



CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION
FROM: Seimone Jurjis, Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending July 1, 2022.

ZONING ADMINISTRATOR ACTIONS JUNE 30, 2022

- Item 1: 925 Via Lido Soud, LLC Bulkhead Coastal Development Permit No. CD2022-009 and Staff Approval No. SA2022-004 (PA2022-025)
Site Address: 925 Via Lido Soud
Action: Approved by Resolution No. ZA2022-044 Council District 1
- Item 2: Thomas James Homes Residence Coastal Development Permit No. CD2022-015 (PA2022-046)
Site Address: 4014 Channel Place
Action: Approved by Resolution No. ZA2022-045 Council District 1
- Item 3: Xanadu Café Minor Use Permit Amendment No. UP2021-036 (PA2021-220)
Site Address: 100 West Coast Highway, Suite 104
Action: Approved by Resolution No. ZA2022-046 Council District 2
- Item 4: Onyx Athletica, LLC Minor Use Permit No. UP2021-041 (PA2021-247)
Site Address: 847 West 16th Street
Action: Approved by Resolution No. ZA2022-047 Council District 2

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. ZA2022-044

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-009 AND STAFF APPROVAL NO. SA2022-004 FOR A GRADE DETERMINATION TO CONSTRUCT A NEW BULKHEAD LOCATED AT 925 VIA LIDO SOUD (PA2022-025)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Sinclair Associates Architects, Inc., with respect to property located at 925 Via Lido Soud, requesting approval of a coastal development permit and grade establishment at the lot legally described as Lot 319 of Tract No. 907. The subject site fronts Newport Harbor. The majority of harbor fronting properties are bulkheaded, however, the subject site is not.
2. The applicant requests a Coastal Development Permit to construct a new bulkhead within private property along the U.S. Bulkhead line at 925 Via Lido Soud, where there are currently no shoreline protective devices to protect existing development on the property and adjacent development. The proposed bulkhead coping would reach 8.75 feet North American Vertical Datum of 1988 (NAVD88) with a stem wall up to 13.5 feet (NAVD88) to match the height of adjacent bulkheads on either side. All work will be performed from the landside of the U.S. Bulkhead Line and all construction would occur from private property (i.e., the landside). The project also includes a grade determination to establish grade for the purposes of measuring height. The proposed grade determination would allow the subject property to construct improvements at a height consistent with the two (2) adjacent properties.
3. The subject property is designated RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single Unit Residential Detached - (10.0 - 19.9 DU/AC)) and it is located within the R-1 (Single-Unit Residential) Coastal Zone District.
5. The proposed project is located within the City of Newport Beach Permit Jurisdiction pursuant to the Post LCP Certification Permit and Appeal Jurisdiction Map ("Map") and is within the Appeal Area of the California Coastal Commission. Pursuant to the Map, the California Coastal Commission retains jurisdiction within tidelands, submerged lands, and lands that are subject to the public trust or were subject to the public trust at any time. The proposed project is adjacent to, but not located within tidelands or lands that are subject to the public trust or were subject to the public trust at any time. The proposed bulkhead is contained entirely within private property and all construction would be conducted without the use of mechanized equipment on the water or sand. Additionally, the project is located

outside of submerged lands, which is defined as the lands that lie below the line of mean low tide (from California Code of Regulations Section 13577). Therefore, the project is under the permit jurisdiction of the City of Newport Beach.

6. A public hearing was held on June 30, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the construction and location of limited numbers of new, small facilities or structures such as accessory (appurtenant structures) such as garages, patios, swimming pools, and fences. The proposed bulkhead is an accessory structure to the primary use of the property as a single-family residence.
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. Coastal Land Use Plan Policies within Chapter 2 and Chapter 3 including 2.8.3-6, 2.8.3-5, 2.8.6-5, 2.8.6-6, 2.8.6-8, 3.1.4-7, and 3.1.4-8 are implemented through NBMC Section 21.30.030 (Natural Landform and Shoreline Protection). The project complies with NBMC Section 21.30.030 based on the following facts:
 - a. The purpose of NBMC Section 21.30.030 (A) (Purpose) provides regulations for the protection of natural landforms and shoreline features. The intent includes

maintaining a system of harbor bulkheads that are essential to the continued operation of Newport Harbor and to protect public access, public views, and scenic qualities of the coastal zone.

- b. In compliance with Subsection(C)(3)(a)(i), the property developed with a single-family residence and garage is not subject to recorded waivers of future protection, as the existing development was issued a Coastal Development Waiver by California Coastal Commission in 1996 (W-5-95-282), which does not include conditions.
- c. Subsection(C)(3)(a)(ii) requires that the construction of protective structures must be necessary to protect existing development from natural hazards and be located entirely within private property and not within State tidelands. For the purposes of this section, existing development is defined as a principal structure (e.g. residential dwelling, required garage, etc.). The proposed bulkhead is intended to protect the existing single-family residence and garage on-site as well as existing surrounding development including 921 and 929 Via Lido Soud. The proposed bulkhead is also needed to protect the pre-Coastal Act pattern of development on Lido Isle where existing infrastructure and development is reliant on bulkheads for protection from coastal hazards including future sea level rise. A Coastal Hazards Analysis and Engineering Assessment of Need for New Bulkhead Report was prepared for the project by Geosoils, Inc. dated March 11, 2022. The report included a summary of the damage observed to the residential structures at and adjacent to the subject site. The report concludes that without a bulkhead at 925 Via Lido Soud (subject property), foundation displacement will eventually damage the structures to the point of foundation failure. Therefore, the proposed bulkhead is necessary to protect existing development from natural hazards.
- d. Subsection(C)(3)(b) limits the enlargement and expansion of land areas related to the establishment of shoreline protective structures and prohibits the creation of new useable land areas. All of the land on the subject property is considered usable. As shown on the topographical survey prepared for the property, elevations within the front yard setback (along the water) vary from 10.38 to 12.45 feet (NAVD88), which is typical for new development in the coastal areas of the City. Any future design of a structure using fill would not create new useable land areas.
- e. Subsection(C)(3)(c) promotes the use of non-structural methods to protect structures, when feasible. Within the Newport Beach harbor, non-structural methods are not employed to protect the residential islands. Non-structural methods in this area are not feasible and cannot be carried out successfully, which is demonstrated by the universal use of bulkheads to maintain a system of harbor bulkheads.
- f. Subsection (C)(3)(d) contains several provisions related to the design and siting of protective structures such as bulkheads. The proposed bulkhead is located as far landward as possible to align with the neighboring bulkheads and fill a gap in

the system of bulkheads. The bulkhead would not impact coastal resources (refer to Finding 2) nor access to recreational areas or State tidelands. There are no tidelands adjacent to the site and only a small area of sand off-site that does not connect with any recreational areas in the vicinity. The bulkhead would not impact alteration of natural shoreline process, other than reducing the amount of erosion of soils on private property during high tide events. The bulkhead would reach an elevation of 13.5 feet (NAVD88) which is in line with adjacent bulkheads, reducing any visual impacts. Lastly, the bulkhead is a standard 8 inches wide consistent with the footprint of bulkheads in the City.

2. The harbor has been physically altered for more than 100 years to assure the public purpose of maintaining a navigable harbor and protecting the shoreline from erosion. The proposed bulkhead would link the existing bulkheads at 921 and 929 Via Lido Soud. The proposed bulkhead would fill in a gap in an otherwise continuous bulkhead system that surrounds most of Lido Isle that is not subject to a recorded waiver at this time.
3. The proposed bulkhead is not located within wetlands as defined in NBMC Section 21.70 (Definitions). Wetlands require the presence of at least one (1) characteristic of either (i) land that supports hydrophytes, (ii) undrained hydric soil, or (iii) non-soil substrate covered by water part of the year. The sand soil that surrounds Lido Isle and descends into Newport Harbor is sand that is covered and uncovered by the tides but supports no plants, does not exhibit undrained hydric soil, and is not a non-soil substrate. Thus, the subject location does not contain wetlands.
4. The neighborhood is predominantly developed with residential uses that are protected by existing bulkheads. The proposed design of the bulkhead is consistent with the existing neighborhood pattern of development along the bay.
5. A Coastal Hazards Analysis and Engineering Assessment of Need for New Bulkhead Report was prepared by Geosoils, Inc. dated March 11, 2022, for the project. The report describes the property's shoreline as an intertidal beach. During a very low tide event some wet sand is exposed. The shoreline is generally at the bulkhead line as extended from the adjacent properties. As sea level rises, the shoreline will remain at the bulkhead. The current maximum bay water elevation is 7.7 (NAVD88). The report analyzes future sea level rise scenarios assuming a 3.2-foot increase in the maximum water level (year 2100) over the next 75 years (i.e. the life of the structure). Therefore, the sea level is estimated to reach approximately 10.9 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). Without the proposed bulkhead, the rising sea levels will continue to distress the existing and neighboring properties and ultimately public facilities such as roads and utilities. Refer to Fact 1(b) above.
6. 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 bulkhead is proposed at an

elevation of 13.5 feet (NAVD88) and is designed to be able to accommodate an elevation of 14.4 feet (NAVD88) if needed in the future.

7. 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
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) – (General Site Planning and Development Standards - Waterfront Development). This requirement is included as a condition of approval that will need to be satisfied prior to the issuance of building permits, respectively.
9. The proposed project is requesting a grade determination to establish grade for the front yard for the purpose of measuring new structures. With approval of the grade determination under Findings C and D, the proposed bulkhead would comply with all development standards such as maximum height of accessory structures (NBMC Section 21.30.040 Fences, Hedges, Walls, and Retaining Walls).
10. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of 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.
11. The property is located adjacent to coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
12. 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 viewpoint is in Marina Park and is not visible from the site. The site is located on the bay, which provides views to boaters of Lido Isle. As currently developed, the existing property and other residences along Via Lido Soud are located within the view shed of the Bay. However, the proposed bulkhead complies with all applicable Local Coastal Program (LCP) development standards and maintains a profile consistent with the existing neighborhood pattern of development along the Bay that predominately consists of

bulkheaded properties. The subject property and adjacent properties also include residential piers which partially obstruct views of the system of bulkheads as viewed from the water. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

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 includes the construction of a new bulkhead to fill a gap in the existing system of bulkheads. 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 within private property and outside of public tidelands so as not to block or impede existing public access opportunities.
2. The public currently does not have access through the property to the water and the proposed bulkhead would not interfere with any established or planned public access routes. The bulkhead would become part of the system of bulkheads that is essential to the operation of Newport Harbor. Access to the water exists throughout Lido Isle and the closest vertical access point located along Via Lido Nord approximately 500 feet north where there is access to the water and a grassy area for the public. The project does not include any features that would obstruct access along these routes. The property is not suitable for aquaculture and is zoned for residential uses including single-family development that currently exists on the site.
3. There is an existing glass fence that was likely inadvertently constructed within public property and would be removed as part of the proposed project.

Staff Approval for Grade Establishment

In accordance with Section 20.30.050 (C) – (Grade Establishment) and 21.30.050 (C) – (Harbor and Bay Regulations) If the Director finds that the existing grade on the subject lot has been previously altered (e.g., contains retaining structures, property line walls, planters, or excavation/fill), or other conditions are present to the degree that the existing grade is not representative of the prevailing grades on adjoining lots and/or the general area and, therefore, is not appropriate for the purpose of establishing the grade of the subject lot, the Director may establish the grade that is reasonable and comparable with the grades of adjoining lots and that will not be detrimental or injurious to property and improvements on adjoining lots. In this

case, the proposed bulkhead requires a coastal development permit, and the Zoning Administrator will review the grade determination findings for purposes of measuring height for improvements on the site.

Finding:

- C. *The existing grade on the subject lot has been previously altered (e.g., contains retaining structures, property line walls, planters, or excavation/fill), or other conditions are present to the degree that the existing grade is not representative of the prevailing grades on adjoining lots and/or the general area and, therefore, is not appropriate for the purpose of establishing the grade of the subject lot.*

Facts in Support of Finding:

1. The Applicant is constructing a new bulkhead along the front (bay) property line; however, the grades along the front setback area (waterfront) include depressed areas that are not representative of the prevailing grades on the two (2) adjoining properties. The two (2) adjacent properties are previously altered with bulkheads. This grade differential creates design constraints and unfairly restricts the heights of accessory structures below those of the neighboring properties. The surrounding properties have front yard elevations on the water of approximately 13.26 feet (NAVD88) at 929 Via Lido Soud and 13.74 to 13.92 feet (NAVD88) at 921 Via Lido Soud. An established grade of 13.5 feet (NAVD88) would be consistent with surrounding properties.
2. The building pad area is generally level and similar to adjacent properties, however, unlike adjacent properties the front of subject site gradually slopes to the water. The subject property is currently developed with a fence and a few stairs within the front yard setback along the waterfront. The existing residence along Via Lido Soud is at a similar grade elevation as the neighboring properties, approximately 13.42 to 14.16 feet (NAVD88). Near the patio of the single-family residence, the grade is approximately 13.95 and gradually slopes to as low as 9.21 feet along the waterfront property line near the wood steps leading to the pier.
3. Both adjacent properties also have bulkheads that meet the minimum elevation standards of 10.9 feet (NAVD88) pursuant to the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. 921 Via Lido Soud has an existing bulkhead that reaches a height of 13.5 feet (NAVD88) and 929 Via Lido Soud has a bulkhead that is 13.38 feet (NAVD88) with additional wall height reaching 16.66. The proposed bulkhead would provide adequate protection for existing development and allow for comparable measurement of height for improvements.

Finding:

- D. *The grade is reasonable and comparable with the grades of adjoining lots and will not be detrimental or injurious to property and improvements on adjoining lots.*

Fact in Support of Finding:

1. Allowing a higher grade of 13.5 feet (NAVD88), which is an average elevation between the adjacent property's front yards along the waterfront (13.26 feet and 13.74 feet (NAVD88), respectively), would provide the property with a grade elevation that is compatible with those of the neighboring properties and equitable for the purposes of measuring heights of accessory structures and other features.

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. CD2022-009 and Staff Approval No. SA2022-004, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal 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 30TH DAY OF JUNE, 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 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.*
3. *Prior to the issuance of building permits, the bulkhead shall be designed and engineered for the top of stem wall at 13.5 feet (NAVD88) and engineered to be adaptable to an elevation of 14.4 feet (NAVD88).*
4. *Improvements landward of the face of the bulkhead on the subject property shall be measured from established grade at 13.5 feet (NAVD88).*
5. 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).
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 seaward of the private property.*
8. *Prior to the issuance of final building permits, the existing glass fence on public property shall be removed. At such time as directed by the City or the California Coastal Commission, the applicant shall agree to and cooperate with both agencies for: 1) the removal of any unpermitted development (i.e. existing glass fence) located seaward of the property and within the prolongation of the side property lines of the subject property, and 2) the restoration of the affected area consistent with a restoration plan approved by the City and Coastal Commission.*
9. *Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the*

bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.

10. *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.*
11. *All construction activities shall occur within private property and the use of mechanized equipment is prohibited within the Bay and public property.*
12. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
13. 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.
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. 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.
16. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
17. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
18. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
19. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
20. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
21. 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.
22. 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

23. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
24. Should the property be sold or otherwise come under different ownership, any future

owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.

25. This Coastal Development Permit No. CD2022-009 and Staff Approval No. SA2022-004 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 and Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
26. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **925 Via Lido Soud, LLC Bulkhead including, but not limited to, Coastal Development Permit No. CD2022-009 and Staff Approval No. SA2022-004 (PA2022-025)**. 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.

Grading

27. *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.*
28. *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.*
29. *Prior to the issuance of building permits, temporary shoring or temporary excavation details shall be provided with adequate temporary excavation stability. Temporary shoring may be required for dead-men excavation.*

Building

30. *Prior to the issuance of building permits, a geotechnical report shall be submitted to the building division for the new seawall/bulkhead structure.*
31. *The new bulkhead/seawall shall be designed and constructed in accordance with the "City of Newport Beach Waterfront Project Guidelines and Standards – Harbor Design Criteria Commercial & recreational Facilities".*

RESOLUTION NO. ZA2022-045

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-015 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 4014 CHANNEL PLACE (PA2022-046)

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 James Homes (Applicant), with respect to property located at 4014 Channel Place, requesting approval of a coastal development permit (CDP).
2. The lot at 4014 Channel Place is legally described as Lot 8, Block 441, Channel Section.
3. The Applicant proposes the demolition of an existing single-family residence and the construction of a new three (3)-story 2,486-square-foot single-family residence with attached 365-square-foot, two (2)-car garage. The project also includes the construction of landscaping, hardscaping, drainage, site walls, and the raising and reinforcing of an existing bulkhead for protection against coastal hazards. The design complies with all applicable development standards and no deviations are requested. All improvements authorized by this CDP will be located on private property.
4. The coastal permitting jurisdiction of the property is bisected. The residence falls within the permit jurisdiction of the City while the bulkhead and approximately 10 feet of tiebacks falls within the permit jurisdiction of the Coastal Commission
5. The subject property is designated RT (Two Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
6. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two Unit Residential (RT-D) (20.0 - 29.9 DU/AC) and it is located within the Two-Unit Residential (R-2) Coastal Zone District.
7. A public hearing was held on June 30, 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 2,486-square-foot single-family residence with attached 365-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 NBMC, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 3,066 square feet and the proposed floor area is 2,851 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 3 feet along the front property line abutting Channel Place, 3 feet along each side property line and 20 feet along the second front property line abutting the Newport Bay.
 - c. The highest guardrail is less than 24 feet from established grade of 9.00 feet based on the North American Vertical Datum of 1988 (NAVD 88). The highest ridge is no more than 29 feet from established grade. The project complies with the maximum height requirements.
 - d. The project includes garage parking for a total of two (2), 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 surrounding neighborhood is predominantly developed with a mix of both two (2)-story single-family residences and duplexes. The proposed design, bulk, and scale of the proposed development is consistent with the existing neighborhood pattern of development.
3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated January 6, 2022, for the project. The report states that the current maximum bay water elevation is 7.7 feet (NAVD 88). The report analyzes future sea level rise scenarios assuming a 3.2-foot increase in the maximum water level over the next 75 years (i.e., the life of the structure). The sea level is estimated to reach approximately 10.9 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). On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial and Residential Facilities. The guidelines require that any structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet (NAVD 88) with a design for adaptability elevation of 14.4 feet (NAVD 88). The proposed bulkhead design maintains a minimum top of wall elevation of 10.9 feet (NAVD 88) with future adaptability of up to 14.4 feet (NAVD 88).
4. The project site is protected by an existing bulkhead. A bulkhead conditions report was prepared for the project by PMA Consulting, Inc., dated January 6, 2022. The report concludes that once the existing bulkhead is raised and reinforced per the report's recommendations, flooding, wave runup, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. Condition of Approval No. 2 requires the bulkhead be raised to an elevation of 10.90 (NAVD 88) with a design adaptability of elevation of 14.4 feet (NAVD 88).
5. The finished floor elevation of the proposed single-family residence is 9.0 feet (NAVD 88), which complies with the minimum 9.00 feet (NAVD 88) elevation standard.
6. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) – (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). This requirement is included as a condition of approval that will need to be satisfied prior to final building permit inspection, respectively.
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). This requirement is included as a condition of approval that will need to be satisfied prior to the issuance of building permits, respectively.
8. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified

in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.

9. 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.
10. Pursuant to Section 21.35.050 (Water Quality and Hydrology Plan) of the NBMC, due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for Best Management Practices (BMPs), use of an LID (Low Impact Development) 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.
11. Proposed landscaping complies with Implementation Plan Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
12. The closest designated public viewpoint in the City's Local Coastal Program (LCP) is located at Channel Place Park approximately 500 feet west of the property across the bay. The proposed residence is not located near Coastal View Roads, as designated in the Coastal Land Use Plan. Due to the distance of the proposed development from the public viewpoints and the project's compliance with applicable LCP development standards, including height and setbacks, the project will not impact coastal views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on standard R-2 lot with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and

recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

2. Vertical access to the bay front is available adjacent at the terminus of 40th Street and the Newport Bay. Lateral access to the bay front is provided at the west terminus of Channel Place and the Newport Bay. The project does not include any features that would obstruct access along these routes.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2022-015, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date the Resolution is adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 (Local Coastal Implementation Plan) of the NBMC. 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 30TH DAY OF JUNE, 2022.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**
(Project Specific Conditions Italicized)

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *Prior to final building permit inspection for the new residence, the Applicant shall obtain approval from the California Coastal Commission to raise and reinforce the bulkhead.*
3. *Prior to final building permit inspection for the new residence, the existing seawall shall be reinforced and capped to 10.90 feet (NAVD 88) and capable to be raised up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial and Residential Facilities and in accordance with the recommendations provided in the Coastal Hazards Report and Sea Level Rise Analysis prepared by PMA Consulting, dated January 6, 2022.*
4. *Prior to the issuance of a building permit for the new residence, the project plans shall be updated to reflect that waterproofing or similar design feature will be constructed around the proposed residence as an adaptive flood protection device up to a minimum of 10.9 feet (NAVD88). Flood shields (sand bags and other barriers) can be deployed across the openings to protect and prevent flooding to the structure.*
5. *Prior to final building permit inspection of the new residence, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.*
6. *Prior to the issuance of a building permit for the new residence, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. This letter shall be scanned into the plan set prior to building permit issuance.*
7. This approval does not authorize any new or existing improvements (including landscaping) on California Coastal Permit Jurisdiction, State tidelands, public beaches, or the public right-of-way. Any improvements located on tidelands, submerged lands,

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

8. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands, or their buffers. No demolition or construction materials shall be stored on public property.
9. 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 (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
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. 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.
14. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
15. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
16. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
17. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
18. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
19. *Prior to the issuance of building permits, the Applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.*
20. *Prior to the issuance of building permits, the Applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.*
21. *Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.*
22. *Prior to issuance of 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 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.*

24. *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.*
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 (Construction Activity—Noise Regulations) of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
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 NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7 AM and 10 PM		Between the hours of 10 PM and 7 AM	
	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 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. CD2022-015 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.
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 **Thomas James Homes Residence including, but not limited to, Coastal Development Permit No. CD2022-015 (PA2022-046)**. 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. ZA2022-046

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2021-036 FOR AN AMENDMENT TO UPGRADE AN EXISTING TYPE 41 (ON-SALE BEER AND WINE – EATING PLACE) ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE TO A TYPE 47 (ON-SALE GENERAL – EATING PLACE) ABC LICENSE AT AN EXISTING CAFÉ LOCATED AT 100 WEST COAST HIGHWAY, SUITE 104 (PA2021-220)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by R&R Rafaei, LLC (Applicant), with respect to property located at 100 West Coast Highway, and legally described as PCL 1, Parcel Map 2010-133 requesting approval of an amendment to a Minor Use Permit.
2. The Applicant requests to amend a minor use permit to upgrade the existing Type 41 (Beer and Wine - Eating Place) Alcoholic Beverage Control (ABC) License to a Type 47 (On-Sale General - Eating Place) ABC License at the existing Xanadu Café. No change to floor area, hours of operation, or seating is proposed with the amendment. There are no proposed changes to the floor plan and the hours of operation would remain 6 a.m. to 10 p.m., daily. If approved, this amendment will supersede Minor Use Permit Nos. UP2015-007 (PA2015-021) - (for the existing café) and UP2016-042 (PA2016-174) - (addition of Type 41 ABC License). All conditions of approval will be consolidated and incorporated into this amendment
3. The subject property is located within the Commercial General (CG) Zoning District and the General Plan Land Use Element category is General Commercial (CG).
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 June 30, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves the upgrade of the existing ABC License for the café with no other alterations or changes.
3. Furthermore, a Mitigated Negative Declaration (SCH No. No. 2011041038) was prepared for the development of the shopping center in accordance with the implementing guidelines of the California Environmental Quality Act (CEQA) and approved by the City Council on August 9, 2011.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030 (Alcohol Sales) of the NBMC, the following findings and facts in support of such findings 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 of the NBMC, 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 subject property is in Reporting District 26 (RD 26). The Newport Beach Police Department (NBPD) is required to report offenses of Part One Crimes combined with all arrests for other crimes, both felonies and misdemeanors (except traffic citations) to the ABC. Part One Crimes are the eight (8) most serious crimes defined by the FBI Uniform Crime Report – criminal homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson. The crime rate average in RD 26 is higher than adjacent RD 41 and the City-wide Reporting District Average, but lower than adjacent RD 25 and RD 28. Adjacent RD 41 is predominantly residential properties compared to the subject RD 26 which includes most of the commercial properties in Mariners Mile, a highly traveled and visited area by residents and tourists. The area is found to have undue concentration, as it has 30 percent over the citywide average crime count. The highest volume crime is “simple assault” and the highest volume arrest is “drug related offenses.”
 2. The NBPD has reviewed the proposal, provided recommended operational conditions of approval and had no objection to the project. The operation of the establishment includes the approved floor plan with no separate bar counter or area and an earlier closing hour of 10 p.m.

ii. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.

1. The subject RD 26 has the second lowest number of total arrests compared to the adjacent Reporting Districts and 36 percent of the arrests were alcohol related. RD 26 and adjacent RD 25 have the highest amongst the adjacent Reporting Districts due to DUI arrests. RD 26 includes most of the commercial properties in Mariners Mile and the portion of West Coast Highway which is a heavily traveled road for visitors accessing the coastal destinations of water-front restaurants, boating and marine activities. The NBPB memo indicates this location has not been a burden on police resources in terms of calls for service.
2. In 2021, there were fifteen (15) dispatch events coded to this location and in 2022, to date there has been one (1) dispatch event but none of the calls appear to be directly related to the existing café or alcohol.

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 existing food service, eating and drinking establishment (Xanadu Café) is within Mariners Pointe Shopping Center along West Coast Highway and is consistent with the Commercial General land use category. The shopping center consists of retail, service, and other eating and drinking establishment uses. The subject property is located approximately 200 feet across Dover Drive from Lower Castaways Park. However, the café is oriented further away with its main entrance and outdoor dining within the commercial corridor along West Coast Highway which is approximately 450 feet from the park. Environmental Nature Center Preschool and Newport Harbor Lutheran Church and School are over a ¼-mile north of the café on Dover Drive. The nature of the commercial area along Coast Highway is to provide goods and services including eating and drinking establishments designed to foster visitor and resident activity from travelers down Coast Highway and residents nearby. The nearest residential uses are behind the shopping center site along Kings Road and across Coast Highway in the gated community of Bay Shores. Eating and drinking establishments with incidental alcohol service are common in the General Commercial area on Coast Highway and the proposed change in alcohol license type is not anticipated to alter the operational characteristics of the use such that it becomes detrimental to the area.

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

1. Currently there is one (1) establishment (Sushi Li) within the shopping center that includes a Type 47 ABC License and no late hours. The next closest establishment is Pizzeria Mozza at 800 West Coast Highway approximately 900 feet west of the center. There is no evidence suggesting these uses have been detrimental to surrounding properties or the neighborhood.

v. *Whether or not the proposed amendment will resolve any current objectionable conditions.*

1. An eating and drinking establishment have operated at the subject property since 2015 with no operating issues or complaints related to alcohol.
2. The project has been reviewed and conditioned to 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.
3. The existing hours of operation for the establishment will minimize the potential effects on land use. The establishment closes by 10 p.m., daily, which will help to ensure the use does not become a late-night bar, tavern, or nightclub.
4. The establishment is located within an existing shopping center which is developed with other commercial uses and has an existing alcoholic beverage control license. Upgrading the license is not expected to alter the existing operation and will complement the food service while providing a convenience to customers.

Minor Use Permit

In accordance with Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits) of the NBMC, the following findings and facts in support of such findings 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 General Commercial (GC), which is intended to provide a variety of commercial uses.
2. The existing eating and drinking establishment is located within a shopping center in the commercial area along West Coast Highway, which provides goods and services to visitors and residents alike, consistent with the CG land use designation.
3. 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 site is in the Commercial General (CG) Zoning District and is intended to provide commercial uses. Eating and drinking establishments are permitted uses subject to the approval of a use permit.
2. The existing eating and drinking establishment operate pursuant to Minor Use Permit No. UP2015-007 (PA2015-021), which allowed the existing café with interior and exterior seating, and hours of operation from 6 a.m. to 10 p.m. daily. It also operates pursuant to Minor Use Permit No. UP2016-042 (PA2016-174), which allowed the Type 41 (On-Sale Beer and Wine) ABC License. The requested upgrade of the ABC license requires approval of an amendment to the Minor Use Permit. This resolution will consolidate the approvals for the café into one (1) minor use permit.
3. The use will remain an eating and drinking establishment and the upgrade of the alcohol beverage control license will not alter or intensify the existing use. Further, there will be no change to the floor area including the existing net public area and seats or the hours of operation.

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 upgrade of the ABC license in conjunction with the included conditions of approval will not change the operating characteristics of the existing café.
2. The café will remain complementary to the other uses in the Mariner's Pointe shopping center, which will include retail stores, food services, and other commercial uses. It will contribute to making the shopping center a viable commercial node for the neighborhood and visitors.
3. The café will continue to provide a convenience for residents of the neighborhood and visitors to the area with adequate parking within the parking structure on-site.

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 existing café within the shopping center has proven to be physically suitable in terms of design, location, shape, and size to support the use. The physical characteristics of the site are not changing with the upgrade of the ABC license.
2. Adequate public and emergency vehicle access, public services, and utilities are provided for on-site.
3. The existing café is located along an existing walkway adjacent West Coast Highway that is Caltrans-right-of way. The café is conditioned to be maintained entirely on private property with no encroachments into the Caltrans-right-of-way.

Finding:

F. Operation of the use at the location proposed 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 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 café will continue to service the neighborhood by providing dining services as a public convenience to the surrounding residential neighborhood as well as visitors which is the intent of the commercial area. The service of alcohol will continue to complement the principal use of the facility and provide an economic opportunity for the property owner to maintain a successful business in a way which best serves the community.
3. The operator has corrected the previous violations of providing smoking lounge services on the menu at the premises. There is a condition of approval included to prohibit any smoking lounge services at the café.

4. As conditioned, the owners, managers and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for selling alcohol.

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. UP2021-036 (PA2021-220), 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.
4. This resolution supersedes Zoning Administrator Resolution Nos. ZA2016-066 (PA2016-174) and ZA2015-015 (PA2015-021), which upon vesting of the rights authorized by this Minor Use Permit No. UP2021-036 (PA2021-220), shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 30th DAY OF JUNE, 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 including seating plan, outdoor dining area stamped and dated with the date of this approval.
2. This Resolution approves Minor Use Permit No. UP2021-036 (PA2021-220), amending and superseding the existing Minor Use Permit No. UP2016-042 (PA2016-174). This Minor Use Permit will also supersede existing Minor Use Permit No. UP2015-007 (PA2015-021). All appropriate conditions of approval for the café are included and shall be abided by.
3. The hours of operation for the establishment shall be limited to 6 a.m. through 10 p.m., daily.
4. The maximum interior net public area shall be 484 square feet.
5. The outdoor dining shall not exceed 121 square feet (25 percent of the net public area) and shall remain entirely on private property with no encroachment into the public right-of-way or the Caltrans right-of-way. The design and materials of the new ABC barrier shall be reviewed and approved by the Planning Division prior to installation. An inspection shall be scheduled with the Planning Division to confirm the location of the outdoor dining and that the required ABC barrier is entirely on the private property to match the approved plans.
6. The establishment shall not provide any services that constitute a "smoking lounge" as defined by Chapter 20.70 (Definitions) of the NBMC. This shall include, but not be limited to the menu of the café including tobacco or tobacco like substances for smoking by patrons on the premises.
7. Use Permit No. UP2021-036 (PA2021-220) 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 NBMC, unless an extension is otherwise granted.
8. Parking shall be provided at a rate of one (1) space for each 40 square feet of net public area and shall comply with the approved parking management plan in effect for the site. Any change to this would require an amendment to this use permit.
9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and may require an amendment to this use permit or the processing of a new use permit.

10. Temporary refrigerated trash storage shall be provided to control odors associated with food waste, unless otherwise approved by the Community Development Director.
11. Kitchen exhaust fans shall be installed and maintained in accordance with the Uniform Mechanical Code.
12. The exhaust systems for the food use shall be installed with pollution control units to filter and control odors and shall be located entirely within the structure, except for a required vent that may be located on the roof in a location approved by the Planning Division.
13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
14. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this use permit.
15. 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.
16. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
17. No outside paging system shall be utilized in conjunction with this establishment.
18. 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

19. All trash shall be stored within the building or within the existing dumpsters stored in the trash enclosure. The trash enclosure shall comply with Zoning Code Section

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- 20.30.120 including three (3) walls, a self-latching gate and a decorative solid roof for aesthetic and screening purposes.
20. 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.
 21. 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.
 22. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 8 a.m., daily, unless otherwise approved by the Director of Community Development, and may require an amendment to this use permit.
 23. 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.
 24. 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.
 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 the **Xanadu Café Minor Use Permit Amendment including, but not limited to, Minor Use Permit No. UP2021-036 (PA2021-220)**. 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.

Police Department

26. The ABC License shall be limited to a Type 47 (On-Sale General – Eating Place). Any substantial change in the ABC license type shall require subsequent review and potential amendment of the Use Permit.
27. The Applicant shall comply with all federal, state, and local laws, and all conditions of the ABC 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.
28. 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. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. 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.
29. The Applicant shall maintain a security recording system with a 30-day retention and make those recording available to police upon request.
30. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the NBMC.
31. There shall be no live entertainment or dancing allowed on the premises.
32. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
33. Any event or activity staged by an outside promoter or entity, where the Applicant, operator, owner or his 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.
34. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
35. 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.
36. Food service from the regular menu must be made available to patrons until 30 minutes prior to closing.

37. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The license 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.
38. 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 which are clearly visible to the exterior shall constitute a violation of this condition.
39. Strict adherence to maximum occupancy limit is required.
40. "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).
41. The outdoor dining patio shall be separated from the public right-of-way with a solid decorative barrier (subject to ADA compliance) around the perimeter of the consumption area to meet the minimum requirements of ABC and shall not be located beyond private property.
42. The Applicant shall post and maintain professional quality signs measuring 12 inches by 12 inches with lettering no smaller than two (2) inches in height that read, "No alcoholic Beverages Beyond This Point" at all premises exits.

RESOLUTION NO. ZA2022-047

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2021-041 FOR A PERSONAL TRAINING FACILITY, LOCATED AT 847 WEST 16TH STREET (PA2021-247)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Onyx Athletica LLC (Applicant) with respect to property located at 847 West 16th Street and legally described as the West 157 ½ feet of Lot 812 ½ of the First Addition to the Newport Mesa Tract, seeking approval of a minor use permit.
2. The Applicant requests approval to establish a personal training facility and on-line activewear business within an existing 5,920-square-foot tenant space in the IG (Light Industrial) zone. The space will be renovated and improved with nine (9) individual workout stations, a lobby/reception area, administrative offices, restrooms, storage closets and lockers for patrons. The facility will operate by appointment only, between the hours of 5:00 a.m. and 10:00 p.m. daily. The proposed use is permitted in the zone, subject to a minor use permit.
3. The subject property is categorized General Industrial (IG) by the General Plan Land Use Element and is within the Industrial (IG) Zoning District.
4. The subject property is not located in the coastal zone.
5. A public hearing was held on June 30, 2022, online via Zoom. A notice of time, place, and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 1 exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

3. Class 3 exempts the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. In urbanized areas, this exemption includes a store, motel, office, restaurant or similar structure not exceeding 10,000 square feet in floor area on sites zoned for such use, if not involving significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.
4. The project involves the establishment of a personal training facility and on-line activewear business within an existing 5,920-square-foot tenant space in the IG (Industrial) zone and improvements are limited to minor tenant improvements within the existing building. The project therefore qualifies for both the Class 1 and Class 3 categorical exemptions.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the 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 IG (General Industrial) land use designation is intended to provide for a wide range of moderate to low intensity industrial uses, such as light manufacturing, research and development, and limited ancillary commercial and office uses. The proposed project comports with this intent. Personal training is consistent with the land use designation and the retail component serves as an ancillary commercial use.
2. The property is not located within 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 IG (Industrial) Zoning District is intended to provide for areas appropriate for a wide range of moderate to low intensity industrial uses and limited accessory commercial and office uses. Health/Fitness Facilities over 2,000 square-feet are specified as an allowed use within this zone, subject to a minor use permit.
2. The project will provide a host facility for private personal trainers who will contract with Onyx Athletica LLC for use of the space and equipment to train individual private clients.

The project would support private trainers by providing a shared location in which to operate, designed and equipped for their work, with adequate on-site parking and operating characteristics consistent with the surrounding adjacent land uses.

3. The operational conditions of approval will promote compatibility with the surrounding land uses, which are predominately industrial uses. The proposed use will comply with all other applicable provisions of the NBMC.

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 project is located within an existing industrial building. The design, size, location, and operating characteristics of the use are compatible with the surrounding existing land uses.
2. Project implementation will consist of tenant improvements to the existing tenant space, in compliance with Building and Fire Code safety and accessibility requirements. The design of the tenant improvements will comply with all Building, Public Works, and Fire Codes.
3. The applicant has provided a parking study, prepared by RK Engineering Group, Inc., dated October 6, 2021, documenting that adequate parking exists onsite for both the existing and proposed uses. The parking study considered the square footage of each existing and proposed business, operating hours, number of onsite parking spaces and applicable City parking requirements. There are fifty-two (52) onsite parking spaces on the project site and thirty-nine (39) spaces are required based on City standards, therefore a surplus of thirteen (13) parking spaces exists.

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.*

Facts in Support of Finding:

1. All proposed tenant improvements, with the exception of signage, are limited to the inside of the existing building and will not affect pedestrian circulation, parking spaces, or access to existing tenants. Adequate public and emergency vehicle access is taken from West 16th Street. Public services and utilities are adequately provided for on-site.
2. The design of the improvements will comply with all Building, Public Works, and Fire Codes, and plans will be reviewed prior to the issuance of building permits.

Finding:

E. Operation of the use at the location proposed 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 proposed use.

Facts in Support of Finding:

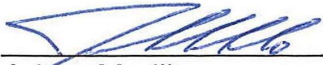
1. The project includes conditions of approval to ensure that potential conflicts with the surrounding land uses and City as a whole are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots, during business hours, if directly related to the patrons of the business.
2. The proposed business will be located within an existing tenant space in an existing industrial building and the IG Industrial zone allows the proposed use, subject to a minor use permit. The space has not proven unsuitable for this type of use.
3. The proposal has been reviewed by the Building Division, Public Works, and Fire Departments, and recommended conditions of approval have been included to limit any detriment to the City or general welfare of persons visiting or working in the surrounding neighborhood.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2021-041 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 30TH DAY OF JUNE, 2022.



Jaime Murillo
Zoning Administrator

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

1. The project shall be in substantial conformance with the approved 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. The Applicant is required to obtain all applicable permits from the City's Building Division and Fire Department.
5. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of NBMC Chapter 20.42 (Signs).
6. Minor Use Permit No. UP2021-041 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060 (Time Limits and Exceptions), unless an extension is otherwise granted.
7. 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.
8. Any change in operational characteristics, expansion in area, or other modification to the approved plans, may require an amendment to this Use Permit or the processing of a new Use Permit.
9. A minimum of thirty (30) onsite parking spaces shall be allocated to the proposed use.
10. Private training sessions shall be scheduled to have a 15-minute time gap between appointments to maintain available onsite parking.
11. All training sessions shall be by appointment only. Walk-ins are not permitted.
12. Trash dumpsters and stored items blocking parking spaces shall be relocated to render all parking spaces available for the parking of vehicles.

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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. 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. 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.
 16. The exterior of the business shall always be maintained free of litter and graffiti. 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. 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).
 18. Storage outside of the building in the front or at the rear of the property shall be prohibited, except for the required trash container enclosure.
 19. 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.
 20. 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 NBMC.
 21. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **Onyx Athletica LLC including, but not limited to, Minor Use Permit No. UP2021-041 (PA2021-247)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this

condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division

22. 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.
23. Prior to the issuance of building permits, the project plans shall comply with applicable disabled access requirements.

Fire Department

24. The facility is classified as an A-3 Assembly Group Occupancy. A minimum of two (2) exits equipped panic hardware are required. A roll-up door does not qualify as an exit door.