



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 January 28, 2022.

ZONING ADMINISTRATOR ACTIONS JANUARY 27, 2022

- Item 1: 513 Jasmine, LLC Tentative Parcel Map No. NP2021-015 (PA2021-262)
Site Address: 513 and 513 ½ Jasmine Avenue
- | | | |
|-----------------------------------------------|------------------|---|
| Action: Approved by Resolution No. ZA2022-004 | Council District | 6 |
|-----------------------------------------------|------------------|---|
- Item 2: BIRE II, LLC Residential Condominiums Tentative Parcel Map No. NP2021-016 and Coastal Development Permit No. CD2021-070 (PA2021-271)
Site Address: 424 and 424 ½ Fernleaf Avenue
- | | | |
|-----------------------------------------------|------------------|---|
| Action: Approved by Resolution No. ZA2022-005 | Council District | 6 |
|-----------------------------------------------|------------------|---|
- Item 3: Helmsman Ale House Temporary Expansion Limited Term Permit No. XP2021-026 and Coastal Development Permit No. CD2021-050 (PA2021-204)
Site Address: 2920 Newport Boulevard
- | | | |
|-----------------------------------------------|------------------|---|
| Action: Approved by Resolution No. ZA2022-006 | Council District | 1 |
|-----------------------------------------------|------------------|---|
- Item 4: Avila's El Ranchito Temporary Patio Limited Term Permit No. XP2021-036 and Coastal Development Permit No. CD2021-071 (PA2021-273)
Site Address: 2800 Newport Boulevard
- | | | |
|---------------------------------------------------------------------|------------------|---|
| Action: Continued to February 10, 2022 Zoning Administrator Meeting | Council District | 1 |
|---------------------------------------------------------------------|------------------|---|
- Item 5: Royal Hen Temporary Outdoor Dining Tables Limited Term Permit No. XP2021-037 and Coastal Development Permit No. CD2021-075 (PA2021-286)
Site Address: 311 Marine Avenue
- | | | |
|-------------------------------|------------------|---|
| Action: Removed from Calendar | Council District | 5 |
|-------------------------------|------------------|---|
- Item 6: Smith Residence Coastal Development Permit No. CD2021-052 (PA2021-207)
Site Address: 300 Morning Star Lane
- | | | |
|-----------------------------------------------|------------------|---|
| Action: Approved by Resolution No. ZA2022-007 | Council District | 3 |
|-----------------------------------------------|------------------|---|

Item 7: Magis TLCS, LLC Residence Coastal Development Permit No. CD2021-057 (PA2021-274)
Site Address: 1712 East Ocean Front

Action: Approved by Resolution No. ZA2022-008

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. ZA2022-004

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING TENTATIVE PARCEL MAP NO. NP2021-015 FOR TWO (2)-UNIT RESIDENTIAL CONDOMINIUM PURPOSES LOCATED AT 513 AND 513 ½ JASMINE AVENUE (PA2021-262)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by 513 Jasmine, LLC, with respect to property located at 513 and 513 ½ Jasmine Avenue, and legally described as Lot 13, Block 536, Corona Del Mar Tract, requesting approval of a tentative parcel map.
2. The applicant requests a tentative parcel map for two (2)-unit residential condominium purposes. An existing duplex has been demolished and a new duplex is under construction. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. The Tentative Parcel Map would allow each unit to be sold individually.
3. The subject property is designated Two-Unit Residential (RT) by the General Plan Land Use Element and is located within the Two-Unit Residential (R-2) Zoning District.
4. The subject property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held on January 27, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The project is consistent with and eligible

for the Class 15 exemption as it does not propose the division of more than four (4) parcels, the division is consistent with the General Plan and Zoning, no variances or exceptions are proposed as part of the project, all services and access to the parcel is available, the parcel has not been divided in the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. Therefore, the proposed project qualifies under the parameters of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two (2)-unit residential condominium purposes. The project site was previously developed with a duplex and has been cleared of existing improvements. A new duplex is under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use designation.
2. The subject property is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a duplex because it is relatively flat and rectangular. It was also previously developed with a duplex.
2. The subject property is accessible from both Jasmine Avenue and the alley in the rear.
3. The site is adequately served by existing utilities, as the site was previously developed with a duplex that is being replaced.

Finding:

C. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

1. The property is located within an existing residential neighborhood that does not contain any sensitive vegetation or habitat on-site.
2. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines. Section 2 of this Resolution is hereby incorporated by reference.

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map is for condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per NBMC Section 19.28.010 (General Improvement Requirements) and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

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

Facts in Support of Finding:

1. Legal access to the property is provided via Jasmine Avenue and a public alley to the rear.
2. The Public Works Department has reviewed the proposed Tentative Parcel Map and determined that the design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development because no public easements are located on the property.
3. Public improvements will be required of the Applicant per the Municipal Code and the Subdivision Map Act. The project is conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Jasmine Avenue frontage, the undergrounding of utilities, and the installation of new landscaping, including a street tree, along the Jasmine Avenue parkway, consistent with Title 19 (Subdivisions).
4. There are no existing easements either through or adjacent to the property.

Finding:

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

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site, developed for residential uses, lies in the R-2 Zoning District, which is intended for and permits residential uses for up to two (2) units.

Finding:

G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.

Facts in Support of Finding:

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a "land project" as previously

defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land.

2. The project is not located within a specific plan area.

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The residential building under construction has been designed to have wastewater discharge into the existing sewer system and complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three (3) of the Coastal Act.

Fact in Support of Finding:

1. The subject property is not located within 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 pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2021-015, 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 10 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 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 27TH DAY OF JANUARY, 2022.



Jaime Murillo
Zoning Administrator

EXHIBIT “A”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from “duplex” to “condominium.” The development will not be condominiums until this permit is final.
2. The building permit for the new construction shall not be final until after recordation of the Parcel Map.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
5. 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.
6. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
7. 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.
8. 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.
9. 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 **513 Jasmine, LLC including,**

but not limited to, Tentative Parcel Map No. NP2021-015 (PA2021-262). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department

10. A separate and independent fire sprinkler system shall be installed for each individual dwelling unit.
11. A 3-foot-wide path of travel shall be maintained along one (1) side of the structure from Jasmine Avenue and the alley for Fire Department access.

Building Division

12. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements.
13. Separate utilities and fire sprinkler risers are required for each unit.

Public Works Department

14. A Parcel Map shall be recorded. The map shall be prepared on the California coordinate system (North American Datum of 1983, NAD83). Prior to recordation of the map, the surveyor/engineer preparing the map shall submit to the County Surveyor and the City of Newport Beach, a digital-graphic file of said map in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivisions Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
15. Prior to recordation of the Parcel Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual Subarticle 18. Monuments (1-inch iron pipe with tag) shall be set **on each lot corner** unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
16. All improvements shall be constructed as required by Ordinance and the Public Works Department.

17. Prior to recordation of the parcel map, the applicant shall reconstruct all damaged curb, gutter and sidewalk along the Jasmine Avenue frontage and all alley panels along the alley frontage per City Standard.
18. Prior to recordation of the parcel map, all private, non-standard improvements within the public right-of-way shall be removed.
19. Prior to recordation of the parcel map, the applicant shall install new sod or low groundcovers of the type approved by the City throughout the parkway fronting the development site.
20. Prior to recordation of the parcel map, a street tree of a type approved by the City shall be installed throughout the Jasmine Avenue parkway fronting the subject property per City standards.
21. Prior to recordation of the parcel map, all existing overhead utilities shall be undergrounded.
22. No above ground improvements shall be permitted within the 5-foot rear alley setback.
23. Each unit shall be served by an individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
24. An encroachment permit shall be required for all work activities within the public right-of-way.
25. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
26. All on-site drainage shall comply with the latest City Water Quality requirements.
27. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector.

RESOLUTION NO. ZA2022-005

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2021-016 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-070 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 424 AND 424 ½ FERNLEAF AVENUE (PA2021-271)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Civilscapes Engineering, Inc. (Applicant), with respect to property located at 424 and 424 ½ Fernleaf Avenue, and legally described as Lot 6, Block 433 Corona del Mar Tract, requesting approval of a tentative parcel map and coastal development permit for condominium purposes.
2. The applicant requests a tentative parcel map and coastal development permit for a two (2)-unit condominium. A duplex has been demolished and a new duplex is currently under construction. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. The tentative parcel map would allow each unit to be sold individually.
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).
4. 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.
5. A public hearing was held on January 27, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning, no variances or exceptions are required, all services and access to the proposed parcels are available. The parcel was not involved

in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

Tentative Parcel Map

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for a two (2)-unit residential condominium. A duplex has been demolished and a new duplex is currently under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Fernleaf Avenue frontage and any damaged concrete alley panels consistent with NBMC Title 19.

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a two (2)-unit residential development because it is regular in shape. An existing duplex has been demolished and a new duplex is currently under construction.
2. The subject property is accessible from the alley and is adequately served by all existing utilities.

Finding:

C. *That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

1. A duplex has been demolished and a new duplex is currently under construction.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3) of the CEQA Guidelines under Class 15 (Minor Land Alterations).

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map is for 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. Public improvements will be required of the developer per NBMC Section 19.28.010 (General Improvement Requirements) and Section 66411 (Local Agencies to Regulate and Control Design of Subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

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

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 access easements located on the property.

Finding:

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

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The property was previously developed with a residential use and is located in a Zoning District that permits residential uses.

Finding:

G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Code of Regulations (the California Building Code) that requires new

construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

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

Fact in Support of Finding:

1. The two (2)-unit dwelling that is under construction is consistent with the intended uses of the R-2 Zoning District, which allows two (2) residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The subject property is located within the Coastal Zone. A coastal development permit is requested in conjunction with the proposed tentative parcel map application. The project complies with the certified Local Coastal Program (LCP) and public access and recreation policies of Chapter Three of the Coastal Act. The Facts in Support of Findings L and M for the *Coastal Development Permit* (below) are hereby incorporated by reference.

Coastal Development Permit

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:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for a two (2)-unit residential condominium. A duplex has been demolished and a new duplex is under construction. The duplex conforms to all applicable development standards, including floor area limit, setbacks, height, and off-street parking. The proposed subdivision and improvements are consistent with the density of the R-2 Coastal Zoning District.
2. The property is located in an area known for the potential of seismic activity. All projects are required to comply with the California Building Code and Building Division standards and policies.
3. The Tentative Parcel Map is for a property that is over 1,000 feet from the harbor and is not near any natural landforms or environmentally sensitive areas.

Finding:

M. Conforms to 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 not located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is a tentative parcel map for two (2)-unit condominium purposes. The project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Approval of the parcel map will not affect public recreation, access or views.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2021-016 and Coastal Development Permit No. CD2021-070, subject to the conditions set forth in Exhibit "A," which is attached here to and incorporated by reference.
3. The approval of Tentative Parcel Map No. NP2021-016 and of Coastal Development Permit No. CD2021-070 shall become final and effective 14 days following the date the Resolution is adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 (Local Coastal Implementation Plan) of the Newport Beach Municipal Code. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 27th DAY OF JANUARY, 2022.



Jaime Murillo
Zoning Administrator

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

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is final.
3. The building permit for the new construction shall not be final until after recordation of the parcel map.
4. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 (Subdivisions) of the Newport Beach Municipal Code.
5. 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 BIRE II, LLC Residential Condominiums including, but not limited to, Tentative Parcel Map No. NP2021-016 and Coastal Development Permit No. CD2021-070 (PA2021-271). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

6. 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 Sections 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.**

7. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (1-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. New sod or low groundcovers of the type approved by the City shall be installed throughout the Fernleaf Avenue parkway fronting the development site including the area between the sidewalk and property line.
10. The existing broken and/or otherwise damaged concrete curb, gutter, sidewalk along the Fernleaf Avenue frontage shall be reconstructed per City Standard and all damaged alley panels.
11. A new street tree shall be planted along the Fernleaf Avenue frontage per City Standards.
12. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
13. All existing overhead utilities shall be undergrounded.
14. No above ground improvements are permitted within the 5-foot rear alley setback area.
15. All existing private, non-standard improvements within the public right-of-way shall be removed.
16. An encroachment permit is required for all work activities within the public right-of-way.
17. All improvements shall comply with the City's sight distance requirements. See City Standard 110-L.
18. All on-site drainage shall comply with the latest City Water Quality requirements.
19. 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

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

Fire Department

23. Fire sprinkler systems are required for each individual unit and no combined systems shall be allowed.

RESOLUTION NO. ZA2022-006

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING LIMITED TERM PERMIT NO. XP2021-026 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-050 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 2920 NEWPORT BOULEVARD (PA2021-204)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Helmsman Ale House (Applicant), with respect to property located at 2920 Newport Boulevard, described as Assessor Parcel Numbers 047-043-04 and 047-043-20, requesting approval of a limited term permit and a coastal development permit.
2. The Applicant proposes a reduced 1,000-square-foot maximum expanded outdoor dining area for up to a one (1)-year term. The previous larger 5,500-square-foot area was authorized through Emergency Temporary Use Permit No. UP2020-143 and Emergency Coastal Development Permit No. CD2020-128 (PA2020-246).
3. The subject property is categorized Visitor Serving Commercial (CV) by the General Plan Land Use Element and is located within the Commercial Visitor-Serving (CV) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor Serving Commercial (CV-A) – (0.0 to 0.75 FAR) and it is located within the Commercial Visitor-Serving (CV) Coastal Zoning District.
5. A public hearing was held on January 27, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and 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 Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The

Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 1,000-square-foot expanded outdoor dining patio at an existing restaurant for a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

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.

Limited Term Permit

In accordance with Section 20.52.040.G (Limited Term Permits) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The limited term permit will allow an extended and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Use Permit No. 3485 and its subsequent amendments.
2. The previously larger 5,500-square-foot expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit. A resident has filed complaints regarding operating outside of authorized hours and excessive noise. If founded, those complaints have been addressed through enforcement measures outlined in the NBMC, as they are received by the Code Enforcement Division. The operation of the expanded dining area is limited to up to one (1) year and has been reviewed and conditioned to help preclude any detriment to the general welfare of the area. The Code Enforcement Division will continue to ensure all conditions of approval are abided by.

3. The previously approved temporary operation was authorized through Emergency Temporary Use Permit No. UP2020-143 (PA2020-246). This approval allowed a temporary patio of approximately 5,500 square feet. The proposed operation significantly reduces the patio to no more than 1,000 square feet. Operation of the expanded outdoor dining area is limited to up to one (1)-year.
4. Outdoor dining areas are common within the Balboa Peninsula area, have been used at the subject property during similar hours in the past, and the use has not proven to be detrimental. The existing hours of operation for the interior of the restaurant are limited from 6 a.m. to 11 p.m., Sunday through Thursday and from 6 a.m. to 1 a.m., Friday and Saturday. The proposed temporary outdoor dining area would close by 9 p.m., Monday through Thursday, and by 10 p.m., Friday through Sunday.
5. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
6. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency (OCHCA) guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the OCHCA guidelines.
7. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
8. The plan includes appropriate delineation of outdoor use spaces with temporary physical barriers or markers.

Finding:

- B. 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 restaurant is located on a site that is comprised of two (2) separate parcels: one (1) with the restaurant building and one (1) with the parking lot to serve the building. The combined two (2) parcels are approximately 0.5-acre in size. If approved, the temporary outdoor patio would be reduced to 1,000 square feet from the previously approved 5,500 square feet and has been conditioned to have no permanent structures.
2. The project site is located on the northeast corner of Newport Boulevard and 30th Street. Surrounding uses include residential neighborhoods, which are located to the west beyond The Landing shopping center, and a mixed-use neighborhood to the north, east and south. The temporary patio does not negatively affect surrounding uses as it is limited by the Conditions of Approval, is a reduction of the current temporarily expanded area, and serves

an existing restaurant. Furthermore, the reduced temporary outdoor dining area will restore approximately ten (10) parking spaces.

Finding:

- C. *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 site has direct driveway approaches taken from 30th Street and the alley. The temporary outdoor patio is located within the private parking lot abutting the restaurant and will not impede access. There are no traffic issues anticipated.

Finding:

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

Fact in Support of Finding:

1. The subject property has been occupied by a food service use with outdoor dining since 1993. The existing parking lot has historically accommodated the restaurant. The existing parking lot is expected to accommodate the temporary use. There have been no parking-related complaints or issues raised related to the outdoor dining area installed under the previous emergency permit.

Finding:

- E. *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 category for this site is CV (Visitor Serving Commercial). The CV category is intended to allow for a range of accommodations (e.g., hotels, motels, hostels), goods, and services intended to primarily serve visitors. Permitted uses include those permitted in the CV Zoning designation, which includes restaurants by obtaining a use permit. The expanded outdoor dining use is accessory to the existing restaurant, will be utilized for a limited duration on-site and will be in furtherance of the intention for this land use category.
2. The site is in the Commercial Visitor Serving (CV) Zoning District. The CV designation applies to areas intended to provide for areas appropriate for accommodations, goods, and services intended to serve primarily visitors. The expanded outdoor dining use is

accessory to the existing restaurant, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CV designation. The CV District also allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.

3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CV Zoning District in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU 2, below. Additional benefits from the proposed amendment include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

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

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

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Balboa Peninsula.
5. The site is not located within a specific plan area.

Coastal Development Permit

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

Finding:

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

Facts in Support of Finding:

1. The project site is not located adjacent to a coastal view road or public access way. The temporary patio is located on a site with an existing restaurant. The temporary outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development on the Balboa Peninsula. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
2. The Property is in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and barrier has only minor detached structures. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
3. Improvements are complementary to the area; the subject restaurant and other restaurants on the Balboa Peninsula have similar outdoor dining improvements.
4. The dining area barrier is installed within the existing private parking lot. The barrier delineates the area dedicated for outdoor dining use and alcohol service. There are no existing City utilities within the expanded outdoor dining area.
5. Development authorized by this permit is not located in any environmentally sensitive habitat area (ESHA) and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to re-open allowing public to visit coastal areas and provides an added amenity for visitors. The proposed operation does not contain ESHA, wetlands, or sandy beach area.
6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

Finding:

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

Fact in Support of Finding:

1. The subject property is not located between the nearest public road and the sea or shoreline of any body of water located within 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 pursuant to Section 15301 under Class 1 (Existing Facilities) and 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 Limited Term Permit No. XP2021-026 and Coastal Development Permit No. CD2021-050 subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning and Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 27TH DAY OF JANUARY, 2022.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. The development shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective from January 11, 2022, to January 10, 2023, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040(J) (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.
3. *The expanded dining area shall not exceed 1,000 square feet.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 9 p.m. on Monday through Thursday, and 10 p.m. on Friday through Sunday.*
5. *There shall be no use of amplified sound and/or live entertainment in the expanded dining area.*
6. *The applicant shall install and maintain a physical barrier between any area used and adjacent to common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. *There shall be no permanent structures that require building permits.*
8. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
9. The sale of alcohol "to go" to patrons that dine within the expanded outdoor patios shall be prohibited.
10. The establishment shall abide by all applicable Orange County Health Care Agency requirements.

11. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
12. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
14. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.
15. This Limited Term Permit and Coastal Development Permit be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
16. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
17. 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 this Limited Term Permit No. XP2021-026 and Coastal Development Permit No. CD2021-050 (PA2021-204) for Helmsman Ale House. 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

18. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.

- c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one (1) accessible seating area shall be provided.
 - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).
19. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Public Works Department

20. Prior to implementation of this approval, the site plan and layout shall be reviewed and approved by the Public Works Department.
21. Substantial barriers (automobiles, K-rail, water-filled barrier, or other material acceptable to Public Works) shall be provided between the seating area and drive aisle and adjacent parking spaces. Substantial barriers shall not encroach into the required dimensions of the drive aisle and parking spaces.
22. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles and 15 feet of space around all underground facilities, such as poles and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
23. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
24. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
25. Expanded outdoor dining areas shall adhere to the SCE Clearance Decal examples.

Fire Department

26. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (two [2] or more walls) and/or canopies larger than 700 square feet (no walls or one [1] wall):
- Post maximum occupant load.
 - Do not exceed posted occupant load inside the tent or canopy.
 - Visible and Mounted Fire Extinguishers with current service tags.
 - No Smoking Signs shall be installed.
 - Illuminated Exit Signs shall be installed.
 - Emergency Lighting shall be provided.
 - Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
 - All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.

- If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
 - LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
 - Tents and canopies shall have the State Fire Marshal tag indicating fire resistance.
 - Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.
27. Fire lane(s) shall be identified on the plan.
28. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
29. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
30. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a 3-foot clearance in all directions.
31. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
32. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.

RESOLUTION NO. ZA2022-007

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-052 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE WITH ATTACHED GARAGES PROVIDING THREE (3) ENCLOSED PARKING SPACES LOCATED AT 300 MORNING STAR LANE (PA2021-207)

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 (Applicant), with respect to property located at 300 Morning Star Lane, and legally described as Lot 166 of Tract No. 4224, requesting approval of a coastal development permit (CDP).
2. The Applicant proposes the demolition of an existing single-family residence and the construction of a new 6,588-square-foot, two-story, single-family residence with a total of 793 square feet of attached garages providing a total of three enclosed parking spaces. The project also includes the installation of landscaping, hardscaping, drainage, a pool, site walls, patio improvements, and reinforcing the bulkhead for protection against coastal hazards. The design complies with all applicable development standards and no deviations are requested. All improvements authorized by this CDP will be located on private property. The design complies with all applicable development standards and no deviations are requested.
3. The subject property is categorized RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1-6000 (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 it is located within the R-1-6000 (Single-Unit Residential) Coastal Zone District.
5. A public hearing was held on January 27, 2022, online via Zoom. 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 single-family residence in a zone which permits residential uses. The proposed project consists of the demolition of one single-family residence and the construction of a new new 6,588 square-foot, two (2)-story single-family residence with a total of 793 square feet of attached garage space providing three enclosed parking spaces in the R-1-6000 zoning district.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, maximum lot coverage, setbacks, height, and parking.
 - a. The maximum allowable lot coverage is 60 percent, and the proposed lot coverage is 55 percent.
 - b. The proposed development provides the minimum required setbacks, which are 10 feet along the harbor side, 6 feet along each side property line, and 6 feet along Morning Star Lane. The harbor side setback is regulated as a front setback while Morning Star Lane setback is regulated as a rear setback.
 - c. The proposed development will be two stories. The highest roof will be less than 24 feet from established grade (13.10 feet based on the North American Vertical Datum of 1988 [NAVD 88]), which complies with the maximum height requirements.
 - 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 (2)- story single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared for the project by PMA Consulting, Inc, dated August 5, 2021. The report states that the current maximum bay water elevation is 7.7 feet (NAVD 88). The report analyzes future sea level rise scenarios assuming a 3-foot increase in the maximum water level over the next 75 years. The bay water level is estimated to reach approximately 10.7 feet (NAVD 88) in the year 2096 (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). 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 proposed bulkhead design maintains a minimum top of wall elevation of 10.9 feet (NAVD 88) with future adaptability of up to 14.4 feet (NAVD 88).
4. The project site is protected by an existing bulkhead. A bulkhead conditions report was prepared for the project by PMA Consulting, Inc., dated August 5, 2021. The report concludes that once the existing bulkhead is reinforced per the report's recommendations, flooding, wave runup, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. Condition of Approval 2 requires the bulkhead remain at a minimum elevation of 10.90 (NAVD 88) with a design adaptability of elevation of 14.4 feet (NAVD 88).
5. The top of slab for the first floor of the residence is proposed at an elevation of 13.30 feet (NAVD 88), which complies with the minimum 9.00 feet (NAVD 88) elevation standard.
6. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) of the NBMC, the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). These requirements are included as Condition of Approval Numbers 3 and 4, and will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.
7. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.

8. The property abuts 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.
9. Pursuant to Section 21.35.050 of the NBMC, due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared for the project by Forkert Engineering & Surveying Inc., dated August 6, 2021. 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.
10. 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.
11. The project site is located approximately 785 feet to the east of Westcliff Park and approximately 2,300 feet southwest of Galaxy View Park. Both parks have designated public viewpoints as identified in the Coastal Land Use Plan. The parks offer public views of the Upper Newport Bay, the harbor, and the Pacific Ocean beyond. A visual evaluation of the project site demonstrated that the proposed project ultimately cannot be seen from either of the designated viewpoints. The project site is screened by either existing landscaping or existing development. As a waterfront property, the northeast elevation of the new residence will be visible from the water. On the elevation fronting the bay, the proposed design features large glass windows, horizontal composition, and modern architectural treatments which avoid over ornamentation. The visual appearance of excessive bulk is reduced through the architectural style of the residence. Proposed fencing for pool protection along the waterfront edge of the property utilizes transparent materials and avoids the appearance of being walled off from the water. Additionally, the proposed two-story design of the residence is consistent with the existing neighborhood pattern of development, complies with all applicable development standards, and has no unique features that would result in adverse impacts to public views

Finding:

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

Facts in Support of Finding:

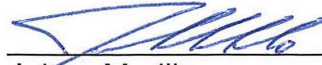
1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on standard R-1-6000 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.
2. Vertical access to the bay is available at the terminus of North Star Lane east of the site and at a point across from Westcliff Park west of the site. Lateral access is provided west of the vertical access point across Westcliff Park. The project does not include any features that would obstruct access along these routes.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-052, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal.

PASSED, APPROVED, AND ADOPTED THIS 27TH DAY OF JANUARY, 2022.



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, the existing seawall shall be reinforced and shall maintain a minimum elevation of 10.90 feet (NAVD 88) with the capability of being 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 and in accordance with the recommendations provided in the Coastal Hazards Report and Sea Level Rise Analysis prepared by PMA Consulting, dated August 5, 2021.*
3. *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.*
4. *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.*
5. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
6. This Coastal Development Permit does not authorize any development seaward of the private property.
7. 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.
8. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
 9. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
 10. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
 11. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
 12. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
 13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
 14. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
 15. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious

to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

16. *Prior to 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.*
17. *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.*
18. *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.*
19. *Prior to issuance of a building permit, the Applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.*
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. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday, and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
24. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

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. CD2021-052 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 NBMC, 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 **Smith Residence including, but not limited to, Coastal Development Permit No. CD2021-052 (PA2021-207)**. 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. ZA2022-008

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-057 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED THREE (3)-CAR GARAGE LOCATED AT 1712 EAST OCEAN FRONT (PA2021-274)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Richard Krantz Architecture (Applicant), with respect to property located at 1712 East Ocean Front and legally described as Lot 3 of Tract No. 518, requesting approval of a coastal development permit (CDP).
2. The Applicant requests to demolish an existing single-family residence and to construct a new 3,645-square-foot, three-story, single-family residence with an attached 736-square-foot, three-car garage. The project also includes the installation of landscaping, hardscaping, drainage, site walls, and patio improvements. The design complies with all applicable development standards and no deviations are requested. All improvements authorized by this CDP will be located on private property. The design complies with all applicable development standards and no deviations are requested.
3. The subject property is categorized RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single Unit Residential Detached) - (10.0 – 19.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zone District.
5. A public hearing was held on January 27, 2022, online via Zoom. 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 single-family residence in a zone which permits residential uses. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 3,645-square-foot, three-story, single-family residence with an attached 736-square-foot, three-car garage in the R-1 zoning district.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The 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 4,736 square feet and the proposed floor area is 4,247 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line abutting East Ocean Front, 3 feet along each side property line and 0 feet along the rear property line abutting the alley.
 - c. The highest guardrail is less than 24 feet from existing grade and the highest ridge is no more than 29 feet from existing grade, which comply with the maximum height requirements.
 - d. The project includes garage parking for a total of three (3) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)-story residences and an occasional newer three (3)-story, single-family residence. The proposed design, bulk, and scale of the development is consistent with applicable development standards of the zoning district and the expected future development of the neighborhood.

3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated June 21, 2021 for the project. As an oceanfront site, the report analyzes the coastal hazards of shoreline erosion, flooding, wave runoff, and sea level rise. The report assumes an approximate 3.2-foot increase to bay water levels from sea level rise (based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update) over the next 75 years (i.e., the life of the structure). The report concludes that given the wide nature of the beach, lack of long-term shoreline erosion, and a high finished first floor elevation of 14.00 (NAVD 88) which complies with the minimum 9.0-foot (NAVD 88) finish floor elevation standard for new structures, the proposed project is reasonably safe from coastal hazards and sea level rise. There is no anticipated need for a shore protection device over the life of the proposed development and there are no recommendations necessary for avoidance or minimization of coastal hazards.
4. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) - (Natural Landform and Shoreline Protection/ Development Standards) of the NBMC, the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) - (Waterfront Development/ Development Standards). Both requirements are included as conditions of approval, Condition of Approval Numbers 2 and 3 respectively, and will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively
5. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
6. Pursuant to Section 21.35.030 (Construction Pollution Prevention Plan) of the NBMC, 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.
7. Pursuant to Municipal Code Section 21.35.050 – (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (PWQHP) is required. A preliminary PWQHP has been prepared for the project by Civil Engineology Inc., dated, January 6, 2022. 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.

8. 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.
9. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest designated coastal viewpoint is approximately 1,979 feet away from the project site, at the West Jetty View Park and the project site is not visible from this designated viewpoint. The building design features large glass windows on both stories, arches, glass guardrails on the third floor, and exterior stairs which provide visual interest for views from the beach while reducing the overall massing and bulk of the building. The project's compliance with height and setback development standards will prevent new impacts to views of the coast as the new residence will maintain a building envelope consistent with the existing neighborhood pattern of development.

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.*

Fact in Support of Finding:

1. The project site is located on the Balboa Peninsula, between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on standard R-1 lot with a new single-family residence. The project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the coast is available on either side of the project site via the I and L Street ends. Lateral access is provided on the beach and through the East Ocean Front Alley. The project does not include any features that would obstruct access along these routes.
3. Unpermitted development (i.e. a low wall) exists seaward of the private property on a portion of the City's property (the public beach). The unpermitted development is the subject of an ongoing enforcement action by the California Coastal Commission. Condition of Approval No. 6 requires the property owner to agree to and cooperate with the City and California Coastal Commission 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.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-057, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal.

PASSED, APPROVED, AND ADOPTED THIS 27TH DAY OF JANUARY, 2022.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.*
3. *Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. This letter shall be scanned into the plan set prior to building permit issuance.*
4. 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.
5. This Coastal Development Permit does not authorize any development seaward of the private property.
6. *The Applicant shall remove any unpermitted development located seaward of the property and within the prolongation of the side-property lines of the subject property and shall cooperate with the City and the California Coastal Commission for the restoration of the affected area consistent with a restoration plan approved by the City and the Coastal Commission.*
7. 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.
- 8. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
 - 9. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
 - 10. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
 - 11. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
 - 12. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
 - 13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
 - 14. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
 - 15. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

16. *Prior to 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.*
17. *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.*
18. *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.*
19. *Prior to issuance of a building permit, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.*
20. *Prior to issuance of building permits, the final WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the approved CPPP and 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. 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 a.m. and 6:30 p.m., Monday through Friday, and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.

24. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

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. CD2021-057 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 **Magis TLCS, LLC Residence including, but not limited to, Coastal Development Permit No. CD2021-057 (PA2021-274)**. 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.