



## 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 June 17, 2022.

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### ZONING ADMINISTRATOR ACTIONS JUNE 16, 2022

- Item 1: Salt & Straw Minor Use Permit No. UP2022-002 (PA2022-015)  
Site Address: 2001 Westcliff Drive, Suite 102
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| Action: Approved by Resolution No. ZA2022-041 | Council District | 3 |
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- Item 2: 319 VIA LIDO SOUD, LLC Residence Coastal Development Permit No. CD2022-007 (PA2022-014)  
Site Address: 319 Via Lido Soud
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2022-042 | Council District | 1 |
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- Item 3: Menninger Residence Coastal Development Permit No. CD2022-020 (PA2022-058)  
Site Address: 2641 Circle Drive
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| Action: Approved by Resolution No. ZA2022-043 | Council District | 2 |
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**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2022-041

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2022-002 FOR A NEW TAKE OUT-SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT LOCATED AT 2001 WESTCLIFF DRIVE, SUITE 102 (PA2022-015)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Salt & Straw, LLC, with respect to property located at 2001 Westcliff Drive, and legally described as Parcel 1 of Lot Merger No. LM2013-005 requesting approval of a minor use permit.
2. The applicant requests a minor use permit to establish a take-out service, limited eating and drinking establishment in the form of a gourmet ice cream parlor within The Walk Shopping Center. The proposed ice cream parlor will have approximately 419 square feet of interior net public area and include up to six on-site seats, and no late hours or alcohol service.
3. The subject property is designated General Commercial (CG) within the Land Use Element of the General Plan with a Commercial General (CG) Zoning District designation.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on June 16, 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 minor interior improvements to an existing commercial space and involves no expansion in floor area.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020.F (Finding and Decision) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

A. *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 General Commercial (CG) and is intended to provide a wide variety of commercial activities oriented primarily to serve citywide or regional needs.
2. The proposed gourmet ice cream parlor use is consistent with the CG designation as it is intended to provide a service not only to visitors, but also to residents within the immediate neighborhood and surrounding area.
3. The proposed gourmet ice cream parlor is within an existing commercial space in The Walk commercial center. The Walk includes various commercial retail and office uses including eating and drinking establishments, which are complementary to the surrounding commercial and residential neighborhood.
4. The subject property is not part of a specific plan area.

Finding:

B. *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 located in the Commercial General (CG) Zoning District. The proposed take-out service, limited, eating and drinking establishment in the form of a gourmet ice cream parlor is a permitted use subject to the approval of a minor use permit pursuant to Newport Beach Municipal Code Section 20.22.020 (Commercial Zoning Districts Land Uses and Permit Requirements).
2. The parking requirement for a take-out, limited, food service eating and drinking establishment is one (1) space per 250 square feet of gross floor area (GFA). The existing parking for the commercial space is also one (1) space per 250 square feet of gross floor area so the proposed establishment does not result in an increase of code required parking. The one (1) space per 250 square feet of GFA is appropriate for this type of use based on several physical design and operational characteristics. For example, the net public area is 419 square feet in area and no seating proposed on the floor plan. The operation includes take-out service only. The project does not include

outdoor dining. Lastly, live entertainment, dancing, and alcohol service are not permitted for a take-out service limited use and no late hours are proposed.

3. Required parking is adequately provided within the on-site shared parking structure and surface parking for The Walk, which provides a total of 404 spaces. The total parking requirements for the center based on the various existing and planned on-site uses, including the five (5)-space requirement for the proposed gourmet ice cream parlor, results in a total need of 370 spaces and a surplus of 34 spaces.
4. As conditioned, the proposed project will comply with Zoning Code standards for eating and drinking establishments.

Finding:

- C. *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 establishment will consist of 419 square feet of net public area with no seating. Back of house areas of the 1,037-square-foot tenant space include a service area, food preparation facilities, a walk-in refrigerator, indoor storage and washing areas, a restroom, and a dedicated wash-down area that will drain directly into the sewer system.
2. The operation of the restaurant will be restricted to the hours between 11:00 a.m. and 11:00 p.m., daily. These hours are consistent with the business hours of other restaurants and uses in the commercial area.
3. The restaurant is located within The Walk commercial center with access from Westcliff Drive and Irvine Avenue. The existing commercial space is entered from a walkway off the existing surface parking lot, which provides convenient access to motorists, pedestrians, and bicyclists.
4. The Walk provides Code-required covered and enclosed trash enclosures for all of the commercial tenants including the proposed Salt and Straw. .
5. The surrounding area contains various retail, business office, and visitor-serving commercial uses including restaurants and take-out eating establishments. The existing restaurant is compatible with the existing and permitted uses within the area.
6. The operational conditions of approval prohibit alcohol sales, dancing, or live entertainment unless an amendment to this use permit or a new use permit is approved. This will help ensure compatibility with the surrounding uses unless further analysis and review is performed.

7. The design of The Walk provides a large parking structure behind the commercial buildings along Sherington Place. This acts as a buffer between the commercial uses and the residential uses across Sherington Place.

Finding:

- D. *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 Walk commercial center operates with various retail, offices and food services and restaurants. The design of The Walk was intended for various service uses.
2. Original site plan approvals from 2013 for The Walk included a review to ensure adequate public and emergency vehicle access, and that public services and utilities are provided. The plans for the buildings with spec commercial suites were reviewed for compliance with applicable building and fire codes.

Finding

- E. *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 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 will serve the surrounding community in a commercial area designed for such uses.
3. The operational conditions of approval for take-out service, limited, uses prohibit alcohol sales, dancing and live entertainment, and there are no late hours of operation.

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. UP2022-002, 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 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 16 DAY OF JUNE, 2022.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan, 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. *The hours of operation for the establishment shall be limited to 11:00 a.m. to 11:00 p.m. Monday through Sunday*  
  
*Live entertainment, dancing, and alcohol sales are prohibited.*
5. *The take-out service, limited eating and drinking establishment, shall be limited to a maximum of six (6) seats. Customer queuing shall not be permitted in parking, drive aisle, or public rights-of-way.*
6. *No outdoor seating is permitted unless an amendment to this Minor Use Permit or a Limited Term Permit is acquired.*
7. *Customers shall not queue in parking stalls, drive aisles or any right of way areas.*
8. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code.
9. Minor Use Permit No. UP2022-002 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
10. This 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.

11. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
12. 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.
13. 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.
14. 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.
15. No outside paging system shall be utilized in conjunction with this establishment.
16. A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Director and Public Works Director in conjunction with the approval of an alternate drainage plan.
17. 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.
18. 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.
19. 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).
20. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three [3] 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. All trash dumpsters and/or receptacles shall have a solid cover or lid. The lid shall remain closed when the dumpster is not in use.



21. 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 Minor Use Permit.
22. 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.
23. 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.
24. 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.
25. 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 **Salt & Straw** including, but not limited to, **Minor Use Permit No. UP2022-002 (PA2022-015)**. 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.

### **Electrical/Mechanical/Plumbing**

26. Prior to the issuance of building permits, the project plans shall demonstrate that the environmental (general) exhaust shall be at least 10 feet away from any forced outside air intake.

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

## RESOLUTION NO. ZA2022-042

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-007 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 319 VIA LIDO SOUD (PA2022-014)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects (“Applicant”), on behalf of 319 VIA LIDO SOUD, LLC (“Owner”), with respect to property located at 319 Via Lido Soud, requesting approval of a coastal development permit (“CDP”).
2. The property is legally described as Lot 908 and southeasterly one (1)-half of Lot 907 of Tract 907, in the City of Newport Beach, County of Orange, State of California.
3. The Applicant proposes to demolish an existing single-family residence and construction of a new, two (2)-story 5,170-square-foot single-family residence and attached 764-square-foot, three (3)-car garage. The project includes the raising and reinforcing of an existing bulkhead for protection against coastal hazards. The project also 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-C (Single Unit Residential Detached – 10.0 - 19.9 DU/AC) and the property is located within the R-1 (Single-Unit Residential) Coastal Zone District.
6. A public hearing was held on June 16, 2022, 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 and construction of limited numbers of new, small facilities or structures including a 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 5,170-square-foot, single-family residence with an attached 764-square-foot garage in the R-1 Zoning District and is consistent with this exemption.

### 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 (LCP).*

#### 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 5,934 square feet, which complies with the maximum allowable floor area limit of 7,900 square feet.
  - B. The proposed development will provide the minimum required setbacks, which are ten (10) feet along the front property line abutting waterfront, four (4) feet along the front property line abutting Via Lido Soud, and four (4) feet along each side property line.
  - C. The highest guardrail is no more than 24 feet in height, and the highest roof ridge is no more than 29 feet in height, measured from the established grade level of 12.44 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 complies with the minimum parking requirement for single-family residences with more 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 protected by an existing bulkhead that will be raised and reinforced for protection against coastal hazards. The existing bulkhead will be increased in height from 9.58 feet North American Vertical Datum of 1988 (NAVD88) to a height of 12.60 feet (NAVD88). The bulkhead can be raised to 14.4 feet without further bayward encroachment to protect the property if needed in the future. The finished floor elevation of the first floor of the existing living area is 13.11 feet (NAVD88), which exceeds the minimum 9.0-foot (NAVD88) elevation standard for new structures and exceeds the minimum requirements for sea level rise (10.75 feet NAVD88) for the anticipated 75-year life of the structure.
4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc., dated January 10, 2022, for the project. The current maximum bay water elevation is 7.7 (NAVD88) and is not expected to exceed the 12.60 feet (NAVD88) top of bulkhead elevation during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 3.05-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 10.75 feet (NAVD88) (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. On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. The guidelines require that any bulkhead structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet (NAVD88) with a design for adaptability elevation of 14.4 feet (NAVD88). The project has been conditioned to raise the bulkhead to an elevation of 10.9 feet (NAVD88). PMA Consulting Inc., Inc. has confirmed the bulkhead design can be raised up to 14.4 feet (NAVD88) if needed and in compliance with the updated guidelines.
6. Pursuant to Newport Beach Municipal Code (NBMC) Section 21.30.030(C)(3)(i)(iv) – (Development Standards - Protective Structures), 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).
7. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) – (Waterfront Development - Development Standards). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.
8. 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.

9. Pursuant to Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared for the project by Forkert Engineering & Surveying, Inc., dated January 11, 2022. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of a Low Impact Development (LID) approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
10. 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.
11. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). Condition of Approval No. 11 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.
12. 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. The closest public viewpoint is located at the Via Lido bridge 1,200 feet to the northwest. 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.

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; however, the project will not affect the public's ability to gain access to use and/or view the coast and nearby recreational facilities. The existing residential development neither provides nor inhibits public coastal access. 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 involves replacement of an existing single-family residence with a new single-family residence. Therefore, the project

does not involve a change in land use, density, or intensity that will result in increased demand on public access and recreation opportunities.

2. The project is designed and sited so as not block or impede existing public access opportunities and occurs within the confines of private property. Existing coastal access conditions will not be affected by the project. Coastal access to the public sandy beach areas is currently provided and will continue to be provided at various street ends throughout the neighborhood, with the nearest to the project site located at Via Firenze and Via Lido Soud.

#### 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. CD2022-007, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 16<sup>TH</sup> DAY OF JUNE, 2022.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Coastal Development Permit No. CD2022-007 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 issuance of a building permit, Certificate of Compliance No. CO2022-008 shall be recorded.*
9. Prior to the issuance of building permit, 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.
10. Prior to the issuance of a building permit, the property owner shall sign 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, judgements, 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. The letter shall be scanned into the plan set prior to building permit issuance.

11. 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.
12. 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.
13. 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.
14. 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.
15. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
16. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
17. 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.
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 the current property owner or agent.

19. 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 **319 VIA LIDO SOUD, LLC Residence** including, but not limited to, **Coastal Development Permit No. CD2022-007 (PA2022-014)**. 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**

20. All improvements shall be constructed as required by Ordinance and the Public Works Department.
21. Prior to issuance of final building permits, an encroachment permit is required for all work activities within the public right-of-way/easement area.
22. Prior to issuance of final building permits, the proposed decorative hardscape within the utility easement requires an encroachment permit and encroachment agreement.
23. Any damaged curb and gutter shall be reconstructed per City Standard.
24. All improvements shall comply with the City's sight distance requirement. See City Standard STD# 110.

### **Fire Department**

25. Prior to issuance of final building permits, fire sprinklers shall be required for this project.

### **Building Division**

26. The property is located in Special Flood Hazard Area AE8. Prior to issuance of building permits, the project must comply with NBMC 15.50 and 15.05.100.
27. The property is in a Soils Liquefaction Seismic Hazard Area. Prior to issuance of building permits, the soils report must include recommendations for construction on liquefiable soils including calculations for seismic settlement according to City of Newport Beach Building Code Policy CBC 1803.5 and the building foundation must comply with Policy CBC 1805.5.11-12.

28. Prior to issuance of building permits, a Water Quality Management Plan (WQMP) is required. If some soil runoff drains into Newport Bay (an Environmentally Sensitive Receiving Water), approval by the Public Works/Harbor Department will be required.
29. Prior to issuance of building permits, the top elevation of the sea wall shall be required to comply with the requirements set forth in Table 2 of the City of Newport Beach Harbor Design Criteria, dated January 25, 2022.

## RESOLUTION NO. ZA2022-043

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-020 TO DEMOLISH AN EXISTING ATTACHED TWO (2)-CAR GARAGE AND GUEST ROOM AND CONSTRUCT A NEW TWO (2)-CAR GARAGE WITH GOLF CART GARAGE AND AN ACCESSORY DWELLING UNIT (ADU) ABOVE LOCATED AT 2641 CIRCLE DRIVE (PA2022-058)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Thomas Burger Architect (Applicant), with respect to property located at 2641 Circle Drive, requesting approval of a coastal development permit.
2. The parcel at 2641 Circle Drive is legally described as Lot 28, Tract 1102.
3. The Applicant proposes demolition of an attached, two (2)-car garage that serves an existing single-family residence and the construction of an attached 641-square-foot, two (2)-car and golf cart garage with a 596-square-foot accessory dwelling unit (ADU) above. The design complies with all applicable development standards 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 is located within the R-1 (Two-Unit Residential) Coastal Zone District.
6. A public hearing was held on June 16, 2022, 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 15301, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities), because it has no potential to have a significant effect on the environment.
2. Class 1 exempts minor additions and alterations to existing structures. The project consists of the demolition of an existing attached two (2)-car garage and guest room

and the construction of an attached two (2)-car and golf cart garage with a 596-square foot ADU above. The project involves additions to an existing structure that does not result in an increase of more than 50 percent of the floor area of the structure before the addition and the project therefore falls within the limits of this exemption.

### 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 (LCP).*

#### Facts in Support of Finding:

1. The project complies with all applicable residential development standards including, but not limited to, setbacks, floor area limitation, height, and parking.
  - A. 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 three feet along each side property line. There are no additional setback requirements for an ADU above a garage.
  - B. The proposed floor area, including the principal residence, enclosed parking and ADU, is 3,994 square feet, which complies with the maximum allowable floor area limit of 5,440 square feet.
  - C. The highest ridge is no more than 29 feet from established grade, which complies with the maximum height requirements. The ADU addition above a garage is subject to the same height limitations as the underlying zoning district.
  - D. The project includes enclosed parking for two (2) vehicles and a golf cart, which exceeds the minimum parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
  - E. NBMC Chapter 21.48.200 (Accessory Dwelling Units) does not require additional parking to be provided for an ADU when the proposed ADU is located within one (1)-half mile of a public transit. NBMC Subsection 21.48.200(C)(9)(c)(ii) – (Development Standards - Parking) defines “public transit” as a bus stop with fixed route bus service that provides transit service at fifteen (15) minute intervals or better during peak commute periods. The nearest public transport is an Orange County Transportation Authority (OCTA) bus stop located at West Pacific Coast Highway and Bayshore Drive. This bus stop is approximately 0.3-miles walking distance from the project

site. The OCTA Route 1 bus serves this stop and is identified in the OCTA system map as a route offering regular weekday service.

- F. The project is conditioned to require the recordation of a deed restriction that will prohibit the use of the ADU for short term rentals (i.e., less than 30 days) and will also prohibit the sale of the ADU separate from the principal dwelling.
2. The neighborhood is predominantly developed with one (1)- and two (2)-story single-family residences. The design, bulk, and scale of the project is consistent with the existing and anticipated neighborhood pattern of development. The new garage and second level ADU are designed to complement the existing single-family residence with respect to architectural style, roof pitch, color, and materials.
  3. The project site is located more than 500 feet from the mean high tide line and is separated from the water by Circle Drive, Bay Shore Drive, and several rows of existing residential development. The finished first floor elevation of the proposed garage is 12.94 feet based on the North American Vertical Datum of 1988 (NAVD88), and the new living area is located above the garage with a finish floor elevation of 25.70 feet, which exceeds the minimum required 9.00-foot (NAVD88) elevation standard. The overall height of the addition is 27 feet 3 inches measured from the average/established grade at 12.99 feet.
  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. 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 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.

**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 West Coast Highway via Bay Shore Drive, a private street. The shoreline is on the south and east sides of the community and consists of bulkheads and two (2) small sandy beaches.
2. 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 Bayshores community at the Balboa Bay Club, immediately north of the Bayshores community.

**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 Coastal Development Permit No. CD2022-020, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 16<sup>TH</sup> DAY OF JUNE, 2022.**



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Jaime Murillo  
Zoning Administrator



**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Coastal Development Permit No. CD2022-020 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. *Prior to the issuance of a building and/or grading permit for an accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder's Office, the form and content of which is satisfactory to the City Attorney, prohibiting use of the ADU for short term rentals (i.e., less than 30 days) and also prohibiting the sale of the ADU separate from the principal dwelling. This deed restriction shall remain in effect so long as the accessory dwelling unit exists on the property.*
5. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.

11. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
12. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
13. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
14. 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.
15. 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 **Menninger Residence including, but not limited to, Coastal Development Permit No. CD2022-020 (PA2022-058)**. 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**

16. Prior to issuance of final building permits, an encroachment permit is required for all work activities within the public right-of-way/easement area.

### **Building Division**

17. Prior to issuance of building permits, a soils report will be required according to City of Newport Beach Building Code (NBBC) Policy No. CBC 1803.5 (formerly NBMC 15.10.010).

18. The property is located within a Soils Liquefaction Seismic Hazard Area identified by the State of California. Prior to issuance of building permits, the soils report will need to include computations for seismic settlement according to NBBC Policy No. CBC 1803.5.11-12. The foundation system will need to be constructed according to one (1) of the shallow liquefaction mitigation methods listed in the policy.
19. Prior to the issuance of building permits, the walls and floor separating the ADU from main dwelling and garage will be required to be one (1)-hour fire resistance rated Walls separating the ADU from the main dwelling shall comply with air-borne and/or impact sound rating in accordance with NBMC 15.05.230.