



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 April 15, 2022.

ZONING ADMINISTRATOR ACTIONS APRIL 14, 2022

- Item 1: Youssef Residential Condominiums Tentative Parcel Map No. NP2022-002 (PA2022-012)
Site Address: 603 and 603 ½ Iris Avenue
Action: Approved by Resolution No. ZA2022-023 Council District 6
- Item 2: Starfish Newport Beach Minor Use Permit No. UP2021-048 (PA2021-269)
Site Address: 191 Riverside Avenue, Suite A
Action: Approved by Resolution No. ZA2022-024 Council District 3
- Item 3: Neighborhood Goods Café Minor Use Permit No. UP2021-052 (PA2021-293)
Site Address: 343 Newport Center Drive
Action: Approved by Resolution No. ZA2022-025 Council District 5
- Item 4: 8 Bayshore Partnership, LP Residence Coastal Development Permit No. CD2021-080 (PA2021-308)
Site Address: 2676 Bay Shore Drive
Action: Approved by Resolution No. ZA2022-026 Council District 3
- Item 5: Lindner Residence Coastal Development Permit No. CD2022-011 (PA2022-030)
Site Address: 2761 Bay Shore Drive
Action: Approved by Resolution No. ZA2022-027 Council District 3
- Item 6: Gunderson Residence Coastal Development Permit No. CD2021-069 (PA2021-268)
Site Address: 139 North Bay Front
Action: Approved by Resolution No. ZA2022-028 Council District 5
- Item 7: Mclain Residence Coastal Development Permit No. CD2022-003 (PA2022-002)
Site Address: 2172 East Ocean Front
Action: Approved by Resolution No. ZA2022-029 Council District 1

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

Item 1: Balboa Theater Renovation – Staff Approval No. SA2021-009 (PA2021-272)
Site Address: 707 and 709 East Balboa Boulevard

Action: Approved

Council District 1

Item 2: Thacker Berry Farms Strawberry Stand – Limited Term Permit No. XP2022-003 (PA2022-054)
Site Address: 2401 Irvine Avenue

Action: Approved

Council District 3

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

RESOLUTION NO. ZA2022-023

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2022-002 FOR TWO (2)-UNIT RESIDENTIAL CONDOMINIUM PURPOSES LOCATED AT 603 AND 603 ½ IRIS AVENUE (PA2022-012)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Adel Youssef of Pro-Builders Enterprises, Inc (Applicant), with respect to property located at 603 and 603 ½ Iris Avenue, and legally described as Lot 3, Block 635, of the Corona del Mar Tract requesting approval of a tentative parcel map for condominium purposes.
2. The Applicant requests a tentative parcel map for two (2)-unit condominium purposes. A duplex has been demolished and a new duplex is under construction. The tentative parcel map would allow each unit to be sold individually. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed.
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 not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held on April 14, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 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 meets all identified criteria; therefore, it is eligible for the Class 15 Exemption.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two (2)-unit residential condominium purposes. The project site was previously developed with a duplex and has been cleared of existing improvements. A new duplex is under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use category.
2. The subject property is not located within a specific plan area.
3. The project is conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Iris Avenue frontage and alley as needed, as well as the undergrounding of utilities, consistent with the Title 19 (Subdivisions) of the NBMC.

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a duplex because it is relatively flat and rectangular. It was also previously developed with a duplex.
2. The subject property is accessible from both Iris Avenue and the alley in the rear.
3. The site is adequately served by existing utilities, as the site was previously developed with a duplex that is being replaced resulting in no increase of density.

Finding:

C. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may

nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The Public Works Department has reviewed the proposed Tentative Parcel Map and determined that the design of the development will not conflict with easements

acquired by the public at large, for access through, or use of property within the proposed development because no public easements are located on the property.

2. There are no existing easements either through or adjacent to the property.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The City's

Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

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

Fact in Support of Finding:

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

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 3 of the Coastal Act.*

Fact in Support of Finding:

1. The subject property is not 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. NP2022-002, 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 after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director of Community Development in accordance with the provisions of NBMC Title 19 Subdivisions.

PASSED, APPROVED, AND ADOPTED THIS 14th DAY OF APRIL, 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. After the recordation of the Parcel Map and prior to building permit final, the Applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this description change permit is final.
3. The building permit for the new construction shall not receive final inspection until after recordation of the parcel map.
4. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Tentative Parcel Map.
5. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 Subdivisions of the NBMC.
6. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **Youssef Residential Condominiums including, but not limited to, Tentative Parcel Map No. NP2022-002 (PA2022-012)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

7. A Parcel Map shall be recorded. The map shall be prepared on the California coordinate system (North American Datum of 1983, NAVD83). Prior to recordation of the map, the surveyor/engineer preparing the map shall submit to the County Surveyor and the City of Newport Beach, a digital-graphic file of said map in a manner described in Sections 7-9-

330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivisions Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

8. Prior to recordation of the Parcel Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual Subarticle 18. Monuments (1-inch iron pipe with tag) shall be set **on each lot corner** unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
9. All improvements shall be constructed as required by Ordinance and the Public Works Department.
10. An encroachment permit shall be required for all work activities within the public right-of-way.
11. All damaged sidewalk panels, curb, gutter, and street along the Iris Avenue property frontage and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.
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 will be permitted within the 5-foot rear alley setback. Smooth transitions between neighboring properties shall be provided.
15. The Applicant shall remove all existing private, non-standard improvements within the public right-of-way shall be removed, including but not limited to brick pavers and fencing.
16. The Applicant shall install new sod or low groundcovers of the type approved by the City throughout the Iris Avenue parkway fronting the development site.
17. A new 36-inch box street tree shall be installed along the Iris Avenue frontage in accordance with City Standards.
18. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
19. In case of damage done to public improvements surrounding the development site by private construction, additional reconstruction within the public right-of-way shall be required at the discretion of the Public Works Inspector.

Building Division

20. Each unit shall be served by its own independent fire riser.

RESOLUTION NO. ZA2022-024

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING MINOR USE PERMIT NO. UP2021-048 FOR A FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT WITH A TYPE 41 ALCOHOLIC BEVERAGE CONTROL LICENSE (ON-SALE BEER AND WINE) WITH NO LATE HOURS LOCATED AT 191 RIVERSIDE AVENUE (PA2021-269)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Amy Bagley of Steiner Studio, with respect to property located at 191 Riverside Avenue, and legally described as Portion of Lot F in Tract 919 requesting approval of a minor use permit.
2. The applicant proposes to convert an existing retail space within the Garden Shopping Center into a food service, eating and drinking establishment (Starfish Newport Beach) including a Type 41 Alcoholic Beverage Control (ABC) License (On-Sale Beer and Wine) with no late hours.
3. The subject property is designated Mixed-Use Horizontal 1 (MU-H1) by the General Plan Land Use Element and is located within the Mixed-Use Mariners' Mile (MU-MM) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Horizontal (MU-H), and it is located within the Mixed-Use Mariners' Mile (MU-MM) Coastal Zone District.
5. A public hearing was held on April 14, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The proposed project involves only minor tenant improvements with no expansion in floor area or change in parking requirements.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of the findings for a use permit are set forth:

Finding

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support of Finding

In finding that the proposed use is consistent with Section 20.48.030 (Alcohol Sales) of the Zoning Code, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
 1. The crime rate in the subject reporting district (RD 25) as well as all three (3) of the adjacent RDs (Reporting Districts) are above the City average. RD 25 contains the Mariners' Mile area from Tustin Avenue to Newport Boulevard, north of Coast Highway including the Garden Shopping Center, vehicle dealerships and various retail and restaurants. The purpose of the zoning of these commercial areas is to provide various commercial and retail uses to support the surrounding residential area as well as the surrounding tourist destinations. Therefore, these beach areas with a higher concentration of commercial land uses tend to have a higher crime rate than adjacent RDs.
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
 1. Due to the high concentration of commercial land uses, the calls for service and number of arrests are the second highest amongst the adjacent RDs. Additionally, this is the Coast Highway area that is considered one of the most significant tourist areas of the City.
- iii. *The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*
 1. The subject property is in a mixed-use district where residential development is permitted above the first floor. However, the Garden Shopping Center does not include any residential development and there are no plans to add mixed-use. The closest residential neighborhood is across Avon Street along Cliff Drive (150 feet) and across Riverside Avenue along Oceanview Avenue (175 feet). The Avon and Riverside streets provide a buffer to the commercial area. Additionally,

the hours of operation do not extend past 10:00 p.m., and there is no outdoor dining or live entertainment.

2. The nearest place of recreation, Cliff Drive Park and Community Center, is located approximately 50 feet behind the Garden Shopping Center across Avon Street and approximately 100 feet from Starfish Newport Beach. The nearest church, St. Andrews, is located approximately 4 miles northeast. The nearest school, Ensign Intermediate School, is located approximately 4 miles to the east. The Property is not located in close proximity to a daycare center. The Project is otherwise surrounded by other commercial retail and office uses.
3. The commercial area along Coast Highway is generally characterized by a high number of visitors, in which commercial and residential zoning districts are located in close proximity to one another. This location along Coast Highway within the Garden Shopping Center has greater distance from sensitive land uses than other commercial areas

iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.

1. The Garden Shopping Center was designed to accommodate multiple food service uses including C'est Si Bon Bakery and a future restaurant that is still within the entitlement process. C'est Si Bon does not serve alcohol. Many of the existing establishments selling alcoholic beverages are on the north and south side of Coast Highway along the bay including:
 - The Rusty Pelican, a food service with no late hours, outdoor dining, and a Type 47 (On Sale General) ABC license located at 2735 West Coast Highway;
 - GuacAmigos, a food service with late hours, outdoor dining and a Type 47 (On Sale General) ABC license;
 - A Market and Restaurant, a food service with outdoor dining, a Type 41 (On Sale Beer and Wine) ABC license and no late hours located at 3400 West Coast Highway;
 - The Winery Restaurant Newport Beach, a food service with no late hours, outdoor dining, a Type 41 (On Sale Beer and Wine) ABC license located at 3131 West Coast Highway;
 - Louie's by the Bay, a food service with no late hours, outdoor dining, a Type 47 (On Sale General) ABC license located at 2801 West Coast Highway; and
 - CP Restaurant & Lounge, a food service with late hours, outdoor dining, dancing, a Type 47 (On Sale General) ABC License located at 2800 West Coast Highway.

The RD 25 statistics indicate an overconcentration of ABC licenses within this statistical area.

2. The per capita ratio of on-sale retail is one (1) license for every 251 residents and is higher than the adjacent districts and the average ratio for Orange County. The per capita ratio of off-sale retail is one (1) license for every 654 residents and is higher than the adjacent districts and the average ratio for Orange County. This is due to the higher concentration of commercial land uses, alcohol licenses attributed to adjacent marina operations, lower number of residential properties, and high number of restaurants along Coast Highway. While the proposed restaurant is located in close proximity to other establishments, the location along Coast Highway, an established commercial area, together with the proposed operational characteristics would make the service of alcoholic beverages appropriate. The Police Department does not anticipate any increase in crime or alcohol-related incidents with the approval of this application subject to the proposed conditions of approval.
 3. Due to the type and operation of the restaurant which is conditioned to close at 10:00 p.m. with limited net public areas, and the incorporation of additional conditions to prevent the restaurant from operating as a bar or lounge, the proximity to other establishments does not appear to create a foreseeable concern.
- v. *Whether or not the proposed amendment will resolve any current objectionable conditions*
1. The Project has been reviewed and conditioned to help ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the establishment. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol-related impacts. All employees serving alcohol will be required to complete a certified training program in responsible methods and skills for selling alcoholic beverages, as required by the State of California.
 2. Offering alcohol service will complement the food service and provide a convenience to customers. The Police Department has no objections to the operation given the proposed hours of operation, license type, and location of the use. The resolution includes conditions of approval to limit objectionable conditions related to noise and trash from the establishment.

Minor Use Permit

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a minor use permit are set forth:

Finding

B. The use is consistent with the General Plan and any applicable specific plan;

Facts in Support of Finding

1. The General Plan designates the site as Mixed-Use Horizontal (MU-H1) which applies to areas on the inland side of Coast Highway in the Mariners' Mile Corridor where it is the intent to establish marine-related and highway-oriented general commercial uses.
2. The proposed food service establishment including alcohol service is consistent with the MU-H1 designation as it is intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach.
3. Several mixed-use structures including visitor serving commercial, such as eating and drinking establishments with alcohol service uses, exist nearby and are complementary to the surrounding commercial and residential uses.
4. The subject property is not part of a specific plan area.

Finding

C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;

Facts in Support of Finding

1. The property is designated by the Zoning Code as Mixed-Use Mariners Mile' (MU-MM), which applies to properties located on the inland side of Coast Highway in the Mariners' Mile Corridor and properties, such as these that front on Coast Highway, are intended to provide nonresidential uses only. The proposed full service, eating and drinking establishment with alcohol service and no late hours within the existing Garden Shopping Center requires a new minor use permit pursuant to Table 2-8 of Newport Beach Municipal Code Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements). The property is located approximately 127 feet from a residential zoning district.
2. The existing property was renovated into the Garden Shopping Center in 2018 and was intended to provide various retail and service uses including this type of food service establishment. There are conditions limiting the net public area so that there is no intensity of parking from the existing retail space as discussed in Fact No. C.3 below.
3. The required parking rate range for food service use is one (1) space per 30 to 50 square feet of net public area. The exact rate is determined based on the characteristics of the food service use. The proposed food service, eating and drinking establishment is small in nature within an existing shopping center with various retail and service uses with a few food service establishments. The net public area is small with 385 square feet and

14 seats, and a larger to-go component. The wine/sushi bar includes seven (7) of the 14 seats. There is no outdoor dining, late hours, live entertainment, or dancing. Based on these operational characteristics, the rate of one (1) space per 50 square feet of net public area is the appropriate rate. The Garden Shopping Center provides 123 total shared parking spaces. The existing retail space is allocated eight (8) parking spaces with a parking rate of one (1) space per 250 square feet. The proposed food service, eating and drinking establishment with 385 square feet of net public area, requires one (1) space per 50 square feet of net public area or eight (8) spaces. Therefore, there are no additional parking spaces required.

4. As conditioned, the proposed project will comply with Zoning Code standards for eating and drinking establishments.

Finding

- D. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*

Facts in Support of Finding

1. The existing 1,814-square-foot retail space will be improved with kitchen facilities, indoor storage and washing areas, dedicated wash down area that will drain directly into the sewer system; and a 385-square-foot net public area including a small wine/sushi bar with a total of approximately 14 seats.
2. The hours operation of the food service are restricted to the hours between 10 a.m. and 9 p.m., Sunday through Thursday, 10 a.m. to 10 p.m., Friday and Saturday. These hours are consistent with the business hours of other restaurants and uses in the commercial area.
3. The existing retail space is allocated eight (8) parking spaces at a parking rate of one (1) space per 250 square feet. The proposed food service, eating and drinking establishment with 385-square-feet of net public area, requires one (1) space per 50 square feet of net public area or eight (8) spaces. Therefore, there is no additional parking required. Additionally, the location provides a walkable food service establishment to the surrounding residential neighborhood.
4. The surrounding area contains various, retail and visitor serving commercial uses including restaurants with alcohol service. The proposed food service with no late hours is compatible with the existing and permitted uses within the area.
5. The operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol-related impacts. The project has been conditioned to ensure that the business remains a restaurant and does not become a bar or tavern. Additionally, dancing or live entertainment is not permitted.

6. The existing common trash storage area located approximately 50 feet behind the 191 Riverside Avenue building was remodeled with the shopping center in 2018 and is adequate to accommodate the proposed food service use. It is conveniently located where materials can be deposited and collected and does not impede with parking.

Finding

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

Facts in Support of Finding

1. The existing Garden Shopping Center has adequate public and emergency vehicle access, public services, and utilities that will be maintained with the proposed food service establishment.
2. The site is accessible from both Riverside Avenue and Avon Street.

Finding

- F. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, and safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The limited hours reduce impacts to surrounding land uses and sufficient parking is available for the food service establishment. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The food service, eating and drinking establishment serves the surrounding community in a commercial area designed for such uses. The food service including alcohol is provided as a public convenience and is not uncommon in establishments of this type. Additionally, the service of alcohol will provide an economic opportunity for the property owner to maintain a successful business that is compatible with the surrounding community.
3. All owners, managers, and employees selling or serving alcohol will be required to complete a Responsible Beverage Service Certification Program.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2021-048, 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, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 14th DAY OF APRIL 2022.



Jaime Murillo
Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. *All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.*
5. *Use Permit No. UP2021-048 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
6. *A minimum of one (1) parking space per 50 square feet of net public area shall be provided exclusively for the food service eating and drinking establishment.*
7. *The net public area shall not exceed 385 square feet based on the eight (8) parking spaces provided unless additional parking is provided on-site based on the minimum required one (1) space per 50 square feet of net public area.*
8. *The food service eating and drinking establishment shall operate within the hours of 10 a.m. and 9 p.m., Sunday through Thursday and 10 a.m. and 10 p.m., Friday and Saturday.*
9. *Outdoor dining shall be prohibited unless an amendment to this Use Permit is approved.*
10. *All catering vehicles related to the operation shall be parked on-site within the Garden Shopping /center parking spaces.*
11. This Minor Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

12. Any change in operational characteristics, expansion in area, or other modification to the approved plans, may require an amendment to this Minor Use Permit or the processing of a new Use Permit.
13. 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.
14. Prior to the issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in Minor Use Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Minor Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
15. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
16. 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.
17. 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

18. 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.
19. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday,

and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays, or Holidays.

20. No outside paging system shall be utilized in conjunction with this establishment.
21. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
22. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
23. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
24. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
25. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
26. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
27. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
28. 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.

29. 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 Starfish Newport Beach including, but not limited to, Minor Use Permit No. UP2021-048 (PA2021-269). 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

30. 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. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

Police Department

31. The approval is for an eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be Type 41 (On Sale Beer and Wine). Any substantial change in the ABC license type shall require subsequent review and potential amendment of the Minor Use Permit.
32. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Newport Beach Municipal Code.
33. The Applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the use permit.
34. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every 3 years regardless of certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's, manager's, and employee's successful completion

of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

35. The quarterly gross sales of on-sale alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
36. The Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
37. Any event or activity staged by an outside promoter or entity, where the applicant, operator, or owner or is employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge cover charge or any other form of admission charge is prohibited.
38. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).
39. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
40. There shall be no live entertainment or dancing allowed on the premises.
41. Full menu food service shall be available for ordering at all times that the restaurant establishment is open for business.
42. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
43. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
44. Strict adherence to maximum occupancy limits is required.
45. The Applicant shall maintain a security recording system with a 30-day retention and make those recordings available to police upon request.

RESOLUTION NO. ZA2022-025

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING MINOR USE PERMIT NO. UP2021-052 FOR A FOOD SERVICE EATING AND DRINKING ESTABLISHMENT WITH A TYPE 47 ALCOHOLIC BEVERAGE CONTROL LICENSE (ONSALE GENERAL) LOCATED AT 343 NEWPORT CENTER DRIVE (PA2021-293)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Patti Keiser, Neighborhood Goods Inc. with respect to property located at 343 Newport Center Drive and legally described as Parcel 3 of Resubdivision 0836 requesting approval of a Minor Use Permit.
2. The applicant proposes to allow a Type 47 (On Sale General) Alcoholic Beverage Control (ABC) license with no late hours for the new food service eating and drinking establishment within Neighborhood Goods department store within Fashion Island regional shopping center (Fashion Island mall).
3. The subject property is designated Regional Commercial (CR) by the General Plan Land Use Element and is located within the PC-56 (Newport Center North – Fashion Island sub-area) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on April 14, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The proposed project involves only minor tenant improvements with no expansion in floor area or change in parking requirements.

SECTION 3. REQUIRED FINDINGS.

In accordance with Newport Beach Municipal Code (NBMC) Section 20.48.030 (Alcohol Sales), the following findings and facts in support of such findings for a use permit are set forth:

Finding

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support of Finding

In finding that the proposed use is consistent with NBMC Section 20.48.030, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
1. The proposed establishment is located within Reporting District (RD) No. 39, wherein the number of crimes is higher than adjacent Reporting Districts and the City overall; however, this may be attributable to a higher concentration of commercial land uses within a regional commercial shopping center, which has a minimal amount of residential uses. RD 44 is smaller in land area when compared to RD 39 yet it maintains a comparable number of crimes as it contains the entire commercial corridor along East Coast Highway within Corona del Mar. RD 43 and 47 have a significantly lower number of crime as they are primarily residential with few commercial uses.
 2. The highest volume crime in RD 39 is burglary or theft from automobiles and the highest volume arrests are drug-related offenses.
 3. The Newport Beach Police Department (NBPD) has reviewed the application and has provided operational conditions of approval to help minimize any potential detrimental impacts.
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
1. The alcohol-related calls for service and number of arrests are lesser percentage of the total arrests than in the adjacent RDs. The NBPD has reviewed the application and has provided operational conditions of approval to help minimize any potential impacts, which are incorporated in Exhibit "A."
- iii. *The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*

1. Fashion Island does not abut sensitive land uses and is separated from other uses by parking lots, roadways and other commercial uses. Residential uses are permitted in the northern sections of the PC-56 (North Newport Center Planned Community) Zoning District within Blocks 500, 600, 800, and San Joaquin Plaza. The proposed use is not located in close proximity to these residential districts.
- iv. *The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
 1. There are several other restaurants within the Fashion Island mall. These include tenants such as Fleming's Steak House, True Food Kitchen, Whole Foods, Cheesecake Factory, P.F. Chang's, Sushi Roku. These restaurants have Type 41 (On-Sale Beer and Wine) or Type 47 (On-Sale General) Alcoholic Beverage Control (ABC) licenses and there is no evidence suggesting these uses have been detrimental to the neighborhood. These establishments are a common use within regional shopping centers or malls. Additionally, there is no evidence to suggest that the conditional approval of this new alcohol sales license would create new objectionable conditions.
 2. The proposed hours of operation do not include late hours and the café will close by 9 p.m. with the department store. According to the NBPD, an adequate security plan is currently in place for Fashion Island. Conditions of approval are included to adequately manage alcohol service, which will occur only within the indoor dining area.
- v. *Whether or not the proposed amendment will resolve any current objectionable conditions.*
 1. The proposed café is located within an existing commercial tenant space and is designed as a restaurant that includes onsite service and consumption of alcoholic beverages. There are no current objectionable conditions.
 2. The NBPD has reviewed the application and has provided operational conditions of approval to help minimize any potential detrimental impacts, which are included in Exhibit "A."

Minor Use Permit

In accordance with NBMC Section 20.52.020.F (Findings and Decision), the following findings and facts in support of such findings for a use permit are set forth:

Finding

B. The use is consistent with the General Plan and any applicable specific plan:

Facts in Support of Finding

1. The Land Use Element of the General Plan designates the project site as Regional Commercial (CR), which is intended to provide retail, entertainment, service, and

supporting uses that serve local and regional residents. The proposed restaurant with alcoholic beverage sales will serve local and regional residents and is consistent with land uses in the CR land use designation.

2. The subject property is not a part of a specific plan area.

Finding

- C. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code:*

Facts in Support of Finding

1. The project is located in the Fashion Island Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District. Fashion Island is intended to be a regional retail and entertainment center that is a destination with a wide variety of uses that will serve visitors, residents, and employees of the area. The eating and drinking establishment with alcoholic beverage sales is a commercial use that serves visitors, residents, and employees in the area and, therefore, is consistent with the purposes of the North Newport Center Planned Community District.
2. Eating and drinking establishments are permitted uses within the Fashion Island Sub-Area of the North Newport Center Planned Community Zoning District. Pursuant to the Planned Community Text, the on-site sale of alcohol in conjunction with an eating and drinking establishment requires a minor use permit.

Finding

- D. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity:*

Facts in Support of Finding

1. The Fashion Island Sub-Area permits a range of retail, dining, and commercial entertainment. The proposed use is compatible with surrounding permitted commercial uses in the vicinity and there are no sensitive land uses located nearby.
2. The on-site consumption of alcoholic beverages will be incidental to the cafe. The quarterly gross sales of alcoholic beverages will not exceed the gross sales of food during the same period, per the conditions of approval. Alcoholic beverage service and consumption will be under the supervision of employees who have completed a certified training program pursuant. The minimum 42-inch barrier fence will be provided around the outdoor dining to meet the Alcoholic Beverage Control License requirements.
3. The café hours will mirror the hours of the department store and the mall, closing at 9 p.m. daily.

4. The conditions of approval reflected in Exhibit "A" of this resolution ensure that potential conflicts with surrounding land uses are eliminated or minimized to the greatest extent possible.

Finding

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

Facts in Support of Finding

1. The Fashion Island mall provides adequate required parking within the onsite surface parking lots and parking structures. The proposed café with alcohol service will be within an existing retail space with an accessory outdoor dining patio, which does not require additional parking to what was required for the retail tenant.
2. This site has been reviewed by the Fire Department to ensure adequate public and emergency vehicle access is provided. Utilities are provided with all applicable requirements.
3. The food service use is permitted by right within the PC-56 Zoning regulations and the tenant space is currently in the plan check process for the food service use.
4. Any improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use:*

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to help ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible.
2. The café with alcohol service will serve visitors and the surrounding business community. The proposed establishment will provide alcohol service as a public convenience to visitors and workers within the surrounding area.
3. Fashion Island management has historically provided efficient onsite security and cooperates with the NBPD.

4. The Applicant is required to obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.
5. The facts in support of Findings A through F above are incorporated by reference

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2021-052, 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 is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 14th DAY OF APRIL, 2022.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. *All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.*
5. *Use Permit No. UP2021-052 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
6. *The café shall close by 9 p.m., daily.*
7. This Minor Use 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.
8. 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.
9. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
10. 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.

11. 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

12. 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.
13. 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 7a.m. and 6:30 p.m., Monday through Friday, and 8a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
14. No outside paging system shall be utilized in conjunction with this establishment.
15. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
16. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
17. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
18. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).

19. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10p.m. and 7a.m. on weekdays and Saturdays and between the hours of 10p.m. and 9a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
20. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
21. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of onsite media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
22. 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.
23. 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 Neighborhood Goods Café including, but not limited to, Minor Use Permit No. UP2021-052 (PA2021-293). 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

24. The outdoor dining patio shall not encroach into 20foot wide pedestrian walkway within interior of the mall. The pedestrian walkway shall maintain 20 feet clear for pedestrians.
25. Propane heaters shall be prohibited in the outdoor dining area.
26. Fire sprinklers shall be required if the outdoor dining patio is covered.

Building Division

27. 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. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

Police Department

28. The approval is for an eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be Type 47 (OnSale General). Any substantial change in the ABC license type shall require subsequent review and potential amendment of the Minor Use Permit.
29. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Newport Beach Municipal Code.
30. The Applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the use permit.
31. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every three years regardless of certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
32. The quarterly gross sales of onsale alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
33. The Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
34. Any event or activity staged by an outside promoter or entity, where the applicant, operator, or owner or is employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge cover charge or any other form of admission charge is prohibited.

35. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).
36. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
37. There shall be no live entertainment or dancing allowed on the premises.
38. The approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
39. Full menu food service shall be available for ordering at all times that the restaurant establishment is open for business.
40. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
41. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
42. Strict adherence to maximum occupancy limits is required.
43. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. 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.
44. The Applicant shall maintain a security recording system with a 30-day retention and make those recordings available to police upon request.

RESOLUTION NO. ZA2022-026

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-080 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE WITH ACCESSORY DWELLING UNIT AND TWO (2) ATTACHED TWO (2)-CAR GARAGES LOCATED AT 2676 BAY SHORE DRIVE (PA2021-308)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Skurman Architects, with respect to property located at 2676 Bay Shore Drive, requesting approval of a coastal development permit.
2. The lot at 2676 Bay Shore Drive is legally described as Lot 54 of Tract 907.
3. The applicant proposes a coastal development permit to allow the demolition of an existing single-family residence and construction of a new two (2)-story single-family residence with a third-floor roof deck and attached 646-square-foot accessory dwelling unit. The proposed structure consists of approximately 13,518 square feet with two (2) attached two (2)-car garages. The project also includes hardscape, walls, landscaping, and drainage facilities. No work is proposed on the existing bulkhead.
4. The subject property is designated Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached (RSD-B) (6.0 – 9.9 DU/AC) and it is located within the Single-Unit Residential (R-1) Coastal Zone District.
6. A public hearing was held on April 14, 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 demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 13,518-square-foot, single-family residence including an accessory dwelling unit and attached garages.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 27,044 square feet and the proposed floor area is 13,518 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line abutting Bay Shore Drive, 4 feet along each side property line and 10 feet along the bulkhead.
 - c. The highest guardrail is less than 24 feet from established grade (12.42 feet North American Vertical Datum of 1988 [NAVD88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
 - d. The project includes garage parking for a total of four (4) 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 and one (1) parking space for attached accessory dwelling units.

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. According to the Coastal Hazards Report and Sea Level Rise Analysis prepared by Geosoils, Inc. dated July 15, 2021, there is an existing seawall which serves the subject property. The existing seawall is currently being raised to an elevation of 10.9 feet NAVD88 with an adaptability elevation of 14.4 feet (NAVD88) pursuant to a coastal development permit (CD2021-065 under PA2021-250) that was previously approved. This is above the minimum required 10.9 feet (NAVD 88). Flooding, wave runup, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. Flood shields (sandbags and other barriers) can be deployed across the openings to protect and prevent flooding to the structure. The report concludes that the proposed project will be reasonably safe from flooding hazards for the next 75 years.
4. The finished floor elevation of the proposed single-family residence is 12.5 feet (NAVD88), which complies with the minimum 9.00-foot (NAVD88) elevation standard.
5. A condition of approval has been included to confirm that prior to final inspection of the building permit for the single-family residence, the existing bulkhead is raised to a minimum height of 10.9 feet NAVD88 (with adaptability up to 14.4 feet NAVD88) as approved under to Coastal Development Permit No. CD2021-065 (PA2021-250).
6. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
7. The property is located adjacent to coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
8. Pursuant to Municipal Code Section 21.35.050, 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 Civilscapes Engineering dated, February 3, 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.

9. Proposed landscaping complies with Implementation Plan Section 21.30.075. A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
10. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal view road that is West Coast Highway, which is located approximately 1,200 feet from the subject property. The project does not contain any unique features that could degrade the visual quality of the coastal zone and the proposed footprint of the structure is similar to the existing development on the property.

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. The project is located within a private, gated community that is not accessible to the public and does not provide public access to the bay. In this case, the project replaces an existing single-family residence located on standard R-1 lot with a new single-family residence and accessory dwelling unit. 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. Lateral access to the bay is available throughout various entrances from West Coast Highway. The Bayshores community is a private, gated community that does not provide public access. Therefore, the project does not include any features that would obstruct access to the bay.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-080, 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 Program (LCP) Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 14TH DAY OF APRIL, 2022.



Jaime Murillo
Zoning Administrator

EXHIBIT “A”

CONDITIONS OF APPROVAL

Planning

1. *The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).*
2. *Prior to the issuance of a building permit, the applicant shall update the plans to measure the 10-foot front setback (along the water) from the bulkhead instead of the property line. The buildable area, maximum floor area allowed, and other relevant data shall be updated to reflect the revised setback location.*
3. *Prior to final of building permits, the existing seawall shall be reinforced and capped to 10.90 feet (NAVD 88) and capable to be raised up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities and the approved Coastal Development Permit No. CD2021-065 (PA2021-250).*
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. *Prior to the issuance of a building permit, the property owner shall notarize and record a deed restriction for the accessory dwelling unit that prohibits short-term lodging and the individual sale of the unit.*
6. *Prior to final inspection of the building permit, the property owner shall submit a questionnaire to the Planning Division that describes the anticipated use and rent (if applicable) of the accessory dwelling unit.*
7. This approval does not authorize any new or existing improvements (including landscaping) on California Coastal Permit Jurisdiction, State tidelands, public beaches, or the public right-of-way. Any improvements located on tidelands, submerged lands, and/or lands that may be subject to the public trust shall require a coastal development permit (CDP) approved by the California Coastal Commission (Coastal Commission). Prior to the issuance of building permits, the applicant shall provide a copy of said coastal development permit or CDP waiver or documentation from the Coastal Commission that subject improvements are not subject to the permit requirements of

the Coastal Act and/or not located within the permit jurisdiction of the Coastal Commission.

8. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
9. This Coastal Development Permit does not authorize any development seaward of the private property.
10. 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.
11. 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.
12. 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.
13. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.

14. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
15. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
16. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
17. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
18. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
19. *Prior to the issuance of a building permit, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.*
20. *Prior to the issuance of a building permit, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.*
21. *Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.*
22. *Prior to issuance of 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.*
23. *Prior to issuance of a building permit, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.*
24. *Prior to the issuance of a building permit, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.*

25. 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.
26. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
27. 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

28. 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.
29. 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.
30. This Coastal Development Permit No. CD2021-080 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.
31. 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 8 Bayshore Partnership, LP Residence including, but not limited to, Coastal Development Permit No. CD2021-080 (PA2021-308). 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

32. The property is located in a Special Flood Hazard Area, Zone AE8. All new construction shall comply with NBMC Section 15.50.
33. A separate building permit is required for repair or remodeling of the existing bulkhead.

RESOLUTION NO. ZA2022-027

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-011 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY, SINGLE-FAMILY RESIDENCE WITH AN ATTACHED THREE (3)-CAR GARAGE AT 2761 BAY SHORE DRIVE (PA2022-030)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Guidero (“Applicant”), on behalf of Heidi Lindner (“Owner”), with respect to property located at 2761 Bay Shore Drive, requesting approval of a coastal development permit (“CDP”).
2. The property is legally described as Lot 22 of Tract 1014, in the City of Newport Beach, County of Orange, State of California.
3. The Applicant proposes to demolish an existing single-family residence and construct a new, two (2)-story 3,411-square-foot single-family residence with an attached 705-square-foot, three (3)-car garage. The project includes additional appurtenances such as site walls, fences, patios, a spa, drainage devices, and landscaping. The design complies with all applicable development standards, including height, setbacks, and floor area limit, and no deviations are requested.
4. The subject property is designated RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-B (Single-Unit Residential Detached [6.0 – 9.9 DU/AC]) and the property is located within the R-1 (Single-Unit Residential) Coastal Zone District.
6. A public hearing was held on April 14, 2022, via Zoom. A notice of time, place, and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (“CEQA”) under Class 3 (New Construction or

Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition and construction of limited numbers of new, small facilities or structures including one (1) single-family residence in a residential zone. The proposed project consists of the demolition of an existing single-family residence and the construction of a new 3,411-square-foot, single-family residence with an attached 705-square-foot garage in the R-1 Zoning District.

SECTION 3. REQUIRED FINDINGS.

In accordance with Newport Beach Municipal Code (“NBMC”) Section 21.52.015 (Coastal Development Permits, Findings and Decision), 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 total proposed floor area, including the residence and enclosed parking, is 4,116 square feet, which complies with the maximum allowable floor area limit of 5,438 square feet.
 - B. The proposed development will provide the minimum required setbacks, which are ten (10) feet along the front property line abutting Bay Shore Drive, ten (10) feet along the rear property line, and four (4) feet along each side property line.
 - C. The highest guardrail is no more than 24 feet and the highest roof ridge is no more than 29 feet, measured from the established grade level of 13.30 feet based on the North American Vertical Datum of 1988 (“NAVD88”), which complies with the maximum height limitation.
 - D. The project includes enclosed garage parking for three (3) vehicles, which exceeds the minimum parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with one (1)- and two (2)-story, single-family residences. The proposed design, bulk, and scale of the development will be consistent with the existing neighborhood pattern of development and expected future development.

3. The project site is located approximately 155 feet from the mean high tide line and is separated from the water by Bay Shore Drive and a row of existing residential development. The finished first floor elevation of the proposed residence is 14.0 feet (NAVD88), which exceeds the minimum required 9.00-foot (NAVD88) elevation standard.
4. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
5. The project design addresses water quality with a construction erosion control plan that outlines temporary Best Management Practices (BMPs) to be implemented during construction to minimize erosion and sedimentation, and to minimize pollution of runoff derived by construction chemicals and materials. No water quality impacts to coastal waters are anticipated based upon the location and elevation of the property.
6. The property is not located on the shoreline nor is it located within 100 feet of coastal waters. The project design addresses water quality with a construction erosion control plan and a post construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site is directed to the City's storm drain system.
7. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). Condition of Approval No. 9 is included to require drought-tolerant, and prohibits invasive, species. Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
8. The property is not located near designated public viewpoints or coastal view roads and will not impact public coastal views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline in the private community of Bayshores. Developed in 1941, Bayshores is a 258-lot, single-family gated community located on the Lido Channel, southwest of Coast Highway and Newport Bay Bridge. The 39-unit Anchorage Apartment complex is also located within the community. The community is accessible from Coast Highway via Bay Shore Drive, a private street. The shoreline is on the south side and east side of the community and consists of bulkheads and two (2) small sandy beaches.
2. Coastal Land Use Plan Policy 3.1.5-3 requires public access consistent with public access policies for any new development in private/gated communities causing or contributing to adverse public access impacts. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on a coastal 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 so as not to block or impede existing public access opportunities.
3. The residential lot does not currently provide nor does it inhibit public coastal access. Vertical and lateral access to the bay front is available adjacent to the Bay Shores community at the Balboa Bay Club, immediately north of the Bayshores community.
4. The project site is not located adjacent to a coastal view road, public viewpoint, public park or beach, or public accessway, as identified in the Coastal Land Use Plan. Furthermore, an investigation of the project site and surrounding area did not identify any other public view opportunities. The project site may be located within the viewshed of distant public viewing areas, however the project is located on a coastal lot and will replace an existing single-family home with a new single-family home that complies with all applicable Local Coastal Program development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2022-011, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. 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 Act.

PASSED, APPROVED, AND ADOPTED THIS 14TH DAY OF APRIL, 2022.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Coastal Development Permit No. CD2022-011 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 21.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
6. 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.
7. 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.
8. Prior to the issuance of a building permit, the Applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species, and water efficient irrigation design. The plans shall be approved by the Planning Division.
9. 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.

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10. 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.
 11. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, wetland or their buffers.
 12. 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.
 13. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
 14. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
 15. 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.
 16. 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 Lindner Residence including, but not limited to, Coastal Development Permit No. CD2022-011 (PA2022-030). 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

17. No encroachments are permitted within the limits of the utility easement located at the rear of the property, including but not limited to, planters, gate swing, first floor eaves and foundations.
18. A new sewer clean out shall be installed on the existing sewer lateral per City Standard No. 406. The sewer clean out shall be located within the limits of the existing utility easement.

Fire Department

19. Fire sprinklers are required for this project.

Building Division

20. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Pollution Prevention Plan (CPPP).
21. Prior to issuance of a building permit, the approved CPPP shall be submitted with the Building Permit plans. Implementation shall be in compliance with the approved CPPP and any changes could require separate review and approval by the Building Division.
22. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the WQHP/WQMP and any changes could require separate review and approval by the Building Division.
23. Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
24. Prior to 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.
25. Prior to issuance of building permits, the applicant shall submit a soils report which include recommendations for construction on liquefiable soils. Additionally, the building foundation shall comply with the minimum requirements of the City of Newport Beach Building Code Policy CBC 1803.5.11-12.

RESOLUTION NO. ZA2022-028

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-069 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 139 NORTH BAY FRONT (PA2021-268)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ian Harrison, with respect to property located at 139 North Bay Front, requesting approval of a coastal development permit.
2. The lot at 139 North Bay Front is legally described as a portion of Lot 10 and a portion of Lot 11 of the Balboa Island Subdivision.
3. The applicant proposes a coastal development permit to allow the demolition of an existing single-family residence and construction of a 2,302-square-foot, three (3)-story, single-family residence with an attached 416-square-foot, two (2)-car garage. The project includes landscape, hardscape, and subsurface drainage facilities all within the confines of the private property. The project complies with all development standards and no deviations from the municipal code are requested.
4. The subject property is designated RT (Two Unit Residential) by the General Plan Land Use Element and is located within the R-BI (Two-Unit Residential, Balboa Island) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E (Two Unit Residential) – (30.0 – 39.9 DU/AC) and is located within the R-BI (Two-Unit Residential, Balboa Island) Coastal Zone District.
6. A public hearing was held on April 14, 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, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 2,302-square-foot, three (3)-story, single-family residence and attached 416-square-foot, two (2)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 2,720 square feet and the proposed floor area is 2,718 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line, 3 feet along the side property lines, and 5 feet along the rear property line.
 - c. The highest guardrail is less than 24 feet from established grade (9.00 feet North American Vertical Datum of 1988 [NAVD 88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
 - d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)- and three (3)-story, single-family residences. The proposed design, bulk, and scale of the development is

consistent with the existing neighborhood pattern of development and expected future development consistent with applicable development standards.

3. The property is an oceanfront lot that is separated from the ocean by a public boardwalk and City-owned concrete seawall/bulkhead. The bulkhead which protects the subject property is part of a larger bulkhead system which surrounds Balboa Island. No modification to the existing bulkhead is proposed with this project.
4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated October 29, 2021, for the project. The maximum bay water elevation is 7.7 feet North American Vertical Datum of 1988 (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 (i.e. the life of the structure). Therefore, the sea level is estimated to reach approximately 10.7 feet (NAVD 88) - (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update).
5. The finished floor elevation of the proposed single-family residence is 9.0 feet (NAVD 88), which complies with the minimum 9.00-foot (NAVD88) elevation standard. The Coastal Hazards Report concludes that the bay water elevation (currently 7.7 feet NAVD 88) will not exceed the proposed finished floor elevation around the single-family residence at 9.0 feet (NAVD 88) with flashing and waterproofing up to 23 inches above the top of slab, for the anticipated 75-year life of the structure. Flood shields (sandbags and other methods) can be deployed across the openings to protect flooding to the structure.
6. The report concludes that flooding, wave runup and erosion will not significantly impact this property over the life of the proposed development. The need for any additional shoreline protective device is not anticipated over the economic life of the proposed development to protect it from flooding, wave runup, or erosion.
7. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
8. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) – (Waterfront - Development Standards). Both requirements are included as conditions of approval that will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively. The Acknowledgement of Coastal Hazards is included as a condition of approval that will need to be satisfied prior to the issuance of building permits.

9. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) – (Natural Landform and Shoreline Protection), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The Waiver of Future Protection is included as a condition of approval that will need to be satisfied prior to final building inspection.
10. The property is located within 100 feet of coastal waters. Pursuant to Section 21.35.030 (Construction Pollution Prevention Plan) of the Municipal Code, a Construction Pollution Prevention Plan (CPPP) is required to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived from construction chemicals and materials. A CPPP has been provided and will be reviewed by the City's Engineer Geologist. Construction plans and activities will be required to adhere to the approved CPPP.
11. Pursuant to Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a preliminary Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared for the project by RCE Consultants, Inc., dated October 23, 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. Construction plans will be reviewed for compliance with the approved WQHP prior to building permit issuance.
12. Proposed landscaping complies with Implementation Plan Section 21.30.075. 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.
13. The front of the proposed residence, which is visible from North Bay Front, contains substantial architectural treatment and visual interest, in-keeping with the design guidelines of the Zoning Code and the new structure would comply with required setbacks. Lastly, the design includes modulation of volume throughout the structure. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to existing public views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation

Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on a standard R-BI zoned lot with a new single-family residence. Therefore, the project does not involve a change in land use, density, or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

2. Vertical access to the bay front public sidewalk and Newport Bay is available approximately 85 feet east and 185 feet west of the site where North Bay Front intersects Emerald Avenue and Park Avenue. The project does not include any features that would obstruct access along these routes.
3. There are no designated public viewpoints or Coastal View Roads near the project site, per the Coastal Land Use Plan. The nearest coastal viewpoint is the Balboa Yacht Basin, which is approximately 1,300 feet northeast from the project site. The nearest coastal view corridor is Bayside Drive from Marine Avenue to Harbor Island Drive, which is approximately 1,400 feet north from the project site. As currently developed, the existing property and other residences located along North Bay Front are located within these viewsheds. However, due to the distance of the proposed development from public viewpoints and the project's compliance with all applicable development standards, including height and setbacks, the project will not impact existing coastal views.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-069 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 Program (LCP) Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 14TH DAY OF APRIL, 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 issuance of building permits, a waterproofing curb or similar design feature shall be constructed around the proposed residence as an adaptive flood protection device up to a minimum of 10.9 feet (NAVD 88). Flood shields (sandbags and other methods) can be deployed across the openings to protect and prevent flooding to the structure.*
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 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.
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. 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.

7. 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.
8. 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.
9. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
10. 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.
11. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. 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.
14. 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.
15. *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.*

16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
23. 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
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24. 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.
25. 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.
26. This Coastal Development Permit No. CD2021-069 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.
27. 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 Gunderson Residence including, but not limited to, Coastal Development Permit No. CD2021-069 (PA2021-268). 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. ZA2022-029

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-003 TO CONSTRUCT A NEW ONE (1)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 2172 EAST OCEAN FRONT (PA2022-002)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by GRAHAM Architecture, with respect to property located at 2172 East Ocean Front, requesting approval of a coastal development permit.
2. The lot at 2172 East Ocean Front is legally described as Lot 19 of Block E.
3. The applicant proposes a coastal development permit to allow the construction of a 753-square-foot, one (1)-story, single-family residence with an attached 483-square-foot, two (2)-car garage. The project includes landscape, hardscape, and subsurface drainage facilities all within the confines of the private property. The project complies with all development standards and no deviations from the municipal code are requested.
4. The subject property is designated RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential – 10.0-19.9 DU/AC (RSD-C) and it is located within the R-1 (Single Unit Residential) Coastal Zoning District.
6. A single-unit residence at the property was demolished in 2020, pursuant to Coastal Development Permit No. CD2019-056 (PA2019-222).
7. A public hearing was held on April 14, 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, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the construction of a new 753-square-foot, one (1)-story, single-family residence and attached 483-square-foot, two (2)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 6,048 square feet and the proposed floor area is 1,236 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 10 feet along the front property line abutting East Ocean Front (beach side), 4 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 established grade (13.16 feet NAVD88) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
 - d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)- and three (3)-story, single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.

3. The finish floor elevation of the proposed dwelling is 13.46 feet North American Vertical Datum of 1988 (NAVD 88), which complies with the minimum 9.0-foot (NAVD 88) elevation standard.
4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated November 8, 2021, for the project. The report concludes that the proposed project is reasonably safe from the shoreline erosion due to lack of wave or wakes that can erode sand from the beach. The report also concludes that the project will be reasonably safe from future sea level rise assuming an increase up to 10.9 feet NAVD 88 (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). The finished floor elevation of the first floor of the proposed structure is 13.46 feet NAVD 88, which complies with the minimum 9.0-foot (NAVD 88) elevation standard for new structures and exceeds the minimum requirements for future sea level rise (10.9 feet NAVD 88).
5. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), 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). This requirement is included as a condition of approval that will need to be satisfied prior to final building permit inspection, respectively
6. 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). This requirement is included as a condition of approval that will need to be satisfied prior to the issuance of building permits, respectively.
7. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
8. The property is located within 100 feet of 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 Municipal Code Section 21.35.050, 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 Toal Engineering, Inc. dated December 13, 2018. 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. 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 adjacent to and immediately west of West Jetty View Park, which is a designated public viewpoint in the Coastal Land Use Plan and offers public views of the Pacific Ocean. Site evaluation revealed that the proposed one (1)-story design is consistent with the existing neighborhood pattern of development and will not affect the existing views afforded from West Jetty View Park. The project will replace a single-family home, demolished in 2020, with a new single-family home that complies with all applicable development standards. Views from West Jetty View Park are toward the ocean and not toward the subject site. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.
12. The front and side of the proposed residence, which are visible from the beach and West Jetty View Park, contain substantial architectural treatment and visual interest, including varied building materials and large windows, in-keeping with the design guidelines of the Zoning Code. The new structure would comply with required setbacks. Lastly, the design includes modulation of volume throughout the structure, an increased front setback beyond what is required by code, and a low, single-story building height. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to existing public views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact, and be proportional to the impact. In this case, the project replaces a single-family residence, demolished in 2020, located on standard R-1 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 beach is available adjacent to the site at West Jetty View Park. Lateral access is available on the beach to the north. 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.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2022-003, 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 Program (LCP) Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 14TH DAY OF APRIL, 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. Hedges within side setback areas and the front setback area are limited to six (6) feet and 42 inches in height, respectively, consistent with NBMC 21.30.040 (Fences, Hedges, Walls, and Retaining Walls).
3. *There shall be no large trees planted along property lines abutting the beach or West Jetty View Park such that they overhang onto public property or impede public views from West Jetty View Park.*
4. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices 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.
5. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. This letter shall be scanned into the plan set prior to building permit issuance.
6. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
7. This Coastal Development Permit does not authorize any development beyond the confines of the private property.
8. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak

nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:

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

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

17. *Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.*
18. *Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.*
19. *Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.*
20. *Prior to issuance of 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.*
21. *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.*
22. *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.*
23. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
24. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
25. 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

26. 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.
27. 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.
28. This Coastal Development Permit No. CD2022-003 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.
29. 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 Mclain Residence including, but not limited to, Coastal Development Permit No. CD2022-003 (PA2022-002). 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.



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

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

949-644-3200

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COMMUNITY DEVELOPMENT DIRECTOR ACTION LETTER

Subject: Balboa Theater Renovation (PA2021-272)
▪ Staff Approval No. SA2021-009

Site Location: 707 and 709 East Balboa Boulevard

Applicant: James Wilson of Thirtieth Street Architects, Inc.

Legal Description: Lots 4 and 5, Block 10, Balboa Tract, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 4, Page 11 of Miscellaneous Maps, in the Office of the County Recorder of said County

On **April 15, 2022**, the Community Development Director approved Staff Approval No. SA2021-009 finding the proposed alterations to the Balboa Theater, a landmark theater as that term is defined by the Zoning Code, in substantial conformance with Use Permit No. UP2004-003 (PA2004-032). This approval is based on the following analysis and subject to the following conditions.

LAND USE AND ZONING

- **General Plan Land Use Plan Category:** Mixed-Use Vertical (MU-V)
- **Zoning District:** Mixed-Use Vertical (MU-V)
- **Coastal Land Use Plan Category:** Mixed-Use Vertical (MU-V)
- **Coastal Zoning District:** Mixed-Use Vertical (MU-V)

PROJECT SUMMARY

The Applicant proposes to renovate and operate the Balboa Theater as an open-air performing arts and special event theater. The renovations include exterior façade restoration, removal of the aged roof structure, and a recreated historical marquee. Although the principal use of the site will remain a theater, consistent with the “Landmark Theater” designation in the Zoning Code, an accessory café is also proposed to serve theater patrons and the public. As proposed, the hours of the café’s operation will vary within the allowed 8 a.m. to 12 a.m. window depending on the time of the year. The café will operate with a Type 47 (On-Sale General – Eating Place) Alcoholic Beverage Control (ABC) License.

I. BACKGROUND

The Balboa Amusement Company constructed the Balboa Theater in 1928 and operated it as a motion picture theater until 1973. Between 1973 and 1975, the theater operated as an

adult theater. By 1976, the theater was purchased by Landmark Theaters, which operated it as a traditional movie theater until it closed its doors in 1992. Historically the theater maintained approximately 450 seats.

The building underwent a seismic retrofit and a complete interior demolition in 1994, and 1998, respectively. Later in 1998, the City purchased the property with Community Development Block Grant (CDBG) funds and leased it to the Balboa Performing Arts Theater Foundation (the "Foundation"), which held the lease until 2015.

Approval was granted by the City in 2004 (UP2004-003), to allow a complete renovation of the theater with a rooftop deck. The project also received a Coastal Development Permit from the California Coastal Commission. Demolition work commenced on the property, which effectively implemented all entitlements. However, ultimately, the Foundation could not obtain adequate funding to continue and complete construction of the project.

In 2014, the City contracted with Chambers Group, Inc. to prepare a historical resources report for the Balboa Theater, which documents the results of a historic architectural resources survey and assessment. The report concludes the structure has been altered such that it lacks the historical integrity necessary to be considered eligible to be listed on the California Register of Historic Resources or as a historical resource for California Environmental Quality Act (CEQA) purposes. However, it is listed as a locally recognized historic resource in the Historical Resources Element of the General Plan and subject to the policies therein.

In 2016, the property was sold by the City to the Balboa Theater Company, LLC for redevelopment as a theater. A deed restriction is recorded against the property to ensure the theater use and ancillary uses are continued in perpetuity.

II. PROJECT DESCRIPTION

Use Permit No. UP2004-003 (PA2004-032) Allowances

Based on the foregoing information, the Applicant has effective entitlements to renovate and operate the Balboa Theater as a performing arts and special event theater. The original approval allows for additions and alterations to the Balboa Theater that included increasing the height of the existing 32-foot, 10-inch building to 45 feet, 6 inches and 54 feet, 10 inches for a tower/elevator shaft feature. The original project proposal included a complete renovation of the theater with approximately 325 seats. The new theater proposed three interior floors: (1) a lobby, stage, and partial auditorium level; (2) an auditorium level that would hold the bulk of seating and projection, sound and lighting facilities; and (3) a support level that included restrooms, dressing rooms, storage areas and equipment rooms. Additionally, a roof deck was proposed where theater-related pre- and post-performance functions and fundraising events would take place.

The theater, as then proposed and approved, would be expanded from approximately 7,695 square feet to approximately 11,014 square feet on the 5,130 square foot lot. It is notable that no parking was required even with the large addition consistent with the City's

landmark buildings ordinance amendment of 2003. All conditions of approval from Use Permit No. UP2004-003 are included as Attachment No. CD 2.

Proposed Changes and Reduction of Use

In general, the revised project will be largely scaled down compared to the 2004 Use Permit and coastal development permit. There will be no additional floor area and the open-air theater will operate on a single level thereby eliminating the need for any height increase. There will no rooftop deck as part of the project. The project will include an accessory café and the principal use of the property will remain a theater. The accessory café use will serve both patrons of the theater and the public. The Applicant's description of the proposed use is included as Attachment No. CD 3.

As proposed, the theater will operate in accordance with the limited hours allowed by Coastal Development Permit No. 5-11-073, as issued by the California Coastal Commission. Programming will feature live musical performances, theatrical and film presentations, as well as private corporate events, community events and private celebrations. All use of sound amplification will be confined, directed, and minimized with implementation of the acoustical engineer's recommendations for dampening sound. The entire acoustical analysis is attached as Attachment No. CD 4.

The accessory café will primarily serve patrons of the theater and will operate from 8 a.m. to 12 a.m., daily. The earlier opening hour will allow patrons to engage in the historic setting by offering food and beverage service along with information about the theater and its offerings. Tickets for performances and events will also be sold during this time.

The café operation also includes a Type 47 (On-Sale General – Eating Place) Alcoholic Beverage Control (ABC) License that allows beer, wine and distilled spirits to be sold and consumed on the licensed premises. Alcoholic beverages will be sold and served as a convenience accessory to the sales and service of food, which is required.

The following is a list of highlighted renovations proposed both to the exterior and the interior.

Exterior renovations include:

- Complete façade restoration to recreate the Spanish Colonial Revival architecture style that is highly regarded in the Balboa Village Master Plan Design Guidelines;
- Recreated historical marquee sign that will project over the public sidewalk with a minimum 9-foot, 3-inch vertical clearance. Theater marquee will be a very close replica of the original marquee;
- New event poster marquee boxes to help advertise upcoming theater events;
- Removal of horizontal roof structure with the mansard roof remaining and restored; and
- Fire separation and seismic upgrades for structural integrity to meet current fire and building safety code requirements.

Interior renovations include:

- An entry lobby flanked by a service bar and a food and beverage area with a kitchen;
- New small service and storage mezzanine above the kitchen area;
- New restrooms meeting State accessibility standards for the disabled;
- An open area for flexible seating with the restored stage at the front as the focal point; and
- New sound attenuation improvements flanking the sides of the building and baffling at the stage area.

The project plans are included as Attachment No. CD 5.

III. **FINDINGS**

Pursuant to Section 20.54.070 (Changes to an Approved Project) of the Newport Beach Municipal Code (NBMC), the Community Development Director may authorize minor changes to an approved site plan, architecture, or the nature of the approved use without a public hearing and waive the requirement for a new use permit application. This approval and waiver of a new use permit application is based on the following findings and facts in support of the findings.

Finding:

A. The changes are consistent with all applicable provisions of this Zoning Code.

Facts in Support of Finding:

1. The Balboa Theater is a legal nonconforming use and structure, as it encroaches into the required alley setback, exceeds the maximum allowable floor area ratio of 0.75 of the MU-V District, and lacks on-site parking. Typically, expansion of any nonconforming use or structure is subject to the approval of a use permit consistent with NBMC Chapter 20.38 (Nonconforming Uses and Structures). In this case, the proposed project is exempt from obtaining a use permit, as the building meets the definition of a "Landmark Theater" and the proposed changes meet the specific conditions of NBMC Section 20.38.070 (Landmark Structures).
2. The theater, as proposed, will occupy more than 70 percent of the building in any given operational scenario, as discussed in the Applicant's project description.
3. The proposed hours for the café are no greater than between 8 a.m. and 12 a.m.
4. The existing theater does not provide off-street parking and the number of seats will be reduced from 325 to 208, thereby reducing the amount of required parking. Given the floorplan is open and there is no delineation between the café and the event space, the café will not service the general public while an event is occurring, it will only serve event patrons. The total capacity for the project will not exceed 261

persons; therefore, parking for the accessory use will not increase parking requirements.

5. The proposed front elevation re-establishes the theater using plaster and Spanish Colonial Revival architectural features, water downspouts, and a recreated replica marquee sign. The existing Spanish tile roof will also be restored on the façade; however, the entire roof structure will be removed to create a coastal, open-air environment.

Finding:

B. The changes do not involve a feature of the project that was a basis for or subject of findings or exemptions in a negative declaration or Environmental Impact Report for the project.

Facts in Support of Finding:

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302 under Class 2 (Replacement or Reconstruction) 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. This exemption allows for the reconstruction or replacement of a commercial structure with a structure of approximately same purpose and capacity. The nonconforming performing arts theater with an existing seating capacity of approximately 325 seats will be principally used as a performing arts theater with a reduced capacity of 261 persons. The proposed café will function as an accessory use. At no time will the overall occupancy exceed that of the previously existing theater. Furthermore, an investigatory report was prepared by a qualified architectural historian finding the structure ineligible as a historic resource for CEQA purposes.

Finding:

C. The changes do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval.

Facts in Support of Finding:

1. The project design continues the use of design elements from the existing Balboa Theater. The project will restore window boxes and related architectural features, water downspouts and the stucco surface. The architectural expression of the front elevation is providing simple ornamentation.

2. The Applicant will salvage and reuse as much of the existing building as possible to ensure that the unique character is retained and that the project maintains its consistency with the adopted Balboa Village Design Guidelines.
3. While the multiple-story configuration, including a rooftop deck, are being eliminated, this is seen as a favorable reduction in intensity that helps to reduce the anticipated parking demand. The Applicant is required to comply with all Conditions of Approval from Coastal Development Permit No. 5-11-03, as issued by the California Coastal Commission.
4. All Conditions of Approval in Exhibit "A" of the attached Planning Commission Resolution No. 1646 are incorporated below in Subsection IV (Conditions) and will remain in full force and effect.

Finding:

D. The changes do not result in an expansion or change in operational characteristics of the use.

Facts in Support of Finding:

1. The proposed project will scale down the changes to the existing theater and will further reduce its intensity while maintaining the spirit and intent of the original approval.
2. All Facts in Support of Finding A are hereby incorporated by reference.

IV. CONDITIONS

1. The development authorized by this staff approval shall be in substantial conformance with the approved project plans.
2. All previous conditions of approval for Use Permit No. UP2004-003 (PA2004-032) shall remain in full force and effect.
3. The proposed establishment shall remain a theater and shall operate consistent with Section 20.38.070(D) (Landmark Structures – Conditions) of the NBMC.
4. Events at the theater shall be limited to performing arts shows, pre- and post-show gatherings, lectures, films, corporate or community meetings, and other public or private events.
5. The proposed establishment is not authorized as a restaurant, bar, tavern, cocktail lounge, nightclub, or smoking lounge.
6. A revision to the existing building permit shall be obtained prior to commencement of construction.

7. The final building permit plans must demonstrate that the recommendations of the reviewing acoustical engineer in the acoustical analysis have been incorporated into the construction documents.
8. A copy of this approval letter shall be incorporated into both the Building Division and field sets of plans prior to issuance of the building permits.
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 the Balboa Theater Renovation including, but not limited to, the Staff Approval No. SA2021-009 (PA2021-272). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:


Benjamin M. Zdeba, AICP
Senior Planner

Approved by:


Jim Campbell
Deputy Community Development Director

Attachments: CD 1 Vicinity Map
CD 2 Exhibit "A" of Use Permit No. UP2004-003
CD 3 Applicant's Written Description
CD 4 Acoustical Analysis
CD 5 Project Plans

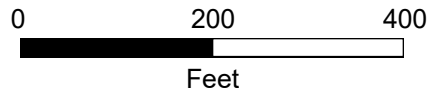
Attachment No. CD 1

Vicinity Map

Vicinity Map



NBGiS
NEWPORT BEACH



Disclaimer:
Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

Attachment No. CD 2

Exhibit "A" from Use Permit No. UP2004-003

EXHIBIT "A"

CONDITIONS OF APPROVAL
Use Permit No. 2004-003

1. Use Permit No. 2004-003 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
2. The development shall be in substantial conformance with the approved site plan, floor plans, building elevations and sections dated August 3, 2004 (Except as modified by applicable conditions of approval).
3. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code.
4. All improvements shall be constructed as required by Ordinance and the Public Works Department.
5. An encroachment permit is required for work activities within the public right-of-way.
6. Any modification to the approved plans shall require an amendment to this Use Permit or the processing of a new Use Permit.
7. 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.
8. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
9. Should this business 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 owner or leasing company.
10. The Planning Commission may add to or modify conditions of approval to this Use Permit or recommend to the City Council the revocation of this Use Permit upon a determination that the operation, which is the subject of this Use Permit, causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
11. All Development and operational characteristics shall conform to the provisions of Section 20.62.065 (Landmark Buildings) of the Municipal Code. The hours of operation of all accessory uses shall be limited to the hours between 8:00AM and 12:00AM.

12. This approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a Use Permit.
13. The sale, delivery and consumption of alcoholic beverages is subject to the review and approval of the California Alcoholic Beverage Control Board.
14. The operator of the facility shall be responsible for the control of noise generated by the subject facility. Pre-recorded music and use of audio equipment shall be restricted to the interior only, provided further that the exterior noise levels outlined below are not exceeded. Use of paging sound equipment is prohibited on the exterior of the building. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 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

15. Temporary signs shall be prohibited in the public right-of-way, unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
16. The exterior of the establishment shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
17. Storage outside of the building shall be prohibited.
18. Prior to the issuance of building permits, the applicant shall execute a formal agreement with the General Services Department for the use of the City owned refuse dumpsters on Washington Street.
19. Prior to the issuance of building permits, the final exterior colors of the building shall be subject to the review and approval of the Planning Director.
20. Prior to the issuance of building permits, the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Department. The lighting plan shall be found consistent with the Balboa Village Design Guidelines. The

site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Planning Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Planning Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.

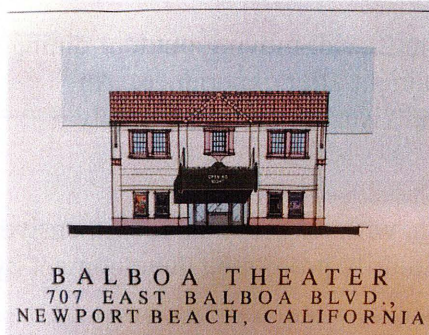
21. Lighting shall be in compliance with applicable standards of the Zoning Code and shall be implemented and maintained in a manner consistent with the Balboa Village Design Guidelines. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" type fixtures are not permitted.
22. Prior to the issuance of a grading or building permit, the applicant shall prepare a Water Quality Management Plan (WQMP) specifically identifying the Best Management Practices (BMP's) that will be used on site to control predictable pollutant runoff. The plan shall identify the types of structural and non-structural measures to be used. The plan shall comply with the Orange County Drainage Area Management Plan (DAMP). Particular attention should be addressed to the appendix section "Best Management Practices for New Development." The WQMP shall clearly show the locations of structural BMP's, and assignment of long term maintenance responsibilities (which shall also be included in the Maintenance Agreement). The plan shall be prepared to the format shown in "Attachment C" of the DAMP title "Water Quality Management Plan Outline" and be subject to the approval of the Planning, Public Works and Building Departments.
23. Prior to the issuance of a grading or building permit, the applicant shall submit a Storm Water Pollution Prevention Plan to the City for review and approval. The Storm Water Pollution Prevention Plan shall be maintained on-site throughout the construction phase and shall be made available to the public for review, upon request.
24. Curb drains are allowed for storm overflow discharges only. The bottom section of the proposed downspouts shall be designed to allow routine runoff to percolate into the ground.
25. All Lithocrete sidewalk damaged by the construction shall be replaced in-kind. Full sections of sawcut diamond-shaped Lithocrete sidewalk panels shall be replaced to match the existing adjoining sidewalk sections. No sectional replacements will be allowed. A preconstruction meeting between the Contractor and the Public Works Department Engineering Division shall be conducted prior to the start of said Lithocrete work.
26. A new water meter with traffic-grade box and cover shall be installed within the alley right-of-way.
27. A new sewer cleanout with traffic-grade frame and cover shall be installed within the alley public right-of-way.

28. All overhead utilities serving the development shall be undergrounded to the nearest appropriate pole in accordance with Section 19.24.140 of the Municipal Code. Upon undergrounding of services by the utility companies, the Applicant, at the earliest opportunity, shall promptly make all underground service connections.
29. During construction, workers' vehicles shall not be parked within the public right-of-way.
30. No portion of the existing Balboa Boulevard sidewalk shall be obstructed by the construction activities from Memorial Day to Labor Day and from Thanksgiving Day to New Year Day.
31. No concurrent assembly occupancy of the rooftop deck and theater for separate events shall be permitted.

Attachment No. CD 3

Applicant's Written Description

Balboa Theater



Narrative: Updated November 2021

The LAB Team respectfully submits the enclosed updated site plans for reactivation of the historic Balboa Theater.

Although our revised plan, as previously discussed, removes the existing roof (and thereby plans for a rooftop bar), key elements and programming remain constant and well within substantial compliance of Conditions of Approval. In fact, we believe without the distraction of a rooftop element, the performance stage on the main floor, in original location, becomes unquestionably the center of attention respectful of the Theater's history.

Programming would remain diversified as per our original intent and dedicated to the arts in general, as our 30 year history of operating properties in Orange County documents (Casino San Clemente, Anaheim Packing House, Farmers Park, the LAB, etc). At the re-imagined Balboa Theater performance center remain committed to host:

- live music including jazz, R&B, classical, Indie
- local school music and dance performances
- specialty movie showings (student, independent filmmakers, etc.)
- business and trade seminars
- written word events, book club meetings
- non-profit fundraisers
- private celebrations
- seasonal community celebrations

Amenities to remain per original plan: (1) intimate neighborhood café open to the public (2) walk up bar counter and beverage service (3) common area seating for food and beverage services, now "al fresco"!

We believe the removal of the mezzanine seating and rooftop bar as presented on original plans is a major "gain" for the community in that we have simplified both visibility and accessibility besides adding an incredible "wow" factor of being the only arts performance

facility truly Californian-style “al fresco” and open air to the sky. Daytime and nighttime (market lighting) experiences will be one-of-a-kind in an urban infill historical location.

We believe this updated plan reflects lessons learned from Covid; moving outdoor dining or even semblance of outdoor dining to a preferred and sought after experience. An indoor-outdoor entertainment venue will attract locals and visitors alike – especially if within a built out urban landscape.

Importantly, this plan serves as a financially feasible plan, without demands for expensive construction, steel, etc. as the initial plan and that has primarily prohibited development by others to date.

We are eager to move forward with this updated plan and appreciate the patience and continued support of the City of Newport Beach.

Regards,

Linda Sadeghi and Balboa team
Balboa Theater Company LLC

Balboa Theater



Narrative: Updated February 2022

The LAB Team respectfully submits the following narrative additions to our November 2021 submittal, following questions arising in the City correspondence of December 23, 2021, under “Pt. 1 Narrative”.

1. What are the proposed hours of operation for the café?

After researching existing neighborhood eateries and their hours, we are of the mind to *initially* operate the café for lunch and dinner only. As we build our team, our menu and local patronage we can explore adding an authentic breakfast offering, so then operating well within our 8am start time and midnight closing time window as stated in our Conditions of Approval.

We have also noted that neighboring eateries have “summertime” hours and “off season hours” and we would most likely adjust accordingly. So, suggested *initial* hours of operation for the café:

INITIAL WINTER MONTHS

Monday & Tuesday	Closed
Saturday & Sunday	Brunch 10am-3pm
Wednesday-Sunday	Dinner 5pm-9pm

INITIAL SUMMER MONTHS

Monday- Friday	Lunch 11am-3pm
Saturday & Sunday	Brunch 10am-3pm
	Dinner 5pm-10pm
Event Days	Extended Dinner 5pm-12am

STABILIZED SERVICE MONTHS

Addition of Breakfast Service	8am-11am Daily
-------------------------------	----------------

2. Will alcohol service be offered from the café?

Yes, alcohol will be served from the bar counter during café hours.

3. Will the café be closed to the public when events are occurring?

Yes, the café will be closed to the general public when events are occurring primarily as there is no physical separation between event seating and café seating or way to separate event ticket holders from the general public. Events would be well publicized in advance and tickets available via eventbrite or other such social media platform to the general public. We envision events to be more weekend evening-centric.

4. What ABC license will the premise seek?

We currently hold a 47 ABC license in escrow and are currently in legal process for a transfer of this license to the Balboa Theater address. A new LLC is being formed to hold the license in the new location.

5. Will the bar be open to the public outside of events? If so, what are the proposed hours?

Yes, the bar along with café will be open to the public outside of events for lunch and dinner service – see hours as proposed in pt. 1 above.

As described in our November letter, community amenities to remain per original plan: (1) intimate neighborhood café open to the public (2) walk up bar counter and beverage service (3) common area seating for food and beverage services, now “al fresco”! (4) seasonal and regular performance events (live music, theater, dance, private events, etc.) within hours of operation as outlined in the COA.

Please see responses to department comments per attached letter from Thirtieth Street Architects, Inc.

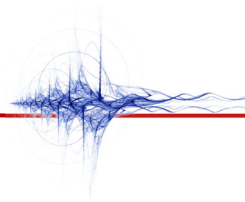
We are eager to move forward with this updated architectural plan and appreciate the patience and continued support of the City of Newport Beach.

Regards,

Linda Sadeghi and Balboa team
Balboa Theater Company LLC
linda@thelab.com

Attachment No. CD 4

Acoustical Analysis



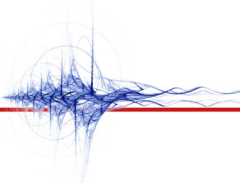
ACOUSTIC STUDY

**BALBOA THEATER
707 EAST BALBOA BLVD.
NEWPORT BEACH, CA**

AUGUST 19, 2021

GARY HARDESTY





Brief background and qualifications of Sound Media Fusion, LLC.:

Located in Van Nuys, California.

Facility includes:

1. Acoustic development and testing laboratory.
2. Electronic design development and testing laboratory.
3. Feature film motion picture augmented reality sound stage.
4. Acoustic and electronic simulation software systems of various kinds (NoisePlan, EASE, etc.).

SMF and its different generations, all founded by Gary Hardesty, have provided numerous services in the areas of acoustics, noise mitigation/monitoring, intellectual property creation and management (patents) and electronics, internationally, for more than 47 years.

We have provided the services of acoustic design, noise mitigation/monitoring, sound design and technical management for some of the largest events in the world, including:

-Olympic Opening and Closing Ceremonies and sports venues since the Los Angeles 1984 Olympics.

- Venue acoustic and sound system designs.
- Noise mitigation and monitoring design and management.
- Work includes all competition venues as well as Opening and Closing Ceremony.

-Continuous acoustic and mitigation work for the Vatican, including the large World Youth Day global events (the Toronto event featured a main site for the mass, which had more than 1.4 million people in attendance).

-24 years' work with the NFL on the Superbowl game, including acoustics, noise mitigation, sound design and management for the halftime shows.

-Academy Awards.

-Grammy Awards.

We have provided services for the Cities of Costa Mesa and Newport Beach, along with services for entities within those cities, including:

-18 years of acoustic design, noise monitoring/mitigation and technical management for the OC Fair, including reopening of Pacific Amphitheatre in 2003. In 2014, we redesigned the acoustics in Pac Amp, giving the Fair another 3.5 acres of usable land, while improving in-venue acoustics and out of venue noise mitigation- a \$15 million project, also acting as project manager.

-Newport Dunes noise monitoring/mitigation and acoustic designs.

-Newport Beach pickleball courts acoustic designs and noise monitoring/mitigation.

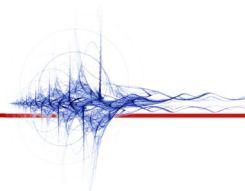
-Balboa Bay Club noise mitigation.

-Various Costa Mesa venues.

-Acoustic design and noise mitigation/monitoring for large festivals in San Diego's Waterfront Park.

-Acoustic and sound system design for many international performing arts theaters, amphitheaters, and stadiums.





-Acoustic design for many large international theme parks, including Ocean Kingdom in China and EuroDisney in Paris.

A recent patent award was for a highly sophisticated type of high-power loudspeaker system (used for all Tokyo Olympic venues, including Opening and Closing Ceremony, as well as many fixed installations in theaters and stadiums in Japan, Korea and Europe (licensed to one of our clients- Panasonic):



(12) United States Patent
Hardesty

(10) Patent No.: US 10,070,217 B2
(45) Date of Patent: Sep. 4, 2018

- (54) **SPEAKER APPARATUS**
- (71) Applicant: **PANASONIC INTELLECTUAL PROPERTY MANAGEMENT CO., LTD.**, Osaka (JP)
- (72) Inventor: **Gary Allen Hardesty**, Northridge, CA (US)
- (73) Assignee: **PANASONIC INTELLECTUAL PROPERTY MANAGEMENT CO., LTD.**, Osaka (JP)
- (*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.
- (21) Appl. No.: **15/439,392**
- (22) Filed: **Feb. 22, 2017**
- (65) **Prior Publication Data**
US 2018/0227663 A1 Aug. 9, 2018
- (30) **Foreign Application Priority Data**
Feb. 3, 2017 (JP) 2017-019026
- (51) **Int. Cl.**
H04R 1/02 (2006.01)
H04R 1/40 (2006.01)
H04R 3/14 (2006.01)
- (52) **U.S. Cl.**
CPC *H04R 1/403* (2013.01); *H04R 3/14* (2013.01); *H04R 1/023* (2013.01)

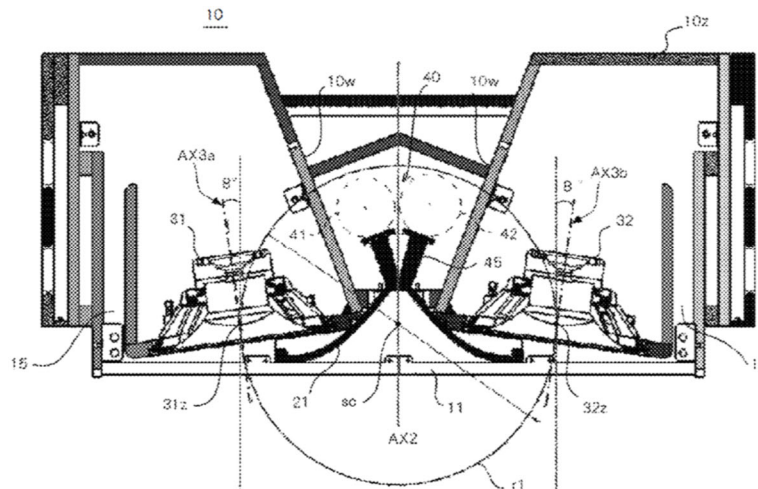
(58) **Field of Classification Search**
CPC H04R 1/30; H04R 1/345; H04R 1/2861; G10K 11/02; G10K 11/025; G10K 9/00
USPC 181/152, 159, 177, 187; 381/339, 340
See application file for complete search history.

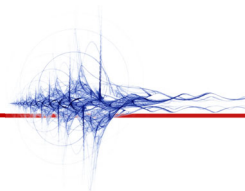
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* cited by examiner
Primary Examiner — Sunita Joshi
(74) *Attorney, Agent, or Firm* — Greenblum & Bernstein, P.L.C.

(57) **ABSTRACT**
A speaker apparatus includes first acoustic drivers that respectively output first acoustic signals, and an acoustic coupler having acoustic passages. The acoustic passages respectively include inlets, and an outlet of the acoustic passages is common. The first acoustic signals output from the first acoustic drivers are respectively inlet into the inlets, the first acoustic signals inlet into the inlets are guided to the common outlet, the first acoustic signals are combined at the common outlet to generate a second acoustic signal, and the second acoustic signal is output. Lengths of the acoustic passages from the inlets to the common outlet are identical to each other.

4 Claims, 24 Drawing Sheets
(3 of 24 Drawing Sheet(s) Filed in Color)





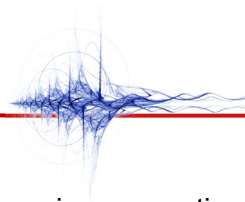
Loudspeaker acoustic design and development for several large international clients (JBL, Yamaha, Panasonic).

SMF/Gary Hardesty past/present clients include (examples):

Panasonic, US Army, The Scenic Route, Inc., OC Fair, City of Newport Beach, City of Costa Mesa, Newport Dunes, F1 Racing, Palmer Audio, Lucasfilm, Meyer Sound, Eastern Acoustic Works, JBL Professional, Yamaha Corporation, US Olympic committee, Ocean Kingdom Theme Park-China, EuroDisney-Paris, NFL Superbowl, Wheel of Fortune, Academy of Country Music Awards, Grammy Awards, Academy Awards, Vatican, Mexico 2010 Bicentennial Committee, World Cup Soccer, Hult Center for the Performing Arts, Asian Games- Korea- Thailand, China, Main Stadium-Japan.

More than 200 large venues/stadiums globally, including: Japan, Korea, Greece, China, Russia, USA, Italy, Germany.





While it is beyond the scope of this study to detail all the various acoustic parameters that makeup noise, noise monitoring and mitigation, it is important to highlight some of the theory, for the methods as detailed in this study to make sense.

Some theory:

From a physics perspective, sound is nothing more than small pressure changes traveling through:

*Any elastic medium. These pressure variances propagate in all directions from- Anything that vibrates mechanically in or on that medium or even just contacting that medium-- things like vocal cords, guitar strings, saxophone reeds, or loudspeakers.

The word 'medium' -means any molecular substance that contacts the vibrating source. It could be almost anything-- air is the most common example; but water could be an example too. Even the wood that contacts a violin string is an example.

*An elastic medium is one in which the molecules can be displaced slightly but where they tend to spring back to their original or rest position.

In a gas like air, molecules can be compressed (pushed closer together) and rarefied (pulled further apart) but they will always spring back to normal pressure. Water, steel, and wood also have a springiness that makes them good conductors of sound waves.

*The pressure changes don't have to be very big to be perceived as sound. In a typical conversation at 1 meter, the difference between highest compression to lowest is only 00.0001%, one ten thousandth of a percent.

In sound, waves of compression are always followed by mirror image waves of rarefaction (decompression) so that overall, the pressure remains normal.

Remember that in sound it's not the air molecules that travel from the source to your ear but rather the waves of compression and rarefaction of those molecules.

Finally, remember that sound waves are:

*mechanical energy-- an actual physical disturbance.

They are not like radio waves or light waves. These are electromagnetic energy.

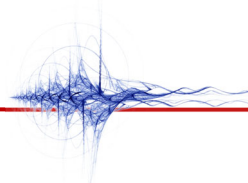
How fast does sound travel? Sound waves travel at approximately 1128 feet per second in air that is 68 degrees Fahrenheit.

In sustained sounds, molecular displacement is usually repetitive and it often occurs with high regularity. That means it repeats the same way at very evenly spaced time intervals-- say every thousandth of a second.

This regularity is called periodic vibration. When vibrations repeat like this, the sound they produce has an identifiable pitch-- a musical tone.

If there is no regularity, then the vibration is aperiodic and produces noise. The physical vibrations that make sound can be nearly any frequency.





Experiments have shown that sound at 10 billion cycles per second is possible.

However, human ears respond to only a relatively small range of between 20 cycles per second and 20,000 cycles per second.

Even this range is significantly shortened by age and other conditions.

Within this range of 20 to 20,000 cycles per second (cps) humans are most sensitive to the frequencies between 1,000 and 5,000 cycles per second.

Cycles per second are now more commonly referred to as Hertz. So, what was 1,000 cps, is now referred to as 1,000 Hertz (or 1 KHz- 'K' meaning 1,000).

There are four important attributes that we can manipulate to create or describe any sound.

And, we can work with these attributes in two different ways: we can measure them and we can hear them.

If we measure them, they're called physical attributes: if we hear them, they're called perceptual attributes.

The four physical attributes are frequency, amplitude, waveform, and duration. Their perceptual counterparts are pitch, loudness, timbre, and time.

There is similarity between hearing and measuring these attributes; however, it is a complex correlation. The two are not exactly parallel.

Frequency refers to how often the vibration repeats a complete cycle from rest position through compression through rarefaction and back to rest position.

This is usually stated in cycles per second (cps) or in Hertz (Hz) after the 19th century physicist Heinrich Hertz. Cps and Hz are the same measurement.

Pitch refers to our perception of frequency on a continuum from low to high.

Amplitude refers to how much energy is contained in the displacement of molecules that make up sound waves.

It is usually measured in decibels.

Decibels is a logarithmic scale in which each ten-number increase represents a tenfold increase in energy.

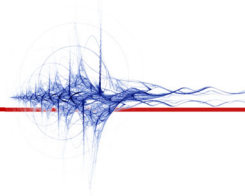
On this scale a 10 decibel increase equals 10 times the energy, but a 20-decibel increase = 100 times the energy and a 30-decibel increase = 1000 times the energy; etc.- logarithmic scaling.

We need this logarithmic scale because the loudest sound humans can hear is about 1 trillion times as powerful as the softest.

Each doubling of sound energy can be represented by a 3-decibel change. Loudness refers to our perception of amplitude and is sometimes stated in phons.

The least amount of amplitude humans can perceive as sound, starts the decibel scale at 0 dB.





This is about a trillionth of a watt per square meter.

TABLE 22-1

Units of sound intensity. Sound intensity is expressed as power per unit area (such as watts/cm²), or more commonly on a logarithmic scale called *decibels SPL*. As this table shows, human hearing is the most sensitive between 1 kHz and 4 kHz.

	Watts/cm ²	Decibels SPL	Example sound
	10 ⁻²	140 dB	Pain
	10 ⁻³	130 dB	
	10 ⁻⁴	120 dB	Discomfort
	10 ⁻⁵	110 dB	Jack hammers and rock concerts
↑	10 ⁻⁶	100 dB	
	10 ⁻⁷	90 dB	OSHA limit for industrial noise
	10 ⁻⁸	80 dB	
	10 ⁻⁹	70 dB	
	10 ⁻¹⁰	60 dB	Normal conversation
	10 ⁻¹¹	50 dB	
	10 ⁻¹²	40 dB	Weakest audible at 100 hertz
	10 ⁻¹³	30 dB	
	10 ⁻¹⁴	20 dB	Weakest audible at 10kHz
	10 ⁻¹⁵	10 dB	
	10 ⁻¹⁶	0 dB	Weakest audible at 3 kHz
	10 ⁻¹⁷	-10 dB	
	10 ⁻¹⁸	-20 dB	

We measure sound with a device called an 'SPL meter'.

Sound pressure level meters (SPL meters) incorporate 'weighting filters', which reduce the contribution of low and high frequencies to produce a reading that corresponds approximately to what we hear ('curves').

The curves were originally defined for use at different average sound levels, but 'A weighting', though originally intended only for the measurement of low-level sounds is now commonly used for the measurement of environmental noise and industrial noise, as well as when assessing potential hearing damage and other noise health effects at all sound levels; indeed, the use of A-frequency-weighting is now mandated for all these measurements.

History of A-weighting:

A-weighting began with work by Fletcher and Munson which resulted in their publication, in 1933, of a set of equal-loudness contours. Three years later these curves were used in the first American standard for sound level meters.

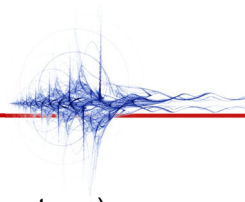
B-, C-, D- and Z-weightings:

A-frequency-weighting is mandated to be fitted to all sound level meters. The old B- and D-frequency-weightings have fallen into disuse, but many sound level meters provide for C frequency-weighting and its fitting is mandated — at least for testing purposes — to precision (Class one) sound level meters.

Z- or ZERO frequency-weighting was introduced in the International Standard IEC 61672 in 2003 and was intended to replace the "Flat" or "Linear" frequency weighting often fitted by manufacturers.

Sound Media Fusion uses a special laboratory calibrated meter made in Europe for our testing.





The meter can simultaneously show Z (flat frequency spectrum) measurements, as well as 'A', peak, LEQ, etc.

The meters also record the actual audio during a test, as well as all the raw data for later analysis.

We can hear what the sound was that was affecting a meter reading at a particular point in time.

While the A-weighting curve, as discussed previously, has been widely adopted for environmental noise measurement, and is standard in many sound level meters, it does not really give valid results for noise because of the way in which the human ear analyzes sound.

The distance of the measuring microphone from a sound source is often omitted when SPL measurements are quoted.

In the case of ambient environmental measurements of "background" noise, distance need not be quoted as no single source is present.

SPL meters are not smart- they present all the sound (noise) picked up by the meter at the meter's location, as a single SPL, or dB 'number'- be it traffic noise, whatever- it's all picked up and displayed as a number, representing the local environmental noise condition.

This local reading presents uncorrelated information, IE: it's not smart information, much as the human ears and brain- we can correlate and discriminate, a SPL meter cannot. The information obtained is ALL the local environment noise.

A trained human must make the measurements, as only this person can understand exactly what is taking place and how to solve it, as well as determine compliance, within the din of all the local background noise that may be present- another reason we record the actual audio, as well as the raw data- for later analysis.

Compliance monitoring is a very difficult science and requires sophisticated equipment and even more sophisticated operators, especially when the compliance monitoring involves noise buried in the overall ambient and local environmental noise.

The type of noise meter we use is called an 'integrating meter'. It can simultaneously record the actual audio taking place, as well as record and calculate the decibel reading- taking more than 16 samples every second.



Sound Media Fusion (SMF) has been retained to provide an acoustic study related to the use of the Balboa Theater (BT) as an open-air music/restaurant/bar venue.

This document is not a construction document and is intended to discuss the ideas and methods of noise mitigation in order to meet the City noise standards, which are:

Newport Beach Municipal Code Chapters 10.26 (Community Noise Control) and 10.28 (Loud and Unreasonable Noise), as well as Section 20.30.080 (Noise).

For the sake of this report, the City needs the following:

1. The report needs to explain what the noise levels will be like;
2. What the concerns may be with those noise levels;
3. How those concerns will be mitigated through design or otherwise;
4. And why the project is going to be okay as proposed.

Methodology, we have:

1. Performed brief noise measurements on an evening to gain an understanding of local ambient noise.
2. Performed audible noise checks to gain an understanding of possible offending ambient local noise.
3. We have reviewed existing nearby businesses with the BT owners.
4. We have discussed, in detail, the plans and use of the building with the new owners.
5. We have applied our 45+ years of live venue acoustic/sound design theory and mitigation theory to use herein.
6. We have studied the various materials currently used in the building shell in order to better understand possible sound propagation through/around the existing structure.
7. We used acoustic modeling and simulation to help determine maximum interior noise levels in order to meet exterior noise limits around the building.
8. We are recommending interior structures, materials for the purpose of noise mitigation.
9. We are recommending a specific type of sound system, along with recommendations for the stage/stage structure design.
10. We are discussing types of music that should be allowed, as well as types of stage related sound equipment that could pose problem and how to work around such problems.
11. We are recommending interior noise measurement equipment, as a permanent feature, in order to ensure the venue always operates within recommended maximum levels.

Some history:

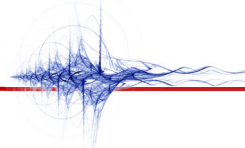
The Balboa Theatre was one of the first 30 US theaters to show The Rocky Horror Picture Show as a weekly, midnight movie running at the Orange County revival house from August 19, 1977 to November 30, 1991.

The theater originally opened as The Ritz theater in 1928, and changed its name to the Balboa Theatre in 1939. The independent theater was taken over by the Pussycat Theater chain in 1973, and was converted to a revival house by the Parallax, the parent company of Landmark Theatres, in 1975.

Others have proposed that the venue be restored to a live theater.

In our discussions with the current owners, they state:

“Our “Agreement for Purchase” of the Balboa Theater from the City of Newport in 2016 clearly states the approved use as: “...for theatrical, cultural center, event center, or for other related performing arts uses within the boundaries of the City....” which is our intent”.



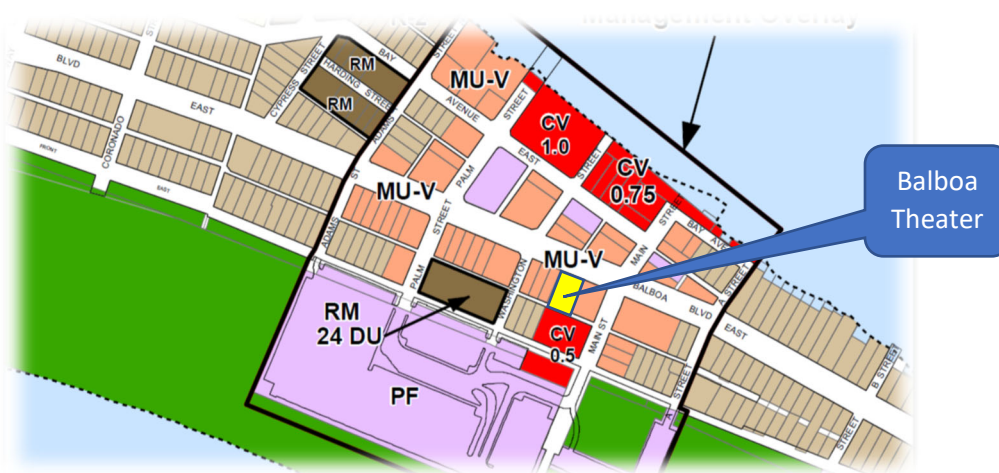
The current owners plan on using the venue as a live music/restaurant/bar. Such use, looking at the historical use, is entirely appropriate for the area, and meets the definition of such use in the current owner's agreement for purchase- as performing arts includes live music.

Proposed target audience is 30+ year old and featuring jazz/blues and perhaps light rock type music. All such live music will be at an appropriate low, 'comfortable' level in the venue and as such, will have very little, if any, noise impact, and noise will be within the City's noise ordinance. Proposed operation starts approximately 7:30 PM each night.

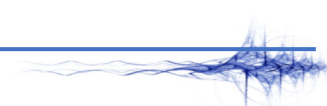
Review of the surrounding area:

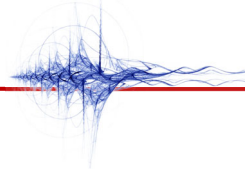


The area appears to be mostly mixed use/vertical, based on this zoning map:



We note that the BT is in a mixed use, vertical (MU-V) zone. That is, the area closest to the BT contains both businesses and some upper story residential areas.





The City noise ordinance states:

10.26.020 Designated Noise Zones.

The properties hereinafter described assigned to the following noise zones:

- Noise Zone I — All single-, two- and multiple-family residential properties;
- Noise Zone II — All commercial properties;
- Noise Zone III — The residential portion of mixed-use properties;
- Noise Zone IV — All manufacturing or industrial properties.

The actual use of the property shall be the determining factor in establishing whether a property is in Noise Zone I, II, III or IV provided that the actual use is a legal use in the City of Newport Beach. (Ord. 95-38 § 11 (part), 1995)

10.26.025 Exterior Noise Standards.

A. The following noise standards, unless otherwise specifically indicated, shall apply to all property with a designated noise zone:

NOISE ZONE	TYPE OF LAND USE	ALLOWABLE EXTERIOR NOISE LEVEL (Equivalent Noise Level, Leq)	
		7 a.m. to 10 p.m.	10 p.m. to 7 a.m.
I	Single-, two- or multiple-family residential	55 DBA	50 DBA
II	Commercial	65 DBA	60 DBA
III	Residential portions of mixed-use properties	60 DBA	50 DBA
IV	Industrial or manufacturing	70 DBA	70 DBA

If the ambient noise level exceeds the resulting standard, the ambient shall be the standard.

B. It is unlawful for any person at any location within the incorporated area of the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the noise level when measured on any other property, to exceed either of the following:

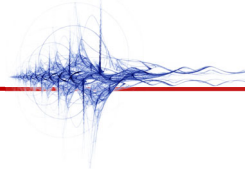
1. The noise standard for the applicable zone for any fifteen-minute period;
2. A maximum instantaneous noise level equal to the value of the noise standard plus twenty (20) DBA for any period of time (measured using A-weighted slow response).

C. In the event the ambient noise level exceeds the noise standard, the maximum allowable noise level under said category shall be increased to reflect the maximum ambient noise level.

D. The Noise Zone III standard shall apply to that portion of residential property falling within one hundred (100) feet of a commercial property, if the intruding noise originates from that commercial property.

E. If the measurement location is on boundary between two different noise zones, the lower noise level standard applicable to the noise zone shall apply. (Ord. 95-53 § 1, 1995; Ord. 95-38 § 11 (part), 1995)





Based on the above, the BT is Noise Zone II for lower buildings nearby, and Noise Zone III for the upper residential sections of the commercial buildings (if any). As highlighted above, paragraph E of the noise code states which standard applies when in a boundary situation, between two noise standards if the measurement is taken at the boundary (commercial business on the ground floor and residential areas above).

The measurement location for noise will be at ground level.

The very low-level noise that will be on the BT exterior, will primarily fall on the ground floor. Very little noise will exist near the (roofless) top of the BT- we don't expect any code impact to nearby upper floor residences.

Based on this, it seems that the applicable standard for the BT would be as Commercial Zone II- 65 dBA up until 10 PM, and 60 dBA after 10 PM.

For the upper floor residential areas, if any, they are classified as Noise Zone III- allowable levels are 60 dBA to 10 Pm and 50 dBA after 10 PM.

Such structures are predominately to the left and right of the BT, as semi-adjoin areas and due to the acoustic designs for the BT as we are discussing herein, very little noise will exist at the upper (air space) of the BT, therefore, very little to no noise impact, whether classified as noise Zone II or III, and meeting City code. Other structures, also zoned as Mixed Use- Vertical, are too far away to be impacted.

We also note the structure designated as RM 24 DU- residential, which is far enough away, and to the rear of the BT that there should be no noise impact from the BT.

We have been informed that there is a bed and breakfast business located near the rear of the theater. We don't have any detail information about the building and have been told that the windows at the rear of the B&B (near the rear of the Balboa Theater) don't open and appear to be sealed.

We did sound measurements on a summer Friday evening, from 7 PM to 9 PM and found that the area noise consists of:

1. Traffic.
2. Some noise from nearby businesses.
3. Average noise level on this night was 71 dBA, measured near the front of the BT.
4. Noise levels appeared to be average for a commercial/main road area.

Existing building:

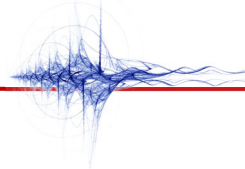
The BT is an old theater building, of which only the shell and front façade and portions of the roof remain.

It is our understanding that the existing roof will be removed, in order to give the venue more of an open-air feel, with smaller, more interior roofs to cover food/drink areas, etc.

The main walls are of brick construction, with what appears to be brick and wood construction for the front.

There are buildings to the left and right sides of the BT, and we don't know how well 'connected' those building walls may be to the BT side walls. We can't determine how much noise, if any, may get into those two adjacent buildings, although we feel, due to the brick walls of the BT, that sound intrusion will be minimal (we have also been told that those businesses don't operate in the evening). Those adjacent buildings do help the BT, by further mitigating noise from the sides of BT into surrounding areas.





Pictures as the BT exists now:



Interior



Rear





Side of rear area, showing the bed and breakfast building at the rear of BT

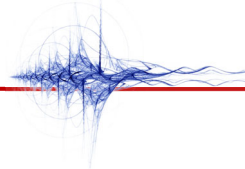
For this venue to be a 'good neighbor' regarding exterior noise, we need to understand some basics of acoustics.

There are six basic sound isolation concepts: decoupling, damping, mass, absorption, resonance, and conduction. With each of these, there are readily available commercial products on the market which can be used to solve these issues.

(Below text used with permission from isostore.com- which is an excellent resource for the various products we will require in this report, in order to make the BT a successful music venue inside, and a good, low-noise neighbor outside. Their text in the quotes below has been changed/clarified and enhanced by this author for this report):

“DECOUPLING

The basic definition of decouple is to separate objects. Resilient clips, resilient channel, double stud and staggered stud framing are the different ways to decouple a wall or ceiling. Sound transfers through vibrations



and if two materials are not touching or have minimal contact, then sound transmission will be seriously reduced.

Decoupling will always be the best way to isolate the lowest of frequencies to the highest of frequencies in both walls and ceilings. Decoupling with resilient clips is also the key way to isolate impact footfall isolation in ceilings.

DAMPING

Many things can be dampened including walls, ceilings, floors, pipes, sheet metal, doors, isolation boxes, and basically any other product with low mass that will vibrate from sound transfer. Most damping between layers of drywall or wood is accomplished with a damping compound such as Green Glue Compound. The concept of sound damping is to convert sound vibrations to non-perceptible amounts of heat.

Damping will help isolate across all frequencies with the most significant gains in the mid to high frequency range. When applied to the floor or ceiling, damping will also help with isolating impact footfall sound transfer, assuming the assembly is resilient, i.e., resilient clips, resilient channel, or independent joists.

MASS

Sound is transferred through vibration. With this, a heavier wall or partition is more difficult to vibrate (the brick walls of the BT provide good mass) while a light weight partition is easy to vibrate. Minimal increases in mass will not lead to significant gains in isolation.

Increasing mass will help with low, mid, and high frequency sound transfer. Low frequency isolation will benefit the most from adding mass to assemblies with very little mass.

ABSORPTION

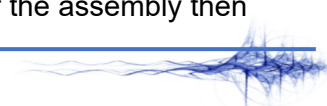
Insulation is the material of choice for meeting the absorption requirements of a wall, ceiling, or floor. Only the thickness of the insulation is crucial and not the type of insulation. We recommend R-13 for 2x4 walls, and a maximum of R-19 for 2x6 or resilient clipped walls. R-19 is recommended for any depth of ceiling joist cavity.

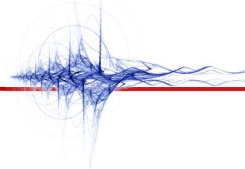
Absorption will help increase isolation in the mid to high frequency ranges, but will not help to isolate low frequencies and footfall impact noise. The value of absorption is increased significantly when the assembly is decoupled.

RESONANCE

Issues with resonance are most often created when attempting to decouple or when using the same type of material in multiple layers. Resolving resonance issues when decoupling is simple. Simply avoid creating more than one air space in any assembly and insulate that one air space with the proper amount of insulation. If you create additional air spaces, e.g., installing resilient clips over existing drywall or building a new wall in front of an existing wall, then you can reduce resonance issues by insulating this newly created air space.

In regards to using the same type of sound isolation material in multiple layers, this can be avoided by using varying thicknesses of drywall or plywood in an assembly. Each building material will have a specific resonance point. This point will vary depending on the type of product and the mass of that product. The resonance point is the weakest frequency point for that vibration absorption material in terms of sound transmission loss. Having two materials of the same type in the assembly will exacerbate the weak performance of that material at that frequency point. So, if one side of the assembly has 1/2" drywall, use 5/8" drywall on the other side. If you are adding multiple layers of drywall or wood to one side of the assembly then





use a different thickness for each layer. Including a damping compound like Green Glue Compound in the layering will reduce these resonance issues enough that multiple layers of the same material thickness are no longer considered a problem.

CONDUCTION

This sound principle is often referred to as flanking. Essentially vibrations from sound transmitting through conductive materials into other conductive materials, e.g., wood framing, plumbing pipes, and sheet metal. This sound transmission is indirect, so the loss from the transmission is difficult to predict, but can be significant. You can break the transmission of sound through conduction by either decoupling the materials or damping the materials”.

Regarding existing structure acoustics and mitigation: brick walls are robust and high-mass, providing increased levels of density and mass which is a basic principle to mitigating sound.

If installed to a suitable height, they are effective at blocking unwanted noises, especially if built to a reasonable thickness.

We understand that the brick walls are approximately 32 feet in height and will remain at this height.

Simplistic discussion:

The brick walls (assuming there are no cracks, crevices, or holes to pass sound), all other things being equal, will attenuate sound some 40 dBA (based on well-known acoustic properties for clay bricks in a sealed brick wall configuration).

Let's examine this further at a cursory level:

In a small venue such as this, holding somewhere around 250 people, an enjoyable sound level for a concert of jazz/light rock/blues type music would be approximately 92 dBA, maximum (loud enough to 'feel', low enough to converse somewhat).

If we assume that the basic brick structure, all around, can attenuate sound some 40 dBA, we would expect the exterior noise, measured near the BT to be around 52 dBA. This does not include the front façade- as we don't know the details of its construction- more later.

We have reviewed the applicable City documents regarding noise, critical point is the noise limits:

City code allows sound to be (assuming this property is in Noise Zone Two, per City code, chapter 10.26) 65 dBA between the hours of 7 AM and 10 PM, and 60 dBA between the hours of 10 PM and 7 AM.

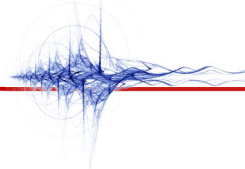
Our estimated exterior noise of the BT, as discussed earlier, would be 52 dBA- well below the required limit of 60 dBA worst case, measured near the property lines of the BT. As we will demonstrate later in this study, areas further away will have no noise impact, especially relative to the local ambient noise, which is high (Balboa Blvd. traffic).

None of these assumptions take into consideration the local ambient noise (street noise, other noise) which serves to somewhat 'mask', or hide noise from this venue, making it seem less apparent.

And, sound attenuates over distance, reducing the impact even further at other properties.

In addition, the height of the walls relative to the lower internal height of the stage and sound system, will create an 'acoustic shadow' around the property- going out some distance, which helps to further reduce exterior noise levels.





On the preceding pages, we have reviewed the existing BT structure and discussed some of the acoustic terms and ideas that are commonly used for mitigating/isolating and improving sound.

Here are the challenges using the BT as a music venue in its existing commercial environment:

1. The venue will have no roof. It is unusual for a music venue to be within a four-wall structure with no roof.
2. The existing front façade is of somewhat unknown construction and material.
3. The BT will include a stage and sound system suitable for use as a live music venue, featuring various types of live music, operating in the evening hours.
4. The BT must, externally, produce non-disturbing noise.
5. The BT, on the interior, needs to operate at sound levels commensurate with a small live music venue.
6. The BT must adhere to City noise ordinances during operation.

How we propose to mitigate the sound and minimize noise from inside the BT, getting outside the BT, while making for a great interior sound 'feeling':

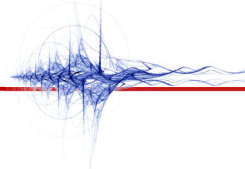
Noise mitigation consists of several elements:

1. Properly designed and placed sound system- sound directed down to the audience- not toward walls and front;
2. An acoustically isolating stage house, to keep stage energy and sound system energy contained;
3. Acoustic absorption on the interior walls;
4. Solid floor;
5. Sound isolating entry/exit door system;
6. Proper treatment of the front façade, from the interior;
7. Proper sealing of any air vents, windows, etc. to meet acoustical good standards.
8. Perform testing when the venue is complete, in order to determine maximum interior sound levels in order to meet City noise requirements exterior to the BT, as well to determine if the building is properly sealed, etc., for acoustic/noise isolation.
9. Operate the system at pre-defined maximum level;
10. Always monitor noise in the venue to ensure proper levels are maintained- using this:
<https://www.noisemeters.com/product/soundear/se3ear/>
11. Do a follow-up study after the venue is complete, with live music, to measure and report actual sound levels on the building exterior, and perform steps as required to mitigate further.

Brief sound system discussion:

The required sound system will consist of a type of speaker system that can be mechanically adjusted to cover a specific vertical (stage front to venue rear) area, in a predictable and controlled fashion, as well as having a fixed horizontal coverage pattern, to limit the amount of sound energy hitting the side walls of the BT.





This type of system is called a 'line array speaker':



It consists of small, modular, flown speaker elements, which are to be focused down onto the audience, helping sound to cover only where the people are- limiting sound travelling outside of the building.

As with any music venue, the most difficult noise to control is low frequency noise (bass- drums, bass guitar amplifier, etc.).

Low frequencies are 'longer' and require a very dense, high mass structure to attenuate. The BT brick structure will help.

In addition, we are requiring in this report, that the sound system not include sub-woofers, as they produce low frequency energy that is difficult to control, and, sound at low frequencies, radiating from a source, is relatively non-directional, making it very difficult to control- as the energy is nearly 360 degrees.

Critical to the usability and acoustic success of the BT will be the stage structure. We won't go into full detail herein, as that is beyond our scope.

We will, however, highlight what the stage system will need to encompass.

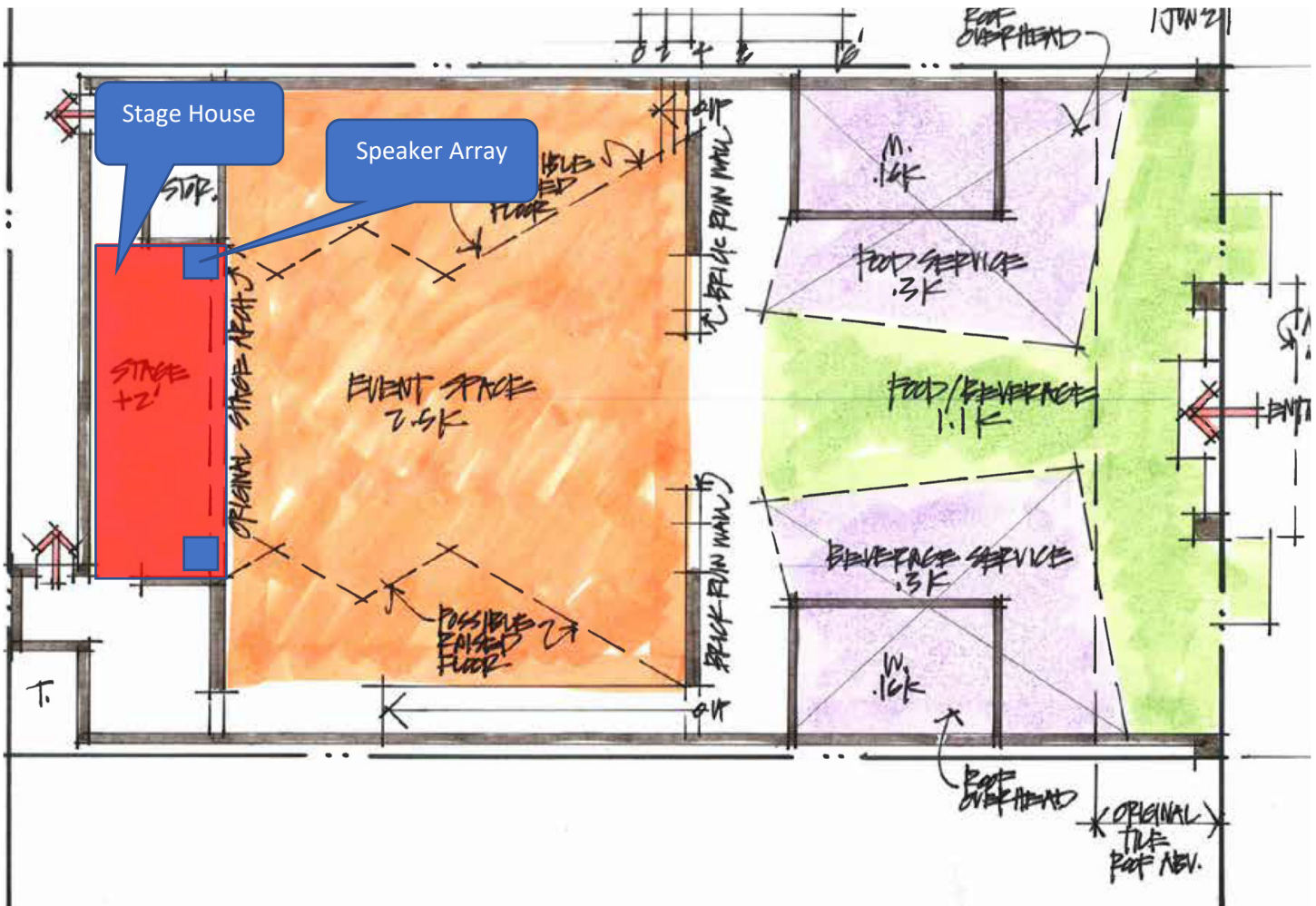
The stage structure must be designed, built, to accomplish the following:

1. The structure must fully enclose (floor, sides, back and top) the stage, making a 'traditional' stage-house type structure:
 - a. Incorporated into the structure will be the truss system to hang lights, as well as the line array speakers (at a high enough level to allow the entire speaker array to be focused down onto the audience, avoiding sound hitting the front wall of the BT).
 - b. The stage and stage house will not be connected to the BT brick walls, in order to not transfer stage vibration into the BT walls, helping to reduce outside noise.
 - c. Stage must be enclosed all the way around (sides, back, top) and made of an acoustically absorbing/rigid structure. Suggest heavy velour curtains on the stage back wall and sides, to absorb sound, as well as sound absorbing tiles in the stage house interior ceiling. It is very important for the stage/stage house to be isolated from the BT as much as possible, in order to limit sound transmission to the sides, rear and upwards, from the BT. The stage structure serves as the major containment component for the BT. Stage access must be through a sound isolating door(s) to keep the stage house sealed as much as possible during a performance (see: <https://isostore.com/product-catalog/sound-control-doors.html>). This link, if studied, serves to provide detail product sales and installation for sound isolating walls: <https://isostore.com/>.



Walls must use, at minimum: <https://isostore.com/totalmass-mlv-barrier-1-pound-2-pound.html>, and: <https://isostore.com/pliteq-genieclip.html> .

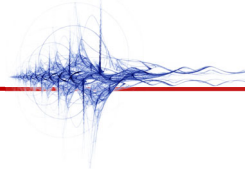
- d. The structure will have sound 'wings', if possible, at an approximate 45-degree angle, to enclose the left side of the left speaker array, and the right side of the right speaker array, made of an acoustically absorbing, rigid structure to absorb side energy from the speaker arrays, to help minimize side of array energy from hitting the side walls of the BT. The wings will also contain a 'roof' to cover the top-of-the-line arrays, to help prevent sound from travelling upwards.



Ideally, the BT main floor would be rebar reinforced concrete, and the stage/stage house would sit (on isolation pads, see: <https://isostore.com/shop-by-function/floors.html>) to help prevent the floor from acting as a large vibrating membrane, which would serve to create more sound in the venue, as well as the potential for more sound out through the open roof.

In order to provide an acoustically comfortable interior space, minimize reflections, and further aid to minimize exterior sound, the brick walls will require acoustic treatment. We estimate that approximately 1/5 of the brick wall surfaces should be sound absorbing. This should give a good mix between a 'live' sound (too much echo/cold feeling) and a 'dead' sound (too much absorption- feels uncomfortable and too quiet).

Type of absorption depends on the 'look' desired. It may look great to hang heavy velour stage type curtains, flat on the sides of the BT, interspersed with the natural brick, to give it more of a 'theatrical' look and feel (IE: brick wall, curtain, brick wall, etc.) to an approximate 1/5 covering.



Or, decorative acoustic tiles (you can make your own tiles via a wood frame, Fiberglas insulation, covered with a relatively porous decorative fabric).

The front wall interior will require work, as it serves to be the majority 'leak' for interior sound getting outside.

Ideally, there would be an interior wall, near the existing wall, which is an acoustically designed wall (drywall, mass loaded vinyl, etc., as discussed earlier for the stagehouse). If there are to be windows, these need to be double pane acoustic type. On the exterior façade, we see large lattice work openings at the top left/right and are unsure what these are- in any case, they must be properly acoustically sealed, etc. as discussed throughout this report.

Ideally, entrance/exit doors would be doubled up, to provide an air space between doors, to help isolate and mitigate. Same for any rear stage entrance areas.

The mitigation means we have discussed above and herein, will serve, in combination, to effectively mitigate sound outside of the venue, with a large amount of sound attenuation at the sides and rear of the BT. The front façade and new interior structures will serve to mitigate sound from the front of the venue.

We performed several simulations using acoustic simulation software and based the settings for the simulations on all the means and methods of mitigation we have proposed and discussed herein.

In combination, the means and methods discussed herein provide a robust mitigation scheme, that allows the venue to work well inside, all the while ensuring that it's a good neighbor and meets standards for noise on the outside.

For all the simulations, we operated the venue sound system at a higher sound level than the venue would actually use, in order to do worst case simulations.

One of the worst-case simulations we performed, was a simulation as if the BT had no front wall at all, in order to see, over distance, what the lack of mitigation from the front would look like- we placed several noise monitoring devices at areas around the BT:

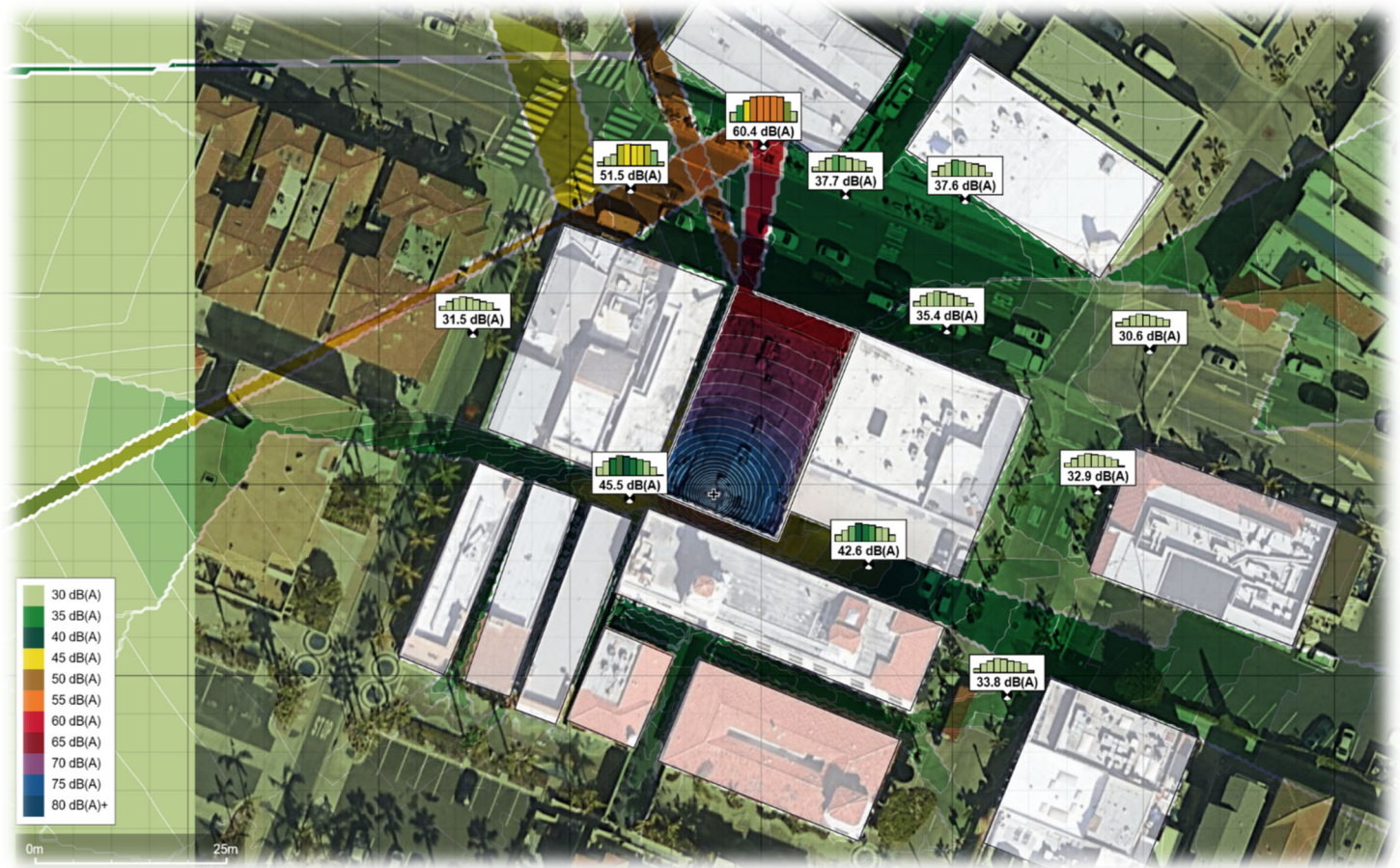




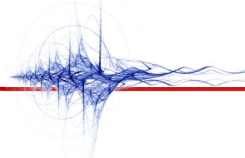
Even in this worst case (no venue front wall) scenario, we can see that worst case noise was only 60.5 dBA. Note the very high attenuation (low noise levels) to the sides and rear of the BT.

Note on the above simulation, we are using what is termed as 'broadband pink noise' for the simulations. This type of noise activates all frequencies at the same time, making for a worst-case scenario (for music, not all frequencies are active at the same time).

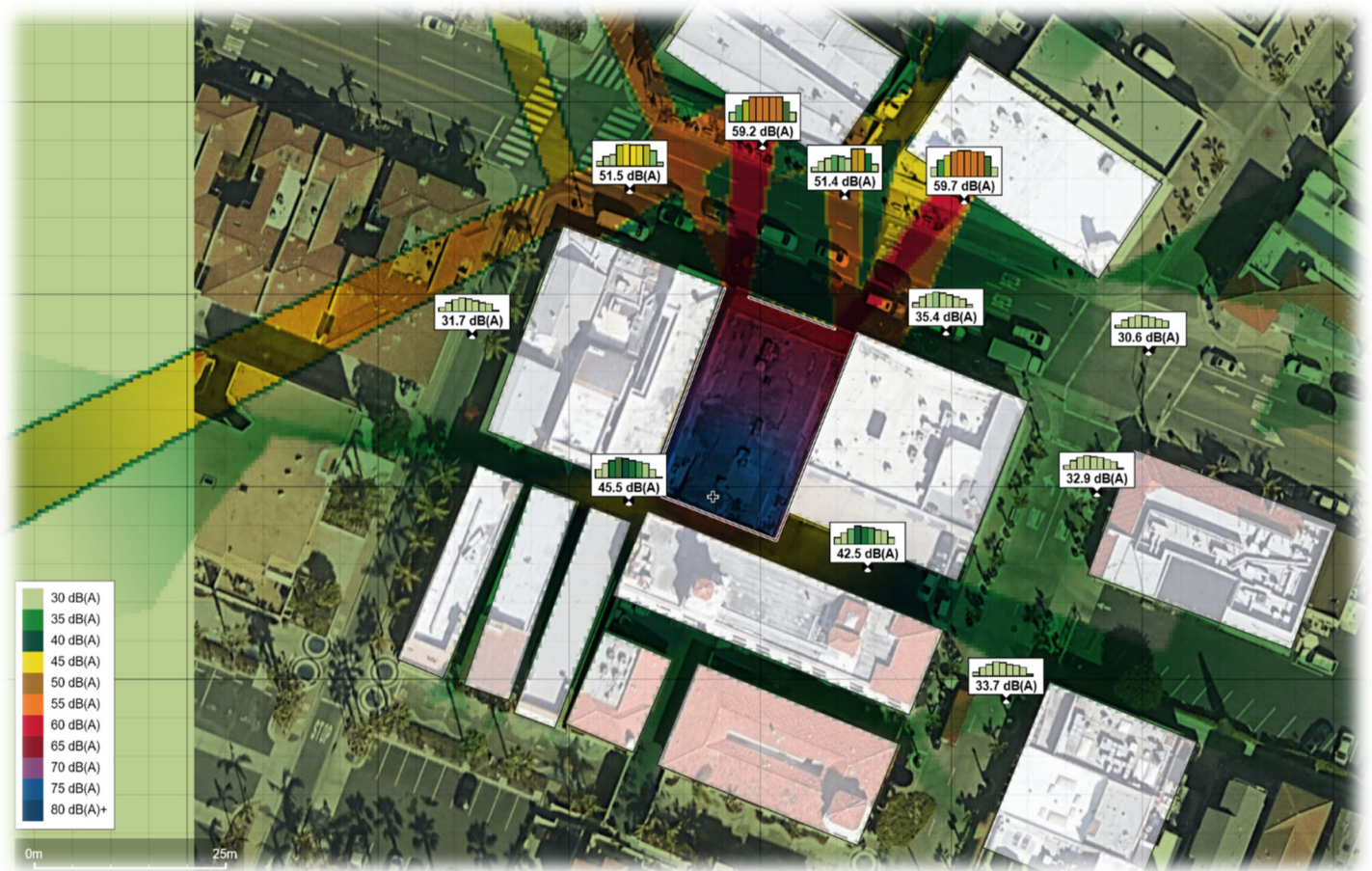
The next simulation is with a front wall and one door open, in order to see what the impact would be (same simulation settings as last page):



Note that the highest noise reading (60.4 dBA) is directly in line with the open door- all other readings are very low.



This next simulation, same settings as previous pages, is with two front doors open:



Again, note the direct correlation- highest noise level is directly in line with the open doors, as one would expect.

Note that the BT will NOT operate with doors open, this, again, is for a worst case noise study.



Another worst-case simulation we performed, was to make the brick walls thinner (than the venue has), causing them to become less effective at mitigating the noise- two doors open, same as last page:



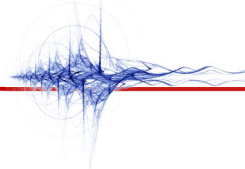
There is a slight increase in noise, but still in compliance.

We don't have concerns with the noise levels as presented herein- they are code compliant and non-disturbing.

We will cooperate with the owners and review acoustic plans, as well as perform actual noise measurements at various steps along the way to confirm mitigation to Code and help them make any adjustments as required.

In the first part of this study, we indicated what the city's concerns were, and what answers they needed:

1. The report needs to explain what the noise levels will be like:
 - a. We have done this, via discussions and simulations.
2. What the concerns may be with those noise levels:
 - a. We discussed the potential challenges in detail.
 - b. We don't have concerns with the proposed and simulated noise levels- they will meet Code and allow the venue to perform well internally.
3. How those concerns will be mitigated through design or otherwise:
 - a. We have discussed our proposed sound system, stage structure and other designs herein, as well as the requirement that the venue monitor noise inside always, to make sure levels meet compliance on an on-going basis.
 - b. We have explained how the sound system will focus energy down onto the audience, minimizing sound leaving the venue, as well as the containment stage house structure, and other acoustic details in the venue.
 - c. We are not concerned with the open- roof idea: the acoustic ideas presented herein will serve to mitigate outgoing noise.



- d. We have discussed the ideas of testing the venue when open, to make any adjustments in sound levels and otherwise, as required to meet the noise requirements.
4. And why the project is going to be okay as proposed:
- a. We feel confident that the owners will cooperate with me and others to ensure that the noise control and mitigation ideas proposed herein are followed, and that any additional steps required will be also discussed and implemented as necessary.
 - b. We are highly confident that the owners want the best for all concerned parties and feel the designs they have and the combined owner ideas/design and our acoustic ideas are in perfect synch and will mutually benefit each other.
 - c. As discussed herein, we are confident that the cooperation we have will ensure compliance at all times.



Attachment No. CD 5

Project Plans

PROJECT SUMMARY

PROJECT ADDRESS: 707 Balboa Blvd., Newport Beach, CA 92663

ASSESSOR'S PARCEL NO.: 048-135-02

LEGAL DESCRIPTION:
Real property in the City of Newport Beach, County of Orange, State of California, described as follows:

LOTS 4 AND 5, BLOCK 10, BALBOA TRACT, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 4, PAGE 11 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING ALL OIL, GAS MINERALS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET FROM THE SURFACE OF SAID LAND, BUT WITHOUT THE RIGHT OF ENTRY UPON ANY PORTION OF THE SURFACE ABOVE A DEPTH OF 500 FEET, TO TAKE, MARKET, MINE, EXPLORE OR DRILL, FOR SAME, AS RESERVED IN DEED RECORDED APRIL 28, 1969 IN BOOK 8939, PAGE 653 OF OFFICIAL RECORDS.

ZONING DESIGNATION:

Mixed-Use Vertical (MU-V).
Designated as a Landmark Theater

SCOPE OF WORK:

This submittal is illustrating Substantial Compliance with prior approvals for the Balboa Theater. The work includes A/E rehabilitation with architectural, structural, MEP & food service improvements to create an active multi purpose theater with food and beverage service. Interior spaces will be mostly open to the sky except for original mansard roof at the street, over restrooms, food service, stage and adjacent food service & mop room. Salvaged wood trusses and trunks planned to be utilized throughout the project.

Since the project will generally be open to the sky, an Acoustic Study has been prepared outlining measures to be taken to attenuate sound from the building. The design drawings show the recommendations integrated into the preliminary design. Final drawings will be reviewed/approved by acoustic firm and submitted to City.

Exterior work includes a facade restoration at main street facade, new recessed entry doors & ticket window, current/coming attraction poster marquee boxes and a recreated historical marquee. The south exterior wall will be removed and reconstructed inset ± 5'-6" for placement of utilities and trash. The new wall will be CMU with a stucco finish.

NOTES:

- All work shall comply with California Codes and Local Ordinances.
- Building will be fireproofed, have a fire alarm system with smoke detectors to protect the panel and in each of the enclosed rooms with fire sprinkler heads as prescribed by CFC and approved by Newport Beach Fire Dept.

LOT SIZE: 5,130 S.F.

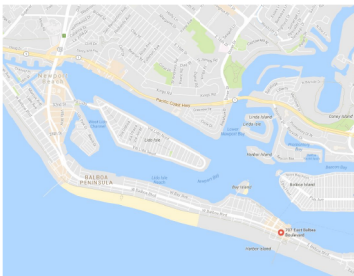
TYPE OF CONSTRUCTION: VB

OCCUPANCY: A-2, FIRE SPRINKLERED

HEIGHT: 50'-0" MAX.

STORIES: 1 Story

VICINITY MAP



SHEET INDEX

- A-1 COVER SHEET/PLOT PLAN
- A.1.1 DEMOLITION PLAN
- A-2.1 PROPOSED FLOOR PLANS (EVENT SEATING W/ TABLES)
- A-3 PROPOSED DESIGN EXTERIOR ELEVATIONS
- A-3a PROPOSED DESIGN EXTERIOR ELEVATIONS (COLORED)
- A-3.1 PROPOSED DESIGN BUILDING SECTIONS

PROJECT TEAM

OWNER:
Balboa Theater Company, L.L.C.
696 Randolph Ave., Unit A
Cosa Mesa, CA 92626

Ph: (714) 966-6661 x 222 office
949) 933-5296 cell

email: chris@thelab.com

Contact: Chris Bennett

ARCHITECT:
Thirtieth Street Architects, Inc.
2821 Newport Blvd.
Newport Beach, CA 92663

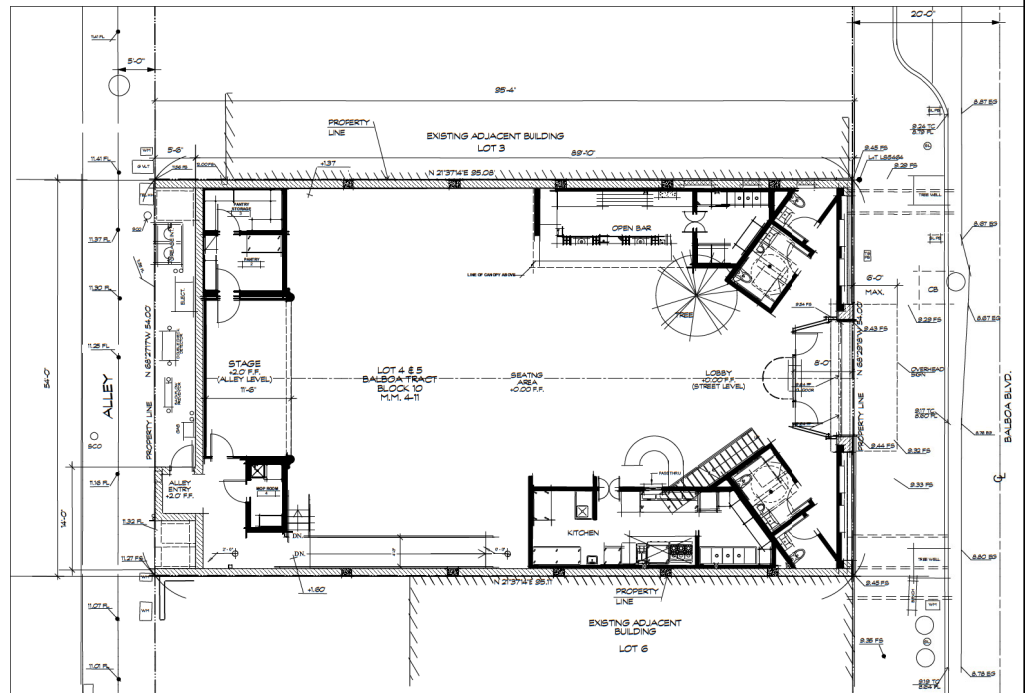
Ph: (949) 673-2643
Contact: James C. Wilson
Email: jw@tsainc.us

ACOUSTIC STUDY:
Sound Media Fusion, LLC
16524 Arminta St.
Van Nuys, CA 91406

Ph: (818) 482-0193
Contact: Gary Hardesty
Email: audiomicro42@gmail.com



BALBOA THEATER
707 EAST BALBOA BLVD.,
NEWPORT BEACH, CALIFORNIA



PLOT/SITE PLAN
SCALE: 1/8"=1'-0"



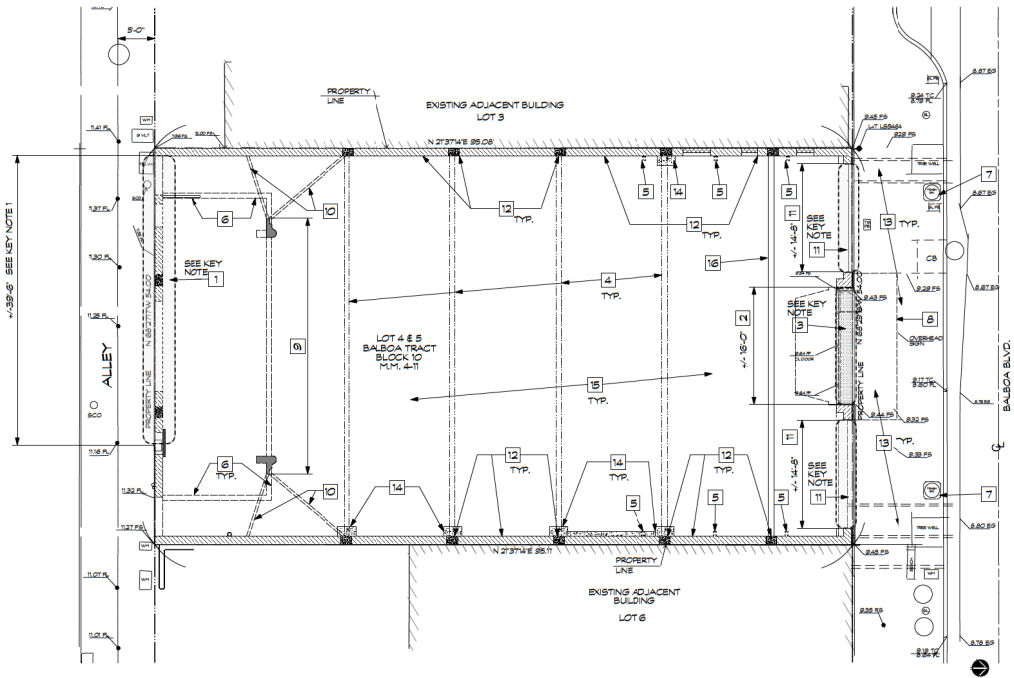
thirtieth street architects inc.
2821 Newport Blvd., Newport Beach, California 92663 (949) 673-2643

BALBOA THEATER
707 EAST BALBOA BLVD.
NEWPORT BEACH, CALIFORNIA

SITE/PLOT PLAN AND PROJECT INFO.
#21005

11/09/2011 Planning Submittal
21/04/2012 City Board Meeting

A-1



GENERAL NOTES:
 1. UTILITY PLANS TO BE SUBMITTED WITH PLAN CHECK.

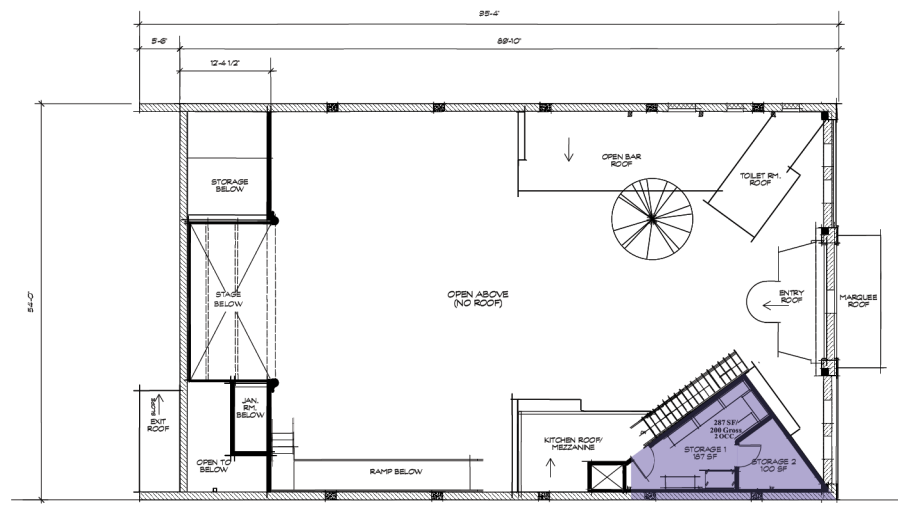
REF. NO.	DEMO KEY NOTES
1	EXISTING MASONRY WALL AND CONCRETE COLUMNS TO BE REMOVED, PROTECT-IN-PLACE EXISTING MASONRY WALL TO REMAIN, TYP.
2	EXISTING DOORS AND WINDOW SYSTEM TO BE REMOVED, PREP FOR NEW DOOR AND WINDOW SYSTEM.
3	EXISTING CONCRETE TO BE REMOVED AND PREPPED FOR NEW CONCRETE FINISH; NEW FINISH SHALL MEET ACCESSIBILITY REQUIREMENTS, TYP.
4	EXISTING TRUSSES AND ROOF ABOVE TO BE REMOVED, TYP.; TRUSSES AT THE CLAY TILE SLUSHER ROOF TO REMAIN, PROTECT-IN-PLACE, TRUSSES TO BE SALVAGED FOR REUSE BY OWNER.
5	EXISTING WOOD POSTS TO BE REMOVED AND PREPPED FOR NEW STRUCTURAL SUPPORT, TYP.
6	EXISTING BROKEN CONCRETE TO BE REMOVED, PREP FOR NEW FINISHES, TYP.
7	EXISTING TRASH BINS TO REMAIN, TYP.
8	EXISTING OVERHEAD SIGNAGE TO BE REMOVED, TYP.
9	EXISTING HISTORIC PLASTER ARCHED OPENINGS TO BE SALVAGED AND MODIFIED FOR NEW OPENING SIZE AND FINISHES, TYP.
10	EXISTING WALL BRACES TO BE MODIFIED AS REQUIRED FOR NEW STRUCTURAL SUPPORT, TYP.
11	EXISTING PLYWOOD AT OPENING TO BE REMOVED, WALL OPENING TO REMAIN, PROTECT-IN-PLACE, PREP FOR NEW WALL INFILL, TYP.
12	EXISTING MASONRY WALLS AND CONCRETE COLUMNS TO REMAIN, PROTECT-IN-PLACE, TYP.
13	EXISTING CONCRETE SIDEWALK TO REMAIN, PROTECT-IN-PLACE, TYP.
14	EXISTING EXPOSED CONCRETE FOOTING TO REMAIN, PROTECT-IN-PLACE, TYP.
15	EXISTING SAND/GRADE TO BE MODIFIED FOR NEW CONCRETE FOUNDATION & FLOOR.
16	EXISTING TRUSSES AT MANSARD ROOF TO REMAIN, PROTECT-IN-PLACE, TYP.

LEGEND

	EXISTING DOUBLE WYTHE BRICK WALL TO REMAIN
	EXISTING DOUBLE WYTHE BRICK WALL TO BE REMOVED PER KEY NOTE
	EXISTING CONCRETE COLUMN TO REMAIN
	EXISTING CURVED TRUSSES TO BE SALVAGED FOR REUSE BY OWNER
	EXISTING TRUSSES AT MANSARD TO REMAIN
	EXISTING TO BE REMOVED, SEE KEY NOTE FOR CLARIFICATION, TYP.

DEMOLITION PLAN

1/8" = 1'-0"

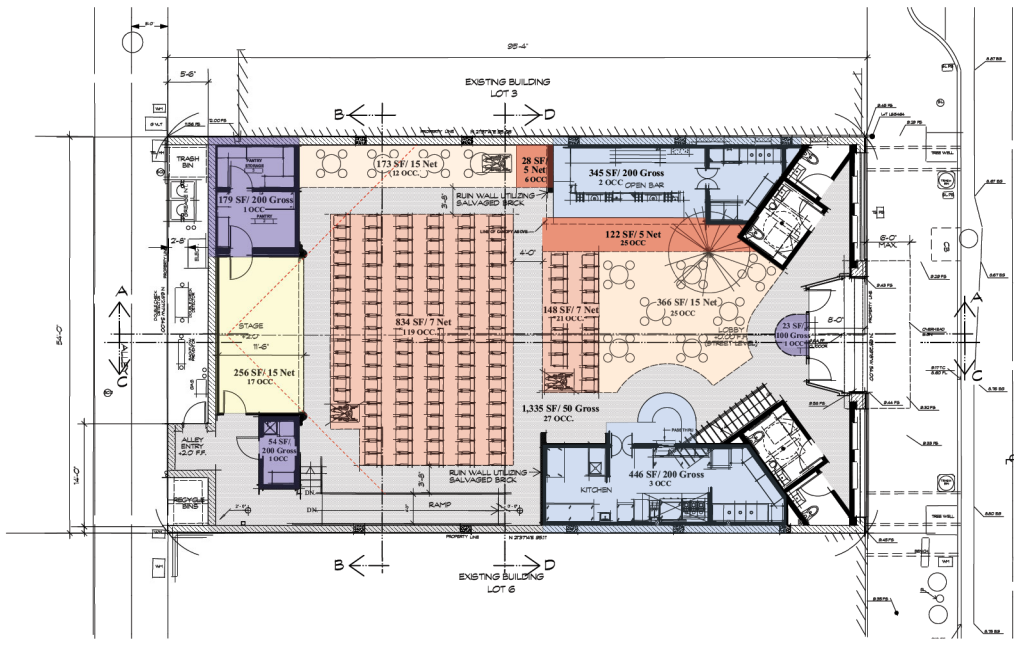


MEZZANINE PLAN
 SCALE: 1/8" = 1'-0"



GENERAL NOTES:

1. Termination of kitchen grease Type I hood exhaust must follow requirements from CMC 510.9.1 or 510.9.2.
2. Termination of restroom exhaust must follow requirements from CMC 502.2.1.



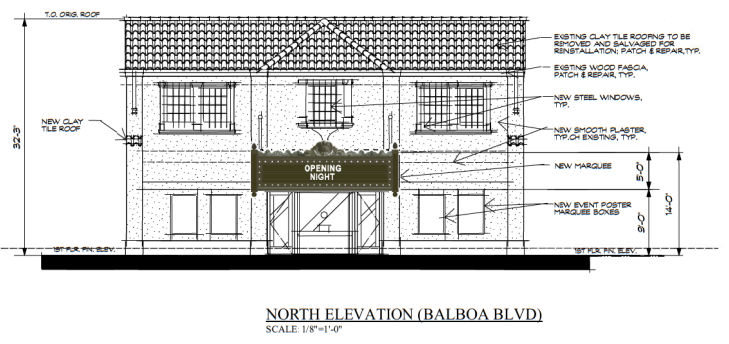
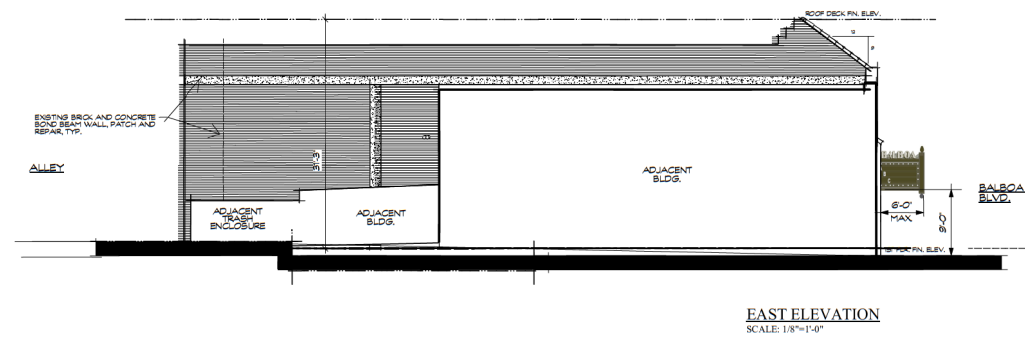
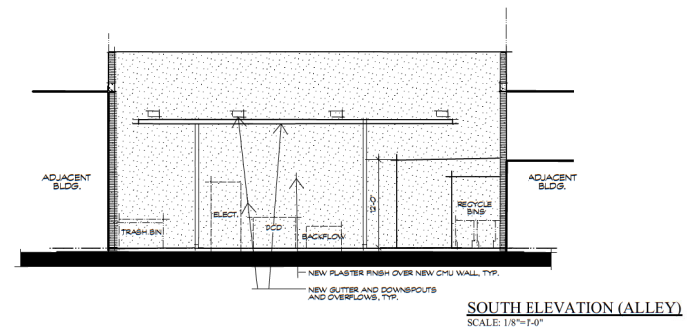
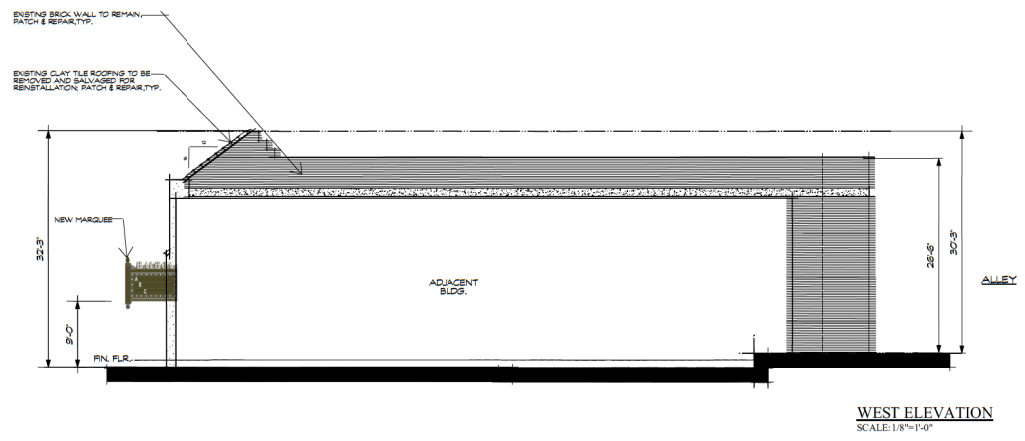
SITE/FIRST FLOOR PLAN
 SCALE: 1/8" = 1'-0"

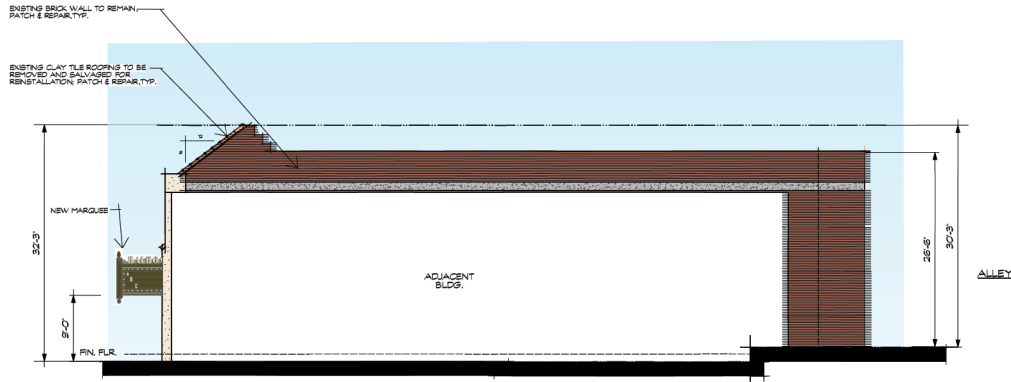


SOUND MITIGATION NOTES:

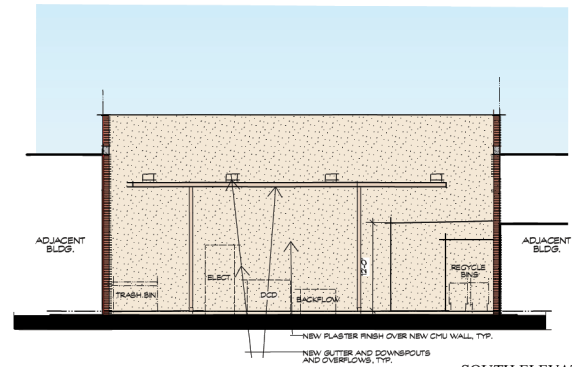
1. Project will meet the mitigating/isolating recommendations as out lined in *Acoustic Study for the Balboa Theater*, dated August 19, 2021 by Sound Media Fusion, LLC.
2. While the report introduces preliminary products/systems of construction, materials and construction techniques must be carefully designed to complement the overall aesthetic desired for the audience experience.
3. Design of elements for mitigating/isolating sound will be developed during Construction Documents and will be reviewed/approved by Sound Media Fusion Inc. as part of CD submittal. As outlined in the report, items will include:
 - a. Properly designed and placed sound system- sound directed downs to the audience- not toward walls and front.
 - b. An acoustically isolating stage house, to keep stage energy and sound system energy contained.
 - c. Acoustic absorption on the interior walls.
 - d. Solid floor.
 - e. Sound isolating entry/exit door systems.
 - f. Proper treatment of the front facade, from the interior.
 - g. Proper sealing of any air vents, windows, etc. to meet acoustical good standards.
4. Owner shall meet these recommendations upon construction completion:
 - a. Perform testing when the venue is complete, to determine maximum interior sound levels in order to meet City noise requirements exterior to the Project, as well to determine if the building is properly sealed, etc. for acoustic/noise isolation.
 - b. Operate the system at pre-defined maximum level.
 - c. Always monitor noise in the venue to ensure proper levels are maintained- using product "SoundEar 3 Advanced Noise Warning Sign" <https://www.noisemeters.com/product/soundear/sc3ear/> or equal.
 - d. Do a follow-up study after the venue is complete, with live music, to measure and report actual sound levels on the building exterior, and perform steps as required to mitigate further.

EVENT SEATING/STANDING	208
STAGE	17
KITCHEN/STORAGE	7
CIRCULATION	27
MEZZANINE	2
TOTAL BLDG. OCC.	261 Max.

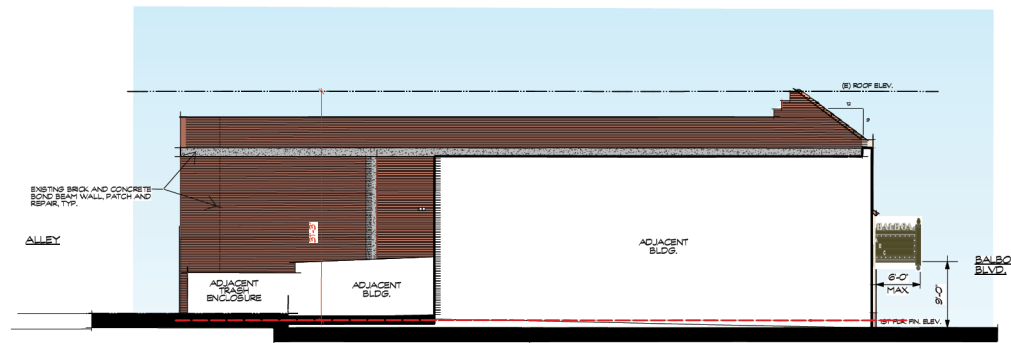




WEST ELEVATION
 SCALE: 1/8"=1'-0"



SOUTH ELEVATION (ALLEY)
 SCALE: 1/8"=1'-0"



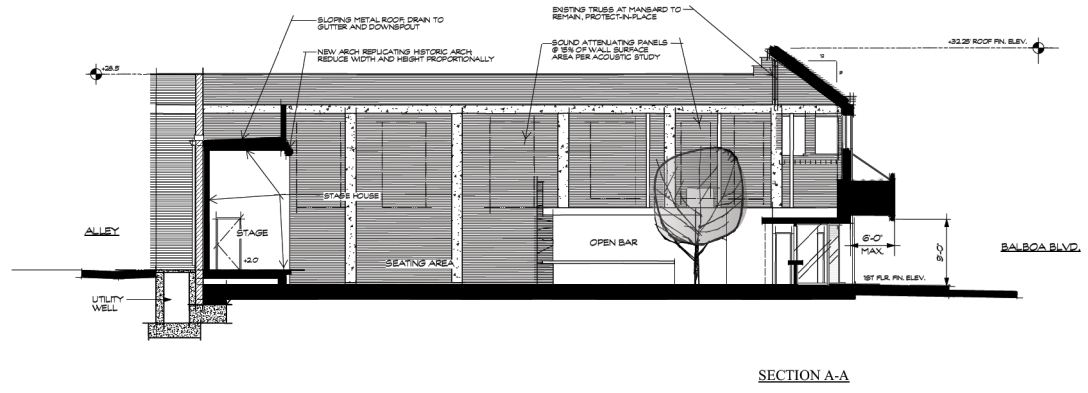
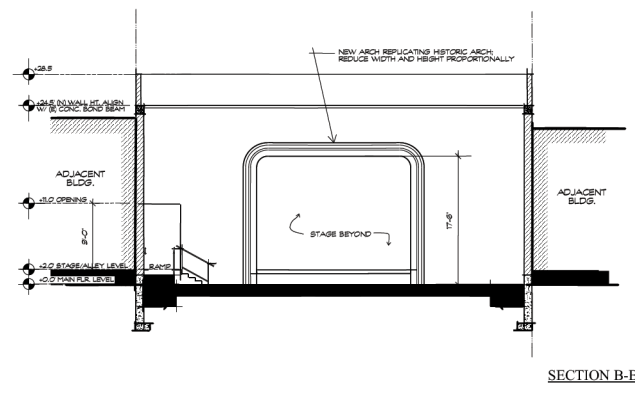
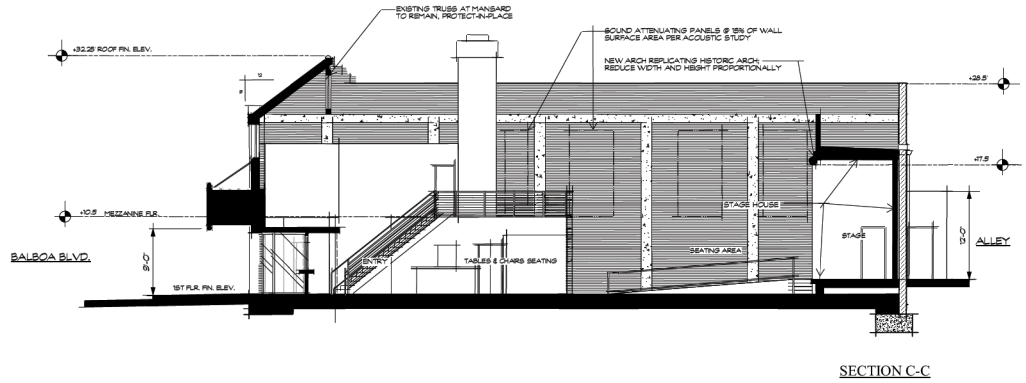
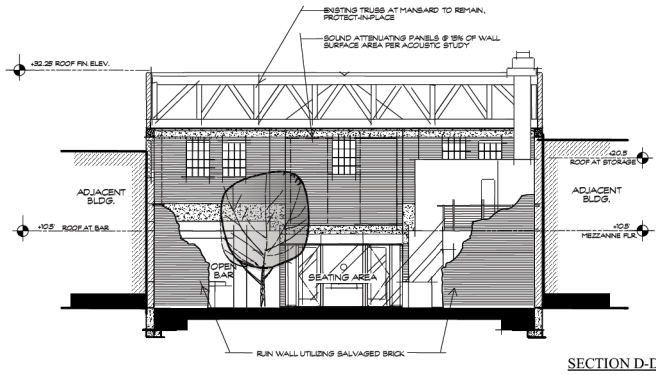
EAST ELEVATION
 SCALE: 1/8"=1'-0"



NORTH ELEVATION (BALBOA BLVD)
 SCALE: 1/8"=1'-0"

SOUND MITIGATION NOTES:

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- While the report introduces preliminary products/systems of construction, materials and construction techniques must be carefully designed to complement the overall aesthetic desired for the audience experience.
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 - Sound isolating entry/exit door system.
 - Proper treatment of the front facade, from the interior.
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- Owner shall meet these recommendations upon construction completion:
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 - Operate the system at pre-defined maximum level.
 - Always monitor noise in the venue to ensure proper levels are maintained- using product 'SoundEar 3 Advanced Noise Warning Sign' <https://www.noisemeters.com/product/soundear/se3ear/> or equal.
 - Do a follow-up study after the venue is complete, with live music, to measure and report actual sound levels on the building exterior, and perform steps as required to mitigate further.



NEW DESIGN BUILDING SECTIONS



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915
949-644-3200
www.newportbeachca.gov

ZONING ADMINISTRATOR ACTION LETTER

Subject: Thacker Berry Farms Strawberry Stand (PA2022-054)
▪ Limited Term Permit No. XP2022-003

Site Location 2401 Irvine Avenue

Applicant Thacker Berry Farms

Legal Description Parcel 1 of Block 38, Page 14

On **April 15, 2022**, the Zoning Administrator approved a limited term permit (less than 90 days) to allow a temporary prefabricated wooden strawberry stand in the parking lot of Harbor Christian Church located at 2401 Irvine Avenue. As part of this limited term permit, the strawberry stand will be permitted to operate from April 16, 2022 to July 15, 2022. The strawberry stand will occupy one parking space in the southeast corner of the parking lot and will sell locally grown, fresh-picked strawberries to the community.

LAND USE AND ZONING

- **General Plan Land Use Plan Category:** PI (Private Institutions)
- **Zoning District :** PI (Private Institutions)
- **Coastal Land Use Plan Category:** PI-A (Private Institutions – 0.0-0.30 FAR)
- **Coastal Zoning District:** PI (Private Institutions)

I. FINDINGS

Finding:

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

Fact in Support of Finding:

1. Class 11 exempts the placement of seasonal or temporary use of items such as lifeguard towers, mobile food units, portable restrooms, or similar items. The proposed temporary strawberry stand will occupy one parking space within the parking lot of Harbor Christian Church for a temporary time period and will be ancillary to an existing religious assembly use.

Finding:

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

Facts in Support of Finding:

1. The limited term permit will allow a temporary strawberry stand to sell locally grown, fresh-picked strawberries on-site for a limited duration (less than 90 days), as conditioned.
2. The operation of the strawberry stand is limited to the hours of 10:00 a.m. to 5:00 p.m. to reduce the impact of noise and traffic to surrounding residents. The strawberry stand is limited to dates beginning April 16, 2022 through July 15, 2022.
3. The proposed strawberry stand is approximately 8 feet wide and 8 feet in depth. The strawberry stand will occupy one parking space for a limited duration in the southeast corner of the Harbor Christian Church parking lot. Queuing customers will gather within the parking space and are not intended to spill into the drive aisle.
4. The proposed strawberry stand is located in the Harbor Christian Church parking lot. Conditions of approval require the area of the strawberry stand to be maintained daily for the removal of trash. All trash shall be stored within the building or within the on-site trash enclosures, screened from view of neighboring properties.

Finding:

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

Facts in Support of Finding:

1. The subject lot is approximately 2 acres in size. Based upon the site plan, there is adequate area to accommodate the proposed strawberry stand and existing uses without impacting vehicle circulation. The strawberry stand will occupy one parking space in the southeast corner of the Harbor Christian Church parking lot for a limited duration (less than 90 days).
2. The lot is bound by Irvine Avenue to the north and east, Tustin Avenue to the west, and Santa Isabel Avenue to the south. The adjacent rights-of-way (Tustin Avenue, Santa Isabel Avenue and Irvine Avenue) separate the lot from nearby residential properties within the R-1 (Single-Unit Residential) Zoning District to the south,

residential properties in the City of Costa Mesa to the north and west and the Upper Back Bay to the east.

3. The strawberry stand will occupy one parking space for a limited time period and will not conflict with peak use hours for regular church services and daycare operations on-site.

Finding:

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

Fact in Support of Finding:

1. The subject lot has two direct driveway approaches taken from Tustin Avenue and Santa Isabel Ave. The strawberry stand's location in the southeast corner of the parking lot will not impede access to the church at the northern side of the parking lot. The strawberry stand will occupy one required parking stall for a limited time period (less than 90 days). No traffic or site circulation issues are anticipated and the hours of operations will occur in off peak hours from church services and daycare drop-off and pick-up hours on-site

Finding:

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

Fact in Support of Finding:

1. The proposed limited duration strawberry stand will create nominal additional parking demand since it is small in size and operates only from 10:00 a.m. to 5:00 p.m., daily, and may close early if the stand sells out of strawberries for the day. The single parking space that the strawberry stand will occupy will not have a detrimental effect on parking demand within Harbor Christian Church since the space is typically underutilized for most of the week due to religious services primarily being offered on the weekends.

Finding:

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

Facts in Support of Finding:

1. The General Plan land use designation for this site is PI (Private Institutions). The PI designation is intended to provide for privately owned facilities that serve the public, including places for religious assembly, private schools, health care, cultural institutions, museums, yacht clubs, congregate homes, and comparable facilities. The proposed use is accessory to the existing religious assembly use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the PI designation.
2. The site is located in the PI (Private Institutions) Zoning District. The PI designation is intended to provide for areas appropriate for privately owned facilities that serve the public, including places for assembly/meeting facilities (e.g., religious assembly), congregate care homes, cultural institutions, health care facilities, marinas, museums, private schools, yacht clubs, and comparable facilities. The proposed use is ancillary to the existing religious assembly use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the PI designation. The PI Zoning District allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.
3. The site is not located within a specific plan area.

II. CONDITIONS

1. The development shall be in substantial conformance with the approved site plan except as noted in the following conditions.
2. Anything not specifically approved by this limited term permit is prohibited and must be addressed by a separate and subsequent review.
3. *The strawberry stand shall be located within the southeast corner of the Harbor Christian Church parking lot, as shown on the site plan (Attachment No. ZA 2). The strawberry stand shall occupy a maximum of one parking space.*
4. *The strawberry stand shall be limited to the sale of strawberries and other fruits. No alcohol or prepared food shall be sold.*
5. *The temporary strawberry stand is permitted on-site for a duration between April 16, 2022, and July 15, 2022. Operation of a strawberry stand outside of dates specified is prohibited.*
6. *Operation and access of the strawberry stand shall be limited to the hours of 10:00 a.m. to 5:00 p.m., daily.*
7. *The strawberry stand shall comply with the noise standards of Chapter [10.26 \(Community Noise Control\)](#) of the City of Newport Beach Municipal Code. The*

maximum noise generated by the proposed use shall not exceed a noise level equal to the value of the noise standard plus 20 DBA for any period of time, as measured using A-weighted slow response. The Code Enforcement Officer may require additional sound testing and attenuation at his/her discretion to comply with the noise standards of the Municipal Code.

8. The strawberry stand and customer queuing shall not restrict vehicle circulation or obstruct the public right-of-way. Patrons shall be prohibited from standing or waiting within the adjacent parking stalls or vehicle drive aisle.
9. *The strawberry stand shall not block any firefighting equipment such as fire hydrants, standpipe connections, or fire department connections.*
10. *There shall be no hazardous materials stored within the strawberry stand.*
11. *There shall be no trash stored within the strawberry stand or within the vicinity of the stand. All trash shall be stored within the church building or within dumpsters stored in the on-site trash enclosures, screened from view of neighboring properties.*
12. *The exterior of the strawberry stand shall be maintained free of trash, litter, and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.*
13. *The strawberry stand shall be securely locked when not in use.*
14. *No objects (such as construction materials, etc.) shall be stored behind and/or in the vicinity of the strawberry stand.*
15. *The strawberry stand shall not be located in a fire access lane.*
16. *A type 2410BC fire extinguisher shall be located at the stand at all times.*
17. *All routes to the strawberry stand and service transactions shall be accessible.*
18. *Substantial barricades shall be placed around the strawberry stand. The barricades shall not impact the adjacent parking stalls or vehicular drive aisle.*
19. The Limited Term Permit is for the operation of one temporary strawberry stand for the hours and dates specified and does not authorize the use or operation of additional strawberry stands on-site.
20. Should the temporary strawberry stand become a detriment to the public health, comfort, convenience, safety, and general welfare of the peace and quiet of the neighboring properties and their inhabitants, this permit may be revoked.

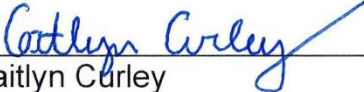
21. *The Community Development Director may impose whatever reasonable conditions are deemed necessary to assure that the strawberry stand is compatible with adjoining uses and does not result in significant negative impacts to the health, safety, peace, comfort and the welfare of persons residing or working in the general vicinity.*

22. To the fullest extent permitted by law, applicant shall indemnify, defend, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Thacker Berry Farms Strawberry Stand** including, but not limited to, **Limited Term Permit No. XP2022-003 (PA2022-054)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development 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. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:

Approved by:



Caitlyn Curley
Planning Technician



Jaime Murillo
Zoning Administrator

MKN/cnc

Attachments: ZA 1 Vicinity Map
 ZA 2 Site Plan

Attachment No. ZA 1

Vicinity Map

VICINITY MAP

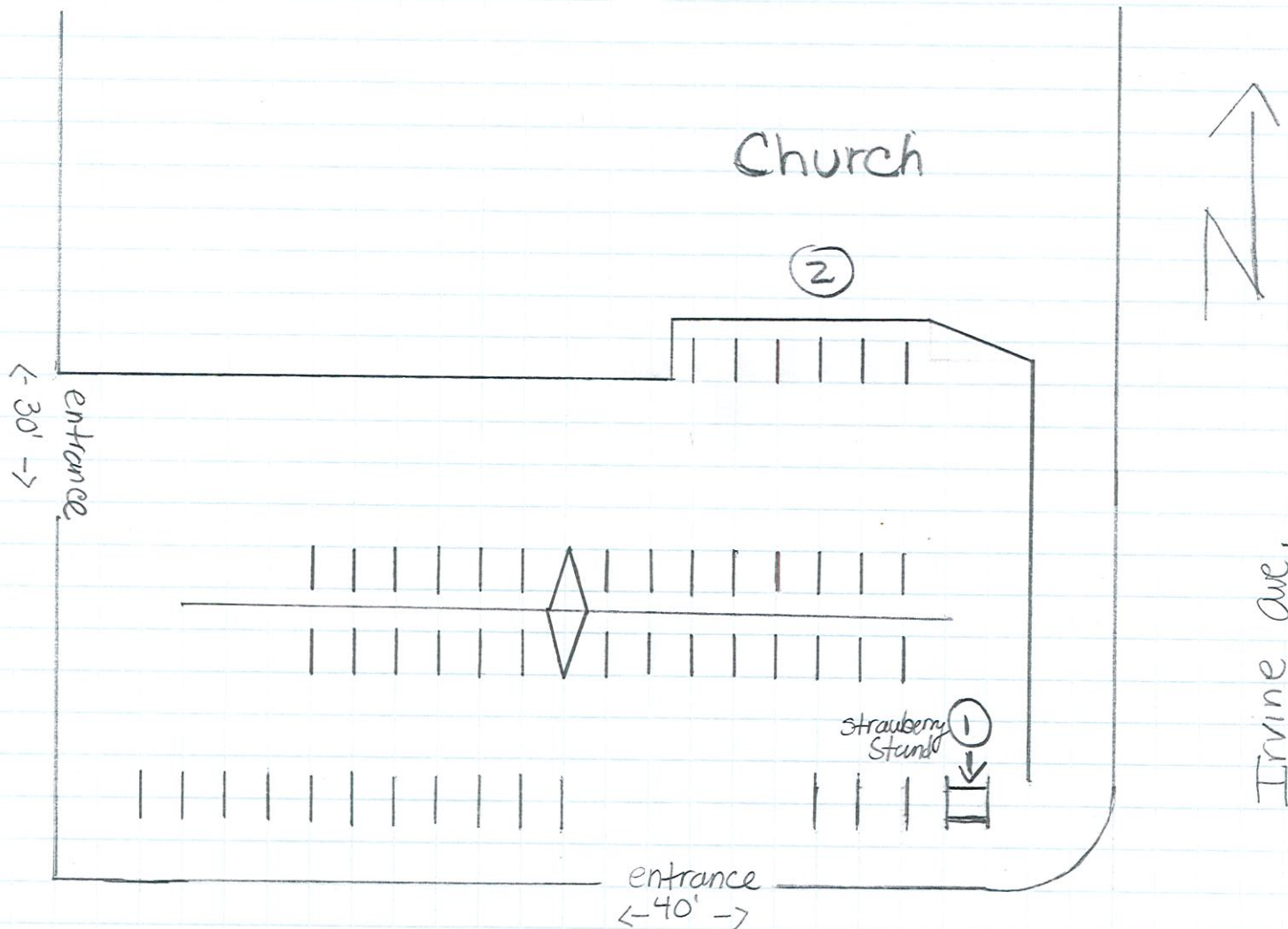


Limited Term Permit No. XP2022-003
(PA2022-054)

2401 Irvine Avenue

Attachment No. ZA 2

Site Plan



Claudia Thacker
 Thacker Berry Farms
 2124 Ridgeway
 Signal Hill, Ca. 90755
 (562) 244-0486

Santa Isabel Ave.
 ← →

1. Strawberry Stand 8' x 8'
2. restroom facility

PA2022-054 for XP2022-003
 2401 Irvine Avenue
 Thacker Berry Farms