



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 30, 2021.

ZONING ADMINISTRATOR ACTIONS JULY 29, 2021

- Item 1: 1572 East Ocean Front L.L.C. Residence Coastal Development Permit No. CD2021-016 (PA2021-084)
Site Address: 1572 East Ocean Front
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| Action: Approved by Resolution No. ZA2021-041 | Council District | 1 |
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- Item 2: Rosen Residence Coastal Development Permit No. CD2021-021 (PA2021-110)
Site Address: 3906 River Avenue
- | | | |
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| Action: Approved by Resolution No. ZA2021-042 | Council District | 1 |
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APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

RESOLUTION NO. ZA2021-041

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-016 FOR THE DEMOLITION OF AN EXISTING SINGLE-UNIT RESIDENCE AND THE CONSTRUCTION OF A NEW THREE (3)-STORY, 3,761-SQUARE-FOOT, SINGLE-UNIT RESIDENCE WITH A 709-SQUARE-FOOT ATTACHED THREE (3)-CAR GARAGE LOCATED AT 1572 EAST OCEAN FRONT (PA2021-084)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Guidero, with respect to property located at 1572 East Ocean Front, and legally described as Lot 19 of Block B of Tract 518, requesting approval of a Coastal Development Permit.
2. The applicant proposes the demolition of an existing single-unit residence and the construction of a new three (3)-story, 3,761-square-foot, single-unit residence with a 709-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 Single-Unit Residential (R-1) Zoning District and the General Plan Land Use Element category is Single Unit Residential Detached (RS-D). The R-1 Zoning District permits single-unit residential dwellings.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached (10.0 – 19.9 DU/AC) – (RSD-C) and the Coastal Zoning District is Single-Unit Residential (R-1).
5. A public hearing was held online on July 29, 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-unit residence. The proposed project is a new single-unit residence located in the R-1 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 4,756 square feet and the proposed floor area is 4,470 square feet.
 - b. The proposed development complies with the required setbacks, which are 10 feet abutting the beach and 3 feet along each side property line. There is no required setback abutting East Ocean Front Alley.
 - 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- unit residence.
 - e. The proposed development has a finished floor of 12.50 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-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 March 3, 2021. The project site is separated from the water by a wide 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 12.5 feet (NAVD 88) and can be adapted up to 14.4 feet (NAVD 88) in the future, if necessary. Therefore, the proposed structure is safe from flooding over the next 75 years. 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 April 5, 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 the I Street street-end. The project will replace an existing single-unit residence with a new single-unit 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 on the Balboa Peninsula 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-unit 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 located approximately 80 feet from the I Street street-end, which is identified as a public beach access location. 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. CD2021-016, 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 29TH DAY OF JULY, 2021.



Matthew Schneider, 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. CD2021-016 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 a minimum of 10.9 feet (NAVD88). Flood shields (sand bags and other barriers) can be deployed across the openings to protect and 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. At such time as directed by the City or the California Coastal Commission, the applicant shall agree to and cooperate with both agencies for: 1) the removal of any unpermitted development located seaward of the property and within the prolongation of the side property lines of the subject property, and 2) the restoration of the affected area consistent with a restoration plan approved by the City and Coastal Commission.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:

- A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
- 17. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
 - 18. 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.
 - 19. 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.
 - 20. 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.
 - 21. 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.
 - 22. 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 1572 East Ocean Front L.L.C. Residence including, but not limited to, Coastal Development Permit No. CD2021-016 (PA2021-084). 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.

23. 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.

Building Division

24. 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.
25. 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.
26. 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.

RESOLUTION NO. ZA2021-042

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-021 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 3906 RIVER AVENUE (PA2021-110)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Guidero, Architect, with respect to property located at 3906 River Avenue, requesting approval of a coastal development permit.
2. The lot at 3906 River Avenue is legally described as Lot 4, Block 239, Canal Section.
3. The Applicant proposes to demolish an existing duplex and construct a new 2,677 square-foot, three (3)-story, single-family residence with an attached 550 square-foot two (2)-car garage. The project includes landscape, hardscape, drainage, and accessory structures all within the confines of the property. 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 are requested.
4. The subject property is bisected by the coastal permit jurisdiction boundary resulting in a portion of the property within California Coastal Commission's permit jurisdiction. This Coastal Development Permit is intended to cover portions of the project within the City's permit authority as designated in the certified Local Coastal Program (LCP) (Title 21 of the Newport Beach Municipal Code).
5. 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.
6. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E (Two Unit Residential – 30.0 - 39.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
7. A public hearing was held online on July 29, 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 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 (3)-single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 2,677-square-foot, three (3)-story, single-family residence with an attached 550-square-foot two (2)-car garage and therefore qualifies within this exemption.
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 3,430 square feet and the proposed floor area is 3,227-square-foot.
 - b. The proposed development provides the minimum required setbacks, which are four (4) feet along the front property line abutting River Avenue, three (3) feet along each side property line, and 20 feet along the second front property line abutting the water.
 - 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.

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- d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor.
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 June 10, 2021, for the project. The current maximum bay water elevation is 7.7 feet (NAVD 88) and may exceed the current top of bulkhead elevation of 6.78 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 (NAVD 88) with a design for adaptability elevation of 14.4 feet (NAVD 88). The project has been conditioned to raise the bulkhead to an elevation of 10.9 feet (NAVD 88). PMA Consulting, Inc. has confirmed the bulkhead design can be raised up to 14.4 feet (NAVD 88) 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 will 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 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 single-family residence is 9.65 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 single-family residence at 10.9 feet (NAVD 88) for the anticipated 75-year life of the structure.

7. Pursuant to Newport Beach Municipal Code (NBMC) Section 21.30.030(C)(3)(i)(iv) – (Natural Landform and Shoreline Protection), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The Waiver of Future Protection is included as a condition of approval that will need to be satisfied prior to final building inspection.
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). The Acknowledgement of Coastal Hazards is included as a condition of approval that will need to be satisfied prior to the issuance of building permits.
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 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 Thomas M. Ruiz dated, May 5, 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.

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.

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 the end of 40th Street. Lateral access is available at the Channel Place 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 is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on a standard R-2 lot with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is 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 the water. 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; 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. 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.

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) 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. CD2021-021 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 29TH DAY OF JULY, 2021.



Matthew Schneider
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 10.90 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 June 10, 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 a minimum of 10.9 feet (NAVD88). Flood shields (sandbags and other methods) can be deployed across the openings to protect and prevent flooding to the structure.*
5. *Waiver of Future Protection for Properties with Approved Bulkheads – 21.30.030.C.3(i) – (Natural Landform and Shoreline Protection). 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. *Acknowledgement of Hazards for Waterfront Development - 21.30.015.D.3(c) – (Waterfront - Development Standards). 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.*
7. This approval does not authorize any new or existing improvements (including landscaping) on California Coastal Permit Jurisdiction, State tidelands, public beaches, or the public right-of-way. Any improvements located on tidelands, submerged lands,

and/or lands that may be subject to the public trust shall require a coastal development permit (CDP) approved by the California Coastal Commission (Coastal Commission). Prior to the issuance of building permits, the applicant shall provide a copy of said coastal development permit or CDP waiver or documentation from the Coastal Commission that subject improvements are not subject to the permit requirements of the Coastal Act and/or not located within the permit jurisdiction of the Coastal Commission.

8. 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.
9. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays
10. 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.
11. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway
12. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
13. 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.
14. 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.
 15. 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.
 16. 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.
 17. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
 18. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
 19. 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.
 20. 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.
 21. *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.*
 22. *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.*
 23. *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.*

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24. *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.*
 25. *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.*
 26. *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.*
 27. *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.*
 28. 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.
 29. Coastal Development Permit No. CD2021-021 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.
 30. 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 Rosen Residence including, but not limited to, Coastal Development Permit No. CD2021-021 (PA2021-110). 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.