trailer or within the vicinity of the trailer. All trash shall be stored within the restaurant or within dumpsters stored in the on-site trash enclosures, screened from view of neighboring properties.*
15. *The exterior of the building shall be maintained free of trash, litter, and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.*
16. *The temporary trailer shall be locked when not in use.*
17. *No objects (such as construction materials, etc.) shall be stored behind and/or in the vicinity of the trailer.*

18. *The Limited Term Permit is for the operation of one temporary trailer on-site for the hours and dates specified and does not authorize the use or operation of additional storage trailers on-site.*
19. *Should the temporary trailer become a detriment to the public health, comfort, convenience, safety, and general welfare of the peace and quiet of the neighboring properties and their inhabitants, this permit may be revoked.*
20. 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 **Chihuahua Cerveza Temporary Trailer** including, but not limited to, **Limited Term Permit No. XP2021-003 (PA2021-133)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

  
\_\_\_\_\_  
Jaime Murillo  
Zoning Administrator  
MS/dl

Attachments: ZA 1 Vicinity Map  
ZA 2 Site Plan

# **Attachment No. ZA 1**

Vicinity Map



# VICINITY MAP

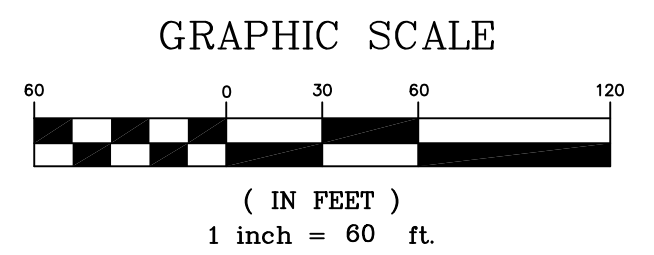
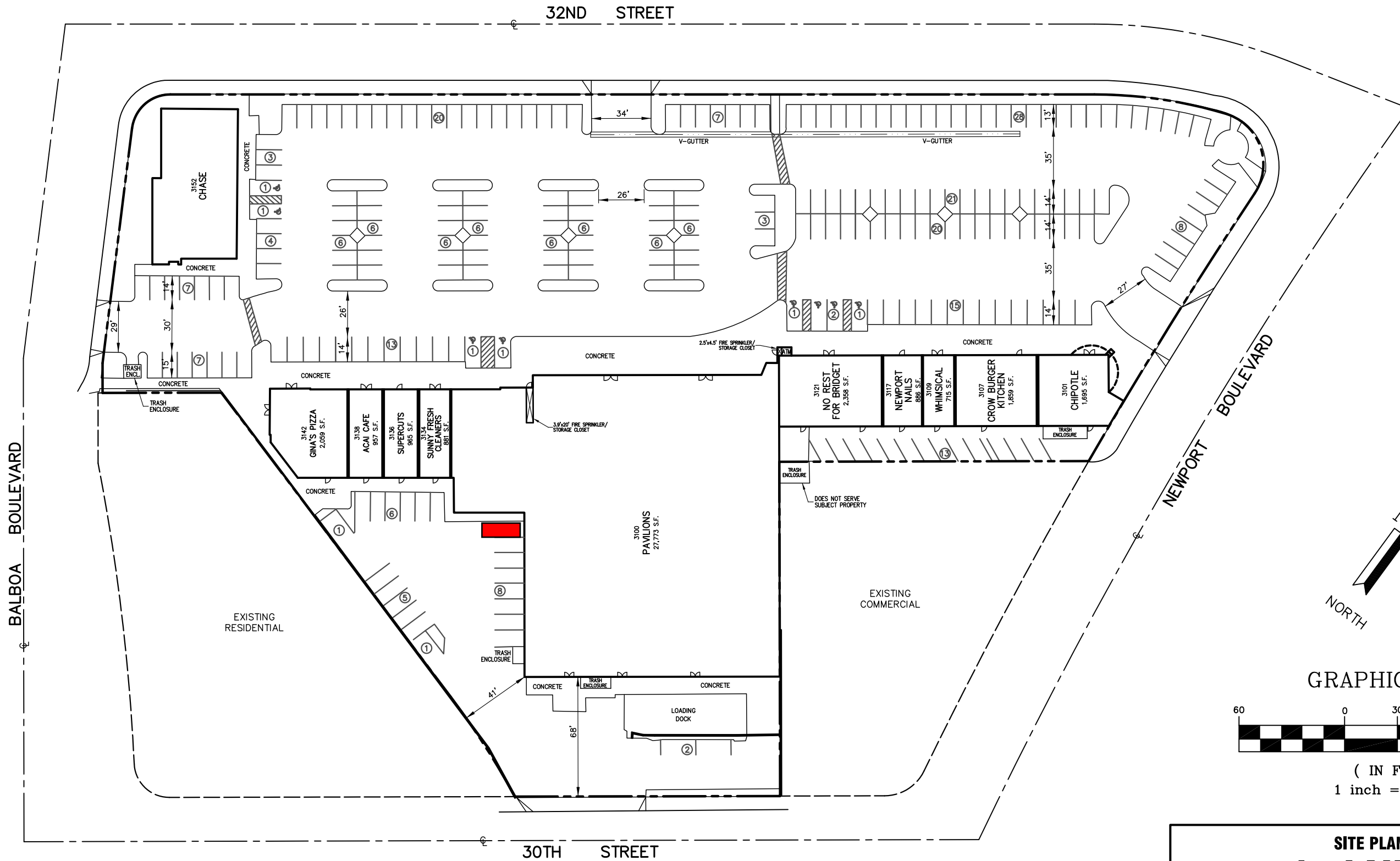


Limited Term Permit No. XP2021-003  
(PA2021-133)

**3107 Newport Boulevard**

# **Attachment No. ZA 2**

Site Plan



PREPARED BY:

**APD**  
CONSULTANTS, INC.  
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TOTAL TENANT SPACE AREA = 40,148 S.F.  
(EXCLUDING CHASE)  
CHASE = 3,994 S.F. (NOT MEASURED)

SITE PLAN OF  
**"the LANDING"**  
NEWPORT BEACH, CALIFORNIA

FOR  
**mobilitie**  
telecommunications infrastructure